

FINAL MINUTES

**VIRGIN TOWN COUNCIL MEETING
WEDNESDAY, June 27, 2018
6:30 pm
114 So. Mill Street, Virgin, Utah**

Present:

Council Members: Mayor, Matthew Spendlove
Jay Lee
Dan Snyder
LeRoy Thompson

Others:

Monica Bowcutt-Town Clerk	
Heath Snow, Town Attorney	Lesa Sandberg
Bruce Densley	John Ely
Sean Amodt	Bonnie Timmerman
Bruce Densley	Kent Peterson
Cameron Spendlove	Rod Mills, Town Engineer
Cindy Escude	Kevin Kerlin
Darcey Spendlove	John Kay & wife
Rosemary Marchi	Neil Thomas

A. WORK MEETING

6:30 PM

Mayor Spendlove excused Council Member Kevin Stout.

a. Water Tiers & water conservation while down to 1 tank & violation fines.

Mayor Spendlove stated that the town was in the process of relining the small water tank, so it would be empty for about 3 months. He reported that several different water accounts had used nearly 700,000 gallons of water during the month of June. He wondered if the Council wanted to put people on notice that if they used more than "x" amount of gallons, there would be a fine associated for the over usage. The Council agreed to send a letter to citizens asking them to conserve water, especially during this period. It was also suggested that Chris Holm and the Mayor go visit with these three accounts to encourage them to begin using less water. Attorney Heath Snow stated the town could approve a resolution for fines on a temporary basis.

Neil Thomas stated that everyone had a part to play in water reduction in the area. He thought that more conversations should be had about the subject.

b. Mesa Road Disconnect-De-Annexation

Monica Bowcutt, town clerk, reported that there was nothing new to report on the de-annexation/disconnect of the Mesa Road. Rod Mills, town engineer, reported that it was a legislative process. The State and BLM, the only land owners, by law took a 'no-position' on the matter. It was the Mayor's understanding that there was no application, just a letter, which would go to the County, followed by recording the de-annexation. The Council, the attorney, and the engineer discussed the de-annexation process at length. They understood the County may object, at which point it was unclear what would then happen. Mayor Spendlove asked that everyone work together and have the project at least started or maybe even completed by the July meeting.

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* Mayor Spendlove updated those present on the possibility of a new water tank being put in at the Staples family compound (on the Kolob Road). He reported that Ron Thompson would like a meeting with all the landowners and the town to discuss the possibility. Rod Mills had estimated \$1.6 million for the new tank and water line. The Mayor continued explaining by stating the project would not cost Virgin anything because the landowners would pay for it, however, Virgin would own the water tank and the water would go through the town's system. The exact tank location had not been determined.

* Bruce Densley reported that a fire had started on Pine Valley. The fire district had been able to put men and equipment on the fires last year, which had made the district some excess funds. Dan Snyder elaborated on how the district was being involved and being proactive before fire season began. Mr. Densley also reported that the new Coral Canyon fire station would be operational within the month. Also, the next fire station would be built in Dixie Springs.

B. REGULAR MEETING 7:00 PM

1. Call to Order- Mayor, Matthew Spendlove

Mayor Spendlove began the meeting at 7:00 pm.

2. Invocation/Pledge of Allegiance

The Invocation was given by Bruce Densley and the Pledge of Allegiance was led by Cameron Spendlove.

3. Declaration of Conflict of Interest

No conflicts of interest were declared.

4. Consent Agenda: Possible Approval of Items 5, 6, and 7

5. May 2018 Checks and Invoices

6. May 30, 2018 TC Draft Minutes

Jay Lee made grammatical changes to the minutes.

7. June 19, 2018 TC SPECIAL MEETING DRAFT Minutes.

Dan Snyder moved to approve items 5, 6, and 7 with the minor changes. LeRoy Thomson gave the second. No roll call vote. The motion was unanimously approved.

8. Discussion and possible approval of Building permit Extension for Dageenakis. (7/13/18)

John Kay was present to discuss a possible approval of a building permit extension for the Dageenakis home. He was hoping to be completed within 3 months. Dan Snyder thought

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the ordinance said extensions could be granted for 6 months. The Council agreed to give this cushion of time.

Jay Lee moved to extend the building permit for 6 months. LeRoy Thompson gave the second. No roll call was taken. The motion passed unanimously.

9. Possible approval of Virgin Park, LLC Development Agreement-Kevin Kerlin

Kevin Kerlin was present to discuss the Virgin Park, LLC Development Agreement. He pointed out that 2 sentences in section 3, paragraph a, contradicted each other. Attorney Snow suggested that the word 'unless' be added to help clarify the intent of that paragraph. The agreement clearly stated that rentals could only take place on the 12 designated pads.

Jay Lee moved to approve the Development Agreement and authorized the Mayor to execute it on behalf of the town. Dan Snyder gave the second. No roll call vote. The motion passed unanimously.

Attorney Snow reminded Mr. Kerlin that the Agreement needed to be notarized with his and the Mayor's signature, and then recorded with the property.

10. Discussion of solution for drainage near John Ely

John Ely asked Rod Mills, town engineer, to give a report from UDOT. Mr. Mills stated UDOT would not accept Mr. Ely's suggested drainage plan because the slope did not meet their standards for right of way. He further explained that UDOT stated there may be something that could be done on the south side of the highway in front of the fence line, but those options had not been discussed or investigated.

Mr. Ely began explaining the problem in great detail. His presentation, entitled "The Road To Disaster: Documents and Findings Related to the Drainage Channel and Berms called for on the Approved Engineered Construction Drawings for Desert Garden Estates III" was very detailed and was read word for word by Mr. Ely. This document is attached to the minutes for reference. The presentation outlined the history of the issue, alleging that the town had not ensured that the construction drawings had been followed and the developer had not been upfront in his work.

After the presentation, Rod Mills explained that the town took the alternative drainage plan from Mr. Ely's engineer and submitted to the State, who rejected it, saying that there was not sufficient information. Additional information had been supplied, which was also rejected by the stated because the plan was not acceptable according to their standards. Mayor Spendlove stated the UDOT would not approve Mr. Ely's plans, the original construction plans called for berms and dikes which should be put in to fix the problem.

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The brick wall was discussed at length. Attorney Snow explained that walls were not necessarily approved with a subdivision. Attorney Snow asked Mr. Ely if he had any suggestions of how the issue might be resolved. Mr. Ely responded that he wanted the town to acknowledge that it was their responsibility because the town's administration blatantly overlooked issues. Attorney Snow stated the town would not make that acknowledgment. He pointed out that there was nothing on the record that showed there was a problem within the two-year bond period (until 2007). At that point, there was no problem, so the bond money was released. Mr. Ely stated that the developer had filled in the wash on his property, which caused water to overflow onto lot 43 and the emergency access road.

Mayor Spendlove asked how John would like to fix the issue. He replied that an open channel or a berm was unacceptable at the present time, however pipe would be OK. He stated that the town had made a major error, they needed to man up to it and find a way to get it done. If fixing the problem required work to be done on his property it would be underground. He did not want said work to tear down the value of his property. Mayor Spendlove stated the construction drawings called for dikes and berms. Mr. Ely stated that the wall was now in the easement and he would also lose several tall pine trees, which was unacceptable, if berms and dikes were put in. Attorney Snow reiterated that the original construction drawings show berms and dikes. He also stated that Mr. Ely was now utilizing the benefit of where these berms should be with a wall and landscaping.

Jay Lee stated that a trench for a 36 inch pipe would cause major damage to any landscaping, including the trees. He then asked Mr. Ely if he had plugged the pipe off before the flood, causing more damage. Mr. Ely responded that yes, he had plugged, but he did not think it had caused more damage because it was only 50 percent blocked. John also pointed out that Vince Blackmore had filled in the wash on lot 43 when installing the building pad there.

Bonnie Timmeramn asked what UDOT recommended be done to solve the problem. Mayor Spendlove replied that they were worried the box culvert to the West would not hold all the water from both drainages. The water would go over the road in a big storm.

Mayor Spendlove said he would like to follow the plans. Dan Snyder stated that the original plans, not a second set of plans, were the only thing that could be found, so that was what the town had to go on. Attorney Snow stated that the town relied on its hired professionals to make sure all details were signed off on and followed.

Rod Mills, town engineer, stated that one of the key issues was there was information that had never been fully appraised. The record only shows that the town's engineer at that point, off the record, said he thought the existing drainage ways might take the flows under the revised plans. The problem was compounded because of water coming into the area because of the development to the north. As the current town engineer, Mr. Mills questioned what happened to those drainages, why did the past resident engineer think it might work out fine, because they did not exist. Mr. Mills did not know what happen to them because there was no record.

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The town had tried to help Mr. Ely. Mr. Mills continued that he just could not get UDOT to approve that particular plan. He further explained that it appeared to be a problem with the developer, if he was the one that closed up the drainages. Some questions Mr. Mills had were: Who closed them up? When did that occur? How did that happen? He felt these were the issues that must be researched. Mr. Ely confirmed that the drainages were filled in by Vince Blackmore when he built the pad on lot 43. Attorney Snow pointed out that the town did not do inspections for drainages when someone was putting in a building pad. Mr. Ely responded that the town was now asking for more details at the grading stage. He also felt the town needed more standards to avoid problems like this.

Jay Lee moved to continue the discussion later and to move on. LeRoy Thompson gave the second. No roll call vote: The motion passed unanimously.

Mayor Spendlove stated the Council knew the issues and had heard Mr. Ely's story. Mr. Ely then stated that he felt the town had a responsibility to correct and resolve the issue. Mayor Spendlove replied that he would continue to research the plans and the issue and be in touch with Mr. Ely.

11. Possible Approval of Public Entity Resolution-From Office of the State

Treasurer-PTIF

This resolution was required by the State Treasury, stating on who could sign off on checks and withdrawals for the PTIF accounts. LeRoy Thompson, Town Treasurer, and Candus Tibbits, Town Accountant, were appointed to be signers on the account. Attorney Snow stated it was more than appropriate.

Jay Lee moved to approve the Public Entity Resolution from the office of the state treasurer PTIF and appoint LeRoy and Candus to be the signers on the account. Dan Snyder gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion passed unanimously.

12. Possible approval of Ordinance 2018-16 Amending Chapter 6 Home

Occupations

LeRoy Thompson pointed out a typo in section 6 referring to 6.3 Non-compliance and 6.2.1 and 6.2.2 Conditions. The Council agreed with the change. Attorney Snow stated that P & Z had streamlined the home occupation process, making it more simple. Dan Snyder stated he like the amendment and it was easier to read than the old ordinance. Attorney Snow explained the ordinance. It was pointed out that 'signs' were covered in another chapter.

Jay Lee moved to approve amending Chapter 6 Home Occupations Ordinance #2018-16 with the change in 6.3. It should read "a violation of 6.2", not 6.1. LeRoy Thompson gave the second. Roll

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call vote: Jay Lee-Aye; Dan Snyder-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion passed unanimously.

13. Possible approval of of Ordinance 2018-17 Removal of Chapter 10 Design

Review

Attorney Snow explained that the P & Z felt the entire chapter was duplicative of other areas where there was a design review required for subdivisions, Conditional User Permits, and other things of this type. They felt it was confusing because design reviews were also called for in other chapters. Because of this, P & Z decided to eliminate design review in a separate location. Instead, design review would be done as part of the approval process, which was done even before preliminary or final plats.

LeRoy Thompson moved to approve Ordinance #2018-17 Removal of Chapter 10 Design Review. Roll call vote: Jay Lee gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion passed unanimously.

14. Possible approval of Ordinance 2018-18 Amend Chapters 16 and 17-Keeping of Animals

Mayor Spendlove explained that the P & Z had taken out all the specific regulations (for example: residents can't have a rooster) and inserted wording that instructed citizens to follow the county, state, and federal animal regulations.

Mayor Spendlove stated that the staff felt specific codes numbers should be included in the ordinance, so the regulations were easy to find. Cameron Spendlove, P & Z Chairman, stated that they had decided to leave the codes out because there were so many different codes for so many different things (every animal, exotic animals, farm animals. They felt it would be exhausting, not helpful, to include them all. Attorney Snow suggested that example codes could be kept at the town office for reference only. He also felt using these codes took the enforcement off the town's shoulders and placed it on the county, state and federal agencies.

LeRoy Thompson moved to approve Ordinance #2018-18 Ordinance Amending Chapters 16 and Chapter 17 Keeping of Animals. Dan Snyder gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion was approved unanimously.

15. Possible approval of Ordinance 2018-19 Amending Chapter 5 Changing Body to determine Non-conforming uses and Non-conforming structures.

Attorney Snow explained that there had been some situations where people had claimed that their use was grandfathered in and had been legal at some point. This made them a legal

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non-conforming use because ordinances had been changed over time. These residents wanted a determination from the town saying whether they were grandfathered or not, so that every time staff or elected officials changed there were no questions. The office staff realized that there was not a clear process to get this determination. The amendment made the process clear and created a two tier approach. The amendment added one section; 5.12 to give direction on this process.

Mayor Spendlove stated he did not want the fee included, because the town taken the use away, so the town should not charge to maybe give it back. Attorney Snow agreed, but stated there was a process which took staff time.

Attorney Snow clarified that the burden of proof was on the landowner, which included proving there had been no abandonment of the use, unless the town required it. The Council discussed having a formal application or just accepting a letter, plus just being placed on a regular town council meeting or holding a special meeting. They agreed to change the wording to 'letter application' (section 5.12.1) and agreed to place the applied for issue on a regular meeting agenda. After discussion the Council agreed to leave the fee included, so that it gave them the freedom to charge if it was needed.

LeRoy Thompson moved to approve Ordinance #2018-19 amending Chapter 5 Changing Body to determine Non-conforming uses and Non-conforming structures and amend 5.12.1 to read "letter application". Dan Snyder gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion was approved unanimously.

16. Possible approval of Ordinance 2018-20 Amending Chapter 26-Council assigning maximum sizes into charts.

Mayor Spendlove explained that Chapter 26 was the Sign Ordinance. The P & Z had recommended an amended Chapter 26 to the Council with the condition that the Council fill in the maximum size chart. Attorney Heath Snow stated that the P & Z had wanted to move the amendment along to the Council, but felt like they did not have enough information to fill in the size chart. One thought the Planning Commission had expressed was to have a sign company give a presentation showing how signs were affected by speed and distance. They have the computer ability to show perspective that was not otherwise available.

Dan Snyder wished to restrict, not discourage, neon, florescent and billboards in order to keep the town unique. He felt people were coming here to escape those types of signs. He wanted more natural looking signs. The section florescent signs were discussed was 26.2.5.

Sean Amodt suggested that temporary signs (like yard sales) should be able to use neon, etc. Perhaps a distinction could be made in the ordinance.

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The height restrictions (25 feet tall) were discussed in relation to signs. The Mayor asked the Council members to look around at the size, shape and color of different signs.

Dan Snyder moved to table until the next meeting item number 16 Ordinance #2018-20. LeRoy Thompson gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion passed unanimously.

17. Open Forum: Limit 2 minutes per speaker

* Rosemary Marchi asked what the procedure was to request that an item be placed on a future Town Council meeting agenda. Attorney Snow stated that the open forum was one place to discuss an item, after which the Council could direct the recorder to place the issue on the agenda. Another way was to speak to the Mayor, who made the final decisions of what was placed on the agenda. Ms. Marchi stated that she had one of the non conforming uses spoken of earlier, and had been directed by the town to stop the use. Attorney Snow directed her to write a letter explaining the issue, along with any pertinent documentation she had. Then, the use would be discussed at a council meeting. He stated she had the burden to show that she had been renting out a short term rental back then, up until the point the town deemed it was prohibited. The Council would decide if the use was a legal non conforming use or not. Mayor Spendlove stated it would be good to get the documentation to the staff quickly and the more documentation the better, so that the Council had time to review and study the issue. Ms. Marchi asked to be placed on the July agenda, to which the Mayor agreed.

* Bruce Densley stated he might have some information regarding John Ely's drainage situation and the construction plans in question. Because he was the only active elected official present, he could explain the thoughts of the Town Council at that time and the procedures that took place. He felt what he had to say could be beneficial. He did not know if the minutes Mr. Ely were verbatim, but he could perhaps shed some light on the issue. Mayor Spendlove asked Mr. Densley to get with him at a later time, even perhaps during a work meeting.

18. Council Comments:

* Dan Snyder stated he had missed a Solid Waste District Special Meeting. It sounded like it was something to do with abandoning the Washington City Landfill. They now had his current email address, so he could receive the agenda on time.

* Jay Lee stated that on July 18, Red Bull would be donating \$3,500 to the BMX Track. There would be publicity and food. The ceremony would be at 8:00 pm. Everyone was invited to attend.

* Mayor Spendlove reported that he had sent letters to many people in Washington D.C. and the BLM regarding the 80 acres near the BMX Track. The town had received some responses.

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He was not opposed to the BLM selling the land, but felt the town should get at least half of it. There had been a meeting set up with the BLM in the near future.

* Monica Bowcutt reminded the Council and P & Z to be at the park at 6:30 am to begin cooking breakfast for the 4th of July.

19. Possible motion to CLOSE the Public Meeting and ENTER into and Executive Session.

The Mayor stated there was no executive session needed.

C. ADJOURN PUBLIC MEETING:

20. Approve Motion to Adjourn Public Meeting.

Dan Snyder moved to adjourn the public meeting. LeRoy Thompson gave the second. No roll call vote was taken. The motion was approved unanimously.

The meeting adjourned at 9:05 pm.

Monica Bowcutt
Town Clerk

Approved: _____