

**Zion Sunset Resort (aka Munn Property)
Virgin Planning and Zoning
Findings Summary Oct. 2014**

Decisions on these applications are completely discretionary. If the Town of Virgin decides to grant the request it should be because the Town feels there are overriding benefits to the majority of residents and Town of Virgin in general. Attached are additional notes and references in explanation of the bullet points below.

Request: Amend Chapter 22 of Virgin Uniform Land Use Ordinance, Highway Resort Zone (HRZ), to include the addition of parcel to the Location section of HRZ VULU 22.3

Analysis Synopsis

- This request to add an additional parcel number to the location description of HRZ, results not in future zoning, but in an automatic rezone of the subject parcel from Rural Residential (RR) zone to HRZ.
- The rezone would give the property owner effective development rights to **any** of the conditional uses listed in the HRZ [*see Note #2 Conditional Uses in HRZ*];
- The application seeks to change a fundamental zoning plan that took many months to create. The adopted location of HRZ was chosen in part to ensure that high-traffic lodging and resort uses are well-separated from the dense residential town center, and on the end of town closest to tourist attractions such as Zion National Park. The proposed change to the zoning scheme would directly conflict with these goals.
- Approval of the application would create a spot rezone making it difficult for Virgin Town to deny any other rezone requests without the risk of being found arbitrary.
- *The **Master Plan Overlay(MPO)** process (VULU Chapter 28) was specifically designed to allow large property owners (20 acres or more) more flexibility to utilize their land. This zoning is already provided for by the ordinance for the subject property. In July 2012 the applicant stated they would begin an MPO application process, but did not follow through.*
- MPO zoning would allow the approval process to include special design standards to minimize conflicts with surrounding uses and to adapt site standards to the location. Unlike the proposed rezone, this process is allowed by ordinance, and would not undermine the Town's zoning, or encourage rezone applications by other landowners.

- By not following the MPO process, if this parcel is designated HRZ with RV use, there would be nothing that Town of Virgin could do to stop ANY OTHER in Virgin parcel being similarly rezoned because of precedence; also every acre of existing HRZ could then be developed as an RV park, such as the proposed hotel site and the one talked about winery. Virgin Town could then become one large RV destination
- There is little reason for the town to compromise its zoning scheme before the existing HRZ, in which some plans for development are only recently in process, has been given a chance to grow. The town is potentially approaching a threshold at which costly and unfunded central sewer construction may be required. Unless and until ground water studies show there is room for more growth than current zoning allows, it would be irresponsible to choose to increase potential density in a location where it is not already granted by right.

Conclusion

- The Proposed ordinance amendment would change the underlying zoning of the subject parcel. The proposed location shares some characteristics of the requested HRZ zone and could provide some benefits to the Town in the form of revenue and employment; however, these same benefits will likely be provided to the town under its current plan without disturbing the adopted zoning scheme, through the development of the currently vacant HRZ district, and/or by use of the MPO process, which would allow the town to have some input into the project scale.

In balance, we find that the following concerns, as well as the additional points mentioned above and in the attachment greatly outweigh the benefits:

- the likely harm to the town's zoning abilities, possibly leading to random HRZ placement and incompatible rezones around the town;
- the potential for large-scale lodging and other high traffic uses close to dense residential use, and located such that repeated trips by visitors to tourist attractions would be routed through the center of town;
- the potential to create greater population equivalencies than the underlying zone would allow, bringing the town closer to, if not beyond, the threshold requiring central sewer treatment.

As noted above, this decision to rezone property is in direct conflict with adopted land use ordinances, and would require us to find overriding public benefit which is not shown.

Therefore, we recommend denial of the application to "Amend Chapter 22 of Virgin Uniform Land Use Ordinance, Highway Resort Zone (HRZ), to include the addition of parcel to the Location section of HRZ VULU 22.3".

Request: Add two additional Conditional Uses to the HRZ: Recreation Vehicle Resort/Campground/Cabins, and Parks, Playgrounds, and Amenities (Incidental to Resort Property)

Background:

During the public process to create the HRZ, it was deliberately decided to leave recreational vehicle campgrounds out of the HRZ zone, effectively prohibiting that use. This was adopted as a means to prevent the proliferation of unpopular or high-impact uses

Analysis Synopsis:

- The requested amendment asks that the town reverse a decision which was based on survey results, and months of input and public discussion on this matter.
- The use named Parks, Playgrounds and Amenities was not discussed or deliberately left out of the HRZ; had appropriate standards been included in the proposal, our recommendation might be different; however, no standards were discussed or proposed.

Conclusion:

Given the above analysis and in particular reference to:

- Compromising the overall zoning scheme and defined HRZ conditional uses
- Lack of standards to accompany the use, making it difficult to legally place any specific conditions on the proposed conditional use.

It is recommended that the application to: "Add two additional Conditional Uses to the HRZ: Recreation Vehicle Resort/Campground/Cabins, and Parks, Playgrounds, and Amenities (Incidental to Resort Property)" be denied.

3.Request: Zone Change from Rural Residential to Highway Resort Zone

- If the inclusion of the applicant's parcel into the HRZ location section is approved, it is by default rezoned to HRZ. Therefore, the first request includes this request.

Conclusion:

It is recommended that the application for a zone change from Rural Residential to Highway Resort Zone be denied, as the application is not required.

**Zion Sunset Resort (aka Munn Property)
Virgin Planning and Zoning
Detailed Findings Oct 2014**

1. Request: Amend Chapter 22 of Virgin Uniform Land Use Ordinance, Highway Resort Zone (HRZ), to include the addition of parcel to the Location section of HRZ VULU 22.3

Background:

- This requested amendment, which adds an additional parcel number to the location description of HRZ, results not in future zoning, but in an automatic rezone of the subject parcel from Rural Residential (RR) zone to HRZ.

From 8.22.3: The Highway Resort Zone designation covers an area with Tax ID #s V-2136-C, V-2137-A, V-2151-A, V-2150-B-1, V-2148-B-2, V-2142, approximately from the east edge of the Forsmith L.L.C. Property (the owner of the existing Zion RV park) to the east boundary of the Petroglyph Partners LC property, and south of Highway 9 to the Virgin River.

- The current location of the HRZ conforms to the General Plan, HRZ listed characteristics, and public desire to protect town views [see *Vision of Virgin survey results*]; its physical characteristics, being below street level and historically agricultural, lends itself to larger projects without compromising natural features and views.

Virgin General Plan vision statement: *The Town of Virgin is known for its beautiful scenery. The warm feeling you have when you visit the Town folks is reminiscent of years gone by. This small serene community would like to maintain its beautiful scenic vistas and at the same time be able to provide a safe, livable environment for its residents...*

- The current location of the HRZ concentrates tourist traffic on the end of town closest to the most-used areas of Zion N. P., well separated from the town center and its relatively dense residential and pedestrian areas; minimizing nuisance conflicts (light, noise, 24-hour activity, etc.) with residential areas.

From VULU 22.3: *The specific location of the Highway Resort Zone has been carefully chosen. Characteristics qualifying it as the best location for the intended use include the following:*

22.3.1. *Natural features of the vegetation and topography are few, because the land has historically been in agricultural use.*

22.3.2. *Substantial flood zone is included in the designated tract; recreational and seasonal activities are a valuable and logical use for this land.*

22.3.3. *Much of the designated area is low-lying, relative to highway elevation. The river, which forms its lower boundary, is tree-lined. These features combine to create a location where buildings larger than the existing norm will have a smaller impact than they might elsewhere in the town.*

22.3.4. *The location is sufficiently separated from areas of dense private residential use, and from the contemplated village-scale commerce district, to avoid common conflicts between intensive tourist use and pedestrian-friendly, community-serving neighborhoods.*

- The current location of the HRZ preserves the dense town center for a future pedestrian-friendly mix of smaller (family based) retail business and residences.
- HRZ designation impact. If this parcel is designated HRZ with RV use, there would be nothing that Town of Virgin could do to stop ANY OTHER parcel being similarly rezoned because of precedence; also every acre of existing HRZ could then be developed as an RV park, such as proposed hotel and the talked about winery.
- In the two-year public process of drafting the HRZ, the town was charged with promoting the public desire to remain a small rural town. Being unwilling to cap the number of any given type of business, it was decided to limit the area in which such uses could occur, to limit impacts and prevent proliferation of resort uses, which were not strongly desired according to survey results. [see Note 1]

Discussion: The application seeks to change a fundamental Virgin Town zoning concept that was discussed in much detail when the HRZ zone was created. The adopted location of Highway Resort Zone was chosen in efforts to promote public desires gathered through opinion surveys and numerous formal and informal public hearings and discussions, with Virgin's planning commission, streets & roads committee, town council, and citizens. 67% respondents of the 2005 Vision of Virgin (VOV) survey, chose the statement "If I could have my wish, Virgin Town future success would be assured through wise planning".

The zoning plans adopted by Virgin Town are intended to preserve Virgin's uniqueness, and are based on the notion that the highway frontage through town naturally falls into three distinct districts: the treeless, native desert to the west; the dense original center of town, and the low, green agricultural area to the east. The specific chosen HRZ area is in the eastern district, which is highly suitable for accomplishing all of its goals.

- *Viewshed.* The proposed rezone would affect land that has some of the characteristics VULU Chapter 22 names as desirable for HRZ, being below street level and historically agricultural, reducing the likelihood that commercial structures and activities would compromise natural features and views.
- *Floodplain.* The parcel in question includes FEMA floodplain. This is a characteristic noted as one reason the location for HRZ was chosen.
- *Potential large vehicle traffic circulation.* The proposed rezone will result in

significant automobile activity within two block of the historic center of the town. This conflicts with the ordinance's intent stated in 22.3.4, which was based on survey results and General Plan concepts, to keep resort use/lodging traffic away from the town center, away from residential uses, and at the end of town closest to Zion NP and most tourist attractions.

General Plan: Goal #1/page32

Circulation Goals and Policies: Ensure that existing and new roads, trails and sidewalks provide ease of movement and safety for automobile, pedestrian, bicycle and equestrian modes of transportation.

- *Possibility for Incompatible HRZ uses.*
The proposed rezone would give the property owner effective right to any of the conditional uses listed in the HRZ [see Note #2 Conditional Uses in HRZ]; potentially resulting in high-impact resort use on a parcel well away and disconnected from the HRZ. VULU does not specifically prohibit spot zoning, but the purpose of zoning and various sections of the ordinance encourage the grouping together of similar and complementary uses. Also, VOV survey question #72: "In my opinion commercial business should be... scaled in sized and character to small town residential surroundings" Yes: 53.15% Vs No:2.8% 'unchecked' 44.06 %
- *Town Center Potential.* The proposed rezone would permit resort uses with potentially large buildings, extensive parking requirements, and uses which do not lend themselves to sidewalk level interactivity adjacent to the historic center of town. [see 22.3.4]
- *An HRZ Extension* could potentially interrupt an otherwise likely dense, interactive zone where small businesses are favored, according to opinion surveys.
- *Spot Zone Implications.* Approval of the application would create a spot rezone. Effectively, if this spot rezone were to be approved, it could lead to any number of other HRZ rezoning applications being presented to Virgin Town. It would create a precedent making it difficult for Virgin Town to deny any rezone; so compromising the integrity of the Town's whole zoning scheme. This request is in clear conflict with the town zoning rationale.
- Denials of future HRZ spot zoning applications could leave the town open to claims of it being arbitrary or capricious. We see no need to endanger the town's ability to enforce its zoning to satisfy this one request, when the town has available a zoning designation which could provide the owner freedom to conduct uses beyond those in the subject parcel's underlying zone.
 - *The **Master Plan Overlay(MPO)** process (VULU Chapter 28) was specifically designed to allow large property owners (20 acres or more) more flexibility to utilize their land. This zoning is already provided for by the ordinance for the subject property. The applicant began an MPO application process, but did not follow through. (see communications of June 7th 2012), but early drafts incorporated large elements in direct conflict with Virgin ordinances, including*

uses that are prohibited in the town such as VRBO (Vacation Rental by Owner). They also included densities above what the ordinance would allow, creating concern about exceeding Washington County Water Conservancy District limits on density of >1 unit/acre and the resulting impact on sewer issues, as well as concerns that the sheer scale of proposed development might conflict with Virgin's General Plan, town goals, and the land use ordinance. No amended plan or formal MPO was ever submitted.

- *Site Standards.* Site Standards for the current HRZ are defined in VULU 22.3 (In brief...the agreed upon HRZ is a large open tract of agricultural land, with RZ to its west, agricultural areas to the east, the Virgin River to the south, and vacant desert to the north. Standards include deep setbacks and streetside meandering trails, for instance; such elements may not be not feasible in the center of town, which is characterized by smaller lots, shallower setbacks, and greater density.
- *HRZ designation* does not provide for as much town input into design and scale, or leeway to adapt its standards to areas not previously contemplated for resort use. [see VULU Chapter 28]. MPO zoning would allow the approval process to include special design standards to minimize conflicts with surrounding uses and to adapt site standards to the location.
- *An ordinance to provide appropriate site standards* for small businesses in the town center is needed and has been much discussed, but none has been adopted as of yet. In the meantime, only grandfathered commercial uses are located in this area, although MPO zoning is available.
- *HRZ development and availability of conforming parcels.* There is little reason for the town to compromise its zoning scheme before the existing HRZ, in which some plans for development are only recently in process, has been given a chance to grow. Concept plans have been presented to the Virgin Town, Council and Virgin Planning Commission for a hotel with construction anticipated to begin in 2015, if approved.
- *In Fill.* A new intersection important for tourist circulation will soon be complete in the HRZ zone; with this change the HRZ is expected to begin to fill in. There is little reason for the town to compromise its zoning scheme before the existing HRZ has been given a chance to grow. A person desirous of developing a resort use in Virgin Town could acquire land that is currently zoned HRZ.
- *Town Density.* At the Town Council meeting on September 24th it was discussed that Virgin Town is approaching a threshold of development density and its ability to handle the associated waste outputs. The Virgin Town Council is looking to initiate a ground water study to examine waste impact on the Virgin River and surrounding Ground Water. Changing the underlying zoning of this parcel from Rural Residential to HRZ could result in increased density over what would be allowed under current zoning. At a time when the town is approaching this threshold, which may necessitate enormous capital investment by the town and its existing residents and businesses, it would be irresponsible to choose to

increase potential density in a location where it is not already granted by right.

On August 1, 2012, the Board of Supervisors held a public hearing on the application for a rezoning of the subject property. The Board of Supervisors received a report from the Planning Commission and the Board of Supervisors held a public hearing on the application. The Board of Supervisors received a report from the Planning Commission and the Board of Supervisors held a public hearing on the application. The Board of Supervisors received a report from the Planning Commission and the Board of Supervisors held a public hearing on the application.

Conclusion:

Given the above analysis and in particular with reference to

- Conflicts with current Virgin General Plan objectives and goals
- Spot zoning and risk to Virgin Town ordinance integrity
- Lack of use of the Master Plan Overlay process
- Water, water and septic impositions on Virgin Town sewer

Therefore, we recommend denial of the application to Amend Chapter 22 of Virgin Uniform Land Use Ordinance Highway Resub 2-0-1 (HR2) to include the rezoning of parcel to the location section of HR2 VLU 22.0.

- *Chapter 8.13.3.D (excerpt)The base development yield may be increased if the Land Use Authority finds that a development qualifies for a density bonus...*
VOV survey question #68: "In my opinion, commercil business should be ...tied to water supply and septic limitiations" YES 55.94% No: 2.8% Unchecked 41.26%

Conclusion:

Given the above analysis and in particular with reference to:

- *Conflicts with current Virgin General Plan objectives and goals*
- *Spot Zoning and risk to Virgin Town ordinance integrity*
- *Lack of use of the Master Plan Overlay process*
- *Waster water and septic implications on Virgin Town sewer*

Therefore, we recommend denial of the application to "Amend Chapter 22 of Virgin Uniform Land Use Ordinance, Highway Resort Zone (HRZ), to include the addition of parcel to the Location section of HRZ VULU 22.3".

2. Request: Add two additional Conditional Uses to the HRZ: Recreation Vehicle Resort/Campground/Cabins, and Parks, Playgrounds, and Amenities (Incidental to Resort Property)

Background:

The existing Resort Zone (RZ) was created many years prior to the HRZ, specifically to accommodate recreational vehicle campgrounds. During the public process to create the HRZ, it was deliberately decided to leave recreational vehicle campgrounds out of the HRZ zone, which would effectively prohibit that use; this was adopted as a means to prevent the proliferation of an unpopular uses (See Appendix 1) of high-impact vehicle activity, and to leave space for a variety of uses, increasing the likelihood that commercial activities, would complement each other and serve the local population.

8.1.7.F. Avoid redundancy of use wherever desirable and possible.

22.6. PROHIBITED USES. All uses not listed as permitted or conditional shall be deemed prohibited. It is intended that 'service station' be a conditional use in this zone; however, it will remain prohibited until specific standards for this use are adopted and incorporated into VULU.

- *Furthermore, the applicant could have asked to be added to RZ rather than HRZ, which would have precluded any risk to HRZ conditional use criteria*

Discussion:

- The requested amendment asks that the town reverse a decision which was based on survey results, and months of input gathering and public discussion on this matter. Such an addition might necessitate changes to the rules and site standards governing the HRZ. The procedure followed by the town to add uses to zones has previously included amendment to Chapter 8 to describe specific standards upon which conditions may be based for the added use (for example, 22.6 states that "service Station" is a desired use, while prohibiting it until specific standards are adopted); no such amendment has been discussed or proposed.
- Furthermore, applicant could have asked to be added to RZ rather than HRZ, making this amendment unnecessary.

Conclusion:

Given the above analysis and in particular reference to:

- Compromising the overall zoning scheme and defined HRZ conditional uses
- Lack of standards to accompany the use, making it difficult to legally place any specific conditions on the proposed conditional use.

It is recommended that the application to: "Add two additional Conditional Uses to the HRZ: Recreation Vehicle Resort/Campground/Cabins, and Parks, Playgrounds, and Amenities (Incidental to Resort Property)" be denied.

3.Request: Zone Change from Rural Residential to Highway Resort Zone

a. This request cannot be properly considered under Virgin Town's current ordinance and future zoning scheme. It conflicts with the location section of the HRZ chapter, as well as certain goals of the HRZ.

b. Should the town agree to the proposal for an ordinance amendment allowing the expansion of the HRZ to the subject property, the application for zone change would not be necessary, as the parcel's zoning would be automatically changed to HRZ with adoption of the amendment to include the applicants legal parcel designation in the description section.

Conclusion:

It is recommended that the application to: "Zone Change from Rural Residential to Highway Resort Zone" be denied as the application is not required.

Note 1.

Notes from Vision of Virgin Survey Results:

“If I could have my wish, Virgin would encourage growth similar in size and character to:” (respondents asked to choose only one) Ranked as follows from most to least popular, the people said:

1. Rockville; 2. Springdale; 3. Toquerville; 4. Parowan; 5. Apple Valley; 6. St. George; 7. La Verkin; 8. Hurricane

Less than 50% of respondents wanted commercial development in any of the locations mentioned. (The process of adopting the HRZ was long and inclusive to confirm the size and location for some resort use as acceptable to the public.) Answers to questions about use suggested that a very few low-impact small businesses would be desirable; “a diverse mixture of small businesses to serve the residents” received 50.3% positive responses. Results by use included a majority of positive responses to “a gas station”[59.44%]” (but not “many gas stations” [2.1%]); “a hotel or motel” [30%] (but not “many hotels and motels” [4.9%]); “small retail shops” [50.35%]; “general store”[63.64%]; “restaurants/cafes”[64.34%]. All other uses in the survey had less than 50% positive results.

Note 2.

22.5. CONDITIONAL USES.

The approval for any project and the continuing use of the property shall be subject to a Conditional Use Permit. Refer to Chapter 8 for procedure and additional standards.

22.5.1. HOTEL/MOTEL.

22.5.2. RETAIL TRADE INCIDENT TO RESORT USE; I.E., BOOK SHOP, ROCK SHOP, FLORAL SHOP, ETC.

22.5.3. CAFÉ, COFFEE SHOP OR DELI.

22.5.4. RESTAURANT (INCIDENTAL TO RESORT BUSINESS).

22.5.5. BREWERY/WINERY.

22.5.6. ART GALLERY/PHOTOGRAPHY STUDIO.

22.5.7. OUTFITTING/GUIDING SERVICES (NO RENTAL OF ATV'S).

22.5.8. BED AND BREAKFAST.

22.5.9. HEALTH SPA/HEALING CENTER.

22.5.10. ACCESSORY EMERGENCY MEDICAL CLINIC.

22.5.11. MUSEUM.

22.5.12. NON-MOTORIZED BICYCLE RENTAL AND TOUR SERVICES.

22.5.13. SHUTTLE STOP.

22.5.14. COMMERCIAL HABITATION AS DEFINED IN VULU CHAPTER 20.4.

22.5.15. AGRICULTURAL USES COMPATIBLE WITH THE RESORT ZONE OBJECTIVES.

22.5.16. TRAILS.

22.5.17. RECEPTION OR EVENT FACILITY.