

**MINUTES  
ALTA TOWN COUNCIL MEETING  
WORK SESSION  
OCTOBER 22, 2009  
8:00 AM  
ALTA COMMUNITY CENTER  
ALTA, UTAH**

The Mayor called the meeting to order. All members of the Town Council were present.

Discussion with possible action on the following:

1. **Minutes – September 3, 2009 Work Session.** The Mayor announced that the minutes of the September 3, 2009 Town Council meeting are not quite finished. No action will be taken on these meeting minutes. The Mayor reported that once the minutes of this meeting are completed, a “draft” copy of those minutes would be posted on the Town’s web site.

2. **Minutes – September 30, 2009 -- Public Hearing.** The Mayor announced that at the September 30, 2009 meeting, the Town had a court reporter that did a word for word transcript of the meeting. It was decided that staff will put the entire transcript on its web page for people to review.

**Hearing no further comments or questions, there was a motion by Dave Richards to approve the minutes of the September 30, 2009 Town Council meeting and public hearing. There was a second by Steve Gilman and the motion was carried.**

3. **Mayor approval to remove trees infested with spruce bark beetle.** The Mayor explained that there is action item on the agenda that addresses the removal of trees infested with spruce bark beetle and if ones were found. A site tour was conducted of areas near Powder Ridge and the View with staff from DNR and members of the Town staff, Alta Ski Lifts and interested citizens. One tree near the View has been identified with a spruce bark beetle infestation. Everyone in attendance received a quick lesson on how to identify a tree that is infested with this beetle. At this point in time, the Town has no requests in front of them to remove a trees so no action needs to be taken by the Council at this time.

4. **Proposed Patsey Marley Hill Subdivision.** The Mayor announced that at the last Town Council meeting the Town Council agreed to hold another meeting on the proposed Patsey Marley Hill Subdivision application to review any additional issues on the application and to give the Estate the opportunity to keep the Town Council up to date on any matters related to its proposed application. The Mayor turned the meeting over to the Estate of JoAnne Shrontz (“the Estate”)

Alan Sullivan, a representative from the Estate, opined that the Town Council wanted to discuss the natural waterways issue in this meeting. He explained that the Estate has pictures to help focus the Council's attention on each of the natural waterways.

Mr. Sullivan stated that the Estate, at the September 30, 2009, Public Hearing, had handed out a binder; part of which summarizes the Estate's presentation on natural waterways. In Mr. Sullivan's opinion, the Town Council is being asked to make a legal determination in the sense that the Town Council's obligation is to apply the Town's ordinances on natural waterways to the facts as they appear on the ground on the Patsey Marley Hill property. Mr. Sullivan noted that the ordinances the Estate is talking about are Section 22-1-6(48) which is the definition of natural waterways and Section 22-1-6(49) which is the definition of net developable acreage. Part (C) of this ordinance states that as part of the calculation of net developable acreage, there must be a minimum of 50 feet from the high water line of any natural waterway. In Mr. Sullivan's opinion, the third ordinance that the Town Council is asked to apply is Section 22-7-8(7) titled "stream regulation". This section states that no building, structure, improvements, or appurtenances shall be constructed, raised or established to the nearest point of which is closer than 50 ft. of the nearest high water line of any natural waterway as defined in Section 22-1-6. It is Mr. Sullivan's opinion that this is the legal framework within which the Town Council should operate and the discussion should occur.

Mr. Sullivan went on to opine that the aforementioned ordinances contain specific limitations on what a natural waterway is and is not. Each term of the ordinance, in Sullivan's opinion, has to be given effect and none of them should be ignored. There are two specific examples that the Estate's is going to ask the Town Council to focus on at this meeting: 1) the requirement in the Town's ordinances that the waterways be natural. In other words, in the Estate's opinion, man made culverts, man made channels, and channels that result from human activity are not natural and therefore are not natural waterways. The word natural must be given effect; and 2) The other example is the requirement for there to be a high water line. In other words, the 50 ft. that is the relevant dimension for purposes of determining the net developable acreage has to be measured from the high water line so a natural waterway by definition has to have a high water line.

Mr. Sullivan made another observation. The Town provisions impose a significant restriction on development on private property and under Utah law, the restrictions need, in Mr. Sullivan's opinion, to be construed narrowly. Mr. Sullivan opined that the provisions must be given effect and the scope of the ordinance and the prohibition of the ordinance has to be construed narrowly. If there is a question, Mr. Sullivan believes that the Town Council should err on the side of allowing development. Mr. Sullivan noted that when the Town Council makes its determination on natural waterways, the Council needs to consider, in his opinion, the impact of the Council's decision on Patsey Marley on future development in the Town. He opined that the law has to be applied equally to everybody and should be the rule when it applies to people who develop land in the future in the Town of Alta.

Steve Gilman had questions regarding the culverts along the summer road. In Steve's opinion, the culverts were placed along the road on a random basis with probably no input from the Forest Service, the owners of the property at that time, or for that matter probably from the Town. The culverts were probably installed by the Forest Service or Alta Ski Lifts to deal with a drainage problem on the road. Steve opined that in the course of installing the culverts sometimes there were two natural waterways and rather than install two culverts, they would let the waterway run down the road and install one culvert halfway between the two. Steve asked the Estate if it had looked into any engineering solutions concerning culvert placement.

Mr. Livsey stated that the Estate has never assumed that they have had permission to redesign the road. If it could get permission, the Estate would look at this situation with the Town.

Mr. Sullivan opined that if there is a constructive way to resolve these issues short of branding what is a man made waterway and a natural waterway, the Estate would love to explore those options.

Mr. Duberow (the Estate's engineer, Stantec) referred to a map for the Town Council where the Forest Service identified the natural drainages when they were designing the roadway. The only natural drainage that the Forest Service identified was where the spring crosses the lowest leg of the Forest Service road near the Cat Shop. The Forest Service identified two drainages in this area. Mr. Duberow opined that the Forest Service did not identify any waterways crossing the roadway alignment.

Ms. Chytraus opined that the Forest Service's definition of what might be a waterway, as identified on their map, may differ from the Town's definition of a natural waterway in their ordinance. It is not necessarily the same thing.

Mr. Duberow gave his opinion of the reasoning behind how and why the Forest Service installed culverts on their roads. His observation and opinion is that the slope above the roadway results in sheet flow off the hillside and there are no defined drainage channels.

Dave Richards asked if it is the opinion of the Estate that any waterway that is altered or culverted in any way is not a natural waterway. Mr. Livsey responded, no. Mr. Livsey, using a map displayed at the meeting, opined and would agree with the Town that waterway #4 that turns into waterway #9 is a natural waterway. Mr. Livsey opined that the decision that the Town Council makes on natural waterways for the proposed Patsey Marley Hill subdivision could effect everyone else in the Town of Alta.

Paul Moxley asked Mr. Livsey about photographs sent by the Estate of the area near Powder Ridge.

Mr. Livsey opined that the Powder Ridge development was done awhile ago and maybe there is a big "who cares" factor. Mr. Livsey stated that he sat in at an Alta Planning Commission meeting months ago where the density of Powder Ridge was redefined. Mr.

Livsey has asked the Town for documents on that decision and none have come back from the Town. It is Mr. Livsey's opinion that if the drainages shown on those photos of Powder Ridge are not natural drainages then it does not matter anyway. He has not seen how the net developable acreage was done at Powder Ridge. Mr. Livsey believes that either a) drainages shown on the photos of Powder Ridge are natural drainages and that was taken into account or b) they are not natural drainages. Mr. Livsey opined that the drainages shown on those photos look a lot like the drainages found on the Patsey Marley Hill property.

Mr. Sullivan opined that the drainages on Powder Ridge look a lot like the drainages on the Patsey Marley property. He further opined that if the drainages on Powder Ridge were considered natural waterways then there would have been an impact on the determination of net developable acreage at Powder Ridge. Mr. Sullivan asked for consistency in the determination of density.

Ms. Chytraus opined that the Town, in this situation, has to apply its ordinances.

Mr. Livsey asked to look at another place in the Town where the Town applied their definition of a natural waterway. He cannot find a Town record of a determination of a natural waterway.

Paul Moxley noted that during the site visit to the Patsey Marley Hill area (September 23, 2009) features were pointed out above the road and below the road it seems obvious to Paul that there was a lot of work done in connection with the installation of the road that changes the whole topography. Paul went on to say that in the spring the Patsey Marley Hill property is a whole "river".

Mr. Livsey opined that the Estate has addressed this situation with the building pads.

Paul Moxley opined that that the Town Council members are not trained judges or engineers and the Town has an expert that has given his opinion as to the natural waterways on the Patsey Marley Hill property. The Estate has an expert that has opined differently than the Town. Paul felt it would be beneficial in this meeting for the Estate to offer up an opinion why they think the Town's expert is wrong on the subject of natural waterways very specifically.

Dave Richards commented that based on the map that the Estate laid out for the Town Council at this meeting, water has to flow up hill in order to get where the Estate drew the #10 natural waterway on this map.

Mr. Livsey explained this situation to the Town Council by referring to a photo that was shown on the screen. There was discussion between the members of the Town Council and Mr. Livsey on this particular drainage as it relates the placement of a culvert at this location.

Cliff Curry asked about natural waterways being diverted by artificial means and culverts.

Mr. Sullivan responded by opining that if water is diverted away from what was the natural waterway then it is no longer a natural waterway. The new channel that is created by the diversion is not a natural waterway because it is not natural and is a man made channel.

Mr. Gilman then commented that one of these situations has to be a waterway.

Mr. Sullivan then responded by opining that there is no water in what was previously a natural waterway.

Mr. Gilman then responded to Mr. Sullivan's comment by stating that some random person moved the waterway.

Mr. Sullivan asked why the Town would protect, as a natural waterway, a channel that was originally natural but no longer has water in it.

Mr. Gilman asked whether the Town or the Forest Service should restore the water to the natural waterway and have it be the natural waterway. Mr. Sullivan responded that the Estate is not in the business of restoring culverts.

Paul Moxley asked the Estate's view of things and applying that theory, is there is a difference between 7 and 10 lots. Mr. Sullivan stated yes.

In Mr. Livsey's opinion, the Town Council's job is to figure out what the word natural means and what a gully, stream, creek or wash is. Mr. Livsey believes it is a size difference and a seasonal issue.

Paul Moxley opined that he does not feel he can do anything other than say that he is not an engineer and not a judge. The Town's expert says "x" and the Estate's expert says "y" and Paul does not need to go back to engineering school and must rely on the Town's expert.

Mr. Sullivan commented that the Estate can point out to the Town Council where the Estate thinks the channel is not natural because it has obviously been created by a man made diversion. Unless the Town's engineer responds to this question, Mr. Sullivan opined that there is pretty compelling evidence that what we have is not a natural waterway but a man made channel and the man made channel is not designed to be protected by the ordinance.

Paul Moxley also stated that what would be useful is to understand the Estate's argument about Powder Ridge and how that applies to the Estate's situation.

Mr. Livsey opined that he is not sure whether the situation at Powder Ridge does or does not apply because the Estate has not seen how net developable acreage was determined at Powder Ridge.

Mr. Livsey offered to go through each photograph of the alleged natural waterways for the Town council. The Mayor asked if these photographs would provide anything new to the Town Council and Mr. Livsey stated that the Council has seen this information either on their site visit or information provided to them in prior presentation.

The Mayor did not think that the Council needed to look at each individual waterway again. He went on to say again that the Town Council has empowered the Town's expert, Clarence Kemp, to come up with his determination on natural waterways as it relates to the Estate's property and the Estate's expert has determined something different. Mr. Kemp then produced another document stating that he stands behind his determination on natural waterways on the Patsey Marley Hill property. The Mayor stated that he personally feels comfortable with Mr. Kemp's determination.

Mr. Livsey referred to a map in front of the Town Council. He asked the Town Council to look across the top portion of the road and look at the natural waterways numbered #1 - #8. As Mr. Livsey views the determination of Clarence Kemp, he believes the only difference between what was a natural waterway (#4, 6, and 8) and what was not a natural waterway, (numbers 3,5, and 7) is the result of road run off or road flow that was not culverted. In other words, the only difference, in Mr. Livsey's opinion, between the ones that he thinks are natural and the ones that are not natural is one has a culvert and the other has a pitch in the road.

Cliff Curry asked Mr. Livsey if waterway #2 is a natural waterway. Mr. Livsey replied that #2 is created by the Shrontz and Bourke homes' roof runoff and Jody Shrontz put a culvert in to address this situation when she built her house. The other culvert near this area was placed to address the Town's water tank overflow and both are not natural.

Mr. Livsey went on to opine that natural waterway #3 is a dip in the road according to Mr. Kemp, and #5 and #7 area also dips in the road and therefore are not natural. Natural waterways numbered 4, 6, and 8, which are culverted, are therefore natural.

John Guldner explained that he had walked the Patsey Marley site three times with Mr. Kemp, two of those times were with Matt Betts (the Estate's engineer from Stantec). In John's opinion, if Mr. Kemp was standing on the road where a culvert was located and saw a channel uphill of the culvert then Mr. Kemp called it a natural waterway. In Mr. Guldner's opinion, every single natural waterway that Mr. Kemp left in his report had an obvious channel above the road. Mr. Guldner has walked the Patsey Marley site of late and every single culvert marked by the Estate on the road with paint has water flowing into the culvert from above the road. In his opinion, the size of the flow is not a factor in determining a natural waterway.

Mr. Duberow rolled out a Salt Lake County map dated 1938 of the Forest Service Road for the Town Council to review. Mr. Duberow went over the map for the Town Council in relationship to the current structures and property lines of the Patsey Marley area. He pointed out some of the culverts that show up on this map as well. Steve Gilman noted that he does not recall ever seeing culverts that are shown on this map actually in place on the road.

Steve Gilman went on say that he has worked on the road over the years and in his opinion, the culverts were put in because there was a drainage problem, not because they were trying to continue a natural waterway. Steve believes the road was worked on extensively by the Forest Service in the mid 1980's.

Paul Moxley asked for the purpose the 1938 map. Mr. Livsey opined that it was part of the 3.5 mile extension from the bypass road to the campground loop and was part of a county project using federal and state funds. Mr. Mark Haik also opined that the minutes from the Salt Lake County Commission on the date they approved this plat clearly cite that the road was going to be built in cooperation with Bureau of Public Roads (a federal agency), the State Road Commission of Utah, and Salt Lake County.

Dave Richards asked, as the Estate reads the ordinance and state code, what is the purpose of waterway set backs; is to protect against potential loss of property or to protect against potential environmental and watershed damage.

Mr. Livsey stated that he would love to hear the Council's opinion on this matter, as they are the legislative body. Mr. Livsey does not know what the original ordinance intended to protect. If he wrote the ordinance he would want to make sure it protected homes and did not put a home where it blocks the flow of water.

Mr. Duberow brought out another map and went on to explain various topographic highlights as it relates to defined gullies and channels. Mr. Duberow opined that he would write the ordinance so it protected the streams and riparian habitats that could exist along a stream or channel. None of the areas on the Patsey Marley property are flowing streams except for the area labeled # 4 into #10 where you have a wetland and a riparian area to protect.

Ms. Chytraus opined that the Town does not have to speculate as to what the purpose was in enacting the original ordinance in order to apply the ordinance.

Mr. Sullivan commented that the ordinance does have the word "natural" in it and the word "natural" has to mean something.

Dave Richards pointed out on the Estate's map a wetland that was defined by the Estate and Stantec, and used the map to ask a question about that wetland and its shape.

Mr. Livsey opined that once you remediate, reroute, or stop water from going into the wetland, you do not get the soils that you need to get a wetland.

Ms. Chytraus asked if Mr. Livsey could identify what waterways are natural or not that flow into the jurisdictional wetlands. Mr. Livsey opined that the property has two springs; one of which starts at #4, runs down #9, and continues through what is called #12. The other is a spring that starts above a natural waterway, goes into #10, and flows through the jurisdictional wetland that stops at the road. That spring then flows through a culvert and about 10 ft. below the culvert, plants and soil typical to a wetland start appearing.

Mr. Chytraus asked Mr. Livsey to identify the numbers of the waterways that flow into the jurisdictional wetland. Mr. Livsey responded by saying that waterways #4, #9, #10 and #13 flow into the jurisdictional wetland.

Mr. Livsey referred to #6 on the screen and explained that in his opinion, #6 is the only one that gives him pause. It might or might not be gully. Mr. Livsey does not see a gully, channel, or high water mark on #6 but did admit that there would probably be flowing water in this area every time it rains or when the snow melts. Mr. Livsey stated that if the Town Council determines that something is a natural waterway, there will be a 50 ft set back from the waterway. The Estate does not want to build a house in the middle of a seasonal drainage, so they would work with the Town in moving the building pad if they had to.

Mr. Livsey then reviewed the drainage labeled #4 with the Town Council and commented that he does not see the high water mark that would qualify this as a natural waterway. Then he described the area below the culvert and noted he does not see this as a gully.

Craig Call, attorney for the Estate, opined that the Estate does not have a conclusion as to the role that the Town Council is in, but this is not a major point. The Estate appealed Mr. Kemp's decision back when the determination was made thinking that the Estate had to make sure they were hedging their bets because perhaps the Town Council was the Appeal Authority in lieu of another entity. The other approach to the Town Council's role is what the Town's counsel advised; it is the land use authority. It is not unusual at all, certainly in the appeal role that a body of layman who are not engineers be asked to apply the ordinance in this situation. There are often situations where there are two opinions from two people looking at the situation with different eyes. Mr. Call opined that there are a number of different ways to accomplish all of the goals in this process without necessarily saying that the default is that the Town Council has to apply the harsh language of the ordinance as the Council's only option.

It is the opinion of the Estate that Mr. Kemp did not look at the natural waterways in the way they should have been looked at it.

Paul Moxley asked if there are instances where the developer would indemnify the community in this sort of circumstance. Mr. Sullivan responded by saying yes, and Paul wanted to know how that was done.

Mr. Sullivan stated that the first issue is to answer the question, “indemnification as to what”.

Paul Moxley went on to say, for example, if the Estate builds houses and then the river runs through the house and knocks the house down what would happen if the property owner then sues the Town for allowing this to occur. Paul went on to opine that maybe one potential solution could be for the Estate to provide a bond for some period.

Mr. Call opined that the Estate could meet with the Town’s counsel and make sure that the Estate and the Town’s counsel have given the Town Council the best advice available on what the Town’s liabilities might be. Mr. Call went on to say that clearly in that kind of a situation, the first and primary responsibility would rely with the Estate and their engineers and experts that chose the design. He opined that the Town has the advantage of immunities.

Mr. Livsey went on to opine that the Estate solves this potential problem by altering the building pads, which the Estate has expressed their willingness to look at as an option.

Mr. Call opined that if the Town Council makes a determination in the meeting today that a channel that is a result solely of a location of a culvert across the road is a natural waterway, then the Town Council needs to be willing to apply that same test in future development. He opined that the Town Council needs to ask themselves if they made the same determination when the Powder Ridge density was changed and whether there was a determination that there was not a natural waterway in that area. He asked whether the Town Council’s ruling today is going to be consistent with the Powder Ridge ruling?

Cliff Curry opined that no one is suggesting that the mere existence of a culvert defines a natural waterway and he believes that Clarence Kemp cited that as further evidence of a location of a natural waterway in some cases and in other cases it was not.

Dave Richards wondered about the Powder Ridge argument. Dave went on to opine that doing something that is potentially wrong just because it was done in the past does not hold water. Two wrongs do not make a right.

Mr. Livsey believes that the Estate is not saying that two wrongs do not make a right but what they are saying is that the ordinance should be consistently interpreted. The Powder Ridge condos were built many years ago and therefore there might be a “so what” factor to some of this. He stated that the place where it becomes consistently interpreted is the potential bump in density which took place 6 to 8 months ago. Mr. Livsey went on to state that he has not seen the documents regarding this decision at Powder Ridge and he does not know if natural waterways were taken into account. Either Powder Ridge had sufficient density and this is a non issue, or they were not considered to be natural waterways and that acreage was not excluded.

Ms. Chytraus opined and clarified that the Town's ordinance mentions a stream, creek, gully, and wash and the continued reference to a gully is not necessarily comprehensive of what would define a natural waterway. Nor does the ordinance require a high water mark but requires a high waterline. Ms. Chytraus opined that there are a couple things that Mr. Livsey is referencing which narrow the ordinance considerably, so there are broader considerations under the Town's ordinance than Mr. Livsey's repeated references.

In Dave Richards's opinion, the issue of natural waterways is both to protect against the potential loss of property and to protect the environment. Considering both reasons, the Town Council has to side on being conservative. Dave went on to opine that if there is water in the channel, than the Town must consider it to be natural.

Katie Lewis, legal counsel for the Town, opined that another point to make in terms of the high waterline and the 50 ft set back from each, is when Mr. Kemp did his measurements, he considered the high waterline or the high water mark as the very middle of each of the waterways. Ms. Lewis went on to say this is the least restrictive towards the Estate as possible in terms of the set backs because the natural waterways are being measured from the midline of each waterway.

Cliff Curry opined that he takes the property owner's rights seriously, and that in fact the Town's ordinances need to be applied as written or narrowly. Therefore, Mr. Curry does not feel that the Town should err on the side of determining a natural waterway to be a natural waterway. The Town should not err at all and should make the best decision they can. Personally, Mr. Curry stated that he is not going to shade it towards deciding something is a natural waterway and the Council should try to make the right decision.

Onno Wieringa, General Manager of the Alta Ski Lifts, opined that when he looks at the Town's ordinance he feels that they mostly apply to the Base Facility Zone. Onno went on to say that when the Forest Service looks at the Town, they feel that there is precious little left that is natural due to mining, re-routed water, de-water areas, timber harvesting and commercial and residential development. The Forest Services looks at in a broader perspective and looks at the watershed health and at the end of the day asks, does the watershed health improve, stay the same or degrade as a result of the proposal in front of them. In Onno's opinion, maybe the Town Council needs to look at this development in this way. In his opinion the Town should look at Powder Ridge as an example of what the Town should not do. The Town Council should look at the whole Patsey Marley Hill project and ask if the watershed health is going to be as good as it is today and can the project improve or make the health of the watershed better.

Mr. Haik opined that the Council is in a position to make a decision on the natural waterways and the Council does not have to be engineers to make that decision. Mr. Haik's felt that the Council should look at the narrow questions of what the specific ordinance means; does the Town Council think improvements can legally be constructed on the Patsey Marley property and if the answer is yes, what are the problems confronting the Council and list them. Then, in Mr. Haik's opinion, the Council should ask what the

avenues under the authority and jurisdiction of the Council to assist the applicant in solving some of the problems.

Steve Gilman asked if the Estate had any further information to present to the Council at this meeting. Steve also asked if the Estate had resolved the Forest Service right of way issue, if the Estate worked with Salt Lake City Public Utilities and obtained permission to tap into the Town's culinary water system, and if the Estate received the paper work that says the flow at the Quincy Mine is legal and documented. Steve opined that he has not seen the piece of paper from the State Engineer or the Salt Lake City Public Utilities that says the proposed Patsey Marley Hill development has, for example, 10 thousand gallons of water every day for eternity. Steve went on to comment that he does not know how much water the Estate has, how the Estate is going to delivery that water to the site, and never has he seen an actual document from a governing authority that says this is how much water the Estate has and that the Quincy mine belongs on that property.

Mr. Call opined that the Estate has presented a contract between Mr. John Cahill and a group of owners and Salt Lake City which provides the Estate with interest in a flow from the Quincy Mine. Mr. Call went on to say that Mr. Gilman's question was how much of that flow can the Estate appropriate for their proposed development. He stated that the Estate has been told a number of times by Salt Lake City in the past and the Estate is trying to obtain a correct determination from the Public Utilities Department on this matter. Mr. Call made mention of a letter that was sent two to three weeks ago to Salt Lake City attorney's office asking that question and Mr. Call has been told by Rusty Vetter that the City attorney's office will be back in touch with the Estate in a couple of weeks.

Steve Gilman went on ask if the letter from Salt Lake City will tell the Town how much water the Estate has from Quincy Mine and if that water is assigned to and transferred successfully to the Estate for the development on that property.

Mr. Sullivan opined that the Estate has documentation that has been presented to the Town that the Estate does have a valid water right and that water right was transferred to Jody Shrontz. He stated that the question the Town has asked is what is Salt Lake City Public Utility Department's current view of the quantity of the entire water right that the Estate has that can be devoted to any development on the Patsey Marley Hill property. Mr. Sullivan opined that they have been told verbally in the past how much water the Estate has and the Estate is currently trying to obtain quantification. The Estate should have that number in a couple of weeks.

Mr. Gilman asked if, in this letter, the City is going to agree to let the Estate transfer that water from the Quincy Mine to the proposed Patsey Marley Hill development.

Mr. Sullivan responded that the Estate believes that transfer of water to the proposed Patsey Marley Hill development was stipulated in the original 1975 agreement.

Mr. Chytraus opined that this water contract references Cahill operating as Patsey Marley Hill Development and Salt Lake City has previously confirmed that there is a contractual right to water out of the Quincy Mine.

Mr. Livsey then referred to a memo/fax from John Guldner to Lee Kapaloski where John Guldner wrote that he got off the phone with Jeff Niermeyer (director of Salt Lake City Department of Public Utilities) and Mr. Niermeyer stated the number was 30,000 gallons of water. Mr. Livsey opined that Salt Lake City, on numerous occasions, has stated that the Estate has 33,000 gallons available for a minimum of 16 homes.

John Guldner then stated that the water is still at the Quincy Mine.

Mr. Livsey updated the Council on the application to the Forest Service for a Special Use Permit. The application has been filed with the District Ranger and is currently under review. A few people have been contacted by the Forest Service on this matter and the Forest Service seems to have accepted the application and is processing it.

The Mayor announced that Paul Moxley has asked to be excused from the meeting at this time.

Katie Lewis asked who has been contacted by the Forest Service on the application submitted by the Estate. Mr. Livsey mentioned that he had heard that a representative from the Alta Ski Lifts had been contacted and he did not know who else had been contacted.

Dave Richards asked the Town's legal counsel to explain why the Estate has indicated that they would be willing to move the building pads because of the natural waterways but the Estate is asking not to identify the natural waterways for the purpose of net developable acreage. It seems to Dave that the Town and the Estate are working under two entirely different ordinances.

Ms. Chytraus responded that the ordinance refers to the same definition of a natural waterway for two purposes: one is the calculation of net developable acreage and the second is the placement of building and structures within that 50 ft. set back.

Mr. Sullivan opined that if you make a determination that a waterway is not a natural waterway and therefore not subject to the 50ft setback, the Town still will have some flexibility requiring the Estate to take special measures to avoid any problems related to an un-natural waterway.

Steve Gilman opined that Salt Lake City has to sign off on the transfer of water from the Quincy mine to the Patsey Marley site and he is not sure that this will be addressed in the letter that the Estate is going to receive from Salt Lake City. Ms. Chytraus opined that she thinks that Salt Lake City has recognized that the contract to the water is for the benefit of the Patsey Marley property.

John Guldner stated for the record that the Town of Alta and its Planning Commission did not change or amend the density of Powder Ridge. The Town has to assume that, how ever long ago the Powder Ridge Planned Unit Development (PUD) was approved, that the people working on that project did it right. John went on to state that Powder Ridge is 8.2 to 8.3 total acres and 5.4 net developable acres. The Alta Planning Commission amended the PUD to go towards filling out density and the Planning Commission did not change or increase the density of Powder Ridge. Tom Pollard wanted to know if this was actually a recalculation of coverage. Ms. Chytraus clarified that it was a recalculation of up to what is allowed by the underlying zoning which was restricted in the original PUD. Powder Ridge did not have to recalculate net developable acreage to accomplish the amendment to their PUD 6 to 8 months ago.

Mr. Call reminded the members of the Town Council that the Estate provided them, at their September 30, 2009 presentation, with an approximate timeline on what the Estate thought would be the course of events particularly with respect to the Special Use Permit application before the Forest Service. This process could take until next year and that was one of the grounds upon which the Estate asked the Town Council to defer their decision on the ultimate approval/disapproval of the application until the Estate can cover that base.

Dave Richards went back to the fact that Alan Sullivan stated in this meeting that the Town's ordinance 22-1-6 Section 48 reads that "natural waterways are those areas varying in width along streams, creeks, gullies and washes... as determined by the building official". It goes back to the fact that the Town Council members are not engineers and should, in his opinion, rely on the building official as it states in this ordinance.

**Hearing no further comments or questions, there was a motion by Steve Gilman to adjourn the meeting. There was a second by Dave Richards and the motion was carried.**

Passed and approved this 10<sup>th</sup> day of December, 2009

---

Piper Lever / S  
Assistant Town Clerk