

The Regular Meeting of the
Brian Head Town Council
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Via Zoom Meeting ID# 883 2287 7113
TUESDAY, FEBRUARY 08, 2022 @ 1:00 PM

Roll Call.

Members Present: Mayor Clayton Calloway, Council Member Larry Freeberg, Council Member Kelly Marshall, Council Member Dennis VanNostran, Council Member Martin Tidwell.

Staff Present: Bret Howser, Town Manager; Nancy Leigh, Town Clerk; Aldo Biasi, Public Works Director; Amanda Hunter, Code Enforcement; Wendy Dowland, Town Planner.

A. CALL TO ORDER

Mayor Calloway called the regular meeting of the Brian Head Town Council to order at 1:00 pm for February 8, 2022.

B. SWEARING IN OF COUNCIL MEMBER MARTIN TIDWELL

Nancy Leigh, Town Clerk, swore in council-elect Martin Tidwell. The Council welcomed Council Member Tidwell to the Council and Council Member Tidwell gave a brief history of his time in Brian Head.

C. PLEDGE ALLEGIANCE

Mayor Calloway led the Council and others in the Pledge of Allegiance.

D. DISCLOSURES

There were no conflicts of interest with today's agenda items. Mayor Calloway stated that the disclosure statements are on file with the Town Clerk and are available for public inspection during normal business hours.

E. APPROVAL OF THE MINUTES:

January 11, 2022, Town Council Meeting

Motion: Council Member Marshall moved to approve the January 11, 2022, Town Council minutes. Council Member Freeberg seconded the motion.

Action: **Motion carried 4-0-1 (summary: Yes = 4, No = 0, Abstain = 1 Vote: Yes:** Council Member Freeberg, Council Member Marshall, Council Member VanNostran, Mayor Calloway. **Abstain:** Council Member Tidwell).

February 1, 2022, Town Council Special Meeting

Motion: Council Member Marshall moved to approve the February 1, 2022, Town Council special meeting. Council Member Tidwell seconded the motion.

Action: **Motion carried 5-0-0 (summary: Yes = 5 Vote: Yes:** Council Member Freeberg, Council Member Marshall, Council Member Tidwell, Council Member VanNostran, Mayor Calloway)

F. REPORTS / PUBLIC INPUT ON NON-AGENDA ITEMS. Public input is limited to three (3) minutes on non-agenda items.

Council Member Marshall reported she will be holding a free community yoga class every Wednesday at the Public Safety Building. Council Member Marshall reported the yoga class is intended for all levels.

Bret Howser, Town Manager

1. Updated the Council on the 2022 legislative sessions and bills that could impact Brian Head:
 - House Bill 23 could have an impact on rural cities and towns with the first responder mental health amendment in which cities/towns would be required to give mental health benefits to first responders and their families for their lifetime. The bill is still being worked on and one substation creates a grant for funding for rural cities/towns.
 - House Bill 151, Retail Facilities Incentives, also known as “zoning for dollars” where cities are battling for retail businesses by using incentives. The Utah League of Cities and Towns has tried to work an exemption by limiting this to big box retails only along with an exemption for fourth class counties.

Council Member Marshall inquired about the Town’s Business Beautification Grants that are offered. Bret responded they are carving out the grants that cities provide to businesses along with the Redevelopment Agency Areas (RDA). Bret reported there may be a time in which the Council Members may want to contact the State Senators and Representatives on this bill.
2. The Southwest Health Department will hold an appeal hearing for a property owner who was originally granted a septic tank permit and then revoked it later. The hearing is scheduled for February 9, 2022, at 11:00 am in Kanab, UT. Bret reported both he and the mayor have been in contact with the applicant, Board of Health, County Commissioner, and the applicant’s attorney on this matter. Dr. Blodgett, Health Department, was given a tour of the property by Bret and the Mayor of the area in Town. Bret explained the Town is trying to address fire suppression in the area by utilizing the Special Assessment Area (SAA) process for waterline improvements. Bret explained that if the appeal is granted, they will need to have clarification on why the appeal was granted. The question was asked as to what the Town’s policy is on this issue. The Town referred that it was the Health Department’s policy and not the Town’s policy.

Wendy Dowland, Town Planner, reported she has been busy in the Planning Department with two new subdivisions: Aspen Meadows Southeast and West Zion View Drive. The convenience store project should be finished and building applications are starting to come in. Wendy reported Thursday is her last day working for the Town.

Amanda Hunter, Code Enforcement, reported that parking issues have improved with the short-term rentals by working with the property owners on their parking issues.

Aldo Biasi, Public Works Director

1. Explained that due to health issues, the monthly department update was not included in the Council’s packet. Aldo updated the Council on the department’s current projects.
2. New lighting will be installed at the maintenance shop to conform to the night sky-friendly ordinance.
3. Crews are currently working on creating new trail signs for the upcoming summer season.
4. A couple of the crew attended the Utah Department of Transportation (UDOT) asphalt training.
5. Aldo commented that with Wendy leaving the Town, she will be missed and how much Wendy has done for him and his department.
6. Tom Gurr is back to work after health issues and is currently on light duty.

Chief Dan Benson, Public Safety Director

1. Appreciates proposed House Bill 23, giving mental health benefits to first responders but would not want to see the cost burden the town.
2. Is participating in a committee as a representative for rural communities for the relocation of the Iron County jail. The meeting will be held on Zoom meetings for remote participation. Chief Benson reported he is opposed to a proposed location near the Iron County landfill which would cost time for an officer due to the distance.
3. Council Member Freeberg inquired as to an increase in snowboard thefts at the Resort. Chief Benson responded that snowboard thefts have not increased, but due to the

challenge of people leaving their snowboards sitting out unattended or the boards were accidentally returned due to a mix-up in the boards there are snowboard theft reported. The department has made some arrests for snowboard thefts.

G. AGENDA ITEMS:

1. **NIGHTLY RENTAL CODE REQUEST/DISCUSSION.** Larry Edgerton, Town Resident. A request to consider a buffer zone for nightly rentals operating in single-family residential zones.

Mr. Larry Edgerton, 316 Ridge View Street, explained that he would like the Council to consider the following changes in the Nightly Rental Code:

- a. A requirement of three-hundred-foot space between nightly rental locations in single-family residential zones or some type of spacing requirement.
- b. A requirement that notification is sent to adjacent property owners requiring approval before a license is issued.
- c. The Council identify a moratorium for new nightly rental license applications until the Town Code is amended.

Mr. Edgerton explained there have been trespassing issues from nightly rental guests and as a solution, the Town installed signage to help deter trespassing on private property to access the ski slopes. Mr. Edgerton reported there are thirty-two nightly rental businesses alone on Ridge View Street and with the issues of OHV traffic, he believes there will be bigger issues with the summer season.

Mr. Edgerton reported he has permission from his neighbors to enforce the trespassing on their property and he has sent many emails to the Town regarding code violations by the nightly rentals. Mr. Edgerton commented the nightly rental owners need to be held accountable to the Town and if they continue to violate the Town Code, their license should be suspended/revoked.

The following was discussed:

- a. Mayor Calloway commented that it is a balancing act between the residents and nightly rentals, but one point that stands out is basic property rights and the property owner has a right to rent out his property to generate income.
- b. Occupancy control is one of the main challenges the Town faces without violating the privacy rights of the guests.
- c. Mayor Calloway commented that the Council has previously discussed limiting the number of nightly rentals in single-family residential zones and in reviewing a nightly rental location map, it was shown that the ideal location for a nightly rental is in the Woodbridge Subdivision (Ridge View, Eagles Roost and Pinehurst Streets).
- d. Mayor Calloway stated he does not believe that one person has a right and another does not when it comes to whether they can rent out their home.
- e. Mayor Calloway commented on some of Mr. Edgerton's emails regarding trespassing and pictures showing footprints in the snow but no actual proof of trespassing. Mayor Calloway commented that it takes the assistance of the residents to contact the Marshals at the time of the occurrence.
- f. Mr. Edgerton reported there are four out of ten cabins that are near his residence that are currently nightly rentals and if more nightly rental licenses are issued, then the trespassing issues will increase.
- g. Mr. Jack Cody, 375 Ridge View Street, commented he has had problems with nightly rental guests trespassing on his property and his biggest concern is his liability if someone were to fall on his property and he gets sued from it. Mr. Cody inquired as to what the Town will do to protect the residents' property from trespassers.
- h. Mr. Cody commented that he plans to retire in Brian Head and would be willing to cooperate with the Town to create a blacklist of nightly rentals. Mr. Cody commented that if there was a change in the Town Code, he would like to have a plan identified from the Town.

- i. Council Member Marshall inquired if Mr. Edgerton has installed security cameras that would video any violations from the nightly rentals that are adjacent to his property along with a sign that states "you are being watched and videoed" which could be a preventive measure.
- j. Mr. Cody responded that cameras would not work, and Mr. Edgerton commented he would not install cameras on his property. He has been offered by his neighbor to install cameras and he declined the offer because he does not want to live in a place where he would have to have cameras installed and he would feel like he would be spying on his neighbors.
- k. Mayor Calloway commented that the Town needs the assistance of Mr. Edgerton at the time of the occurrence but fails to provide that assistance.
- l. Bret explained that it is difficult to conduct code enforcement on trespassing issues and does not give the Town sufficient evidence to use as a strike against the nightly rental business. Mr. Edgerton suggested the Town install a security camera on a town sign to catch trespassing or contact the two nightly rental owners that are adjacent to his property and inform their guests against trespassing.
- m. Mr. Cody commented that tall fences are the only way to deter trespassing on private property, but the Town has requirements that prohibit fences.
- n. Mr. Edgerton commented that he believes it is communication between the Town and the nightly rental business owners and requiring the owner to withhold their guests' deposits for any violation of the Town Code.

The Council then held the following discussion:

- a. Mayor Calloway stated that staff needs to explore possible solutions such as contacting the owner of the property and acknowledging what the issue is.
- b. Mayor Calloway stated he is opposed to a spacing requirement between nightly rental locations.
- c. Council Member Freeberg commented on the challenges of enforcing and that he does not agree with a space requirement. He would like to find a way to reduce or restrict the number of nightly rentals in R-1 zones who have the sole intent of renting their home out.
- d. Council Member Tidwell commented that a spacing requirement of 660 feet between rentals would be a challenge to enforce when allowing one property to rent out their property and denying another property owner. The Town should look at some language that would strengthen the interactions between the Town and nightly rental owners.
- e. Council Member Tidwell stated the Nuisance Code could be utilized for some of the issues to put pressure on the nightly rental owners. Security cameras could also be used to report to the Town for issues like trespassing, but not to issue a citation but use the Nuisance Code for enforcement.
- f. Council Member Tidwell suggested contacting the nightly rental owner on reports of trespassing by their guests each time along with working with the rental management companies. It may not be a 100% solution but by installing a camera and working with rental management companies by giving them feedback, they can be more responsive.
- g. Mayor Calloway commented that there needs to be someone to report the incident, the Town to receive the complaint and contact the property owner within a short timeframe before those guests check out or before their deposit is refunded, then withholding a deposit would work.
- h. Bob Whitelaw, Alpine Lodging, reported that he does not collect deposits from his guests, and if damage happens to one of his rental units, he charges the credit card they have on file with him.
- i. Mr. Whitelaw stated he opposes the three-strike rule with nightly rental owners since he should not receive a strike because of something his guest may have done, the guest should be held accountable for their actions instead.
- j. Mr. Whitelaw commended that if there is a resident who is wanting the nightly rental owner to lose their license, then they will produce consistent issues that would cause strikes against the license.
- k. Mr. Whitelaw commented that communication is the key and there are only a couple of areas where people trespass to access the ski slopes.
- l. Mayor Calloway commented he is opposed to cameras being installed and watching people.

- m. Council Member Marshall stated she is opposed to the spacing requirement and believes it infringes on property rights. Being a real estate agent, she encounters people who are buying properties with the intent of renting them out.
- n. The Town allows for fences that meet the Land Management Code requirements but are only allowed to be four feet in height and would not work to keep people out in the winter. Council Member Marshall suggested looking for another solution for trespassing in certain locations.
- o. Council Member Tidwell commented that cameras have been recommended by the Marshals and he would be in favor of installing cameras since the Town is growing along with installing a sign inside the nightly rental requesting the guests to be respectful of the neighbors.
- p. Discussion on whether the nightly rental market is getting saturated with the number of nightly rentals. Bob Whitelaw commented that he would like to see a requirement that all nightly rentals be conducted through a rental management company and only allowed in condominiums.
- q. Mayor Calloway inquired if the Council would consider a cap on a percentage allowed in single-family residential and multi-family residential zones for nightly rentals.
 - 1) Council Member Tidwell responded the Town may not have an option if it becomes between owner rights and owner responsibilities. If a guest is causing a nuisance, then the Town should act against the owner and control the nightly rental business through those means.
 - 2) Council Member Freeberg commented that Brian Head is a resort town, and the residents need to realize that fact. There is a demand for lodging and the Town does not have the facilities to meet the demand.
 - 3) Council Member Marshall responded that each neighborhood has its challenges in which one area may have several nightly rental locations while others have very little. Council Member Marshall stated she is opposed to the capping of nightly rentals and believes they are part of property rights. Council Member VanNostran agreed with Council Member Marshall.
- r. Mr. Cody reported the Resort has roped off their boundary to the ski slopes but does not believe it has deterred people from accessing the slopes.

Consensus of the Council: staff will interact with the two nightly rental businesses adjacent to Mr. Edgerton to emphasize the issues that have been created.

2. **WOODBIDGE SUBDIVISION WALKWAY EASEMENTS.** The Town's walkway easements located in the Woodbridge Subdivision

Bret Howser, Town Manager, presented the Woodbridge subdivision plat showing the five (5) walkway easements, two walkways accessing the Chair #1 ski slopes, and three (3) walkway easements between the roads: Ridge View, Eagles Roost, and Pinehurst Street (see attached). Bret explained he received a request from Mr. Steve Traylor who owns lot #47 and is collaborating with his neighbor who owns lot #46 to identify a driveway from Ridge View instead of Eagles Roost by purchasing the walkway between Ridge View and Eagles Roost.

Bret reported he attempted to contact Park City who also has similar walkway easements in subdivisions similar to Woodbridge but have installed stairs to see if they are useful.

Bret reported the Trails Committee reviewed the walkway easement to see if there is a possibility of using the walkways in the future. It was the Trails Committee's recommendation to keep the walkways for future use.

The Council discussed the following:

- a. Mayor Calloway stated he agrees with the Trails Committee recommendation and the walkways should be preserved for future access.
- b. Council Member VanNostran commented he does not have an opinion on the matter since he is not familiar with the area but would agree with the Trail Committee recommendation.

- c. Council Member Marshall stated she believes the walkways should be preserved for access through the subdivision.
- d. Mr. Traylor reported that it was his intention not to make it a private drive but would allow the public to access the walkway as well and he would install the staircase for this easement between Ridge View and Eagles Roost Street.
- e. Bret explained the Town requires a driveway width to be a minimum of sixteen feet (16'). Wendy reported that the neighbor may be willing to give some of their property to meet the driveway width requirement.
- f. Bret explained that instead of selling him the walkway for a driveway, the Town could grant him driveway access, but with the requirement that lot #24 would need to identify six feet (6') for the access and the walkway would be used for a public walkway and Mr. Traylor could install the staircase at the steep areas at his expense.
- g. Council Member Tidwell suggested the driveway and public walkway be wider than sixteen feet (16') and if there was a safety issue in funneling people down a driveway.

Consensus of the Council: Staff will research the Town's liability with a shared driveway and walkway trail in the same area and report back to the Council. The Town will retain ownership of the ten-foot walkway easement.

3. **TOWN PLAYGROUND REDESIGN AND RELOCATION.** Discussion on relocation and redesign for the Bristlecone Park playground equipment.

Mayor Calloway inquired if the Council is interested in moving forward with replacing the current playground equipment. All Council Members were in favor of replacing the playground equipment.

Mayor Calloway suggested the Council form a focus group of children of different ages/grades in Brian Head and present them with the playground concepts to see to gather their input. Bret explained he will work with the playground equipment company for additional pictures and features along with costs for each piece of playground equipment and have the kids identify their five (5) favorite pieces of equipment.

Bret reported that the proposed \$136,000 cost was based on some level of grant funding from the Restaurant Tax Board and the Redevelopment Agency and also identified a solid rubber surface, and the Council has the option to reduce the flooring to an engineered matting instead.

Consensus of the Council: Staff will create a focus group of children of different age groups to review the different types of playground equipment. Depending on the cost of the equipment and grant funding, the rubber matting may be taken out and replaced with the engineered matt. Different sizes of projects will be presented to the focus group (small, medium & large).

Council Member Freeberg suggested the location be large enough for the space to grow with the equipment in the future such as on the east side of the Town pavilion where the fire pits are currently located or on the north side of the pavilion. Bret explained the property on the north side of the pavilion is owned by Briarwood Homeowners Association has an agreement with the Town and if the playground were to move to the north side, the Town would need to work with Briarwood HOA on an agreement.

Council Member Marshall suggested the playground could be located by the volleyball court. Mayor Calloway suggested staff contact the playground equipment company on locations.

4. **FUTURE AGENDA ITEMS.** The Council will discuss potential items for future agendas.

Septic Density Study

Mayor Calloway reported the Health Department has contracted with an engineering firm to conduct the septic density study, but it was discovered that Brian Head was not included in that study. Mayor Calloway recommended the Town also contract with the engineering company to do a septic density study for the Town since it is something that needs to be done and could shape the direction of the Town with sewer lines along with giving the Town a better direction. Bret responded that it can be identified as an action step in the Strategic Plan that is currently being drafted. The staff will see if the Town could do something jointly with the Health Department as well.

Mayor Calloway reported he has requested the Planning Commission packets be forwarded to the Council as well.

H. CLOSED SESSION OF THE TOWN COUNCIL. A strategy session to discuss the sale, lease, or purchase of real property including water rights.

Motion: Mayor Calloway moved to enter a closed session to discuss the sale, lease, or purchase of real property including water rights. Council Member Marshall seconded the motion.

Action: **Motion carried 5-0-0 (summary: Yes = 5 Vote: Yes: Council Member Freeberg, Council Member Marshall, Council Member Tidwell, Council Member VanNostran, Mayor Calloway).**

The regular meeting of the Town Council was recessed at 3:29 pm for a closed session.

The regular meeting of the Town Council was reconvened at 4:51 pm

I. ADJOURNMENT

Motion: Council Member Freeberg moved to adjourn the regular meeting of the Brian Head Town Council for February 8, 2022. Council Member Marshall seconded the motion.

Action: **Motion carried 5-0-0 (summary: Yes = 5 Vote: Yes: Council Member Freeberg, Council Member Marshall, Council Member Tidwell, Council Member VanNostran, Mayor Calloway).**

The regular meeting of the Brian Head Town Council was adjourned at 5:52 pm for February 8, 2022.

February 22, 2022

Date Approved

Nancy Leigh, Town Clerk