

Minutes of the Hurricane City Special Council meeting held on April 8, 2021, in the Council Chambers at 147 North 870 West, Hurricane, Utah at 4 p.m.

Members Present: Mayor John Bramall and **Council Members:** Nanette Billings, Joseph Prete, Dave Sanders and Kevin Tervort. Darin Larson excused.

Also Present: City Manager Kaden DeMille, City Attorney Fay Reber, Public Works Director Mike Vercimak, Planning Director Stephen Nelson, City Engineer Arthur LeBaron, and City Recorder Cindy Beteag

AGENDA

4:00 p.m. Discussion and possible decision regarding the roads in Hurricane Garden Home Subdivision

Mayor Bramall started the meeting stating the Hurricane Garden Homes HOA wants to make their subdivision a gated community. Nanette Billings stated she talked to St. George City's Mayor and she stated they haven't had any issues with emergency vehicles getting into gated communities. Lester Dalton, representing the HOA, stated they will do whatever the Fire District requires. The HOA wants the gates. Arthur LeBaron mentioned there was a previous plan to bring the roads up to standards and have the City take over them. A history of the minutes was sent out today. Mr. Dalton stated their intent is to gate their private roads but they are still open for discussion. He explained the roads belong to the subdivision and they do the maintenance on them. Ms. Billings pointed out the State code 72-5-104 reads that if the road is used by the public for ten years then it is a public road. She stated it hasn't been posted as a private road. Mr. Dalton commented there signs used to be there but they have probably blown down.

Joseph Prete stated there is language on the plat for phase 1 that grants use of ingress and egress for the public but the roads will be kept as private so they didn't have to build the roads to standards. He stated gating the roads would be contradictory to the language on the plat. Mr. Dalton stated the plat doesn't specify what roads in the subdivision and what type of access it is referring to. Mr. Prete stated the first page of the plat shows the roads going all the way to 600 North. Mr. Dalton mentioned he has a call into the Ombudsman office because he feels it is taking. They have been trying to come to a census for a long time but the HOA feels gates are the only option right now. The traffic has become very heavy since the subdivision to the north was started. Mr. Prete asked if the HOA had met since last week. Mr. Dalton stated contact has been made to some and they still are wanting the gates. Ms. Billings mentioned the roads have been there since 1991 and have been used by everyone since they were constructed.

If the City takes over the roads they wouldn't be improved immediately. Mr. Dalton stated the time to have these discussions and make decisions is past. Kevin Tervort stated the issue is now all the construction trucks are coming through their development ruining their roads and then they have to pay to fix them. Dave Sanders voiced concern with heavy trucks going over the bridge. Ben Packer stated if the bridge fails, the HOA is responsible for it. Mr. LeBaron asked if the City is claiming that it is a private right of way then are they going to not allow the gates. It was approved as private roads because they didn't want to build them to City standards but not a gated community. If they are public streets based on the statute then the HOA has no liability. He doesn't think all the construction traffic is going through this subdivision. The question is are the roads public or private. Have they become public streets by

prescriptive use? The previous discussions about taking over the roads have been regarding they aren't to City standards, not about gates.

Mr. Prete reads sections from previous minutes 11/8/90 Mr. Anderson wishes the City to take over the roads. Commission explains the City would probably require they meet City specs. Planning Commission 3/14/91 Mr. Anderson requested the roads to be public and maintained by the City. City Council 3/21/91 if standards are not followed they indicated that it should be a private development until it can be proven to be effective. Planning Commission 4/11/91 the chairman states there is a letter from the City Engineer that reads the roads should remain private until it is proven the drainage system works. Planning Commission 5/9/91 the roads will remain private for this phase to test the design. Planning Commission 7/9/98 it reads the streets will be constructed according to city standards and become part of the City's street system; referring to phase 2 but they are not to City standards either. Mr. Prete has no doubt that the intent was public access to 600 North. It was approved with that understanding. There is a clear intent for public ingress and egress. Previous aerial maps show a road continuing to 600 North.

Mayor Bramall would like to work with the HOA on the roads and put a weight limit on the bridge. Make the roads public and the City is responsible for the improvements. There is not a cost to take the roads over unless the Council wants to do improvements. Mr. LeBaron provided an estimate of what it would cost to install curb, gutter, and sidewalk. Ms. Billings thinks improvements to the bridge are needed more than curb gutter and sidewalks. The HOA has tried to do improvements to fix the drainage situations. Fay Reber stated the language on the plat states they are dedicated to the use of benefiting the public for access purposes. Private just means they maintain them. Mr. Packer stated the HOA is asking if the City wants the roads to be public then they take over the maintenance and liability. The HOA used money to improve 1580 West. They want the gates to protect their roads and liability. If the City makes the road public they would like to be reimbursed for the money they spent on improvements to 1580 West. Mr. Reber commented it is hard to ask for reimbursement when the original developer agreed to the terms. Mr. Dalton mentioned they are into the gates \$25,000. Their CCR's dictate before they can give open space they have to have written approval from every home owner's mortgage company. There were fifteen members present at the HOA meeting and two thirds of the group wanted the gates. Mr. Reber commented the roads are already public so the mortgage companies wouldn't need to sign off anything. It is acknowledging ownership doesn't exist, not taking over ownership. Mr. Dalton commented the HOA could end up in a lawsuit if banks have concerns that they didn't approve the roads going public. He is frustrated because he has been trying to address this for twenty years. The HOA wants the gates to protect the roads. The police chief stated last week that they can't enforce city ordinances on private streets. They don't care if the City takes the roads but not at their improvements expense.

Mike Vercimak doesn't see a problem with putting up the gates. There is still access on both sides. He understands connectivity but doesn't think it is needed in this situation. Mr. LeBaron commented if they are already public then the City doesn't need approval from Hurricane Garden Homes to call them public. He mentioned a similar situation with the Evertt's on Turf Sod Road and the Ombudsman ruled it has a public road. Mr. Prete understands their frustration and understands why they want the gates. He acknowledged things have changed over the last few years making traffic more intense. He thinks the best answer is for the roads to become public. Although that doesn't solve money they have already spent toward roads and gates, it is better to have an agreement between the City and HOA.

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Mr. Dalton requested if the City is going to make the roads public then they also take over all the open space to give them the option to dissolve the HOA under the threat of condemnation. Mr. Reber stated there is no need to include condemnation. There is no threat. He suggested wording it as follows; With respect to the roadways within the Hurricane Garden Home Subdivision the city affirms its legal authority in accordance with section 72-5-104 of the Utah code to exercise all rights and assume all obligations not inconsistent there with including the right of ownership, maintenance, replacement and repair and to enter to an agreement with Hurricane Garden HOA. Mr. Dalton would like to see open space included so it's a win for everyone. That way they can dissolve the HOA. If the City takes the common space then there could be legal issues. The City can't condemn open space but they are willing to entertain an offer of the open space. The irrigation is in 1580 West so it would become part of the Hurricane Irrigation system. The shares would have to be deeded to the City as well.

Joseph Prete motioned with respect to the roadways within the Hurricane Garden Home Subdivision the city affirms its legal authority in accordance with section 72-5-104 of the Utah code to exercise all rights and assume all obligations not inconsistent there with including the right of ownership, maintenance, replacement and repair and to enter to an agreement with Hurricane Garden HOA. Seconded by Nanette Billings. Motion carried with Nanette Billings, Joseph Prete, Dave Sanders and Kevin Tervort voting aye.

Another meeting will be held with the HOA on April 29th at 5 p.m. Mr. Packer requested a speed bump and stop sign on 365 North. City will do a dedication plat to clear up the record.

Adjournment: 5: 45 p.m.