



**MINUTES OF THE SPRINGDALE TOWN COUNCIL SPECIAL MEETING
WEDNESDAY, JUNE 23, 2021**

AT THE CANYON COMMUNITY CENTER, 126 LION BOULEVARD, SPRINGDALE, UTAH

The Special Meeting convened at 10:00am

MEMBERS PRESENT: Mayor Stanley J. Smith, Council members Adrian Player, Randy Aton, Lisa Zumpft, and Suzanne Elger

ALSO PRESENT: Town Manager Rick Wixom, Director of Community Development Tom Dansie, Town Treasurer Dawn Brecke, Police Chief Garen Brecke, and Town Clerk Darci Carlson recording. Town Attorney Greg Hardman participated electronically.

Approval of the agenda

Motion made by Lisa Zumpft to approve the June 23, 2021 agenda. Seconded by Suzanne Elger.

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: Aye

Motion passed unanimously.

A. Discussion/Information/Non-Action Items

1. General Discussion and Announcements – Ms. Carlson announced the first “Meet the Candidates Night” event would be held Thursday evening starting at 6:30pm at the Canyon Community Center.

B. Legislative Action Items

1. Public Hearing: Subdivision Plat Amendment – Revisions to the Canyon Springs Estates PUD subdivision plat, clarifying subdivision access and easements: Mr. Dansie explained this plat amendment did not change the physical layout of the subdivision or any lot boundaries or dimensions. This amendment only clarified access on the private streets, lot easements, and common easements within the subdivision.

The Town recently entered into a settlement agreement with the Canyon Springs Homeowners Association (HOA) which terminated a lawsuit. In order to uphold requirements under the agreement, the Town needed to prepare an amended plat and obtain Council approval.

The Planning Commission reviewed the plat amendment and recommended approval. Their motion and findings were contained in the staff report. Public comment had been submitted primarily from residents of the subdivision, raising concerns of the potential impacts access would allow.

Questions from the Council to staff:

Mr. Aton confirmed the plat could not be recorded without all required signatures.

Ms. Elger asked if the HOA and the Town's process could be done in parallel.

- Mr. Dansie indicated it could. The HOA had sixty-days from the date of the agreement to approve the plat.

Town Attorney Greg Hardman said the amended plat was provided to the Canyon Springs Estates attorney soon after its creation and prior to it going before the Planning Commission. The HOA attorney and Board members had access to the plat for several weeks.

Questions from the public to staff:

Brant Warner asked why a plat amendment was necessary in the agreement.

- Mr. Hardman provided a brief history of the lawsuit. The parties determined mediation was beneficial to resolve the lawsuit and other contemporaneous issues related to maintenance of the low-pressure sewer system and historic public access through the subdivision to public lands. All issues were well-documented and explained in advance. Also prior to mediation, it was understood the individuals participating on behalf of the HOA had authority and authorization necessary to resolve all the issues.

Mr. Warner asked if prior to mediation the HOA Board members should have contacted members of the association.

- Mr. Hardman would not comment on what the HOA Board members should have done related to the governing documents of the association.

In terms of the settlement agreement itself, the parties at the mediation spent nearly 7-8 hours negotiating and another 3 hours drafting the agreement.

In referencing the Planning Commission motion concerning the plat amendment, Mr. Warner asked why the settlement agreement was binding.

- Mr. Hardman said Tim Hoover attended mediation and signed the settlement agreement in his capacity as president of the HOA with the advice of HOA legal counsel. The document was put together for the express purpose of resolving the lawsuit. Mr. Hardman submitted it was a binding, legally enforceable settlement agreement.

Mr. Warner asked that the Planning Commission's findings of good cause be elaborated.

- Based on the Planning Commission's deliberation, Mr. Hardman stated the plat was prepared in accordance with the settlement agreement. By recommending approval to the Town Council, it would accomplish the objectives and justification for the agreement.

Citing Section 10-14-13(D)(2), Mr. Warner asked how it was determined no one was materially injured.

- Mr. Hardman said it was one of the presumptive findings that the Council would determine in deciding whether to approve the amended plat.

Motion made by Suzanne Elger to open a public hearing to discuss the subdivision plat amendment of Canyon Springs Estates. Seconded by Adrian Player.

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: Aye

Motion passed unanimously.

Greg Cooper, property owner in Canyon Springs, read a statement into the record (Attachment 1). The signatory of the statement also included the names of Edward Box, Mark E. Brown, Michael Kuttan, Dimon McFerson, and Brant Warner

Brant Warner read section 19 *Authority to sign* from the settlement agreement. With this, Mr. Warner affirmed the HOA president did not have full authority to sign. He also questioned Mayor Smith's authority to sign the document. Because of these reasons, Mr. Warner said the settlement agreement was moot and a fraud. In referencing Town code section 10-14-13 *Vacating a plat*, Mr. Warner said a plat could not be changed or amended unless the Town Council was satisfied that neither the public or a person would be materially injured. He said every lot owner in Canyon Springs was materially injured. Additionally, Mr. Warner did not believe there was good cause to make an alteration.

Dimon McFerson owned property in Canyon Springs where he said increased traffic from pedestrians and bicycles would occur. This necessitated increased supervision requirements of the Town. He supported the statement read by Mr. Cooper. Mr. McFerson said the rights of thirty-nine property owners were being violated.

Mr. Warner added comments and said this issue stemmed from a long-standing lawsuit between the Town and Canyon Springs regarding gates. In fact, this issue motivated the Town Council to eliminate 'compelling need' from the ordinance language as it relates to gates. Personally, he was not in favor or opposed to gates. Mr. Warner said the settlement agreement was complex, represented a huge material change, and was unnecessary. He felt owners would not have a problem with public access through a gate if vehicles could be restricted. A plat amendment was not necessary.

Motion made by Adrian Player to close public hearing. Seconded by Suzanne Elger.

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: Aye

Motion passed unanimously.

Council deliberation:

Ms. Zumpft disclosed she lived in Canyon Springs.

Mayor Smith indicated his authority to sign the settlement agreement was given in a public meeting before the mediation. The Town Council approved a motion that granted authority to Adrian Player and Mayor Smith to represent the Town and make decisions during the mediation.

Mr. Player clarified this meeting was not intended to discuss the legality or rightness of the settlement agreement; the purpose was to consider the plat amendment.

Ms. Elger said the Council was managing the Town's interests and not Canyon Springs HOA issues.

During mediation it was communicated the HOA representative was there with full authority to sign the agreement. Had this not been the case, mediation would not have proceeded. The Town moved ahead in good faith. The Town had an obligation to uphold what was determined in mediation. Whether the HOA upheld their obligation was up to them.

Ms. Elger said access to this land had gone on for many years as a prescriptive easement. During this time there were no examples of material injury. This amendment simply formalized already existing access.

In many ways, Mr. Player said the settlement agreement benefitted property owners. With a gate, only people or bicycles could access the subdivision, not cars.

Mr. Aton said the Town entered into mediation in good faith; if the HOA wanted to terminate the agreement that was their choice.

Mayor Smith added the Town had a legal obligation to uphold the decisions made during mediation. If not, it would be a breach of contract.

Motion made by Suzanne Elger that the Town Council approve the plat amendment for Canyon Springs Estates PUD subdivision plat. This motion is based on the findings in Section 10-14-13 of Town Code which addresses vacating or changing a plat; the Planning Commission's findings and approval in that they determined that the plat amendment would not materially injure the public or any persons; and the findings show there is good cause for the amendment based on the signature of the HOA president on the settlement agreement dated April 27, 2021 between the Town and Canyon Springs Estates Home Owners Association, and direct the Mayor to sign.
Seconded by Randy Aton.

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: Aye

Motion passed unanimously.

2. Public Hearing: Ordinance 2021-07 amending section 1-6-5 in Town Code changing the compensation schedule for elected and appointed officials: Currently the Mayor drew a small salary but the Town Council and Planning Commission members were not compensated.

Staff conducted a survey of other communities in the county to compare public official compensation. The Town Council had also previously discussed this through the budget process.

Questions from the Council to staff: None were asked.

Questions from the public to staff: None were asked.

Motion made by Suzanne Elger to open public hearing for Ordinance 2021-07 modifications to the Town Code Section 1-6-5 changing the compensation schedule for elected and appointed officials. Seconded by Adrian Player.

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: Aye

Motion passed unanimously.

Public comments: No comments were made.

Motion made by Suzanne Elger to close public hearing. Seconded by Adrian Player.

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: Aye

Motion passed unanimously.

Council deliberation: There was no additional Council discussion.

Motion made by Lisa Zumpft to approve Ordinance 2021-07 amending section 1-6-5 in Town Code changing the compensation schedule for elected and appointed officials and direct the Mayor to sign. Seconded by Adrian Player.

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: Aye

Motion passed unanimously.

C. Administrative Non-Action Items

1. Public Budget Hearing: Resolution 2021-13 to open and amend the FY 2020/21 budget: This budget amendment made final adjustments to the current fiscal year in order to close it out. Mr. Wixom expressed his appreciation of Ms. Brecke's efforts, along with other department managers.

Mayor Smith commended the work of Mr. Wixom and Ms. Brecke in watching the Town's funds.

Questions from the Council to staff: None were asked.

Questions from the public to staff: None were asked.

Motion made by Lisa Zumpft to open public hearing for Resolution 2021-13 to open and amend the FY 2020/21 budget. Seconded by Adrian Player.

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: Aye

Motion passed unanimously.

Public comments: No comments were made.

Motion made by Lisa Zumpft to close public hearing. Seconded by Randy Aton.

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: Aye

Motion passed unanimously.

Council deliberation:

Ms. Zumpft expressed appreciation for staff, specifically Mr. Wixom and Ms. Brecke, despite a challenging year with COVID and many unknowns.

Motion made by Lisa Zumpft to approve Resolution 2021-13 to open and amend the FY 2020/21 budget and direct the Mayor to sign. Seconded by Adrian Player.

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: Aye

Motion passed unanimously.

2. Approval of the bid award to Interstate Rock for the SR-9 sidewalk project: The Town was constructing a sidewalk between HooDoos and the Best Western. Interstate Rock was the successful bidder in the bidding process. The amount of the bid was \$249,619.00. UDOT would contribute a significant portion of this amount with the balance coming from the Town. The project contract would come before the Council in a subsequent meeting. Construction would start after Labor Day.

Motion made by Randy Aton to approve the bid award to Interstate Rock for the SR-9/Tiley Hill sidewalk project. Seconded by Adrian Player.

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: Aye

Motion passed unanimously.

3. Discussion and possible approval of employment agreement for Town Manager Rick Wixom: Mayor Smith indicated Mr. Wixom's contract expired in October.

Mr. Wixom said he had a great experience working and serving the Town for the last seventeen years.

Mayor Smith worked closely with Mr. Wixom and was in full support of this agreement extension. Mr. Wixom had done a good job keeping the Town financially sound.

- Mr. Player felt Mr. Wixom was the best Town Manager in the state of Utah.

Ms. Elger began by stating her comments were not personal. This was an employment agreement and a significant contract, the value of which was approximately \$600,000. In review, she noted some errors and omissions. One concern was section 7d addressing reimbursement for a personal vehicle and mileage. Ms. Elger said Mr. Wixom was provided a town car which represented different compensation. Additionally, she wanted to consider his performance evaluations over the past three years.

- Mayor Smith indicated performance was reviewed every quarter as part of the Arbinger 3A+ process. Council members had access to this information.
- Ms. Elger asked if Mr. Wixom had defined goals and expectations, and how the salary was calculated. She wanted to ensure there was a process set up before the contract was approved.

Several years ago, the Town contracted with Mike Swallow to conduct a salary comparison to ensure Springdale salaries were comparable with other municipalities. Mr. Swallow continued to provide this service. Compensation was based on his documentation and recommendations.

- Ms. Elger's concern was whether this compensation included merit, COLA, and market adjustments. She questioned where the number came from.
- Human Resource Manager Ms. Brecke, said Mike Swallow conducted an organizational reset every two to three years. Market adjustments were made at the beginning of 2020; however, they were not implemented until this fiscal year.
- Section 3b in the contract addressed cost of living, merit and market adjustments.

Ms. Elger questioned the tax liability related to Mr. Wixom's use of the town-provided vehicle. She said the section addressing mileage reimbursement should be amended. The contract should also reflect the actual salary amount for the upcoming fiscal year.

- Mayor Smith noted other staff members could use the vehicle. Mr. Wixom's use of the car was in line with the Town's vehicle policy.

Mr. Player recalled issues with the past personnel appraisal process. The Arbinger evaluation system was more effective and structured. Mr. Player had reviewed Mr. Wixom's performance evaluations; however, Mr. Aton, Ms. Zumpft, and Ms. Elger had not.

The effective term of the contract was October 1, 2021 through September 30, 2024. Starting July 1st, Mr. Wixom's compensation amount would increase to \$163,196.00 which included cost of living, merit, and market rate adjustments.

Motion made by Adrian Player to approve the employment agreement for the Town Manager Rick Wixom effective October 1, 2021 through September 30, 2024. Seconded by Lisa Zumpft.

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: No

Motion passed.

Motion made by Lisa Zumpft to go into Closed Session for discussion of the purchase, exchange, or lease of real property. Seconded by Adrian Player.

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: Aye

Motion passed unanimously.

The Closed session commenced at 11:33am.

MEMBERS PRESENT: Mayor Stanley J. Smith, Council members Adrian Player, Randy Aton, Lisa Zumpft, and Suzanne Elger

ALSO PRESENT: Town Manager Rick Wixom, Director of Community Development Tom Dansie, Town Treasurer Dawn Brecke, Police Chief Garen Brecke, and Town Clerk Darci Carlson recording. Town Attorney Greg Hardman participated electronically.

The Closed session ended at 12:04pm

Motion made by Suzanne Elger that the Town move forward with the strategy discussed during the Closed Session regarding the purchase, exchange or lease of real property. Seconded by Adrian Player

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: Aye

Motion passed unanimously.

Adjourn

Motion to adjourn at 12:02pm made by Randy Aton. Seconded by Lisa Zumpft.

Aton: Aye

Zumpft: Aye

Smith: Aye

Player: Aye

Elger: Aye

Motion passed unanimously.

Darci Carlson

Darci Carlson, Town Clerk

APPROVAL: _____

[Signature]

DATE: _____

8/11/21

A recording of the public meeting is available by contacting the Town Clerk's Office.
Please call 435-772-3434 or email springdale@springdale.utah.gov for more information.





PO Box 187 118 Lion Blvd Springdale UT 84767

ATTENDANCE RECORD

Please print your name below

Meeting Town Council Date 6/23/21

IN PERSON ATTENDEES:

REMOTE ATTENDEES:
(Clerk will complete)

Gregory H. Cooper
Name (please print) Gregory Cooper

Name (please print)

BRANT WARNER
Name (please print)

Name (please print)

ERIC BLOUX
Name (please print)

Name (please print)

Barbara Bruno
Name (please print)

Name (please print)

DIMOV McFERRSON
Name (please print)

Name (please print)

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To the Town Council of Springdale:

We are among what we believe is a large majority of owners of property in Canyon Springs Estates who are resolutely opposed to the 2nd Amended P.U.D. of Canyon Springs Estates (the "Proposed Amendment") proposed by the Town of Springdale. That Proposed Amendment seeks to turn significant common property, including private roads and common easements into "public access easements," and is a highly material and adverse change to our ownership interests in such land. It is by no means a mere clarification. As such, the Proposed Amendment may only be adopted in compliance with the provisions of the Covenants, Conditions and Restrictions of Canyon Springs Estates, which are of record and of which the Town had notice. Those requirements include approval by 75% of all of the votes on the HOA as well as approval by a majority of the eligible mortgagees holding mortgages on lots. Those approvals have not been obtained and we are confident that the Proposed Amendment will not be approved.

This attempt to encroach on the rights of land owners has arisen rapidly, and we continue to ascertain and evaluate the facts. The Town's plans for such public use of the roads, which are paid for and maintained by the owners of Canyon Springs Estates, may still not have been fully disclosed for consideration by those owners. We are in the process of retaining legal counsel and will oppose the Proposed Amendment, and plan vigorously to assert all of our rights in connection with individual and common lands. We expect other owners to join us.

The simplest and least expensive route for all involved would be to withdraw the Proposed Amendment.

Respectfully,

Gregory Cooper

With the concurrence of:

Edward Box

Mark E. Brown

Michael Kutten

Dimon McFerson

Brant Warner