

TOWN COUNCIL Meeting FINAL Minutes  
Wednesday, September 28, 2022 at 6:00 pm  
Old Church, 114 S. Mill Street, Virgin, UT 84779

PUBLIC MEETING WILL END PROMPTLY AT 9:00 PM.  
ANY UNFINISHED BUSINESS WILL BE CONTINUED TO NEXT MONTH'S MEETING

PRESENT:

Council Members:

Jean Krause-Mayor  
Paul Luwe  
Gene Garate  
LeRoy Thompson  
Mistie Baird

OTHERS:

Heath Snow-Town Attorney  
Krystal Percival-Town Clerk/Recorder  
Jeff Staples-Zion's Edge Subdivision  
Chance Snow-Zion Landing Subdivision  
Bronwyn Gooch  
Sean Amodt  
Darlene Pope  
April McKeon  
Dennis & Joann Allen  
Bill & Lori Baughman  
Cheryl & Charlie Sliger  
Kelly Purdown  
Ann Beshell

Keith Fanta  
Cindy Escude'  
Margaret Mihlbauer  
David Mendoza  
John Staples  
Jeff Staples  
Allen Lee  
Kent Peterson  
Shelley & Steve Tanner  
Mike & Julie Tyler  
Todd Barber  
Stan Burt  
Clint & Kylee Jenson

1. WORK MEETING-6:00PM

Mayor Krause Called work meeting to order at 6:00 PM

- A. Discussion of short-term rentals and residential hosting in Desert Garden Estates - Waiting for Attorney Heath Snow.  
Jean would like to discuss an application for RHF permit in Desert Gardens where this is in violation of their CCR's.

Jean asked Heath if we as a town can even legally ask if they have gotten permission from their HOA? Heath says we can ask but that can not determine our permit being issued.

Jean read a part of our STR Ordinance, Ch. 60, regarding Residential Hosting. Section 60.04.E.6 says, "This town does not have authority and will not enforce CC&R's or any other privately negotiated restrictive covenant." Heath added, "This section does not supersede CC&R's and any other privacy negotiation becomes established by private associations. The association still has full power to enforce it on their own." Jean commented that she saw where the association doesn't have to enforce it, but an individual could try to enforce the CC&R's on their own. But she just wants to make it clear that in our code it says it's not up to the town to enforce the CC&R's in a subdivision.

Heath followed up with yes these are private specialized prescriptions and is not a proper use of funds and holding reinforced ordinances that apply to everyone we have a requirement constitutionally to offer equal protection under the law and where this is a private law, we can't enforce it.

Paul has concerns about putting the question on the application regarding if the applicant has read their CC&R's or talked with the HOA about RHF. He feels if that question is on there and we deny the permit for another reason it could look like we are trying to enforce the CC&R's which we legally can not do. He does think our ordinance should be tightened up as it seems loosely written. He thinks the number of people in one home as well as who the person living there should all be looked at. He's aware of some abuses in town of not having the permanent owner living there. He would suggest this goes to P&Z to look at ways to protect the neighborhoods with revisions to tighten up the requirements. LeRoy thinks Paul should take on this task. Paul agreed to send P&Z some recommendations for this amendment to the RHF ordinance.

13 minute break.....

- B. Discussion whether to support Washington County in their quest to pave Sheep Bridge Road – The County wants a letter of support which she will not do until hearing from the public. The 2 benefits are recreation & tourism and congestion. She sees dust would be mitigated but then there's a lot more traffic. She sees the good and the bad on it all. She asked the council what their thoughts are? Paul wants to hear from citizens that are affected, mostly the residents in DGE. The cost needs to be investigated. If we pay for some of it that let's the developer off like Labrie, so maybe we can have a payback agreement. Maybe we need to consider is something like a roundabout at SR9. The mayor mentioned Rockville has asked for a new bridge in response to a support letter for paving Smithsonian Butte.

Gene Garate thinks it affects a lot more than some residents like local communities such as Hurricane or LaVerkin. If we get a grant he doesn't want to stick the developers with an unfair share.

Paul believes developers will ask for or accept a payback deal if the town needs some reimbursement for the Town share.

C. Discussion of streetlighting in Desert Gardens –

Jean explained this is about streetlights town-wide not just Desert Gardens. After meeting with Gene Garate, he said he would not object but would like to see another survey. The spreadsheet from RMP states the address of every streetlight in town. If you take the total to do the whole town at \$ 8,330 and you subtract the cost of Desert Gardens that leaves the cost of \$ 3,960 for the rest of the town. There are options to contemplate such as removing lights or doing Dark Sky lighting.

LeRoy feels that the town should not pay to remove poles in DGE.

D. Discussion of Capital Improvements Committee Appointments –

Capital Improvements Committee includes: Jean Krause (Mayor), LeRoy Thompson (Treasurer) and Wyatt Lee (Planning Commissioner), and 2 people in town. Jean would like to appoint April McKeon being an engineer. Need one more.

## 2. REGULAR MEETING-7:00PM

A. Call to Order/Pledge of Allegiance/Opening Thought or Prayer

Mayor called the meeting to order at 7:01 PM/Pledge of Allegiance/ Opening Prayer led by LeRoy Thompson

B. Declaration of Conflicts of Interest –

Mayor Krause stated she is so close to having a conflict of interest on New Business, item number 4, if we get that far. Heath said she needs to declare the conflict now and decide if she wants to vote on it at that time.

No other conflicts were declared.

Paul asked if Gene would have a conflict of interest on the 2 preliminary plats. Heath said the town should have a standing conflict of interest form filled out by all council members. This would be considered an indirect conflict.

### C. Council Comments

i. Updates by Mayor – Mayor updated council about the East Water Tank deadline of Nov. 11, 2022 for the funding and the meeting to get the funding will be January 6, 2023. The Pocketville Road is being discussed with the Town Engineer for the cul de sac as well as the water pipeline which was never signed after the December meeting when it was approved. Heath is looking at it to re-negotiate that contract to assure our needs are met.

LeRoy said some things were put in council members packets showing assets and how things have grown in a balance sheet from 2018 to 2022, June 30, 2022. Total assets in 2018 of \$293,177 and in 2022 we had \$1,205,714.62 with the majority of those assets being funds we have set aside for the water tank and other possible improvements to the roads. Page 2 is where we are on income and its public information for anyone to see. The other one is year to date comparison to budget and we should be at 17% now in revenue and we are at 20%, we should be at 17% of expenses and we are at 10.4%, so that shows we are trying to manage things properly.

### D. Consent Agenda

i. Approval of Minutes from August 24, 2022, Town Council Meeting - Tabled until next month.

ii. Approval of Checks and Invoices for August 2022

***LeRoy moved to approve checks and invoices for August 2022, Mistie 2<sup>nd</sup>, all AYES. Motion passed unanimously.***

Sean updated on the Mosquito Abatement and how the peak of our season down here is in September not July or August. The worst case was at Sky Mountain Golf course on the 17<sup>th</sup> and 18<sup>th</sup> hole and they were coming from a farm about a half mile away. We rarely do fogging anymore but we tried to contact people to let them know we had to do this. We had police waiting for us that we had to explain to them what we were doing. We also found an invasive species in Harrisburg that carries many diseases, so we are trying to eradicate them there. They are black and white and bite in daytime. If you spot these please notify them so they don't get established. What we spray is very diffused and not very concentrated.

### E. Open Forum

Sean loves the Harvest Fest and because it's harvest time he has lots of cucumbers and squash for anyone that needs them. He also thanks Dan for quickly getting on the leak on S. Mill St.

April McKeon – She understands things change but when she moved here no STR were allowed at all. She thinks reviewing our ordinances on STR should be done and maybe amended again.

On the subject of paving Sheep Bridge Road she quoted a Ron Whitehead letter about people from other cities needing use of Sheep Bridge Road and feels like the residents don't matter. She thinks there should be speed bumps or something to slow down traffic. She thinks Virgin Town residents should be considered before Apple Valley or Hilldale residents that work this direction. April accepted being on the capital improvements committee.

Darlene Pope concurs with April. She says employees in the park were referenced in the letter and \$5 million for 30 people when there's way more people here to be affected. She thinks it's the charge of her City Council to protect and consider the needs of the citizens of the town and it seems counter intuitive to consider the needs of Apple Valley and Hilldale without deeply considering the impact to town residents.

Wyatt Lee has been involved in many events and has heard incessant complaints about the dust on Sheep Bridge Road so he doesn't understand the pushback on paving Sheep Bridge Road versus the dust.

Keith Fanta of Desert Gardens just finished building their house in May and moved in. It does back up to Sheep Bridge Road so they see it every day, but his biggest concern would be what happens where it hits SR 9? When they try to pullout of their development it is risky and cars and trucks are flying through there. Take into consideration that is going to be a risky intersection with injuries and potential fatalities.

Julie Tyler said they eat on their deck 50% of the time and watch Sheep Bridge Road. Some use caution but others buzz through so fast. They were on their bikes the other day and a guy came through so fast and Mike tried to slow them down. They glared at Mike and sped up. He was worried about his wife on a bike and so many people walk out there too. She stated she is against the paving because of the higher speed limit that will come with that.

Bill Baughman stated he's concerned about the entrance to Desert Gardens where he lives if they put a gas station there. If the developer has to pave his half of the road who paves the other half? He's never pulled into a gas station from a gravel road.

### 3. OLD BUSINESS

#### A. CLOSE PUBLIC MEETING AND OPEN PUBLIC HEARING



***Mistie moved to CLOSE the Public Meeting and OPEN the Public Hearing, LeRoy 2<sup>nd</sup>, ALL AYES. Motion passed unanimously.***

i. Take Public Comment on Ordinance 2022-11 Amending Section 3.06.030 of Virgin Town's Municipal Code setting new compensation rates for Virgin's elected, appointed, and statutory officers.

No public comment was made.

#### B. CLOSE PUBLIC HEARING AND RE-OPEN PUBLIC MEETING

***LeRoy moved to CLOSE the Public Hearing and RE-OPEN the Public Meeting, Mistie 2<sup>nd</sup>, ALL AYES. Motion passed unanimously.***

- i. Discussion and possible approval of Ordinance 2022-11 Amending Section 3.06.030 of Virgin Town's Municipal Code setting new compensation rates for Virgin's elected, appointed, and statutory officers.

Mayor Krause reviewed the new rates and that this needed to be done by Ordinance.

Paul Luwe explained how he became involved in this Ordinance by wanting to be sure this process is done properly. He stated he will vote no on this but that doesn't reflect his views on P&Z or others receiving a raise.

LeRoy commented that he is for this because he knows it is deserved and so much is not compensated that P&Z or TC members do.

Mistie agreed that it is well deserved as she drives by and sees the Clerk and Darcey here late at night and knows how many hours the staff puts in to complete their work so she wants to support this ordinance.

Heath wanted to clarify that staff should be done by resolution and elected officials by Ordinance. Also, that generally staff should be paid according to experience. If the town

hires somebody new according to this ordinance they would be paid the same as Krystal even with no experience. He reiterates it should be dependent on experience. Usually there is a pay range and the administrator which in our case is the Mayor would do annual evaluations and issue pay raises according to experience within that pay range. So we need to adopt the pay ranges, but what you are paying employees doesn't need to be adopted by ordinance, but Elected Officials does. Heath feels we need the distinction that it's not improper to have a pay range for appointed positions like a Town Recorder.

Mayor Krause said she hopes to have the Town Personnel Manual in October for revision so is that where we would start this process of pay ranges? She also wanted it known that the salary chosen for the Clerk position is in line with surrounding towns.

***Gene Garate moved to approve of Ordinance 2022-11 Amending Section 3.06.030 of Virgin Town's Municipal Code setting new compensation rates for Virgin's elected, appointed, and statutory officers, striking the line that says the salary is as follows and the box of salary for the Clerk/Recorder,***

***Paul moves to amend the motion to keep the line but insert that pay scale range will be set in the personnel policy manual, Jean 2<sup>nd</sup>, ROLL CALL VOTE, ALL AYES. Motion passed unanimously.***

***Gene moved to approve the amended motion, Jean 2<sup>nd</sup>, ROLL CALL VOTE, Paul-no, Gene-AYE, Jean-AYE, LeRoy-AYE, Mistie-AYE. Motion passed 4-1.***

- ii. Discussion and possible approval of Ordinance 2022-12 Amending Section 44.12 of Virgin Town's Municipal Code allowing non-conforming lots abutting Highway Resort Zone to be re-zoned Highway Resort Zone upon request. Accept public comment.

No public Comment

***LeRoy moved to approve Ordinance 2022-12 Amending Section 44.12 of Virgin Town's Municipal Code allowing non-conforming lots abutting Highway Resort Zone to be re-zoned Highway Resort Zone upon request. NO 2<sup>nd</sup>, Mistie-AYE, LeRoy-AYE, Paul-NO, Gene-AYE, Jean-AYE. Motion passed 4-1.***

- iii. Discussion and possible approval of Resolution 2022-M A resolution adopting a policy for replacement of luminaires and maintenance of existing streetlights with the town until the town has researched and adopted new standards and specifications for streetlights and the town has sufficient funding within its budget to retro-fit existing streetlights. Accept public comment.

No public comment

Mayor Krause commented on the understanding from the work meeting to go forward with replacing current lighting with dark sky lighting from Rocky Mountain Power throughout the town except for Desert Gardens, who will have a survey of what they want, either pay to remove their lights or the town will have their lights replaced as well as the rest of the town.

Mistie pointed out the 30-day limit for replacement.

Gene Garate inaudible.

***Gene Garate moved to table Resolution 2022-M, until next month, A resolution adopting a policy for replacement of luminaires and maintenance of existing streetlights with the town until the town has researched and adopted new standards and specifications for streetlights and the town has sufficient funding within its budget to retro-fit existing streetlights, LeRoy 2<sup>nd</sup>, ALL AYES. Motion passed unanimously.***

Paul Luwe asks if we need a budget amendment. Can we use road impact funds? Heath says no just use General Funds.



#### 4. NEW BUSINESS

- i. Discussion and possible approval of final plat for Zion's Edge subdivision from John Staples, seeking Short-Term Rental Overlay. Located V-2148-A-1-B-1-A (East of Rio De Sion)

No public Comment.

Heath commented regarding the STR declaration and changing to overlay zone but was mostly inaudible. Heath did suggest no selling of lots until the completion of the overlay zone change.

Jeff Staples reiterated Heath's suggestion but clarifies they have done everything required for this overlay. Also, the only other existing subdivision with this overlay did not do a zone change. With their financial obligations to close this property and the interpretations from both council members and staff that we have done everything, If this can't be agreed on tonight, our legal counsel will have to get involved. Our proposed resolution would be an approval tonight not just for the final plat but also the final plat with the STR Overlay contingent upon doing whatever other application that we've been told doesn't exist within a special meeting to be held in 2 weeks. Otherwise, it puts us in a bad position, that we will defer to the town to help with.

Jean said when you look at the code for the STR Overlay, it talks about the application, then the town shall not approve an STR Overlay designation unless it finds the following, and it names 6 things. One has been done but the other 5 have not, but this has nothing to do with you at all. It's the town. The Town was supposed to have a zone change, under item #8 in Section C, the town finds proposed zoning designation of dwelling units as STR's at this particular location is necessary or desirable to provide a service or facility which will contribute to the general well being of the neighborhood and the community, and that has not been done. B. A development wide short-term rental use of dwelling units will not under the circumstances of the particular case be detrimental to the health safety and welfare of the persons residing or working in the vicinity or injurious to property or improvement in the vicinity, and that hasn't been done. Then under C. the proposed zoning designation which hasn't been applied for and development of dwelling units as STR units will comply with all other regulations and conditions, and that has been taken care of. I said I know you've done which is D. You've got this in your CC&R's. It talks about using one management company and then F. talks about the proposed zoning designation does not contradict with the town's General Plan. Mayor Krause states that her issue is that 4 out of 6 findings have not actually been analyzed and addressed. Her opinion is, and everybody else on Town Council can chime in, but her opinion is that doing a review including an STR Overlay and making it conditional on something done afterwards, she would have a problem with. She does not like the proposal.

Paul states the ordinance makes it very clear we have to provide notice and we have to provide a Public Hearing and a recommendation from the Planning Board and since this is a zone change, it's state law and requires us to go through a procedure so he doesn't think Jeff's contingency would work because it's prejudging what the recommendation is based on public input. Paul doesn't think that would be allowed under state law. He thinks we have to go through the proper process and then we'll make our decision based on the evidence presented in the recommendation of the Planning Board. Paul recollected that when they were here for the Preliminary plat he asked if they had made a decision on the STR and Jeff said no he had not and that's fine because according to the process you can do it later but you still have to go through the process and so they had an opportunity to do it back then, 2 months ago, and now you've made the decision to do it but we still have to go through the process and do the proper notice.

Jeff stated there were certified mail notices going to adjacent landowners about their project showing the STR Overlay with a 10-day notice and Paul responded that they still have to go through the 10 day notice on the Public Notice Website and go through a Public Hearing. There was no notice that the Planning Board was holding a Public Hearing about an STR Overlay that went out to the public. Their agenda had no notice on it for an STR Overlay. It was discussed but not in a Public Hearing and finally when the Planning Board sent their recommendation it was to approve the final plat with conditions but no recommendation as to the STR Overlay.

Gene said the Town dropped the ball and it's not the applicant's fault.

Heath stated that going back and going through the correct process is as much a protection for the landowner as for the town. The landowner could have read the ordinance or had his legal counsel read it to avoid some expectations, but Heath feels this process needs to happen but in an expedited way. We are not changing the zone we are adding the STR Overlay to the underlying but that requires a 10-day public notice for a Public Hearing at Planning Commission level and then you can properly take action.

More discussion regarding the certified letter mailed out by the town and what documents were turned in to the Clerk 10 days prior to the September P&Z meeting.

Gene says he feels the commission needs to redo for a couple of reason section C3 that says a narrative can be shared, but then it says a little later that this can be done simultaneously with the final plat but below that it says it only applies to final plats that have been recorded. At what point the town must be made aware of this is pretty open. Heath thinks it's not as confusing as it sounds and now that they are asking for it we need to follow the

rules exactly as well as the developers resending the letters with a copy of the Public Hearing Notice that states very clearly that this is a Public Hearing for a zone change application with an STR Overlay, fill out a zone change application and pay the fee.

Sean & Bronwyn commented regarding what P&Z discussed from the ordinance.

Jean asked Heath about the pending litigation.

Heath says the pending ordinance doctrine in Utah the *Logan City versus Western Land Equities* says there's been some nuances to that case, you can't run out and put an ordinance in place with knowledge of a pending application. Heath would need to see when the first draft of the ordinance was prepared and submitted to the city and when it was put on Planning Commission agenda and see when the applicant filed their application.

Gene stated he thinks to put legislation through to put the cat back in the bag, that's sneaky and doesn't think we should go that way. He does have a request that the council should be looking at the two (2) subdivisions that are here tonight with whatever council decides to do tonight it needs to apply to both of them. He thinks if this goes back to P&Z there should be a special meeting right afterwards to address it and that fees should be waived because the town has been disingenuous, whether intentional or not, these developers were not told that this is what they were going to have to do by anybody.

Heath reiterates that yes, we were ambiguous in this specific situation and it's an actual zone of which you have to go through the process prescribed by Utah law and we need to recognize our deficiencies and recognize that the developer should have been more alerted on our ordinances too but nonetheless we need to do this.

Mayor Krause stated that she has a strong disagreement with holding a council meeting right after a P&Z meeting because that implies that we already know how it's going to go. The next day would be preferable. Everyone agrees to hold the special meeting on Friday October 14, 2022 although Jeff Staples adds that they as well as the legal counsel they have retained feel they have done everything and addressed all items the Mayor listed as not done yet, so they are willing to go through this but this has been nonsense and if there are more curveballs are thrown, the hammer that their attorneys throw down will be ungodly and this town will not want to afford it.

***Gene moved to approve the final plat for Zion's Edge Subdivision located at V-2148-8-1-b-1-8 East of Rio de Sion with any remaining obligations worked out with Heath and with the same motion that the Town notices tomorrow for a Public Hearing for the STR Overlay Zone to be on P&Z on October 13, 2022 and the council will convene on October 14, 2022 at a time to be determined and this is contingent upon the applicant filling out the application and the town will waive the fees, Mistie 2<sup>nd</sup>, LeRoy wants to vote no but feels we have done a real injustice to the developer and his heart goes out to them so he'll go ahead and vote-AYE, Gene-AYE, Paul-AYE, Jean-Recused herself. Vote passed.***

- ii. Discussion and possible approval of proposed subdivision (preliminary plat) Zions Landing from Justin Christensen located V-2139-B (Pocketville Road)

Chance Snow updated for Justin Christensen and asked about a cul-de-sac up there. He said they just want the ok from council before getting too far into the process. They will be upgrading the sewer plans from previous plans. LeRoy asked if this would be STR and Chance responded they are leaning that way but want to avoid what just went on with the Zion's Edge. And we are aware of and will handle storm water drain off.

***Gene moved to approve preliminary plat Zion's Landing located at V-2139-b Pocketville Road, LeRoy 2<sup>nd</sup>, Jean questioned if we are about to get ourselves in the same mess, we're in with Zion's Edge by approving this preliminary plat without addressing anything according to our code on STR issues?***

Heath explained that the only reason to declare STR is to know that everything is adequately sized, and things are dealt with that are more important to the bigger development like adding additional off-street parking.

**ALL AYES. Vote passed unanimously.**

***Paul moved to table discussion item 4-iii and 4-iv for next month, Jean 2<sup>nd</sup>, ALL AYES. Motion passed unanimously.***

- iii. Discussion and possible approval of Ordinance 2022-13 Amending sections of "VULU" (Casita) / Removing size restriction for attached casita. Motion and Vote

Reason for change and effects:

- • Bring VULU into compliance with **Utah State Law 10-9a-530. (2)-b-(i).**



- • Changing language from Casita to Accessory Dwelling Units
  - • Removing sizing restrictions from Internal Accessory Dwelling Units
- iv. Discussion and possible approval of Ordinance 2022-14 Amending Chapter 2.12 Definition Changes L-Z . Motion and Vote

Reason for change:

- • To simplify definitions.
- • Remove regulations in definitions.
- • Add new definitions to better fit the use of the terms in current ordinances
- • Regulations in definitions have been moved to their respective locations throughout VULU

#### 5. CLOSE PUBLIC MEETING AND OPEN CLOSED MEETING (IF NEEDED)

***Gene moved to CLOSE the public Meeting and OPEN the CLOSED Meeting for the purpose of addressing the John Ely appeal, NO 2<sup>nd</sup>, ALL AYES. Motion passed unanimously.***

#### 6. ADJOURN MEETING

***Gene moved to adjourn, LeRoy 2<sup>nd</sup>, ALL AYES.***

Meeting adjourned at 9:32 PM

APPROVED: November 16 2022

Krystal Percival - Town Recorder:



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