

FINAL MINUTES

VIRGIN TOWN COUNCIL SPECIAL MEETING

Wednesday, September 4, 2019

7:00 pm

114 S. Mill Street Virgin, Utah

Present:

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

Others: Monica Bowcutt-Town Clerk
Heath Snow, Town Attorney
Darcey Spendlove
Bill Frazier, Ruggles Attorney
Bruce Densley
Sabrina Cullen
Sean Amodt
Cameron Spendlove
George Walsh
Lesa Sandberg
Joshua Ruggles
Jack Ruggles
Bonnie Timmerman
Diane and Kent Peterson
Gene Garate
Sheryl Mintz

REGULAR MEETING

7:00 pm

1) Call to Order-Mayor Matthew Spendlove

Mayor Spendlove called the meeting to order at 7:00 pm.

2) Invocation/Pledge of Allegiance

Kevin Stout gave the invocation. LeRoy Thompson led the Pledge.

3) Declaration of Conflict of Interest

Kevin Stout stated his daughter was giving or trying to start giving horse rides, so he declared a conflict.

4) Action Items:

a. Hearing Regarding Possible Revocation of Zion Canyon Trail Rides Conditional Use Permit and Renewal (or Non-Renewal) Business License.

Matthew Spendlove turned the time over to Attorney Heath Snow to conduct the hearing. Attorney Snow reviewed a packet which included a summary and timeline of Zion Canyon Trail Rides. The Conditional Use Permit was applied for in 2005. The Council followed along as this packet was explained by Attorney Snow. The conditions which had been imposed and the changes made to these conditions over the years were reviewed. These changes occurred in 2008 and 2014. Attorney Snow stated that since 2005 there had been no verification of liability insurance in place or any sort of alternative plan like what the Council had agreed to in

FINAL MINUTES
VIRGIN TOWN COUNCIL SPECIAL MEETING
Wednesday, September 4, 2019
7:00 pm
114 S. Mill Street Virgin, Utah

2014. The Attorney explained that in June of 2018 the Town had received an informal inquiry from an injured employee (or as Mr. Ruggles would refer to him as an independent contractor or wrangler) about an existing bond due to substantial medical expenses sustained while on the job and a lack of workers compensation carried by Ruggles. In about July of 2019, the Town had received a notice of claim from legal counsel for an injured patron of Zion Canyon Trail Rides. The claim was served against the Town for negligence against the Town for allowing Ruggles to operate without requiring proper liability insurance. He stated that at present, the recommendation of staff was that the Conditional Use Permit and Business License be revoked, unless Mr. Ruggles and the current property owner agreed to and signed a new and revised Conditional Use Permit. Attorney Snow listed the conditions that would be imposed if this were to happen (which included insurance) and stated that no permit would be issued until all documentation was signed and counter-signed by the current property owner.

Jack Ruggles addressed the Council. He reviewed the history of the trail riding business beginning in about 2005. During this review he explained that he did not offer trail rides but rented the horses and the instructors/wranglers. He briefly explained the history of working with UDOT, which had said if the people were renting horses they could not be stopped. He also explained what had happened in 2014 (with Bruce Densley as mayor) when a bond and lien on his house had been agreed upon. He acknowledged that the Town should not be responsible for something that he had done, referencing the current notice of claim being served against the Town. He felt his use was grandfathered in and could not be changed. Mr. Ruggles suggested that himself and the Town should stick together to deal with the current notice of claim. If the Town agreed to do this, he would cover all the legal costs. He also wished to talk about a way the problem could be worked out.

Attorney Snow stated that the Council was not currently interested in property bonds but would require insurance. He continued by reviewing the issues in 2014 and why the town had made the bond an option then. Mr. Ruggles replied that he was not operating a trail riding business and never had. He was renting horses and wranglers to people. His clients completely understood that.

Mr. Ruggles' Legal Counsel, Bill Frazier, stated he had a few differences in the history of the Conditional Use Permit and also wanted to talk about procedural concerns. He presented a letter from then Town Clerk, Ray Golata, asking for proof of liability insurance dated 2008. He then read from a February 9, 2017 letter from Town Clerk, Monica Bowcutt, which asked for six items to be addressed, but there was no mention of proof of insurance. Mr. Frazier then spoke about February 2019 when the CUP Ordinance was changed. He quoted section E requiring proof of insurance, stating he was unable to find other notations which would be important to comply with statute. He also quoted Section 8.12.4.n where it talked about using BLM trails

FINAL MINUTES
VIRGIN TOWN COUNCIL SPECIAL MEETING
Wednesday, September 4, 2019
7:00 pm
114 S. Mill Street Virgin, Utah

and providing appropriate documentation to the town. Mr. Frazier showed a copy of the BLM 2018 Special Recreation Permit, and special times when the permit may be waived. He felt that Mr. Ruggles qualified for this waiver. He also explained that Mr. Ruggles was within his rights because he had seen no action from a Judge Colter on the issue. Mr. Frazier then showed a letter from Scott Snow, from UDOT, which Attorney Snow state he had already seen.

Mr. Frazier explained that Jack Ruggles' permit expired on December 31, 2019 and Mr. Ruggles wished to sell the property and move elsewhere. In the meantime, he wanted to reimburse the Town for any problems. He felt that the notice of claim was of poor quality and had no real chance of winning in court. He stated that Mr. Ruggles was willing to pay \$50,000 to pay for the town's costs to defend.

Mr. Frazier reviewed the conditions imposed and what Mr. Ruggles was willing to do. This included discussion of the current lawsuit between Jack Ruggles and the Washington County Water Conservancy District. He stated that he had no knowledge that Mr. Ruggles was using private property for his horse rentals. The issue, in his mind, came down to insurance. He discussed options for supplying insurance. He stated that the way to resolve the issue was to 1) accept \$50,000 from Jack Ruggles to defend against the notice of claim and 2) allow Mr. Ruggles to continue to operate with some type of alternative bond.

Mayor Spendlove stated he wished to clarify why the Business License was granted under his Mayoral ship. He stated that multiple people, including Jack Ruggles, had told him that the Town had a bond on the property. It had since been found that nothing of the sort had been recorded. Attorney Snow explained that even though the bond had not been completed, the Town still had the authority to uphold the requirement. Failure to enforce did not constitute a waiver. The doctrine of waiver against a municipality was nonexistent.

i) Town Council Deliberation re: Hearing (Executive Session, if desired).

Attorney Snow stated that the Council had already had threat of litigation under the notice of claim and also under the pending action, which constituted grounds to hold an executive session. The Council wished to hold a closed deliberation meeting.

Discussion turn back to the BLM special event waiver, with Attorney Snow asking if the waiver had been issued by the BLM. Attorney Frazier replied that permits were not issued. Mr. Ruggles acknowledged that some of his renters had taken a wrong turn and trespassed onto private property.

Attorney Snow stated that the Town could require, under a Conditional Use Permit, whatever conditions they wanted. The rides or rentals originated in Town limits and the horses were

FINAL MINUTES
VIRGIN TOWN COUNCIL SPECIAL MEETING
Wednesday, September 4, 2019
7:00 pm
114 S. Mill Street Virgin, Utah

also stabled in Town limits. If the town wanted to require insurance, they could do that.

Mr. Ruggles read from the Utah State Equine statutes. Attorney Snow stated that there was a list of exceptions to the code, which had not been read. The Town wanted to be indemnified in the off chance that it may not be as protected as Mr. Ruggles said it was and the Town had to spend money defending because they permitted the operation.

Jay Lee moved to close the public meeting and open an executive session. LeRoy Thompson gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; Kevin Stout-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion was unanimously approved.

The public was excused from the building and 7:58 pm.

The public was invited back into the building at 8:18 pm.

ii) Issuance of Decision on Hearing Regarding Possible Revocation of Zion Canyon Trail Rides Conditional Use Permit and Renewal (or Non-Renewal) of Business License.

Attorney Snow clarified with Jack Ruggles that his position was he was not operating a trail riding business, but a horse rental business. Mr. Ruggles indicated yes, especially since 2014.

Matt Spendlove stated that the Council felt because the Conditional Use Permit was for trail riding, and Mr. Ruggles was operating a horse rental business, the permit should be revoked because it was invalid. A new Conditional Use Permit needed to be issued for the correct business type.

Bill Frazier stated that the horse rental business should not be a surprise to anyone as it had been occurring since around 2014. He asked that sufficient time be given to Mr. Ruggles to secure the new license. The Council affirmed that a CUP was not an administrative permit and could be completed in a very short amount of time. Discussion followed as to the Conditional Use Permit process and the time that would be involved. Mr. Frazier was concerned about the business coming to a halt because of the time it would take to receive the new permit.

The Council agreed to give Mr. Ruggles 15 days to have the new permit in place. Monica Bowcutt stated that 15 days would land on Thursday, September 19 at 2:00 pm, when the office closed.

FINAL MINUTES

VIRGIN TOWN COUNCIL SPECIAL MEETING

Wednesday, September 4, 2019

7:00 pm

114 S. Mill Street Virgin, Utah

LeRoy Thompson moved to revoke the Conditional Use Permit because of abandonment and give 15 days to continue to function and to get the new Conditional Use Permit as a rental business rather than a trail ride business, which would end on September 19 at 2:00 pm.

Attorney Snow clarified that the motion was for a revocation of the Conditional Use Permit and the Business License. This would go into effect on September 19, 2019 at 2:00 pm. Council Member Thompson agreed.

Jay Lee gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; Kevin Stout-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion was unanimously approved.

5) Motion to Close Regular Meeting and Move into Executive Session (if necessary-grounds to be cited in motion)

Dan Snyder moved to close the public meeting and open an executive session for the purpose of discussing pending litigation. LeRoy Thompson gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; Kevin Stout-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion was unanimously approved.

The public was invited to leave the building at 8:34 pm.

EXECUTIVE SESSION

a) Call to Order

b) Discussion

c) Motion to Close Executive Session and Move Back into Regular Meeting.

The public re-entered the building at 8:54 pm. Attorney Snow left the public meeting.

6) ACTION ITEMS:

7) Resolution #R2019-H A Resolution Naming Virgin Town Representatives required to represent the Town in the BLM Easement and New East Tank Project.

Mayor Spendlove explained this was the resolution that the BLM needed to grant the easement for the new water tank.

FINAL MINUTES

VIRGIN TOWN COUNCIL SPECIAL MEETING

Wednesday, September 4, 2019

7:00 pm

114 S. Mill Street Virgin, Utah

Dan Snyder moved to approve Resolution R2019-H. LeRoy

Thompson gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; Kevin Stout-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion was unanimously approved.

8) ORD 2019-16 Chapter 22: Changes to Chapter 22 Highway Resort Zone (HRZ)

Mayor Spendlove explained that this amendment made Pocketville Road eligible for HRZ.

LeRoy Thompson moved to approve the Ordinance 2019-16

HRZ. Jay Lee gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; Kevin Stout-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion was unanimously approved.

9) ORD 2019-17 Chapter 4: Recreational Facilities Ordinance Section 4.21 Outdoor Lighting

Mayor Spendlove explained that this amendment made the BMX Track exempt from the Lighting Ordinance until the Planning and Zoning reworked the entire Ordinance.

Jay Lee moved to approve Ordinance 2019-17 Chapter 4:

Recreational Facilities Ordinance Section 4.21 Outdoor Lighting.

Kevin Stout gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; Kevin Stout-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion was unanimously approved.

10) ORD 2019-18 Chapter 1: Restating Definitions. Remove "food" from Hotels and Motels and add "on 3 sides" to Basement.

Mayor Spendlove reported that the attorney suggested food be removed so it did not appear the Town was requiring hotels and motels to provide food. The words "on 3 sides" would be removed from the definition of basement.

Lesa Sandberg stated that in P & Z 'all sides' was taken out.

LeRoy Thompson moved to approve Ordinance 2019-18 with 'food' taken out of the hotels and motels definition and on basement remove 'on 3 sides' from the definition. Dan Snyder gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; Kevin Stout-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion was unanimously approved.

FINAL MINUTES

VIRGIN TOWN COUNCIL SPECIAL MEETING

Wednesday, September 4, 2019

7:00 pm

114 S. Mill Street Virgin, Utah

11) ORD 2019-19 Chapter 1: Section 1.6 Proposed Definitions

This amendment included the equine definition. The Council agreed that no action was needed because it was included in item number 10.

12) ORD 2019-20 Chapter 8: CUP

LeRoy Thompson explained that verbiage had been added about safety liability for trails.

Dan Snyder moved to approve changes on Ordinance 2019-20 in Chapter 8 adding language to landscaping. Kevin Stout gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; Kevin Stout-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion was unanimously approved.

13) ORD 2019-21 Chapter 20: Commercial Zone

Dan Snyder stated the changes were exactly the same, just in Chapter 20. Verbiage had been added about safety liability for trails.

Jay Lee moved to approve changes on Ordinance 2019-21 Chapter 20 Commercial Zone. Dan Snyder gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; Kevin Stout-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion was unanimously approved.

14) ORD 2019-22 Chapter 22: HRZ

Mayor Spendlove stated that the same verbiage had been added about safety liability for trails.

Kevin Stout moved to approve changes on Ordinance 2019-22 Chapter 22 HRZ adding the verbiage about safety and welfare of the town. LeRoy Thompson gave the second. Roll call vote: Jay Lee-Aye; Dan Snyder-Aye; Kevin Stout-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion was unanimously approved.

15) ORD 2019-23 An Ordinance citing Town Policy to collect Impact and Availability Fees

Mayor Spendlove reminded the Council this was the Water Availability Ordinance that was

FINAL MINUTES

VIRGIN TOWN COUNCIL SPECIAL MEETING

Wednesday, September 4, 2019

7:00 pm

114 S. Mill Street Virgin, Utah

discussed at the August 28 meeting. Monica Bowcutt, Town Clerk, reported that the Ordinance had been sent to Attorney Snow and he had not responded. Jay Lee reported that on item number 3, 'town' needed to be changed to 'account holder'. Town Clerk Bowcutt stated that item numbers 5 and 6 had also been added since it had been discussed in August. It was discussed that the town was trying to recoup the money that had been paid to the Conservancy District. Jay Lee wished to fix a grammatical error in item number 4. It was also pointed out that this Ordinance would only apply to new availability accounts. The staff would make a spreadsheet in order to keep track of new and old accounts.

Jay Lee moved to approve Ordinance 2019-23 An Ordinance citing Town Policy to collect Impact and Availability Fees. Dan Snyder gave the second. Roll call Vote: Jay Lee-Aye; Dan Snyder-Aye; Kevin Stout-Aye; LeRoy Thompson-Aye; and Mayor, Matthew Spendlove-Aye. The motion was unanimously approved.

Jay Lee modified his motion to include the corrections. The Council all agreed.

WORK MEETING

a) Discussion of Master Plan Overlay

The Council decided it was too late to hold the work meeting. They agreed to work on the Master Plan Overlay at a different time.

ADJOURNMENT

16. Motion to Adjourn Public Meeting.

The Council unanimously adjourned the meeting.

The meeting adjourned at 9:18 pm.

Monica Bowcutt
Town Clerk

Approved:_____