

Town of Leeds

Agenda Town of Leeds Planning Commission Wednesday, June 1, 2022

PUBLIC NOTICE is hereby given that the Town of Leeds Planning Commission **PUBLIC MEETING** scheduled for Wednesday, June 1, 2022 at 7:00 P.M. This meeting will be held at Leeds Town Hall, 218 N. Main Street, Leeds, UT 84746.

If you are interested in participating remotely via Zoom, please contact Town Hall at 879-2447 or email Clerk@LeedsTown.org for the Zoom details.

Regular Meeting 7:00 p.m.

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 May 4, 2022
6. Announcements:
 - a. Fourth of July Festivities
 - b. Fiscal Year end June 30, 2022
 - c. Huntsman Games Cycling event October 6, 2022
7. Public Hearing:
 - a. Zone Change Request on Parcel L-73-A from Commercial (C) to R-R-20 approximately .86 acres for Gay Egley
8. Action Items:
 - a. Discussion Possible Action Regarding Potter Property approximately 11.94 acres
 - b. Discussion Possible Action Regarding Zone Change Request on Parcel L-73-A from Commercial (C) to R-R-20, approximately .86 acres for Gay Egley
 - c. Discussion Possible Action Regarding Lot Line Adjustment on Parcel L-73-A for Gay Egley
9. Discussion Items: None
10. Staff Reports
11. 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 May 30, 2022, at these public places being **Leeds Town Hall, Leeds Post Office**, the Utah Public Meeting Notice website <http://pmmutah.gov> and the Town of Leeds website www.leadstown.org



Aseneth Steed, Clerk/Recorder

Town of Leeds

Planning Commission Meeting for Wednesday, June 1, 2022

- 1. Call to order:
Chairman Swenson called to order the regular meeting of the Planning Commission at 7 PM on Wednesday, June 1, 2022.

ROLL CALL:

	Present	Absent
CHAIRMAN: DANNY SWENSON	<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: MARK ROSENTHAL	<u>X</u>	<u> </u>

- 2. Invocation: Chairman Swenson
- 3. Pledge of Allegiance
- 4. Declaration of Abstentions or Conflicts: None

- 5. Agenda:
Commissioner Darton moved to approve the agenda of June 1, 2022.
Commissioner Hadley seconded. Motion passed in a roll call vote.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
CHAIRMAN: DANNY SWENSON	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: ALAN ROBERTS	<u> </u>	<u> </u>	<u> </u>	<u>X</u>
COMMISSIONER: KEN HADLEY	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: TOM DARTON	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
COMMISSIONER: MARK ROSENTHAL	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

Meeting Minutes of May 4, 2022:
Chairman Swenson made a motion to approve Meeting Minutes of May 4, 2022. Commissioner Rosenthal seconded. Motion Passed in a roll call vote.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
CHAIRMAN: DANNY SWENSON	<u>X</u>	---	---	---
COMMISSIONER: ALAN ROBERTS	---	---	---	<u>X</u>
COMMISSIONER: KEN HADLEY	<u>X</u>	---	<u>X</u>	---
COMMISSIONER: TOM DARTON	---	---	<u>X</u>	---
COMMISSIONER: MARK ROSENTHAL	<u>X</u>	---	---	---

6. Announcements:

a. Fourth of July Festivities

Chairman Swenson expressed appreciation for the flags and ceremonies that make Leeds unique and acknowledged Leeds public works officer Antonio Fernandez and the impressive displays his efforts allow residents and visitors to enjoy. He announced the schedule for the fourth of July activities which include the pancake breakfast, parade, afternoon watermelon and potluck dinner. The movie My Fathers Highway will be shown in the Townhall in the evening. Lynn Potter said his uncle was the Super on the project and Chairman Swenson said he hoped Mr. Potter would be present at the movie to offer insight.

b. Fiscal Year end June 30, 2022

c. Huntsman Games Cycling event October 6, 2022

7. Public Hearings:

a. Zone Change Request on Parcel L-73-A from Commercial (C) to R-R-20 approximately .86 acres for Gay Egley.

Chairman Swenson expressed appreciation for the flags and ceremonies that make Leeds unique and acknowledged Leeds public works officer Antonio Fernandez and the impressive displays his efforts allow residents and visitors to enjoy. He announced the schedule for the fourth of July activities.

Chairman Swenson: This right across the street including the market, right?

The property in question is right here. This is the road easement that was there prior to the original change. So, this was originally the residential property in 2008. Somewhere around there, this whole property was then changed to Commercial. We are requesting that this residential property that was originally

there be reinstated area back to its original form before it was changed to Commercial.

Scott Messel: To be able to break this off right here and meet the minimum square footage for the zone, they needed to get more land. That is why it has been straightened up and then you can see that dashed line right there. So, between that dashed line and this solid line will be the 33-foot access easement. I could not find anything recorded showing this is the existing one. No subdivision was done combining it. There is no subdivision on record, it was just record of surveys that were done. Scott Woolsey put together the document for this.

Commissioner Darton: How did they merge the two parcels into one?

Scott Messel: You can merge the two together? You can combine ownership. That is something that can be done at the recorder's office, and now in state code if you are combining two parcels and there's not an easement you can amend the plat. So, it is not confusing, let's pretend that these two lots were part of a subdivision. Often there is a utility easement that runs on that line, the only way to get rid of that utility easement is to amend the plat and combine it into one. You would still have that easement. It will just be according to the new description of where it is.

Commissioner Darton: It will be on the other property, the commercial property, correct?

Tim Corbett: It'll actually between the residential property and the commercial property on the property line code.

Scott Messel: Who will own it?

Tim Corbett: The commercial property will technically own that.

Scott Messel: We might want to have that as a condition of approval that it is called out, so it is clear. My recommendation is, right now, it just says proposed new 33-foot access easement. In my experience, which provides access to this partial back here. It provides access to both, but it would be good to have a description that says over and across for this parcel, of this parcel, on this parcel, or for common use or something more detailed called out on it.

Commissioner Darton: This would be so that later other property owners may need to rely on that.

Scott Messel: Yes, so there are more details showing who has it. I will use Kolob as an example. Up on Kolob there were a lot of subdivisions done in the 1960s and 70s and rather than having a dedicated right away they had not an access easement across. But some the language said only for the lot owners in the subdivision. It was not very clear so the people that live at one end are still claiming this and then the residents in that subdivision are saying, hey, no, that's ours. We are maintaining it and we do not want you driving through our lots.

Commissioner Darton: There's all that open space out there. And theoretically, someone could sell some of that open space to somebody else who may want to develop it and they are going to have an access.

Chairman Swenson: Easements stuff is schematics. That can be resolved easy enough, because I think the residential property section needs their lot line to come over to get the acreage. Whether they have access from that easement or not, I guess I can be written but that process can be done.

Commissioner Darton: Currently, Mrs. Egley owns both parcels. So, it is basically a lot line adjustment.

Chairman Swenson: It is not an adjustment. Right now, it is a division because it's one parcel right now. It is one parcel. They want to divide the parcel, make part of it residential, and leave the rest Commercial. That is a subdivision.

Scott Messel: That is a subdivision by state code, which is what that would be.

Commissioner Darton Should they have to file a subdivision application?

Tim Corbett: Okay. That's what I was afraid.

Chairman Swenson: Well, should not even be a lot line there because it's one parcel so you need to file for a subdivision. That is totally different than a lot line adjustment.

Scott Messel: You cannot just refer back to what was there prior?

Commissioner Darton: Because what was there prior no longer exists?

Chairman Swenson: Correct. There is no record of what it was officially. It may not fit the requirements for square footage on the property.

Tim Corbett: If there wasn't anything there officially before. How do we know it did actually exist? And why are we here? What is there to change if we don't know what it actually existed as before?

Scott Messel: Because right now, it's one parcel. When you divide a parcel of land whether you divided into two or two hundred Lots, it is a subdivision by state code.

Commissioner Darton: If there is no evidence of what it was before, I think since there is a residential unit on there, I doubt that the residential unit would have been put there if it was commercial at the time. So, the zone change amendment is correct, but instead of a lot line adjustment, it needs to be a subdivision.

Chairman Swenson: It is really a moot point what it was before. You basically have your property. It is one parcel. You want to subdivide it. A parcel Residential and parcel stay Commercial and just meet those requirements as far as where you put the line to fit in to the residential zoning that you want. That makes sense.

Tim Corbett: Well, we still need to have it split. How do we how do we reference the subdivision from the lot line adjustment, then? I guess what is we're just now coming to this conclusion that it is a subdivision not a lot line adjustment after two months?

Chairman Swenson: There is not a lot line adjustment.

Scott Messel: Yes, it is because in looking more into it, I wonder if I have another slide.

Tim Corbett: That's your original record. If you go back one more slide, see that R-22. This is what you have listed in your map. How did you come across to that R-22 is what it is on the map if you don't know if that's what it was? is I guess my question.

Scott Messel: Okay, we could argue that and whether or not there is a mistake on the map, but the big issue here is not so much the zoning, it's taking one lot and making it into two.

Commissioner Darton: The great thing is since it is now one lot. You can subdivide it any way you need to. You do not have to be limited to what it was before.

Scott Messel: You can see right here, it is that parcel number is the same as that parcel number, L-73-A. It is all one parcel.

Time Corbett: So, my question is, is this a whole other application?

Scott Messel: Correct. Yes.

Tim Corbett: And that includes separate fees, I'm assuming?

Chairman Swenson: If we selected the wrong fee that can be applied to the subdivision application.

Commissioner Darton: I can tell you now, looking at this, when you come back with the right application, I do not think you're going to have any problems getting our blessing on it. Because it just totally makes sense. Especially given the history that had previously been residential, there is a housing unit on it. It is not a commercial being used for commercial purposes, doesn't hurt anything to change the zoning of that little strip and to separate the property, somewhat similar to how it had been separated in the past. I do not think you're going to have, the others can speak up, but for me, I don't see a problem with an approval.

Scott Messel: It is for the legality of it.

Commissioner Darton It is going to clean up and clear up the record.

Chairman Swenson: But do not just say stand out there to sidewalk and say, hey, this looks good. Because you still have to meet the square footage of the zone and Alta engineering will know that.

Commissioner Darton: you are going to have to get us a legal property description to put in the subdivision application.

Scott Messel: Alpha engineering already did the legal description. Now they just need to put it in subdivision form rather and a lot line adjustment format and the exhibit will not be an exhibit it will be a preliminary plat.

Tim Corbett: And does you have a direction on the easement requirement that you were talking about earlier?

Scott Messel: You can go through the subdivision ordinance and see what the width is that is needed. I can talk to Scott Woolsey.

Commissioner Darton: What you are hoping is to have a description of the easement that says it's for the benefit of all the property owners.

Chairman Swenson: For the record. I would suggest that the Town consider or look at applying any costs or redistributing any excess back to you in the process of filing since it was not done maliciously you apply those fees.

Tim Corbett: I appreciate that. And then I guess the zone change?

Scott Messel: This would be my recommendation because the zone change is tied to a legal description, let's bring them through at the same time. My recommendation would be that the Planning Commission table the zone change until the preliminary plat is available. And so, we make sure that the same legal description is on the lots.

Commissioner Darton: Since this is a public hearing, do we want to see if anybody here wants to be heard or do, we re-notice this as a public hearing next month?

Scott Messel: We will be publishing the correct notice.

Chairman Swenson: you came for information, that's why you're here. And I think it will probably look better in the long run.

Scott Messel: It will clean up any confusion so in the future, we do not have the same questions to sort.

Commissioner Darton: I am sorry you will have to come back. I hate it when red tape gets in the way, but we do have to follow the statutes and the requirements. So, feel free to reach out, we want to make sure that all the i's are dotted and the Ts are crossed, so that everything goes through properly.

Commissioner Darton moved to table the discussion of Parcel L-73-A until they come back with an application to subdivide the property. Commissioner Hadley seconded. Motion passed in a roll call vote.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
CHAIRMAN: DANNY SWENSON	<u>X</u>	—	—	—
COMMISSIONER: ALAN ROBERTS	—	—	—	<u>X</u>
COMMISSIONER: KEN HADLEY	<u>X</u>	—	—	—
COMMISSIONER: TOM DARTON	<u>X</u>	—	—	—
COMMISSIONER: MARK ROSENTHAL	<u>X</u>	—	—	—

Commissioner Darton made a motion to close the public hearing for Ordinance 2022-03, General Plan. Commissioner Rosenthal seconded the motion.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
CHAIRMAN: DANNY SWENSON	<u>X</u>	—	—	—
COMMISSIONER: ALAN ROBERTS	—	—	—	<u>X</u>
COMMISSIONER: KEN HADLEY	<u>X</u>	—	—	—
COMMISSIONER: TOM DARTON	<u>X</u>	—	—	—
COMMISSIONER: MARK ROSENTHAL	<u>X</u>	—	—	—

8. Action Items:

a. Discussion Possible Action Regarding Potter Property approximately 11.94 acres

Chairman Swenson: Mr. Potter you are up. Would you mind introducing yourself. Before we start, when we left last meeting, we were going to check with our legal counsel. We did. Do you want me to read his statement, or have you got that statement?

Scott Garrett: No. I mean, I mean I may have seen it. You can read it though for the record.

Chairman Swenson: It is probably pretty simple, pretty short.

Scott Garrett: Well, let me just for the record, just a few things, then if I might. I appreciate that clarification from you. So just as a little background, and we provided the last time, but a couple of you weren't here. Maybe you were here over zoom? I don't know. I believe what happened, Mr. Potter can correct me if I'm wrong. He brought an application for a site plan or grading plan before this body or before the Town Council back in February of 2020. And then he believed at that time, that Hillside Ordinance didn't apply to his property. And that started the discussion.

Chairman Swenson: So, two issues, Hillside ordinance and your plan. Have two separate things.

Lynn Potter: It is a cart and horse thing. I'm Lynn Potter. My wife and I, Diana Powell on L-3-1-7-1110 property in question. I must ask that everything tonight be recorded, and any recordings kept.

Scott Garett: No. And so that's, that's kind of what we what we need. Now, I want to say I appreciate the fact that you've turned to Counsel for some, some advice, but I'd also remind you that Counsel is not here to tell you what to do. Rather, just to make sure that they give you advice on what's proper and what's not. What you do is actually up to you, to your body and how you best think that that the action fits, you know, what needs to

happen within your town. So, in that vein, I want to read just a little bit from the Ombudsman opinion where, where he says. The Ombudsman says, admittedly...

Chairman Swenson: Will you do one thing for me? And forgive me for interrupting. You don't have to do it this way but because these two gentlemen were not here for the presentation last time meeting, it was very thorough, very extensive and primarily on the history of how and where the property was, and how maybe it shouldn't apply to your property because of a statute of limitations kind of a thing. Give us this kind of history. If you would give us a synopsis of why you felt that presentation proved that the Hillside Ordinance was not going to apply to your property. Basically, you are asking us to say there is an ordinance that everybody else has to adhere to but not Mr. Potter. You are countering that did not apply to him. Give a synopsis of that before you go on.

Scott Garrett: Perfect, especially where they weren't here before. So, you have an ordinance. It's called the Hillside Ordinance. You're probably familiar with it. But yes, I think it went into effect sometime, maybe 2008. But it said in there that anything prior to 1999, any subdivisions prior to 1999 that were finalized would not be subject to the Hillside Ordinance. That was an ordinance that was passed by the Town Council for Leeds. And so, Mr. Potter, he didn't get into this property until sometime, maybe 2017. And so, you know, whatever happened with Mr. Potter? You know, by the time he bought the property, the Hillside Ordinance was in place but the same property he purchased in 2017. Alberta Pace had had sold back in 1997. And so, that property went through the subdivision process. This is where there is some contention. I don't think, I think we all would agree that it went through the process, I think we all would agree that there was a zone change done to the property from Commercial to Residential, in anticipation of it being subdivided and in anticipation of the minor subdivision being approved. We think there was approval. The Town Council, and the Ombudsman opinion has suggested that, you know, maybe there wasn't approval but, there's no question that the parties intended that that lot be a minor lot subdivision. The conditions that they stated for it to happen happened. In other words, a road that was in front of the lots was deeded by Paul Felt to the town. That was the only stated condition that needed to happen before it was finalized. That happened, all this happened prior to 1999. So, the issue is if the process was completed in 1997 when it was being discussed and hammered out, if it was completed and finalized, then you know, those conditions and covenants would run with the land and Mr. Potter would inherit the benefit of what happened in 1997. So, we're of the opinion that it was formalized in 1997, and you may be of a different opinion. If it was formalized, that means that Mr. Potter would not be subject to the Hillside Ordinance as he attempts to build a home on his lot. Okay. Any questions about that so far?

Chairman Swenson: No. If I could fill in the blank just a little bit if I'm if it is appropriate.

Scott Garrett: Please go ahead.

Chairman Swenson: the presentation was showing how records were not kept very well at the meetings.

Scott Garrett: That is the bottom line.

Chairman Swenson: That is, that really is. You were trying to validate the assumption that these things took place. Because there was not anything stating it. We are assuming, and it was it was very good, but the analogy is that, hey, I believe that this is what took place. Fine. That all did go to legal. Okay. That all went, your program went, minutes went, and all the things like that went, as hey, here is the reason why he's explaining that. So, I am trying to fill in the blanks, as I remember because you were trying to validate what wasn't there. Okay. And, and a proper assumption, you know, especially on your side what, right, and it did sound good to me. That being said, in our legal counsel's statement, it's hard to go against that, your legal counsel, it is very hard to go against that. Your presentation is very good and valid. Okay. But when our legal counsel is also looking at your evidence, nothing added on our part, nothing. Your presentation, minutes, everything else you provided, in his mind that is beside the point for whatever legal reason. He does not give a big background but the simplicity of it is the fact that legally on his end, which doesn't take precedent over the Statute of the ordinance is what he's telling us. You understand where I'm coming from. Right. Yeah,

Scott Garrett: I understand that. I do. The way I interpret it is this, that if you your legal counsel is telling you that if you decided not to approve Mr. Potter's request, he thinks he could defend that in a court of law later.

Chairman Swenson: Right. I am assuming that, yes. That would make sense.

Scott Garrett: Right. That is what he's saying. He's saying that even though we came to you with an additional affidavit, we provided an affidavit from one of the former councilmen that was a councilman at the time in 1997. She provided some clarification and said, Yeah, in fact, we intended that lot to be subdivided. It was subdivided into minor lot subdivision, and it was approved, and it didn't require additional approvals after the conditions were met, that is after Paul Felt deeded his land, that road, to the town at that point in time. She's saying it was the intent of the Council that would be a minor lot subdivision approved and formalized. That was the additional evidence that we brought before you, and you and your counsel said, but that doesn't change anything for me.

Chairman Swenson: Okay and forgive me because I am going second hand here. I was asked to go attend, and I was out of state. When you are saying that, if we approve it, and so on so forth, then legal would come and defend and go against you. Right. And I was thinking the same thing. Well, did anybody asked him when we do not approve it? What about your legal coming? To defend your side. Right? And I am assuming he's thinking that?

Scott Garrett: Well, I think if you approve it, there is not going to be any additional fight. It's over. There's not going to be well, I mean, what's your counselor going to do?

Chairman Swenson: Well, actually, if we approve you can move on to Town Council, right? We are really not that final authority.

Scott Garrett: Right. I get that. You make the recommendation.

Commissioner Darton: Town Council feels regularly to ignore our recommendations. I just want to make that clear.

Scott Garrett: They have the right to go with your recommendation or not?

Chairman Swenson: We try to do the groundwork. Right. And that, in my mind, we are trying to do this. So that this does not take place over and over and over.

Scott Garrett: In terms of moving forward here is how it plays out. If the Town Council approves Mr. Potter's request, it's over. It's done. We're done. There's no further litigation. Because, your counsel is not going to say, oh, that's illegal, we're going to challenge that. You can't do that. If it's not approved, and then fight will continue, and it will move to the next stage and ultimately end up in court. So. So that's kind of what it's going to look like moving forward.

Commissioner Darton: If I could. So, I was out of the country last month when you were here. The only thing I know is what went through the minutes from last month, so I got a flavor for it. In your presentation I was getting the sense that there was no direct evidence at all either way, and that you were just drawing in logical inferences from what happened. But then you said you had an affidavit from one of the council members who said it was done. For me, that would tip the scales.

Scott Garrett: Well, that was our point two. We felt like it tipped the scales as well, because let me read you what the Ombudsman said, Okay. This is right from his opinion, he says, admittedly, under the same standard, there likewise appears to be substantial evidence to support a conclusion that formal subdivision with approval did occur. I mean, so he's saying it's a basically, it's a tie.

Chairman Swenson: He is assuming because there was a long period of time,

Scott Garrett: No. He's saying there's substantial evidence both ways.

Chairman Swenson: There is Yeah, I agree.

Scott Garrett: He's saying there's substantial evidence both ways. He does say that the record is deficient, that there's missing minutes from either a Planning Commission or from a Town Council or from both. There are problems with the minutes. He's saying there's substantial evidence either way. In other words, a court could conclude that formal subdivision did occur, or it could conclude that it didn't. So, he's kind of saying tie. And then we bring in this affidavit from a councilman. And I'm saying, well, that kind of that kind of tips it because now you've got a personal live person that was there to live that experience that ruled on it.

Commissioner Darton: And was one of the decision makers

Scott Garrett: Was one of the decision makers. And now you're going to come along after you're going to say no, no, she didn't really mean that. That you know, to me, it tips the scale in Potter's favor.

Chairman Swenson: Why would that tip the scale in Pot...

Scott Garrett: You're not wrong either way. I mean. What's your legal counsel? He's not saying you have to do it this way and I don't want to put words in his mouth, but I've been in government, I counseled, I had county commission for 16 years. We don't tell you what to do. We tell you, that's illegal, or that's not illegal, or I can defend that, or I can't defend that. What your legal counsel is telling you is he thinks he can defend your decision if you decide not to approve the subdivision. But, But why? Why not approve it? I mean, if Mr. Potter has done everything and met all the conditions of what your subdivision ordinance requires, why is it being so difficult for him? Why is the process being so hard? And then we bring proof of an affidavit from a councilman at that time saying, yes, that's what happened. And the minutes show that substantial evidence to support that. Yes, that's what happened. And I don't think anybody would say that that wasn't the intent, regardless of whether the Town Council actually raised their hands to vote for it or against it. I think there's enough evidence just to show that everybody intended that this happened. Maybe it just didn't cross the finish line. But everybody's intent was that it crossed the finish line.

Lynn Potter: May I? I have alienated the Town Council last years, maybe not this one. You know, I've definitely alienated Greg Hall. I've alienated Sunrise Engineering. So as for Craig's opinion, I read what the mayor forwarded me. And the way Craig phrased it, quite frankly and correct me if I'm wrong. He says my opinion stands. Is not that what he said? Isn't that the quote? That nothing has changed? Okay. It is opinion stands. Well, my problem with that is, is he talking about his opinion before the Ombudsman? Is he talking about his opinion after the Ombudsman?

Chairman Swenson: I'm hoping he had the whole thing.

Lynn Potter: Oh, I am certain he had the whole thing but what does he? What is he saying there? Really? He didn't. He didn't tell me. And so, because I find that to be, I find it to be a non-committal opinion. He did not come right out and say it.

Chairman Swenson: No. He is committing. He says it changes nothing regarding the property requirement to comply with the Hillside.

Commissioner Darton: So, I have a couple of issues. You know, essentially, what we're trying to decide is whether you get an exemption from the Hillside Ordinance. The legal basis for that exemption is that your property was subdivided before 1999. The factual record is not super clear but now having heard that there's an affidavit from a council member who was a council member at the time that this was done kind of tips me over into there is a factual basis for that. My initial question was, what is the purpose of the

Hillside Ordinance and how easily do we want to grant an exception to that? Isn't there a great deal of safety issue involved with the Hillside Ordinance?

Lynn Potter: I'm not. I'm not looking for something that's where you can vote in an exemption. To me it's statutory. Because, you know, there's no question about it. Okay. Because, in our opinion, our strong opinion that it was subdivided prior to 1999. If it is, well, then there's no question about it. So, it comes down to one sentence of the opinion of the Ombudsman, that it boils down to his opinion that the records were deficient, and that goes back into the Town's court and to change that, there has to be significant evidence. We have bridged the records gap and the significant information gap with the affidavit. Now, as for an exception, I don't want to be accepted to any laws, but I want to follow the laws. That's why I came in here. And okay, it's my understanding, I don't need a permit to go out and grade my property flat unless it's into the Hillside Ordinance, okay, if it's under 20%, if it's under the hillside roads, I could go in and create a flat without having a permit. But yet I came in to get everybody's blessing. Okay. And you guys originally blessed this January 15, 2020. Okay. And, since then the question came up, well, does the Hillside Ordinance even apply? Okay, now, on our property, we tried to show that there isn't a concern with landslides because we had soil study done. And it's all rock, as you know. So. As for safety and security, most of the Hillside Ordinance was created because of something that happened up north with a whole bunch of fills, a whole bunch of loose dirt and property started to move. You can argue, and I have, and that's probably why I am alienated to Town Council, that the Hillside Ordinance here was not necessarily designed from the point of safety, but from the point of prevention of development on anything over a 30% slope, because that's like these strictest in the state. So as for reasoning and the Hillside Ordinance?

Scott Garrett: Well, let me just say, I think if those criteria were intended to be built into the ordinance that would have been, you know, I mean, I think the ordinance that we're operating under is that anything prior to 1999 is accepted out for whatever reasons you guys decided. But that's the rule 1999. But before anything before that is not subject to it after that, subject to it. I don't know. I don't know why. I don't know if it's safety. I don't know if it's something else. I don't know. But that's your ordinance, and that's what we're stuck with, right?

Chairman Swenson: I'm not sure of that history either.

Commissioner Darton: I'm wondering if the issue is because it's not really clear. Nobody wants to take responsibility to determine the facts. If goes into a court, then you have a finder of fact. If I can ask my three colleagues, knowing that there's an affidavit from a Town Council member who says, this is what was done. Does that sway you to approve this and move it on to the Town Council? The Town Council do whatever they may?

Chairman Swenson: Well, you presented an affidavit statement at the last meeting. Let's go back to that a little bit. You came up with a long history from here to here. The affidavit didn't cover that whole history. It covered a portion at the very end.

Lynn Potter: Right.

Chairman Swenson: I remember that part, but I don't remember what it is validating in the presentation that went years and years and years. She was one of the last members that was saying something when she wasn't here during this part. So right now, the affidavit is kind of out there. Unless you could present that right now. I don't remember what it was stating. You see what I mean?

Scott Garrett: Let me read it. This is this is from Mary Kay Lisonbee. I don't know if I'm saying that right. She was a Town Council member in 1997 when this property was subdivided.

Commissioner Darton: Allegedly subdivided.

Chairman Swenson: If I remember her name was on part of the minutes stating that wasn't complete.

Scott Garrett: The minutes that weren't complete?

Chairman Swenson: Well, they weren't valid. They weren't complete. She was a part or prior to that minutes that didn't have some of the complete process at the time.

Scott Garrett: She was a Councilman during that timeframe. Yes.

Chairman Swenson: That is how I remember it.

Scott Garrett: So, it says, I'm over the age of 18. I'm a resident of Washington County. I'm a former member of the Leeds Council having served from approximately 1996 to 1997. I recently reviewed documents related to property in Leeds that was owned by Alberta Pace. These documents include Town Council minutes. Having reviewed the minutes my recollection of the events and the council's intentions have been refreshed. I remember Alberta came to the council wanting to split off a portion of her land and sell 12 acres to a couple of wanting to build on that land. The vehicle to accomplish this was to create a minor lot subdivision. The council approved the property division, subject to Alberta obtaining a quitclaim deed for an access road to the 12 acres that would be sold. The deed was to be titled to the Town of Leeds. No further action by the town was anticipated or required to complete the minor lot subdivision once the deed was recorded. It was the intent of the council that the 12-acre parcel would be a minor lot subdivision eligible to build a residence once the deed for the access road was recorded, which appears to have happened.

Commissioner Darton: Do you know when that deed was recorded?

Scott Garrett: April of 1997 is when it's recorded.

I have recently visited the property owned by Lynn Potter and can verify that the approximate 12-acre parcel owned by Potter is the same property that was split off from Alberta's property, and which was approved by the Town Council as a minor lot subdivision for the purpose of building a residence back in 1997, although Potter did not own the property then. As further proof of the town's intent to create a minor lot subdivision and approved building on the parcel is the fact that the town consented to a zone change that would accommodate the building of a residence R-R-2. I am certain of the foregoing. I have an independent recollection of the events and my recollection is consistent with the town minutes I reviewed.

So yeah, she was a council member at that time. She kind of clarified that process.

Chairman Swenson: She kind of like remembered that hey, we screwed up back here because we don't have enough minutes. I remember she was part of that. I'm not sure whether she had anything to do with that obviously not.

Commissioner Darton: Clearly it was her fault that the Minutes were faulty.(laughter)

Chairman Swenson: No, not at all. Just the timeframe.

Lynn Potter: I would like to explain why I have spread this out over such a timeline. Okay, I was being cheap. All right? I figured that this would be turned down by the Town Council and then we would go to the Board of Equalization or Appeals. I've also got something else in play and that's the width of the easement. Okay. And I was hoping to tie both of these together with this Board of Equalization.

Chairman Swenson: The width of your easement? That is a whole other entity based on what you want to do with your property.

Lynn Potter: Right. Okay, so there are a bunch of documents that also help explain the story of how property came to be and so by including those in it I tied it all together and tried to save 550 bucks. So that's why I threw in so many additional documents. It gives it depth, it gives it understand but I know it also adds 10 minutes, maybe 15 minutes to the presentation. But yeah, easement, width, Cheap.

Chairman Swenson: Well and the easement width that's approval for a whole other issue as opposed to this. Now if you recall, I was in favor of moving this forward. You did a lot of research, it makes sense. But I'm not the one that knew the legal ramifications of it. That if it was subdivided prior to, you know, that kind of stuff. And I respect that. That's not me. I was a 37-year fireman out in LA. I'm not questioning you or the town, I question the purpose of the Hillside Ordinance, because Malibu is built on stilts. I drive through St. George and as you're going through the cut to St. George. Look on the hills sides up there they built right next to the hillside. I don't know the background behind that. Like you said, though, it is a legal ordinance and a legal document that restricts for whatever the reasons. In California, It's all about hilltop, its ridge tops for view. It is not safety, not water, but for view. We all want the house on top of the hill, so you got to put it down below. You

got to sync appears and structure, you know it is 50 feet down, so it won't move. Where I question, and I do remember the statement from the past council member, it all sounded good to move on, but the town's attorney had that information also. He had all that. He reviewed that statement that in your mind tips scale. Why, with all that, would he say that you still need to abide by the Hillside Ordinance?

Lynn Potter: Because He's really, really, mad at me because I have been disbaraging[Sic] to him. Because I don't go to plumbers and ask them, hey, do I need a new sink? And he comes back and says, Yeah, you need a new sink and a fan belt! If we go to court on this. He's making a lot of money on this.

Chairman Swenson: Him and you are paying a lot of money. That is not my intent. For sure. There is no reason.

Lynn Potter: I'm not worried about the money.

Scott Garrett: But even more importantly, yeah, whether you know, his intent or not, I mean, the thing is it's your town. Neither decision is legally wrong. You are not wrong if you side with Mr. Potter. You're not legally wrong. It's just, I don't want to speak for your town attorney. But I think what he is saying is if you decide not to approve the subdivision, he thinks he can defend you in a court of law. But neither decision legally is wrong. He is not telling you that it's wrong. To go one way.

Commissioner Darton: Yeah, I am looking at ordinance 20.10 the requirements of this chapter shall not apply to developments for subdivisions that were approved prior to January 1, 1999. That is the legal standard.

Scott Garrett: That's your standard. You are stuck with that. Yeah.

Commissioner Darton: That's the legal standard in the statute, the Hillside Ordinances is anything approved prior to January 1, 1999. This ordinance does not apply. The affidavit that you read, you know, it would be great if there was something recorded.

Chairman Swenson: That's the problem. That is a problem.

Scott Garrett: A minor lot. Subdivision does not have to be recorded. I think what you're saying is what would be greatest is if something was in the minutes? I don't know.

Commissioner Darton: Yes, some official record. But there is not an official record. Just inferences going back and forth, you know, about equally.

Chairman Swenson: Well, there was. He showed the official records. There are minutes.

Commissioner Darton: Oh?

Lynn Potter: There's that one official statement made by a council member in the Planning Commission, where he says Alberta Lee has gotten conditional approval on this and we're just waiting on that Felt deed. For them to say that means like, everybody voted on this and everybody, well, I can't say everybody, but it was approved by a majority. So, it was approved. But documentation is sorely lacking. They got three-hour meetings and there's three pages.

Chairman Swenson: Yeah, I know.

Diana Powell: There was a sale. There was an escrow. I contract that required and mandated the sale of the lot be a legally subdivided lot and this was the sale of the lot from Alberta Pace to Felt. It is in your packet.

Lynn Potter: Spears not Felt.

Diana Powell: Spears, I'm sorry, Felt sold the lot to the town or gave the lot to the town and anyways, the Spears bought the lot. Their purchase contract mandated that our lot as it's configured today, you know, legally subdivided and that it was zoned to properly allow for the building of a home. Rural Residential.

Lynn Potter: Right.

That was escrowed? It was evidenced in your packet. And without it being addressed, the property never would have closed.

Chairman Swenson: So, there's evidence that makes sense it just there is nothing saying it ever happened.

Scott Garrett: The issue is whether or not it was actually brought to a vote and you guys voted said I, that is approved.

Chairman Swenson: Mark Rosenthal, go ahead. Do you have a comment?

Commissioner Rosenthal: Thank you. Appreciate all the discussion and the arguments for and against. Without the benefit of documentation, I would make a motion that we deny Lynn Potters request.

Chairman Swenson: Okay. We are not at that point yet, but we will hold on that. He is making a motion that we deny.

Scott Garrett: Can I ask for some clarification on that? Why? I just missed, based upon a lack of documents? Is that what you said?

Commissioner Rosenthal: The lack of documentation of town record, Sir.

Chairman Swenson: We're all saying the same thing, for the real clarity let us cut and dry.

Scott Garrett: Okay, hang on. You know what? Just a sec. So, So, yeah, I just. If I could just say one thing to that. It is not Mr. Potter's fault that the minutes are deficient. First of all, that is a town problem. And, you know, this was looked at pretty substantially by the Ombudsman. And he concluded that, you know, there's both substantial evidences to decide that it was approved, as well as substantial evidence to decide that, that it wasn't approved because there wasn't a final vote. So, I mean, there is there's records. I mean, there's records of what happened, and those records have been provided. And so, I don't think it's a lack of records or documentation. It's a lack of maybe clarity in the minutes. But. But that's not, again. That's not Mr. Potter's problem.

Lynn Potter: We, the reason this presentation was also extra-long, because we went on a tangent. Also, during my research, I found several properties. I didn't include them all in the presentation, I include the most prominent one, the most prominent property as example was the firehouse. The firehouse was purchased. And a statement was made by a Town Councilman in the Planning Commission saying a minor lot subdivision is required. Nothing is ever noted in the minutes anymore. And yet, a deed is transferred to the town, construction takes place, a year later, they say, hey, it's open. It's done, but there is nothing in the minutes that even implies. At least we have some implication that minor subdivision took place and so this is an indication of just well, they were kind of casual about it, because back then, it was more innocence. Everybody knew what was going on and no one had a problem with it. But nowadays, and the reason that that exception is in the ordinance, the hillside ordinance is because there's a lot of other people in town that didn't want their property, because most of them are subdivided before 1999, that didn't want their property affected by this ordinance. That's why that exception is in there.

Commissioner Hadley: Mr. Porter, you said the reason why we had the ordinance, so the hillside will not come down. You know, anything over 30 degrees. Okay, and you said you had engineering come out and assess the hillside and said this rock would not fall down.

Lynn Potter: Right

Commissioner Hadley: One thing, we have to do is accept that engineer, what you come up with and then override the ordinance? Is that right?

Chairman Swenson: No.

Scott Garrett: As long as you (inaudible)

Lynn Potter: You can't.

Commissioner Hadley: Well, because you purchased the property before the ordinance come in.

Lynn Potter: Oh, well, in truth, you can override the ordinance if you just agree that yeah, it was subdivided before 1999. That, that's the bottom line. If, if you agree from this

evidence that it was subdivided before 1999, which it appears it was in 1997, Well, then it doesn't apply to us and everything else disappears. Otherwise, this is really going to get drawn out and long and, you know, Scott's going to...

Chairman Swenson: No, do not get discouraged. It is appropriate to go through this process.

Commissioner Darton: This has been drawn out way to too long already. I was not here last time. But, you know, as we have been talking, I've been thumbing through and I found several other things, you know, found the affidavit at the back of this, for me the affidavit really pushes it over, understanding that, you know, back then they weren't really good or consistent with their minutes and the record keeping. So, for me, that pushes it over the edge. I would move at this time.

Chairman Swenson: Well, we have a motion already.

Commissioner Darton: Oh, okay. We do have a motion already. A motion to disapprove it.

Chairman Swenson: And we will get to that here in just one second. I will get back to your motion. I have heartburn with the fact that the attorney does not validate anything with his statement. He reviewed everything I am assuming. Because he had everything in the whole packet.

Commissioner Darton: He gave no reasoning though.

Chairman Swenson: He's not validating it by saying because of this. Just that, and he might be totally right that, hey, you still need to follow the Hillside Ordinance. Basically, that is what he's saying. I think he should have done that, because you have done it the other way. So, I wish there were more validation. I am not saying that it should go through or not, but just his statement. He is our leading authority at this point in time. That is why we went to him. So. Me, just stating that that was my heartburn. With that being said, do you have anything else you want to say? Before I go to Mark's motion? And then we will proceed? Either way, that is why we're here.

Lynn Potter: I've been coming here for a long time. I think I know you guys. It is my understanding you have got a legal background.

Commissioner Darton: I practiced law for a few years.

Lynn Potter: I know you're not the Town Council, but you have the mind, you have the understanding.

Chairman Swenson: No, he does not have the mind. (laughter)

Commissioner Darton: My mind was lost many years ago.

Lynn Potter: But in my opinion, I know that this guy isn't biased against me because I haven't potentially alienated him yet. You know?

Commissioner Darton: Well, one thing about a legal background is you can compartmentalize and approach things objectively. So.

Lynn Potter: So, I would take this guy's opinion over Craig's who I know I have.

Commissioner Darton: . Well, right now, my opinions are actually, in line with what you want so.

Lynn Potter: We are taking it. We are taking it.

Chairman Swenson: We are taking a vote.

Scott Garrett: Here is my final statement. I kind of said that. But, you know, for me, one thing that just really makes sense to me in this situation is that back in 1997, everybody intended that this be a minor lot subdivision that's clear from that's clear from the record, so, so why not? Why are we getting hung up on something little when we know what their intent was? We don't always get to discern somebody's intent. But in this case, we know, they all intended that it'd be a minor lot subdivision. And just because maybe we don't know whether that final hand was lifted in support, we know that that it was rezoned. We know that it was subdivided. Property was transferred, everything. The deed for the road was recorded. Everything happened, except maybe that final hand, you know, saying I agree. So, we know what the intent was. So why is this such a I don't understand why it's so hard. I just, it doesn't seem like. Why?

Chairman Swenson: well, I do not know about that because that hasn't come across for us. I think part of it is we do not know what you want to do with it. And does not really matter. Doesn't matter what you want to do later. That is later. We are just talking about whether the hillside ordinance should apply to you or not.

Scott Garrett: That's right.

Chairman Swenson: Okay. What you want to do with it later Is a whole other discussion.

Lynn Potter: When I originally came in, I said I wanted to build a castle there and that really hacked a lot of people off. A castle on the hill? I was you know my plan was eccentric.

Chairman Swenson: Scott, do you have a comment?

Scott Messel: No

Chairman Swenson asked for a second on the motion to deny. No Second.

Commissioner Darton: I would move then that we vote to approve this and send it to Town Council and send it on to the Town Council and let them do with it what they will.

Commissioner Hadley: We tried that haven't we?

Chairman Swenson: No. Town Council sent it back to us. Before they got into this so we could do our homework.

Commissioner Hadley: I will second that one.

Chairman Swenson: We have a first from Tom Darton and a second from Ken Headley. Roll call vote on sending it on. Will you read that motion Back to make sure we got it right, please?

Clerk: Commissioner Darton motioned to move the request for Potter property to Town Council. Seconded by Commissioner Hadley.

Commissioner Darton: Let me restate my motion. I move that we recognize that the Potter Property was properly subdivided before 1999 and is therefore not subject to the hillside ordinance.

Chairman Swenson: Well, that changes things.

Commissioner Hadley: And I will second that one.

Chairman Swenson: You can validate that based on the record before us?

Commissioner Darton: I believe that the preponderance of the evidence weighs in favor of that.

Chairman Swenson: Town Council is going to have to decide anyway. So really, our verbiage does not matter when really what you need is a yes or no.

Scott Garrett: Yes. Just want to be clear on what the yes was or the No.

Chairman Swenson: Well, I do not know if there's a ponderous of evidence. I personally agree that we should set.

Commissioner Darton: And a preponderance means 50.1%. I mean, that is legally what the standard preponderance of evidence is.

Chairman Swenson: You seconded? Any discussion.

Commissioner Hadley. I seconded.

Chairman Swenson: Mark, how about you?

Commissioner Rosenthal: No, thank you.

Chairman Swenson: I am in favor of moving forward. I was last time just because when it came up with legal, I thought, yeah, I want to do what is the most right. There is no evidence, concrete. Either way. We see that in courts all the time. I am bothered by the statement. It is not very conclusive. I do not know if there's the evidence that you're stating. There is a lack of evidence both ways. This is one reason why we are here. If there was good evidence, we would not have this discussion.

Commissioner Darton; I would argue that the circumstantial evidence supports their claim, and the affidavit really clarifies it in my mind.

Chairman Swenson: Well, I agree it should move forward for more consideration. We are not the ones with authority. So, roll call vote and from my left.

Commissioner Darton moved that Planning Commission recognize that the Potter property was properly subdivided before 1999 and is therefore not subject to the Hillside Ordinance. Commissioner Hadley second. Motion passed in a roll call vote.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
CHAIRMAN: DANNY SWENSON	<u>X</u>	---	-----	-----
COMMISSIONER: ALAN ROBERTS	---	---	-----	<u>X</u> ---
COMMISSIONER: KEN HADLEY	<u>X</u>	---	-----	-----
COMMISSIONER: TOM DARTON	<u>X</u>	---	-----	-----
COMMISSIONER: MARK ROSENTHAL	---	<u>X</u>	-----	-----

Scott Garrett: Thank you, gentlemen. What do we need to do to get on the Town Council? What is our date. Do we have a date?

Lynn Potter: Next week?

Chairman Swenson: Ask the clerk right here.

Clerk: I will need to take it up with the mayor.

Chairman Swenson: It might be next week.

Scott Garrett: I feel like you guys really listened to us. I appreciate that. I thought that is all we could ask for.

Chairman Swenson: we did last time.

Commissioner Darton: Sorry, I was on vacation.

Chairman Swenson: It is too bad. It is not clear, but I think that's what look at longtime history of stuff. The only reason I am coming across and more in your favor also was lack

of that evidence. And the fact that I have been on hundreds and hundreds of brushfires around homes built way worse than where you're looking at. Okay. And so, to say, no, when it is not a problem in certain places, what is the exact purpose here? I do not know; I don't want to deny that I just want you to be able to continue that process. I do not know whether it will go through or not. But I do have the right to go through.

Scott Garrett: Thank you. Appreciate it.

Commissioner Darton: You might send a gift basket to each of these. Oh, wait, you cannot do that.

Lynn Potter: I would like to point out that the Ombudsman...

Chairman Swenson: Somebody give us a definition of that title?

Scott Garrett: The property rights Ombudsman here in Utah? What they are they're an office that consider considers land use decision. They offer kind of neutral opinions. Just keep things out of court and avoid litigation. They're very talented, they're very specialized in the area of land use. And so, when they issue an opinion, it's usually very well thought out.

Chairman Swenson: based on land use laws or land use intent?

Scott Messel: Laws

Commissioner Darton: So, would this be almost like an arbitrator for land use?

Scott Garrett: Yes, except it's not binding on either party? It's just a suggestion and guidance.

Commissioner Darton: You know, if, if, when you go to the Town Council, if things do not go your way, I would really hate for either side to end up or taking it to court. I would recommend, you know, trying to get with the town and, and figure out an alternative dispute resolution process that would be binding, that might be a good idea.

Scott Garrett: We'll look at it and see,

Commissioner Darton: Because it could be much faster and much cheaper.

Lynn Potter: I wanted to state that the Ombudsman made a statement in his decision that the town should not be able to take advantage of poor record keeping and they also basically said that we're going to push this off to you guys, and that you're going to have to make a judgment call on this. And you guys made a judgment call. You stepped out from under someone else's opinion. You looked at it with your hearts. And this is this has been one of the best decisions I've ever seen you guys make and not just because of his mine because I've been watching for a long time.

8. Discussion Items:

Chairman Swenson: We have three ladies out there in the back. Let me see if there are comments.

Inaudible Voices

Chairman Swenson: Do you know what, come on up here. Please just be on record. You're her and so I'm glad you're here. If there is some concern, I understand that. We have not approved anything that he wants to do up there. We do not know what he wants to do up there. Right. That is a whole other discussion. I do want to hear your concerns or what your thoughts are.

Robyn Schneider: I live here. That's my house. Right. And that's my home right there. And this is Potter's property, right here is her private drive, which is right behind my house, too. She's constantly going out and picking up rocks that comes down when it rains, from his property, when it rains hard, and she gets flooded all around here from his property. And you can actually see the rain gutters that comes off the hill down here to this part.

Chairman Swenson: Now, mind you I mean to clarify. Nothing he has done, has created that. He bought it the way it was. Right? So, she's getting flooded the rocks come because it's a hillside, he hasn't done anything.

Robyn Schneider: I'm just worried if he does, okay, it's going to get worse than what it is now. That's what my concern is.

Commissioner Darton: When he presents something, he comes back, and he wants to build a home. I think what they are going to be is leveling a portion of it, which I think will reduce the amount of slope.

Scott Messel: We will want to look at.

Commissioner Darton: Anything that he is going to want to build, he's going to have to come back to the planning commission for a building permit. And we are going to be looking at it and requiring certain conditions be met to mitigate the impact on neighbors and the environment.

Chairman Swenson: That's always a concern. Sure. All right.

Commissioner Hadley: That's why I asked about the engineering that went on up there to find out which effect that is going to take on your property. And all the other properties are there to be affected.

Robyn Schneider: Yeah, when I moved in here. I didn't see any of any of his stuff over there. But now it's piling up pretty bad. Right behind, you know, in that area where I could see it plain as day on my back door.

Chairman Swenson: Heavy equipment?

Robyn Schneider: It's an old truck about that he brought in, and he's just loaded it up with stuff. And he's got this big ol fan that set in there. And just, it's just junk. Because what it is, you know, it looks like a junkyard, and I didn't, you know, I mean, I love the area and everything, but I wasn't expecting to move in and then all of a sudden, my neighbors was going to turn their places into junk. You know, that's not what I'm wanting to move anywhere.

Commissioner Darton: I would hope. And we do not know anything yet. That if he gets approval to move forward and actually build something that then it will no longer be a junkyard.

Angela Rohr: This property was part of Alberta Pace's. Really it was it just separated off from her subdivision?

Chairman Swenson: Well, that is the point. There is There was no record of validation of exactly what it was done officially. That is the argument.

Angela Rohr: Because what she is thought, you know, over the years, is that this this was her nine acres that she was going to be developing.

Chairman Swenson: After she split that other one after she split this off. Yeah, that is right. Then it was no longer hers. So, she is always talked about that other area along the road. As developing. She no longer had that property on the side. Well, that is what I'm getting. And that is where the importance of the one affidavit from the council person that was on council during a lot of those yours, she came in later and said, yes, I recall. This was the intent. And that is our statement.

Commissioner Darton: For the people who do not have the benefit of having gone to law school and read a lot of really boring stuff. Often, when you are trying to figure out the intent of the statute, you will go back to, you know, legislative statements that were made that are not part of the official statute or the record to try to figure out okay, what does this mean? And essentially, that is what kind of we're doing here is we got a statement from a council member, it says, this is what we did. This is what we intended.

Angela Rohr: When did he get that statement?

Chairman Swenson: Her affidavit was recent when they got it from her, but she was on the Town Council prior to the hillside ordinance and prior to during this discussion without records.

Commissioner Darton: she was a member of the council, and this is what was done.

Angela Rohr, I think she's probably an elderly person. I was here in 2007. So that happened, but I wasn't on the council. I used to come to a lot of meetings with them, too. I just seem to remember that the purpose of the hillside ordinance was safety.

Ronda Mclaughlin: This affidavit is from someone and what she remembers twenty-five years ago. Do each of you remember what you were doing twenty-five years ago?

Commissioner Darton: She said she reviewed the minutes that were in the record, and that the minutes refreshed her recollection?

Scott Messel: They have made the motion. And so, the next step wouldn't be to take comments.

Ronda Mclaughlin: This is coming from Lynn Potter has been a bully this whole time. We do not know that he didn't coerce her into signing it.

Commissioner Darton: An affidavit is the same as if you came into court and testified under oath.

Scott Messel: and what the Planning Commission can do tonight, or what can be done tonight. The decision has been made.

Chairman Swenson: The Affidavit is a sworn document is though you were at court. She is saying yes. I am here and she is read something to recall, it comes clear. Now I am recalling that I was part of that during that and there was discussion. That is what she's saying. Okay, still does not validate it 100%

Ronda Mclaughlin: Going into why he is trying to get rid of this 30%. He's already came in here, when he was trying to prove that before he wants to cut through the mountain and put his house in a place that it's going to? But if you know him, he does not care. It is what he wants. Like Robin said, he's brought the truck, he brought numerous trailers, he just keeps going. Every time you turn around, he's bringing in more junk in there and he's came in from day one, because that's what he wants.

Commissioner Darton: If the Town Council agrees that, legally, his parcel of property is not subject to the hillside ordinance, which does not impact the requirements that he is going to have when he comes back for a permit to build something. Because we are going to look at where he's going to build put his road and, you know, safety is going to be whether or not the hillside ordinance applies. There are still safety issues.

Ronda Mclaughlin: So, when he comes in and he starts grading, and he's not doing, what he's been approved for, who's who takes care of that.

Chairman Swenson: There is an inspector, which is that is inspecting every phase, okay? So, if something is not going along with the plan approval, then there is a stop order. There is a legal order that you can Do that you got to stop.

Ronda McLaughlin: Who is watching over once he gets whatever his approval and then he just comes in and does whatever he wants.

Scott Messel: The citizens of the town.

Chairman Swenson: Well, there is an inspector that inspects at certain phases before you can move on to the foundation, the grading has to be inspected before you can do the framing, the foundation, even footing, and the slab board has to be approved. There is an approval, same with septic tank approval. So, before you can do certain things, the last phase has to be either mitigated and changed, or it has got to be approved.

Scott Messel: He cannot build a home that is not safe.

Ronda McLaughlin: But he is Lynn Potter. He thinks you can do anything, and you have already opened the door tonight.

Chairman Swenson: No, we did not open the door. We are just doing the legal aspect that he can move forward. Town Council has not approved anything. It has to go through them. We are so this commission is to do the groundwork so that all this has been worked out before he goes to Town Council. Otherwise, Town Council has to do all this and along with all the other things, so we do the groundwork.

Commissioner Darton: So, they will get the record from everything that went on here. And that they can review. They do not have to rehash the exact same things. And then they routinely vote different than we do. It may not get past Town Council.

Chairman Swenson: I am just using an example. My heartburn was with a single sentence statement from our attorney. He did not validate why or anything. It is just stating his opinion that all this discussion didn't change anything. You were here last time when Lynn presented everything right.

Ronda McLaughlin: If you have looked at the minutes of when he came in Lynn's gone back and forth. The lawyer already had to shut down a meeting because Lynn was contradicting himself.

Chairman Swenson: Well now they can do more homework on our statement and what we have come up with. It is not over. We need you guys here too.

Ronda McLaughlin: I am always here. But again, that is how he is. He thinks he got it sign and he will push through. Thank you.

Chairman Swenson: We are her for you guys too. We need you here to keep us on it.

Staff Reports: None

The meeting was adjourned at 8:40 pm.

APPROVED ON THIS THIRD DAY OF AUGUST, 2022



Danny Swenson, Chairman

ATTEST:



Aseneth Steed, Town Clerk/Recorder