

# TOWN COUNCIL PUBLIC MEETING AT LEEDS TOWN HALL, 218 NORTH MAIN STREET, LEEDS, UT OCTOBER 24, 2012 MINUTES

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## OPENING AGENDA ITEMS:

1. **Call to Order** – The meeting was called to order at 7:02 p.m. by Mayor Alan Roberts.
2. **Pledge of Allegiance** -- The Pledge was led by Nate Blake.
3. **Roll Call** – present were **Mayor Alan Roberts** and Council Members, **Nate Blake, Alan Roberts, Angela Rohr** and **Frank Lojko**; Joe Allen arrived shortly after roll call. Also in attendance was Legal staff, Heath Snow, Deputy Clerk Recorder, Virginia Taylor, and Bob Nicholson the Town of Leeds contract planner.
4. **Declaration of Abstentions and Conflicts by Council Members** – There were no abstentions or conflicts with what was on the agenda.
5. **Consent Agenda** – **Mayor Roberts** stated that September 12, 2012 minutes, had had a clerical error in the date. The date has been corrected from September 9, 2012 to September 12, 2012 and was ready for signature.  
**Mayor Roberts** stated September 26, 2012 minutes have been reviewed. Requested approval of tonight's Agenda.  
Angela Rohr motioned to approve the Consent Agenda; **Nate Blake** seconded the motion to approve Consent Agenda.  
**Nate Blake Aye, Alan Roberts Aye, Angela Rohr Aye, Frank Lojko Aye**
6. **Announcements** – **Mayor Roberts** called attention to the announcement posted regarding this area as a *Non-polling area*. For voting within the municipal Town of Leeds, you use the ballot mailed to you and send it back into the address given on the ballot. Call the county if you haven't received your ballot in the mail. Don't throw them away, Vote!  
**Mayor Roberts** stated that **TRUNK OR TREAT** will be held in the Park. Please contact Roxanne or Steve Lewis for information about the event which will be held on the 27<sup>th</sup>.  
**Councilman Nate Blake** pointed out that some activities would also be at the Fire Department on the 27<sup>th</sup> which is Saturday.
7. **Citizen Comment** -- **Mayor Roberts** called names from the list on the Sign-In Sheet for discussion of items NOT listed as an Agenda item. Mayor Roberts stated that this is NOT a Public Hearing Meeting. He stated that he believed we are still a responsible, respectful public body able to engage in some open dialogue at appropriate times during the meetings. It is not unreasonable that there will be some sort of dialogue regarding the items on the agenda tonight. If you want to speak about something on the agenda, please pass at this time. Mayor Roberts then began calling off the names on the list.  
**Daniel Lee** – (Alberta Lee's son) I would like to be notified in advance of meetings.  
**Mayor Alan Roberts** – The legality issue, according to state Code, state notices of meetings are to be posted in three public locations. We post on the Leeds webpage [www.leadstown.org](http://www.leadstown.org), at the post office and on the State Agenda Board <http://prmn.utah.gov>.  
**Wayne Peterson** – Pointed out his trouble locating information to contact Town Council members on the [www.leadstown.org](http://www.leadstown.org) webpage.

## BUSINESS SESSION:

1. **SWEARING IN OF OFFICERS**

Virginia E. Taylor our Deputy Clerk Recorder, and Joe Allen our Town of Leeds Treasurer, took the affirmative Oath of Office administered which was documented by Don Tait, Notary Public under the direction of legal staff, Heath Snow. Our Clerk Recorder, Robert W. Goldsberry is currently in class in Salt Lake City and will receive the Oath of Office at a later time.

## 2. TREASURER APPOINTMENT RATIFICATION

### Motion

**Mayor Roberts** made a motion to ratify Joe Allen as the Treasurer for the Town of Leeds. Councilman Frank Lojko seconded the motion and the motion was carried unanimously as follows:

**Councilman Nate Blake Aye**

**Mayor Alan Roberts Aye**

**Councilwoman Angela Rohr Aye**

**Councilman Frank Lojko Aye**

**Joe Allen** took the Oath of Office and was sworn in at that time.

After the conclusions of the affirmation of the Oaths, **Mayor Roberts** explained the appointments, specifically for Recorder and Treasurer. A concern about Joe Allen filling the position of Treasurer and still being a Council member had come up. The legality for appointments, specifically for Recorders and Treasurer, have been checked by the Mayor through the Utah State Attorney General's office. Councilman Joe Allen has voluntarily agreed to take those responsibilities on as a Treasurer. Three individuals dealing with public funds and how they interact are crucial for watching over public funds. Two people who cannot hold the office of Treasurer, are the Recorder and Mayor. A Mayor and Treasurer are not allowed to hold the position of Recorder. Also after an election, next January following an election, the next Mayor has the option to appoint a new Treasurer and a new Recorder if they choose to do so. That is where we sit.

## 3. ENCROACHMENT PERMITS FOR LDWA

### Presentation by LDWA (Leeds Domestic Water Association) Elliot Sheckman

LDWA would like an Encroachment Permit that would be overall for the unknown number of true encroachments.

**Emergency repairs** and current costs of replacement of piping is \$600 to \$800 per repair and replacement.

**Mayor Roberts** called attention to an arrangement that was done through the Town and the specific contractors that were working for LDWA a couple of years ago.

**Joe Allen** agreed with emergencies exceptions being needed in the plan.

**Mayor Roberts:** LDWA has **five** encroachments to-date.

**Elliot Sheckman, LWDA** would check in it.

**Nate Blake** agreed that a blanket encroachment permit makes sense.

**Elliot Sheckman, LWDA** pointed out that there are a many of unknowns.

**Heath Snow**, stated the purpose of encroachment permit is to know where the encroachment takes place and to insure that the Town's infrastructure is protected in the sense that where ever any cuts or work is done, in anyway, the cuts need to be properly repaired and that sudden or emergency needs be replaced and remedial work will be covered and insured so that if there is ever a problem or disagreement about what needs to be done, we can resolve them.

**Angela Rohr** asked about the number of encroachments on Silver Reef road

**Mayor Roberts** stated a Motion on the encroachment policy is needed.

**Heath Snow** A blanket encroachment is needed in the form of a permit

**Mayor Roberts** stated that LDWA, working with our legal staff, drafted a blanket encroachment plan for the systems improvements done a couple of years ago. Custom instances for emergencies and encroachments in the normal courses of repair can be dealt with through Frank Lojko and Nate Blake.

**Mayor Roberts** stated **Frank Lojko** and **Nate Blake** will be working with LDWA, Elliot Sheckman on a plan. **Elliot Sheckman** stated that it will take a couple of weeks to come up with a draft.

***SPECIAL COMMENT BY NATE BLAKE** which stated that he needed to apologize to some of the citizens of Leeds. He had been under the understanding that this was going to be a public forum tonight where they would be allowed to speak. Apparently he was wrong; so he wanted to make that apology.*

#### 4. GRAPEVINE WASH FINAL DEVELOPMENT PLAN

**Bob Nicholson**, the Town of Leeds contract planner, outlined that present status of the Grapevine Wash Final Development Plan. Plans have already been approved subject to Leeds Town Codes.

**Bob Nicholson** went over the February 15, 2012 Planning Commission recommendations on the Grapevine Wash Final Development Plan which are subject to compliance to the Leeds Town code and the following ten considerations:

- 1) Parking zoning code must be applied, and be approved.
- 2) All utilities are waiting for approval with the exception of the proposed sewage treatment site. This is located in the Toquerville town limits and also needs separate approval.
- 3) Street designs which have been considered needs approval
- 4) Traffic Mitigation Plan needs finalization and approval
- 5) All parking areas have been modified with hard surfaces.
- 6) All buildings to comply with design and come before the Planning Commission
- 7) Parking requirements on mixed-use, needs discussion and approval
- 8) Maintenance responsibility of the street is in negotiation
- 9) Second street access and third street access and emergency access need approval
- 10) Home owners' association will be formed

**Bob Nicholson** asked the Council members if they had any questions.

**Nate Blake** asked why is there a rush to pass the final approval on a 50 year contract on only a conceptual drawing?

**Bob Nicholson** stated that the time schedule was part of the original annexation agreement approved in 2009.

**Nate Blake** was concerned with future development of this Grapevine Wash agreement and legal problems.

**Heath Snow** explained this is a zoning process talking about density and usage.

**Nate Blake** questioned the locations of accesses.

**Heath Snow** pointed out all the more reason and need to have a development plan finalized and recorded; thus binding successors. Heath again stressed that this is a zoning stage, not a preliminary plat stage or the sub-division stage.

**Nate Blake** again stated he did not feel comfortable signing at this time. We wanted to continue negotiations. The contract is not JUST a zoning contract. There is a lot more to it than just zoning issues.

**Heath Snow** agreed.

**Mayor Roberts** called on Councilman Frank Lojko to voice his concerns.

**Councilman Frank Lojko** pointed out changes Grapevine and the Council have made to confirm to Town Codes.

His six items of concern are:

- 1) Duration of contract
- 2) Density discrepancy
- 3) Concerns with egress and ingress and access of roads and eminent domain in the future
- 4) Mentioned an Inter-local Agreement being corrected by the Lieutenant Governor, Greg Bell's office. (NOTE: This typo correction was in the Certificate of Creation Resolution dated March 23, 2011, and the corrected document has been filed as of the Washington County Recorder's Office on Tuesday, October 23, 2012. This was not an Inter-local Agreement)
- 5) Concern about Park and Trails costs and maintenance
- 6) Concern about sewage placement, density and period timetable of development

**Councilwoman Angela Rohr** also stated concerns with:

- 1) **The density** issue, cited, page 32 of the Grapevine Annexation Agreement. She also questioned the statement about the exchange of density per acre, found on page 15 of the same agreement.
- 2) The access with ingress and egress specifications and whether there were any agreements of usage

**Bob Nicholson** pointed out that he, Joe Allen, and Drake Howell had met and discussed this issue of density and usage.

- 3) Angela Rohr wanted clarification of the duration of the contract found on page 24 of the Development Plan. She felt the negotiated correction on this point had been changed. Angela also questioned the ingress, egress, secondary and emergency accesses being up to code and the fact that negotiations have failed to resolve the problem and that future problems could result from lack of agreement to the development plan.

4) Angela also asked about sewage, its location in Toquerville, and the need for approval. Councilwoman Rohr pointed out a concern about Part 12 of the Final Development Plan regarding parks and improvements.

**Joe Allen** explained the exchange of land for impact fee credits.

**Heath Snow** expressed the need to update impact fee ordinances and requirements. He went on, in detail to explain the how and why the fair market value is exchanged for credits on impact fees. (See **Page 17** of the proposed Final Development Plan where it earmarks Parks Impact Fees)

**Joe Allen** pointed out the Final Development Plan fails to actually say when it expires. Discussions about changes of language and access primary road completion were issues discussed, and will definitely be put in writing.

**Joe Allen** requested to have the floor.

**Angela Rohr** conceded the floor.

**Joe Allen** listed his concerns and possible resolution on:

1) Emergency access; the Final Development Plan expectations has wording to cover this subject during various stages of future development.

**Heath Snow** discussed the BLM ownership of the surrounding land and the timetable of the Development stages needed to reach agreements and grant easements on usage in the future.

2) Joe Allen stated that Section 3.3.1 of the Final Development Plan regarding sewage site for Grapevine Wash is in the Sandstone Mountain area of Toquerville, and part of the LDWA.

**Angela Rohr** and **Joe Allen** questioned the existence of an agreement between Grapevine and WCWCD. It is unknown whether or not an agreement has been made at this time. The land is owned by the Washington County Water Conservancy District (WCWCD).

**Mayor Roberts** explained the size, and the Washington County Water Conservancy study that has been done regarding the parties who took part in the study, the proposed sewage plans, responsibilities and governing town (Toquerville) of the area.

**Heath Snow** pointed out that the Conservancy District, Ashcreek, and other possible management items regarding the sewage treatment facility.

**The council members** discussed the style and architectural design of the sewage facility.

**Nate Blake** brought up the question as to whether Grapevine Wash would be going to service their wastewater area.

**Mayor Roberts** clarified the responsibilities for the billing, maintenance, options and usage of the systems including Grapevine's responsibilities.

**Nate Blake** questioned the encumbrments on Leeds.

**Heath Snow** clarified the responsibilities of Grapevine.

**Mayor Roberts** stated if Grapevine utilizes the Conservancy property for wastewater, all of that is governed by Toquerville not by Leeds.

**Heath Snow** clarified the time discrepancy by explaining that the initial 35 years was the 20-5-5-5 automatic renewal with the 15 year optional renewal agreement. He also stated that in the agreement, if Grapevine had 500 equivalent residences in the first 35 years, then they could have another 15 years. Council members are confused with the sentence structure and want it clarified. The statement is located on page 24 paragraph 22, second sentence of the Final Development Plan.

**Nate Blake** wants this statement in the Final Development Plan clarified.

**Heath Snow** agreed to go back and clarify the Final Development Plan timetable and present it to the council.

**Joe Allen** also questioned how the renewals worked and requirements according to the agreement.

**Angela Rohr** wants the wording, regarding extensions, clarified.

**Mayor Roberts** asked Bob Nicholson whether he wanted to discuss any of these points.

**Mayor Roberts** discussed the impact fee policies pointed out that concerns the council and citizens have need to be directed to our contracting staff or our legal staff to clarify the information.

**Bob Nicolson** answered and explained further about the need for the Town of Leeds to follow the state requirements.

**Heath Snow** agreed with Bob's scenario.

**Joe Allen** pointed out the jurisdiction of the Town of Leeds, and responsibilities with these impact fees.

**Heath Snow** again clarified adherence and application of the impact fees.

**Bob Nicholson** gave an example of developments in St. George that use the application of impact fee credits and impact fees.

**Mayor Roberts** requested permission from the council for the applicant to address the council.

SET-UP TIME BREAK

**Drake Howell**, Grapevine Wash, representative of the property owners group, gave the following presentation.

- 1) History of creation of district was given.
- 2) Outlined types of agreements, and language of agreements
- 3) Pointed out the consistency of compliance with these agreements, and compromises including timetable term agreement.
- 4) Request approval and gives handout with proposed edits to the Final Agreement for discussion. (Appendix A for Exhibit K-1-A, B and C ) to facilitate discussion.
- 5) **Section 3.3.1 on Sewage:** **Joe Allen** requested language to read NO LAGOONS to section 3.3.1. **Drake Howell** refers council members to page 6 and 7 of the final agreement section 3.3.1. and proposed insertion.  
**Joe Allen** request language be changed from "if" to "regardless of where it is located" Exhibit K-1-b .  
**Heath Snow** had input to clarify the idea, and Heath said he would make the change with Drake's approval.
- 6) **Section 22 on the Timetable terms:** **Heath Snow** questioned for clarification wording of map location. Drake asked if council members were in agreement (fine) with the terms and received unofficial agreement.
- 7) Drake pointed out to the Council that the need to sign the Final Development Plan **NOW (tonight)**, which references the zoning ordinance for mixed-use requires a Development plan to the town, establishes certainty for the town and the developer.

**Drake Howell** offers to respond to any concerns or questions. He thanked everyone.

**Angela Rohr** is concerned with the lack of written proof of access to property in the Final Development Plan.

**Drake Howell** stated this is a zoning stage. Grapevine expects approval with a long list of conditions that require completion before one plat can be made in that area.

**Joe Allen** offers to spearhead a discussion on DENSITY.

**Mayor Roberts** agrees and request the agreement of council members, who agreed to allow Joe Allen to continue.

**Joe Allen** referred to the Annexation Agreement, Exhibit C, on page 32 and 34 and Exhibit F. The Discrepancy of 2500 units and the units per acre of 3.8 were discussed regarding contradiction of density.

**Heath Snow** agrees there is a conflict that needs resolution.

**Angela Rohr** discussed concessions and transfers of 25% of units from one village to another.

**Joe Allen** talked about concessions and discussions with the Grapevine Wash Final Development Plan.

**Nate Blake** asked for more information about the density.

**Joe Allen** explained the concessions the developer may be willing to discuss regarding adjustments to the density.

**Nate Blake** questioned the action.

**Heath Snow** stated there could be a legality problem later.

**Nate Blake** stated it could be expensive.

**Heath Snow** stated there needs to be a revision.

**Mayor Roberts** suggested a tiered density transfer.

**Joe Allen** questioned the wording in the Final Development Plan.

**Heath Snow** explained the inability to increase the density past a certain limit of units regarding the density issue of each village.

**Angela Rohr** questioned the character of the villages, densities, and the changes.

**Nate Blake** restated Angela's concerns.

**Joe Allen** questioned the logistics of the development integrity with transfers of units from village to village. He suggested decrease, increase, and tier language be clarified.

**Nate Blake** expanded on Joe Allen's suggestion.

**Angela Rohr** voiced her concerns of interpretation of the Final Development Plan on the future residents of Leeds.

**Drake Howell** addressed the council members' concerns and the need for the Town Council's approval for any transfers when that stage is reached.

**Heath Snow** pointed out flaws in the language of the Final Development Plan .

**Drake Howell** wanted resolution of any other concerns before the density compromise could be accomplished.

**He** asked for any lingering concerns be address today. But only if there were no other lingering issues would compromise of the density be negotiated.

**Mayor Roberts** asked the Council if there were any lingering issues.

**Frank Lojko** stated he was not happy with the density thing and the way this is playing out. "I am irritated by it because I don't believe that was the intention of the council. We were looking at 600 and something not 300 and something acreage."

**Nate Blake** felt he had been blind-sided.

**Heath Snow** discussed how this sort of action could play out in a court of law and opposing argument over time. It is the cost of money without guarantee of success.

**Frank Lojko** stated he didn't like a developer coming in and saying "litigate" just to force the council to do something.

**Heath Snow** denied Grapevine every saying they were going to litigate. They only said they have vested rights of 2500 units.

**Frank Lojko** asked Heath Snow why he brought it up.

**Heath Snow** responded with, "I'm your Legal Council!"

**Nate Blake** agreed with Frank that he feels Grapevine is pushing.

**Drake Howell** felt they had met all ordinance requirements for this zone stage.

**Heath Snow** is glad we caught it. He credited the Mayor for finding the density conflict. "Better late than never."

**Mayor Roberts** stated the need to take action on this because of time restraints.

**Nate Blake** wanted to table the measure and discuss it in closed session.

**Mayor Roberts** stated this issue does not fall in the boundary of closed session requirements We action one way or another. Approve or disapprove.

**Angela Rohr** stated there are items that need conditions. Items need to be changed from not approved items to not approve list of items.

**Mayor Roberts** wanted to know, "What reason are you tabling the Final Development Plan?"

**Angela Rohr** stated wanted a completely corrected document.

**Elliott** asked if people, in the room, be allowed to speak invaluable to hear them

**Joe Allen** opened the floor for public in-put

**Mayor Roberts** asked "Do you have an individual that you desire to speak to the council as a collective body?"

**Elliott** stated the citizens are just sharing information.

**Mayor Roberts** called time constraints of 3 minutes.

**Allen Howard** stated the Fire District is waiting on the Town of Leeds agreement so the Fire District agreement will match. And he wants it in writing. He also asked questions about utilities impact on his private property and free usage of his property being hindered by the utilities.

Mr. Cundick stated his oncerns about density, access, and concerns about the effect of the future land use and past agreements. (see Appendix B)

**Lee Dickson** commented on the traffic litigation plan. (He forgot his source) (Appendix C) He is concerned about the proposed change and cost of construction and maintenance in additional roads.

**Wayne Peterson** voiced concerns about density and default scenario.

**Heath Snow** stated there are no fixed or liquidated damages if we default on Schedule J. Heath advised that if council feels there are enough concerns and lingering issues, it would be best to make the changes and come back later. That would require tabling it tonight. I prefer to have all the language in the document.

**Nate Blake** stated he felt the same way and agreed with Frank Lojko that this needs further review and language corrections and additions.

**Heath Snow** stated there hasbeen a change of circumstances.

**Mayor Roberts** asked, "Where do you want to go with this?"

Anita Low, from Toquerville, questioned the sewage plan.

Betty McKnight voiced concerns about traffic, water, sewage issues plus monies owed by Grapevine to the Town of Leeds  
Kevin Lee discussed right-of-way and need for the Council to better communication with citizens.

Drake Howell stated clearly that his clients interest in the reduction of density is completely contingent on the councils' vote to the affirmative on the project tonight. He also reminded the council of time restraints.

Joe Allen referring to Ron Cundick comments number 4 (Section 34 governing law) asked Heath Snow if there is any reason we should change that verbiage in it.

Heath Snow, Joe Allen and Drake Howell discussed the language of the Final Development Plan and the Town of Leeds ordinances.

Heath Snow stated we can't contract away our ordinances.

Nate Blake, Joe Allen, Frank Lojko, and Heath Snow discussed recapping and language of the motion.

Mayor Roberts stated he would rather not have pen and ink changes. I understand you can do a motion with conditions, but that would have to be pen and ink, and that concerns me.

Heath Snow agreed with Mayor Roberts.

Mayor Roberts stated I am either looking for a motion to approve, deny, or table.

Nate Blake and Joe Allen discussed what, why, and the reasons for tabling this item at this time.

Mayor Roberts, Joe Allen, Heath Snow, Frank Lojko and Nate Blake discussed tabling the issue, the annexation agreement, and further researching of lingering issues.

Drake Howell requested approval tonight with conditions the Council wants to see in writing so that Grapevine and the Council could come to an agreement on them later.

Joe Allen states an additional two weeks are needed before action can be taken.

#### Motion

Joe Allen motioned the vote to either approve or deny the Grapevine Wash Final Development Plan Agreement be tabled to our next meeting until we are able to see, in writing, the resolutions that we verbally discussed tonight."

Mayor Roberts asked for a second.

Angela Rohr seconded the motion.

Mayor Roberts I have a motion on the floor. All those in favor?

Joe Allen--Yea, Nate Blake--Yea, Alan Robert--Yea, Angela Rohr--Yea, Frank Lojko--Yea The motion carries.

#### Update By Staff

Park expenditures will be presented by Angela Rohr at the next meeting. No other up-dates.

Joe Allen motioned for adjournment.

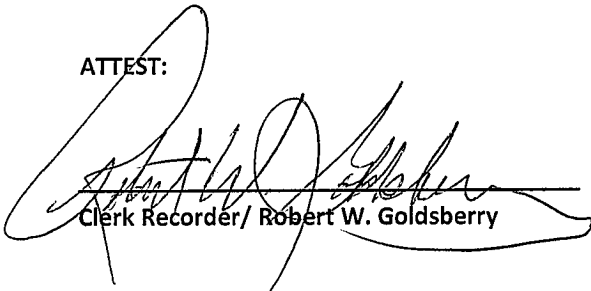
Meeting Adjourned at 11:00 PM.

APPROVED ON THIS 14<sup>TH</sup> OF NOVEMBER, 2012



Mayor Alan Roberts

ATTEST:



Clerk Recorder/ Robert W. Goldsberry

**Appendix A**

**October 24, 2012**

**Drake Howell Grapevine Points**

Proposed Edits to the Grapevine Final Development Agreement

- A. Add to Section 3.3.1: "Buildings located within the wastewater treatment site shall conform to the architectural guidelines of the Grapevine Pattern Book."
  
- B. Add to Section 3.3.1: "In no case shall the facility which ultimately treats wastewater generated by the Project employ sewer lagoons if located upon either of the properties identified as options in the sentence immediately preceding this sentence."
  
- C. Add to Section 22: "In the event that during the first twenty (20) years of the Initial Term of this Agreement, Developer has a) not filed, and received approval of, any preliminary subdivision plat or commercial site plan (the "Initial Application") and b) improved the Primary Access per Washington County, Utah standards and specifications or constructed some other physical public improvement to the Property acceptable to the Town in its sole and reasonable discretion, then this Agreement will terminate unless otherwise extended by mutual agreement of the parties."



## Appendix B

October 18, 2012 Comments

by Ron Cundick

### **Some Deficiencies and shortcomings in Grapevine Wash Development Agreement that should be remedied before the Agreement is approved**

**Point 1. Project phasing and scheduling is not clear and definite and does not provide for termination under terms acceptable to the Town.** The agreement provides nothing definite in phasing the project. Moreover, the Town Council stated that certain progress should be accomplished within 20 years, to include commencement of actual construction, or the Town could terminate the Development Agreement. The developer's proposed agreement calls for 35 years.

**Point 2. The developer's proposed agreement exceeds the 3.8 units/acre permitted by the Annexation and Development Agreement, as set forth in the project summary. This is the density that was vested in the project by the agreement and was the basis for approval of the project density. It cannot be exceeded.** It is clear that the developers' Property is only 373 acres. If the developer constructed 2397 residential units, that would average 6.4 units/acre. (Moreover, the proposed 228 acres to be developed would average 7.6 units/acre, with the highest density at 10.5 units/acre.) Where, as in this case, there is a conflict between the density per acre and the total number of residential units, the density per acre must control. At a 3.8 density, the maximum number of units for 383 acres is 1452, rather than 2397. Consequently, the units in the villages in the development plan must be reallocated, consistent with that number.

**Point 3. The developer has failed to designate the 3 access points necessary for the complete development.** The Town requires that the development plan include the "location and documentation of public access easements." The developer maintains that because a certain number of access points are required once a development exceeds, e.g., 100 or 600 residential units, the Town Council should wait until development reaches that point to require these access points. The Town Council has plenary authority to require information regarding all access points before approving the development agreement. There is no requirement that it allow the developer to delay complying with this requirement until the 101<sup>st</sup> or 601<sup>st</sup> unit is constructed.

**Point 4. The Town has no authority to enter into an agreement which would prevail over Town ordinances in the event of a conflict.** Town officials, as well as developers, must comply with all ordinances and cannot circumvent, modify, or render them inapplicable or subordinate by contract. They can only change them by an ordinance which amends, supersedes, or abolishes them. Part 34, Governing Law, of the development agreement provides that "If there is any discrepancy between this Agreement and Town land use ordinances, this Agreement shall prevail."

**Point 5. Density transfers without express Town approval are unacceptable.** Part 10 of the Agreement provides that the developer may make density transfers provided the density of any village is not increased by more than 25%. These density transfers "shall be approved" provided the overall density for the project is not exceeded, etc. For example, a Village with 1038 units could be increased to 1297 units, and units in other villages would be decreased by that total amount. Units could be transferred from less dense villages, such as those with single family housing, and transferred to a more dense village which has more apartments, etc. without consent of the Town

**. Appendix B**

**October 18, 2012 Comments by Ron Cundick ( page 2)**

**e provision for the Town to pay 100% of the appreciated land value and cost of parks and trails is unacceptable.** Part 12 of the Agreement allows the developer to build the parks with improvements and receive by way of impact fee credits 100% of both the fair market value of the unimproved land at the time of the dedication, plus costs of the improvements. If the developer is not willing to donate the land for parks and trails so that the Town is paying only for the improvements, then the Town should seek other sites, such as BLM land, that it can set aside now for future use and not be compelled to pay for market value of land at such time in the future as the parks and trails are completed and dedicated to the Town.

**Point 7. An interlocal agreement should be signed and made part of the development agreement.**

According to the Development Agreement between Leeds and the Developer, Leeds is to enter into an interlocal Cooperation agreement with the GVW Basic Local District. That agreement should be signed and incorporated as an exhibit to the Development Agreement. It is crucial to the terms and conditions under which the Basic Local district and Leeds will provide for the acquisition, construction, and operation of parks, recreational facilities or services, water, : sewage, rights-of-way, power, communications, natural gas, etc. and crucial to coordinate and facilitate the financing and installation of all these public improvements. It is inadvisable to approve the development agreement without also entering into the interlocal agreement first.

Point 8. No requirements for financial responsibility by developer, no entity to deal with Point 9.

All exhibits should be complete, what about the studies mandated?

**Point 10. Impact Fee Credits for system improvements at fair market value of land at time of dedication is an unwarranted expense for the Town.** Developer wants appraised fair market value of land as of the time system improvements are dedicated. These system improvements are primarily for the benefit of the developer, and secondarily for the benefit of the Town. The bulk of the "system improvements" will be necessary for the development itself. For example, a sewer pipe for the development might be 18 inches in diameter, but to accommodate a sewer system for others to also use, it might require a 24 inch pipe to handle the excess-capacity. However, the trench has to be dug and the pipe laid, so there should be no additional land cost. Consequently, the Town should only agree to pay the difference in cost for the larger pipe. Where system roads are concerned, more land is involved, such as a 3 or 4 lane system road instead of a 2 lane development road. If the Town pays for the additional land and the extra cost to develop the wider road, it should not agree to pay the appreciated value. Paying fair market value on land that the Town has let the developer sit on for many years until the development is finally done as is not a prudent agreement or necessary expenditure of scarce Town resources. The fact that payment is by way of impact fee credits does not change that.