

The Regular Meeting of the
Brian Head Town Council
Brian Head Town Hall – Council Chambers
56 North Highway 143 – Brian Head, UT 84719
[www.Zoom.us \(Click Here\)](https://www.zoom.us/j/86857576715)
Via Zoom Meeting ID# 868 5757 6715
TUESDAY, AUGUST 23, 2022 @ 1:00 PM

Roll Call.

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

Staff Present: Bret Howser, Town Manager; Nancy Leigh, Town Clerk; Chief Dan Benson, Public Safety Director; Shane Williamson, Town Treasurer; Becky Bennett, Town Planner; Amanda Hunter, Code Enforcement.

A. CALL TO ORDER

Mayor Calloway called the regular meeting of the Town Council to order at 1:00 pm for August 23, 2022.

B. PLEDGE ALLEGIANCE

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

C. PRESENTATION FOR COUNCIL MEMBER VANNOSTRAN

Mayor Calloway reported it is Council Member VanNostran's last Council meeting since he will be moving to Northern Utah. Mayor Calloway presented a plaque and farewell gift to Council Member VanNostran and thanked him for his dedicated service to the Town and wished him the best in his future endeavors.

Council Member VanNostran thanked the Council and staff for their support for the past year as he served on the Town Council.

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:**August 9 2022 Town Council Meeting**

Motion: Council Member Marshall moved to approve the August 9, 2022, Council meeting minutes. Council Member Freeberg 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 that since school is now back in session, she would like to hear any comments on whether Highway 143 in Parowan Canyon is closed.

Mayor Calloway reported he attended the Iron County Destination Planning Committee for the past two days, the purpose of the meeting was to give Maria Twitchell, Tourism Director, a better direction for the Tourism Bureau.

Council Member Freeberg reported that the TV show "KSL Outdoors" will air an episode on Brian Head and OHVs. He and Mike Saemisch took the tv host on an OHV tour in Brian Head and the surrounding area.

Bret Howser, Town Manager

1. The Town's Fall Clean-up Day is scheduled for September 24, 2022. This year, the clean-up day event will be on Saturday to allow property owners to participate in the cleanup. Bret reported volunteers will be needed to help with the lunch at the Public Safety building. Council Members Marshall, Tidwell, and Freeberg volunteered their service at the luncheon.
2. There will be a Fall Community Hike on September 16, 2022, which will be a five-mile loop around Brian Head Peak. Bret reported that there will be two options for participants in which they can either ride the ski lift to the Brian Head Peak area and meet up with the others who chose to hike to the Peak. The group will meet back at the Public Safety building for a dutch oven dinner. Council Member Tidwell reported several trees are down on the trail. Staff will bring a chainsaw for the hike. Bret reported he will need to meet with the Resort to schedule the chairlift rides.
3. The Visionary Planning Tour to Telluride, CO scheduled for September 7th thru 9, 2022 where the Council and three members from the Planning Commission and Town Manager will tour Telluride and Mountain Village.

Aldo Biasi, Public Works Director

1. Updated the Council on public works projects which are now moving forward after the recent storms which delayed some of the projects.
2. Utah Department of Transportation (UDOT) is currently installing K-rails along Highway 143 in Parowan Canyon to support the highway after the damage to the highway with the recent monsoons.
3. There will be a 1,300-foot open trench on Trail Road which violates the Town's policy for a trench longer than 100' open at one-time. Dominion Energy will have five of its crew available to lay the gas line in one day. Barricades and signage will be placed for safety measures.
4. Flint Decker, Gardner Plum Developers, decided to delay the paving on Highland Drive until spring 2023. During that time, it would allow for the trenches to settle in preparation for paving in 2023.
5. Western Rock was scheduled for September 19, 2022, to pave the Town trail at Bristlecone Park for the public art piece along with some turnouts on Circle Drive. These projects may be delayed due to the rescheduling of Highland Drive paving.
6. Bearflat Well Repair: The swedging crew encountered some issues with gaskets for the swedging on the Bearflat Well. The delay is approximately a week out and staff will have additional information at a later time for the Council.
7. Manzanita Trailhead Restroom Project: the waterline has been installed in Sandstone and crews are working towards the Manzanita Trailhead. The restroom is scheduled to be delivered in October 2022; the restroom is a concrete building that will sit on a flat concrete pad. Mayor Calloway commented that the Manzanita Trailhead has debris that would need to be cleaned up.
8. Bristlecone Pond Project: Sprinkler lines have been buried and culverts replaced. The pad for the public art piece (Brian the Bear) will be poured in September. Signage informing the public of the construction has been installed on the bulletin board and a sign structure will be built for the sign for a better view for the public to see.



9. The Town has purchased a snowcat that was within the budget. Repairs are needed for the snowcat, but it should be a benefit to the Town once the snowcat is operational.
10. Council Member Freeberg inquired as to the roads that were disrupted in the Cedar Breaks Mountain Estates subdivisions due to the installation of fiber optics and waterlines for the Special Assessment Areas (SAA). South Central Communication has been installing fiber optics as well and will be working on repairing the roads they disrupted during their construction.
11. The Utah Department of Environmental Water Quality (DEQ) approved the water system for the Falcon Court SAA area waterline. Property owners are now allowed to connect to the water system.
12. The Public Works crew is working on the installation of a waterline on Lookout Circle and once completed with this project, the crew will then focus on maintenance of the Town's equipment.
13. Mayor Calloway reported that Aldo has applied for the City Manager position in Parowan, UT. Interviews for the position will take place on Friday, August 26, 2022.

Shane Williamson, Town Treasurer, explained that in an effort to bring the polished look and update some of the furniture in the Town Hall, staff is requesting a consensus of the Council to begin the purchase of office furniture for four offices. Funds will be identified from the surplus funds and a budget adjustment will be made in a near future council meeting. The existing furniture will be in a surplus sale to recoup some of the funds. The total amount requested for the new furniture is \$20,000. **Consensus of the Council:** Agreed to begin purchasing the new office furniture.

Chief Dan Benson, Public Safety Director

1. Spoke with Tracey Munson, UDOT, regarding the upcoming repairs that will be taking place on Highway 143 in Parowan Canyon. They will be working on saving the asphalt in the canyon due to the recent monsoons that undermined the highway.
2. Marshall Danny Abbott made it through Hell Week for SWAT. Chief Benson encouraged the Council to congratulate Marshall Abbott on his achievement.
3. Updated the Council on the latest fire weather report. Chief Benson reported that with the recent monsoons, there was some relief to the 1,000 hr. fuels, but it would take time to for them to recover.
4. Mayor Calloway commented on the good response to an ATV accident that took place over the weekend at Second Left Hand Canyon. Life flight was called in to transport the OHV driver who suffered some serious injuries. Another serious OHV accident took place in Tippetts Valley which was a head-on collision and also required a life flight a few weeks prior to this accident.

Dave Mason, 871 Autumn Lane, reported he recently purchased a lot in the Steam Engine Meadows subdivision, lot #7 (871 Autumn Lane), and is planning to clean up the deadfall of trees on his property. Mr. Mason reported he is requesting a waiver to camp on his property without an active building permit since he needs to clear the deadfall to determine where his future driveway will be. Mr. Mason reported he has to rent a hotel room in order to work on his property instead of being allowed to camp on his property. The property is six acres, and his camper could be shielded from the public.

Council Member Tidwell inquired as to what method he would be using to dispose of his grey and black water from his camper. Mr. Mason reported he plans to use the grey water to water the trees and would need to go to Parowan to dump his black water.

Mayor Calloway inquired if the Council is interested in allowing staff to work with Mr. Mason on a waiver for camping with the purpose of fire mitigation on his property. Council Member Marshall suggested Mr. Mason use the Bearflat Campground on the south end of Town. Council Member Freeberg commented that a waiver may be appropriate for fire mitigation, but limits would need to be identified for a one-time stay. Council Member Tidwell commented that if staff is willing to do



1 something that would allow some type of waiver with limits for fire mitigation, he would support
2 staff. Council Member Marshall commented that she sees the benefit, but believes it would take
3 staff time to enforce the waiver/permit.

4 Council Member VanNostran commented he believes that others will take advantage of a
5 waiver/permit but can see the benefit to the Town for fire mitigation efforts. Bret Howser, Town
6 Manager, explained it would be a challenge for staff to enforce and in his experience, people will
7 apply for the waiver/permit and then do what they want.

8
9 Mayor Calloway stated that Council will take the information under advisement and that a
10 decision will not be made at this time.

11
12 Mr. Mason reported that he plans to apply for a building permit in the future but would like to
13 complete the fire mitigation on his property first to determine a location for his home. Bret
14 explained that Mr. Mason can apply for a building permit without having to identify the location of
15 the driveway at this time. Council Member Tidwell explained there are regulations in the Steam
16 Engine Meadows HOA that have different requirements above the Town's requirements.

17
18 Bret reported he has received information from other property owners who also expressed an
19 interest to camp on their property and the Council may revisit the issue at a later date.

20
21 Michael Hyte, 361 Elk Drive, stated he is frustrated with the Special Assessment Area (SAA)
22 process, in which a petition that is being circulated on Elk Drive is three votes short of being able
23 to meet the 50% of property owner in order to submit their petition to the Town. The property
24 owners who refused to sign the petition have cited financial hardship and the other property
25 owners are now unable to get water to their property for at least the next five years which has
26 resulted in his property having no value. Mr. Hyte commented when the Town annexed their
27 subdivision in 2008, most of the owners would have fought the annexation if they understood that
28 their lots would be of less value.

29
30 Mr. Hyte commented with the current SAA process and the regulations from the Health
31 Department for septic tanks, essentially the Town and Health Department now potentially face
32 exposure to a regulatory taking. His property tax bill increased this year and will be challenging
33 his property tax bill with the County since his property has no value. Mr. Hyte stated he is unsure
34 as to why the waterlines are not extended first since other areas are receiving sewer first. It was
35 his understanding that the reason why the Cedar Breaks Mountain Estates (CBME) subdivision
36 received water was for fire mitigation and inquired as to why the Town doesn't allocate resources
37 for water line extensions. The Town received grant funding for the Snowshoe area, but the
38 CBME area was a decade ahead of the Snowshoe area for improvements.

39
40 Mr. Hyte commented he likes the direction and growth the Town is taking but believes there is a
41 lack of focus on water improvements. He would invite the Town to see if grant funding or any
42 kind of assistance is available that could be applied for the three (3) lot owners who are against
43 the Elk Drive SAA, citing financial hardship. The owners have been contacted by the sponsors,
44 the Castles who are the sponsor of the Elk Drive SAA in an effort to work with them but have
45 been unsuccessful in getting their signatures for the petition.

46
47 Bret inquired as to what change in the Town's regulation Mr. Hyte feels is a regulatory taking. Mr.
48 Hyte responded to the change in the SAA process, the change in the Code prohibiting camping
49 without an active building permit and the Health Department's regulations on septic tanks. Bret
50 explained that the Health Department's requirements are not a Town requirement. The Special
51 Assessment Area regulation is a state-guided regulation, and camping has not been an allowed
52 use in the Land Management Code. The Town allowed temporary camping in the past and it was
53 identified in the Parking Code, but it conflicted with the Land Management Code.

54
55 Mr. Hyte referred to a reimbursement agreement for waterline extensions but was informed that it
56 was removed from the Code and is no longer an option for property owners. Bret explained that



1 the reimbursement agreement was a financing mechanism, and the Town was never obligated to
2 do it. Mr. Hyte inquired what is the beneficial use of their property on Elk Drive. Bret explained
3 that the Health Department regulation was in existence for a while, but they recently became
4 aware of the regulation and notified the Town.
5

6 Mr. Hyte inquired if the Town has any ability to apply for grants or if there are funds in the Town's
7 budget to help property owners extend waterlines. Bret explained the Town was able to obtain
8 grants for the Mountain View waterline which was tied into the Saltpile tank. That project cost
9 more than 1.4 million dollars five years ago, but the Town was able to save and pay for one-half
10 of that waterline project and the Council prioritized higher than the Snowshoe/Toboggan waterline
11 at the time. The property owners in the Snowshoe/Toboggan area also paid into their project
12 directly.
13

14 Bret explained the Council identified prioritization for areas for SAA's with the Fire Protection Map
15 which shows areas identified "A" are a higher priority for fire mitigation which includes the Aspen
16 Drive area, and the Elk Drive area is identified as area "B" on the SAA Fire Protection Map. The
17 Town would look at obtaining grant funding for the Aspen Drive area before the Elk Drive area.
18

19 Mr. Hyte asked what message is given for those properties on Elk Drive who are now unable to
20 build and are not able to bring the water from Mountain View to their property which has made
21 their property of no value and are at the mercy of the financial situation of a few property owners
22 for at least five years.
23

24 Mayor Calloway responded that he should reach out to the sponsor of the Elk Drive SAA and
25 obtain more information on the Elk Drive SAA and let staff know so they can help guide them
26 through the SAA process.
27

28 29 **G. AGENDA ITEMS:**

30 31 **1. ORDINANCE AMENDING THE LAND MANAGEMENT CODE, CHAPTER 9** 32 **SUBDIVISIONS FOR WATER ACQUISITIONS.** An ordinance amending the Land 33 Management Code, Chapter 9, Subdivisions, for water acquisitions. 34

35 Becky Bennett, Town Planner, presented a draft ordinance amending the Land Management
36 Code, chapter 9 (Subdivisions) establishing a provision for water acquisition in 9-9-6 (see
37 attached).
38

39 Mayor Calloway explained the Council previously discussed the proposed amendments and
40 the Planning Commission has forwarded a recommendation of approval to the Council.
41

42 The following was discussed:

- 43 1. The Planning Commission recommended to establish a pool of water rights, in which
44 100-acre feet of water rights would be put aside and developers/individuals requesting
45 water rights would be on a first come, first served basis based on the following:
46 Residential development would be allowed 40 acre feet of water and Commercial
47 would be allotted 60 acre feet of water.
- 48 2. The graphs presented in the staff report show the water consumption rate of 0.6 and
49 does not include snowmaking. If the Town continues to use the same usage rate at
50 100% buildout, there is sufficient water to cover everyone if it stayed at the current
51 rate.
- 52 3. State Engineer requirements identify the Town does not have enough water according
53 to their criteria of a 0.45-acre foot per residential unit.
- 54 4. Other resort communities were researched for their water rate consumption which is
55 identified in the staff report for this agenda item.



5. Bret suggested that a pool of 100 acre-feet of water be identified in which 60% (60-acre feet) of the pool would be allocated for commercial development and allow 40% (40 acre feet) for residential development in which one person would have a max limit of 20% (20 acre feet) of the total 40 acre feet allotted for residential. A large subdivision development would be required to bring water rights to the Town to build, but the pool would accommodate a small lot split.
6. Council Member Tidwell suggested the Town follow the State Engineer's requirement instead of coming up with their own requirements. Aldo Biasi, Public Works Director, explained the Town has a history of using less than what the State Engineer's office identifies for residential water usage and believes that it could be reduced.
7. Council Member Tidwell inquired if the Town was taking a risk identifying a lower residential water usage than the 0.45-acre feet the State Engineers identifies, and if the Town could be penalized. Bret commented that it would not be a risk since the Town should be able to obtain a waiver when needed.
8. If short-term rentals would play a part in the higher usage of water since more short-term rentals are operating now than what was operating in 2019.
9. Bret explained the Town has insufficient data from previous years but now has data that is will be sufficient for analysis in a few years.
10. The Brian Head Special Service District currently owns 245-acre feet in the Parowan Valley and if the Town were to move the water to Brian Head there would be a 40% reduction in the amount of water the Town has access to, and staff would need to research the cost of what it would take to move the water to Brian Head. Parowan Reservoir Co would also need to be paid if the Town were to move the water rights.
11. Town owns and maintains a spring located in Dry Canyon and that water goes to Parowan Irrigation as part of an agreement with the Town.
12. Mayor Calloway commented he disagrees with the allocation number presented, but agrees with the pool concept, but the pool will continue to decrease.
13. Mayor Calloway commented that he believes it is a safe and effective management tool to identify 100-acre feet for new subdivisions. The Council can then re-evaluate it at a later time when there is more build out and the Town can determine whether there is sufficient water.
14. Council Member Freeberg inquired about back calculating how many units the Town is calculating. Mayor Calloway reported that it would apply 0.2 and would get no more than 20% of the 40% for residential, which is eight (8) acre feet of water which results in 40 single-family residential units.
15. Mayor Calloway polled the Council on whether to allocate 100-acre feet of water for the pool. **Consensus of the Council:** Agree with 100-acre feet of water as a total pool amount.
16. Condominiums are considered a subdivision.
17. The question as to how to divide the 100-acre feet of water between commercial and residential. Mayor Calloway recommended that the sixty acre feet of water go towards commercial subdivisions, because of the need for commercial in Brian Head. The definition of commercial is a typical mall project where it is residential above the commercial.
18. Council Member Marshall commented that the presented number shows commercial using one-acre foot which would allow for sixty commercial properties and forty acre feet allotted for residential would allow up to 200 units.
19. Mayor Calloway explained that it would be on a first-come, first-served basis and once the water is gone, the Council would then re-evaluate it.
20. Council Member Marshall commented that single-family residential lots have already been platted, but there are a handful of multi-family residential properties that haven't been subdivided yet and this process should be identified as a living document.
21. Council Member Marshall expressed her concerns regarding the requirements for developers to complete a water study which is time-consuming and costly and recommended that the Town complete the water study instead since they would have to follow the Town's requirements as to what is needed. **Consensus of the Council:**



The Town will complete the water study unless it is challenged by the developer, at which time the developer may complete a water study and present it to the Town for consideration.

22. Council discussed the number of acre-feet of water to identify for residential and commercial: Per Residential: 0.3-acre feet for usage. Per Commercial: 1.9-acre feet for usage based on the Town's experience. **Consensus of the Council:** The residential usage requirements: 0.3-acre feet per residence. Commercial: 1.5-acre feet per commercial. It will be based on a first-come, first-served basis.
23. Council Member Tidwell suggested that acre-feet of water be used instead of percentages and a developer can only use up to eight-acre feet maximum and the first come, first served basis needs to be in the context of the water that is available, otherwise, the fifth person coming in would have less water available to build.
24. Bret inquired as to how large of development the Council would be comfortable in allocating water. Council Member Marshall commented that a large condominium project would use 26.6-acre feet which allows for Current condominium projects, such as Elevate at Brian Head, which is currently under construction has thirty-six condo units and Black Diamond Condo has applied for six units in a building, but existing condominiums such as Giant Steps and Timberbrook, have ninety condo units. Council Member Marshall explained there is a trend to build larger condo units nowadays which would result in fewer units, but the water consumption would be higher.
25. Dave Mason, 871 Autumn Lane, commented the Council should consider 0.3 for cabins since larger cabins are being built and use more water.
26. Bret inquired as to the Council's intent with the pool of acre-feet of water on whether to allow small or larger developments. Council's intent for the pool of water: Mayor Calloway commented that the first developer takes the largest amount of water, but a problem could be, if a plat is recorded but not built, there could be an issue and the water would sit there and not be used. Bret explained that it would depend on the location and if there is already existing infrastructure, but if any infrastructure is needed, must be built and if they don't complete the required infrastructure, the plat is then voided. Mayor Calloway reminded us that there are condo projects that were platted, but never completed.

Council Member Marshall was excused from the meeting at 3:00 pm.

27. Mayor Calloway commented that he believes that the first developer to build residential, then they could be allowed the entire amount of water available of 40%, but there should be some type of time limitation required.
28. Mayor Calloway recommended that if there is a lot line vacation, then the pool of water could increase and allocate those water shares into a specific pool for smaller lot splits.
29. Council Member Freeberg recommended there should be some water available for small projects vs. a developer with 100 condo unit projects and there should be some type of protection for the small lot splits.
30. Council Member Freeberg recommended the Town change the one-third acre of property to one-half acre of property to build a residential home.
31. Council Member Tidwell suggested that three-acre feet be set aside for small lot splits only and when a lot line is vacated, those water shares would go towards that specific pool for allocation for individual lot splits. When the water is used, then the Council will re-evaluate the pool. **Consensus of the Council:** three acre-feet will be specifically allocated for individual lot splits; thirty-seven acre feet allocated for residential, and sixty acre feet allocated for commercial. If there is a lot line vacation, the water allocated for that lot will be returned to the pool allocated for individual lot splits.
32. **Recap:** Three-acre feet will be identified for individual lot splits; 37 acre feet will be allocated for residential, and 60 acre feet of water will be allocated for commercial. If a



lot line vacation is to take place, the water share portion will be returned for individual lot splits of the 3 acre feet identified for individual lot splits.

33. Mayor Calloway stated he would like some type of language identified that the developer should be prohibited from recording a subdivision or condominium plat if they don't build. Becky explained a timeframe of two years in which they are allowed an extension that is attached to the building permit and not the subdivision.

34. Bret explained the developer is required to install the infrastructure for the entire project. Mayor Calloway commented that a developer could extend the water main to the property and then not build for many years after that which is not the intent. Bret responded the Council could make it part of the subdivision process for a condition that the developer can use the number of allocated water rights if they do it within so many years and it could be built into the actual stipulation of the subdivision process.

35. Mayor Calloway commented that he believes the Council should table the ordinance to ensure that there is a timeframe identified in the ordinance. Bret responded the Council could approve a subdivision and language is identified that a subdivision is vacated if they don't build the subdivision within a certain number of years.

Motion: Council Member Freeberg moved to table Agenda Item G-1. Land Management Code Amendment, Chapter 9 Subdivision for further research requirements for the completion of subdivisions. Council Member VanNostran seconded the motion.

Council Member Tidwell inquired if staff would incorporate the comments identified in the discussion as part of the ordinance amendment. Mayor Calloway confirmed that it will be incorporated into the draft ordinance presented to Council at the next Council meeting.

Action: **Motion carried 4-0-0 (summary: Yes = 4 Vote: Yes: Council Member Freeberg, Council Member Tidwell, Council Member VanNostran, Mayor Calloway. Absent: Council Member Marshall).**

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

The Council reviewed the tentative agenda for September 13, 2022.

H. ADJOURNMENT

Motion: Council Member VanNostran moved to adjourn the regular meeting of the Brian Head Town Council for August 23, 2022. Council Member Freeberg seconded the motion.

Action: **Motion carried 4-0-0 (summary: Yes = 4 Vote: Yes: Council Member Freeberg, Council Member Tidwell, Council Member VanNostran, Mayor Calloway. Absent: Council Member Marshall).**

The regular meeting of the Brian Head Town Council was adjourned at 3:45 on August 23, 2022.

September 13, 2022

Date Approved


Nancy Leigh, Town Clerk

