

# City of La Verkin

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## La Verkin City Council Work Meeting Minutes

Wednesday, March 18, 2026, 5:00 pm.

111 S. Main, La Verkin, Utah

**Present:** Mayor Kelly Wilson; Council Members: Amanda Barr, John Valenti, Micah Gubler, and Darren Prince; Staff: Kyle Gubler, Derek Imlay, Fay Reber, and Nancy Cline; Public: Heath Snow, Alen Olsen, Scott Stratton.

**Called to Order** –Mayor Wilson called the work meeting to order at 5:00 pm.

1. 20-foot access Easement- Olsen Subdivision.

Fay explained that the purpose of this meeting today is to talk about this twenty-foot access easement that Theresa Fish has requested the city vacate. They have already discussed this issue, but he gives a short recap. This twenty-foot access easement runs to the right where the boundary between lot one and then parcel A, which is still owned by Allen Olson, right? One of the difficulties in this is the language of the owner's dedication that says that all easements shown on here are conveyed as public easements. Public easements on the plat itself simply says, "twenty-foot access easement." One of the first considerations is to try to figure out what this access easement really is. Is it a public street? Is it simply an access easement? He passed out a memo that kind of explained why. The significance of that is that if it's just an access easement and they're looking to vacate just an easement, then they can proceed by filing a plat amendment under section 8-11-1020-811 of the Utah Code.

Kyle asked if they had filed a plat amendment.

Fay replied they have not come in and filed it yet. Snow told me they would be filing a petition for a plat amendment. If an access easement doesn't rise to the level of a public street, then we don't have to have it heard under section eight thirteen, which pertains to vacating or amending public streets, which requires a public hearing and requires two findings. One finding being that good causes exist for the vacation or amendment, and that no person nor any member of the public will be injured by such a vacation or by an amendment. There would be two- pronged findings we have to make.

Mayor Wilson added that it is not wide enough for a public street or fire access.

Fay agreed. If it's simply a public access, then we can proceed under section eight eleven which is the plat amendment process. That has to be filed before the (ALUA) land use authority. At the last meeting they discussed there might be a possibility that it would be filed before ALUA, but by statute, the ALUA is not the body to hear this. Under Utah Code, it says that the land use authority is a defined term is that body which is specifically designated by the council to hear plat amendments. In this case, we have never done that in our subdivision ordinance, where we create the ALUA and delegate certain authority to the ALUA. It does not extend to plat amendments. In fact, our subdivision ordinance says that all plat amendments are simply determined in accordance with state law. For that reason, because we haven't designated anybody as the land use authority, that designation falls back on the city council itself. That's just a matter of state law. For that reason, the plat amendment when it comes will be filed with the city council. He originally thought that parcel A was also included as part of the subdivision, but it's not. It's only a one-subdivision lot; it only includes lot one. So, parcel A is not within the subdivision. That's relevant to the statute dealing with plat amendment says, if any person within the area of the amended plat files an objection, then you have to have a public hearing. Now, in this case, the only objection we would have is from Alen Olsen. Right? He is not within the amended part of the amended plat area. So therefore, he doesn't qualify, and we don't necessarily have to have the public hearing. After we give the appropriate notice, we can have it placed on city council agenda, and then it would

come to the city council for determination. The one finding we have to make is if it's a plat amendment is to find good cause. We have to find that good cause exists for the plat amendment. Problem is that Utah code doesn't define what good cause is. There's a whole lot of different things that could possibly go into that, but that's something for the council to determine whether or not good cause exists for the vacation. Now in this case, there are several factors that might weigh into that. One factor is that Theresa Fish bought the property after it was subdivided. She knew full well or should have known because it was on the plat, that there was a twenty-foot access easement there. The other factor that would come into play is whether or not that twenty-foot access easement and the recording of the plat creates a vested right in parcel A for access into parcel A. And if that's the case, if there is a vested right access into parcel A, then if we somehow extinguish that right. The city can have some liability there. Parcel A is owned by Alen Olsen. If we interfere with Alen Olsen's property rights by vacating what would otherwise be a valid access easement for him, then the city could have some liability.

Mayor Wilson asked if it's an access easement, it's not wide enough for a road, and it's not wide enough for fire department. Can you just make it access by walking access like a trail or something?

Fay didn't know if they could do that unilaterally.

Kyle added it's not only too narrow for a fire truck but also too steep. According to the letter from the fire department.

Fay explained that it seems to him what was really happening at the time they recorded the plat was that Alen Olsen was trying to provide access into lot one, and then he was also trying to provide access into his remaining parcel. Now he could have done that in a lot of different ways and a lot less confusing way. He could have just simply reserved an easement that was pertinent to lot A and noted that on the plat, but they didn't do that. They just put a twenty-foot access easement, and that's what makes it kind of complicated and kind of questionable. From the city's perspective what will happen is they'll file an application for an amended plat. It'll come to the city. There's some notice that has to go to affected entities and so forth, but once that notice is given, it can be set on the agenda not for a public hearing, but just as a regular meeting agenda item. And, then the city council can make a decision as to whether or not they think that there is good cause for that vacation of the twenty-foot access easement

Mayor Wilson added that it could leave us open to Alen if he wanted to file suit against this.

Fay replied that it would, if we did that and Alen said get back and said, "Hey, wait a minute, you are interfering with my property right. This is a vested right I have because of the recording of the plat" and that he could claim that we're taking a valuable property right, he could claim violation due process. He could claim a number of things potentially, and he could potentially file suit.

Councilman Gubler asked where she signed the plat a couple of times, at least once aware or should have been aware of it. It seems like it puts us in more of a position of liability if we now take it and vacate it. She knowingly purchased it and signed the plat.

Kyle asked if the city doesn't vacate it could there be liability from Theresa?

Fay explained that the only liability we would have is if we somehow didn't follow the state statute in our determination of what's good cause, and we didn't make the appropriate findings. And didn't have all of that set out in our minutes of our meeting. It's the whole issue of making sure we lay a good record and a good foundation for it all.

Mayor Wilson asked Fay if his recommendation would be to let them go ahead and file for an amended plat?

Fay replied that we can't stop them from filing an application for an amended plat.

Mayor Wilson clarified that as far as the city council goes it would be best to leave it as is.

Fay replied that's one way of maybe minimizing threat of liability.

Councilman Prince commented that the attorney indicated two weeks ago that we couldn't determine what that access meant. Now we are saying that we can say that was determined as an access for that back lot.

Heath Snow commented that if the court of law is looking at this, a judge doesn't look at what the party's intentions are or the evidence of what they would say after the fact. First thing you have to do is look at what does the plat, the plain language says. And it said access easement. And then it's got the dedication and it dedicates all easements to the city. All it would have needed to be said was access road to parcel A. This is access road for Parcel A, but it doesn't say that; it just says, "access road." It says, right here in the dedication, they dedicate and convey to the city of La Verkin for perpetually use of public, all easements shown on the spot. If I am a judge I can't go beyond the four corners of that document and look at what parties thought, they intended. If it's clear to him in the four corners of the document, he doesn't go there. Mr. Olson can say, "I always intended it to be a reserve access to one". But the judge can't or shouldn't listen to that because parole evidence is not admissible.

Fay added unless it's unclear. That's only if it's clear from the four corners of the document. If there is any ambiguity, the court can look at outside evidence. That would be up to the judge to make that determination.

Councilwoman Barr asked if there is any other access point available to Lot A.

Heath replied that the entire back of property.

Councilwoman Barr thought that would be an easier spot to do whatever they're going to do. We talked about this, the very first time; it was they couldn't build anything on there, is that correct?

Heath explained that initially, this was a flag lot. That got dedicated, but you can't extend the pole of a flag beyond a flag lot to twenty-five feet that is what your ordinance requires for the pole of the flag lot, and this is only twenty feet. We've got a letter from the Hurricane Valley Fire District that says that in the width of the access and what's actually been built out there because it does ramp to get to a higher level that it's not wide enough and it's too steep of a gradient. It's fourteen feet. Fire code does not allow a fire access road to be more than two percent gradient.

Scott Stratton commented that it's not true. You can go fourteen if you pave up or put in sprinklers in the building.

Councilwoman Barr replied that the fire Marshall's letter said ten feet.

Councilman Prince asked if that even matters. What if it was access for a peddle bike? Do we have to determine whether it's for car access or fire truck access.

Heath replied that we have a very vague easement here, just based off of the notation. What we do know is it's not utility easement. It's some sort of access easement. What level of access is it? Vehicular traffic? Is it pedestrian traffic? What is allowed in it? And then frankly, this easement area is part of my client's lot. Because there's no clarity there a court would look at how this thing has been historically used. It's been a dirt road, it's never been paved, and really hasn't been used. There is a gate right here at the top, but I do know that Mr. Olsen has gone through it once or twice.

Fay replied that it is paved now.

Heath commented that her driveway is partially paved. If I took the first ten feet, of this twenty-foot easement, that would be her paved driveway. The other side of it is dirt, and the back half of it is dirt.

Fay replied he knows that the easement doesn't follow right in line with where the pavement goes down a lower portion closer to the road down there. It actually goes up on the hillside.

Councilman Gubler adds that in the end it is a public access easement.

Fay added that the plat is a little bit vague on what kind of access easement this is.

Heath commented that he has copies, and electronic copy on a thumb drive and a check for the application fee to apply for an amended plat. All that's been done to the plat is to eliminate some language, and it says "Olson Subdivision First amendment," I think is what it says right there, and it eliminates it. The effect of approving that would be to abandon or vacate an easement. Really, you would vacate a road, you can abandon other things, but the city would be abandoning that.

Fay said his concern is that by virtue of a dedicated plat showing the easement goes exactly up to the property line that it creates a vested property interest or a property right in parcel A. And if so, it makes it much more difficult for the council to find that there is good cause existing for the approval of the plat. That's what the council has to find, good cause.

Heath commented not necessarily that it harms somebody else.

Fay replied that he didn't think the harm comes in, Under section eight eleven. Eight thirteen is the one on public streets, but this isn't a public street. So, under eight twelve if the land use authority finds that there is good cause for the vacation or amendment, that's the finding we have to make. It goes on to say, and no public street or municipal utility easement has been vacated or amended. Which is the case.

Heath asked what the public purpose is of retaining it.

Fay explained what the council has to find is whether or not there is a good cause for approving the plat amendment, which would effectively vacate or abandon the easement.

Heath replied that the cause would be that it is an easement that burdens his client's property.

Fay explained that she purchased the property knowing the easement was there.

Heath explained that unknowing the nature and scope of it, she's now been advised by myself, by legal counsel, as to what that is, and we're asking for it to be abandoned. And the reason why I don't see any harm or that it is worthwhile to do is, it can't be used for fire access. Now, if someone wanted to build a home up there, they could use sprinklers. Okay, that's fine. But it's too steep and it has not improved. That's another issue too; as an all-weather surface. All the way along that, and in my opinion, any attempt to pave or gravel those twenty feet is an expansion in the scope of the easement as it has been historically used. What existed at the time that this plat was recorded, and what has happened since then? It has always been used as a partial paved driveway into my client's property, and the rest of it is dirt.

Alen Olsen commented that Heath has never been here. He doesn't know any of this. He does it all the time. He's just trying to make his paycheck, but the thing is, the city approved it. We filed everything; we did everything correctly. The people that had the house have to leave it on; she was aware of it before she bought it. I don't see how this is any problem, and it doesn't encroach on her property. I know Mr. Snow probably never even saw it.

Heath replied he had been there and walked the property.

Alen Olsen continued to say that I doubt you know anything about that history. And the thing is, it doesn't encroach on her property whatsoever. It goes straight up from two hundred up to the property. The other thing is, it's not too steep; the other side is too steep. So, if you shut this off then then they're going to have an issue.

Heath replied that the bottom line is this road along here is unimproved right now. This is paved all the way to right here. Their buyer wants to build a home or two homes on it, I now understand, and they want to go and expand the scope of the easement and pave it. And they want to be able to lay pavement right up into their home. They want to pay a deferral amount to the city so that whatever the cost to improve that is, is paid in. And when the city is ready to improve it, it's done. But they don't have to drive their vehicles through dirt roads and make a meandering driveway. They just want a straight shot, and they just want to drive right up into their property.

Scott Stratton commented those words are being twisted. As long as these guys hold the line that's all that matters.

Mayor Wilson commented that the twenty-foot easement isn't wide enough for your access.

Heath added that additional access or driveway or lane beyond the first flagpole is not allowed, and that this wasn't flagged lot even if it was allowed, the ordinance says twenty-five feet. And that's twenty feet, so it can't be used as access.

Alen Olsen replied that it doesn't matter.

Councilman Valenti asked if they had any private roads that are less than twenty-five feet. It's access for an automobile or truck or whatever; it doesn't have to be access for a fire lane.

Heath explains that if my client puts a gate at the end right here, which there already is a gate. What is the city's purpose or use for access? They can drive a truck up there and look around, or the public, any person publicly, can go up there and look, and drive on my client's property. That's what that's the only thing I can ascertain from a term access road. You can access; you can go up there. But what can you do with it? What does it allow? So that's where I am asking, I don't see the benefit to the city. What is the harm of abandoning it?

Alen Olsen asked what the harm in keeping it is.

Heath replied it allows the public to drive on his client's property.

Alen Olsen commented that it's an easement. I mean, you said that we didn't use it much, which we did, but there wasn't anybody else. Other than maybe the city once in a while and Gail never cried about it. No, they allow it all the time. And the guy next door where those bushes are, I think you can take those out and make a road right there.

Mayor Wilson asked Fay if the Olsen's have a vested right to the access.

Fay replied that he was correct. That's one of the questions we need to decide. We need to decide whether or not, by virtue of this recorded plat, if it creates a vested use with respect to parcel A. And if it does, then in making the determination with good cause. We need to take that into consideration because we don't want to interfere with someone's property rights by vacating a public street

Councilman Prince asked if that's vacated, do they still have a claim to a prescriptive easement.

Heath replied even if the Olsen's or their predecessors had used that for a period of time, by the mere fact that they recorded a plat that didn't reserve that as an easement for themselves, so that's a clear acknowledgement and it would break any sort of prescriptive.

Fay agreed that you can't really acquire prescriptive easements against the city against the public right away. The other thing is to obtain prescriptive easement; it's a twenty- year period.

Heath added that they need to recognize the nature of the easement— is this access easement? And unless it clearly says that it is an exclusive access easement, it's non-exclusive. Case law in Utah says that they're going to construe easements for the benefit of the burdened property owner, which is my client. So, she has a right to go over it as well. And right now, the city has a right to go over it.

Alen Olsen replied that we have a right to go over it. That's just your interpretation.

Heath replied that assumes you have a right over the city's right.

Alen Olsen commented that the right is there. It's there in writing it says access.

Councilman Valenti replied that it doesn't identify it as a public access easement except in the language.

Heath added it doesn't reserve it for the benefit of parcel A.

Alen Olsen commented it does reserve it for us to parcel A.

Heath explained it dedicates it to the town dedication of an easement and reservation of an easement.

Alen Olsen responded that it's fine because they are part of the town.

Fay commented that when engineers prepare a plat they pirate language from another plat and stick it on.

Councilman Gubler thought it was obvious that the intent of it was to carry two hundred north up, and it was to access the parcel A

Heath explained he never found any master transportation plan or B and C road maps that show two hundred east ever extending beyond right there.

Alen Olsen said that's not what he said.

Heath responded that the city always thought that it was going to extend right into a hillside.

Councilman Gubler explained that no, he was saying when you look at this, like we do from an outside perspective, you can tell that they messed up on this plat, but it's easy to tell what they were trying to do. To him it's not that hard. They made it ambiguous by not getting this plat recorded right.

Councilman Valenti added that there's no guarantee two hundred south won't go further to the east on that map. There's a large parcel there to be subdivided to the north of it later on.

Mayor Wilson added that the only way to put a road there is for that property owner to the north would have to dedicate it for a fifty-foot street, then it could be.

Heath added that it wouldn't be on his client's property though.

Mayor Wilson agreed and that's a possibility they could.

Fay commented that he's got to explain to the council that because the Olsen's aren't a part of the amended plat, their protest doesn't count towards the requirement that there is a public hearing. For consideration, approval, or whatever of the plat amendment. So, what he indicated to the council is as soon as the plat amended, plat is filed and the notice is given. It should be set on the agenda of a city council meeting, and then council can make a determination.

Mayor Wilson added that it would be up to the city council to decide whether or not to amend that plat. The council would decide whether they thought there was any liability for a suit from the Olsen's against the city by vacating that.

Fay explained that It's up to the council at that point to determine whether or not there is good cause. Whether they think there is good cause for the approval of the amended plat now that determination of good cause. It could include a number of different factors. It's not spelled out by Utah code, so it's kind of ambiguous, like everything else in this case.

Heath asked what if we filed a petition for declaratory judgment, asking the judge to quiet title and determine the purpose and the beneficiary of any sort of easement, whether it's the cities and the publics in general or it is owed to the owner of parcel A, the Olsen's. If we did that and a court made a determination, I would assume that we would also make the city a party but say, "Hey, look as long as you agree that you'll abide by whatever the judge decides on this," because really, it's a dispute between the two parties.

Fay replied that he thought in that instance, the city would just simply take a neutral position and say, "Look, whatever the court decides will abide by."

Heath added that maybe that's the easiest way, and this gets put on hold. We have a judge, look at it and interpret it the way, that I am pretty confident the judge will interpret it, that it's the city's for use of the public right up to the edge of the property. At that point in time, our question would be they don't have some sort of implied easement that was reserved there. They don't have an easement; they don't have harm or anything like that. And the question becomes, what is the purpose that the city wants that piece of property or an easement on that piece of property? Why do they need to continue to allow people to go up their driveway, turn around or whatever?

Fay replied that that's an alternative way of handling it. And again, from the city's perspective, he thought they would just sort of stand back and take a neutral position.

Heath explained that we wouldn't want to bring the city in to make them incur costs. They just have to be a party so that the city bound by whatever the court decides.

Councilwoman Barr thought that was a good idea and would make it a neutral decision as well as unbiased.

Fay added that, It takes council off the hook a little bit in making that determination.

Mayor Wilson added it takes the city off for liability on either side.

Councilman Valenti added that if we decided it's a legislative issue, and if the court decides it's more of a judicial issue, is that kind of how it would work out also?

Fay explained that he didn't think the distinction between legislative and judicial has any bearing.

Councilman Valenti asked because if it comes to us, that's us exercising legislative authority.

Fay explained that this gets kind of complicated. But typically, if you had a plat amendment, that typically is an administrative function. But because the city didn't delegate or designate the ALUA to hear that, then it falls back to the city council. So now city council, in effect, makes that determination as an administrative body.

Councilman Gubler commented which we could attach an ultimate decision based on whether it was arbitrary or capricious.

Fay agreed that there's a number of different ways that you could attach it or they could.

Councilman Gubler added that ultimately, it's probably going to be decided in a court anyway, right?

Fay replied that's a possibility. It depends on how strongly either party feels after the city council makes a decision. If they were put in that position.

Heath asked if the city council would rather have him file this than ask for the item to be tabled, pending the outcome of a piece of litigation? Then it sets the stage and is done properly.

Fay thought the city might prefer that position of just tabling it.

Heath added that they wouldn't have to make an initial decision. Pending the outcome. They're only making a decision based off what the court finally decides.

Mayor Wilson commented that they would add it to the agenda. They could discuss it there and determine whether or not they want to table it or not.

Fay explained he thought we don't have anything really to consider at this point. We don't have an amended plat in front of us to review. He thought the only thing we can do is continue until such time that we receive an application for an amended plat. If they elect not to file that and go the other route, it'll just simply continue until that time.

Heath agreed they would table it for now. He would leave the application and the plat itself in electronic copy with the city. We would ask that it be considered lodged and that it be on the agenda for the following council meeting, for which then they would table it. We will get it filed with a declaratory judgment action filed, just asking a judge to declare whose has rights.

Mayor Wilson commented there is only one item on the agenda that night so they can add that.

Fay explained they would put it on the agenda and it's a quick table. He'll have that filed. We'll just simply motion to table this until a resolution from the court.

Mayor Wilson closed the meeting at 5:40 p.m.

**B. Adjourn:**

**The meeting adjourned at 5:40 p.m.**

April 1, 2024  
Date Approved

ATTEST: Nancy Cline  
Nancy Cline  
City Recorder

[Signature]  
Mayor Kelly B. Wilson