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**MINUTES OF THE SPRINGDALE TOWN COUNCIL SPECIAL MEETING ON  
MONDAY, JUNE 29, 2015 AT TOWN HALL, 118 LION BLVD., SPRINGDALE, UTAH.  
MEETING CONVENED AT 5:00 PM**

**MEMBERS PRESENT:** Mayor Stan Smith, Council members Mark Chambers, Bill Weyher, Mike Alltucker, Adrian Player

**ALSO PRESENT:** Town Manager Rick Wixom, DCD Tom Dansie, Town Attorney Greg Hardman and Town Clerk Darci Carlson recording. See attached list for citizens signed into the meeting.

**Pledge of allegiance led by Chief Garen Brecke.**

**Approval of agenda: Motion made by Mark Chambers to approve the agenda as posted; seconded by Adrian Player.**

**Weyher: Aye**

**Chambers: Aye**

**Smith: Aye**

**Player: Aye**

**Alltucker: Aye**

**Motion passed unanimously.**

**Discussion/Information/Non-action Items**

**General discussion & announcements:** No announcements were made

**Action Items – Legislative**

**Discussion and possible action regarding proposed Ordinance 2015-03 and fire season restrictions:**

Mayor Smith asked if the Council had questions. None were asked.

**Motion made by Mike Alltucker to adopt Ordinance 2015-03 which prohibits open fires and use of fireworks within the Town during the 2015 fire season and authorizes the Mayor to sign; seconded by Adrian Player.**

**Weyher: Aye**

**Chambers: Aye**

**Smith: Aye**

**Player: Aye**

**Alltucker: Aye**

**Motion passed unanimously.**

**Action Items – Administrative**

**Consideration and possible action concerning proposed settlement agreement with Izzy Poco:** Mayor Smith said he would allow public comments as long as they remained civil.

He said this item has been going on for many years. It has not been an easy decision for the Council. There have been many things leading up to this which cannot be discussed in public until the lawsuit is dismissed.

- Mayor Smith said they traveled to Salt Lake City to meet with Izzy Poco, their lawyers and a mediator. The agreement is the outcome of that mediation. Because of the litigation, much has been going on in closed session and tonight is more of a formality.
- Public hearings regarding the ordinance will be held at the Planning Commission meeting on July 7<sup>th</sup> and the Town Council meeting on July 8<sup>th</sup>. Mayor Smith said hopefully by that time the lawsuit will have been dismissed and more information can be shared.

Lisa Zumpft asked if the public will hear the content of the settlement agreement tonight before the Council votes. Mayor Smith summarized the agreement: Izzy Poco has the right to open a sandwich shop and sell Subway sandwiches; Izzy Poco agrees to abide by all the Town laws and ordinances currently on the books; the Town will rescind the franchise part of their ordinance; the settlement agreement states a dollar amount.

Town Attorney Greg Hardman said the settlement agreement is a public document and he had copies available to distribute.

The audience asked why the settlement agreement was not shared with residents prior to the meeting. Mr. Hardman replied terms of the agreement were only finalized this afternoon.

Mayor Smith said the amount granted is \$787,000. This amount was negotiated between the Trust/insurance company and the lawyers. Originally Izzy Poco was asking for a lot more. The insurance company will make the payout not the Town. The settlement will cover legal expenses and the disputed claim without admission of wrongdoing.

Louise Excell said the legal and constitutional challenges of the ordinance were never resolved. Therefore she could not understand why the Council would do this. To her, they rolled over and gave away the Town without a fight. She said if the Council voted to approve the agreement they were making a bad decision as the people elected to represent the Town's best interest. If the attorneys have recommended you approve this settlement then you need a new law firm and a new insurance company. Ms. Excell said this is an amazing abdication of everything we have worked to preserve. If approved, she said the Mayor and Council should respectfully submit their resignations. Addressing Izzy Poco and Mr. Fotheringham who was videotaping the meeting, Ms. Excell said you may celebrate your victory but you have to mourn what you have done to Springdale.

Mayor Smith respectfully disagreed that the Council did not put up a fight. Once settled, they can explain more about what went into the decision. His feelings are just as strong today as when the ordinance was passed. For the past two years, the Council has received more information than the Town is aware.

Ms. Zumpft asked if the agreement was only for Izzy Poco and what the long-term ramifications would be.

- Town Attorney Greg Hardman said it is an agreement between the Town and Izzy Poco. It allows Izzy Poco to move forward on its own or assign the opportunity to a related entity.

Stewart Ferber said now anyone can build a fast-food restaurant. Mr. Hardman said if the ordinance is repealed then that is a possibility.

Ms. Excell said anyone can file an application for a fast-food restaurant and they would have a vested right in advance of the formal repeal.

Julie Gregoric said if Izzy Poco was able to challenge the formula restaurant ordinance what is preventing them from challenging the Town's sign ordinances.

- Mayor Smith said they have just as much right as anyone else does to challenge. They too will need to abide by the Town's ordinances and be compliant.

Ms. Zumpft asked if Izzy Poco can open more franchise businesses. Mayor Smith said the agreement allows Izzy Poco to open Subway.

Max Gregoric noted as part of the settlement agreement the Town must rescind the formula restaurant ordinance. The public hearings next week would allow an opportunity for residents to discuss the removal of the formula restaurant ordinance. He questioned the timing of these hearings because by law the Town needed them before making any ordinance change.

- Mayor Smith said tonight the ordinance was not being rescinded. To abide by law, the Town will hold public hearings on July 7<sup>th</sup> and 8<sup>th</sup>. Mr. Gregoric indicated the Town already agreed to rescind the ordinance per the agreement so essentially the public had no say in the outcome.
- Mr. Hardman clarified and said it was a prospective commitment which is totally legal. Mr. Gregoric countered and said if every member of the community said they didn't want the Council to change the ordinance it would have no affect since the Council is agreeing to take action on the settlement tonight. He said the public hearings are virtually meaningless and will have no effect.

- Mr. Hardman added the agreement is subject to being signed by Izzy Poco.

Mr. Gregoric said settlement agreements are mutually agreed upon so something has pushed the Council to settle. Recently the public was told the case was dismissed by a judge. A short time later we hear you are settling the case. Why did the Council decide to settle rather than continue the court battle? The citizens of Springdale are very concerned about this and not in favor of rescinding the ordinance.

- Mayor Smith said he cannot answer at this time.

Mr. Hardman said the case was dismissed due to a procedural technicality. Under state and federal law, this is not a dismissal with prejudice. The applicants filed a motion to have the court reconsider and also filed an appeal. They moved ahead in a very deliberate path demonstrating an effort to move the case forward regardless of the ruling.

- Mr. Gregoric said it seems the Town is giving up a lot by having to rescind the ordinance. The Council could also consider not settling.

Stewart Ferber defended the Council. He said they represent us but know more than we do. Without insurance the Town could be financially exposed. In his opinion other settlement agreements with the Town have given away more. He said as long as the Town maintains the architectural standards outside and fast-food franchise inside, it brings competition. If you can't tell it's a McDonald's or Subway from the outside, it doesn't make any difference. He felt the Town could have lost a lot more than they are losing now and commended the Council for fighting it off for all these years.

Ms. Zumpft suggested if the formula restaurant ordinance is rescinded the Planning Commission work on language which limits where they can go in Town.

- Mayor Smith said that despite what people think, they have looked at different language and scenarios. Much is still met with problems. The ordinance is being amended to take out language that causes grief.

Pat Cluff said she was very disappointed. She feared for the character of the Town they have tried so hard to preserve. She implored the Council to keep Springdale from turning into a fast-food town. She said we have so much to protect and asked them to do their best.

Chuck Passek asked if they can expect the building to change. Do they have to abide by the ordinances or can they make it appear more like a Subway including logos and fonts.

- Mr. Dansie replied the settlement agreement requires them to comply with all Town architectural and design standards. These standards dictate setbacks, building size, colors and materials but not logo fonts. The Town has the ability to enforce all its standards.
- Mr. Passek asked if fonts can be added to the sign ordinance. The intent being to minimize the impact of these logos. Town Attorney Greg Hardman indicated that trademarks and service marks are issues which would need to be considered.

Ron McMahon said he doesn't envy the position of the Town Council. In reading the synopsis it appears to be a fiscal problem and the insurance company is playing a pivotal role. They appear to be holding the Town hostage. He questioned if it is a fight against the franchisee or if the issue is the insurance company. He asked if the Town was opening itself up to another lawsuit by signing the agreement.

- Mr. Hardman answered 'no'. He said there are general releases and all past and present claims are being waived in their entirety.
- Mr. McMahon said the question is how can the insurance company dictate the forward nature of the Town and how do we protect against this. Mayor Smith said until the case is dismissed they cannot speak freely.

Mr. Hardman said the Council is approving the agreement subject to Izzy Poco signing. In talking with their attorney it will be signed within the next few days.

Councilman Weyher asked the attorney the consequences if the Council chose not to sign the agreement. Mr. Hardman answered that we have a lawsuit and go back to court.

Mr. Chambers said this issue has been a process for the Council and has occurred over many years. Given their understanding and the information they have been given, they must make a decision. He does not like it but has

a responsibility. There will be a time when more information will become available to the community. It has not been easy emotionally or intellectually. Every Council member cares about the Town and the village atmosphere. They understand the importance of marketing and tourism and how the Town looks and feels. It is our brand. The ordinances can still protect how we want to be seen and how we want to live in our Town.

Mr. Alltucker expressed his support of the settlement agreement with the same trepidations as Councilman Chambers. He said they had great legal counsel and have explored many options. This agreement provides for the Town's financial security, which is one of the Council's duties. It does not put the Town at undo risk. It provides for continued insurance coverage and ends personal claims. It lays out what is expected going forward with opportunities for enforcement. Mr. Alltucker said it has to be done.

Mr. Player said he was not going to resign and found the comment offensive. In fact he probably plans to run again and if the community does not like his decisions as a Councilman then they can choose not to vote for him. He reiterated the pressure they have all been under and said once additional information comes out he felt people would agree they were doing the right thing.

**Motion made by Mike Alltucker to enter into a proposed settlement agreement with Izzy Poco and authorize the Mayor to sign on behalf of the Town subject to Izzy Poco countersigning the agreement as required by its terms; seconded by Adrian Player.**

**Alltucker: Aye**

**Player: Aye**

**Smith: Aye**

**Chambers: Aye**

**Weyher: Aye**

**Motion passed unanimously.**

**Consideration and approval of separation agreement for Kurt Wright:** Mayor Smith said he talked to Kurt Wright and he agrees with the document. Accusations that Mr. Wright were fired and mistreated are not true. Mr. Wright gave his resignation without pressure. In the agreement, the Town is giving him things we don't have to but are in recognition of what he has done.

Mayor Smith said it was not easy to sit in his seat and make the decisions they have to make. Unfortunately the Council receives more information than they can give out to the community. He would not resign because he loves this Town too much. It has been challenging to see the departure of a Town Clerk and Chief of Police and deal with a lawsuit they hoped to win. He reminded people there is often much more to issues than what they see.

Councilman Chambers said Kurt Wright has every right to retire and move on with his life. The best thing people can do is to give him their thanks and praise for his service.

Mr. Alltucker said having been part of this process the Mayor deserves kudos for dealing with a difficult situation. He did it professionally and maintained Mr. Wright's stature and respect.

**Motion made by Mike Alltucker to approve the separation agreement for Kurt Wright and authorize the Mayor to sign; seconded by Adrian Player.**

**Weyher: Aye**

**Chambers: Aye**

**Smith: Aye**

**Player: Aye**

**Alltucker: Aye**

**Motion passed unanimously.**

**Consideration and approval of Police Chief employment contract for Garen Brecke:** Mayor Smith stood and introduced Chief Garen Brecke. The Council unanimously promoted him to Police Chief. Mayor Smith said they are proud of him and he will take the department in a good direction. The job is not easy and the Council has asked Chief Brecke to do a lot more. The audience applauded and Chief Brecke shook hands with each Town Council member.

Mayor Smith commended Mike Alltucker for his work on the employment agreement. Mayor Smith also acknowledged Town Manager Rick Wixom for his excellent work on these agreements. He said they are not perfect but are a good start.

**Motion made by Bill Weyher to adopt the Police Chief employment contract for Garen Brecke and authorize the Mayor to sign; seconded by Mark Chambers.**

**Alltucker: Aye**

**Player: Aye**

**Smith: Aye**

**Chambers: Aye**

**Weyher: Aye**

**Motion passed unanimously.**

Mr. Chambers wanted to commend the Council but specifically the Mayor. Although he was his opponent in the last Mayoral election, Stan Smith has been fantastic and amazing to watch. The duties of Mayor have grown significantly and Mayor Smith attends numerous meeting representing the Town. He is giving his all and cares so much. Many don't see the tremendous work he does.

The audience gave applause.

Mayor Smith said he was not about getting pats on the back, but thanked Mr. Chambers.

**Discussion of options for street light replacement project:** Mayor Smith said hopefully the Town will get involved in this project. It will have an effect on the look and feel of the Town for many years and will cost a lot of money. Councilman Weyher, Mr. Dansie and he went to Chicago to tour the Sternberg factory. It provided them an opportunity to be educated regarding street lights (attachment #1).

- Mayor Smith showed an LED array which illustrated the variety of light intensities. There are many factors that affect brightness, direction and glare. LED lights last roughly 21 years before they lose their efficiency.
- They looked at a number of different light fixture options and sizes. The light intensity and pole height will be lowered as they move closer to the Park.
- Mr. Weyher said Mr. Dansie wrote a good report about what was learned during the Chicago visit which is available on the Town website. Mayor Smith said the Council would vote on the light pole design, base, light color and intensity in their July 8<sup>th</sup> meeting. He encouraged community input.
- Each lamp can be adjusted via an internal programmable clock or they can add a network controlled option which allows adjustments remotely. Once the Town determines the specifications they would go out for bid on the project. Dates will be forthcoming for demonstrations to the public.
- Mayor Smith said the goal is to keep light on the streets and sidewalks and keep the sky as dark as possible. Keeping lights higher helps avoid bounce-back from the pavement.

Kat Hendrick is a photographer and understands ambient light. She recommended the Council speak to local photographers about their thoughts. Keeping it darker toward the entrance to the Park was great.

Mayor Smith said they were working to balance priorities; safety and enjoyment of the night sky.

**Budget Hearing: Resolution 2015-10 to open and amend FY 2014-15 budget:** Mr. Wixom asked if the Council had any questions. He said this is the final budget of the fiscal year and is a comprehensive wrap-up. Treasurer Dawn Wallace makes corrections to ensure each account is rectified. He expressed his thanks to Ms. Wallace for her work.

**Commission questions:** Mr. Chambers asked if they needed to repeal the previous budget resolutions. Mr. Wixom said the resolution itself repeals the others.

**Public questions:** None were asked.

**Motion made by Mark Chambers to open public hearing; seconded by Adrian Player.**

**Weyher: Aye**

**Chambers: Aye**

**Smith: Aye**  
**Player: Aye**  
**Alltucker: Aye**  
**Motion passed unanimously.**

**Public comments:**

Lisa Zumpft asked if the budget includes payment to the insurance company from last year. Mr. Wixom answered the term expires July 1<sup>st</sup>.

**Motion made by Mark Chambers to close public hearing; seconded by Bill Weyher.**

**Weyher: Aye**  
**Chambers: Aye**  
**Smith: Aye**  
**Player: Aye**  
**Alltucker: Aye**  
**Motion passed unanimously.**

**Commission discussion:** No additional discussion took place.

**Motion made by Mark Chambers to adopt Resolution 2015-10 to open and amend FY 2014-15 budget; seconded by Adrian Player.**

**Weyher: Aye**  
**Chambers: Aye**  
**Smith: Aye**  
**Player: Aye**  
**Alltucker: Aye**  
**Motion passed unanimously.**

Mayor Smith mentioned that although it may appear the budget is being railroaded through there have been countless hours of review. The majority of work is done before the Council meeting.

- Mr. Wixom said this was the fourth amendment to this budget. It has been looked at several times.

Mayor Smith commended Mr. Wixom and said the Town was able to transfer \$500,000 for the street light project due to the strength of the budget. Mr. Wixom and Ms. Wallace have done good work.

**Authorization for Mayor to sign Interlocal Cooperation Agreement between Washington County and county municipalities regarding the distribution of RAP tax revenues:** Mayor Smith said the RAP tax has passed but in order for Springdale to get their share of funds the Interlocal agreement needs to be signed.

- Mr. Wixom said the agreement specifies how the County will distribute funds. Springdale's portion is fairly small.
- The projected RAP tax amount to come into Springdale this next year is \$16,000. The Town has full control on setting the policy and procedures by which the funds are distributed or they can choose to use the County advisory board.

**Motion made by Mark Chambers to authorize the Mayor to sign the Interlocal Cooperation Agreement between Washington County and Springdale regarding the distribution of RAP tax revenues; seconded by Bill Weyher.**

**Weyher: Aye**  
**Chambers: Aye**  
**Smith: Aye**  
**Player: Aye**  
**Alltucker: Aye**  
**Motion passed unanimously.**

**Adjourn: Motion to adjourn made by Bill Weyher; seconded by Adrian Player.**

**Alltucker: Aye**

Player: Aye  
Smith: Aye  
Chambers: Aye  
Weyher: Aye  
Motion passed unanimously.

*Darci Carlson*  
Darci Carlson, Town Clerk

APPROVAL: *[Signature]* DATE: *7/8/15*

