

HIDEOUT, UTAH
10860 N. Hideout Trail
Hideout, UT 84036
TOWN COUNCIL MEETING
September 12, 2019
6:00 PM

TOWN COUNCIL REGULAR MEETING

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Rubin called to order the meeting of the Town Council of the Town of Hideout at approximately 6:00 p.m. on September 5, 2019 at 10860 N. Hideout Trail, Hideout, Utah, and led the Pledge of Allegiance.

II. ROLL CALL

Town Council Members Present:

Mayor Philip Rubin
Council Member Chris Baier
Council Member Kurt Shadle
Council Member Hanz Johansson

Absent: Council Member Dean Heavrin
Council Member Jim Wahl

Staff Present: Town Administrator Jan McCosh

Town Attorney Dan Dansie
Town Treasurer Wes Bingham
Town Clerk Allison Lutes
Public Works Kent Cuillard

Others Present:

Jerry Dwinell, Will Pratt, Jack Walkenhorst, Heather Kruse, Carol Haselton, Arianna Farber, Bill Bartlett, Paul Ziegler, and others who did not sign in or whose names were illegible.

III. Approval of Council Minutes: June 13, 2019; August 8, 2019; and August 22, 2019

Council Member Shadle moved to approve the of June 13, 2019 Regular Meeting Minutes. Council Member Johansson made the second. Voting Aye: Council Members Baier, Johansson, and Shadle. Voting Nay: None. The motion carried.

Council Member Shadle moved to approve the August 8, 2019 Truth in Taxation Hearing Meeting Minutes. Council Member Johansson made the second. Voting Aye: Council Members Baier, Johansson, and Shadle, Voting Nay: None. The motion carried.

Regarding the August 8, 2019 Regular Meeting Minutes, Council Member Baier made the following corrections: page 12, section 13, line 31: Wada Way instead of Waterway; line 36: Ross Creek instead of Lost Creek and remove a second period. Council Member Johansson requested the spelling of his name be corrected.

Council Member Johansson moved to approve the August 8, 2019 Regular Meeting Minutes subject to the referenced corrections. Council Member Baier made the second. Voting Aye: Council Members Baier, Johansson, and Shadle. Voting Nay: None. The motion carried.

Council Member Shadle moved to approve the August 22, 2019 Regular Meeting Minutes. Council Member Baier made the second. Voting Aye: Council Members Baier, Johansson, and Shadle. Voting Nay: None. The motion carried.

IV. Agenda Items

1. Declaration by the Mayor

Mayor Rubin informed the Council that Council Member Heavrin last attended a meeting on May 9. Consequently, on June 13 and June 26, the Mayor sent Mr. Heavrin letters regarding his attendance, which remain unanswered. Further, Mr. Heavrin had not submitted any requests for his Council Meeting attendance fees for more than a year. Utah Code §10-3-301-5(b)(3) provides that if a member does not attend for a continuous period of more than 60 days, that seat can automatically be declared vacant. Accordingly, Mayor Rubin felt the Council needed to declare his seat vacant. He suggested this be addressed at the October 10 meeting to allow for certain Council Members' upcoming travel.

Council Member Shadle was not in favor of the proposal and thought it would set a bad precedent; he felt it was too close to the start of the new year when three new Council Members would be seated. Council Member Baier commented his vacancy created a quorum issue. She suggested seating one of the two remaining candidates early. Dan Dansie explained the statutory process to fill a vacancy. He clarified that pursuant to the statute, the seat is automatically vacant if the council member is absent for a consecutive period of more than 60 days. "Absent" in the context of the statute is specifically defined as, "the elected municipal officer fails to perform official duties including the officer's failure to attend each regularly scheduled meeting that the officer is required to attend."

Council Member Shadle commented that based on the foregoing explanation by Mr. Dansie and strictly applying the statute, it could also be applied to Council Member Wahl, who had missed at least two meetings in a row. He was concerned with setting a precedent and a potential challenge to the Council's action on this issue. Mayor Rubin stated he also sent letters to Council Member Wahl, who responded that he would improve his attendance. Mr. Wahl had been coming to more meetings recently, and the Mayor would not be comfortable applying this statute to him.

Further discussion ensued regarding whether it was feasible, given travel commitments, the remaining Council Members would be able to address Town business effectively, and addressing Council Member Shadle's concern regarding whether the rule would be applied equitably. Mayor

Rubin believed his approach was not targeting people; he reached out to both and asked them to participate. Mr. Wahl agreed to work on his attendance.

Mayor Rubin announced he would table the item until the next meeting. Discussion followed concerning council member availability for the next meeting.

Addressing Council Member Shadle's concerns, Dan Dansie explained the conservative position would be to say this is or is not the intent of the Council to move forward on this path authorizing the Mayor to post notice of vacancy.

Mayor Rubin asked the Council for its consent to move forward and declare a vacancy. Council Members Baier and Johansson were in support. Council Member Shadle was not in support. Mayor Rubin stated he would follow up on Council Member availability for October 10.

2. Presentation – Moving Toward a Budget Less dependent on Building Fees – Ken Leetham, City Manager North Salt Lake

Ken Leetham, City Manager of North Salt Lake appeared via telephone to speak on his experience as City Manager of Saratoga Springs, a small town similar to Hideout that generated revenue through its building permits.

Mr. Leatham detailed what happened during the downturn in 2007-2008 during a rapid growth period. The city's general fund was heavily dependent on building permits and fees. Layoffs occurred as a result of the downturn. The city did not have a balanced revenue structure to weather a downturn without raising property taxes. The city ultimately raised taxes. Mr. Leatham felt it would be important for all communities to put together goals and sustainable policies on how they want their cities to be funded. He added that in North Salt Lake, they use a modeling software to make five-year projections and see how sustainable the financial picture would be. He felt the same exercise would benefit Hideout.

Discussion continued regarding the steps taken by Saratoga Springs to recover, using salary freezes, layoffs and a property tax increase, and what could happen in Hideout should a downturn occur.

Council Member Shadle asked Treasurer Wes Bingham to provide a reality-based view of what impact a downturn would have on Hideout. Mr. Bingham responded that if the Town was generating \$350,000 of permit revenue and the cost of full-time staff was approximately \$75,000-\$80,000, and if in a downturn, the revenue dropped by 1/2, the Town could still consider hiring one additional full-time staff member. It was estimated the Town would have 75-80 building permits this year.

Mayor Rubin focused the discussion on that would be the base load to run the Town and initiate certain Town initiatives in support of the General Plan and green space initiatives. The Town's income sources outside permitting, and even with the tax increase, were still limited. Questions the Town could need to address the gap: do we add commercial space? If so how? At some point the Town will be built out. What would happen to B & C road funds? The Mayor felt it

necessary to put a finance committee back together to analyze the the real numbers and address the issues.

Discussion followed on what potential commercial opportunities would be available in the Town. Council Member Shadle commented the Town should be focused on moving forward on doing something on the two potential commercial parcels in the Town and to annex in the parcels of the landowner who has been wanting to annex his land in.

Mayor Rubin encouraged the community members, particularly those with budget and finance skills to participate in the finance committee.

3. Approval of Bills to be Paid

Mayor Rubin led a short discussion to identify new items on the report of bills to be paid.

Council Member Shadle moved to approve payment of the bills. Council Member Johansson made the second. Voting Aye: Council Members Baier, Johansson, and Shadle. Voting Nay: None. The motion carried.

4. Resolution Appointing a Mayor Pro Tempore from September 21 through October 5, 2019

Mayor Rubin announced he would be out of town for two weeks, thus necessitating the need to appoint a Mayor Pro Tempore. Council Member Baier agreed to serve as the Mayor Pro Tem.

Council Member Shadle moved to adopt Resolution appointing Chris Baier as Mayor Pro Tempore from September 21 through October 5. Council Member Johansson made the second. Voting Aye: Council Members Baier, Johansson, and Shadle. Voting Nay: None. The motion carried.

5. Continued Public Hearing – Consideration and Possible Recommendation to Allow the Mayor to Finalize the Service Agreement With Utopia/UIA Fiber

Mayor Rubin announced All West committed to the rates set out in their September 4 letter, or lower, for five years and they would continue with the free installation offer through October 31. Further, they would address all areas of Hideout, including Toad Hollow, and they would contact those residents who had already signed up to offer a change in their plans, given the new pricing. Jerry Dwinell clarified that the new installation offer through October 31 also applied to areas not yet serviced, such as Soaring Hawk.

Jack Walkenhurst with All West commented the company planned to send another mailing to the Town residents and reach out via social media to let people know about the service available. He would also leave some advertising materials at the town office. Concerning smart applications such as fire reporting, air quality monitoring, etc., Mr. Walkenhurst stated he had already started looking into it and would be the point of contact person.

Following discussion, the Council decided not to move forward on the Utopia/UIA contract at this time.

6. Continued Public Hearing – Consideration and Possible Recommendation to Allow the Mayor to Sign an Inter-local Agreement With MIDA

Dan Dansie provided an update on his work with Richard Cattan, MIDA's attorney, after incorporating edits based on feedback from the Planning Commission. He noted MIDA accepted most of the edits and they provided two minor edits. Mr. Dansie walked through in more detail the specific revisions and the rationale behind them.

A discussion arose concerning whether an arbitration clause would need to be included in the agreement concerning performance of maintenance services within the Hideout zone. Council Member Shadle felt it would be appropriate to include such clause, noting the Planning Commission originally had the clause in the contract. Arianna Farber, Project Manager for MIDA commented that a failure in Hideout's performing its maintenance services in the Hideout zone would need to be so egregious for MIDA to take action, because MIDA did not have the manpower to come in and decide to take over any part of Hideout's municipal services. From MIDA's perspective, it was not a realistic scenario. She added MIDA would be willing to pursue arbitration should such a situation arise. Council Member Shadle reiterated the arbitration clause should be included to avoid potential costly litigation. Mr. Cattan (appearing by phone) agreed to include the clause and stated there would be no way MIDA would take over Hideout's services.

Mayor Rubin moved the discussion to sales tax revenue. He understood that all sales tax revenue would be allocated to MIDA. Ms. Farber countered it was not true. There were two components to sales tax revenue. The population-based sales tax on Hideout would not be captured by MIDA. As to the other component, point-of-sale, MIDA would take .5%. Mayor Rubin commented he had reached out to Zions Financial to look at the benefit of Hideout being a landowner if the town-owned parcels were to become a part of the MIDA district and received 65% of the MIDA funds as opposed to 35% without MIDA, vs. the loss of 50% of sales tax. Therefore, based on that analysis, the Town would need to decide whether it would be beneficial to include Town-owned lands within the MIDA zone.

Town Administrator Jan McCosh reviewed discussions she had with Jim Clayton of the State Tax Commission, who oversees distribution of sales tax, (unintelligible) of MIDA, and Mike Davis with Wasatch County. Mr. Davis stated under MIDA, the Town would give up all municipal taxes without sunset. Jim Clayton stated it was outside the scope of MIDA. Ms. McCosh stated the population portion of the taxes would be based on census data and it was unclear how that would work; she felt more questions needed to be asked.

Ms. Farber stated Mike Davis' assertion was untrue on any level. MIDA would not pocket the sales tax revenue but would invest the funds back into the project area via the Development or Municipal Services funds. Council Member Shadle noted the point-of-sale sales tax argument really applied to only two slivers of land owned by the Town, and currently no commercial development was slated to go into that. Thus, the Town only needed to confirm whether it would be getting the head count sales tax, which it would be under MIDA. He felt the Town also needed to decide whether it would make economic sense to include those two Town-owned slivers of land. Mayor Rubin stated he scheduled a meeting with Susie Becker of Zions the following week to discuss the options concerning the sales tax.

Ms. Farber asserted MIDA would have the tools to contribute to the Town-owned land if the Town was considering a commercial development for that land. For example, MIDA would have the ability to charge a 6% energy tax (gas and electricity), as well as a 1.1% resort communities' tax. There would be advantages to incorporating those areas into the zone. Council Member Shadle felt the issue shouldn't hold up a decision on MIDA; it was just a financial decision and he believed the Mayor was fully capable of assessing the financial decision. However, he did want it affirmed in the agreement that the 50% per capita sales tax would flow to the Town.

Mr. Cattan reminded the Council that if Hideout owned properties were included within the project area, they would also be eligible for landowner monies from the Development Fund. Further, MIDA could help finance infrastructure within that area.

Mayor Rubin summarized the issue to be considered: if the loss of point-of-sale revenue would exceed the amount the Town would receive from the landowner development fund. Council Member Shadle reiterated his preference to have the Mayor determine the answer to that question after meeting with Susie Becker of Zion Finance. Ms. Farber commented this decision would have to be made by Tuesday the following week for MIDA's timing. The Mayor felt there wasn't any reason it couldn't be done by that deadline. Mr. Dansie and Mr. Cattan confirmed they could add language to section 10 to clarify the population tax flowing to the Town that was discussed earlier. Mr. Cattan also affirmed language could be added to the agreement that would state that if somehow the State were to determine the residents within the Hideout project zone were counted as MIDA residents, then MIDA would transfer the per capita tax to Hideout; it was also agreed that B&C road taxes would also be included.

Discussion continued regarding the MIDA funds and how they are structured.

Council Member Baier felt the MIDA agreement represented uncharted territory and the Council was facing an important decision. Ms. Farber commented she had never seen any MIDA agreement where the legislature introduced legislation to change the agreement. Mr. Dansie added the only impact MIDA Act legislation could potentially have on the Hideout zone would be those side areas that hadn't been previously spelled out in the original agreement. He agreed it would be unlikely the legislature would come in and change a contract through legislation.

Mr. Dansie clarified the MIDA agreement provides that all the sales tax would be going into the development fund, but the Town could approach MIDA to transfer funds to the municipal services fund if needed.

Council Member Shadle felt the financial benefits to the Town via the MIDA agreement would further the goals of the General Plan and would help fund other initiatives.

At 8:35 pm, Mayor Rubin opened the floor for public comments. With no comments forthcoming, the Mayor closed the public hearing.

Council Member Shadle asked for a report on discussions with the developers. Mayor Rubin reported both agreed (though not yet in writing), that the Town would be part of the process in deciding how their development funds would be used and what amenities the Town would want. Jerry Dwinell submitted that the developer would need to come before the Planning Commission on three separate occasions, which would afford the Commission the opportunity to provide

input to the developers on amenities to benefit the project area. Council Member Shadle felt the issue should be addressed with some specificity, due to the substantial amount of money involved.

Discussion with Walt Plumb, a developer, followed concerning the developers' risk, their financial commitment, the MIDA funds flowing to the developers, and addressing how Hideout could be a part of the decision on how developer MIDA funds could be utilized. Mayor Rubin suggested reviewing the amenities installed by the developers on past projects as a percentage of overall project cost, determine that value and possibly include language in the agreement stating that the amenities would need to be x% of the total project cost for future developments. Discussion continued regarding the Mayor's suggestion. Mr. Plumb indicated his agreement with the proposal.

Council Member Shadle recommended the Council authorize the Mayor to finish the agreement and include the items discussed this evening: the sales tax, B&C taxes, the arbitration clause, and to perform the analysis regarding whether to include the small slivers of land.

Ms. Farber explained that a decision would need to be made so that the informational packets for the taxing entities would be prepared by Tuesday to meet the deadline prior to the MIDA Board meeting on October 1. The Council continued its deliberations on what action to take regarding the contract negotiations and the timing associated therewith. Dan Dansie provided the Council with some options on how to proceed this evening with the Council's decision.

Council Member Johansson moved to allow the Mayor to finalize the MIDA agreement, but not to sign. Council Member Shadle made the second.

Further discussion ensued concerning all the tasks involved in reaching a conclusion as to whether to include the Town's small parcels in the project area; the decision was dependent upon the Mayor's upcoming meeting with Susie Becker of Zion's to discuss the financial impacts.

The Council also discussed the potential impact to the incremental taxes should the decision be delayed into the following year. Council Member Shadle felt the amount of money the Town would potentially be giving up was not worth risking the chance over its decision on whether to include the two small slivers of commercial land.

Mayor Rubin called for a vote on Council Member Johansson's motion. *Voting Aye: Council Members Shadle and Johansson. Voting Nay: Council Member Baier. The motion failed.*

Council Member Shadle moved to authorize the Mayor to finish negotiations of the agreement with MIDA with the modifications discussed this evening and to move forward adopting a consent resolution on MIDA. Council Member Johansson made the second. Voting Aye: Council Members Shadle and Johansson. Voting Nay: Council Member Baier. The motion failed.

Discussion and debate resumed. Council Member Shadle urged Council Member Baier to reconsider her position.

Council Member Johansson said including the sliver into the project area would benefit the Town residents, because they could develop it faster using MIDA money, and realize the benefits to the Town.

Walt Plumb expressed concern in not being part of the MIDA project area. He proposed the following on the Vanden Akker parcel: if instead of the Town having 35%, it would have 40%. He explained the Vanden Akker development was a higher end product with an estimated \$68 million in development. He felt it was very unwise to go back to MIDA and tell them the Town voted this down. Ms. Farber added her leadership was so humble, they would walk away to avoid bad press. Mr. Plumb reiterated his commitment to give the Town an additional 5%.

Jerry Dwinell asked Council Member Baier to expound on the nature of her dissent. Ms. Baier responded it started in principle. She perceived MIDA just kept expanding and growing all the way across Highway 40 to the Jordanelle. She felt it would have to be someone's financial gain for that to be happening. She queried who would be benefitting from all the development and she opined it was not the military families, but rather the developers themselves to accelerate growth. Secondly, she wondered whether the Town would be getting the best deal it could. Mr. Dwinell stated they had been working for six months on the financial aspects of the deal and held three public hearings on the issue.

Ms. Farber stated MIDA had never approached developers, developers had always come to MIDA. She continued with a statement about the purpose and vision of MIDA, from her perspective as a former Marine Captain. She expressed the purpose of her job was to create public policy that would impact the country's military members. Ms. Farber asserted the MIDA project was not a money grab; it was an organization that really cared about military members and supported projects in areas like Hideout for economic development and growth. Council Member Baier expressed her appreciation to Ms. Farber for presenting on the real purpose of MIDA, because she previously felt it was all about money and incentivizing accelerated development.

Carol Hazelton, Town resident, was concerned with the lack of attendance at the meeting, where such an important decision was before the Council. She was also concerned that two council members were not showing up and she was concerned that three people were making a big decision. She expressed her support for the MIDA agreement and appealed to Council Member Baier to reconsider her position.

Council Member Baier polled the Council, asking if they felt MIDA would go away if they did not vote this evening. Council Member Shadle felt it was indeed possible, however he rephrased the question: Would it be worth taking the chance that this agreement may not be on the table in a month, and he didn't think it was worth a chance.

Council Member Johansson expressed his belief in Ms. Farber and felt the MIDA principals were humble people that would indeed walk away if the Council did not support the agreement.

Although not a voting member, Mayor Rubin expressed without MIDA tax revenue there would be no possible way it could exceed the other values the MIDA elements would bring to the table. It would allow the Town to achieve the things they wanted to do and to attract people to the

community and use the facilities. Further, it would provide a greater recreational experience for people who really needed it. He saw very little downside to this and it would be the right thing to do for the Town.

Council Member Baier commented she heard some very compelling arguments and suggested the Council pursue another motion and include the Vanden Akker offering stated by Walt Plumb.

Council Member Shadle moved to approve the Consent Resolution, and in tandem authorize the Mayor to finalize the MIDA agreement, incorporating the changes to the provisions discussed this evening, including the additional 5% tax portion from the Lakeview Estates parcel. Council Member Johansson made the second. Voting Aye: Council Members Shadle, Johansson and Baier. Voting Nay: None. The motion carried.

7. Continued Public Hearing – Possible Adoption of an Impact Facilities Plan

Mayor Rubin explained the details had been worked out with the engineering firm which was currently making the final changes. He expected to have the final document this week for review and hopefully put it on the table at the next meeting. Council Member Shadle felt there were some issues to discuss. Dan Dansie stated they could be discussed during an executive session. Discussion followed on Council availability for an October 10 meeting.

Council Member Shadle moved to continue this discussion to October 10. Council Member Johansson made the second. Voting Aye: Council Members Shadle, Johansson and Baier. The motion carried.

8. Presentation of Financial Statements for Fiscal Year Ended June 30, 2019 – Wes Bingham, Town Treasurer

Wes Bingham explained the municipality would be highly dependent on property tax and would need to start thinking about the potential for a downturn and getting the correct amount of surplus in the General Fund. He directed the Council's attention to the balance sheet, showing \$735,000 in cash, but much of it was tied up: \$547,000 in developer bonds. Regarding equity, the Town has \$275,000 of which \$250,000 consists of \$250,000 restricted B & C funds which cannot be used for operations. Mr. Bingham stated he would advocate moving some of those funds into another fund. He added the Town could keep up to 75% of its revenue; when it becomes a city, it could retain up to 25%.

Mr. Bingham stated the Town would need to start planning for future property tax increases, because they are such a significant part of the Town's revenue source. As to B & C road funds, Mr. Bingham found only about \$6,000-10,000 that were used for crack seal. Mayor Rubin commented the Town did have \$600,000 cash promised through the Deer Springs development that could be used to help toward some of the shortages, however there were contractual obligations as to how those funds could be used.

Mr. Bingham continued, noting that based on the trajectory of the Town, it would have to use \$107,000 surplus, however the Town does not have that. He added the Town could transfer money from the enterprise funds, however he cautioned the Town would want to keep those balanced.

Mr. Bingham commented the Town would need to look at some of the expenditures to see what could be eliminated, at least from the current year until the Town receives some of the increases. Council Member Shadle noted the MIDA agreement could change the look of the property tax revenue starting next year. Discussion followed regarding MIDA; Mayor Rubin stated he would inform Mr. Bingham regarding the MIDA structure and agreement.

Continuing, Mr. Bingham stated the Town may need to adopt another resolution to transfer funds from the Enterprise Fund to the General Fund as a loan. He noted the Water and Enterprise Funds were doing well, explaining that the funds generated approximately \$110,000 in cash based on \$25,000 in depreciation. When reviewing the actuals, the Town generated \$515,000 in revenue and \$338,000 in expenses last year. He reiterated the Town may need to increase property taxes to consider other services the Town may need to provide.

9. Public Hearing – Regarding FY 2020 Budget Amendment – Reallocation of a Portion of Engineering Fees to the Enterprise Fund

Mr. Bingham explained the resolution reallocating some of the engineering costs (\$30,000) that were historically allocated to the General Fund should be coming out of the Enterprise Fund, as they relate more to sewer and water infrastructure. Council Member Shadle noted some typographical errors in the Resolution that will be corrected.

At 10:18 p.m., Mayor Rubin opened the floor for public comments. With no public comments, the Mayor closed the hearing.

Council Member Shadle moved to adopt Resolution 2019-13 amending the 2019-2020 Operating Budget to reallocate \$30,000 from the Enterprise Fund to the General Fund. Council Member Baier made the second. Voting Aye: Council Members Shadle, Baier and Johansson. Voting Nay: None. The motion carried.

Following the vote, Council Member Shadle thanked Jan McCosh, Vytas Rupinkas and Wes Bingham for their time and effort in working through and getting the Town's finances under control.

10. Public Hearing to Discuss the Snow Removal Ordinance, due to Additional Suggested Revisions to the Ordinance

This item will be deferred to another meeting.

V. Adjournment to Executive Session – Threatened Litigation

Council Member Shadle moved to adjourn to executive session. Council Member Baier made the second. Voting Aye: Council Members Shadle, Baier and Johansson. Voting Nay: None. The motion carried.

Whereupon at 10:20 p.m., the Council adjourned to executive session.

VI. Meeting Adjournment

The executive meeting was adjourned at 10:52 p.m.

Allison Lutes, Town Clerk

APPROVED