

# Town of Leeds

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## Agenda

### Town of Leeds Town Council-Work Session Wednesday, April 26, 2023

**PUBLIC NOTICE** is hereby given that the Town of Leeds Town Council and Planning Commission will hold a **PUBLIC MEETING** on Wednesday, April 26, 2023, at 6:00 pm. The Town Council will meet in the Leeds Town Hall located at 218 N Main, Leeds, Utah.

#### **Work Session 6:00pm**

1. Discuss and finalize proposed new water Ordinance 2023-03, Water Authority with the Town Council, Planning Commission and LDWA Board.

#### **Regular Meeting 7:00pm**

1. Call to Order/Roll Call
2. Invocation
3. Pledge of Allegiance
4. Declaration of Abstentions or Conflicts
5. Consent Agenda:
  - a. Tonight's Agenda
  - b. Meeting Minutes of April 12, 2023
6. Citizen Comments: No action may be taken on a matter raised under this agenda item. (Three minutes per person).
7. Announcements:
  - a. Public Notice for Town of Leeds 2024 Municipal Election for Two (2) Town Council Member- each a 4-year term
9. Public Hearings: None
10. Action Items: None
11. Discussion Items:
  - a. Town of Leeds Flood Risk Map program review with Utah Division of Emergency Management representative Jamie Huff
  - a. Second quarter budget review
12. Citizen Comments: No action may be taken on a matter raised under this agenda item. (Three minutes per person).
13. Staff Reports:
14. Closed Meeting- A Closed Meeting may be held for any item identified under Utah Code section 52-4-205.
15. Adjournment

The Town of Leeds will make reasonable accommodations for persons needing assistance to participate in this public meeting. Persons requesting assistance are asked to call the Leeds Town Hall at 879-2447 at least 24 hours prior to the meeting.

The Town of Leeds is an equal opportunity provider and employer.

Certificate of Posting:

The undersigned Clerk/Recorder does hereby certify that the above notice was posted April 24 2023 at these public places being at Leeds Town Hall, Leeds Post Office, the Utah Public Meeting Notice website <http://pmn.utah.gov>, and the Town of Leeds website [www.leadstown.org](http://www.leadstown.org).



Aseneth Steed, Clerk/Recorder

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# Town of Leeds

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## Town Council Meeting for Wednesday, April 26, 2023

### Joint Meeting 6:02 PM

#### Town Council

##### ROLL CALL:

	<u>Present</u>	<u>Absent</u>
MAYOR: BILL HOSTER	<u>X</u>	<u>          </u>
COUNCILMEMBER: DANIELLE STIRLING	<u>          </u>	<u>X</u>
COUNCILMEMBER: RON CUNDICK	<u>X</u>	<u>          </u>
COUNCILMEMBER: STEPHEN WILSON	<u>          </u>	<u>X</u>
COUNCILMEMBER: KOHL FURLEY	<u>X</u>	<u>          </u>

#### Planning Commission

##### ROLL CALL:

	<u>Present</u>	<u>Absent</u>
CHAIRMAN: DANNY SWENSON	<u>          </u>	<u>X</u>
COMMISSIONER: ALAN ROBERTS	<u>          </u>	<u>X</u>
COMMISSIONER: KEN HADLEY	<u>X</u>	<u>          </u>
COMMISSIONER: TOM DARTON	<u>X</u>	<u>          </u>
COMMISSIONER: GARY ROSENFELD	<u>X</u>	<u>          </u>

#### LDWA MEMBERS:

	<u>Present</u>	<u>Absent</u>
ALAN COHN	<u>X</u>	<u>          </u>
DORIS MCNALLY	<u>X</u>	<u>          </u>
KURT ALLEN	<u>X</u>	<u>          </u>
DON FAWSON	<u>X</u>	<u>          </u>

Scott Messel, Town planner present

Invocation: Commissioner Darton

Pledge of Allegiance: Mayor Hoster

Commissioner Darton made a motion to approve the agenda for the April 26, 2023 work meeting. Commissioner Rosenfield seconded the motion. Motion carried.

Declaration of Abstentions or Conflicts: Councilmember Cundick noted for the record he was the initiator and drafter of the ordinance.

1. Discuss and finalize proposed new water Ordinance 2023-03, Water Authority with Town Council, Planning Commission and LDWA Board

Mayor Hoster explained the work session is aimed to coordinate between the Town of Leeds and the Leeds Domestic Water Association (LDWA). Ron Cundick played a crucial role in drafting an ordinance between the town and the LDWA. This session is to address concerns that have brought them to this point, and it was an opportunity to enhance the relationship between the town and the LDWA, provide better service and protection for citizens, and identify legal ways to achieve that.

Alan Cohn, representing the Water Board, suggests that an MOU might be more appropriate than a town ordinance since we all live in the town and share the same water supply. If something happens, the town has problems with water, everybody's affected. He feels like going at it from an ordinance standpoint, may be jumping the gun a little bit.

Mayor Hoster noted Alan Cohn's suggestion and explained that the reason for approaching an ordinance is because there were gaps in a prior ordinance that exists between the town and the Leeds Domestic Water Association (LDWA). There are concerns about the LDWA being the acknowledged water authority within the town and how this affects developers who believe the town is biased and enabling a private company to facilitate property rights. The mayor met with the Washington County Water Conservancy District, who also has concerns over this issue. There are several other concerns, and Ron Cundick will describe the context of the meeting since he is more privy to conversations between the LDWA and the town of Leeds. The meeting is for dialogue only, and there will be no voting or action taken.

Councilmember Cundick referenced the handout provided to the committee of the background and rationale to the new ordinance. He explains why a new ordinance is needed. The ordinance was initially written during a time of conflict in Leeds when the town was attempting to take over LDWA, and it has been largely ignored since. The goal of the new ordinance is to bring together LDWA and the town so that developers must come to those two entities to move forward, rather than bypassing them and going to the Washington County Water Conservancy District. The new ordinance designates LDWA as the water

provider and provides an exclusive right to it, making it easier for developers to know where to go for decisions. Mayor Hoster addressed the concerns expressed about creating a monopoly and suggested that LDWA should be the moderator of the utility, which would allow the town to seek water from the Washington County Conservancy District if necessary. The ordinance would strengthen LDWA's role and provide consistency in policies.

The consensus was it would be more flexible to have an MOU in place rather than trying to cover everything in a statute. An MOU would allow for easier changes and modifications if needed in the future, without having to go through the process of amending a statute. However, it's important to ensure that the MOU includes all necessary details and provisions to protect the interests of the town and LDWA.

Doris McNally, a member of the water board, suggests that the original ordinance from 2009 is on weak legal grounds because their company is privately held and not a governmental entity. However, the mayor argues that it is not illegal for a municipality to regulate a private company that has a monopoly within its jurisdiction. McNally expresses frustration with the lack of collaboration between the town and water company and believes there needs to be a discussion about the master plan for the future. The mayor explains that the purpose of the ordinance is to avoid competition with another water company, which would diminish services to shareholders.

Don Fawson, a member of the Water Board, thanked Councilmember Cundick for interceding in a recent issue and getting a loan to bring things up to standard. He also mentioned that the Water Board's attorneys are some of the best in the state and provided their opinion on the town's ability to regulate the LDWA, a nonprofit mutual water company. According to the attorneys, the town does not have the authority to regulate the LDWA but can approve new development and enter into an agreement to be the water provider. Additionally, the attorneys noted that an ordinance would not accomplish its intended purpose and that the town may build its own water system if it chooses. Fawson suggested that the town sit down with LDWA to work out the terms of an agreement and warned that passing the ordinance would be of no legal effect and could lead to litigation. Mayor Hoster clarified that the town is not trying to take over the water company, but wants to protect the town's obligation to health, safety, and welfare for all citizens. Alan Cohn of the Water Board asked what the vulnerabilities facing the town were regarding the developers, but the mayor felt the relevance to this discussion was not clear.

In the discussion, Don Fawson from the Water Board mentioned that they have been working to resolve past contention and frustration by having discussions with parties involved and trying to come to an understanding. He noted that they have been doing this with at least one of the developing groups, which has had significant contention. Fawson mentioned that they recently met with the group and had a productive discussion, which left both sides with good feelings about what needs to be done. He also noted that they have been having discussions with the Washington County Water Conservancy District, the town, and the company to bring understanding about water rights and how they can give and take with one another. This positive approach to addressing past problems is a step in the right direction for the community.

Doris McNally raised a question about the water authority documents and whether they were intended to incorporate other water companies that serve the outskirts of the area in addition to the LDWA. Councilmember Cundick clarified that the documents were only for culinary water.

Commissioner Darton asked about how much of Leeds is served by the LDWA and how many shares are owned by residents. Alan Cohn from the Water Board replied that there are around 400 shares in total, and when asked about the percentage of residents served by LDWA, McNally estimated it to be around 95-96%. McNally also noted that there are commercial, industrial, and institutional shares in addition to residential shares. Fawson clarified that everyone in the town currently being served by LDWA held water shares, except for a few homes served by Angell Springs.

Mayor Hoster explained that the purpose of the conversation is not for the town to take over the water company, but to mitigate the existing liabilities between the town, developers, and LDWA. He believes that the old ordinance has many problems, and all attorneys agree that it needs to be addressed. The concern is that if another company provides water to the town, it will diminish the town's ability to be competitive and provide essential services. Additionally, there are concerns about property rights for developers who have been unsuccessful in getting water from LDWA. He clarified to McNally that the Regional Water agreement revised in 2019 that was a discussion scratched from the April 26, 2023 town council agenda has no correlation between that agreement and this water ordinance.

Don Fawson discussed the history of the water company in the town, mentioning that it has only been around for 50 years. He told of two instances, Sullivan's many years ago and Silver Pointe, where the company had issues with water supply for proposed housing developments. He noted that the town was not against the developments, but the water company did not have the

resources to supply them, so they were told they had to bring the water rights. He mentioned that the town is currently working through concerns with a new development called Silver Eagle and he stated that SITLA has water rights for development. Mayor Hoster brings up Grapevine as a recent development that had been proposed and notes that the town cannot simply deny the development but must have legal justification for doing so. They discussed the possibility of an agreement between the town and LDWA to provide first right of refusal throughout the town, which would allow the town to deny Grapevine and other developments that did not receive water from LDWA. Doris McNally suggests that a Memorandum of Understanding would be appropriate for this type of agreement. Cohn noted that a contract would not be binding with third parties, but it would still be a legal document. Don Fawson expressed his desire to understand the situation, noting that the water board is not in the business of stopping growth.

Mayor Hoster explained that an agreement with a utility provider would enable the town to deny other providers that would compete against the existing utility, and that the town has the right to refer to such an agreement.

Fawson says the thing the board is struggling with right now is the idea that we have enough capacity to handle the town's infill as well as potential developments in other areas including SITLA, Silver Eagle Estates, Silver Pointe estates, and the Sullivan property if they choose to develop. The LDWA board are currently trying to determine if they want to expand their water rights to encompass the other areas or leave it to the Washington County Water Conservancy District to deal with.

Mayor Hoster asked if that meant that developers were being approved only if they brought the wet water with them.

Fawson said that was not necessarily true. He explained that having water rights does not necessarily mean having access to water. Infrastructure such as equipment, pipelines, and aquifers are also needed to supply water. If a developer wants to bring in water, they will need to drill a well, obtain water rights, and put in the necessary infrastructure. However, this is not always economically feasible. The Washington County Water Conservancy District has the duty to bring water to people in the county, but not the obligation to have water brought to them. The town can regulate new development, but existing developments may have different water rates depending on their water source. The Washington County Water Conservancy District can deliver water to a certain point and charge a set amount, but the town would need to charge

individual meters and handle maintenance and billing. Alternatively, the town could contract with LDWA or the Washington County Water Conservancy District to take over these services.

Kurt Allen, a member of the Water Board, expressed his support for an ordinance that establishes a relationship between LDWA and the town. He acknowledges the importance of working with the Washington County Water Conservancy District but emphasized the need for the town to maintain control over its own destiny. He cautioned against allowing the Washington County Water Conservancy District to provide water to developments within the town without going through the town, as this would undermine the town's integrity. He believes that the Washington County Water Conservancy District should focus on selling water to government entities rather than private entities. He notes that despite some differing opinions, they are close to reaching an agreement with the help of legal counsel. He concluded by emphasizing the need for the town, water company, and irrigation company to work together to protect the water in their community.

Councilmember Cundick expressed concern about the loss of control if the administration, maintenance, and building of LDWA were turned over to Washington County Water Conservancy District or contractor. This includes setting rates and overall administration. To maintain control, LDWA could become the exclusive or primary provider and have control over infrastructure and standards, even if paid for by someone else. This would allow LDWA to increase revenue and hire a full-time professional manager. By controlling billing and administration, LDWA could expand its revenue base, especially as development occurs.

Kurt Allen believes that it is important for Leeds to maintain control over their own fate by managing the growth and administration. The developers should use Washington County Water Conservancy District water only when LDWA is unable to provide it themselves. LDWA should handle the billing and meter reading themselves to maintain control, and the town agrees with this approach. This way, they will be able to use the town's water while still retaining control over the development.

Councilmember Cundick acknowledges that the town may need to use the Washington County Water Conservancy District's water in the future but wants to clarify that the statutes give cities and towns authority over the water. This control is necessary to accomplish certain things, and having an ordinance that

designates the town is in charge is important. This way, when a developer tries to avoid certain requirements, the town can refer to the ordinance and ensure compliance. Councilmember Cundick suggests that LDWA could be designated as the primary provider rather than the exclusive provider under the ordinance.

Mayor Hoster stated that he had discussed the matter with Don Fawson, and he agrees with the points made. The mayor then brought up a hypothetical situation in which a company sues the town for damages caused by the waterline they installed in Silver Pointe, which has led to radiation contamination. If the lawsuit is successful, the town's assets would be owned by the company, and the town would be exclusively tied to that provider. However, if the town has an ordinance that allows for another company to become the provider, the town could argue that the assets have no value and switch to a different provider. LDWA II would then become the provider of the water.

Kurt Allen asked if he can comment on Mayor Hoster's statement, saying that he believes it is unlikely that such a catastrophic scenario would happen. He believes that LDWA is a well-run water company and that the state and insurance would prevent a private company from taking over. Mayor Hoster clarified that the Washington County Water Conservancy District, not he, came to them with the concern about a private entity taking over. He suggested that if LDWA were to lose all its value due to a lawsuit, the town should have the ability to switch to another provider. This would provide an "umbrella of protection" for LDWA, but not the town. Kurt asked the Mayor to confirm that the ordinance would provide government protection, but Mayor Hoster clarified that it would simply allow the town to switch providers in case of emergency. Cundick and Allen agreed that the ordinance would not provide protection, but Mayor Hoster emphasized that what it does is provide the town with the capability to switch from LDWA to another provider if something were to happen to LDWA.

Kurt Allen suggested that the community should start using the Washington County Conservancy District water as it is the smartest thing to do since the LDWA cannot service all the geographic areas. They all agree that they need additional water and have a relationship with the Washington County Water Conservancy District. Allen believes that the ordinance can be simple and that the trilateral relationship with the town, LDWA, and the Washington County Water Conservancy District can meet all the needs of the community while keeping control of the water. Mayor Hoster talked about the wording of the ordinance and how it can protect the LDWA from accusations of bias and



capriciousness. Alan Cohn sought clarification on LDWA being the sole water provider, and Kurt Allen explained that the town can purchase water from the Washington County Water Conservancy District through LDWA.

Commissioner Darton sought to understand what they are trying to accomplish and suggested that the town grant LDWA a monopoly on the town's territory, and the town becomes the designated contracted provider of the extra water from the Washington County Water Conservancy District. There was a discussion about what position this puts LDWA in. Councilmember Cundick insists it puts LDWA in the driver's seat and able to manage the growth. Kurt Allen emphasized the need for Leeds to be proactive in decisions of development within its annexation policy boundaries and not leave it to Toquerville. Commissioner Darton reminded that if Leeds does not take a proactive approach to influence the area's growth, Leeds will have all the undesirable impacts without any benefits and that is not an acceptable scenario.

Fawson expressed support for the agreement and voiced appreciation for Councilmember Cundick and his future thinking and efforts in initiating the dialogue and attention to the need for an agreement or MOU that is applicable to all water users.

Mayor Hoster called for an adjournment.

13. Adjournment 7:12 PM

Approved this 24<sup>th</sup> Day of May 2023.



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Bill Hoster, Mayor

Approved this 24<sup>th</sup> Day of May 2023.

Danny L Swenson  
Danny Swenson, Chairman

ATTEST:

Aseneth Steed  
Aseneth Steed, Clerk/Recorder