

MINUTES
ALTA TOWN COUNCIL MEETING
Wednesday, September 11, 2024, 4:00 PM
Alta Community Center, 10351 E. Highway 210, Alta, Utah

PRESENT: Mayor Pro Tempore Elise Morgan (attended virtually)
Councilmember Carolyn Anctil
Councilmember John Byrne (attended virtually)
Councilmember Dan Schilling

STAFF PRESENT: Chris Cawley, Town Manager
Mike Morey, Town Marshal
Jen Clancy, Town Clerk
Molly Austin, Assistant Town Manager
Brooke Boone, Deputy Town Clerk

ALSO PRESENT: Polly McLean, Legal Counsel (attended virtually)

NOT PRESENT: Mayor Roger Bourke
Craig Heimark, Treasurer

1. CALL THE MEETING TO ORDER

00:00:00

Councilmember Anctil called the September 11, 2024 Alta Town Council meeting to order.

Dan Schilling then delivered remarks, noting the significance of the day (September 11th). Schilling emphasized that the day was important not only for its historical context but for the loss of 2,977 American lives. Schilling extended sympathies from the Town to Deputy Spencer and his family, recognizing their personal loss. Schilling concluded with a hope that such an event would not be repeated.

2. VOTE TO ELECT A COUNCILMEMBER TO CHAIR THIS MEETING

00:01:20

After some discussion, it was determined that it would be best for Mayor Pro Tempore Morgan to chair the meeting and so no action was necessary.

3. CITIZEN INPUT

00:03:00

Kody Fox, the Executive Director of Friends of Alta, informed the council about an upcoming speaker series event scheduled for November 13. Fox said the event will focus on Utah air quality and will be

held at the Main Library in Salt Lake City, due to potential road conditions in Alta that time of year. Fox reported that the speaker would be John Lin, a professor in astrophysics and associate director of the Wilks Center for Climate Change and Policy. Lin's presentation would cover topics such as greenhouse gases, air quality, and the future of the Wasatch Front. Fox directed attendees to the Friends of Alta website for more details, noting that the event is free and requires an RSVP.

Jen Clancy reported that a written public comment had been received by Mark Haik and that it would be attached to the minutes from this meeting.

4. **PRESENTATION: PROPOSED AMENDED SUBDIVISION ORDINANCE – TODD GODFREY, HAYES GODFREY BELL**

00:04:20

Chris Cawley introduced Todd Godfrey to the council. Cawley clarified that this meeting's purpose was not to approve the subdivision ordinance but to introduce it for a first reading. Cawley explained that, due to uncertain attendance, Cawley was hoping the council would preview the ordinance and then a vote could be scheduled for the October council meeting when attendance would be more certain. Cawley mentioned that Godfrey was available to answer questions and provide background on the state legislation driving the proposed changes to the subdivision ordinance. Cawley informed the council that the commission had held three meetings on the topic, including two discussions and a public hearing, after which the commission recommended the ordinance to the town council.

Godfrey, attorney at law firm Hayes Godfrey Bell, explained that the firm had been selected to assist with the rewrite of the Town of Alta's subdivision ordinance. The primary goal was to ensure compliance with state law changes from the 2023 and 2024 legislative sessions. Godfrey noted that although the redline version of the ordinance appeared to reflect significant changes, most were organizational rather than substantive.

Godfrey outlined key changes required by the new state law, including a more structured two-step process for subdivision approval: a preliminary plat review and a final plat review. While the state previously allowed for a concept plan review, it is no longer required, though the town's ordinance still strongly encourages developers to follow it. Godfrey highlighted that under the new law, the planning commission can—but is not required to—remain the authority for preliminary plat reviews, which the current draft retains. The major change is that final plat approvals now fall under the authority of the town manager, as state law no longer permits the town council to be involved in this approval process. Godfrey emphasized that the planning commission would still hold a public hearing for subdivision applications, though state law does not mandate it. Godfrey noted that many of the substantive requirements for subdivision applications in the existing ordinance had largely remained unchanged and offered to answer any questions.

Schilling raised a question regarding the council's ability to hear appeals on subdivision approvals, referencing state law changes. Schilling sought clarification from Godfrey on whether the town council was fully precluded from hearing appeals. Godfrey responded that, while the state law is not entirely explicit on appeals, his legal opinion is that the town council is likely precluded from hearing appeals, given the law's language on subdivision reviews. Schilling agreed, noting that since the final decision

authority now lies with the town manager, it seemed appropriate. Cawley then explained that while the town code currently designates the town council as the appeal authority for land use decisions, the new state law explicitly prohibits the council from making decisions on subdivision approvals. However, the law does not specifically address the council's role as an appeal authority. Cawley noted that it could be inferred that the council should not handle subdivision appeals, but this remains an interpretation. John Byrne added that while there are pros and cons to the council acting as an appeal authority, he believed that, as a small town with an unelected planning commission, it was important for the council to retain this role unless mandated otherwise by state law. Byrne suggested that any further changes beyond what is required by the state could be addressed later, after the necessary adjustments had been made by year's end.

Cawley confirmed that the planning commission had not voted to formally recommend any changes to the appeal authority section of the ordinance, and Byrne reiterated his support for passing the ordinance as it currently stands. Both Byrne and Schilling expressed their agreement with approving the ordinance as drafted.

Polly McLean suggested an adjustment to the ordinance, recommending that the timeline for reviews be extended to the maximum allowed by state law. McLean pointed out that the state code permits up to 40 business days for certain reviews, which could be beneficial for the town, given its small size and the logistical challenges of organizing meetings. Byrne asked whether this change would require sending the ordinance back to the planning commission, Godfrey opined that such a technical change would not necessitate another review by the planning commission.

Morgan noted that there seemed to be support for adding it to the agenda for the October meeting and emphasized the need to have the ordinance passed by December.

5. ALTA SKI AREA UPDATE, MIKE MAUGHAN

00:16:00

Mike Maughan provided updates on various operational activities as summer ends. Maughan reported the campground was officially closed. Maughan said most projects on the mountain were nearing completion, including the Mambo terrain change and the retaining wall repair at Alf's. Work would continue on new conveyors at the Albion base for another six to eight weeks. Maughan mentioned plans to extend the snowmaking utility line to the campground area, which was expected to start the following week. Maughan also reported that survey work had been conducted in the Albion Alps area of Albion Basin to define property lines for potential projects involving the Forest Service.

Additionally, a legislative visit organized by the Central Wasatch Commission (CWC) was scheduled for the following Thursday, with legislators touring the area to discuss local challenges. A tree planting day was also planned for the 21st, with a goal to plant between 1,000 and 3,000 trees.

Maughan informed attendees about upcoming discussions with Interstate Parking regarding winter operations, with no major changes anticipated. Maughan reported the parking program for season pass holders would continue, along with a reservation fee for public parking. The MOU with the Town of Alta was nearly finalized.

Maughan said opening day for the ski area would be November 22, conditions permitting.

6. QUESTIONS REGARDING DEPARTMENTAL REPORTS

00:22:00

Brooke Boone, the new Deputy Town Clerk was introduced to the council.

Cawley addressed the council regarding a few proposed budget amendments. Cawley acknowledged the need for adjustments based on various circumstances and sought the council's input on proceeding with administrative budget adjustments versus formal budget amendments. Clancy informed the council that a recent audit by the Utah Retirement System revealed a need to amend the court budget due to contributions related to a tier one judge. The proposed changes involved approximately \$6,000 for back pay and annual costs and could be offset by a reduction in the contribution to the capital project fund. They also presented the proposed amendments within the water fund including road maintenance and engineering costs associated with a waterline project. Specifically, Cawley proposed adding \$2,000 for Michigan City Road maintenance and increasing the engineering budget from \$15,750 to \$20,000 to accommodate updated project requirements. Additionally, Cawley mentioned addressing issues related to the condition of a parking area in West Peruvian Estates, proposing a budget adjustment to account for necessary improvements to the slope.

Clancy emphasized the importance of obtaining council feedback on the preferred path forward regarding these budget adjustments. The council agreed that a budget amendment in October would be preferable, allowing for a thorough discussion and public notification of the expenditures.

7. APPROVAL OF CONSENT AGENDA: AUGUST 14, 2024, TOWN COUNCIL MEETING MINUTES, STAFF AND FINANCE REPORTS

00:40:00

MOTION: John Byrne motioned to approve the consent agenda including the August 14, 2024 Alta town council meeting minutes, and staff and finance reports. Dan Schilling seconded.

VOTE: All were in favor. The August 14, 2024 meeting minutes, and staff and finance reports were approved.

RESULT: APPROVED

8. UPDATE ON WATER AND SEWER MASTER PLAN PROJECT AND DISCUSSION OF WATER SYSTEM FIRE FLOWS – CHRIS CAWLEY AND KASEY CARPENTER, SALT LAKE COUNTY SERVICE AREA #3

00:41:15

Cawley introduced Carpenter, the general manager of Salt Lake County Service Area No. 3, to the council. Cawley mentioned that appearances by Carpenter's predecessor, Keith Hanson, had been a highlight in previous meetings. Carpenter then introduced himself, noting that he had taken over Hansen's role over a year ago and briefly explained his responsibilities. Carpenter mentioned managing

the water system in the area, including Snowbird and parts of the bypass road, and thanked the council for the opportunity to attend this meeting.

Carpenter explained that the Town of Alta owns its water infrastructure, while Salt Lake County Service Area No. 3 operates the system under contract. Cawley further explained that properties within the Service Area district boundary fund their water and sewer services through property taxes. Clancy noted that the Town's water and sewer boundaries are different, and Carpenter added that the service area operates the sewer system in Powder Ridge, even though it's outside the water boundary.

Cawley provided a detailed overview of the Alta water system, emphasizing its simplicity compared to other municipal systems. Cawley explained that water is sourced from the Bay City Tunnel and pumped to a 365,000-gallon storage tank, with an additional smaller tank in Grizzly Gulch. The system includes two and a half miles of pipes, many installed in the 1970s, with two pressure reducing valves and 25 fire hydrants. Recent improvements were highlighted, including the replacement of a PRV and water line in West Peruvian and upgrades in Grizzly Gulch and the Albion parking lot.

Cawley discussed fire flow deficiencies identified in a 2014 study, noting that while most of the system meets requirements, areas like Grizzly Gulch, Alta Central, and Hellgate remain below the required fire flow of 1,500 gallons per minute for two hours. Cawley mentioned that ongoing updates to the hydraulic model and the current Water Master Plan Project are aimed at addressing these issues.

Carolyn Anctil inquired about the impact of the Shrontz Estate's potential development. Cawley explained that additional infrastructure, such as a larger storage tank, would likely be required, which could improve fire flows, particularly in Grizzly Gulch. Cawley noted that future developments would need to comply with state and fire regulations, which often require fire sprinklers to reduce flow demands.

Cawley concluded by explaining the scope of the Water Master Plan Project, noting that engineers from Hansen Allen Luce had nearly completed updating the water model. Cawley highlighted the importance of ensuring the town complies with regulations while balancing financial constraints. The project will result in a capital improvements plan, which will prioritize necessary upgrades and be presented to the council for adoption.

Schilling raised a question regarding capital improvements, asking if some had already been integrated into their plans. Cawley clarified that the current discussion was separate from the upcoming water project planned for the next summer. Cawley explained that the present project was a planning and engineering project, with civil engineers tasked with developing a master plan. A list of projects would likely be available by early 2025, and the town had already included rough estimates for major water system improvements, beginning in the next fiscal year.

Cawley further explained the ski area's utility project along the transfer tow road next summer presented an opportunity to partner and save on excavation and mobilization costs. Cawley reported that The US Forest Service had already approved a significant portion of the water line installation alongside its approval of Alta Ski Area's project in the same corridor. Benefits from the Town of Alta project would include better fire flows throughout the commercial core and an overall improvement in water system functionality. Cawley reflected that the 2014 study didn't include a pressure-reducing

valve, which would increase the project cost. Cawley mentioned ongoing efforts to finalize engineering solicitations, get further Forest Service approvals, and secure state approval. Byrne commented that combining certain projects could create economies of scale, and the town could consider financing options like loans or bonds for larger sums. Schilling supported the idea of combining projects to reduce disruptions to the town and recreational activities.

9. **NEW BUSINESS**

01:12:00

Elise Morgan thanked Cawley for sending out information about an upcoming retreat and urged the council to respond so the retreat date could be scheduled.

10. **MOTION TO ADJOURN**

01:12:30

MOTION: Dan Schilling motioned to adjourn, and John Byrne seconded.

VOTE: All in favor. The meeting was unanimously adjourned.

RESULT: APPROVED

Passed this October 9th day of , 2024


Jen Clancy, Town Clerk

MAYOR
ROGER BOURKE
TOWN COUNCIL
CAROLYN ANCTIL
JOHN BYRNE
SHERIDAN DAVIS
ELISE MORGAN



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Exhibit A

The following written public comments were received are to be included in the September 11th, 2024 Town council meeting minutes.

<u>Pages</u>	<u>Document</u>	<u>Date Received</u>
2-15	Mark Haik Public Comments	September 9 th , 2024

Public Comments for the September 11, 2024 Town of Alta Council Meeting

MC Haik <mchaik@lsi-utah.com>

Tue 9/10/2024 1:49 PM

To: John Byrne <JByrne@townofalta.com>; Roger Bourke <RBourke@townofalta.com>; emorgan@gmail.com <emorgan@gmail.com>; Carolyn Anctil <CANctil@townofalta.com>; Dan Schilling <DSchilling@townofalta.com>
Cc: Molly Austin <MAustin@townofalta.com>; Chris Cawley <ccawley@townofalta.com>

📎 1 attachments (526 KB)

Haik_April_5_2019_AlbianBasinOverlayZone.pdf,

Mayor Bourke & Town of Alta Council:

Please find attached comments I submitted in 2019 regards land & water in 2019, germane today.

Recent meetings disclose that the TOA is going to let a contract for professional services to study options to upgrade various public utilities in the TOA.

Prior to further expenditure of public funds I would urge the Council to review all the appropriated approved municipal water sources and the service area map on file at the Utah Division of Water Rights.

I can provide certified copies following items if the TOA is not in possession to facilitate competent review:

[1] Copy of amendment to 1976 water contract (from SL City & TOA).

[2] Copy of 3rd Dist Court proceeding in Cahoon Maxfield case, transcripts & audio.

[3] Copy of Cahoon Maxfield/SLCPU change application hearings transcripts & audio.

[4] Transcript of Sullivan deposition of Kapalowski in Shrontz case.

[5] Transcripts of both Briefer & Guldner depositions in the Melville case regards status of water in TOA.

In addition to the above I would urge the council to have the staff assemble for public review by TOA Council, former Mayor's Pollard & Sondak, TOA Administrator's or TOA Consultants; communications with jurisdictional partners SLCPU and UDWR regards recent changes in the germane change applications in the Albion Basin.

I would also urge a review of the SLCPU Requests for Extension of Time for all the municipal water Change Applications in the TOA.

Regards a path to start a competent public discussion regards municipal water I think elected officials should have some public response to following two questions:

[1] Given that the first sentence of the Shrontz Settlement Agreement says that the 1975 water contract shall be specifically performed, what are the consequences for the remaining municipal water contracts and change applications?

[2] Which current change applications on file at the UDWR govern the diversion of water for snowmaking irrigation in the TOA?

Submitted for Public Comments for the September 11, 2024 Town of Alta Council Meeting.

M.C. Haik

Intermountain Land Services LLC

POB 17124

Holladay, Utah

84117-0124



M.C. Haik-Comments on Town Alta Planning Commission Proposed Title 10-Land Use Regulations

Since I have purchased my 4 lots in the Albion Basin Subdivision I have consistently attended both TOAPC & TOA Council meetings on a very regular basis. I have as well used the GRAMA act to request both TOA Council & TOAPC minutes and a large variety of other documents from the TOA and their jurisdictional partners to understand the requirements to build a home.

Contemporaneous with the Albion Basin annexation into the TOA the TOA negotiated an amendment to the 1976 water contract which allowed the TOA to serve municipal water pursuant to the 1976 contract to the newly annexed Albion Basin. I came across this agreement while reading minutes in the Salt Lake City Recorder's Office and subsequently made a request to TOA and Ms. Black-Clerk produced a copy of the agreement executed by Mayor Leavitt & notarized by Ms. Black. A review of the TOA minutes disclose the TOA Council voting to approve the agreement & authorized Mayor Leavitt to execute the agreement, a legislative act. Why this circumstance has never been mentioned in the staff analysis of the 1976 contract is unclear and or produced in one or more civil suits is unclear. It was never produced to me despite numerous request for information regards water in the TOA.

I have also recovered the Court Record in the Cahoon Maxfield v. SLC case as well as the corresponding hearing records from the Utah Division of Water Rights which case resulted in Mssrs. Kapalowski/Veasey-Parsons Behle Latimer, representing both the TOA & Service Area #3 (Snowbird) before the State Engineer, to put in place the requisite change applications to legally divert municipal water & use municipal water in the TOA. Mssrs. Kapalowski/Veasey-Parsons Behle Latimer were not representing Salt Lake City, they represented the municipality of Town of Alta (57-10013). This is the same 3rd Dist Ct case & UDWR hearings which resulted in the Salt Lake City change application to serve municipal water to the Albion Basin Subdivision (57-10015). This case resulted from the fact that Salt Lake City Public Utilities had failed to file the necessary change applications for all of their so called surplus water contracts, seven of which are in LCC and the remainder divided among BCC, Millcreek, Parleys & Emmigration. The records from Cahoon Maxfield 3rd Dist case & the change application hearing record at the UDWR covers all of these contracts. Mr. Guldner was present and introduced by Mr. Veasey at the UDWR hearings. The result of the settlement of the Cahoon Maxfield case & the resulting Change Applications before the UDWR is that SLCPU hired the former Head of Appropriations-UDWR, Mr. Green to apprise SLCPU regards the amount of water required to serve the SLCPU surplus contracts in the change applications. Mr. Green was instructed by SLCPU that all the contracts were going to be served. Mr. Green determined the amount of water should be 400.02 gallons per day, the required amount for indoor culinary use, this amount was used for all the contracts, in all five canyons. The change application filed for the TOA was for 500 acre feet for municipal water service in the TOA and snowmaking & the Albion Basin Subdivision's change application was for municipal water service for 30 single family lots, each with 400.02 gallons

M.C. Haik-Comments on Town Alta Planning Commission Proposed Title 10-Land Use Regulations

per day. An anomaly of the Cahoon Maxfield case is that there were no change applications filed for the surplus contracts for Albion Alps Subdivision or the properties in the Cecret Lake vicinity each of which have surplus contracts similar to the others. This circumstance was brought to the attention of the State Engineer in 2015 with a complaint to the UDWR Enforcement Officer and resulted in former Mayor Pollard & then SLCPU employee Ms. Breifer being tasked with identifying the parties diverting the water, the source of the water being diverted, the amount used and the location of the infrastructure. Failure to disclose water diversions and uses to the State Engineer is illegal. After an initial letter seeking information from property owners and SLCPU meetings with the area 57 UDWR Engineer this investigation came to a standstill and remains unresolved. The status of the investigation has not been reported on by the TOA staff nor elected officials. This circumstance should be resolved since it has been 4 years since it was brought to light. The TOA & TOAPC must know what the municipal assets are, and the quantities, to enable sound future planning and the existing uncertainties render the present efforts moot. All diversions of culinary water, public or private, large or small, municipal or community carry with them a surrounding source protection zone. It is absolutely imperative that the municipal authorities know the location of the diversions, the location the water is diverted to, the amount diverted, and the purpose for which it is placed into use. The municipal authorities in the TOA & TOAPC have failed to follow through with their jurisdictional partners to apprise themselves and take appropriate steps to remedy the deficiencies. Prior to remaking the Land Use & Zoning Regulations the TOA & TOAPC must be able to quantify their municipal water assets and apprise the community regards the extent of their assets to responsibly plan for the future.

In the course of my research regards requirements to build on my property I reviewed the communications from Mr. Guldner which contained some requirements to build and directed my attention to an address list of various jurisdiction partners but failed to cited all the local TOA ordinances to be compiled with to file an appropriate application. I retained a lawyer expert in land use zoning & building ordinances to apprise me of what was required for a building application in the TOA. After an exhaustive review by counsel of the TOA ordinances & records at the TOA offices he produced a list of TOA ordinances and requirements to make an application to build a home in the Albion Basin Subdivision. I pursued the requirements outlined by counsel and submitted an application to build two houses. The applications were submitted and the TOA building official responded by letter that the TOA would issue the building permits if I successfully obtained a permit for a new septic system from Salt Lake Valley Health Dept. The fact that I have submitted two applications which fulfilled all TOA requirements to build should have been reported at both TOAPC & TOA Council, to my knowledge staff has not reported on these applications to either body publicly. The result of my counsel's exhaustive review was that it disclosed Ms. Black-TOA Clerk had the ordinances in disparate files with no coherent numbering system in place such that they could be presented to those making inquiries regards requisite build requirements. Ms. Black then advocated for the TOA Council to

M.C. Haik-Comments on Town Alta Planning Commission Proposed Title 10-Land Use Regulations

inventory, catalogue & renumber the TOA Ordinances and the TOA hired an outside contractor to accomplish this task which resulted in the present numbering system.

Subsequent to my analysis of the TOA building requirements I retained a an engineer who has successfully obtained septic permits for clients all over Salt Lake County and specifically in all of the east side canyons and was a former Salt Lake Valley Health Board member. My properties passed all the required soils & other tests required by Salt Lake Valley Health. I also recovered records from Salt Lake County Planning & Zoning to review other successful septic permits in the canyons. I found that once the germane tests had been successfully completed the last thing that occurred was SLCPU provided a letter which states that water is available. I made a GRAMA request to Salt Lake County Planning and Zoning and found that hundreds of these letters were routinely issued by SLCPU to build new homes, for extensive remodels and repairs, or for replacement of failed septic systems in the last quarter century. Salt Lake County routinely required parties upgrading, remodeling, building new and making extensive repairs to their properties to upgrade the old septic system to a fully contained system; in each case a letter from SLCPU was issued stating water was available regardless of the terms of any surplus water contracts. These approval letters included leaseholds on federal property which in order to renew their lease had to upgrade the old septic system to fully contained. The number of properties was extensive and Salt Lake County Planning & Zoning provided the data in an Excel Spreadsheet. Subsequent to my engineer providing successful test results and responding to all the SLVHD questions the only thing that remained was a one page letter from SLCPU, which letter SLCPU Director-Niermeyer refused to provide. An otherwise routine administrative act, a letter which hundreds of others received upon successful completion of septic system tests was denied to me. Director Niermeyer did send a letter to the TOA & copied to SLVHD which stated that there was a water contract but the amount was insufficient. The letter made no mention of the change application (57-10015) filed by SLCPU at the UDWR decades prior, purportedly based on said contract, which application was approved for 400 gallons per day by the UDWR-Engineer for the Albion Basin Subdivision and is the basis for providing water to others in the Albion Basin Subdivision. This resulted in an appeal of this decision which has been winding it's way through the judicial system and remains pending today. I would also point out that Director-Niermeyer has conflicting sworn statements regarding the same contract. In one sworn statement Director-Niermeyer maintains that the contract has no force & effect & is not capable of being performed and in a second sworn statement several years later the same contract has force & effect but an insufficient quantity of water. Essentially a quantum contract, which exists in two completely different states at the same time, enforceable between the parties & unenforceable between the parties. I would note that this circumstance is evident in other surplus contracts in the TOA.

M.C. Haik-Comments on Town Alta Planning Commission Proposed Title 10-Land Use Regulations

The 1976 contract has specific terms and conditions which interpretations vary depending on to whom and when the analysis is given:

[1] regards quantity-265000 gpd if 1975 contract terminated. First sentence of Shrontz Settlement Agreement say 1975 contract shall be performed, leaving a balance under 1976 contract of 115000 gpd.

[2] 1976 contract says water may be provided in the 1976 TOA boundaries, which if true includes the properties in Cecret Lake.

[3] TOA staff omitted/failed to disclose that TOA & SLCPU had agreed to amend geographic limitation, but neither party disclosed to anyone and only came to light as a result of my review of Salt Lake City minute records.

[4] 1976 contract says no irrigation yet numerous parties including former Mayor Pollard admit that they used water to irrigate.

[5] Mr. Kapalowski specifically represented to the Board of Water Resources that the TOA could legally divert 500 acre feet, pursuant to an approved change application, based on the 1976 contract this value is larger then 265,000/115,000 gpd.

[6] The staff routinely contends that the amount is 265000 gpd which is less than 500 acre feet cited by Mr. Kapalowski as amount the TOA is legally entitled to divert.

The foregoing are a few examples of the same contract having meaning and no meaning at the same time, despite very simple plain language. There are additional anomalies in various surplus contracts I will not recite. The result is one contract appears to have multiple values and multiple meanings. I am not going to characterize the circumstances, actions or inactions, or conflicting statements of various elected officials, jurisdictional partners, staff of TOA & jurisdictional partners, counsel for TOA & jurisdictional partners which have over time led to the situation the TOA finds itself today; except to say that none of the foregoing cited parties can stand in public and cite where water can be diverted, used and in what amounts in the TOA. The fact is the analysis provided by the TOA long term staff does not even remotely pass the sniff test and legal counsel with a fiduciary obligation to the municipality has not been heard from. The TOA Council and TOAPC must seek substantive analysis & representations from the Counsel that represented the municipality of the Town of Alta in the change application (57-10013) for the municipal water supply, that party is Mssrs. Kapalowski/Veasey-Parsons Behle Latimer. Mr. Kapalowski was a member of both the old TOAPC which was merely appointed advisors to the Mayor of the TOA and a member of the TOAPC subsequent TOAPC conforming the TOAPC to the LUDMA act which their prior counsel Thompson had failed to do. Mr. Kapalowski silently recused himself from any deliberations regards the proposed Shrontz subdivision, he did not disclose his recusal to the TOAPC Chair or other members, the Mayor of Alta who appointed him or the staff. The only account of his recusal come in a sworn deposition

M.C. Haik-Comments on Town Alta Planning Commission Proposed Title 10-Land Use Regulations

by Mr. Sullivan in the Shrontz case. Why Mr. Kapalowski-Town of Alta Special Counsel for Water had to silently recuse himself from TOAPC deliberations should be disclosed at a minimum to his employers the TOA Council, but more appropriately to the public as well. Prior to any additional land use legislation or amendments the municipality of the Town of Alta must be able to quantify and disclose publicly how much water may be used where and by whom to the property owners, business owners, inhabitants & visitors to appropriately plan for the health welfare & safety and future viability of the community.

The properties in the proposed Albion Basin Protection Overlay Zone currently have four basic circumstances:

[1] Albion Basin Subdivision-Has surplus contract and change application for requisite culinary water amounts and water system fully approved & on file at SLVHD and UDWR. 57-10015.

[2] Albion Alps-Has surplus water contract but no change application, water diversion & use is not disclosed to UDWR.

[3] Cecret Lake-Has surplus water contract, but no change application, water diversion & use is not disclosed to UDWR, but is included in the original bounds of 1976 contract yet denied water by TOA.

[4] All of the property is within the municipality of the Town of Alta covered by the change application 57-10013 which provides for municipal use in the Town of Alta.

Until such time as the municipal authorities & their jurisdictional partners can disclose to the community the germane state of affairs the various authorities are not appropriately situated or informed to make land use or new zoning policies. The Town of Alta is definitely in need of both land use and zoning changes to maintain the community for the future but the process over the last decades has lacked transparency and frequently lacked participation by those most affected due to lack of rapport between the governed & the government as evidenced by lack of participation in the public process, recently much discussed by former TOA Councilman Moxley and others.

I would advocate the following course for the TOA Council's future deliberations regarding land use and planning and zoning:

[1] Remand the current proposed changes to the TOAPC and request that the TOAPC review in detail my applications to build to gain a substantive understanding of what the law presently requires and make a further review of their proposed land use changes once apprised.

M.C. Haik-Comments on Town Alta Planning Commission Proposed Title 10-Land Use Regulations

[2] Request written opinion from Mssrs. Kapalowski/Veasey-Parsons Behle Latimer or their successors regards the present status of all surplus water contracts, and all the change applications filed in the TOA by their jurisdictional partner SLCPU of record at the UDWR.

[3] Request written report from SCLPU regards the present status of all surplus water contracts and all the change applications in the TOA filed by their jurisdictional partner and of record at the UDWR to present to the public.

[4] Read the transcripts and listen to the audio from the hearings before the UDWR for the change applications for 57-10013 which clearly state in the first person the intentions for the use of water in the TOA by applicant SLCPU's counsel Mr. Novak & former Director SLCPU Hooten, in addition to TOA Counsel Mssrs. Kapalowski/Veasey-Parsons Behle Latimer.

[5] Review all of the original color TOA Zoning maps which I recovered from Salt Lake County Planning & Zoning and have digitally and have previously proffered to both the Mayor of Alta and the TOAPC Chair, which in my lengthy experience in attendance at public meetings in Alta have never been shown publicly.

[6] Conduct interviews with the long time owners of Albion Basin properties regards their recollections of what transpired during the annexation, including Page, Knowlton, Charlier, Gates, Jones, Miles, White, Gibbs, Nebbeker, Wetzel, Fisher, Melville, Pruitt; both to gain insight of their experience and cultivate a rapport so that they & their successors will substantively participate the public process from which they have become estranged.

[7] Appoint Mark C. Haik to the TOAPC.

Mark C. Haik

M.C. Haik-Comments on Town Alta Planning Commission Proposed Title 10-Land Use Regulations

Since I have purchased my 4 lots in the Albion Basin Subdivision I have consistently attended both TOAPC & TOA Council meetings on a very regular basis. I have as well used the GRAMA act to request both TOA Council & TOAPC minutes and a large variety of other documents from the TOA and their jurisdictional partners to understand the requirements to build a home.

Contemporaneous with the Albion Basin annexation into the TOA the TOA negotiated an amendment to the 1976 water contract which allowed the TOA to serve municipal water pursuant to the 1976 contract to the newly annexed Albion Basin. I came across this agreement while reading minutes in the Salt Lake City Recorder's Office and subsequently made a request to TOA and Ms. Black-Clerk produced a copy of the agreement executed by Mayor Leavitt & notarized by Ms. Black. A review of the TOA minutes disclose the TOA Council voting to approve the agreement & authorized Mayor Leavitt to execute the agreement, a legislative act. Why this circumstance has never been mentioned in the staff analysis of the 1976 contract is unclear and or produced in one or more civil suits is unclear. It was never produced to me despite numerous request for information regards water in the TOA.

I have also recovered the Court Record in the Cahoon Maxfield v. SLC case as well as the corresponding hearing records from the Utah Division of Water Rights which case resulted in Mssrs. Kapalowski/Veasey-Parsons Behle Latimer, representing both the TOA & Service Area #3 (Snowbird) before the State Engineer, to put in place the requisite change applications to legally divert municipal water & use municipal water in the TOA. Mssrs. Kapalowski/Veasey-Parsons Behle Latimer were not representing Salt Lake City, they represented the municipality of Town of Alta (57-10013). This is the same 3rd Dist Ct case & UDWR hearings which resulted in the Salt Lake City change application to serve municipal water to the Albion Basin Subdivision (57-10015). This case resulted from the fact that Salt Lake City Public Utilities had failed to file the necessary change applications for all of their so called surplus water contracts, seven of which are in LCC and the remainder divided among BCC, Millcreek, Parleys & Emmigration. The records from Cahoon Maxfield 3rd Dist case & the change application hearing record at the UDWR covers all of these contracts. Mr. Guldner was present and introduced by Mr. Veasey at the UDWR hearings. The result of the settlement of the Cahoon Maxfield case & the resulting Change Applications before the UDWR is that SLCPU hired the former Head of Appropriations-UDWR, Mr. Green to apprise SLCPU regards the amount of water required to serve the SLCPU surplus contracts in the change applications. Mr. Green was instructed by SLCPU that all the contracts were going to be served. Mr. Green determined the amount of water should be 400.02 gallons per day, the required amount for indoor culinary use, this amount was used for all the contracts, in all five canyons. The change application filed for the TOA was for 500 acre feet for municipal water service in the TOA and snowmaking & the Albion Basin Subdivision's change application was for municipal water service for 30 single family lots, each with 400.02 gallons

M.C. Haik-Comments on Town Alta Planning Commission Proposed Title 10-Land Use Regulations

per day. An anomaly of the Cahoon Maxfield case is that there were no change applications filed for the surplus contracts for Albion Alps Subdivision or the properties in the Cecret Lake vicinity each of which have surplus contracts similar to the others. This circumstance was brought to the attention of the State Engineer in 2015 with a complaint to the UDWR Enforcement Officer and resulted in former Mayor Pollard & then SLCPU employee Ms. Breifer being tasked with identifying the parties diverting the water, the source of the water being diverted, the amount used and the location of the infrastructure. Failure to disclose water diversions and uses to the State Engineer is illegal. After an initial letter seeking information from property owners and SLCPU meetings with the area 57 UDWR Engineer this investigation came to a standstill and remains unresolved. The status of the investigation has not been reported on by the TOA staff nor elected officials. This circumstance should be resolved since it has been 4 years since it was brought to light. The TOA & TOAPC must know what the municipal assets are, and the quantities, to enable sound future planning and the existing uncertainties render the present efforts moot. All diversions of culinary water, public or private, large or small, municipal or community carry with them a surrounding source protection zone. It is absolutely imperative that the municipal authorities know the location of the diversions, the location the water is diverted to, the amount diverted, and the purpose for which it is placed into use. The municipal authorities in the TOA & TOAPC have failed to follow through with their jurisdictional partners to apprise themselves and take appropriate steps to remedy the deficiencies. Prior to remaking the Land Use & Zoning Regulations the TOA & TOAPC must be able to quantify their municipal water assets and apprise the community regards the extent of their assets to responsibly plan for the future.

In the course of my research regards requirements to build on my property I reviewed the communications from Mr. Guldner which contained some requirements to build and directed my attention to an address list of various jurisdiction partners but failed to cited all the local TOA ordinances to be compiled with to file an appropriate application. I retained a lawyer expert in land use zoning & building ordinances to apprise me of what was required for a building application in the TOA. After an exhaustive review by counsel of the TOA ordinances & records at the TOA offices he produced a list of TOA ordinances and requirements to make an application to build a home in the Albion Basin Subdivision. I pursued the requirements outlined by counsel and submitted an application to build two houses. The applications were submitted and the TOA building official responded by letter that the TOA would issue the building permits if I successfully obtained a permit for a new septic system from Salt Lake Valley Health Dept. The fact that I have submitted two applications which fulfilled all TOA requirements to build should have been reported at both TOAPC & TOA Council, to my knowledge staff has not reported on these applications to either body publicly. The result of my counsel's exhaustive review was that it disclosed Ms. Black-TOA Clerk had the ordinances in disparate files with no coherent numbering system in place such that they could be presented to those making inquiries regards requisite build requirements. Ms. Black then advocated for the TOA Council to

M.C. Haik-Comments on Town Alta Planning Commission Proposed Title 10-Land Use Regulations

inventory, catalogue & renumber the TOA Ordinances and the TOA hired an outside contractor to accomplish this task which resulted in the present numbering system.

Subsequent to my analysis of the TOA building requirements I retained a an engineer who has successfully obtained septic permits for clients all over Salt Lake County and specifically in all of the east side canyons and was a former Salt Lake Valley Health Board member. My properties passed all the required soils & other tests required by Salt Lake Valley Health. I also recovered records from Salt Lake County Planning & Zoning to review other successful septic permits in the canyons. I found that once the germane tests had been successfully completed the last thing that occurred was SLCPU provided a letter which states that water is available. I made a GRAMA request to Salt Lake County Planning and Zoning and found that hundreds of these letters were routinely issued by SLCPU to build new homes, for extensive remodels and repairs, or for replacement of failed septic systems in the last quarter century. Salt Lake County routinely required parties upgrading, remodeling, building new and making extensive repairs to their properties to upgrade the old septic system to a fully contained system; in each case a letter from SLCPU was issued stating water was available regardless of the terms of any surplus water contracts. These approval letters included leaseholds on federal property which in order to renew their lease had to upgrade the old septic system to fully contained. The number of properties was extensive and Salt Lake County Planning & Zoning provided the data in an Excel Spreadsheet. Subsequent to my engineer providing successful test results and responding to all the SLVHD questions the only thing that remained was a one page letter from SLCPU, which letter SLCPU Director-Niermeyer refused to provide. An otherwise routine administrative act, a letter which hundreds of others received upon successful completion of septic system tests was denied to me. Director Niermeyer did send a letter to the TOA & copied to SLVHD which stated that there was a water contract but the amount was insufficient. The letter made no mention of the change application (57-10015) filed by SLCPU at the UDWR decades prior, purportedly based on said contract, which application was approved for 400 gallons per day by the UDWR-Engineer for the Albion Basin Subdivision and is the basis for providing water to others in the Albion Basin Subdivision. This resulted in an appeal of this decision which has been winding it's way through the judicial system and remains pending today. I would also point out that Director-Niermeyer has conflicting sworn statements regarding the same contract. In one sworn statement Director-Niermeyer maintains that the contract has no force & effect & is not capable of being performed and in a second sworn statement several years later the same contract has force & effect but an insufficient quantity of water. Essentially a quantum contract, which exists in two completely different states at the same time, enforceable between the parties & unenforceable between the parties. I would note that this circumstance is evident in other surplus contracts in the TOA.

M.C. Haik-Comments on Town Alta Planning Commission Proposed Title 10-Land Use Regulations

The 1976 contract has specific terms and conditions which interpretations vary depending on to whom and when the analysis is given:

[1] regards quantity-265000 gpd if 1975 contract terminated. First sentence of Shrontz Settlement Agreement say 1975 contract shall be performed, leaving a balance under 1976 contract of 115000 gpd.

[2] 1976 contract says water may be provided in the 1976 TOA boundaries, which if true includes the properties in Cecret Lake.

[3] TOA staff omitted/failed to disclose that TOA & SLCPU had agreed to amend geographic limitation, but neither party disclosed to anyone and only came to light as a result of my review of Salt Lake City minute records.

[4] 1976 contract says no irrigation yet numerous parties including former Mayor Pollard admit that they used water to irrigate.

[5] Mr. Kapalowski specifically represented to the Board of Water Resources that the TOA could legally divert 500 acre feet, pursuant to an approved change application, based on the 1976 contract this value is larger then 265,000/115,000 gpd.

[6] The staff routinely contends that the amount is 265000 gpd which is less than 500 acre feet cited by Mr. Kapalowski as amount the TOA is legally entitled to divert.

The foregoing are a few examples of the same contract having meaning and no meaning at the same time, despite very simple plain language. There are additional anomalies in various surplus contracts I will not recite. The result is one contract appears to have multiple values and multiple meanings. I am not going to characterize the circumstances, actions or inactions, or conflicting statements of various elected officials, jurisdictional partners, staff of TOA & jurisdictional partners, counsel for TOA & jurisdictional partners which have over time led to the situation the TOA finds itself today; except to say that none of the foregoing cited parties can stand in public and cite where water can be diverted, used and in what amounts in the TOA. The fact is the analysis provided by the TOA long term staff does not even remotely pass the sniff test and legal counsel with a fiduciary obligation to the municipality has not been heard from. The TOA Council and TOAPC must seek substantive analysis & representations from the Counsel that represented the municipality of the Town of Alta in the change application (57-10013) for the municipal water supply, that party is Mssrs. Kapalowski/Veasey-Parsons Behle Latimer. Mr. Kapalowski was a member of both the old TOAPC which was merely appointed advisors to the Mayor of the TOA and a member of the TOAPC subsequent TOAPC conforming the TOAPC to the LUDMA act which their prior counsel Thompson had failed to do. Mr. Kapalowski silently recused himself from any deliberations regards the proposed Shrontz subdivision, he did not disclose his recusal to the TOAPC Chair or other members, the Mayor of Alta who appointed him or the staff. The only account of his recusal come in a sworn deposition

M.C. Haik-Comments on Town Alta Planning Commission Proposed Title 10-Land Use Regulations

by Mr. Sullivan in the Shrontz case. Why Mr. Kapalowski-Town of Alta Special Counsel for Water had to silently recuse himself from TOAPC deliberations should be disclosed at a minimum to his employers the TOA Council, but more appropriately to the public as well. Prior to any additional land use legislation or amendments the municipality of the Town of Alta must be able to quantify and disclose publicly how much water may be used where and by whom to the property owners, business owners, inhabitants & visitors to appropriately plan for the health welfare & safety and future viability of the community.

The properties in the proposed Albion Basin Protection Overlay Zone currently have four basic circumstances:

[1] Albion Basin Subdivision-Has surplus contract and change application for requisite culinary water amounts and water system fully approved & on file at SLVHD and UDWR. 57-10015.

[2] Albion Alps-Has surplus water contract but no change application, water diversion & use is not disclosed to UDWR.

[3] Cecret Lake-Has surplus water contract, but no change application, water diversion & use is not disclosed to UDWR, but is included in the original bounds of 1976 contract yet denied water by TOA.

[4] All of the property is within the municipality of the Town of Alta covered by the change application 57-10013 which provides for municipal use in the Town of Alta.

Until such time as the municipal authorities & their jurisdictional partners can disclose to the community the germane state of affairs the various authorities are not appropriately situated or informed to make land use or new zoning policies. The Town of Alta is definitely in need of both land use and zoning changes to maintain the community for the future but the process over the last decades has lacked transparency and frequently lacked participation by those most affected due to lack of rapport between the governed & the government as evidenced by lack of participation in the public process, recently much discussed by former TOA Councilman Moxley and others.

I would advocate the following course for the TOA Council's future deliberations regarding land use and planning and zoning:

[1] Remand the current proposed changes to the TOAPC and request that the TOAPC review in detail my applications to build to gain a substantive understanding of what the law presently requires and make a further review of their proposed land use changes once appraised.

M.C. Haik-Comments on Town Alta Planning Commission Proposed Title 10-Land Use Regulations

[2] Request written opinion from Mssrs. Kapalowski/Veasey-Parsons Behle Latimer or their successors regards the present status of all surplus water contracts, and all the change applications filed in the TOA by their jurisdictional partner SLCPU of record at the UDWR.

[3] Request written report from SCLPU regards the present status of all surplus water contracts and all the change applications in the TOA filed by their jurisdictional partner and of record at the UDWR to present to the public.

[4] Read the transcripts and listen to the audio from the hearings before the UDWR for the change applications for 57-10013 which clearly state in the first person the intentions for the use of water in the TOA by applicant SLCPU's counsel Mr. Novak & former Director SLCPU Hooten, in addition to TOA Counsel Mssrs. Kapalowski/Veasey-Parsons Behle Latimer.

[5] Review all of the original color TOA Zoning maps which I recovered from Salt Lake County Planning & Zoning and have digitally and have previously proffered to both the Mayor of Alta and the TOAPC Chair, which in my lengthy experience in attendance at public meetings in Alta have never been shown publicly.

[6] Conduct interviews with the long time owners of Albion Basin properties regards their recollections of what transpired during the annexation, including Page, Knowlton, Charlier, Gates, Jones, Miles, White, Gibbs, Nebbeker, Wetzel, Fisher, Melville, Pruitt; both to gain insight of their experience and cultivate a rapport so that they & their successors will substantively participate the public process from which they have become estranged.

[7] Appoint Mark C. Haik to the TOAPC.

Mark C. Haik