

**Alta Town Council
Work session
September 3, 2009
Our Lady of the Snows Center
Alta, Utah**

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

The Mayor announced that this is a work session of the Alta Town Council regarding the proposed Patsey Marley Hill subdivision application (the “application”). The Mayor emphasized that this is a public meeting, not a public hearing. The Council may have specific questions for the public or the applicant, but the Mayor asked for the public to refrain from making any comments unless the Town Council asks a person a specific question. Representative(s) from the applicant (the “Estate”) will be asked to make a comprehensive presentation at a separate time.

The Mayor announced that under Utah law the Town Council is required to hold a public hearing on the proposed Patsey Marley Hill subdivision application and will provide sufficient public notice of the time and place of that hearing. At that point, the Town will accept both written and verbal comments from members of the public.

The Mayor explained that the proposed Patsy Marley Subdivision application before the Town Council deserves to be fairly reviewed. At the meeting today the Town Council will begin the process of gaining an understanding of the information presented to the Council and how it relates to the ordinances that will govern the final decision on the proposed application. The Council needs to look at all the issues, not just a single issue. At the end of this review process, the Town Council will determine if they will accept the recommendation of the Alta Planning Commission which was denial of the proposed Patsey Marley Hill subdivision application.

Kimberly Chytraus, legal counsel for the Town of Alta, made a few comments. She reminded the Town Council that the decision they make on the proposed Patsey Marley Hill subdivision is an administrative decision and the application is entitled to approval if it complies with the ordinances and state law. She explained that there is no time period in which the Council must make a decision on this matter until the Estate requests a decision be made. Under state law, the Estate may request a decision and the Town Council then has 45 days to make a decision.

The Mayor asked if there was a process in place that allowed further information to be given to and considered by the Town Council on this matter. Ms. Chytraus explained

that the Town Council is acting as the Land Use Authority when reviewing this matter and it may accept, request, and consider additional information from the Estate.

The Mayor asked if the Council understood this process and had any questions. Paul Moxley asked about a letter written by Alan Sullivan, legal counsel for the Estate, regarding comments made by John Guldner at the last Planning Commission meeting and if that letter appeared in either binder prepared for the Council for this meeting.

Mr. Sullivan explained that the binder prepared by the Estate was simply a summary of what the Estate had given the Planning Commission and Town staff in the past. Mr. Sullivan commented that now that the Estate has been given the assurance that they will be able to make a presentation to the Town Council, the concerns expressed in the Estate's letter have been addressed.

The Mayor requested that Town staff give a brief outline as to where they believe the Town is at it relates to this process.

John Guldner explained that the application is in front of the Town Council because the Alta Planning Commission decided that they were finished with their job and forwarded on the application to the Town Council. The Planning Commission, after careful review, recommended denying the Patsey Marley subdivision application because of the number of outstanding conditions.

John gave a history of the Patsey Marley area. He explained that the area in question that was annexed to the Town of Alta in May of 1980 was comprised of 27.25 acres and was zoned FR-1, which allows one single family home per net developable acre. It was the owner's responsibility to provide sewer, water, and roads, and the area in question was not a subdivision. Also, there were no promises made by the Town of Alta as part of the Patsey Marley annexation as it relates to sewer, water, and roads. Those were to be the responsibility of the developer.

John explained that in 1999 Jody Shrontz bought 25.16 acres of the 27.25 acres and desired to put a hotel down low in the property in the vicinity of the maintenance shed. At that time the Town, Jody, and her attorneys addressed the deficiencies in her proposal and by and large they are the same deficiencies that the Town is presently dealing with. The lodge that Jody Shrontz was proposing would have required a rezoning from FR-1 to either the Base Facilities zone or some other commercial zone. The request for rezoning was never officially submitted by Jody Shrontz. The Town never reviewed any plans or made any decisions on Jody Shrontz's request for rezoning nor did they deny anything related to this request.

John went on to explain that in 2001, while working on the lodge concept, the Town sent a letter to Jody Shrontz's representative at Ray, Quinney & Nebeker, legal counsel for Ms. Shrontz, outlining the major deficiencies of the property, regardless of the type of development scenario. Included in the 11 major deficiencies were many of items being

addressed today: water, access, net developable acreage especially related to natural waterways, and vegetation especially as it relates to mature trees.

In January of 2003, Jody and her husband Duane died in a plane crash. After this tragic event, the Estate of Jody Shrontz took over the Patsey Marley property. Throughout 2007, the Estate attempted to submit incomplete subdivision applications. The Town at the same time was talking to the Estate about the deficiencies that the Town felt needed to be addressed before they could address the proposed subdivision. In a meeting held in 2007, with a representative of the Estate, the representative acknowledged the deficiencies and stated that they will be back before the Town when these deficiencies are addressed. Instead, the Estate sued the Town of Alta in January of 2008 to force the Town to review the Estate's application. As a result, the Estate obtained the right to be vested under the Town ordinances that were in place at that time and the Town promised that they would diligently review and process the application.

John explained that the Town Planning Commission had diligently reviewed the application numerous times after the lawsuit was settled in March of 2008. In November of 2008, the Planning Commission was ready to make its recommendation to the Town Council but at the Estate's request, the Planning Commission postponed its decision, giving the Estate until July of 2009. Then in December of 2008, the Planning Commission clarified their decision made in November of 2008 and stated that in July 2009 they will be making a "thumbs up or thumbs down" recommendation to the Town Council on what to do with the proposed Patsey Marley subdivision application. In July of 2009, the Alta Planning Commission noted that nothing had really changed on the check list that they had developed for the Commission's review process. No major progress had been made on the major issues identified and no "needs to be satisfied" items had been checked off on check list since November of 2008, and for that matter since 1999.

Therefore the Alta Planning Commission felt it was no longer a planning issue and forwarded the Patsey Marley subdivision application to the Town Council with a recommendation to deny based on seven reasons: 1) no culinary water to and through the Patsey Marley site, 2) no fire fighting to or through the Patsey Marley site, 3) no emergency access to or through the Patsey Marley site, 4) incorrect net developable acreage especially related to natural water ways, 5) inadequate parking plan with the parking areas shown on the map that are inaccessible at least six months out of the year, 6) inadequate identification of and preservation of natural vegetation especially mature trees, and 7) numerous plat deficiencies that the Town Building Official had pointed out in an October 2008 meeting with the Estate's representatives. As a result, the Planning Commission gave the Town Council a check list or road map outlining items that needed to be satisfied before the application could be approved.

Steve Gilman asked if there was a time limit set when the Town settled with the Estate and agreed to look at the proposed subdivision application using the "old" rules that were in effect when the Estate first applied. He also asked, that as part of this settlement, did the Town agree to provide a speedy review of the proposed subdivision application. John

stated that the Town agreed to look at application under the previous zoning ordinance regulations and all ordinances that were in place prior to the Estate bringing suit against the Town. The Town also agreed to conduct a diligent review of their application. There was no time limit laid out in the settlement agreement.

Alan Sullivan was asked to opine on this comment. Mr. Sullivan opined that the suit was filed to obtain a determination that the filing of the application vested the application for purposes of determining what law would apply to the resolution of the application. Mr. Sullivan further opined that the Town took a position that the application was not vested so the Estate filed a suit to determine that issue and suit quickly settled. With that settlement, the parties agreed that the law that was in effect in December 2007 would be the law that applied to application.

Katie Lewis, counsel for the Town, clarified that the language of the settlement agreement was that the Town would review the application diligently, expeditiously, and fairly.

The Mayor suggested that the Town Council go through the checklist that the Planning Commission used and look at every individual item. This would provide Town Council with a systematic approach to the review.

The Mayor asked all members of Town Council to refer to the July 2009 Update Review Checklist found in their binders that were provided to them by staff. (See attached Checklist dated July 2009) The Council agreed to have the Mayor read each item on the checklist and take comments and questions on each item.

Under UCA 10-9a-603 – Item #1 on page 1 – The application does not comply. The Mayor read the notes to the checklist and opined that eventually this item will be satisfied.

Item #2 on page 1 – The application does comply

Item #3 on page 1 – The application does comply

Item #4 on page 1 – The application does comply

Item #5 on page 1 – The application does not comply. The Mayor read the notes to the checklist. Charles Livsey commented that the law requires that existing rights of ways should be noted and the Estate has noted the recorded and existing rights of ways as well as prescriptive right of ways on the plat mat. He opined that the Estate has complied and that this item should be moved into the “complies” column. John stated that when the Town is done with the review of the proposed subdivision application, this item would be resolved.

UCA 10-9a-603(4) – Item #1 on page 2 – Ms. Chytraus commented that the requirements underlining all the signatures from the agencies listed in this section are found elsewhere in this checklist.

The Mayor announced that the next Section of the checklist reviews whether the proposed Patsey Marley Hill subdivision application conforms to the Zoning Ordinances of the Town of Alta.

Item #2 on page 2 – The application does comply

Item #3 on page 2 – The application does comply

Item #1 on page 3 – The application does not comply. The Mayor read the notes to the checklist. The Mayor brought to the attention of the Council that the original proposal from the Estate was a 10-lot subdivision. The Town has received a second proposal from the Estate that recognizes a 7- lot subdivision. The Mayor felt that depending on decisions made down the road on the application, like natural waterways and vegetation, the number of lots may vary.

Alan Sullivan opined that the decision of the Town’s Building Official on natural waterways was received by the Estate a few days prior to the July Planning Commission meeting. It was different from the preliminary decision made by the Building Official on natural waterways. Mr. Sullivan stated that the 10-lot subdivision proposal was based on what the Estate believed to be the determination of natural waterways (the preliminary decision) and then right before the July Planning Commission meeting the Estate received the second determination from the Town’s Building Official. Mr. Sullivan explained that the Estate then did two things. First the Estate appealed the decision of the Building Official’s determination of natural waterways and second, the Estate put together a 7-lot configuration. Mr. Sullivan went on to say, that if the Town Council agrees with the second opinion of the Building Official, then the seven 7- lot subdivision does comply.

Mr. Sullivan asked the Town Council to make a decision early on in their proceeding on the issue of natural waterways because the Council’s decision will affect whether the subdivision is 10, 8, or 7 etc. lot subdivision.

The Mayor asked the Town’s legal counsel whether the Estate’s appeal of that natural waterways decision by the Building Official should be part of the Town Council’s thought process at this point in time. Kimberly Chytraus, legal counsel for the Town, commented that counsel is drafting a response to the Estate’s appeal to the Building Official’s decision on natural waterways. The response mirrors the counsel’s response to the Estate’s original appeal to the original determination that the Estate’s appeal is inappropriate and premature. The Building Official is not the Land Use Authority under LUDMA. The Town Council is the Land Use Authority. The Town Council will have to make the final decision on whether they agree and accept the Building Official’s determination of natural waterways. Ms. Chytraus noted that Mr. Sullivan appealed the decision to the Town Council as the appeal authority. Ms. Chytraus explained that the Town Council, in this situation, is not the Appeal Authority; the Estate should appeal a decision by the Land Use Authority to District Court. She advised that the Town Council make natural waterways part of their discussion as they go through this process.

The Town Council felt that a site visit would be helpful.

John Guldner felt that the issue of natural waterways does need to be addressed. John explained that Clarence Kemp, the Town's Building Official, a representative from Stantec (the engineer for the Estate) and John walked the Patsey Marley site in October of 2008. After the Planning Commission meeting in November of 2008, the Planning Commission decided that there should be a spring on-site visit with the same people to determine natural waterways. That second visit took place in July of 2009 and the engineer for Stantec was called and participated in this second visit of the site. Clarence Kemp, the Town's Building Official, walked the site two more times with the Estate's engineer. John opined that Mr. Kemp's decision was made after careful review and many on site visits to the Patsey Marley site.

Dave Richards asked if it is the opinion of the Estate that under the Estate's proposal for a 7-lot subdivision, the net developable acreage issue as it relates to natural waterways is resolved. Mr. Livsey opined that assuming the Mr. Kemp's determination is accepted, then there are 8.3 net developable acres but because the way the road dissects the property, the result would be a 7- lot subdivision.

Item #2 on page 3: The application does comply.

Item #3 on page 3: The application does comply.

Item #4 on page 3: The application does comply.

Item #5 on page 3: The application does not comply. The Mayor read the notes on the checklist. The Mayor opined that this issue could be solved by the approval of a culinary water system. John added that there is a section of the sewer line that needs to be "sized up" from the Ski Lift maintenance shop to the ticket sales building. The sewer line is too small for the Cottonwood Improvement District to except as a main line.

Item #1 on page 4: The application does comply.

Item #2 on page 4: The Planning Commission will make this decision. In order to remove any mature trees from a possible lot, the Estate would have to request permission from the Mayor to remove vegetation; more specifically on Lot 2 to accommodate its preferred plan. Charles Livsey requested that the Council walk the proposed Lot 2 to see what the Estate has planned. Mr. Livsey felt that there is a Town "program" in place that provides the following: if a tree is taken down then three or more trees are replanted.

Item #3 on page 4: The Planning Commission will make this decision. The Estate must provide a minimum of two parking spaces for each lot. The Estate submitted a proposal for potential parking solutions.

Item #4 on page 4: The application does comply. (see notes)

Item #5 on page 4: The application does not comply. The Mayor read the notes into the record. The Town believes that this requirement has not been met unless off street parking spaces are accessible year round or the Estate provides an alternative winter parking plan in accordance with Town Ord. 22-11-5. Dave Richards asked if the Estate agreed or disagreed that the Town ordinance requires the construction of off site parking.

Charles Livsey opined that the Town ordinance states the parking spaces must be on the lot and he cannot find in the Town ordinances where it states that additional parking must be provided off site.

Katie Lewis clarified that in Section 22-7-8 it does state that the Planning Commission “shall determine the number of parking spaces required however the minimum requirement in Chapter 11 of this Title shall be satisfied.” Ms. Lewis explained that in Chapter 11 of the Town ordinances, which is the entire parking ordinance, it states that not only should two parking spots be provided for each dwelling unit but they shall be off-street parking spaces and there shall be adequate egress and egress to required spaces for all uses as well as orderly and safe circulation for public service and emergency vehicle use. The parking regulations also require pedestrian access to and from the parking area.

Item #4 on page 4: Application does comply.

Item #5 on page 4: Application does comply.

Item #1 on page 5: Application does not comply. The Mayor read the notes into the record. Kimberly Chytraus explained that a meeting with the Unified Fire Authority (UFA), Town staff and the Estate is being set up to go over what UFA will require of the Estate. Charles Livsey opined that the Town and UFA have some discretion and flexibility in the requirement of side hill cuts and grade of the access roads and asked for the Town Council’s guidance on these issues.

Item #2 on page 5: Application does comply. The Mayor read the notes into the record on this item as it relates to the ownership of the Albion Basin Road.

Item #3 on page 5: The Mayor read each section under this item on checklist

(a) Application does comply.

(b) The item found on page 6 has a note that reads that soil suitability studies were submitted to the Town for its review and comment.

(c) Application does not comply. The Mayor explained that this goes back to the June 16, 2009 report completed by Clarence Kemp, the Town’s Building Official. The Mayor referred to the note on the checklist for this item.

(d) Application does not comply. The Mayor read the notes into the record.

Katie Lewis explained that there were two pages missing from the checklist found in the Council’s binders. Ms. Lewis went on to explain that when the Council gets to the end of page 7 they can look at the actual ordinance, which is Town Ordinance 2002-O-4.

Item #1 on page 7: Application does not comply. The Mayor read the requirement as found on the checklist as it relates to water and sewer requirements. The Mayor clarified that the Estate will not be installing septic tanks but proposes to have piped sewer and water.

Item #2 on page 7: This item refers to Town Ordinance 2002-O-4: Each real property development proposal must have evidence of approval from nine agencies prior to Planning Commission review:

The Mayor read Ordinance 2002-O-4 in its entirety for the public in attendance. A copy of this ordinance is attached to the record of this meeting (see attached Ordinance 2002-O-4).

Kimberly Chytraus suggested that she read into the record the departments in which the Town has approvals from on the Estate's application. The Mayor agreed to this procedure.

Approvals have been received from the following agencies:

- 1) Salt Lake County Service Area #3: The Service Area has given approval but has noted in its approval that the Town will have to give approval for the sanitary sewer. The Town has declined to give approval until there is water to actually serve the sewer system. Ms. Chytraus explained that the approvals on some of these requirements were obtained prior to the Planning Commission recommendation to the Town Council.
- 2) Cottonwood Improvement District: the District's approval stated that Town approval would be required in addition to the District's approval.
- 3) Utah Department of Transportation: The Town staff and Town Planning Commission recommended that the Estate does not need approval from UDOT because the Patsey Marley area is not served by a UDOT road. UDOT does not claim jurisdiction over the Albion Basin Road.
- 4) U.S. Army Corp of Engineers: The Estate has submitted information that the plat did not contemplate the disturbance of jurisdictional wetlands on the property. Therefore the Corp of Engineers would not be required to give any kind of approval.
- 5) Alta Marshal's Office: The Marshal's Office has reviewed some plat notes regarding avalanche and interlodge procedures and the Marshal's Office agreed that this requirement can be handled by these plat notes. The Estate will include these notes as part of their draft CC&R's.

Ms. Chytraus then outlined the outstanding agencies.

- 1) UFA
- 2) The Salt Lake City Department of Public Utilities – Water Division: The Estate has sought the Division's approval several times and the City has declined to give that approval.
- 3) Salt Lake Valley Health Department/Division of Water Quality
- 4) Salt Lake Valley Health Department/Environmental Health Division

Paul Moxley inquired to what extent did the Planning Commission deny the application because of timeliness.

Charles Livsey opined that Ordinance 2002-O-4 is a prerequisite before Planning Commission review. Because of the way the application was submitted and the review process took place, Livsey felt that the Ordinance is not necessarily irrelevant but thinks the timing issue is more of a red heron than an actual issue.

Kimberly commented that under normal circumstances, these outside agency approvals were all required when the Estate first submitted their application. As part of the settlement agreement, the Town agreed to allow them to vest and forward the application to the Planning Commission. So normally this would have happened before it went to the Planning Commission but under the settlement agreement, the application was be forwarded to the Commission without the outside agency approvals. The Planning Commission did not address the issue of timing in the ordinance.

John Guldner commented that the Planning Commission recommended to deny the application because of the outstanding issues.

Dave Richards asked if the Estate considered its application to be compliant and complete when it was submitted in July of 2007.

Mr. Sullivan opined that he felt the application was complete for purposes of vesting. The Estate realized that there were a number of issues that needed to be worked out during the subdivision review process and some of the issues were addressed during the Planning Commission review process. The issue of water and the delivery system is work in progress. The Estate has been working through the alternatives and Mr. Livsey feels that the situation is a chicken and egg problem. The Estate has been told by the Forest Service that before obtaining a Special Use Permit which would enable the Estate to build a private water system, the Estate had to exhaust all the other alternatives before going over Forest Service land. The most obvious of those alternatives was to hook on to the Town's water system. That alternative was rejected by Salt Lake City Public Utilities. The Estate also suggested that they occupy some of the excess capacity in the Town's water system and change the point source from the Quincy mine, where in the Estate opinion it does have a perfectly adequate supply of clean water, to the Bay City mine. That alternative was also rejected. The Estate then proposed drilling a well on the Patsy Marley property and the Estate was told they could not drill wells and were told to look into developing springs. The Estate followed through with the concept of developing the three springs on the property, one of which has historically be used for a source of water for some homes in the Grizzly Gulch area. The Estate was told by Salt Lake City before the last Planning Commission meeting, that the springs would not be acceptable. The only acceptable way for the Estate to solve the water transportation delivery problem is to build a private water system. Mr. Sullivan went on to say that the Estate is in front of two agencies of government to get approval for a private water system. The first is the State of Utah Division of Drinking Water (DDW). The Estate

has submitted an application to the DDW and the application is pending. The other agency is the Forest Service for a Special Use Permit. There is a short span of land on the way up to Patsey Marley from the Quincy Mine that crosses the Forest Service land.

Charles Livsey gave a brief history of the circumstances surrounding the donation of the land to the Forest Service. Quincy Mine is surrounded by surface estate which was donated back to the Federal government. The mineral estate is still in private ownership. Mr. Livsey explained that because the Estate will disturb the surface estate with its proposed water delivery system, the Estate needs permission from the Forest Service to do so. The quickest way to Patsey Marley for the water delivery system is straight up to Highway 210. The Estate is working with the Alta Ski Lift Company to find a path which will have the least amount impact on the operation of the Ski Lifts. Once both parties agree on that path, the Estate will submit their application to the Forest Service.

Mr. Livsey went on to say that the State of Utah is encouraging the Estate to consider a loop system through the Town's water system which in Mr. Livsey's opinion is a benefit to the Town. What that means for the Estate is that the private water system would go along the transfer tow instead of going straight up to HWY 210.

Mr. Livsey also commented that they will put forth several options to the Forest Service. The Forest Service will make their decision based on many considerations. Livsey went on to say that before the Estate can submit an application to the Forest Service the Estate had to be rejected on all the other alternatives.

The Mayor asked if the concept of looping the water systems would be contrary to the fact that Salt Lake City has denied the Estate the right to wheel water through the Town's system. In Mr. Livsey's opinion, the Town would have to obtain permission from Salt Lake City to proceed in this manner.

Mr. Livsey opined that one of the great benefits about the proposed subdivision is that the Estate will be required to put in up to a 350,000 gallon reservoir to meet fire flow requirements. If Salt Lake City will not let the Estate's private water system to interconnect with the Town's water system, then only the Estate and the Grizzly area benefit from this reservoir. If, on the other hand, there is an interconnect or a loop system, Mr. Livsey feels this alternative increases pressure to everyone in Town and double the Town's fire fighting capacity.

Steve Gilman asked if the "water" question was supposed to be resolved before the application process could begin.

Mr. Livsey responded by stating that the State of Utah wants developers to be able to develop without the rules changing. He opined that Utah law acknowledges that folks that come in and do developments like this will expend a lot of time and money. He opined that there is a lot of case history that states that the rules of the game should not change after a certain point. In Utah law, that "certain point" is when an application is submitted which is complete and therefore vested. Mr. Livsey believes that the

application that the Estate submitted complied with those rules. The Town did not agree with that statement and then proposed legislation which would have foreclosed all development under a moratorium. Mr. Livsey went on to say that to overcome the concern that Estate's application would go by the way side and would not be vested, the Estate brought the issue in front of a judge to determine that the application was complete under the rules. Mr. Livsey opined that for an application to be complete that means it is not "done" and not ready for approval but instead the application is ready to start the process.

Kimberly Chytraus, legal counsel for the Town, opined that Utah law states that an application is vested when it is complete. Kimberly explained the history to the Council when the Town brought their ordinances in compliance with LUDMA. In December of 2007, the Town decided to enact a moratorium for reasons unrelated to the issue with the Estate. The Estate was always assured that the moratorium did not apply to the Estate's application. The Estate chose to sue the Town of Alta and in part of the lawsuit the Estate asked to be vested, which was a condition of settlement. The Town agreed to settle and to allow the Estate's application to be vested as it was submitted in July of 2007. The Town also agreed to forward the application on to the Planning Commission.

John Guldner then asked the question: does vesting mean for five years or ten years or how long. Guldner also explained that prior to the lawsuit there was a disagreement on what was a complete application. The Town was not changing any of its ordinances relating to land use development. The Town was trying to update and bring itself into compliance with LUDMA. The Town had no intention of changing the zoning in any area of the Town.

Katie Lewis, legal counsel for the Town, clarified that the only thing vesting does under Utah law and Utah case law, which Mr. Livsey mentioned, was to permit the land use applicant, in this case, the Estate, to be considered under the ordinances in effect at the time the application was submitted. In order to be approved, which is the task before the Town Council, the application has to comply with all of the ordinances and statues that were in effect at the time the application was submitted. The checklist that the Town Council is reviewing at this meeting represents the ordinances in effect at the time the Estate's application was submitted.

The Mayor explained that the Town's water supply agreement in effect today is controlled by Salt Lake City Public Utilities/Water Division. Whether the Town feels this is a good proposal from the Estate or not, our duty to the Town of Alta is to make sure that residents of the Town have drinking water available. We cannot do anything to violate the contract with Salt Lake City and that is why the Estate has to go to Salt Lake City to obtain approval on the transmission of water to their property.

Kimberly Chytraus explained that Salt Lake City sent a letter to the Planning Commission declining to allow the Town of Alta to extend its water line and to allow the Town to use its water system to deliver water from the Quincy Mine.

Dave Richards understands that the Estate has gone back and forth to Salt Lake City on wells and on springs and other solutions to a water delivery system. He stated that on June 4th the Estate filed a constitutional taking petition in which the Estate said that the construction of a private water line was not feasible. Then on July 15th the Estate wrote a letter to Lynn Crestwell, in which the Estate reversed that petition and asked that the petition be thrown out because the Estate felt they could build a private water system. Dave asked if the Estate was set in their statement that the Estate could in fact build a private water system. Representatives of the Estate answered yes. The Estate confirmed that a private water system is the only option on the table at this time.

Steve Gilman asked if the Estate had any letters from the applicable agency that attest to the amount of water and the quality of water that the Estate has coming out of the Quincy mine. The last water test that Steve has seen was taken in 1973.

Mr. Livsey commented that the Estate had put those old tests in the handouts to the Council to show that the water had been constant over time. The Estate took water samples in 2007 and the results were basically identical to those in 1973. The big concern was antimony and the water from the Quincy Mine is under the EPA limit. Mr. Livsey stated that there have been five water tests of the Quincy mine water.

Ms. Chytraus opined that Salt Lake City has never made a determination on the quantity of water available to the Estate coming out of the Quincy mine.

Mr. Livsey disagreed with that statement and stated that Salt Lake City has repeatedly said that the Estate has adequate water for the proposed development. The City has also stated that the Estate has adequate water for a minimum 16 lots which was the annexation language from 1980. Mr. Livsey opined that the City has never to date quantified the gallons per day which the Estate is entitled to under the Quincy Mine water contract. However the Quincy contract provides for 150,000 gallons per day, the Estate is the only remaining party on the contract to Estate's knowledge, and Salt Lake City has confirmed that. Mr. Livsey stated that this is not to say that the Estate is entitled to 150,000 a day from the Quincy mine. What has been clarified is that the Estate has adequate water for proposed development. Mr. Livsey continued by stating that Salt Lake City has acknowledged that the Estate has contractual right and that the contract will satisfy the Estate's needs for water. Livsey went on to opine that he was not sure that the City was aware that they had to quantify the gallons per day that the Estate is entitled to. Mr. Livsey believes that the City is reticent to answer the quantity question in a letter.

The Mayor asked, when the Estate refers to 16 lots, it is the Estate's opinion that a formal approval was given to the owner at that time or was it a conceptual approval.

Mr. Livsey gave a brief history of the Patsey Marley area when John Cahill owned the property. Cahill wanted to develop Patsey Marley in the 1970's and had the 1975 Water Contract. Cahill was working with the Town of Alta at that time. In 1977 the Town sent a letter which stated that the Town would give Mr. Cahill the right to hook on to the Town's water system in the Patsey Marley area. Mr. Livsey went on to opine that the

Town's letter was meaningful. Mr. Livsey then said that the subsequent water line through the aforementioned property was put in the wrong place. Livsey went on to say that the Town would not let Mr. Cahill hook on to its water line through Cahill property per the promise made in that 1977 letter. Mr. Cahill, as a result, asked the Town to remove the water line going through the Patsey Marley Hill property. This issue was taken to court and a settlement agreement was signed. According to Mr. Livsey, the Town agreed to have the Planning Commission review Mr. Cahill's proposed subdivision as if it were in the Town limits and then let Mr. Cahill know, that if he were to annex this property to the Town, how many lots the Town would give him. Mr. Livsey went on to opine that in 1979 Mr. Kapaloski made a motion to allow the property to be annexed to the Town with the recommendation that it be given at least 16 lots. The Patsey Marley area was eventually annexed to the Town of Alta and annexation agreement does not rehearse any of the prior history. That, in Mr. Livsey opinion, is where the 16 lots come from.

Mr. Livsey went on to say that when Jody Shrontz bought the property, she did not have the water assigned to her. The 1975 Water Contract states that Salt Lake City has to give prior approval before assignment. Jody Shrontz's attorneys went to Salt Lake City and the City retroactively granted the assignment of the water contract from Cahill to the Alta Ski Lifts and then to Jody Shrontz. In correspondence with the Estate, Salt Lake City acknowledged that there was sufficient amount of water for 16 home sites.

John Guldner spoke to Mr. Livsey's comments. Guldner opined that the 1977 letter was a few sentences from Chuck Eubank, the Public Works Director at that time, to John Cahill giving him the right to hook on to the Town's system in the Grizzly Gulch area. The letter also stated that prior to the hook John Cahill would have to obtain approval from the Public Works Department. However, everything the Town did as it relates to this issue needed approval from Salt Lake City. As to Mr. Kapaloski's motion in a Planning Commission meeting in 1979, he did recommend a minimum of 16 units but that recommendation never appeared in any annexation language. John went on to opine that this language never appeared in any Policy Declaration or as item in the actual annexation papers. John also pointed out that when Mr. Cahill was communicating with the Town in the 1970's, he owned 28.4 acres. The Estate now owes 25.16 acres. Mr. Guldner opined that there were no grants of lots or water in the Patsey Marley Hill annexation. Mr. Guldner agreed that the subject of 16 lots was talked about but 16 lots was never ratified by the Town Council at that time.

Cliff Curry asked the attorneys of the Estate to explain why the Estate withdrew its takings petition. Mr. Sullivan stated that it was factually wrong and the Estate reconsidered that issue very carefully. The Estate decided that it was feasible to develop the private water system.

Mr. Curry went on to ask if the Forest Service would require the Estate to pursue the issue of a private water system with Salt Lake City before they consider a Special Use Permit. Mr. Sullivan replied that Forest Service does not require this..

Dave Richards asked about one of the drawings for the Estate's private water system which has the water line going up the hill and then east along HWY 210 . Dave asked the Estate if they had had discussions with the UDOT on digging up their road. Mr. Livsey opined that in Utah that UDOT offers their rights of ways for utilities.

Mr. Livsey opined that if the loop system for their private water line is not considered, then the Estate would seek approval from UDOT to traverse along their right of way.

Dave Richards asked that if the Estate was given approval to loop into the Town water system, would the water from the Quincy have to meet the Town's water quality requirements John Guldner and Katie Lewis both opined that if the Estate built a private water system, that system would have to meet the State drinking water quality standards and perhaps the State Health Department water quality requirements.

Mr. Livsey stated that the Estate, having worked with the State Division of Drinking Water on this matter, agrees with the State that it makes the most sense to have the State over the proposed private water system. Therefore the water system will be regulated the same as the Town's system. Mr. Livsey also commented that the pipe size will be the same as the Town's water system. All the issues with this proposed private water system will be solved assuming Salt Lake City is willing.

Dave Richards asked legal counsel for the Town, if the Estate were to use the looping system or tie into the Town water system, would either of those scenarios be considered an expansion of the Town water system under the contract that the Town now has with Salt Lake City.

Mr. Livsey opined that Salt Lake City would have to give their consent to tie into the Town's water system.

Kimberly Chytraus opined that the Town has a contract with Salt Lake City. Theoretically Salt Lake City could modify or give consent under that contract. Salt Lake City has enacted a moratorium that prevents them from expanding their water contracts. Ms. Chytraus felt that if the Estate asked Salt Lake City, they would probably tell them they can't do it.

Mr. Livsey opined that Salt Lake City might not be willing today to allow the Estate to tie into or use the Town's water system but perhaps it makes a lot of sense to run the route so in the future you could integrate the two systems like Snowbird Service Area #3 and the Town of Alta have with their water systems.

John Guldner opined that we do not know the exact placement of the UDOT right of way.

Cliff Curry asked about the summer road as it relates to access questions for the proposed private water line. Mr. Livsey commented that they have approached the Forest Service on this matter. Mr. Livsey went on to opine that the Estate views the ownership status of the summer road differently than the Town of Alta. However, out of caution, the Estate

has approached the Forest Service about granting a Special Use Permit in the event that it is a Forest Service Road. The Forest Service has agreed that they will grant a Special Use Permit for the span of road from the end of the payment to the property line of the Estate. Once the road is inside the property of the Estate, Mr. Livsey opined that the 1941 easement applies. The Forest Service has acknowledged that the Estate does not need Forest Service permission on the part of the road inside the Patsey Marley property. Regardless, though, the water line will be going up the property and will not parallel the summer road.

Cliff Curry asked about the Special Use Permit process.

Mr Livsey stated that the Estate has filed a Special Use Permit application with the Forest Service which contains numerous alternatives, the majority of which the Estate had to get “denied upon” before the Estate could be considered by the Forest Service. All the Estates alternatives for a water delivery system will be explained in the application to the Forest Service: the route up the hill to Hwy 210 and then east along the highway or alternatively across the Alta Ski Lift transfer tow. The Forest Service can choose one of the options most of which Salt Lake City has said no to. Mr. Livsey explained that the Estate will file an application which will then go through a review process. The primary route for the proposed water delivery line is less than five (5) acres so it is not subject to a full blown environmental assessment process. This alternative will go through a categorical exclusion process and will be reviewed and public comment accepted. The Town will have a chance to give their opinion as to what should happen with this proposed water delivery system. Mr. Livsey would hope that the Town would support their application. Every affected agency and the public will have a chance to comment.

Mr. Livsey opined that subdivisions of this nature take anywhere from three to five years and with these additional complications, the Estate does not anticipate breaking ground any time soon.

The Mayor asked, if the Estate had to quantify a timeline as to when it felt it could have a solid solution to the water delivery system issue, what would the time line be.

Mr. Livsey opined that they are going through the process with multiply government agencies and therefore these approvals are out of their control. The Estate is before the Town to diligently pursue the approval of their application which is what the Estate is supposed to do under State law. The Estate does not anticipate that they will have a monthly meeting with the Town Council to give the them updates. But the Estate would prefer to work through some issues like the natural waterways before it snows this year. He went on to say that once they are ready, the Estate would like to come back to the Town Council and explain the progress they have made

The Mayor proposed that the Town Council hear a presentation from the Estate as to status of the project and what the Estate would like the Town Council to hear about their project. After that presentation, the Town Council would hold a public hearing on this issue. At the meeting today, the Mayor felt that the Town Council tried to get a grasp of

the issues on the proposed Patsey Marley Hill subdivision and how the issues pertain to the Town ordinances.

The Mayor asked if the Town Council had any specific questions of the Estate.

Cliff Curry asked how much time the Estate would like to make their presentation to the Town Council. The Estate stated that they would need about one half hour to make their presentation.

Mr. Curry felt that the Town Council could combine both into one meeting: the presentation and the public hearing to follow that presentation.

Paul Moxley felt that this meeting should be held before the upcoming election because there could potentially be two new members on the Council and out of fairness; the new members would not have heard or participated in these sessions.

The Estate commented that they feel they will not have the water situation resolved before this proposed meeting.

Dave Richards commented that he has heard the Estate state in their July presentation to the Planning Commission and in various letters over the summer that at this point in time any decision on their application was premature. Dave then went on to ask the Estate how long they feel their application should be held open as is; 6 months, a year or hold the application open indefinitely.

Alan Sullivan responded yes and went on to say for as long as it takes. The Estate is working diligently on this process and has no interest in delaying this process and has every interest in moving the process along. Mr. Sullivan believes that projects like this take time and it is not usual for them to take from three to five years to complete. . He asked for the Town's patience in resolving issues related to this project especially the water issue which he believes is the key issue.

Cliff Curry commented that a decision made by the Town Council could be yes, no or could be that the Town would hold the decision open and allow more time. Mr. Curry believes that a decision needs to be made no matter what it is.

Mr. Livsey opined that over time in the land use arena decisions will be made subject to certain things. He believes that it is a bit premature to make a decision because the Estate has some outstanding issues and believes that the Town Council could make a decision subject to the Estate providing X, Y, and Z. Mr. Livsey opined that the water issue in this situation is a bit more complicated and it makes sense to hold the decision open until there is more results surrounding the water situation.

Steve Gilman thought that in the Town's planning process, these issues such as water, needed to be resolved before a the application could be made to the Town.

John Guldner explained the 2002 ordinance and went on to say that normally, except for this case (the Patsey Marley Hill subdivision application) when a person or group submits a subdivision application things should be ready before the application is submitted to the Planning Commission. John opined that the Town could approve an application subject to A,B, and C but the Town could not allow the subdivision to be recorded subject to certain final determination of water to the site. The Town could keep the application open and must the Town have all the items' on the check list finalized before the Town could give their final approval. John emphasized again that in the past, the Planning Commission did not review or hear an application until the application was ready.

Katie Lewis, counsel for the Town, stated that under State law the requirement is that if the subdivision conforms to the municipality's ordinances and approval has been given by the culinary water authority and the sanitary sewer authority, than the municipality shall approve the application. The flip side of that, which is being discussed today, is that in order for the application to be approved, a municipality is required to go through its ordinances to make sure the subdivision application complies with those ordinances and complies with State law. The Town must make sure that they review the application fully before the Town makes any determination.

Tom Pollard opined although the Town is required to hold a public hearing by law and the Town would like to have public input on the proposed Patsey Marley Hill subdivision, the issue before the Town is whether or not the application complies with the ordinances in place.

Mr. Livsey commented that the Estate does not want to tell the Town when they should hold this public hearing in this process but he opined that it does seem a bit premature at this point when the Estate has some outstanding issues.

Katie Lewis opined that the public hearing is not premature at this time because the Town can hold the public hearing anytime during the process and chose to do it during the Town Council process rather than the Planning Commission progress in order to have more details on the table.

The Mayor felt that the Town should hold the public hearing in conjunction with the Estate's presentation so that the public can hear and be fully informed on what the Estate is proposing.

Alan Sullivan stated that the Estate would be happy to follow the aforementioned format. Mr. Sullivan went on to say that the proposal could change from ten lots to seven lots and there also could be changes and more detail added to the project as a result of interaction between the Town, the Estate and UFA. Therefore there could be a justification for another public hearing down the road.

The Town Council reviewed some possible dates for the site visit and the presentation and public hearing.

The Town Council agreed to first have a site visit on Wednesday, September 23rd at 1:30 p.m. That site visit will be announced and posted and site visit open and public meeting. The Council and representatives of the Estate will meet at the summer booth.

The Council agreed that the Public Hearing and Estate presentation will be held on Wednesday, September 30, 2009 at 3:00 p.m.

The Mayor thanked everyone for attending this work session and providing valuable information.

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 12th day of November, 2009.

Katherine S.W. Black/s
Town Clerk