

**Interlaken Town Council Executive Session Agenda
Wednesday, 15 November 2017, 7:30 PM – 9:45 PM
Town Pump House, 236 Luzern Rd., Midway, UT**

1. Call to Order.

Mayor Simpkins called the meeting to order at 7:30pm.

2. Roll Call – Members Present:

Lisa Simpkins, Mayor
Chuck O’Nan, Council Member
Greg Harrigan, Council Member
Sue O’Nan, Council Member, arrived at 8:00pm
Scott Neuner, Council Member, was absent

Bart Smith, Town Clerk
Susanna Littell, Planning Commission Member
Elizabeth Hora-Cook, Planning Commission Member

3. Approval of Agenda or Changes.

Motion: Council Member Harrigan moved to approve the agenda as amended.

Second: Council Member Chuck O’Nan seconded the motion.

Discussion: no discussion

Vote: The motion was approved with the Council Members unanimously voting Aye.

4. Discussion of Interlaken ROW Issues– Brent Bateman from State Ombudsman Office, Town Legal Counsel Tim Bywater, Town Council, Planning Commission

Brent Bateman, the state property rights ombudsman, discussed and received questions regarding Interlaken Town’s ownership of the roads, and the 33-foot wide roadway right of way. The conversation centered on the town’s ability to exert control over activities in the ROW, including parking regulation enforcement, lot owners’ work (construction), and enforcement of the town’s ordinances related to the ROW.

Brent’s opinion was that the town has a defensible position that the ROW is 33 feet wide. He asked how close were the original plat roads to the current surveyed roads. It was noted that the dedication language is there in the original plat. If the actual roads are not the same as the original plat, we would have two types of roads – prescriptive and owned. The dedication is a transfer to the public, so the lot owners do not own the roads.

The Summit Engineering map, using the center of the road and the 33-foot ROW is very defensible – it’s publicly owned property, until the town abandons it. This all presupposes that the original plat dedication is close to what’s on the ground. The Summit survey was recorded. Although, “defensible” is solid, you can’t say that it’s absolutely sure. Individual lot owners may have a special situation. In narrower sections of the road, the ROW may be narrower. If it hasn’t been dedicated, then it’s a “road by use.” After 10 years of use, it’s a road by use according to state law, but the ROW width is not necessarily 33 feet if it wasn’t dedicated as such.

Areas of concern – the road that extends into the State Park – if it was not part of the original dedication, it cannot be a road by use, because Wasatch State Park is the sovereign. Also of concern is the road that extends into Midway by the Zenger property, by BHR.

Simpkins asked to what extent we allow lot owners to do work in the ROW. Brent noted that what they put out there is at their peril. The town has the right to tow cars parked in the public ROW. Brent noted from his experience, that if some day we decide to widen the roads, someone will fight us.

Simpkins asked what other municipalities allow in the ROW. Brent responded that very few municipalities care about what people do in the ROW is it's not a health, safety, or welfare issue. Putting foliage in an area that blocks visibility or putting something in the ROW that could cause damage if you pulled off the road are areas of concern. Harrigan mentioned Hawkins' dugout of a slope which created a steep drop next to the road as a safety hazard. Brent noted that if he's in the public ROW, the town could take action, otherwise there's nothing you can do. Harrigan noted that if he builds a guardrail in that location, the town would be okay with that.

It was decided to have the planning commission look at the ordinances and recommend to the council what lot owners should be allowed to do in the ROW, as well as continue to work on an encroachment permit.

5. Discussion of Public Hearing Schedule for Land Use and Budget Amendments– Council and Planning Commission

It was decided to hold a Land Use Hearing, Water Rate Hearing, Budget Hearing, and the regular town council meeting back to back on December 11, starting at 6:00pm. One of the issues to be addressed at the pc hearing would be the definition of a setback. The new salary for the water master was also discussed, and the council agreed it should be set at \$30,000.

6. Council Comments. None.

There was a discussion regarding the Soper application to construct an amateur radio antenna support structure. The town's legal counsel, Tim Bywater, noted that the town was not required to approve the applicant's desired configuration. The town must provide reasonable accommodation and may consider aesthetic, safety, health, and welfare concerns in its decision. The town may consider a shorter or retractable tower, or a different location, in its decision to provide reasonable accommodation. It is important that the town include a discussion of how it reached its decision, and be transparent in its process. The town is not obligated to reach a decision at the request of the applicant, and may ask the applicant for more information necessary to evaluate the application.

7. Adjournment.

Council Member Greg Harrigan moved to adjourn the meeting. Council Member Sue O'Nan seconded the motion. The motion passed unanimously. The meeting was adjourned at 9:44 PM.

The next Town Council meeting will be held on Monday, December 11th, following public hearings for land use, water rates, and a budget amendment. The hearings start at 6:00pm, at the Town Pump House, 236 Luzern Rd.