



**TOWN COUNCIL
MINUTES**

DATE: <u>August 28, 1997</u>	CALLED TO ORDER: <u>7:25 p.m.</u>
	ADJOURNED: <u>10:45 p.m.</u>

The meeting was called to order at 7:25 p.m. by Mayor Hooge. Council Member Cyril Watt led the Pledge of Allegiance. The following Council Members were present and represented a quorum.

Mayor: Debbie Hooge
Council: Nick Berg, Diane Bradshaw, John Jacob and Cyril Watt.

Town Staff:

Attorney: Randy Skeen, Esq., and Gerald Kinghorn, Esq.
Manager: Dave Conine
Engineer: James Dahl and Mike Wren of MCM Engineering
Recorder: Janet Valentine

Others: Bob Lynds, Gary Tassianer, Dan Valentine and John Walden.

Let it be noted that where ever the word "city" was said it was replaced with "town".

Item 3 - Approval of Minutes: (tabled to next Town Council Meeting)

MOTION: *Diane Bradshaw moved to approve the minutes next week. John Jacob seconded. Ayes: 4, Nays: 0, Abstained: 1, (Mayor Hooge). Motion passed.*

Item 4 - Public Comment:

MOTION: *Cyril Watt moved to move Item 4 Public Comment under Item 5 on the agenda. Nick Berg seconded. Ayes: 4, Nays: 0, Abstained: 1, (Mayor Hooge). Motion passed.*

Item 5 - Closed Session with Special Bond Counsel, Jerry Kinghorn: (a closed session was not called for at this time).

John Jacob disclosed that he is a Town Council Member and currently works for Cedar Valley Water Company and receives one and one eighth of the funds from that Company.

IS THIS AMT CORRECT?

Jerry Kinghorn introduced himself and explained that he was asked by Blaine Carlton of Ballard Spahr Andrews and Ingersoll to assist them as special council to the Town, with respect to some specific infrastructure issues. The purpose for Mr. Kinghorn's work with the Town is to evaluate the resources that are owned and will be operated by the Town, to assure bond council and the underwriter that the Town can operate the utilities and facilities that are necessary to generate the revenues to pay off the bond anticipation notes. The first phase of financing is for four or five years, and the primary concern is that the resources and facilities required by the Town will pay off the bond anticipation notes in the first five years.

The revenues from these notes will pay for all the utility infrastructures. Mr. Kinghorn wants to verify that the time the bond anticipation notes close, the Town will have title to all the facilities and resources it needs to operate the systems needed to pay off the notes. There were a couple of documents Mr. Kinghorn had a concern with

Minutes of the Town Council Meeting

Date: August 28, 1997

respect to the potential of litigation risks. "Water Agency and Equity Participation Agreement" was one of these documents. John Jacob requested to have Jerry Kinghorn talk about the other utilities before he addresses these documents.

Jerry Kinghorn referred to the following issues that were not considered litigation risks:

1. Water Rights: The town needs to assure that prior to the time that the bonds close, the town has title to water rights sufficient to furnish water to all of the connections that will generate the revenues to pay off the first phase of notes. Discussion ensued.
2. Electrical Power: There is currently only 250 connections available from Utah Power, and the need is for approximately 1200. It was Mr. Kinghorn's understanding that there are arrangements being made to vest the Town with the legally enforceable right to acquire the power that's necessary to service 251 to 1200 connections. Discussion ensued.
3. Ownership of the Storage Facilities for Natural Gas: The Town cannot hook-up to the existing gas pipe line because it is too large and the Town is too small. The Town should own pressure tanks in order to be able to supply natural gas. Mr. Kinghorn explained to the Council that the Town will need legally enforceable contracts in place or a title to the facilities to obtain the bond anticipation notes.
4. Cable TV Service (Telecommunications): Mr. Kinghorn hesitates to raise this issue, because he doesn't have the documentation. Nick Berg told him to contact Gary Tassianer of Tacso Engineering, because he can fill him in on all the utility issues. Discussion ensued.

Mr. Kinghorn expressed his concerns that if the Town can't repay the bonds and he missed something, and someone brings a law suit he will be liable. The Town needs to pledge the utility systems and the revenues from those systems and if the Town defaults on the bonds, the buyer of the bonds will come in and take away these systems and run them.

John Walden (the developer) introduced himself and addressed the Council. Mr. Walden said that the bonds were suppose to have been issued back in April and the proceeds from them was to be put in trust and then paid out as the Town built these infrastructure items. Only the land (Eagle Mountain Properties, L.C.) was to be put up as collateral. But because of the law-suite (i.e. Triplett?) the bonds were not issued, and he has had to put up the cash to begin building these items. The delay in issuing the bonds was not because the town didn't have ownership of the tanks or the land or any of that. They (the Town) had contracts to buy that. Mr Walden expressed his belief that "all of the pieces of the puzzle have been put together" but that Mr Kinghorn just hasn't seen everything yet because he is still on the learning curve. Mr Walden then wanted to correct one other thing, that the "bonds coming back and taking the utilities away", is not right since what he is doing is putting up \$10 million in cash as a "cash bond", that's what they're going to go after first, not the utilities. Our (Walden's group) personal guarantees, money, and properties is what is guaranteeing the bonds, and that an agreement (that will be part of the bonds) will stipulate that if the Town does default, it will own nothing except the sewer plant, since the sewer plant can not be privately owned. Mr. Walden then finished up by stating that he agrees with most everything that Mr. Kinghorn has said except for the mis-statements he made as a result of not having "all of the pieces of the puzzle yet" and that Gary Tassianer can fill in those pieces for him.

Discussion between Jerry Kinghorn and John Walden ensued. Mr. Kinghorn said that he understands there is a special assessment district and the proceeds from that is to pay for some of the infrastructure. Mr. Walden replied

Minutes of the Town Council Meeting

Date: August 28, 1997

and said that the special assessment district is to pay for just the roads. The roads are two weeks from being funded according to Mr. Walden, and not all the roads will be completed at that time.

5. Contracts to Purchase the Utilities: Mr. Kinghorn received the Purchase Agreement and said that it needs specificity and needs to specify what is being purchased in exchange for the dollars. This will be the agreement that is executed by the trustee when the funds come from the notes. Mr. Kinghorn said he will amend this agreement and put some specificity that will include exactly what the Town is getting. Mr. Walden said this agreement is the first rendition and he will look forward to Mr. Kinghorn's expertise. Mr. Kinghorn said that the legal authority, the legal commitments, the ownership of the facilities need to be in a position so the funds can be placed in escrow. What is being counted on is that when that escrow closes and the funds are dispersed, the town will begin to produce revenues from those facilities. It was Mr. Kinghorn's understanding that these notes will capitalize some initial interest because the Town won't have any revenue to pay them. The interest on the initial period of those notes will be capitalized and paid by the trustee. Mayor Hooge entertained a motion to go to a closed session.

MOTION: *John Jacob moved to close the open session to a closed session for the legality of the issue. Diane Bradshaw seconded. Ayes: 4, Nays: 0, Abstained: 1, (Mayor Hooge). Motion passed.*

The Mayor and Town Council called for the meeting to go to a closed executive session at 8:20 p.m. on August 28, 1997 at the Lehi American Legion Hall in Lehi, Utah. Those present during the closed session were Mayor Hooge, Council Members; Nick Berg, Diane Bradshaw, John Jacob and Cyril Watt, Attorneys; Randy Skeen, and Gerald Kinghorn, and Town Recorder; Janet Valentine. The closed executive session ended at 8:50 p.m. The Mayor reopened the meeting at 8:50 p.m.

Item 6 - Resolution to not issue any "will serve" letters until the BANS are in place: The Town does not own the utilities and therefore cannot provide utilities to the public at this time. Mayor Hooge said that the Town should own their own utilities by September 18th and because the Town currently doesn't own them, one solution might be in the interim, since currently Mr. Walden owns the utilities that he would issue the "will serve" letters in the Town's name and then we would assume that liability to be assigned to us upon our purchase of the utilities. Discussion ensued between the Council, Jerry Kinghorn, Gary Tassianer and John Walden. Jerry Kinghorn told John Walden that he needs to evaluate and decide if he is willing to issue "will serve" letters. Mr. Walden said he doesn't mind servicing the area that the services are in, but can't promise or guarantee Cedar Pass Water L.C. will be provided water. However he can guarantee that they can hook up and there will be water there. Mr. Walden would like the Town's attorneys to come up with "will serve" letters. Nick Berg suggested to give the Town's attorneys a week to come up with the "will serve" letters and if they don't then the Council will adopt the resolution.

MOTION: *Nick Berg moved to table the Resolution to not issue any "will serve" letters until next Thursday's meeting and in the interim of 7 days we will not be recording plats or issuing building permits. Diane Bradshaw seconded. Ayes: 4, Nays: 0, Abstained: 1, (Mayor Hooge). Motion passed.*

Jerry Kinghorn referring to the motion said that this can't happen because John Walden being a individual does not have the authority to operate as a public utility and can't sell services to the public without a "certificate of convenience and necessity". Cities and Towns are exempt from this because they are municipalities. Gary Tassianer said John Walden cannot get into the utility business, so he will have to provide what ever means to allow the Town to provide the utilities. Discussion ensued. Nick Berg said the Town doesn't own it's utilities so it

Minutes of the Town Council Meeting

Date: August 28, 1997

doesn't have the legal right to give "will serve" letters. No action was taken.

Item 7 - Resolution to appoint Eric M. Taylor as Eagle Mountain's volunteer Fire Chief: Mayor Hooge told the Council Eric Taylor could not be attendance this evening because he is currently fighting a fire. Mr. Taylor is a certified EMT and certified at the national level as a Firefighter I and II and has had 14 years experience. He is also certified as a fire fighter trainer and currently trains in the local fire departments in the area. Mr. Taylor owns a lot at Cedar Pass Ranch and intends to build within the next year and a half. He is currently a member of the Orem Fire Department and works part time for Utah County Fire Department. He would like to be Eagle Mountain's Fire Chief, and has met with the county and arranged with them that when our fire station is complete, the county will provide full time, fully trained fire fighters and equipment for our station. Eric Taylor will also train any residents interested in becoming volunteer fire fighters for Eagle Mountain. When the time comes that Eagle Mountain can afford to pay for a full time Fire Chief, he would like to be considered for the position.

MOTION: *Cyril Watt moved to approve Resolution 97-34 appoint Eric M. Taylor as Eagle Mountain's volunteer Fire Chief. John Jacob seconded. Ayes: 4, Nays: 0, Abstained: 1, (Mayor Hooge). Motion passed.*

Mayor Hooge said she would try to have Eric Taylor available to meet and interview with the Council.

Item 8 - Review of the Town of Eagle Mountain proposed Water Utility:

MOTION: *Cyril Watt moved to table Item 8 - Review of the Town of Eagle Mountain proposed Water Utility indefinitely. Diane Bradshaw seconded. Ayes: 4, Nays: 0, Abstained: 1, (Mayor Hooge). Motion passed.*

Item 9 - Janet Valentine's presentation on the UMCA Training through W.S.U.: Janet Valentine presented a brief explanation of the training classes she attended. The training sessions were held for five days, 8 hours a day, from August 11th to the 15th. The training classes are a means by which municipal clerks and recorders can work towards becoming Municipal Certified Clerks. It takes three years of attending these yearly week long training sessions, along with other criteria to become a Certified Municipal Clerk. Discussion ensued. Mayor Hooge thanked Janet Valentine for her presentation.

Item 10 - Other Business: Mayor Hooge said she had to let Jeanette Quinn go, so the Town is in need of a Clerk. Janet Valentine expressed interest in this position, and Mayor Hooge wants to pay her on a salary basis. This needs to be done by resolution, but wasn't put on tonight's agenda. She will start functioning in that position immediately, and the Council will need to adopt the resolution at next week's meeting. Janet Valentine said she would not be able to be on the Planning Commission and work full time as the Clerk. Mayor Hooge asked the Council to think of a replacement for her position.

Re-seeding Program: Mayor Hooge said that the Town needs to implement a basic re-seeding program for the disturbed land that has been created by all of the construction. There is a spray solution available which consists of mulch and other ingredients. This re-seeding spray is applied in the fall. Mayor Hooge requested that this issue needs to be put on next week's agenda for both the Planning Commission and Town Council, and that Ira Hodges will give the presentation.

Development Master Plan: Nick Berg said the Planning Commission was presented this evening on the Development Master Plan for the 8,000 acres owned by Eagle Mountain Properties. It was approved subject to a couple of conditions when it goes to the Town Council. Mr. Berg asked the Mayor if it was ok to put it on the

Minutes of the Town Council Meeting

Date: August 28, 1997

Town Council's agenda for next week. The motion made by the Planning Commission required that the Development Agreement between the Town and Eagle Mountain Properties together with the Development Master Plan happen simultaneously. John Jacob said he would need this information by Tuesday to be prepared by Thursday to vote on it. Mayor Hooge said if the Council has any questions on this Development Master Plan that they could call Ira Hodges, MCM Engineering, Nick Berg and/or Mayor Hooge, and also the maps will be available at the Town's office for them to review.

Mayor Hooge said that the Development Agreement will be reviewed by all attorneys and that the Council will have time to review it and then vote on it. The Development Agreement will be accepted or rejected but it will not be amended.

Janet Valentine addressed the Council and told them if there are any subdivision requests to be placed on next week agendas, the agenda sign up sheet will be posted at the Town's office, but the deadline to be placed on the agenda will be Friday at noon. In the case of next week's agenda the item would need to be submitted tomorrow by noon. This would not include discussion items or conceptual reviews. John Jacob said that the Town Engineers have requested that these types of items should go through them to be placed on the agenda. Then items won't be placed on the agenda that are incomplete.

Mayor Hooge entertained a motion to adjourn the Town Council Meeting. No motion was made because Dave Conine addressed the Council.

Master Development Agreement: (wasn't on the agenda)

Dave Conine the Town Manager brought up the issue of the Development Master Plan and said that there have been presentations to both the Planning Commission and Town Council in regards to this Plan and it was to be put on the Council's agenda for this evening. Mr. Conine continued, John Walden came to Utah for the purpose of being able to be responsive to this, and the land uses are consistent with what is depicted in the Development Code. Mr. Conine suggested that the Council go through this, approve it subject to the Development Agreement. Dave Conine said it was noticed in the newspaper that it would be presented this evening. He suggested that maybe the Council would have more of a comfort level in calling this an emergency session. Mr. Conine thinks it would be considered "Old Business" on the agenda, therefore fits into the context of this meeting.

Mayor Hooge responded and said that Nick Berg just got through saying this was passed onto the Council subject to approval of the Development Agreement. Nick Berg agreed. Mayor Hooge said they could discuss and review it. Nick Berg said we could approve the map tonight. John Walden responded and said he doesn't need to be present for the Development Agreement (which is scheduled for next week's meeting) because there will be no need for any discussion, due to the numerous meetings Mr. Walden and Mayor Hooge have attended along with their attorneys. Mr. Walden would like this (the Development Master Plan) taken care of because the Town has already had the public forum and the public input. Mr. Walden continued and said it would be much easier for him if this issue is addressed tonight, because he needs to go back to Florida and will not be able to attend next week's meeting.

Dave Conine presented to the Town Council the different land uses by referring to the maps. Mr. Conine continued and said that the Town's Development Code describes these land uses for the entire Town. Eagle Mountain L.C. plans to implement those land uses by what they have presented and been approved on the Equestrian Center, Touchstone Development, and Patterson Development. What Eagle Mountain L.C. did was tie into what is already part of the Town's direction in development and planning. They are looking for a

Minutes of the Town Council Meeting

Date: August 28, 1997

commitment from the Town that says, Eagle Mountain L.C. you are empowered to develop the town's master plan and in exchange for implementing our plan, we assure you the right to do that. According to Mr. Conine it is essentially that simple. Discussion ensued.

John Jacob asked where the sewer will go when it needs to be expanded, because currently it will only service 500 homes. Dave Conine said that the engineers have looked into this issue, and there have been discussion on changing the type of system used, so that we capture the gray water and use it in an irrigation system. When the Town gets to a population threshold that would be efficient, that is probably what will happen and the sewer wouldn't need to be moved.

250
500
SHOULD
BE 250

Mayor Hooge said that the Development Agreement will tie to the map and force the developer to stay with our plan. Discussion ensued. John Jacob asked if there was comment from the public at the Planning Commission Meeting and if so what was it. Dan Valentine, 6186 North Lake Mountain Road, Eagle Mountain, Utah. Mr. Valentine said he was present and spoke at the Planning Commission Meeting and would like the opportunity to make a quick comment. He said (referring to John Walden), John what I was trying to say to you earlier and what now I have a problem with now is that if you're vesting for densities and uses that's one thing, I'm not against that, it looks great. But it is my understanding that at the date this is approved for a Class III Permit (Class III Permit is now referred to as a Development Master Plan) you will also be vested with the right to approach the Town Council at any date from now until that Development Agreement expires to get your Class II Permits and your Class I Permits for each of these smaller developments according to the Development Code as it exists today.

John Jacob responded and said that is correct and it's ok to do, because if the county approved a 150 lot subdivision but later decide that they don't want it, so they change the development codes so people can't do it. Dan Valentine responded and said what he thought the Planning Commission was trying to say is, ok were not going to change down the road what we have vested here in uses and densities, but if we do happen to change a little bit on what we do on our Class II and our Class I's, we want you to follow that. Dave Conine said that isn't what the Planning Commission ended up with. They stipulated that it would be subject to the technical inconsistencies that are in the Development Code and that they need to be corrected. Mr. Conine said that when Eagle Mountain L.C. comes in for a Class II Permit, they have to go through the process for a Class II, and it would be the Class II that is depicted in the code right now. Mr. Conine continued, and supposed that if the Town got to the point that it found it would be to everybody's advantage to go with a newer version of the Class II, and was acceptable to both parties, the Town would probably be able to have that option.

Dan Valentine questioned why John Walden would be worried if there was changes made to the Class I and Class II Permits. John Walden said he is not worried about anything, this has nothing to do with my worry. Mr. Walden what he is trying to do is to get the BANS and in order to get the BANS, and that the Town wants his ten million dollar guarantee for the Town utilities, he wants to know that he can do exactly what he had pledged to do for the last three years. Mr. Walden said this a time line issue for him, because without the *Development Code (*I believe he was referring to the Development Agreement) and Development Master Plan we are not going to issue BANS, without issuing BANS the Town will not issue any permits, without any permits there will be no Town. He continued and said he is on a time line that has to be met, or this thing is going to explode. This has been discussed, and Mr. Walden has done everything that has been asked of him, and all he is asking for if it's liable to do this, is approval of the Development Master Plan and for the Town to understand that this plan doesn't have any meat in it until the *Development Code is completed. Mr. Walden's concern is that if the Council says no to the *Development Code because they haven't seen it but they will, then this thing just goes poof!

Dan Valentine responded and said maybe the problem he has with this is an issue of semantics. Mr. Valentine

Minutes of the Town Council Meeting

Date: August 28, 1997

expressed he would like Dave Conine and everyone else, instead of stating that what the developer is getting with this plan is a vested right that will go on for the whole extension of the Development Agreement for ten years or whatever that is for uses and densities, will state that it is not all he's getting. He's also getting a lock-in on the Class II's and Class I's as they exist at this point. Discussion ensued. Dan Valentine said he will back off as long as everyone here feels ok with this, and for those of you who have a building back ground agree that this is normal. Dave Conine said this is not normal because no one has guaranteed ten millions dollars for infrastructure before.

Diane Bradshaw asked if she could ask a question of John Walden and Mrs. Bradshaw made clear that she has not read the new development agreement. "What's the benefit to the Town, I mean I see the benefit to you as the developer but what are we getting out of this development agreement as a Town. Can you just kind of be a business man and sell me on it." John Walden said "The development agreement is in essence only this, this all were trying to do is to keep the rules the same. What I am totally terrified of is the petition that's going around Lehi that says you know we don't want any growth and they got how many in your town and how many signatures they get says they can only issue 146 permits. Our BANS and the money that I'm committing for this to give to the Town. I want to give it to the Town so the Town can have revenue and make 4 or 5 million dollars and reduce the burden of all the citizens."

Mr. Walden expressed his concerns regarding the elections in November, and that if everyone who is elected has the opinion, i.e., someone lives in Cedar Pass Ranch and decides that they don't want anything in the Town because they like the view, and this has happened before in Town's. If this happened it would destroy the Town's ability to take these BANS out because without growth the Town wouldn't have the revenue, it would have a domino effect. Mr. Walden expressed that he and the Town both have the same vision which is a pro-growth attitude, we are trying to provide affordable housing for the kids in Utah and the senior citizens on social security. Mr. Walden said that he needs the assurance that if he puts up all this money, and all this infrastructure that he has the ability to do what himself and the Town want to do. Discussion ensued. Dan Valentine said he withdraws all his objections based upon trusting the Town Council and the Town Staff knowing what they are doing. Diane Bradshaw expressed appreciation for Dan Valentine's concerns.

John Walden expressed his thanks to the Town Council and Planning Commission for all the time they have spent on this. He said we have accomplished in three years what most people would of taken ten years to accomplish. Mayor Hooge said "I think what he's (Mr. Walden) saying is that in the next two weeks he's (Mr. Walden) going to be expected to sign these obligations and make these commitments, there going to happen, there going to be very real, and what he's asking for is to give him the comfort level that we can perceive and start signing the Cyril Watt responded "I say we do it."

MOTION:

Cyril Watt moved to accept this plan. Nick Berg seconded. Discussion Called For: John Jacob referred to the airport with it's ^{10,000} ~~12,000~~ foot runway and what effect it would have on the adjacent property owners. Dave Conine responded and said that the value of their property will be greatly enhanced among other comments. John Jacob asked of John Walden if he would contact property owners adjacent to his land. Mr. Walden said he wouldn't do that because he can't develop someone else's land. Gary Tassianer said this development agreement and master plan is for John Walden's property. If someone is effected by that they should be here because it was noticed. John Jacob expressed his concern that it wasn't on the Town Council's agenda which was posted. He also said that he doesn't have any problem voting on this but wants to know how this will effect other people's property. Nick Berg said all the people were contacted by certified mail. Mayor Hooge said Mr. Butterfield and Mr. Bowles, (who are property owners in Eagle Mountain) were present tonight (at the Planning Commission Meeting) and Mr. Bowles came up to the Mayor and said "I love what your

IS THIS CORRECT?

Minutes of the Town Council Meeting

Date: August 28, 1997

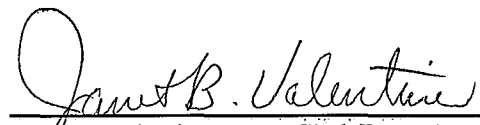
doing, everything is wonderful" John Jacob said that actually is a good comment and that's one concern he had.

Another concern of Mr. Jacob's was how will the sewer system and the sinks effect an airport because of the birds. Dave Conine said he had spoken with an airport consultant and this same issue came up. Mr. Conine said he has observed the bird activity in that area and there isn't a lot of it right now, but admitted this issue does need to be planned for, and needs to be dealt with.

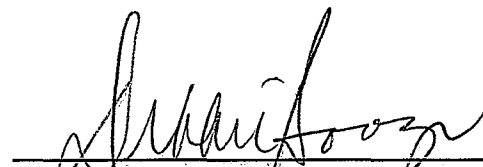
Mayor Hooge said the farmers have expressed that the runway should be about three or four miles further south, because the noise will bother their horses. Dave Conine said the contemplated use is not for air carriers, the contemplated use is for general aviation which consists of private and corporate air craft. John Jacob asked why is there going to be a 10,000 foot runway then. Dave Conine replied initially it's going to be more like 7500 feet and that is still in the planning stage. A G5 or G4 corporate jet would probably require a 8,000 to 9,000 foot runway. It was also mentioned that there is currently a study being done on the windage. John Walden said that they have received interest from Motorola and a lot of interest from other businesses in having an airport accessible. John Walden said he would give land away if it brings jobs into the valley. Mayor Hooge said Mr. Walden has made a commitment to a furniture business that employs 125 people, and all the principals of that company are in the process of relocating their families to our valley. John Jacob referred to the roads, Mayor Hooge said that we want to have a parallel road along the side of the Fairfield Road to alleviate traffic so the pony express trail (Fairfield Road) could be preserved. Discussion ensued. John Walden said that the roads could be changed at any time and that isn't the issue here. All he is asking for is the uses and densities. Discussion continued. **Vote Called For: Ayes: 3, Nays: 1, (Diane Bradshaw), Abstained: 1, (Mayor Hooge). Motion carries three to one.**

MOTION: Cyril Watt moved to adjourn the Town Council Meeting at 10:45 p.m. John Jacob seconded. Ayes: 4, Nays: 0, Abstained: 1, (Mayor Hooge). Motion passed.




Janet B. Valentine, Town Clerk/Recorder

APPROVAL:


Mayor Debbie Hooge