

Town of Leeds

Planning Commission Meeting for Wednesday, January 03, 2024

1. Call to order: 7:02 p.m.
Chairman Swenson called to order the regular meeting of the Planning Commission at 7 PM on Wednesday, January 03, 2024.

ROLL CALL:

	<u>Present</u>	<u>Absent</u>
CHAIRMAN: DANNY SWENSON	X	_____
COMMISSIONER: KEN HADLEY	_____	X
COMMISSIONER: TOM DARTON	X	_____
COMMISSIONER: UNASSIGNED	_____	_____
COMMISSIONER: ALAN ROBERTS	X	_____
TOWN PLANNER: SCOTT MESSEL	X	_____
ALT. COMMISSIONER: MIRANDA NESSEN	X	_____
ALT. COMMISSIONER: ABBY STUDDERT	X	_____

2. Invocation: Commissioner Darton
3. Pledge of Allegiance
4. Declaration of Abstentions or Conflicts: None
5. Consent Agenda:

- a. Tonight's agenda of January 3, 2024

Commissioner Darton proposed to approve the agenda of January 3, 2024. Commissioner Hadley Seconded the motion. Motion passed in a roll call vote.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
CHAIRMAN: DANNY SWENSON	X	_____	_____	_____
COMMISSIONER: ALT ABBY STUDDERT	X	_____	_____	_____
COMMISSIONER: TOM DARTON	X	_____	_____	_____
COMMISSIONER: MIRANDA NESSEN	X	_____	_____	_____
COMMISSIONER: ALAN ROBERTS	X	_____	_____	_____

a. Meeting Minutes of December 6, 2023, Regular meeting.
 Commissioner Darton made a motion to approve the meeting minutes on December 6, 2023, regular meeting. Commissioner Nessen seconded the motion.
 Motion passed in a roll call vote.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
CHAIRMAN: DANNY SWENSON	X	_____	_____	_____
COMMISSIONER: KEN HADLEY	X	_____	_____	_____
COMMISSIONER: TOM DARTON	X	_____	_____	_____
COMMISSIONER: MARIANDA NESSEN	X	_____	_____	_____
COMMISSIONER: ALAN ROBERTS	X	_____	_____	_____

6. Announcements:

- a. 2023 Tree Lighting event & Wreaths Across America ceremony event recap

Chairman Swenson made a request for Commissioner Darton to provide a recap of the tree lighting event from the previous month. Darton expressed satisfaction with how the event went, mentioning the noticeable tree on Main Street. He hoped for continued success in future editions of the tree lighting event. The chairman Swenson gave a report about the Wreaths across America event. He arrived at the cemetery around 10:30 AM, and by then, the wreath-laying had commenced. Ken Hadley, who led the event in impressive military dress blues, had effectively organized the placement of wreaths on graves, honoring those who served in past wars. The event was part of a nationwide initiative, and Ken received praise for his coordination efforts. Many people attended, with some participants moving on to other cemeteries after completing the ceremony at the Leeds cemetery. Chairman Swenson commended Ken Hadley for his excellent work in organizing military veterans' services and recognition. The event was deemed a success, and it was mentioned that there were significant donations nationwide in support of this service.

- b. Dog and Cat Vaccination Clinic, Saturday, January 5, 2023, 1-2PM with Dr. Bice

Dr. Bice, a veterinarian, is scheduled for Saturday, January 6th, from 1:00 to 2:00. Dr. Bice will be available to check and administer vaccinations for dogs and cats in the town. The event has had good attendance in previous years. Additionally, it was noted that annual license fees for dogs and cats are due at the end of the year, and residents can take care of this obligation during Dr. Bice's visit or by visiting the town office. The reminder also included information about the deadline for business licenses, clarifying that they were due by December 31st for all local in-home or commercial businesses.

- c. Steering Meeting to launch Leeds Spotlight City project at Townhall January 9th 4:30pm

Commissioner Roberts was asked to make a reminder regarding a steering committee meeting scheduled for January 9th at 4:30 PM (not AM) to launch the Leeds spotlight for the town at the Washington County Fair. He emphasized the importance of residents attending to contribute ideas and help plan the town's presentation as the spotlight city. It was noted that the fair designates one town in Southern Utah each year for special recognition, and Leeds has been chosen for the upcoming year.

The discussion stressed the need for volunteers and active participation to ensure a successful representation of Leeds at the fair.

7. Public Hearing: None

8. Action Items:

- a. Acknowledgement of receipt form Town Council, recommendation to discuss proposal to Vacate Silver Pointe Estates Subdivision plat and set Public Hearing date

Scott Messel: Following up on our last meeting, additional information was shared, providing a timeline of various events and points related to the subdivision approvals. Essentially, the development agreement has expired. One of the options being presented is to vacate the plat since the development agreement is void. This would enable the developer and the town to collaborate, filter things, and essentially start over. The recommendation is to ensure that any vacated elements do not leave behind partial components, such as roads or open spaces, but rather result in a clean slate vacation of the plat.

Chairman Swenson: We'll need more details and clarification on several aspects, such as the reasons, dates, and extension information regarding the permit. Can you elaborate on that?

Scott Messel: Certainly, I can provide more details. It's been over 15 years since the town entered into the development agreement in September 2008, and the agreement has now expired. It's been more than seven years since the recording of Silver Pointe Estates Phase One. I can go into further details if needed, essentially catching everyone up.

Chairman Swenson: Let's not rush. We need specific details. Can you provide the official expiration date of the agreement? I couldn't find clear information on the 15-year timeline in Chapter 21. When exactly did the agreement expire?

Scott Messel: The development agreement was executed in September 2008, and while I don't have the exact date, it has indeed expired. The reference to 15 years might be due to the passing of Chapter 21 in 2012, which post-dated the agreement. The current version of Chapter 21 mentions dates like 2012-04 and 2023-03.

Commissioner Darton: Clarifying, the agreement was from 2008, and Chapter 21, enacted in 2012, may have influenced the timeline.

Scott Messel: Correct.

Commissioner Darton: The current version of Chapter 21 indicates dates like 2012-04 and 2023-03 as enactments.

Commissioner Roberts: The development agreement itself has built-in triggers of items that had to be checked off by the developer within a certain timeframe. It also

specified continuous work. I want to be cautious about going too in-depth because some details might involve conjecture. Unfortunately, you don't have the development agreement in front of you, which you should.

Commissioner Darton: I've never seen it.

Commissioner Roberts: You should. I can tell you that this planning commission, as appointed officials, should be aware that the development agreement is a public document recorded with the plat, available both at the county and town hall. The interpretation of whether the development agreement has expired might vary. As an example, one condition, the will-serve from a private water company that held this project up. When this development eventually received a will-serve, the timeline specified in the agreement had passed. This is just one example where a box was not checked off within the appropriate time, stretching over 15 years since the development agreement and annexation.

Chairman Swenson: Was the permit issued for 10 years, 15 years, or one year?

Commissioner Roberts: No, it was longer than that, but I don't have the exact timeframe as I don't have the agreement in front of me.

Scott Messel: In 2016, during a town council meeting, there was approval for Plat recording agreement around June 30, 2016. It's been seven years since then.

Chairman Swenson: Alan mentioned water issues in June 2016. The water problems were unresolved, but the developer assured the town that a resolution was coming. That's a long time, validating what you were saying, Alan. The water company seemed to be obstructing that part, which held up the whole project.

Commissioner Darton: It seems the obstruction was from the water company, not the town or the developer.

Commissioner Roberts: Yes, it was a private water company causing the delay.

Chairman Swenson: Scott, let me go back. Over 15 years since the town entered the agreement. You talked about the development agreement with the original developer. Is the original developer still the same?

Commissioner Roberts: The owner of the property is still the same.

Chairman Swenson: Okay, which answers that question. The agreement has expired. How do we determine the expiration date?

Scott: It would be in the development agreement.

Chairman Swenson: Everything's a year, basically a year here, year there. It can be extended in our town codes. So, this then would have been agreed upon with the development and planning commission and town council to agree on a 10-year, whatever the terms were.

Scott: Yes, there was a five-year and a 10-year. Initially, it was five, then an option for a buyer. That was an agreement between two parties.

Chairman Swenson: And that's not in our town code?

Scott: Right, not in town code.

Chairman Swenson: So that agreement, in our code, we can do away with that. Otherwise, it's based on that. Okay, thanks for clarifying this. So, what's our date? Part of it was Alan dewater, but also part was the hazmat stuff, right?

Commissioner Roberts: Yes, part of both. There was an amendment done in 2013, on cleanup for phase one and two.

Chairman Swenson: Certified certificate of completion from the DEA (Utah Division of Environmental Response and Remediation) for all phases. The developer had to resolve issues with the town council, splitting the development into multiple phases. Changes to the town code regarding timing for recorded plats, water, sewer, and service. It was recorded in August 2015. Town agreed to an extension until June 30, 2016. Then the Town Council approved a second plat recording agreement. Mayor Peterson was involved, and the town would not issue building permits until there was written approval from the state about environmental remediation.

Scott: That allowed the plat to be recorded, signing up for phase one.

Chairman Swenson: Yes, I'm looking at dates. That was June 30, 2016, the extended deadline.

Commissioner Darton: Wasn't that the date of the recording of the plat?

Chairman Swenson: The deadline was June 30, 2016. I don't have the date of the recording.

Scott: The plat was recorded in 2016.

Chairman Swenson: So, I've got a note here, more than seven years after the recording. It might have been 30 years, right? Yeah, the final plat in development has not been started. It's been more than 15 years since the town signed the development agreement. When did we get the will to serve the water? Because it shows here only a few months past for the will serve, waters were held up with water or held up with hazmat.

Scott: They've gone through the remediation cleanup.

29:15

Commissioner Roberts: The first thing you have to answer is whether the development agreement is still binding or not. If it's not binding, then you start with, well, it's not binding. You have to look at a recorded plat. A recorded plat has rights to it, but the development agreement is the language that supports those rights associated with the plat. We have amended the development agreement in the past, so it wouldn't be the first time for such amendments. A municipality might approach a landowner or developer for an amendment or dialogue, especially as we approach the end of the agreed-upon timelines.

I fear that some of the motive for potential amendments may have been due to public clamor. However, I support a property owner's rights and helping them be successful within the bounds of what's allowed, whether it's about development or any commercial business.

It appears there was some dialogue between the legal counsel of the town and the developer's legal counsel, but it came to an abrupt halt. According to our legal counsel, the town sees the development agreement as expired. To help the property owner move forward, there would need to be a fair amount of amendments or a clean slate.

Commissioner Darton: Assuming the development agreement is expired, how does that impact the recorded plat?

Commissioner Roberts: The plat is still recorded, but they can't do anything with it. While there are agreements and property rights, if the development agreement is null and void, what can you do with the recorded plat? It's essentially unusable.

Commissioner Darton: So, to continue moving forward, there needs to be some agreement between the town and the developer.

Commissioner Roberts: Yes, there could be an agreement in terms of amending or even starting with a whole new agreement. If the original agreement is no longer valid, it means the plat map has limited usability.

Commissioner Darton: Ordinance 21.14 talks about three things. 21.14.01 says the town council should hear and consider a petition proposing to vacate, alter, or amend a subdivision plat map at a public hearing after receiving a recommendation from the planning commission. However, this section doesn't apply to vacations of a subdivision plat map pursuant to 21.14.6.1.

21.14.6.1 states that if the town files a petition to vacate, alter, or amend a subdivision plat map, the town council shall consider the issue at a public hearing after receiving a recommendation from the planning commission and giving the required notice. Subsection 21.14.6.2 states that the town council may vacate a subdivision plat map or a portion of it by recording an ordinance, replacing the previously recorded plat.

When I looked at Utah Code Section 10-9a-609, it says the land use authority may approve the vacation if there is good cause and no public street or municipal utility easement has been vacated. Subsection three allows the legislative body (town council) to vacate a subdivision or a portion of it by recording an ordinance.

My question is, under our ordinance and state code, it seems the town council could do this on their own initiative. Why are they involving us and not providing all the underlying documentation? If they want us involved, they should give us the information.

Commissioner Roberts: They're supposed to base their decisions with legal counsel. If they want to be careful about personal liability, they should ask for an opinion letter from that counsel.

Commissioner Darton: They should provide us with the information if they want us to be involved. It's crucial to have proper documentation.

39.17

Commissioner Roberts: May I ask a question to someone in this room, not on this Planning Commission Board?

Chairman Swenson: Yes, I think it's appropriate. If it gives insight into a question, it's very appropriate.

Commissioner Roberts: Jared Westoff, would you mind speaking up and coming to the mic? I'm trying to phrase my question appropriately. Do you perceive that the town's position is that the development agreement has expired, and now they want to vacate the plat?

Westoff: That's what they're telling us. They've never told us anything other than that, and yet we see them moving forward with a different development. So, it's difficult for us to understand what's actually going on.

Roberts: Have there been any discussions about potentially amending the development agreement?

Westoff: There's been no discussion about that. We've asked for a meeting to discuss these things, but it has not been allowed.

Roberts: How does the developer feel about the potential vacation of the plat?

Westoff: As I mentioned earlier, we think it's unfair and unjust. It's not how we typically operate with municipalities, and it's certainly not the norm in our experience.

Roberts: Have there been any specific issues or concerns raised by the town that you feel could be addressed through discussion?

Westoff: We've never had that discussion. We've asked for it, but it hasn't been allowed. We're willing to address any concerns they have, but we need the opportunity to do so.

Roberts: In your opinion, what would be the best way to resolve this situation?

Westoff: The best way would be to follow the ordinance, have the required meeting, and work through any issues or concerns in a collaborative manner. It's frustrating for us that this hasn't been allowed so far.

Roberts: Thank you for providing your perspective. This is helpful for us as we consider our role in this matter.

Westoff: Thank you for giving me the opportunity to express our concerns. We just want a fair and open dialogue to address any issues and move forward appropriately.

Westoff: We've just had our annual inspection again, and we're doing whatever the professionals in the state require.

Swenson: My point is, because that's not the issue here, but that's a requirement; the water, the sewer, all that stuff are requirements. If we vacate this now, all those requirements would have to be written back out, okay, and agreed upon. They're all going to be there anyway, before and after, so it's not like you're trying to get out of some of those. And they're not done; it's not finished; it's going to start.

Westoff: We have a site management plan that's well over 50 pages long, closer to 70 pages we're following. We'll continue to follow up. We're spending real money to do actual cleanup to protect the environment and protect everybody around. And just to juxtapose that, you guys just amended a plat where the actual contamination site is and didn't require them to do a thing. So, it's really odd.

Swenson: Yeah, I don't know about that.

Westoff: The Christie Mill site is right on the SITLA property. It is strange; the standard should apply equally.

Swenson: So, my question is, you mentioned that you started asking for this meeting and that meeting, and so on and so forth. Was that after the supposed agreement had expired? The dates that we supposedly say, hey, it's expired, and now you're asking for meetings. Or was that during the time that you had? The supposed agreement? I mean, we don't have a concrete date. Like, we don't have the document. My question is, are you aware as you've mentioned, hey, we've requested meetings here with the mayor and this and that, and nobody's cooperating? Is that after the agreement potentially had expired? According to us? That's my question. In other words, are you starting it after the agreement expired? Or was it during the agreement?

Westoff: Great question. We believe the extension was in place.

Swenson: Do you know the date? The use of the extension and stuff has got to be a date. It's cut and dry. That's the point that we're having trouble with here. We don't have some of those cut and dry days. It's either cut or dry. It's not a perceived timeline. And so that was our problem last time.

Westoff: There is a disputed point. So let me be really clear. The tenure timeline ran out. Okay. The development continued. We have emails saying that it was extended. But we can't find anywhere where it was extended in writing, and the agreements are rather sloppy. It's not really clear if it had to be extended in writing; it would make sense

that it would, but the original development agreement is pretty sloppy, just to be candid. But the town, under the prior mayor and council, continued to work on the development. We continued to work on the development; we all operated as if it was under the extension period. And then we were asking for the meetings prior to the extension running out. And we believe part of the reasons that possibly the meeting was never granted is because there was a concerted effort, like there has been for 15 years, to mess around with this project and run the time clock and help. And so, it's been quite unfortunate and unfair what Mr. Sant went through, who was the prior project manager and owner along with Mr. Crocker, and he has passed away. That's why we're in the room because they wanted another development team to come in and help manage the project forward. But what Mr. Sant went through is immoral; it's wrong, the back and forth. The games Mr. Shelton played, I believe, were totally immoral, possibly illegal. And he would jump back and forth on town council or planning commission or the town or the LDWA board. And he has been allowed to hold this project up for years. And it's wrong. It's wrong when somebody is actively working on solving problems, and somebody on the other side constantly moves the goalposts, makes up new things that need to be done, won't even talk through how no further action letter is, in effect, the same thing as a certificate of completion, and adjusts the requirements over and over and over, and it has somebody chasing their tail and then goes home. 15 years is out. What's wrong? Like there are two parts to this, and the main party that's caused it to take so long, I believe, is LDWA. But I believe it's also the town council over a lot of years. And I do believe that there have been many who have tried in good faith. But there are several bad faith actors that have really held this project. Okay.

Swenson: So, you've mentioned all of the concerns that I think I've had with, I know others. This really should be cut and dry. Should be really an easy thing. You guys got a permit. It was good to hear. These are the parameters that you're supposed to operate within that the extension covered from here to here was done or not done. So, you have one party saying all these innuendos, these guys are taking their time, they're not being cooperative, they're not doing that. We have you on the other side saying the same thing, right? And if this thing should have dates, filings, documentation, cut and dry, we wouldn't be having this discussion for months and months. But we don't have that.

Westhoff: We're not allowed to have a discussion until tonight. So, we really appreciate it because we've been denied.

Swenson: I understand. That's not my point. My point is still it's conversation and conversation, both parties stating their claim. That sounds very reasonable, okay. Now, but because we don't have concrete dates here, we are trying to figure out what's right. We respect the property owners' rights, and we respect the process to be done. My concern is don't lose that thought. Okay. What is the negative of vacating and getting the permit and starting over? What's the negative there? No, no, I'm asking it really. Financially, whatever timeline?

Roberts: I will let Jared answer that.

51:44

Westhoff: We've got over five years of bonding to keep that plat alive, but thousands, tens of thousands of dollars a year, and to not be allowed to have a notice to proceed per your ordinance is beyond frustrating. So, if you've got to make a plan, this is a good faith deed, and at least pay us back our bonding fees. But that's just going nowhere in code.

That's just me, Sam, be fair. No, I'm asking you to take property, ride it. You won't ever make us whole for the timeframe this has taken, but at least recognize that we sat there and bonded and that if the city was acting like an adult city, they should have exercised our bond and put the improvements in themselves. That's how it normally works. And so, it's strange that we're sitting here begging for the right to do what the city has agreed to let us do but now won't let us do. Like, it's really weird. I've never experienced something like this in 25 years of doing this. But I understand your point on the development agreement, this is our opinion. We just think there are rights and that we should be able to carry forward those rights based on a slow walk and the games and good faith; we should be able to keep going. But let's say we've kept it; it is expired by the date, we have an underlying zoning, we didn't just float out into nowhere. There's a zoning in this town. Sure, we can go forward on the zoning. And to me, the development agreement doesn't do us any good anyway because I don't think the town has done a very good job letting us follow. So, who cares if it's expired? Let us go forward on the underlying zoning. We have a plan that's been recorded. Why do we want to go back in time and unrecord the plan? We would love to have a discussion with the town on an alternative development. We've been trying to have that discussion for around a year where we could come in and say, hey, what if we cluster the units? What if we do this differently? What if we leave the hilltop alone? We would love to have those conversations; we've been trying to have them and were denied, haven't been able to get to a meeting. So, we appreciate being able to be here tonight. It's just really all up that somebody is predatorily trying to vacate our plat. That's weird. Normally, you have discussions, and you work together. When you vacate a plat, I mean, vacated a plat in the county and we all work together, and it made sense and we did it like vacating a plat is something that we need in state code, and it needs to happen at times. But it's really odd and it's very unusual that someone would have a government entity take a predatory action to vacate someone's property rights. Like, so what if the development agreements expired? We have underlying zoning and we have got to code here in town, and let's follow and so we don't see any reason for someone to take our rights away. That said, if the town Council's intent on doing it, we've just assumed this planning commission has their hearing, make the recommendation, and let them do it. We hate dying. We're like Psych 1000 cuts death here. And if the town Council's intent on it, get on with it. And our only request would be the state code we don't believe is super clear. It talks about vacating of a plat and another whole process that they pay roads. Right. And so, if you guys do it, we'd appreciate two action items. And take them both out, have the public hearings, follow the process, and get it done. And so, okay, that's where we're at.

Swenson: Scott, you're probably closest to our legal counsel. Now, my question is kind of the same thing. Should be cut and dry. Now, what's the positive or negative on our end of doing this? Because it's not a cut and dry thing. Nobody on either side has given us the exact dates. Good for this good. Not in it's done for this. There are things that were NOT done properly. legally. So. So now tell me the on the legal side. The reason I say that as because everything that I see here and talking with the attorney, whatnot, makes sense. And he makes sense to write up the whole process is making sense for you respond?

Scott: . I'm not an attorney

Darton: Let me just clarify. You are not here as a legal and you are not an attorney.

Scott: it would be nice if the land use code was clear. And as has been stated, the intent? Well, okay, I'll just state it whether or not it's been stated, development agreements are a great tool. But it is really hard to get a really well written and a really good development agreement. And there I know of legal counsel, and then it's not even the town legal counsel that hates being bound by a development agreement that could control everything, you know, goes out for 30 years of development, and there's even if code changes or anything else changes, nothing can be done about that. But there is definitely a bested right with the recording, general recording of a subdivision plat.

Darton: Okay, let me back up. Let me ask you another question. So, Jared suggested that we don't need a development agreement that they can develop under the existing zoning and ordinances that we currently have in the town, they can just move forward in accordance in compliance with that. Is that your understanding that that's an option? Scott: Yes. There's a recorded, and this is where it's tricky. Used. Normally, you have all the improvements put in the bonding, and then you record the plat app after the improvements have been approved. But the town entered into an agreement with stipulations, and I guess markers along the way. And they recorded the plat, but there is a base density granted to any zone and our code has. The town code has the densities and lot sizes and those types of things. Darton: So often, a development agreement would be something That would be establishing by contract, something of a variance from the strict confines of the zone? Scott: Yes, or a partnership with often you end up with a, I'll just back out and use the county as an example, the county has a base, you know, our one Tim's zone, we usually don't the county doesn't do development agreements, generally with a standard subdivision, if someone came in with a PD or planned development, because there were proposals, maybe for some open space, or they wanted a density a little bit different than the face density, you know, maybe it was clustering or something like that, then you enter into a development agreement in the PDS zone is tight to that. And so, if the development agreement goes away, the PDS zoning, you can't do anything other than what was there, that there was a project. South of here little bit, that there was an old it was, I believe, in the 70s Subdivision plat recorded and it was the Op Ed. But it was for a trailer park. Back in the 70s, nothing ever happened with it. So, it was the developer that wanted to come in and vacate the plat and record a new plat on top. Well vacate the one and then recording come up with a new development agreement, a new PD approval, in the end recorded that subdivision. Swenson: and who wanted that? that's kind of what I was trying to find. Roberts: exactly that that's where that's where it should be a collaborative deal. Now, whether it's initiated by a municipality, or by a no owner, or the developer or a representative, the developer, there should be some collaboration there and truly should be driven by the owner saying, here's something that we why, to my mind when I when I look at okay, the town wants to vacate the plat. To me, I'm thinking, Okay, if the developer is not making any efforts, and hasn't been for a long time, okay, that makes sense. But from everything we've heard they've been doing, but see, that's where the discrepancy, Jared, correct me. That's where the discrepancy is in the development agreement, because of the wording. Danny's looking for an actual hard date.

Westhoff: There's a hard date and it is past.

Roberts: There is a hard date that's passed. But there's language in there that says actively working.

Westhoff: But even the extension past. Yes. But, Tom, to put flavor on your question about what a development agreement is used for? It's been a while it's been 15 years. I do remember I was on the town council; I believe. Or maybe I was on the planning commission when this development agreement in question came to the town. I can't remember which one, but I remember being involved from your seats. Not from here. Yes I Would have been planning commission. That's my commission chair. But one of the things that the developer was concerned with he wanted in a development agreement in order to be willing to annex was the town didn't provide sewer. And the state law requires a body politic. So private party or a landowner once they subdivided cannot provide or own a sewer system. So, in the development agreement, they said, Hey, we just want to know that the town will be willing to be body politic, if we can solve the sewer through Ash creek or/and other means. That is one of the terms in the development agreement. Part of the reason we have no problem with the development agreement expiring, is we have a Will Serve letter from ash Creek be the body politic for sewer, and we're willing to spend the money to get it there. As far as we're concerned, like, one of the major reasons we wanted a development agreement we have solved because they were worried back then that the town would annex them, but then not give them a way forward on Sewer. They wanted it in writing that they would have to do it. So, we believe that solved it. We believe that the town council would ultimately act in good faith and allow us to install sewer per Ash Creek.

Darton: If I understand correctly, based on your comments, you will just assume get the Band-Aid ripped off and know what's going on and have this over.

1:06:06

Darton: Yes because that's what our statute says.

Westhoff: So, we'd just as soon get a recommendation and move on.

Swenson: Let me ask you something because we've come around to that. And I was looking at why one entity wants something and why one entity doesn't. If we don't vacate, and we say, "Hey, you guys want to come and communicate and work together? What legal rights do we have to protect us? To where if you don't want to work? In other words, it's been 15 years; things have changed. Okay, these entities that need to be addressed, from water, sewer, everything, the whole thing. If you don't want to change the original agreement, we don't have any right to force you to. If we don't vacate. Is that making sense? If the town is wanting and is legal wanting to vacate so that we start over. We're not saying were not going to ever give you the permit; you get a permit, and you start over here, with all the agreements, and you start again; much of the stuff's already done and researched and so on and so forth. Okay. So, without the town council or without planning, saying, "We don't want you to do this period," there's plenty out there that don't want you to do that. There's plenty out here that don't want anything, okay. We don't want that, is the town saying we want you to start over? Because it's been so long, and things have changed. And we want to just make sure the parameters are all there. If we don't vacate. And you agree right now, verbally, "Hey, we're going to come in here. And we'll make an agreement we'll work together have meetings, but then ultimately, because we didn't vacate. You don't have a requirement to have to do that.

Westhoff: Well, we have 147 acres, and we have phase one approved. So, we're going to have to work together. And I want to just make it abundantly clear. If you want us to amend phase one plat? And we don't want to amend?

Swenson: Right, exactly.

Westhoff: Then, yeah, other than us following the ordinances and lots of protection in the ordinance with our site management plan and all this stuff that we've agreed to do. We got all the horsepower on your normal ordinances. But you wouldn't have any horsepower over that phase one, other than us coming in and saying, "Hey, we'd sure like to amend this."

Swenson: I agree. I agree with that. I agree. That's part of the problem.

Westhoff: Oh, I want to be really straightforward and clear. We don't intend to be in the town very long. We intend to disconnect and be gone. We have 15 years of abuse from this town. It's wrong. What's happened to Gary? And we're done with the abusive relationship, and we're going to be disconnecting from the town.

Swenson: So, you are not going to follow through with your project?

Westhoff: Now we'll go to an entity that we can have a professional conversation with, although tonight has been very professional, we would appreciate it, but we haven't had one of these for a very long time. A very long time. And we hate saying that we've worked to that point. But how much abuse can a landowner take? And just the action of the town council doing something like this? It's just mind-blowing after years and years and years.

Swenson: To be clear, it's been many different town councils.

Westhoff: Yes. It is a very, very good point. It has been a long-standing action, but we do not intend on being in the town very long. So, vacate, don't vacate, do what you're going to do, because we're getting out.

Scott: Could you review that section of the state code again, about the state code? Just the state code part about a recommendation from the planning commission.

Darton: The state code doesn't have it, but the town code does. So, the town code, which is 21.14.6.1, where the town is proposing the vacation, says if the town files a petition to vacate, alter, or amend a subdivision, yada, yada. The town council shall consider the issue at a public hearing, after receiving a recommendation from the planning commission, and after giving the notice required by this section. It's the ordinance that the town council has to hold the public meeting.

Scott: Correct. Now, I'm not legal, but it just says a recommendation. Say it could be a positive or a negative recommendation.

Darton: We know from history that often we could give a unanimous recommendation, and then the town council does the opposite thing unanimously.

Scott: There is a part in the state code that says

Darton: It says the legislative body can do it on their own without our recommendations,

Scott: Correct. It says the failure of a recommendation by a recommending board, which would be the Planning Commission, may be treated as a negative recommendation. And they could hear it. So, the town council could hear it. It's happened in multiple jurisdictions that I'm aware of. And I believe the state's intent behind that was they didn't want things to just be stalled. A Planning Commission stalling something too long. As you see, with all the things happening at the state code level, they're taking away

more and more rights of the local jurisdiction to regulate what happens. And part of it is because at the state level, the feedback that the legislators are getting, this is just my editorial on it, is they're getting feedback from developers that jurisdictions are holding them up. And so, the state is saying, I mean, like with the SB 174, says you may only have one public hearing on a preliminary plat or on a subdivision plat so that you don't just drag it out.

Darton: I understand what the state's doing because I've had some really uncomfortable times while on the planning commission where people seem to be making decisions not according to the law, but according to their personal likes and dislikes, and that really infuriates me because that's not the job we have. We are supposed to follow the law. And, you know, maybe I'm wrong, but from what I've heard so far on this and not having been privy to the actual documents, it sounds like there's a lot of he said, she said, and I personally don't see the good cause for vacation that is talked about in the state code. I don't know what the town council's real intent or agenda is. But I don't want to see the town invite liability that is possibly not needed.

Swenson: I will go even a little farther. Maybe if you've noticed where my questions are, from one side to the other. I don't have any intent or desire. In fact, I have a great desire not to take rights away from you guys. Completely. And I also don't want to take the rights away from the town. Okay, so it's been a long time, and we're not privy to all this stuff that's gone back and forth. And so, my concern was if I vote in favor of the project, not the town, does the project take advantage of it? without recourse and having anything from our town having a say. If I vacate the thing? Does a town come through here and cheat you guys have the opportunity and the rights that you have had all these years? For whatever reason is taken so long? Good, golly, I can't imagine how much money is involved. And no matter how many people, okay, I have a real concern, giving the advantage. I'm not here to give an advantage to one side or the other. In fact, I'm more concerned about making an assessment or a vote one way or the other, being a disadvantage to one side as opposed to being equal. I would love it. I would love to be able to say, hey, let's continue and just maybe the town maybe the town and legal everything else is saying if we vacate it, that's our opportunity for both sides to start over. The only problem with that is it could be a tremendous amount of money on top of a tremendous amount of money. I guess that's what my intent would be is to start over in midstream. Hey, what issues do you have? What do you have to work out? Because in 15 years, things have changed. I'm worried about cheating on one side or the other. Really seriously.

1:17:28

Westoff: I really, really appreciate that perspective. I know Mr. Crocker would too, you know, all he's been through here and how much he's invested. I mean, you got a guy who entered voluntary cleanup to try to clean up the property. And it's like that old saying no good deed goes unpunished. Because he was willing to do that. And now he's getting beat up left and right for it, after spending over a million dollars to clean it up.

Swenson: And see, I'm not worried about that. firemen in LA, I've been involved with hazmat and farms and everything forever, right? That's going to be taken care of.

Westoff: So that what your perspective is so nice to hear. And just to be just to be blunt, right to the point of what you're talking about, we have we want, we would love to

have a jurisdiction where we could come in with what we've already been. It's been blood, sweat, and tears to get just one phase entitled, and one plat recorded. If we're going to sit around and talk about clustering or changing the plat. You know how bad that feels from our side to say, we're going to take that away from you. After you spend all this time like, if we're going to have a common; we got the whole 149 acres, the first phase only compasses some of the property. Like if we're going to sit down and have a good faith discussion with the jurisdiction. Don't start out by taking something we fought so hard to be entitled. And so that just feels so wrong to us. And so, to your question, we think it put us at a massive disadvantage for somebody to come in and take away one of the only things we could finally get reported and get done with the town. And we think if we're going to come into that discussion, somebody needs to acknowledge our no further action letter and just like LDWA knowledge that no further action letter is the same dang thing from a legal perspective and from the town's liability perspective as a certificate of completion.

Darton: Because basically, they're saying you don't need to take any further action on this. It's you've completed it.

Westoff: yes. and there was communication. (Michelle Peot interjected from the audience) Michelle, we don't need to hear from you. We've heard from you enough. The no further action letter allows us to have a continued process to continue to clean up the property without opening and closing a brand new hole into... you can make our life harder to clean up the very thing we all want cleaned up by saying no close out this area and do a certificate of completion and instead of allowing it to go forward and a normal course through the process of the development. And so, but those issues are stuff we can actually sit around and talk about that has never been allowed.

Swenson: I don't want to just talk; I want to know legal. If you don't want to talk about that, and update to new standards, well, then the vote would be bad to allow it to go that.

Westoff: I don't think it affects that because that issue still has to be determined by this meeting, by the ordinance with the engineer or the planner. And or further if the town council wants to take further action there, but LDWA had the meeting in good faith, we went back and forth for months, for months and their own legal counsels, the one that came up with and said, he's the one that said, "Hey, this is the same thing, and, and all intents and purposes is a certificate of completion."

Swenson: Okay, but my point is, that's before us vacating the property, that's before taking action one way or the other. I understand that. They worked, they worked with you, and it worked with you. I am concerned that that work wouldn't take place if we vacate or if we allow it to go on.

Westoff: that still has to happen before we can get a notice to proceed. That doesn't change for the town. But what we're saying is why would you take away our entitlement before we can have that conversation. Agree, that just feels so wrong, and completely unfair when we can sit there and actually have the meeting about a notice to proceed and work on it. Or we could have a meeting to say, "Hey, do we want to do something to amend this plat?" To which we haven't been able to get to, So, back to the back to the point. I'm trying to be just as open and direct as I can. We just as soon a recommendation happened. Move it along. that is our goal here.

Darton: Okay. All right. Anybody have any further... Does Anybody sitting up here have any further questions for Jared before we release him? Okay, Jared, I guess not.

1:28:22

Roberts: You waiting for a motion?

Darton: No, I just want to hear what your novel is about.

Roberts: It is actually some conditions that would be attached to a motion. Scott's going to laugh at this.

Swenson: Seriously, we want to do what's right.

Roberts: My concern is taking a vested right away from property owners.

Swenson: Totally agree.

Roberts: The other concern that I have somebody in the town administration and or elected official could maybe set me straight on this. I'm not convinced that the town of Leeds had due diligence with a property owner on appropriate dialogue, especially on some sensitive issues. So, I move to recommend a denial of vacating silverpoint estates plaque number one.

Darton: Okay, are you ready for a second or do you have more conditions?

Swenson: Why? Why do we have a denial. We don't have to vacate.

Roberts: I want to set a recommendation to Town Council.

Swenson: I see where you are coming from, okay.

Darton: He's proposing that we recommend not to vacate the plat map on phase one because that's what's recorded, here.

Roberts: And here's some conditions. Now, you'd say, why would you put a condition on a recommendation to deny something? Because here again, I want to send a message to a legislative body of what our concerns are, what our concerns really are as a land use authority, currently.

Condition one, recognize that the development agreement did expire? I'm fine with recognizing that. Because what I don't want is a legislative body saying, well, the development agreement expired. So does their ability to do something with that property.

Here is condition two, the recorded plat contains legal rights with zoning that is established at the time it was recorded. So even though the development agreement helps move that particular plat along, if the development agreement doesn't exist,

Darton: there's still a plan.

Roberts: a statutory plan in place We have it right here in Leeds. So that's condition two.

Condition three, if vacation is taken by the town, all roadways, open spaces that were granted and right ways that were granted to the town will returned to the landowner and must also be vacated.

Commissioner Roberts made a Motion, I move to Deny the proposal to Vacate Silver Pointe Estates Subdivision plat Phase I based on with these conditions.

1. Condition one, recognize that the development agreement did expire? Because what I don't want is a legislative body saying, well, the development agreement expired.

2. The recorded plat contains legal rights with zoning that are established at the time of recording. So even though the development agreement helps move that particular plat along, if the development agreement doesn't exist there is a statutory plan in place.
3. If vacation is taken by the town, all roadways, open spaces that were granted and right ways that were granted to the town will return to the landowner. and must also be vacated.

Commissioner Darton Seconded the motion. Motion passed in a unanimous roll call vote:

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
CHAIRMAN: DANNY SWENSON	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: ABBY STUDDERT	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: TOM DARTON	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: MARIANDA NESSEN	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: ALAN ROBERTS	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

Commissioner Roberts made a motion, I moved to recommend the town council hold a public hearing on February 28. 7:00pm, concerning Silver Pointe Estates vacation. Commissioner Darton Seconded the motion. Montion passed in a unanimous roll call vote:

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
CHAIRMAN: DANNY SWENSON	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: ABBY STUDDERT	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: TOM DARTON	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: MARIANDA NESSEN	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: ALAN ROBERTS	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

9. Discussion Items: None

10. Staff Reports : None

11. Adjournment

Commissioner Darton moved to adjourn the meeting. Commissioner Nessen seconded. Adjournment: The meeting was adjourned at 8:47 pm.

Approved on this Seventh day of February 2024

Danny Swenson, Chairman

ATTEST:

Aseneth Steed, Town Clerk/Recorder