

Virgin Town
Town Council
February 20, 2024
Final Minutes

Council
Jean Krause-Mayor
Paul Luwe
Mistie Baird-Online
April McKeon
Marci Holm

Attendance
Krystal Percival-Clerk
Kim Kietzman-Permit Clerk
Valerie Wenz, Darlene Pope
Lee Ballard, Allan Lee, Jay Lee,
Stan Burt, Eric Wallentine,
Beth Stouffer, Jim Soria,
Kent Peterson, KC Shivers,

Online
Monica Bowcutt,
Tom Lacross, Lee,
Jeff,

REGULAR MEETING: 6:05pm

A. CALL TO ORDER JEAN KRAUSE /PLEDGE OF ALLEGIANCE

B. DECLARATION OF CONFLICTS OF INTEREST – NONE

C. CONSENT AGENDA

1. **A.** RE-Approval of Minutes from November 20, 2023 & December 19, 2023 Town Council Meeting.
B. Approval of Minutes from January 11, 2024 Town Council Work Meeting & January 16, 2024 Town Council Meeting.
2. Approval of Checks and Invoices for December 2023 & January 2024
3. Resolution R2024-D Appointing Paul Luwe as Mayor Pro Tem with Mistie Baird as Backup Should Both Mayor and Mayor Pro Tem be Unavailable
Marci Holm made a motion to approve the consent agenda / Paul Luwe seconded.
Roll Call:
April McKeon- AYE
Paul Luwe-AYE
Jean Krause- AYE
Marci Holm-AYE
Mistie Baird-AYE
Passed

D. OPEN FORUM

Limit 2 minutes per speaker, may talk about anything NOT on the agenda.

Cameron Spendlove, I don't think the emergency meeting was the appropriate way for a 3-month moratorium. There was nothing defined as an emergency, all the reasoning was known and common, I don't think it was a need for immediate action. The meeting was held improperly, and the passage of the moratorium was also improper. I think the Town should redo the moratorium based on state law.

Lee Ballard stated she wanted to let it be known that along the river, this last year, there were many cases of West Nile Virus in horses, her horse got it, and it's incurable, and only transmitted by mosquitoes. The State reported to her vet that there have been many cases along the Virgin River this last year.

E. COUNCIL COMMENTS

Marci Holm wanted to thank Ash Creek for coming out today.

April McKeon received a letter from the Department of the Army Corp of Engineers concerning the former Hurricane research site. To establish a restoration advisory board of the site and we have until March 1st. It came in the mail.

Jay Lee gave an update on mosquito abatement.

PUBLIC HEARING:

Marci Holm made a motion to close the public meeting and open the public hearing / April McKeon seconded / ALL AYE / No NAE

A. ACCEPT PUBLIC COMMENT;

1. Ordinance 2024-03 An Ordinance Amending Virgin Municipal Code (VMC) 3.06.030 to Include the Appointed Town Treasurer as a paid position and setting for the Treasurer Compensation.
No Public Comments

Marci Holm made a motion to close the public hearing and open the public meeting / Paul Luwe seconded / All AYE / No NAE

PUBLIC MEETING:

A. MOTION AND VOTE FOR ITEMS 2 - 6

1. Presentation by Steve Meismer of the Virgin River Program and Kevin Bunnel of the Utah Division of Wildlife Resources on the Woundfin Project that will take place on the Virgin River beginning in March 2024.

Steve Meismer talked about protecting endangered fish from getting a parasite. We want to bring a small population of fish up here and see if they would survive above the diversion. The fish would be tagged and marked. They would be released by a sandy substance area. probably in the Rockville Virgin River section. This does not affect water rights or development capabilities. This is a notification to the community about this project and he is hoping to start in the next few weeks. Jay Lee asked what that will do to the species that we have here in the river. Steve stated we shouldn't see much interaction.

2. Permission for 5 County Association of Governments to work with Virgin Town Planning Commission on revision of Virgin Town's General Plan.

Nate Wilburg from 5 County, stated that there is no cost for our service. We will help write your general plan. Small Towns and Cities have a hard time coming up with a budget to keep up their general plans. So, this is a great service. We help with 5 plans, and we are hoping to help Virgin. The planning process starts with the Council giving the ok to the Planning Commission. We can start the process and gather data, public forums, and surveys. Kevin Smedley will be the one working with your town to make it your own. Kent Peterson and Valerie Wenz from Planning and Zoning both said yes, we would really like the help. Nate stated we want to make this Virgins plan and what Virgin wants.

Paul Luwe made a motion to approve / Jean Krause seconded
/ ALL AYE / No NAE

3. Ordinance 2024-03 An Ordinance Amending Virgin Municipal Code (VMC) 3.06.030 to Include the Appointed Town Treasurer as a paid position and setting Treasurer Compensation.

April McKeon made a motion to approve Ordinance 2024-03 / Paul Luwe seconded.

Roll Call:

April McKeon- AYE

Paul Luwe-AYE

Jean Krause- AYE

Marci Holm-NAE

Mistie Baird-AYE

Passed 4/1

4. Resolution R2024-E A Joint Resolution of The Town Council of Virgin, Utah and The Administrative Control Board Of Ash Creek Special Service District Requesting Annexation of Property Within The Boundaries Of Virgin Into Ash Creek Special Service District.

Paul Luwe stated that I think we should take the vote on the Water Conservancy District first and then this vote second. I just feel that sewer is coming fast. With that all said I think however this vote goes, we need to proceed with creating some type of sinking fund for the community and maybe help pay for the construction or impact fees or connection cost. So, when the residents that are here now we will have put the money away now so the existing homeowners don't have to pay for these sewer costs. But I'm voting no. Jean Krause stated that I think we need to join Ash Creek whether we join the Water Conservancy District or not. There is nothing stopping us from creating a sinking fund. April McKeon stated that she agrees with the Mayor and if we had some kind of catastrophic event, we would be set up to protect the environment.

April McKeon made a motion to approve the resolution R2024-E / Jean Krause seconded.

Roll Call:

April McKeon- AYE

Paul Luwe-NAE

Jean Krause- AYE

Marci Holm-NAE

Mistie Baird-AYE

Passed 3/2

5. Ordinance 2024-04 An Ordinance Amending Virgin Town's Official Zoning Map By Re-Zoning V-48-D, V-53, V-74, V-75, (Currently Rural Residential Zone) to Commercial Zone and V-49-A, V-73, V-72-B (Currently Residential Zone) to Commercial Zone.

Dayton Hall, speaking on behalf of Shirlene Hall. He stated there are 7 parcels here, 3 of them front SR 9, and 4 of them do not. You have broad discretion even if contrary to general plan if there is a rational reason to do so. The 4 parcels that are not adjacent to SR 9, I recognize that the council has discretion to not re-zone those. I can see why they would not be eligible. The ones along the highway are eligible. The Town Council needs to comply with its ordinances and with the ordinance making the property eligible for commercial zone. Just like the Town expects its residents to comply with its ordinances. Paul Luwe indicated that he would vote no. He stated that Dayton Hall's interpretation of the ordinance is incorrect and skips the second step that after being eligible for commercial zoning, there must be an approval of a zone change. Paul Luwe indicated that his no vote will be consistent with his prior votes of commercial property next to residential property. The problem with Virgin's zoning is that there is one commercial zone intended to fit all commercial uses. The current commercial zoning is inappropriate next to a residential zone since the uses include a hotel and a gas station. Also, the zone change is contrary to the general plan in that it removes eligible available residential uses. Jean Krause indicated that she would vote yes because the property has been eligible for commercial zoning since she moved to Virgin 15 years ago even though there are new uses. Mistie Baird indicated that she agreed with both Paul Luwe and Jean Krause but would vote yes even though she felt the town needed a C1, C2, C3 commercial uses.

Jean Krause stated that we approve ordinance 2024-04 rezoning V-73, V-53, V-75 and Keeping V-49-A, V-48-D, V-72-E, V-74 / Mistie Baird seconded.

Roll Call:

April McKeon- NAE

Paul Luwe-NAE

Jean Krause- AYE

Marci Holm-NAE

Mistie Baird-AYE

Failed 3/2

Dayton Hall pointed out there was no motion to deny so he requested this matter be tabled for 6 months. Paul Luwe made a motion to table this to 6 months as we work on our ordinances (the amendment to VULU to include a light commercial zone) / Mistie Baird seconded.

Roll Call:

April McKeon- AYE

Paul Luwe-AYE

Jean Krause- AYE

Marci Holm-AYE

Mistie Baird-AYE

Passed

- 6. Ordinance 2024-05 An Ordinance Rescinding Ordinance#2023-12 That Had Amended Virgin Town's Official Zoning Map by Re-Zoning V-2-1-21-2342 From Rural Residential Zone to Commercial Zone.**

Raymond stated that he sent in a letter, and he wasn't going to rehash the letter I indicated. We do have a strong position for takings on this case. I want to note that my client has begun improvements to the property. He talked about statements made by town attorney, Heath Snow at the work meeting. in regard to biased comments. He referenced The December 13, 2023, comments, made by Ms. McKeon and continued to read comments from previous meetings on the subject of the zone change. Returning to what Mr. Snow stated, he advised that a person should recuse themselves if you're indicating how a council would vote. This is concerning, it was public knowledge how McKeon would vote, that would be arbitrary and capricious and bias. Paul Luwe asked Raymond about the improvements he mentioned and asked if his client had received any permits. Raymond responded that they had not received any permits and the improvements started today. His client, Ms. Kellan, clarified the improvements as moving boulders a few weeks ago around the egress and today moving tumbleweeds and bushes. Paul Luwe provided his reasons for voting no on this application. He didn't believe that this was spot zoning in either situation, to grant or to deny application as his belief was that the legislature pretty much did away with spot zoning with its 2015 amendments. He also disagreed with Mr. Raymond's letter concerning the void issue. He stated that his December motion to table was consistent with how he testified before the then council concerning matters that should have been left to the new council in January 2022. He also indicated that consistent with his vote on the previous matter, he believed the current uses in the commercial zoning are incompatible with the character of the neighborhood and with the surrounding rural residential zones. Once approved all the uses are available and the applicant could flip the property to someone else. There is no buffer of a light commercial zone. The zone change doesn't protect nonurban development nor facilitate orderly growth and therefore is contrary to the general plan. This is also contrary to general plan as the general plan requires orderly growth through synchronization of development with public infrastructure and current the transportation plan has access off Mesa Road behind the development creating a big traffic safety concern with traffic coming off 1420 onto SR9 and on Sheep Bridge Road and Mesa Road. The roundabout for this intersection is not even on UDOT's schedule so this proposal is getting ahead of the synchronization of development with public infrastructure. Contrary to the general plan Chapter 6, this proposal eliminates land identified and designated for residential housing and reduces housing sites which exacerbates the lack of affordable housing.

Paul Luwe made a motion to approve the ordinance rescinding ordinance 2023-12 / Jean Krause stated the ordinance needed to change to ordinance number 2024-04 Paul Luwe agreed / Marci Holm seconded.

Roll Call:

April McKeon- AYE

Paul Luwe-AYE

Jean Krause- NAE

Marci Holm-AYE
Mistie Baird-NAE
Passed 3/2


Paul Luwe made a comment that the Town still needed a legal opinion as to the confusion over previous zoning actions.

CLOSE PUBLIC MEETING AND OPEN CLOSED MEETING (IF NEEDED)

ADJOURN MEETING 7:35pm

Motion to adjourn public meeting

Paul Luwe made a motion to adjourn / Marci Holm seconded / All AYE / No NAE


Krystal Percival Clerk/Recorder

April 16 2024
Approved Date