

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](#))
Via Zoom Meeting ID# 841 8161 1614

TUESDAY, SEPTEMBER 13, 2022 @ 1:00 PM

Roll Call.

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

Staff Present: Bret Howser, Town Manager; Nancy Leigh, Town Clerk; Aldo Biasi, Public Works Director; Chief Dan Benson, Public Safety Director; Becky Bennett, 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 September 13, 2022.

B. PLEDGE ALLEGIANCE

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

C. 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

D. APPROVAL OF THE MINUTES:

August 23, 2022, Town Council Meeting

Motion: Council Member Marshall moved to approve the August 23, 2022, Town Council minutes with corrections. Council Member Freeberg seconded the motion.

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

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

Mayor Calloway thanked those who participated in the Telluride, CO field trip. Mayor Calloway reported the trip was very informative.

Council Member Tidwell reported that the Telluride/Mountain Village field trip was very informative and believed it was a good use of time for the council and planning commission.

Council Member Freeberg reported the lunch with Moab's mayor and the Telluride and Mountain Village field trip was exceptionally informative. The representatives identified their challenges and hindsight. Council Member Freeberg commented that the trip was worth the council's time.



Bret Howser, Town Manager

1. On Friday, September 16, 2022, the Community Fall Hike event is scheduled to begin at 9:00 am. This year, the participants have the option to either ride the chairlift up to the peak area or hike Brian Head Peak to meet the first group to hike the Sydney Peak area. Lunch will be provided after the hike at the Town Pavilion. Bret reported that Brian Head Resort is a sponsor of the event. Those interested in riding the chairlift for the event, to contact him.
2. The Fall Town Clean-up event is scheduled for September 24, 2022. This is the first year for a fall clean-up which is scheduled for Saturday. Bret reported he is looking for volunteers to help with the luncheon. Council Member Tidwell reported that he originally volunteered for the luncheon but will not be able to participate this year.

Aldo Biasi, Public Works Director

1. Updated the Council on the status of the Bearflat well repair. Aldo reported that the well has been reset and water will be running to waste to clear up the debris in the well. The water will be tested before it is distributed back into the system. The swedge was installed and a camera was sent down, but the water was too cloudy to get a clear picture. The swedging crew felt the installation was a success and reported the pump wasn't able to be installed at a deeper depth. Aldo reported he will update the Council once he has more information on the well progress and options available to the Council for the repair of the Bearflat well.
2. The in-house projects have been delayed due to the recent rains.
3. The chip seal project has been completed and the public works crew will be installing asphalt in the parking area for the public art piece.

Carrie Dever, Planning Commission, inquired if the Town would consider removing the dead trees that is in the meadow area on both sides of the Village Way entry. Mayor Calloway responded staff will look into it and will contact her.

F. AGENDA ITEMS:**1. TOWN COUNCIL VACANCY INTERVIEWS.** Interviews for a mid-term vacancy on the Town Council.

Mayor Calloway reported the Council will interview two potential candidates for the mid-term vacancy left by Council Member Dennis VanNostran. The two candidates; Ernest Hardin and Shaun Kelly have submitted letters of interest (see attached). Mayor Calloway explained each Council Member will have an opportunity to ask a question of the candidates. The Council then interviewed each candidate as to their knowledge of local government, expectations of the office, and their knowledge of Brian Head.

Shaun Kelly's Interview Summary:

1. Reported he was a previous Council Member serving the Town and has firsthand experience with local government and the Brian Head area. He has lived in Brian Head for the past nine years.
2. He believes the Council should represent the residents and be open to what the taxpayers are saying.
3. Believes there is a discrepancy in the adopted ordinances and how they are enforced. Some ordinances become difficult to follow and he would like to ensure the adopted ordinances are enforced as to their intent.
4. Understands the Town's Council-Manager form of government.



5. Is interested in serving on the council to help promote a hometown flavor and is not interested in promoting mountain life to those who come from the cities and are wanting to promote the city life in Brian Head.
6. One of the challenges he sees in trying to maintain the mountain community for the Brian Head experience vs. those who want to use it as a cash cow. Brian Head can be modern while still providing the mountain living experience.
7. Has attended the majority of meetings over the past eight years and believes that involvement is key for those who are interested in keeping Brian Head a mountain community.
8. Has been a member of the Planning Commission and is a current member of the Trails Committee.
9. Understands the challenges the Council faces in working with businesses, visitors and residents in a small mountain community.

Ernest Hardin's interview summary:

1. Ernest gave a brief history of his experience as a retired engineer for R&D Laboratories but has been in Brian Head for the past sixteen years and has followed the activities of the Town. He has also served as President and Treasurer of the Brianwood Homeowners Association. He has worked in a large organization with over 1,000 employees and several levels of management.
2. Interested in serving on the council because he would like to be involved. The pending annexation of Aspen Meadows is huge for Brian Head, and he believes this project would be a benefit to the Town. Ernest stated he is always interested in expanding the skiing experience for people.
3. Existing Directions and changes: See that there are a few Towns owned items that would need money, but there are a lot of priorities that have been determined. Believes that environmental preservation and wildlife should receive the attention and focus of the Council. Believes the Council is moving in the right direction with the trails and effort towards public parking.
4. Would like the Council to consider enhancing the backcountry experience such as alpine skiing, snowmobile trails, Nordic skiing, and avalanche control.
5. One of the main duties of a Council Member is to receive community input.
6. Would like to preserve the natural environment, with a focus on wildlife habitats.
7. Believes water is a concern for the Town and the focus of the Council.
8. Would invite investors to invest in Brian Head, if the town continues to grow. Growth is necessary for new construction and upgrading the existing infrastructure. Believes the regulation of business and construction activities of the town needs to preserve the quality of Brian Head and believes the Town is on the right track.
9. Individual property rights: Explained the scenario of camping on a property that is prohibited without an active building permit. Ernest responded that regulating land use is important. Due to his experiences in other small communities, Ernest explained that if you let people do whatever they want, they will continue to take advantage of it. He would not step on property rights but believes it is sometimes necessary and take responsibility for it.
10. Communication style is to work with others, in his experience, he has managed forty employees in a department and has worked in an environment where the meetings had reduced to throwing chairs. Working with others has been a pleasure and has learned how to measure your words and what to say when on camera.
11. Reported he would take time to commit to what it requires to be a Council Member in a small community.

The Council thanked both candidates and reported they will contact them after the Council has discussed it further.



1 **2. ROAD NAME CHANGE DISCUSSION AND DIRECTION.** Discussion and direction for a
2 request to change the road name Lupine Court to Trotter Court.
3

4 Nancy Leigh, Town Clerk, presented a request from Nathan Trotter requesting a road name
5 change for Lupine Court to Trotter Court (see attached). Nancy requested the Council's
6 direction on whether the Council would entertain a request to change the name of Lupine Court
7 before any expenditures take place in the noticing period. Nancy explained if the council is
8 interested in changing the road name change, then a written notice to each property owner
9 located on Lupine Court would need to be notified and a public hearing would need to be held.
10

11 The Council discussed the following:

- 12 1. Mayor Calloway commented that he is not in favor of changing Lupine Court since it
13 represents the native floral that grows in the area.
- 14 2. Mayor Calloway explained that there are exceptions to changing the road names,
15 such as those that have a major impact on the Town such as Homer Vasels, to which
16 Brian Head Blvd. was changed to Vasels Street.
- 17 3. Council Member Freeberg commented that he believes Mr. Trotter is proud of his
18 family's history but believes that the Council should not allow requests for individual's
19 names, otherwise, the Town could receive numerous requests from individuals to
20 change the road names to their names.
21

22 **Consensus of the Council:** The road name change request to change Lupine Court to
23 Trotter Court is denied.
24
25

26 **3. A RESOLUTION DECLARING THE INTENTION OF THE TOWN COUNCIL OF THE TOWN**
27 **OF BRIAN HEAD, IRON COUNTY, UTAH, FOR WATER SYSTEM IMPROVEMENTS AND**
28 **RELATED IMPROVEMENTS WITHIN THE CEDAR BREAKS MOUNTAIN HOMESITES,**
29 **UNIT B, SUBDIVISION; TO DESIGNATE OR CREATE THE TOWN OF BRIAN HEAD, UTAH**
30 **SPECIAL TAX ASSESSMENT AREA NO. 2022-01 (RANGER COURT); TO FUND THE**
31 **COST AND EXPENSES OF SAID ASSESSMENT AREA BY SPECIAL TAX**
32 **ASSESSMENTS TO BE LEVIED AGAINST THE PROPERTY BENEFITTED BY SUCH**
33 **IMPROVEMENTS; TO PROVIDE NOTICE OF INTENTION TO AUTHORIZE SUCH**
34 **IMPROVEMENTS AND TO FIX A TIME AND PLACE FOR PROTESTS AGAINST SUCH**
35 **IMPROVEMENTS OR THE CREATION OF SAID ASSESSMENT AREA; TO DECLARE ITS**
36 **INTENTION OF FUNDING A RESERVE FUND IN LIEU OF A GUARANTY FUND; AND**
37 **RELATED MATTERS.** A resolution for the Notice of Intent to create the Ranger Court Special
38 Assessment Area, 2022-01.
39

40 Nancy Leigh, Town Clerk, presented a draft resolution for the Ranger Court Special
41 Assessment Area, 2022-1, Notice of Intent to Create the SAA (see attached). Nancy reported
42 the Council previously considered a Notice of Intent during the July 27, 2022 council meeting.
43 The Council denied the resolution at that time with the direction to the sponsor to include three
44 additional lots to complete a looped waterline on Meadow Drive as part of the SAA. Nancy
45 reported Mr. Ryan Ricks, sponsor, has included the three additional lots that were in question
46 during the August meeting and the petition meets the minimum requirements of fifty percent of
47 the property owners within the SAA boundary. There are now eighteen (18) lots included in the
48 Ranger Court SAA with nine (9) property owners who have signed the petition.
49

50 The Ranger Court SAA is requesting water system improvements. The estimated costs
51 identified also include laterals to the lots and road improvements that would bring the road to
52 the Town's standards for gravel roads. The estimated cost is \$535,537 which includes legal
53 services which are not identified in the attached estimate, this would be divided between the
54 eighteen lots at \$30,308 per lot.
55

56 The Council discussed the following:



1. Mayor Calloway commented the sponsor has complied with the direction the Council identified and recommends moving forward with the Notice of Intent to create the Ranger Court SAA as presented today.
2. Mayor Calloway recommended the Council identify the Town's SAA Policy's Fire Protection Priority Map which identifies this area as "area B" and would require a four-to-one value (four times the amount of the improvements) which may lead to some financial investigation for the appraisal of the lots.
3. Bret Howser, Town Manager, reported this SAA would require a 4:1 value and would be identified for the 2024 construction season. Bret explained the Town would proceed with the engineering of the project once the 60-day protest period has passed and it is ensured there are less than forty percent (40%) protests.
4. Mayor Calloway commented the primary risk to the Town is the cost of the appraisal. Bret explained the appraisal would be paid with town funds unless the sponsor agrees to pay for the cost of the appraisal.
5. Bret explained if the appraisal was close but did not meet the 4:1 value if the Council would be interested in proceeding with the SAA. Bret explained that the Council would need to decide.
6. Council Member Marshall inquired if the requirement for the property to be paid off if the land were to transfer ownership. Nancy reported that the provision would be identified in the Final Assessment ordinance.
7. Council Member Marshall commented that there is a discrepancy on one lot in which the County's GIS system does not identify a lot number but identifies the property as meets and bounds with something associated with lot #9. Nancy reported she will verify the lot to ensure that the proper lot description is identified before the resolution is recorded with the County Recorder.

Motion: Council Member Marshall moved to adopt resolution No. 22-024, approving the Notice of Intent to Create the 2022-01 Ranger Court Special Assessment Area and directed staff to verify the lot description for accuracy. Council Member Freeberg seconded the motion.

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

4. **PLAYGROUND SURFACE DISCUSSION AND DIRECTION.** A discussion and direction for the playground surface material and give directions to staff on which surface material will be used.

Nancy Leigh, Town Clerk, reported that the Council directed staff to research other surface materials for the new playground equipment. The original quote for the playground equipment included engineered woodchips. Nancy presented samples of rubber mulch and the engineered woodchip to the Council for consideration. Nancy reported she received two quotes for rubber mulch; one quote from Playgrounds and More (see attached) for \$22,160 which included the delivery and installation of the mulch. Nancy explained this is the vendor for the playground equipment and includes the installation of the rubber mulch. The other quote presented from BYO Playgrounds for rubber mulch (see attached) in the amount of \$16,805 did not include the installation of the mulch, only delivery.

The Council discussed the following:

1. Council Member Marshall stated she is in favor of using the rubber mulch and in reviewing the multiple colors, she would like to have something that gives the area a "pop" of colors such as either blue, mocha, or green.
2. Mayor Calloway commented that he would agree to go with Playgrounds and more since they will be installing the playground equipment as well. He is also in favor of using rubber mulch over engineered woodchips.



3. Council Member Freeberg inquired if a border would be installed with the ground covering. Bret responded he believes that a boarder for the surface covering was included in the original bid.

Consensus of the Council: directed staff to approve the change from engineered woodchips to rubber mulch with Garrett Park and Play in the amount of \$22,160 as presented. Council Member Marshall recommended the blue rubber mulch for the playground. Council agreed.

5. ORDINANCE AMENDING THE LAND MANAGEMENT CODE, CHAPTER 9, SUBDIVISIONS, ESTABLISHING A NEW PROVISION 9-9-6 WATER ACQUISITION REQUIREMENTS FOR SUBDIVISIONS. An ordinance amending the Land Management Code requiring water acquisition for new subdivisions.

Becky Bennett, Town Planner, presented a draft ordinance amending the Land Management Code, chapter 9 Subdivisions (see attached). Becky reported the Council has previously discussed this item in prior meetings. The draft presented to the Council identifies the changes from previous meetings.

The Council discussed the following:

1. Mayor Calloway commented that it was his understanding from a previous meeting that a change in the language in 9-9-B(1)(a) for commercial developments, to delete the sentence referring to "50% of the available pool to the first development" was to be changed to "ensure the water rights are allocated on a first come first served basis". Becky explained staff will change the language to a first come, first served basis for commercial development.
2. Council Member Tidwell commented that in his view was that if a vested developer is willing to invest should have access to 100% of the water.
3. Council Member Marshall inquired if a developer came in and received all of the water rights and they begin the development but does not finish it. Would the water rights have a timeline associated with it?
4. Becky Bennett, Town Planner, recommended the Council keeps the water rights tied to the property and construction. Becky expressed her concern about revoking water rights which could leave a project unfinished and a scar on the land.
5. Council Member Marshall commented that it could prevent another developer from coming in and finishing the project.
6. Bret explained that in reviewing the LMC, chapter 9 Subdivisions, no identified timeframe for completing a project is in the existing code. The language identifies the process for a subdivision, but the code is missing the implementation of the subdivision or vacating the final plat. Bret recommended if the project is not completed within two years or unless there was significant progress on the project, the water rights could be revoked by the Town.
7. Council Member Freeberg commented that in a subdivision that installed the infrastructure but does not complete the project as a whole, the water rights would remain with that project due to the infrastructure installed. Council Member Freeberg commented he does not believe that it meets the intent of the code. The intent is to see the project completed, which includes the buildings and infrastructure.
8. Mayor Calloway presented another scenario in which there is a commercial development that includes ten buildings and is under one ownership. The commercial development could identify 100 connections, which is one-half the water. Becky responded that this would not apply since there is one ownership and any residential development in association with commercial development would require each condo to be subdivided.
9. Becky explained that in an individual lot, people are not required to bring water to the Town. If a large subdivision is proposed, then they would be required to bring water to the Town but commented that commercial is more complicated since it could include



- condominiums associated with them. It would automatically be subdivided due to the condominiums, but a development agreement would be recommended.
10. Bret explained he would need to complete legal research to determine if the Town can require someone, they must build within a time limit.
 11. Bret suggested the language identify a development agreement with all commercial developments. Council Member Marshall agreed.
 12. Bret inquired if the Council is interested in requiring a development agreement for R-3 (multi-family residential). Council Member Marshall agreed with the requirement for R-3 to identify a development agreement.
 13. Becky reported the Council has identified the following changes for water rights allocations:
 - a) 60% for commercial development may be accessed through a development agreement.
 - b) 37% for residential development.
 - c) 03% for residential small individual lot splits.
 14. Council Member Marshall inquired if a final plat identified 100 hunts and the end resulted in 80 units, would the remaining water rights come back to the pool? Mayor Calloway responded that whatever is built is what they will have for water rights and any remaining rights would revert to the pool for other developers to use.
 15. Council Member Marshall recommended that R-3 lots should also have a development agreement as part of their requirements.
 16. Bret explained that one thing factoring in the water rights analysis is the fact that subdivisions such as the Crystal Aire Subdivision were originally zoned as R-1 but then were zoned as R-3. The infrastructure was built for an R-1 zone and does not accommodate a denser R-3 zone. Several property owners are adamant about keeping the R-3 zone, but he believes that there could be a shortage in water rights someday, and if the Council is interested in considering a rezone to R-2 instead and would allow up to eight (8) units per acre.
 17. Council Member Marshall commented that there is one remaining lot that has not been sold, and the majority of property owners do not want condos in their neighborhood. Bret responded the Council could go to an R-1 rezone depending on what comments the Town receives. Mayor Calloway commented that it may be worth considering.

Consensus of the Council: No concerns with the proposed language for residential (R-1, R-2). Staff will submit a discussion topic to the Planning Commission on the possibility of rezoning areas to either R-1 or R-2 in the Crystal Aire Subdivision.

- Motion:** Council Member Marshall moved to adopt ordinance No. 22-009, amending the Land Management Code, Chapter 9 Subdivisions with the following changes:
1. Deletion of the 50% requirement and adding the development agreement as a requirement for commercial and R-3 zones.
- Council Member Freeberg seconded the motion.
- Action:** **Motion carried 4-0-0 (summary: Yes = 4 Vote: Yes:** Council Member Marshall, Council Member Freeberg, Council Member Tidwell, Mayor Calloway).

Bret requested the Council amend the agenda to go into closed session since the Town Attorney will be available by phone for the closed session. The Council then entered into a closed session.

6. BRIAN HEAD STREET LIGHTING MASTER PLAN RESOLUTION. A resolution adopting the Street Lighting Master Plan.

A draft resolution for the Brian Head Street Lighting Master Plan (see attached) was presented to the Council for consideration.



Mayor Calloway reported he would like to have the entire Council present to review the Street Lighting Master Plan.

Motion: Council Member Marshall moved to table the Brian Head Street Lighting Master Plan until all of the Council Members are present to review the plan. Council Member Tidwell seconded the motion.

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

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

Mayor Calloway requested staff present a report on the results of the Telluride/Mountain Village field trip. Bret reported he will draft a Google Doc and share it with the participants from the field trip by the end of the week.

G. CLOSED SESSION OF THE TOWN COUNCIL to discuss the character, professional competence, or physical or mental health of an individual and Pending or Imminent Litigation.

Motion: Mayor Calloway moved to recess the regular meeting of the Town Council and enter a closed session to discuss the character, professional competence, or physical or mental health of an individual and to discuss a strategy for pending or imminent litigation. Council Member Marshall seconded the motion.

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

The regular meeting of the Town Council was recessed at 3:50 pm. The regular meeting of the Town Council was reconvened at 4:35 pm.

H. ADJOURNMENT

Motion: Council Member Marshall moved to adjourn the regular meeting of the Town Council for September 13, 2022. Council Member Tidwell seconded the motion.

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

The regular meeting of the Brian Head Town Council was adjourned at 4:40 pm for September 13, 2022.

September 27, 2022

Date Approved

Nancy Leigh, Town Clerk

