



118 Lion Blvd PO Box 187 Springdale UT 84767 \* 435-772-3434 fax 435-772-3952

**MINUTES OF THE PLANNING COMMISSION SPECIAL MEETING ON TUESDAY, JULY 7, 2015,  
AT THE SPRINGDALE TOWN HALL, 118 LION BLVD., SPRINGDALE, UTAH.  
THE MEETING BEGAN AT 5:00 PM.**

**MEMBERS PRESENT:** Chairman Jack Archer, Commissioners Joe Pitti, Liz West, Randy Taylor, Allan Staker, and Jack Burns from Zion National Park

**EXCUSED:** Commissioner Mike Marriott

**ALSO PRESENT:** DCD Tom Dansie, Town Attorney Greg Hardman and Town Clerk Darci Carlson recording. Please see attached list for citizen signed in.

**Approval of Agenda: Motion made by Joe Pitti to approve the agenda; seconded by Liz West.**

**Staker: Aye**

**Taylor: Aye**

**Archer: Aye**

**West: Aye**

**Pitti: Aye**

**Motion passed unanimously.**

**Commission discussion and announcements:** There was no Commission discussion or announcements.

**Motion made by Joe Pitti to go into closed session in order to discuss pending or reasonably imminent litigation; seconded by Randy Taylor.**

**Staker: Aye**

**Taylor: Aye**

**Archer: Aye**

**West: Aye**

**Pitti: Aye**

**Motion passed unanimously.**

Closed meeting adjourned at 5:44pm.

**MEMBERS PRESENT:** Chairman Jack Archer, Commissioners Joe Pitti, Liz West, Randy Taylor, Allan Staker, and Jack Burns from Zion National Park

**EXCUSED:** Commissioner Mike Marriott

**ALSO PRESENT:** DCD Tom Dansie, Town Attorney Greg Hardman and Town Clerk Darci Carlson recording. Please see attached list for citizen signed in.

Mayor Smith spoke to residents in attendance. He said as part of the mediation negotiation process, the formula restaurant ordinance was to be repealed. To do this, the Town must first hold public hearings. By law these hearings must be noticed 10 days in advance. The Planning Commission public hearing is held in advance of when the Town Council considers the ordinance.

- Last week the Town Council authorized the Mayor to sign the settlement agreement. We are waiting for the Fotheringham's to sign. If the agreement was not signed by Monday, the public hearings would be pulled until signatures were received. According to Izzy Poco's attorney, the Fotheringham's were not available to sign the agreement.
- The next deadline is Thursday in order to allow the required time for public hearings to be noticed for upcoming Planning Commission and Town Council meetings.

- Mayor Smith said the Town still has options as it relates to the settlement agreement. If Izzy Poco does not sign the agreement we will go back to court. Since the Town is still in litigation we cannot disclose any additional information until the case is dismissed or settled.
- Decisions regarding this issue have been made by the entire Council, not just the Mayor. Mayor Smith emphasized the Council is not going to compromise the Town's position and is doing everything they can to ensure the best outcome possible.

Town attorney Greg Hardman added that in the public lawsuit Izzy Poco claims its damages are in excess of \$3,000,000. He said public hearings determine the fate of the ordinance not resolution of the lawsuit. The settlement agreement was signed by the Town but there are no deadlines as to when Izzy Poco must sign. The agreement has not expired, but that is an option.

Members of the audience expressed frustration and confusion that something was going on which citizens did not agree with.

Mr. Hardman provided background of the case to help explain. The case has been pending for a long time and has gone through various stages of development and procedure.

- Many people thought the federal court judge had dismissed the lawsuit and were therefore surprised to hear the Town was going to settle. Mr. Hardman clarified that the court's dismissal of the case was for lack of standing. Anytime a lawsuit is filed, a plaintiff must fulfill certain basic requirements to advance a case. The Town maintained the ordinance was constitutional and that Izzy Poco lacked standing to be a plaintiff because it had not properly gone through all the administrative processes to secure a permit.
- As the case progressed, both parties filed cross motions for summary judgement. Since the material facts in the case were not disputed, a trial was not needed. Izzy Poco's motion claimed the ordinance was unconstitutional because it discriminates against interstate commerce. They also contend the objective of the Town to maintain its uniqueness is belied by the fact there are hotels and other establishments in Springdale that are associated with franchises or national companies seen elsewhere. The Town's motion maintained the ordinance was constitutional and didn't violate the commerce clause. It also maintained the underlying objective of preserving the unique sense of place was being properly preserved. There was not a lesser restrictive way of accomplishing or implementing this purpose other than outright prohibition.
- The judge waited two years to make a decision and ultimately dismissed the case for lack of standing. It was not a dismissal on the merits of the legal substance of the case. It was a technical dismissal. The plaintiff can refile within one year and correct the standing issue. Izzy Poco indicated they intended to file in state court. They filed a motion to have the federal court judge reconsider his ruling and also filed an appeal with the 10<sup>th</sup> Circuit Court of Appeals in Denver. Since there was no final determination, but an interim ruling, this paved the way for another two to three years of litigation.
- Faced with this possibility and the costs associated with it, the Town's insurance carrier gave strong directives to try and resolve the case. This led to the decision by the Council.
- As a policy holder the Town is entitled to disagree but then the insurance company can deny coverage. Since the insurance company tendered the Town's defense, it was subject to certain restrictions and reservations. The insurance company can dictate the direction of litigation and outcomes. The Town's insurance carrier will pay the settlement and legal expenses. State law requires municipalities have insurance, they don't have an option.
- Mr. Hardman reminded the audience that the community elected five members to the Council and they are legally charged with making decisions. As a public body they make the best decisions they can with the information they have. This is how it works in Springdale and every other municipality in Utah.

A question from the audience directed at the Fotheringham's asked why they were doing this. Jack Fotheringham said he has lived in Springdale since 1960. His father was Mayor and during his tenure in office residents objected to the Bit and Spur, but he believed in freedom and liberty and felt they should be allowed to build it. Mr. Fotheringham said he took an oath in the Air Force to uphold and defend the constitution of the United States. We don't have to ask permission to live in the Town or open a business.

That's why we're doing it. He noted the Excell family owned the Chevron station and opened a Best Western in Town.

The audience began to get agitated and Chairman Archer brought the meeting to order. He expressed the need for the Planning Commission to move on with their meeting and agenda items. The public hearings will be set at a future date for both the Town Council and Planning Commission where public comments will be entertained. The community can also write letters to the Town. He encouraged residents to provide further public comment in this way.

#### **Discussion/Information/Non-Action Items**

**Discussion of revisions to the General Plan: Chapter 3 *Land Use and Zoning*:** Mr. Dansie said the Commission had been working on this chapter for several months. Based on input from their previous discussions, new, refreshed language has been developed rather than a re-write of existing language.

- Future hotel development was discussed but the Commission did not come to a consensus.
- Ideas regarding parking were added which included: providing appropriate parking for RVs and large vehicles; angled parking; and encouraging walking and biking. Ms. West said the new language hit the mark on RV parking.
- Mr. Dansie asked the Commission to consider how regulation of future development will affect the village atmosphere.

Mr. Pitti agreed with the revisions, especially sections on village character which he felt strengthened the overall General Plan document. He said this reflects the sentiments of the community.

Mr. Burns said it was important to identify development that is not keeping with village character such as large scale hotels. Mr. Archer and Mr. Pitti felt this was addressed when boutique and small scale hotels are described in the General Plan.

Under objectives and policies regarding lodging facilities, Mr. Archer suggested they use the word 'encourage' rather than 'require' when addressing architectural and exterior design elements. He felt this would be consistent with other areas of the General Plan.

Mr. Dansie said architectural elements are keys to village atmosphere. Town ordinances are what implement the General Plan standards. He also suggested condensing development into smaller areas rather than spreading it out helps to protect larger sections of property.

Mr. Archer suggested they build in incentives for property owners to preserve agricultural areas.

Mr. Dansie said he had attended a UDOT meeting earlier in the day with the Mayor, Town Manager Rick Wixom and Zion National Park Representative Jack Burns. The topic of discussion was the SR-9 corridor and reconstruction project. Springdale will be going through a street project similar to what La Verkin is going through now.

- The project will dig adjacent to the historic ditches and UDOT has acknowledged preserving them will be problematic. UDOT is deferring to the Town on how these ditches should be handled. Mr. Dansie said the topic will be discussed by the Historic Preservation Commission. They will consider if the ditches are an important resource that add to the character of the Town.
- Mr. Burns thought the ditches in Rockville were listed on the State Historic Registry but would need to confirm. He did not believe Springdale's had been nominated. He noted that an architectural feature does not have to be functioning to be eligible.
- Mr. Dansie said rebuilding or rehabbing the ditches is expensive. The UDOT budget does not include money for the ditches.
- Mr. Pitti said the ditches are an identifying characteristic and thinks the community would get behind a project to rebuild or rehab. He suggested grants may be available to help fund. They are a visual, historic piece of the community.

Mr. Dansie said the reconstruction project will be done in two phases. The first will start end of September 2016 through mid-November. The second will start end of February 2017 through early

March. They have a specific temperature window when they can pave. UDOT is proposing an overlay in Rockville with reconstruction from the end of Rockville through Springdale to the Park.

- Mr. Dansie said they also discussed the proposed SR-9 corridor which would add passing lanes, turn lanes, bike lanes, widen shoulders where they are narrow, and improve parking management.
- Mr. Burns added UDOT announced they are contributing money to the Town's street light project.

Going back to the General Plan discussion, Mr. Taylor asked how far they can push the architectural requirements. Mr. Dansie answered they can go really far by defining elements that are required to be incorporated in designs.

- Mr. Taylor thought an across-the-board requirement would go a long way to mitigate the effects of formula restaurants.
- Mr. Dansie said the Commission can certainly contemplate and promote these types of standards but they cannot be de facto regulation.

Mr. Burns questioned language about charging money for parking. He thought the wording should be softened somewhat since the transportation study has not been completed yet.

Chairman Archer expressed he was feeling good about what they had accomplished in Chapter 3. The Commission would schedule a public hearing to discuss what they had done so far with members of the community. The Commission will begin their review of the Economic Development chapter.

- Mr. Dansie said he would compile all the elements of Chapter 3 and have it available for review in their next work meeting.

**Motion to adjourn at 6:58pm made by Randy Taylor; seconded by Liz West.**

**Taylor: Aye**

**Archer: Aye**

**Pitti: Aye**

**West: Aye**

**Marriott: Aye**

**Motion passed unanimously.**



Darci Carlson, Town Clerk

APPROVAL: \_\_\_\_\_



DATE: \_\_\_\_\_

7-21-15



TOWN OF SPRINGDALE

PO Box 187 118 Lion Blvd Springdale UT 84767

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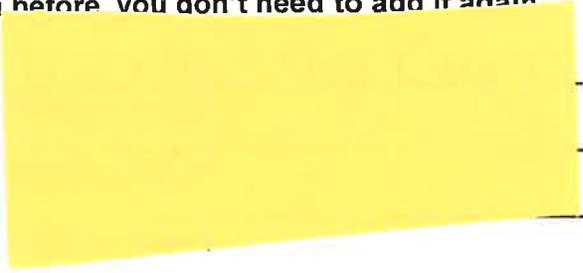
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