

Town of Leeds

Agenda Town of Leeds Town Council Wednesday, October 23, 2019

PUBLIC NOTICE is hereby given that the Town of Leeds Town Council will hold a **PUBLIC MEETING** on Wednesday, October 23, 2019 at 7:00pm. The Town Council will meet in the Leeds Town Hall located at 218 N Main, Leeds, Utah.

Regular Meeting 7:00pm.

1. Call to Order/Roll Call
2. Pledge of Allegiance
3. Declaration of Abstentions or Conflicts
4. Consent Agenda
 - a. Tonight's Agenda
 - b. Meeting Minutes of October 9, 2019 and Work Session Minutes of September 26, 2019
5. Citizen Comments: No action may be taken on a matter raised under this agenda item. (Three minutes per person).
6. Announcements:
 - a. Vote-By-Mail Ballots must be postmarked by November 4, 2019
 - b. Trunk or Treat, Thursday, October 31, 2019, at 6 PM along Babylon Mill Road. Please have cars in place by 5:45 PM.
7. Public Hearing
8. Action Items:
 - a. Appointment of Peter Mills as Leeds representative to the Southwest Mosquito Abatement and Control District, Resolution 2019-09
 - b. Discussion and possible action on Conditional Use Permit & Home Occupation Business License for Brian Hansen, Bed & Breakfast, 480 N Main St
 - c. Discussion and possible action on Change Order for Main Street Curb & Gutter Project
9. Discussion Items:
 - a. Additional information received from Dixie National Forest regarding Silver Reef Museum property
 - b. Additional information received from Washington County regarding Silver Reef Museum property
10. Citizen Comments: No action may be taken on a matter raised under this agenda item. (Three minutes per person).
11. Staff Reports
12. Closed Meeting- A Closed Meeting may be held for any item identified under Utah Code section 52-4-205.
13. 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 October 17, 2019 at these public places being at **Leeds**

Town Hall, Leeds Post Office, the Utah Public Meeting Notice website <http://pmn.utah.gov>, and the Town of Leeds website

www.leadstown.org.

Peggy Rosebush, Clerk/Recorder

Town of Leeds

Town Council Meeting for Wednesday, October 23, 2019

1. Call to Order:

Mayor Peterson called to order the regular meeting of the Leeds Town Council at 7 PM on Wednesday, October 23, 2019 at Leeds Town Hall, 218 N Main.

ROLL CALL:

	<u>Present</u>	<u>Absent</u>
MAYOR: WAYNE PETERSON	x	_____
COUNCILMEMBER: ALAN ROBERTS	x	_____
COUNCILMEMBER: DANIELLE STIRLING	x	_____
COUNCILMEMBER: ELLIOTT SHELTMAN	x	_____
COUNCILMEMBER: NATE BLAKE	_____	x

Mayor Peterson said first, please join me in a moment of silence. A couple weeks back, Darrell Nelson who served on the Planning Commission and Town Council previously and was our Sexton for the cemetery and was also on our Mosquito Abatement Board that the County has, passed away on October 4th. Please join me in a moment of silence in Darrell's memory.

2. Pledge of Allegiance by Mayor Peterson

3. Declaration of Abstentions or Conflicts:

Mayor Peterson said I just reiterate with regard to the Silver Reef Museum that my wife and son serve as volunteers there on the board, where my wife is responsible for the gift shop and my son is the treasurer.

4. Approval of Agenda:

Councilmember Roberts moved to approve tonight's agenda and meeting minutes of October 9, 2019 and the Work Session minutes of September 26, 2019. 2nd by Councilmember Stirling. Motion passed in a Roll Call Vote.

ROLL CALL VOTE:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
MAYOR: WAYNE PETERSON	x	_____	_____	_____
COUNCILMEMBER: ALAN ROBERTS	x	_____	_____	_____
COUNCILMEMBER: DANIELLE STIRLING	x	_____	_____	_____
COUNCILMEMBER: ELLIOTT SHELTMAN	x	_____	_____	_____
COUNCILMEMBER: NATE BLAKE	_____	_____	_____	x

5. Citizen Comments:

Darryl Lewis said my comments are related to Item 8b, bed and breakfast. I attended the Planning Commission meeting regarding this issue, and I was here at the last Town Council meeting, and I have come to believe that the Planning Commission, and possibly the Town Council, believe that anyone who comes forward with a request for a Conditional Use Permit should be granted that permit. It is their right to do whatever they wish to do with their own property. This is not necessarily correct, and I would like to read a portion of the Conditional Use section, Chapter 7 of our Land Use Ordinance. He read Section 7.1. This means not everything is appropriate for everything within a particular zone. He read a part of Section 7.8 and a part of Section 7.9. I can tell you straight up that the Planning Commission did not break a page of Section 7 in their deliberation of this issue. Nothing was brought up. There were stacks of concerns from the property owner next door and they were not in any shape or form given any kind of legitimate consideration.

Lana Riddle said I am the problem. I own the house next door and I almost cried at the past speaker because that is exactly what happened. I directed a graduate program at BYU for 35 years and I have never been treated with such disdain, with such lack of research, but I am over that. What I want to talk about now is I have read every word, every minute of your meetings. There is not a positive comment about short-term rentals or bed and breakfast. I have read them all. You make a point that there is no way to enforce them and I am a victim here. I have written letters to the Mayor and I have sent pictures. No one does anything. Nothing. To grant a person more leeway to do bed and breakfast, when they have not followed the rules thus far, Brian tried to do this in 2013 and failed so here I am again. I have done this rodeo before. These minutes indicate to me the fact we are even considering this is very prejudicial because none of you are in agreement of this. You do not know how to enforce it, and more importantly, you say you came to Leeds because it is a quiet, sleepy little town and you did not want to live next to a hotel and that is what this is. Well, I agree with you completely. I would hope that I am not being discriminated against because I am not a full-time resident. Let me explain I have a disabled granddaughter and a disabled husband. We moved here and did a lot of work. It is a show place. We love it. And then this started to happen. In 2010, I was called on a medical mission to the Philippines, so I was gone. Right away, my husband developed a terminal disease and I have to be there for treatment. I have no other home. We sold our home to move to Leeds. It is only because people are helping us that I can still be where I need to be for my husband's treatments. This is coming to an end and I will be here full-time. Last night and the night before I had someone walking through my property close to 2 AM. I do not like it. I do not like having people in my backyard that I do not know. I agree with the comments about neighbors, about knowing people, but when I come out in my backyard, I see a variety of license plates from a variety of states and a variety of vehicles, recreational and otherwise. How is that fair? If you feel so negative about short-term rentals and bed and breakfasts, but on the other hand, I am supposed to like it. I am supposed to not have any rights. After reading this, many meetings, I feel that there is enough evidence here of what is happening to me, being prejudicial because I am an outsider, that I am willing to go forward with it.

Lynn Potter said if I am wrong on this, please correct me. It seems to me like in the last couple of years, the State passed a ruling or an ordinance or a law stating they changed everything regarding Conditional Use Permits. Instead of being no and you had to prove a yes, you had to jump a whole bunch of hurdles to get a yes. Now Conditional Use Permits are a yes unless it is something horrible and you can prove it should not be. Most of the time, you can always mitigate around the problems. Is that true with the new State laws? If that is so, then we need to reword all of our ordinances because what is in there is invalid since this came across in the last couple of years. Am I wrong?

Mayor Peterson said if we could ask our Planner who is involved with it full-time.

Scott Messel said the State did go through and make changes. They are continuously making changes. The last ones that were made were in May of this year. He read an excerpt from State code ...

Councilmember Roberts said that is not out of line with what our current ordinances follow.

Lynn Potter said okay. I read the layman's and their interpretation of it was the conditional uses were supposed to be given more of an okay unless they were absolutely on the no list. Mitigating factors were supposed to be used to solve the problems. What could solve your problem of seeing license plates and people in your backyard is a fence. I have seen the pictures, and I know you guys have a lot of bad feelings between each other, but a fence and gates would solve it all and he could have his rights and you could have your privacy. I believe in standing up for people's rights. Brian has some rights and there is a solution to this whole problem.

Alan Cohn said I totally agree with Darryl and, I forget the lady's name. I think part of the mitigating thing is, and I think Elliott has spoken about this in the past, we do not have any type of real enforcement of infrastructure so that right there tell me that once we open up that can of worms, we will have problems if we do not have a way of saying okay who is going to enforce it and who will be the enforcement authority who will knock on that door in the middle of the night. We do not have that. That still has not been addressed.

Kimberly Cook said I want to start off with the easement. According to Utah law, an easement is a non-possessive interest in land that allows an easement holder to use another real property for a specific use. The specific use in this case is for 2 single family residences. Originally, the easement was for only 1 single family residence. Somehow, they go it subdivided into 2 single family residences. The next thing I want to address is your own ordinances. This application came across the desk as a family and a breakfast the next morning for a bed and breakfast. I want to go through single family dwelling. She read an excerpt from Ordinance 2008-04, amended in 2009-18A. She read an excerpt on definition on single family dwelling. She read an excerpt on the definition of family. Using this easement changes the use of private property that does not belong to Brian. It belongs to myself and my mother. You cannot change the use of our easement by passing a conditional use, non-conforming use. He is on 2 non-conforming lots. He is on 2 flag lots. This is in my mother's backyard. And we all know about the enforcement. We know what is going on. We have been doing this since 2013. We have documented everything about the short-rental thing that has been going on. He has been breaking all of the ordinances, that is supposed to be a misdemeanor.

Susan Savage said my comment will not help anyone make a decision. What do people do with flag lots? Mainly, what I want to say is I am troubled by the portrayal of the Planning Commission meeting because I was there as well. They talked about trespassing on property that has been a problem. They addressed dust and they also talked about visibility as people enter the street.

6. Announcements:

- a. Vote-By-Mail Ballots must be postmarked by November 4, 2019

Mayor Peterson said there will be vote-by-mail once again in Leeds. A ballot should have arrived in your

mailbox. If you have not gotten one, it would be a good thing to contact the County Election Commission and find out what the status is. If you are mailing them back, they must be postmarked by November 4, 2019. There is an opportunity to deliver them by hand prior to 8 PM on the 5th. There are a couple of drop boxes and I believe you can take them directly into the County offices as well, but there is a drop box right in front in the parking lot.

b. Trunk or Treat, Thursday, October 31, 2019, at 6 PM along Babylon Mill Road. Please have cars in place by 5:45 PM.

Mayor Peterson said there will be Trunk or Treat again on Thursday, October 31st. It will start at 6 PM along Babylon Mill Road. We request those who will be opening up their trunks to try to get in place by 5:45 PM so we do not have any cars moving while children are trying to get ready to circulate. There will also be starting at 6 PM a hot dog dinner. That will be \$1.50 for a hot dog, chips, drink and a cupcake.

7. Public Hearings: None

8. Action Items:

a. Appointment of Peter Mills as Leeds representative to the Southwest Mosquito Abatement and Control District, Resolution No. 2019-09

Mayor Peterson said this resolution is 1 page and it indicates that Peter will be taking over, in this case, for Darrell Nelson. Darrell had served for many years on that. Peter contacted me prior to this with some concerns about water in Town and for the potential for mosquitos taking hold there. When I contacted him, he said he would be willing to be the Leeds representative . They actually meet 5 times a year. He has agreed to take that on and report back to us.

Councilmember Stirling made a motion to approve Resolution 2019-09 designating an appointment of Peter Mills as Leeds representative to the Southwest Mosquito Abatement and Control District. 2nd by Councilmember Roberts. Motion passed in a Roll Call Vote.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
MAYOR: WAYNE PETERSON	x	_____	_____	_____
COUNCILMEMBER: ALAN ROBERTS	x	_____	_____	_____
COUNCILMEMBER: DANIELLE STIRLING	x	_____	_____	_____
COUNCILMEMBER: ELLIOTT SHELTMAN	x	_____	_____	_____
COUNCILMEMBER: NATE BLAKE	_____	_____	_____	x

Mayor Peterson said Peter will be attending the next meeting on November 14th.

b. Discussion and Possible action on Conditional Use Permit & Home Occupation Business License for Brian Hansen, Bed & Breakfast, 480 N Main St

Mayor Peterson said at our last meeting, it was agreed to table this with the desire to look into some of the definitions that are somewhat relevant to it. I circulated an email to members of Council over the weekend with a list of some of the definitions that I thought were brought up or relevant to our discussion.

Councilmember Stirling said since this has started, or has begun, we have heard that the applicant has not followed the rules, breaking ordinances, over and over, harassment and we have received quite a few pictures of cars. In researching this, I spoke directly with Shelly Hansen who is the applicant as well and I asked her what she has been doing and what has been going on. She explained to me that in 2016 when they received the letter, they already had individuals booked and could not cancel at that point so in December 2016, which was when some of the pictures had been taken, they had 6 families that stayed for free. Completely free. They did not take a dime from them. We have heard over and over how they have never followed the rules. Continuing on, after January, 2017, they changed strictly to monthly rentals. Thirty days and that was it. She has documentation on every single individual who has stayed in 2017, 2018 and 2019. Even if they did not want to stay the 30 days, they blocked that 30 days completely off. I want on the record to make sure that this has not followed the rules, breaking ordinances and being harassed. I think the harassment is coming from the other way around. She read some of the booking information. I understand that some of the pictures from 2016 were her son's missionary companions' parents who came and stayed for free. She said anyone who wants to look at the documentation is more than welcome to look because in this Air BNB and VRBO you can go back as far as you can to see who stayed there, how much they were billed. She will show you anything because it is an open book. I would like on the record that the has not followed the rules and the breaking the ordinances is false. Continuing on There is something called property rights. If I want to have someone come and stay in my house for as long as they want whether it is 2 days, 4 days or 30 days, and they are not paying anything, the Town has no right to tell anyone what they can or cannot do if they are not charging them. The difference between a short-term rental and a guest, a guest does not pay which is what she shows from her Air BNB and VRBO. The guest who does not pay, we have no right to tell an individual what they can and cannot do with any property that they own if they are not getting compensated for it. Furthermore, the single-family residence, we already talked about this last week, and I believe what the Planner's interpretation was that part cannot be rented out as 2 units. Is that correct?

Scott Messel said I will read the single-family dwelling definition again. We did have discussion at the last meeting about how it is more common now to have ... It is clear in there what it says, but there are people who have wet bars or movie theater rooms and they have a refrigerator and a sink like a mini kitchenette.

Councilmember Stirling said there was another question about the easement. If was subdivided and the easement was there, there is nothing we can do as a Town Council if it has already been done in the past, correct?

Scott Messel said it depends on if there is language on the easement. Sometimes an easement will be put on a property and it will be very vague in the description. It may just say access easement to, over and across to a property for this property. Sometimes people can get really specific in the language on the recorded easement and break it down. You could get really specific with it. We would have to look and see what it says on the easement description that is recorded. Most of them just say access easement.

Councilmember Stirling said is it legal or illegal to block entrance to a property?

Scott Messel said I would think it would be illegal to stop someone from accessing if they have an access easement for it.

Councilmember Stirling said so as Town Council, we really do not have a right to agree or not agree to a Conditional Use Permit based on an easement that has nothing to do with what we originally put on the property, correct?

Scott Messel said yes.

Councilmember Stirling said my question now is after hearing all of this, it does not appear that the Hansens have been dishonest in any way, which has been said over and over again. Their Air BNB and VRBO states 30 days. They have documentation that they will allow anyone to look at. They have not rented shorter than 30 days through this particular time. I do not believe we can specifically say that because of the past, and they have not followed the rules, that this conditional use cannot be granted. I think the conditional use exactly how you read it and how we have it in our book, we either have to come up with some type of details or grant it.

Councilmember Roberts said I want to go right to the conditional use permit for a home business occupation because that is where this is coming from in our ordinances. The home occupation business portion of it allows for a maximum of 25% usage of a single-family dwelling to be used for as a business. That is a pretty clear-cut number. This property, the way it has been presented, my understanding is much more significant than 25% of a single-family dwelling. The other thing that we need to maintain and understand is it truly is a single-family residential dwelling. That is the first and foremost use of these properties when people are doing home occupations. We do not need to go any further on discussion, from my point of view, unless the applicant can specifically show that 25% or less of that single family dwelling will be used for a home occupation and the remaining part will maintain what its use is, I see no further discussion.

Councilmember Sheltman said the bed and breakfast came under the home occupation. We will put it under its own separate law, under the ordinance and its own chapter. The way it is kind of set in there, and I think I said before, when I was on Planning, we addressed this same issue and had a lot of trouble. We did not get very far with it because the applicant took the application away. I think the best way to do this is to look at it as its own ordinance. The fact that it is sitting under home occupation with this particular thing in place, I think whoever put it there was not looking at the total book that we have here including the definitions. I do not see any way you could do it without going over that 25%. You are talking about a bedroom, a kitchen, a living room and bathroom. In most cases, that will be over 25%. I think it goes back to some of the things that we jumped around which is having bed and breakfast under just a home occupation does not make a whole lot of sense.

Mayor Peterson said at this time since it has been mentioned that the definition of a home occupation, I will read it into record...Home Occupation - any use conducted within a dwelling or on a residential lot carried on by persons residing in the dwelling unit occupying no more than 25% of the dwelling unit or residential lot which is clearly incidental and secondary to the use of the dwelling unit for dwelling purposes and does not change the character thereof and in connection with which there is no display nor stock and trade. That is the full, word for word definition of home occupation that was raised by Alan and by Elliott. Are there any further questions or comments from Council?

Councilmember Stirling said can we ask the applicant questions?

Mayor Peterson said sure.

Councilmember Stirling said what is the square footage of the home you would like to do the bed and breakfast in?

Brian Hansen said 5,000 Square Feet.

Councilmember Stirling said for a bed and breakfast, is it fair to say that you are only renting out the bedroom?

Mayor Peterson said I believe the applicant indicated that they would have the entire first floor and that the resident would be in the basement which is where the second kitchen was brought up. And we have not discussed kitchen. There are a lot of definitions for a kitchen.

Brian Hansen said there is a common area like at most bed and breakfasts. They average between 4 and 12 bedrooms with the average being 8 and many times they will have a common area where they all gather, eat and go on their way. You can read it different ways. Does this make sense? They have access to it, but it will be a shared access. I do not know if I want 2 separate groups in there. They will not be there the full time. The goal is to come and eat breakfast, leave for the day and come back at night. 25% is very cut and dry. I need the kitchen and the laundry room. I may go up and clean 4 or 5 hours during the middle of the day. It is my house; I have to have access to it. They cannot have the whole thing all the time.

Councilmember Stirling said at this point, it appears that 1,250 Square Feet would be 25%.

Brian Hansen said which could be my bedrooms and the bathrooms. The common areas are a sticky point.

Councilmember Stirling said at this point, I would recommend allowing the applicant to have 1,250 square feet for the bed and breakfast in his home. And if we need to have a floor plan that you mark out which bedrooms will be used then by law because of the fact that we have a conditional use and our Planner has said that we either come up with conditions or approve it, I think that is fair. What is the size of a normal bedroom in your home?

Brian Hansen said I do not know. Maybe 10x15, 150 square feet.

Councilmember Stirling said at 150 square feet ... did your application say for 8 individuals?

Mayor Peterson said the Planning Commission said 4 bedrooms, up to 8 people. The application, I believe, was silent on that specific.

Councilmember Stirling said at 4 bedrooms that would be 600 square feet. You would still have 650 square feet additional for the 25%. I would say one of the conditions would be 1,250 square feet.

Brian Hansen said Alan, how would you use a common area? They have to walk through my house to get to the bedroom and bathroom, right?

Councilmember Roberts said of course they do. What areas are you renting out? What do you plan on renting? What area are you looking at as being a rental unit?

Brian Hansen said the bedrooms. That is where they are sleeping and where they are staying. The goal is to stay overnight in a bedroom, have some breakfast and leave for the day.

Councilmember Roberts said do they have full use of a kitchen facility?

Brian Hansen said we would probably share it. That is my kitchen. That is my laundry room. That is how a bed and breakfast is.

Councilmember Roberts said no, that is not how a bed and breakfast is.

Councilmember Stirling said what is the definition of a bed and breakfast for you? If I was to go to a bed and breakfast, I am renting a bedroom and I can lock the door. I can still go down and sit in the parlor if I wanted to. I am only renting the bedroom.

Brian Hansen said you can sit on the back porch and walk around.

Councilmember Roberts said where it becomes problematic is it shifts from a bed and breakfast and to what we look at as short-term rentals now a days because it goes along similar to what Scott was pointing out. The other things there in a normal short-term rental now a days, the first thing is kitchens. You are not fixing food in a bed and breakfast. That is where the dynamics come in for short-term rentals. If you want to cook in it, it is okay. That is where it becomes problematic because now it is much more than 25% of usage of the building. It needs to maintain, first and foremost, a single-family dwelling because that is what those homes are. Every one of us lives in a home like that. We do not live in a commercial building. We live in a residential single-family dwelling unit. I am not opposed to individuals looking at renting a room out, but a blanket statement of saying this will apply for everything is not us doing our due diligence on looking at each individual case. There are other dynamics here. The reason I focus on the 25% because if it is over 25%, we do not need to have this conversation because it does not meet the conditional use that would be placed for a home occupation license within a home. There are a number of people in Town that have a home occupation business license, and if they are over 25%, they are out of compliance. Whether we agree it should be sitting there under home occupation or not, that is where it is at. If you can answer and say it complies with that, then we need to look at other dynamics. We talk about the easements. Easements are not governed generally by the number who will use this residential easement. That easement was maintained and set up for a single-family dwelling. That is what that easement was initially set-up for. There are 2 dwellings that sit behind there that access that easement. It is not governed by the amount of traffic as far as the number of trips made in and out of there. It is what it is. That easement is there. It gives access to those properties.

Briand Hansen said it has been there 47 years. And the original easement just says easement. That is all it says on it.

Councilmember Roberts said so then if we go through and start looking at conditions you would place on it, it would be similar to what the Planning Commission came up with, the bullet points. For me personally, I still interpret you are going to be over 25% usage of that facility.

Briand Hansen said if they use more than the bedrooms and bathrooms. We are at 1,000 Square Feet with bedrooms and bathrooms.

Councilmember Roberts said they will be using the kitchen. If you can promise and guarantee, they will never use the kitchen, and I am not saying walk through the kitchen, I am saying use the kitchen for what a kitchen is for. A kitchen is to prepare food. Then you might convince me.

Brian Hansen said I do not plan on it, but they may. What if someone gets sick for the day? It is a grey area in my mind.

Councilmember Roberts said it shouldn't be a grey area in the mind of the owner. The owner should have a very clear-cut idea of what is going on.

Councilmember Stirling said is there anything in our ordinance that states the definition of a bed and breakfast?

Councilmembers answered no.

Councilmember Stirling said the problem is in our ordinances for bed and breakfast it shows it as a conditional use. Just because we are questioning the viability of the ordinance, it does not make it legal, from what you are explaining, for us to go above and beyond and deny the applicant because we are questioning the ordinance. To me, what I heard is if we have a conditional use, the State says we either have to come up with conditions or we are going against the law. Is this correct?

Scott Messel said yes. It uses the term reasonable conditions.

Councilmember Stirling said I also believe because we do not have a definition for bed and breakfast, we really cannot make one saying a bed and breakfast does not necessarily say they cannot use 1,250 square feet if they want to use the kitchen because we do not have a definition.

Councilmember Roberts said I agree. We do not have a definition, but I have a solid number of 25%. That is just for the home occupation portion of it.

Mayor Peterson said my recollection from listening to the Planning Commission audio and from our previous Town Council meeting, was that the intent was that either you and your wife or your daughter would be down in the basement where you have a second kitchen. We can get into those discussions later if it seems appropriate. What I have found is depending on where you are, if you look at other municipalities, it is a kitchen in one place, and it is not a kitchen at another. That is subject to how you choose to define it. What I heard was that they were going to be behind a locked door on the main floor of the house or conversely that you and your wife or your daughter will be behind a locked door in the basement and that was going to be the separation. With that as the separation, I understand what Alan is saying about the 25%, it is kind of hard to envision that the basement somehow is more. The other thing is there is a clause after that that says something about the use of that 25% which is clearly incidental and secondary to the use of the dwelling unit for dwelling purposes, and as I followed the audio from the meetings and listened when here at the Town Council, it sounded as if when you have somebody renting, you would have someone in the basement, but no one was going to be living in the basement on an ongoing basis.

Brian Hansen said we will be there all of the time. I have to have a house to live in.

Mayor Peterson said I thought you were in the other house that you mentioned at one point in the past.

Brian Hansen said I have long-term renters in there. How can we make this work?

Mayor Peterson said is there anything further from Council at this point?

Councilmember Stirling said from what I understand, if it is a conditional use, we have to come up with conditions, but we are not allowed to deny it because it is in our ordinances. Is this correct?

Scott Messel said more or less if it has been determined that a bed and breakfast is an appropriate use for a residential area subject to conditions. It has more impact than just a standard single-family home. And we have home occupations which cause more impact than just a single-family home. By having it in the Code, you need to be able to ... I will go back to the term reasonable conditions.

Mayor Peterson said but the definition of home occupation is separate and apart from conditional use.

Scott Messel said correct.

Mayor Peterson said are there any further questions? If there are none, I would entertain whatever motion someone desires to make.

Councilmember Stirling said what are the repercussions for not allowing an applicant who has come, and the ordinance says it is a conditional use? What are the repercussions if we say no?

Scott Messel said I am not your legal representative, but it could be challenged. It is set-up in Town Code and State Code, means for appeals.

Councilmember Sheltman said which is the case on anything.

Scott Messel said correct.

Councilmember Stirling said because of the fact that the conditional use is a State Code that says it if it is in our ordinances then we must provide conditions or approve it, I will make a motion.

Councilmember Stirling made a motion to approve Conditional Use Permit & Home Occupation Business License for Brian Hansen, Bed & Breakfast, 480 N Main St, and allow 25% of the home, or 1,250 square feet, and the applicant will provide a map with the 1,250 square feet designated for the Town and he will be allowed to have this conditional use for a bed and breakfast.

Mayor Peterson asked if there is a 2nd to the motion.

Mayor Peterson said absence a 2nd, is there anybody who would propose a different motion?

Councilmember Roberts said what were the conditions of the Planning Commission. Or were there none?

Scott Messel said there were conditions. He read the conditions.

Councilmember Sheltman said did they mention the definition that mentions the 25%?

Scott Messel said no.

Councilmember Roberts said I really do not want to go down this road or this easement access. When you talk about the business they conducted up to this point, and that they were not out of line with the

business they have conducted, it is important for the public to understand on advertising for any short-term rental or any bed and breakfast, whatever terminology you want to put on that, you can argue that all day long, but it will not go anywhere because people can advertise for that type of stuff. It is a State law. People can advertise. There is no argument against the advertisement. If some of these reservations that were made that they were not compensated for as you pointed out, Danielle, but if some of these reservations were made through that advertisement that they put out there then they truly have conducted a business without being established as a business here in Leeds. This is where I would caution even though monies may not have been charged, if you take the reservation through that advertisement then you have conducted business even if you did not take any monies for it. That is different than calling up someone and saying you can stay in my house for as long as you want. This is just a little bit of clarification that I wanted to make on business you have conducted in the past. That is why I am apprehensive, Brian. When you say we are going to rent out the top floor, that is what we are using for this business, and then I say I know that the top floor is half the house. It is hard for me to be convinced that you are not renting out half the house for a short-term rental.

Brian Hansen said we will block off the part of the house not being used and use 25%. It is only half of the top floor. 1,250 square feet is a pretty good bed and breakfast, isn't it? We will block it off. I will not go against what the Council recommends.

Councilmember Roberts said when you look at conditions, we need to look at conditions that are reasonable, but the municipality still has an obligation and a right to determine what those conditions are that are reasonable. When we talk about individuals staying there, it is not changing the entire use of the property, that is where they get into if the condition changes the entire use of the property because we are still talking about residence, sleeping there, but they are not residents, it is a modified motel. I am not opposed to these. As a general statement, I want the public to understand, I am not opposed to individuals looking at what they can do with their properties that are within the ordinances that govern that property. If you are looking for a 2nd on a motion, for me, it will have to be pretty clear on how this thing is organized.

Councilmember Stirling said can I bring one thing up? December, 2016, was the only month that she did short-term for free because she had already booked for December when she received the letter in October. The other ones were strictly for 30 days after starting this in January, 2017. So, the business, even if they did consider Air BNB or VRBO, did not go against any of our ordinances because it was 30-day rentals and she has it documented down to a "T". They never did break the law. After they got the letter, they did the very best that they possibly could to make sure they were abiding by the law. I understand what you are saying, but as of 2017, everything was 30 days or longer and that is documented.

Brian Hansen said the Mayor has a copy. I gave him one.

Councilmember Stirling said I would like to amend the motion.

Councilmember Stirling made an amended motion to approve Conditional Use Permit & Home Occupation Business License for Brian Hansen, Bed & Breakfast, 480 N Main St, and allow 25% of the home, or 1,250 square feet, the applicant will provide a map with the 1,250 square feet designated for the Town, including the contingencies that were agreed on by the Planning Commission and he will be allowed to have this conditional use for a bed and breakfast.

Councilmember Roberts said your home is 5,000 square feet, right? It is important for the public to understand this also Your garage is not calculated in.

Brian Hansen said it does not include the garage or the porch.

Mayor Peterson said is there a 2nd to the amended motion.

Mayor Peterson said in the absence of a 2nd, is there another amended motion that someone would like to make?

Councilmember Stirling said can I amend the motion again?

Mayor Peterson said why don't you start with a new motion.

Councilmember Stirling made a motion to approve the Conditional Use Permit & Home Occupation Business License for Brian Hansen, Bed & Breakfast, 480 N Main St, on the conditions of 25% of the home; applicant will provide a map; all of the recommendations from the Planning Commission; as well as documentation provided to the Town for who is staying and for how long.

Mayor Peterson said is there a 2nd to the motion?

Mayor Peterson said absence a 2nd is there any other motion that anyone would like to make?

Councilmember Roberts said Scott, what have you encountered on frequency of revisiting a conditional use permit? I understand that as a general rule, conditional use permits, once they are established, they stay with the application and the applicant who owns that property at that time. If a property changes ownership, that can trigger the end of a conditional use permit. But what I am looking for is revisiting or a reassessment of the condition.

Scott Messel said I have seen it where there have been controversial conditional uses where the Planning Commission, Town Council or County Commissioners, wanted to give it a year and have it reviewed after a year so they approve a conditional use permit for a period of 1 year. I have also seen others that have gone out of the realm of what was approved, I have seen it come back to the Planning Commission or Land Use Authority. They would bring the applicant back in and amend the conditional use or revoke it.

Councilmember Roberts said I am going to be very candid on this because I think we should put in as a condition, but I do not know the magic number or frequency. I am putting 100% of the responsibility on the homeowner that if business is not conducted according to what is agreed to in the conditions, we will revisit it and it will get revoked. Again, I am still apprehensive because I know this is just a short-term rental and people will come and do whatever they want. If the access to your property, and I do not want to base it just off of this easement, but this access does have an effect that is different than what a normal effect would be if your properties were accessed directly off of a public right-of-way. So, when we look at that, you have to take that into account. How many ATVs or motorcycles are going to be buzzing up and down that easement? They can legally and they will. You know it as well as I do because you have seen it in the past. There will be people who use ATVs and other things that will create an impact for the adjacent properties.

Brian Hansen said in the past 3 years, we have had 2 families who had ATVs.

Councilmember Roberts said I am not saying a condition is you cannot have the ATVs there because the Town allows for ATVs. If an ATV is licensed to be on the road, it is just as legal as any other vehicle that is licensed to be on the road. I think a condition that needs to be included in there is a revisit, but I do not know what the frequency should be.

Brian Hansen said you are working on an ordinance right now. Do you have a timeframe on that?

Mayor Peterson said I would hope it would be, I think we agreed to ask our attorney to start drafting things that have been reviewed with the prosecutor for enforceability.

Brian Hansen said that would certainly apply, right, once it has passed.

Mayor Peterson said I do not believe that is accurate. If a conditional use is granted right now, the conditional use is with the property. It can be subject to review, but I do not think it can be given a mandatory expiration date if it is approved. Let me just speak up on one thing that concerns me. It was a statement that was made at the last Town Council meeting and it was about why the locked door between the basement and the main floor. The statement was for the safety of your daughter or the safety of your family you wanted to have that locked door there.

Brian Hansen said and for the people who are staying there.

Mayor Peterson said what is the safety issue that you envision for the people staying there relative to you the homeowner being in the home?

Brian Hansen said I do not know them, and they do not know me. I think you need your privacy, too. Does that make sense?

Mayor Peterson said it sort of flies, I think very much, in the face that it says the home occupation is clearly incidental and secondary to the use of the dwelling unit for dwelling purposes. It mentions bed and breakfast, and I have been in bed and breakfasts and never had a sense of risk from the people from whom I was staying as a guest nor did I have the sense that I was causing them any kind of risk or fear. To me, that is a little bit concerning for the type of rental that you are thinking might occur that you would want to have that.

Brian Hansen said other guests, would you worry about them if they were on the same floor in a bedroom down the hall?

Mayor Peterson said if I was there, I would want the people operating the bed and breakfast to be there to observe what is happening among all the different guests. I would be less comfortable if I was told that management is locked away in the basement for their safety and for ours. That is just my concern with it. And I think it raises the real concern in my mind that as described and presented over these many meetings, it is kind of violating the clearly incidental and secondary use of it for dwelling purposes as that primary purpose. That is the concern that I have.

Councilmember Stirling said can you explain that again?

Mayor Peterson said the concept that has been raised, and I think agreed to tonight by Brian, is that, and

the statement was made for the safety of his daughter who might be the one staying there or his family, he wanted the basement door to be able to be locked for the family in the basement and for the guests upstairs. What I just heard was for the privacy that would be preferable not knowing these people well and them not being comfortable with the homeowner who is operating the bed and breakfast.

Councilmember Stirling said my question is what is the difference between a locked door on a bedroom and a locked door where you are going to sleep downstairs?

Mayor Peterson said I think it is an ownership type thing. You grant people a certain amount of privacy. When you check into a hotel, you are granted a certain amount of privacy to your own personal sleeping room, but you are not granted privacy to other areas. They have blocked off areas like a pool area or an exercise area or a computer area, but the only place where you, as an occupant of a hotel type rental situation, where you get your privacy to the room you are sleeping in, not the entire floor that includes a kitchen and a living room and dining room or whatever else that might be available. I just see it as a real challenge from the requirement for home occupation that the occupation be incidental and secondary to the use of the dwelling unit for dwelling purposes.

Councilmember Stirling said it is that same thing it says they can use only 1,250 square feet so we were just telling him a little bit ago that he needed to block the rest of the area off so they could use only 1,250 square feet.

Mayor Peterson said I am talking about the original statements that were made about wanting to separate the floors and basically have it be a duplex.

Councilmember Stirling said in order to have that, you have to allow the applicant only 1,250 square feet per our ordinances.

Mayor Peterson said that 1,250 square feet is a subset of the main floor that is about 3,000 square feet. If you are saying they can only use say roughly a little over a third of that, but you are going to be locked in the basement behind a close door, I do not see how there is any enforceability that the Town would have. The owner does not even have it if they are saying they do not want to be on the same level as the renters.

Brian Hansen said when we are sleeping, we would be on a different level, but we would go up there to clean and make our food and do our laundry. We will be in the home, but when we sleep, I would want to have our own privacy.

Mayor Peterson said I believe at this point there is a motion without a second. Is there a second? Or is there another motion that someone would like to make?

Councilmember Stirling said I think he added something to it.

Councilmember Roberts said I requested that somehow you trigger a revisit. I do not know what that timeframe would be. But what is in my mind is probably more frequently than what most people are thinking they would revisit it because if it becomes a problem, it needs to stop really fast.

Councilmember Stirling said I will amend the motion to revisit in 6 months.

2nd by Councilmember Roberts.

Mayor Peterson said are there any further questions from Council?

Councilmember Sheltman said I am the one who has been talking about enforcement and all that over the last year when it comes to bed and breakfasts. I do not know how you are going to enforce 25%. I do not see that as durable. And I do not see how you can have a bed and breakfast in a home occupation with this stipulation in place as far as description. At some point, we are going to have a bed and breakfast ordinance and maybe it can be readdressed at that point. Saying you are going to cut off that much of the house, who is even going to know that?

Brian Hansen said I only expect them to be there about 25% of the time.

Councilmember Sheltman said in some of the bed and breakfasts that I have stayed in, you were able to go through the entire house. You could go wherever you wanted. There were not any meals, but there was coffee and soft drinks available to you day and night. Pretty much the entire floor was open. Unless each room you have in your house has an entry way in and out, you really will not be able to control that. This is stuff that we have been working with on the ordinance that we are setting up. You will not have this problem because it will not be 25%. I just do not see how it works under the description that we have here. I do not see that it is feasible with that particular description for home occupation.

Mayor Peterson said there is a motion and a second.

Mayor Peterson said the motion is to approve it subject to 25% of the home including a map, the Planning Commission conditions, documentation to the Town on who is staying in advance of their stay and that it will be revisited in 6 months.

Mayor Peterson said that is the motion and second that we have. Is everyone in agreement on that?

Motion did not pass in a Roll Call Vote.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
MAYOR: WAYNE PETERSON		x		
COUNCILMEMBER: ALAN ROBERTS	x			
COUNCILMEMBER: DANIELLE STIRLING	x			
COUNCILMEMBER: ELLIOTT SHELTMAN		x		
COUNCILMEMBER: NATE BLAKE				x

Mayor Peterson said it is not approved.

c. Discussion and possible action on Change Order for Main Street Curb & Gutter Project

Mayor Peterson said we have Josh Nowell from Ensign Engineering here. Josh, can you present why we are seeing this particular change order at this point in time and what it represents.

Josh Nowell said I am here tonight because of the change order that was submitted by Interstate Rock for a balance of \$3,597.76. Remember all the way back to February, I think it was, the 27th of February, I am not sure of the specific date, during that Town Council meeting there were 3 change orders presented for

various items pertaining to a valve can that needed adjusting that was not in the original scope; some asphalt at the south portion of the project; and a block wall. At that time, there had been 2 pay requests submitted by Interstate Rock and they were still waiting for the first payment from the Town. That was paid and then the second pay request came in. These change orders were a part of the second pay request. About a week and a half later, maybe 2 weeks, they submitted their final pay request. In that, there was an additional \$3,597.76 which was due for the asphalt installed at north part of the project which was also an additional cost to finish that portion of the asphalt. There were some issues getting this resolved. The Mayor and I met with Interstate Rock 2 weeks ago and this is the conclusion that we came to. They wanted me to present it to Town Council. For the north portion of the asphalt from essentially where the road bends and starts to cutback at the old house there, from there to the north to where the project stops, somewhere around 1,500 feet.

Councilmember Roberts said it seems a little vague to me. It says most of the total amount - \$3,597.76 - comes from the extra width of the asphalt. If most of it comes from there, where does the rest of it come from?

Josh Nowell said that is an interesting sentence. I do not know why they did not put all of it. It should say that.

Mayor Peterson said I believe from the meeting that we had here on October 17th, or shortly before that, they indicated that there were very minor credits to the Town with regard to reduced square footage on curb and sidewalk, I believe.

Councilmember Stirling said it says we have been unable to get a survey on the asphalt quantities and we have not been able to get an itemized breakdown on allocated funds that they have been paid. I wonder if that includes the most of it. At this point, they have not been able to get this. Did they receive that?

Josh Nowell said they sent us their entire breakdown of the project. They sent over all of their itemized pay requests and I have everything up to date with regard to everything they have done and completed.

Mayor Peterson said just to mention, and I realize we are going back quite a way, the Town had already paid \$155,112.45 to them at the time we did those 3 change orders for the block wall, the can and extra drive approaches. The balance due, that we understood, at that time was \$14,710.23. One of the complicating things with going back and re-measuring this as everyone is aware, we had the summer project done by UDOT and that has now covered all of the asphalt that was laid as part of the curb and gutter. There is no way to go back other than rip up very carefully the top layer of asphalt to try to see where things were before.

Mayor Peterson said are there any other questions from Council? Does anyone want to make a motion at this point regarding this final change order that has been submitted?

Councilmember Stirling said with all of your information, this is the correct amount that you see that they deserve?

Josh Nowell said according to that, yes.

Councilmember Stirling said do you have questions on it?

Josh Nowell said I have yet to see their construction staking. In the process of this, Ensign Engineering offered a line item in the bid for survey, construction staking. Not one of the contractors wanted to do that. What happened was we released our CAD files to them. The contract that we have basically gives them the information according to what we designed, and whether they built that specifically to that, I cannot say because we do not have the construction staking. I cannot 100% verify that it is 100%. We knew in the beginning there was going to be changes because of widths that were unknown, even down here in the south portion, there were areas where we needed to cutback. There were some unknowns. That is where we are at this point. I am not disputing the amount of asphalt that they used. There is no way to verify exactly what the quantity measurement unit was. What we can measure is what we can see.

Councilmember Stirling said is there anything you would be able to ask them that would make you feel more confident with this much money?

Josh Nowell said no other than taking their word for it. The road looks really nice in my opinion. I think they did a great job.

Councilmember Stirling said UDOT or them?

Josh Nowell said both. They have a unique way of doing things. During our discussion, I think we all came to a conclusion that everybody probably could have done better on their part.

Councilmember Stirling said you guys already had a meeting?

Mayor Peterson said I met with Josh. I sent an email when they came to me directly, they had been dealing with Josh previously about it when they were back and forth on measurements. I shared with him the minutes from the February 27th meeting related to the change orders. I shared with him the letter that was sent to them saying please find the final payment in the amount of \$14,710 that in combination with our previous payments the contract price and change orders would be payment in full. I did include in that a phone conversation that I had last week with Josh Nowell of Ensign Engineering that it was my understanding you are in agreement that this payment resolves all financial issues related to the Main Street project in Leeds. They subsequently came back adding to their original request after the change orders had been approved by the Town with regard to this extra square footage.

Councilmember Roberts said there were 2 other change orders that were approved and 1 was denied.

Mayor Peterson said actually I believe there were 4 change orders. Three were approved and one was denied. One was for the brick wall, one was for the extra square footage now being referred to as the south end and a utility can relocation and then there were a couple extra drive approaches where we had lots that had not been initially indicated for a drive approach.

Councilmember Roberts said there were 4 change orders?

Mayor Peterson said yes.

Councilmember Roberts said I am looking at Change Order #4. This is what they are asking for. They want us to approve Change Order #4 after the fact.

Mayor Peterson said yes. The brick wall, they were requesting stairs originally and we rejected the stairs.

We approved the brick wall, but no stairs. That was the rejection, but it was part of an approved brick wall. The brick wall was done in advance. The other 2 were done after the work was done.

Councilmember Roberts said I will repeat my statement from back in February. This is going backwards. We are going backwards on change orders. I see a lot of change orders and they are always done ahead of time. They do not do them unless they are approved. You do not do them because you do not know if you are going to get paid for them or not without being approved.

Mayor Peterson said Josh you can confirm or deny, but I made it clear to them that we have done other projects. We have had to have special Council meetings in order to approve a change order because you do not want them to sit and wait for 2 weeks for the next Town Council meeting, but we have held after 24 hours in advance a meeting just to discuss a change order and then move on to adjourn the meeting. That was the only purpose of it. Here, quite frankly, it is an amount of money if we decide to pursue it, it is a game of chicken. It will be who will spend more on legal fees than the actual amount of money involved here. That bothers me, and I do not like playing games of chicken nor do I like people trying to play games of chicken with me.

Councilmember Roberts said it is not the money, it is following the process properly.

Councilmember Stirling said what was most of the \$3,597 coming from. What is your interpretation of the other part of the most?

Mayor Peterson said it indicated, I believe, it was a little more, but then I believe there were certain things that were slightly less and they were saying we did not install as much lineal footage of curb and we did not install as much square footage of sidewalk, it might have been and, therefore, that netted out to this number. They were saying there were other adjustments in our favor.

Councilmember Roberts said the change order, itself, designates asphalt.

Josh Nowell said correct.

Councilmember Roberts said it is the letter that goes along with it that gives it a question mark when it says most.

Mayor Peterson said is there anyone who would like to make a motion regarding what we are calling Change Order #4?

Councilmember Stirling said if we do not then it goes to litigation.

Mayor Peterson said it will probably go to arbitration. If we do not agree on arbitration, then it would go to litigation.

Councilmember Sheltman said we do not have any measurements as far as anything they have to show this dollar amount?

Josh Nowell said they sent over some ... on the south end they took out some equipment and measured the areas which verified. On the north end, they sent over hand sketched pole measurements equal to the amount they are asking for.

Councilmember Sheltman said when was that?

Josh Nowell said probably in August.

Mayor Peterson said it was in August when I sent the email to them with the minutes from the February meeting with respect to it because they sent me an email saying there was a dispute.

Councilmember Sheltman said when was this completed?

Mayor Peterson said this was completed around November when they actually completed the work. It was not done over the winter.

Councilmember Roberts said I would request better clarification before I would be in favor of making that motion.

Councilmember Stirling said the grant money that we would be able to use is no longer available?

Mayor Peterson said I believe that is accurate because we did get from UDOT the sidewalk money in total.

Councilmember Stirling said it says the Town will be giving back \$1,849.56, so if there is any money left over, you give that money back to the funding agency?

Josh Nowell said I do not know if that money was released to the Town and then given back.

Councilmember Stirling said how do we know if the grant money got returned.

Josh Nowell said we will have to check the Town's accounting.

Councilmember Stirling said is the grant closed?

Mayor Peterson said the grant is closed.

Councilmember Stirling said I agree with Alan. I would like more clarification as well.

Mayor Peterson said there is one more alternative. I am fine with requesting more information, but we could also offer to say we could get approval to pay one-third of it. There were 3 parties involved here with regard to the change orders being backwards. I think we are only the party of the fact that the asphalt was installed on our property, not that we misled them in anyway. Either way, it is just a question of how long we want to keep working on this. It is certainly no problem to get more information about how the actual accounting worked with regard to the UDOT money. If desired, we could table this and bring it back at the November meeting.

Councilmember Sheltman said I think it would be better to make an offer. Like you said, we hired everybody, but we are not totally responsible for all of this. I am guessing they are not expecting to get it all. They might take a partial amount. At least we can make the offer. I remember their bid was incredibly low compared to everyone else, but that is no reason to pay the extra money. And it has been quite a while since the project was completed.

Councilmember Roberts said it surprises me to see a change order this late.

Mayor Peterson said one-third of it would be \$1,199.26.

Councilmember Sheltman said I would use the argument that ... it appears we do not have a lot on paper as far as the extra asphalt usage, and then again, the amount of time it has been for a change order. As Alan said, that is normally before they do it, not after. I think we have a good case to say we really worked with everybody here and this is what we are willing to do.

Mayor Peterson said is a third what you were thinking?

Councilmember Sheltman said actually I was thinking less, but okay.

Mayor Peterson said I will put it this way. Is there anyone who would like to make a motion to approve partially the change order request in the amount of \$1,199.26 representing one-third of the requested additional funds, and this is subject to agreement from the other parties that there are no other financial obligations from the Town of Leeds related to this project?

Councilmember Sheltman made a motion as stated above. 2nd by Councilmember Roberts. Motion passed in a Roll Call Vote.

ROLL CALL VOTE:

	Yea	Nay	Abstain	Absent
MAYOR: WAYNE PETERSON	x	_____	_____	_____
COUNCILMEMBER: ALAN ROBERTS	x	_____	_____	_____
COUNCILMEMBER: DANIELLE STIRLING	x	_____	_____	_____
COUNCILMEMBER: ELLIOTT SHELTMAN	x	_____	_____	_____
COUNCILMEMBER: NATE BLAKE	_____	_____	_____	x

Mayor Peterson said Josh, will you notify them or should I do it?

Josh said you can.

9. Discussion Items:

a. Additional information received from Dixie National Forest regarding Silver Reef Museum property

Mayor Peterson said I requested additional information, my recollection from checking back was Dixie National Forest indicated they would check into Yant Flats signage and gate notification regarding Oak Grove. I made a couple requests on that, but I have not heard back from them. Is there anything from Council that you see I might have overlooked with regard to the National Forest?

Councilmembers said no

b. Additional information received from Washington County regarding Silver Reef Museum property

Mayor Peterson said we did submit a GRAMA request following our last meeting as our attorney had indicated would be doable. At this point, we did get back an Ordinance No. 2002-820-0 from the County which is just an ordinance establishing historic preservation advisory committees regarding Silver Reef area and Pine Valley area and then, separately, a Resolution No. R-2002-830 which appointed members of the Silver Reef historic advisory committee. In their cover email that was forwarded to everyone on Council, they mentioned that the zoning and other documents were elsewhere in the County and that they would be responding separately, but they did not have any of that information yet. So that is the additional information that has been received. Is there any discussion from Council about this topic?

Councilmember Stirling said the only thing that I found is in 1961 there was actually, in a book about the 3 towns, and only in 1961, did it show that there were 2 homes that were strictly residential. That is the only thing I could find about zoning in general.

10. Citizen Comments:

Alan Cohn said this is relevant to the whole B&B thing. I guess my question and understanding is why is the Planning Commission and Town Council even entertaining applications at this point? It puts an undue burden on people applying and the Council trying to figure out the current verbiage. Until there is an ordinance that clearly says, that makes it easier on you guys, why don't you just have a moratorium on that until you have a document that clearly states it.

Mayor Peterson said I can share one thing that I heard repeatedly at trainings offered by the Utah League of Cities & Towns and that is the courts have ruled very quickly when there is a moratorium in place that in the court's opinion there has been sufficient time for the issue to be resolved and they step in and impose their conditions on the community that imposed the moratorium. It is generally cautioned because there is precedent where courts have looked at moratoriums very unfavorably towards towns where they decide what is a reasonable amount of time.

Alan Kohn said even if there is a reason for the moratorium so you can get a clearer set of ordinances. Just what went on trying to dissect that verbiage was a nightmare for you and I am sure a nightmare for them. You have to bring an ordinance to the table faster or

Mayor Peterson said my recollection is when they said you might try a moratorium would be is something happened to a portion of your water supply and as a result you could not be providing the safe drinking water for people. That was the kind of situation where they said a moratorium would make sense, but generally they did indicate that just because we are trying to sort something out, it was an inappropriate use of a moratorium.

Councilmember Roberts said you have to be very cautious with a moratorium because they will get challenged if you do not aggressively try to mitigate whatever perpetuated the moratorium to begin with. It will get challenged. Someone will challenge it. The Town has the ability right now because the applicant came so there is an ability there, but as a Council, we want to make those ordinances better than what they are. So far that has been 2 years. A court would challenge that in a heartbeat.

Scott Messel said anything over 6 months.

Councilmember Stirling said I think you can do a moratorium under 6 months.

Scott Messel said you can, but they can be challenged.

Councilmember Stirling said I take this book which is our ordinances very seriously, In reading and trying to do the research, especially with our Planner, basically it says if you have a conditional use, you have to make conditions on it or you say yes to it and that was the biggest reason I thought we need to abide by the laws. We need to abide by this book whether we have feelings about it or not. If a conditional use is pre-approved in the ordinance, I do not feel like it is fair to allow someone to come in and have to deal with what the applicant has dealt with. At this point, we need to do a moratorium even if it is for 5 months just so we have more input from everyone in general so if someone does come back for a bed and breakfast, they know what the conditions are going to be or if it is in its own ordinance. Would you need that as an agenda item?

Mayor Peterson said it would need to be an agenda item. An alternative to a moratorium which I still have concerns because of the ability to challenge it, would be to modify our Home Business Occupation to remove bed and breakfast, but I would suggest we need to add under a specific prohibited use, short-term rentals where we have nothing to point out to say what is actually permitted in regard to it. We are basically silent when it comes to that. And the courts have also ruled that if you have a list of permitted uses and conditional uses, you are not allowed to say our ordinances have this wording in them and we need to update them once we get the general plan updated. We need to eliminate it because it says any other use is prohibited and the court says you cannot do it that way. You have to specify what it is you are prohibiting. The problem I see going that route is, say we are going to prohibit short-term rentals, I do not think we can think of all the things we want to prohibit.

Councilmember Stirling said at this point we do not even have a definition of bed and breakfast. I do not even know why we have it in there. It is not fair. It is not fair to an applicant and it is not fair to the people having to deal with it. Who is actually going to go to court and say they are not going to allow bed and breakfast and we just turned one down and it was actually a conditional use? I think it would be a lot easier for everyone involved for us to be able to define what it is, so someone does not have to go through what everyone has had to go through. If we could have that on an agenda where we have a moratorium for 5 months, I think it would give us a deadline to actually get the bed and breakfast or short-term rental done.

Mayor Peterson said I will ask our attorney about that and look to move it forward in November.

Darryl Lewis said I hear again from the Commission that we are supposed to or be required to approve conditional uses. Our ordinances and I quote ... he read excerpts on definitions. This is our law. The second point I would like to make is there was a lot of discussion on the issue about the easement, and yet, as I listened to the whole thing, easement to me is utility and motor vehicle and personal access to a property. That is what an easement, in my judgment, actually is. If you look at 7.9.1, you will see a whole list of criteria that is supposed to be discussed in the conditional use. He read an excerpt ... None of this was discussed by the Planning Commission and none has been discussed now. As a citizen of this Town, I expect, maybe incorrectly, but I expect the Planning Commission and the Town Council to go by our ordinances or change the ordinances.

Councilmember Stirling said can we have the Planner read what you read from the State? And when did this get adopted by the State?

Scott Messel said the Town cannot have ordinances that do not comply with State Code. I am not saying whether or not our Code does. He read an excerpt from State Code.

Councilmember Stirling said when I went to training, they said if you have a conditional use in your Land Use Authority book, you must approve it with conditions and that is what the State is ...

Darryl Lewis said you need to change the law or abide by it. Our law is law. Change it or abide by it.

Mayor Peterson said it is just being suggested that we update our ordinance to reflect the new State Code, but there is no conflict.

Councilmember Stirling said I agree.

11. Staff Reports:

Councilmember Stirling said I am wondering if we could do some type of plaque in honor of Darrell Nelson for all of the work he has done for the last 20 years in our Town.

Mayor Peterson said we did send flowers to Mrs. Nelson on behalf of the Town. I will certainly look into what else we can do. We will give some thought to it. If you have any specific ideas, please let me know.

Mayor Peterson said BLM law enforcement ... I heard from Keith Rigtrup ,who is the Field Manager for the St George office, and I visited with a Special Agent and a BLM Law Enforcement Agent and a Lieutenant from the Sherriff's Department. They are very much focused on the rock activity being removed from down by Hidden Valley and brought up, in some cases the equipment, through Silver Reef Road. They have begun administrative action against the company that is doing it. The company is continuing their activities. After 30 days, they can move to civil action which is to get an injunction which does not happen necessarily immediately. After they get an injunction, then they can take federal criminal action for the activity. The only thing I was able to think of and started looking into would be we need to have an engineering study to support this, but to come up with a gross vehicle weight that could be on Silver Reef Road. If we had an engineering study that supported it, it would apply to all vehicles over that except for road maintenance vehicles, but otherwise it would apply to all vehicles going up there. I am not sure it can be done if it is the only access to an area or not. There would be a lot more to check into, but I think for the sake of our roads, it might be worth spending \$1,000 or so dollars to get an opinion from an engineer with respect to whether we have something that could be done on restricting the weight of vehicles on the road. I think there could be many of thousands of dollars of damage that could be done. Would Council like for me to look into this?

Councilmembers said yes.

Mayor Peterson said we will be going over our 2020 meeting calendar. We need to approve that by resolution before year's end. While getting it ready, it became obvious that we have a situation in that we as a Town observe Columbus Day as a holiday. We do not officially observe Veteran's Day. I think this is wrong. I would like to get Council's read if the proposed 2020 calendar has Veteran's Day as a holiday and not Columbus Day. It would keep the same number of holidays in the Town. November 11th would be a normal meeting night. Since we do need to meet at least once a month, I would propose we meet on November 18th. If you have any thoughts on this, please let me know. Also, July 3rd is the technical

holiday when July 4th falls on a Saturday. July 5th is the holiday when July 4th falls on a Sunday. This is why we show July 3rd as a holiday.

12. Closed Meeting: None

13. Adjournment:

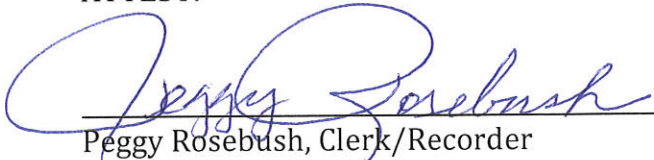
Meeting was adjourned at 9:03 PM.

APPROVED ON THIS 13th DAY OF November, 2019



Mayor, Wayne Peterson

ATTEST:



Peggy Rosebush, Clerk/Recorder