

July 5, 2015

Mayor and Town Council
Town of Springdale
P. O. Box 187
Springdale, Utah 84767

Dear Mayor and Council:

We are writing to provide some input on the recent Izzy Poco settlement agreement and the future of a formula restaurant and delicatessen ordinance in Springdale. We hope that you will consider our comments in light of our years of service and experience in Springdale's government and share the public hearing input with the Planning Commission.

First and foremost, you all have had to make a very difficult decision, and we understand your challenge. It is clear that the decision to enter into a settlement agreement with Izzy Poco doesn't feel right to most Springdale residents. As we review the surveys conducted in preparation for the General Plan, we are struck once again by the percentage of citizens who simply do not want formula restaurants or formula fast food and delis in town.

We believe that what is needed now is transparency beyond the Town's press release and Mayor Smith's recent letter. There is more information that you are able to reveal to Springdale residents; we know because we were able to discover details that are not privileged but that you haven't shared with the public. We think the residents of Springdale will understand why you believed that you were acting in their best interests if they simply have more information. As it is, people are still bewildered and stunned, and that only leads to speculation and rumor.

For example, we think you need to explain why the settlement agreement included an absolute repeal of the current formula restaurant ordinance instead of a revision of the existing one. Likewise, you need to explain how the \$786,000 settlement amount was determined. You may also want to explain why you opted to repeal the current ordinance without immediately implementing a new ordinance process and declaring a moratorium while the new ordinance is being drafted.

As for the process of drafting and adopting a new ordinance, which we sincerely hope you will do with a sense of urgency, we offer the following:

- At the soonest moment legally possible, the Town should implement a moratorium on applications for formula businesses pending new regulations.
- It may go without saying, but a new ordinance ought to make formula businesses a conditional use and each application should be heard individually by Planning and Zoning and Town Council.
- A new set of criteria for approval should be adopted specifically for formula restaurants.

- One criterion should be the requirement of an impact study at applicant's expense that addresses the existing concentration of formula businesses within the immediate neighborhood; the compatibility of the proposed business with the character of the neighborhood; and the impact of increased traffic as a result of a formula food business, as well as any additional relevant data and analysis set forth in the Springdale Town Code governing conditional uses.

An example of such an impact study comes from Coronado, California. Their ordinance regulating formula retail businesses withstood a constitutional Eleventh Amendment "commerce clause" challenge in 2003. Their code, which we think is pretty good, requires that the city consider the following in granting approval:

- (1) the establishment is "compatible with existing surrounding uses, and has been designed and will be operated in a nonobtrusive manner to preserve the community's character and ambiance";*
- (2) the establishment is consistent with the General Plan and Local Coastal Program;*
- (3) the establishment "will contribute to an appropriate balance of local, regional or national-based businesses in the community"; and*
- (4) the establishment "will contribute to an appropriate balance of small, medium and large-sized businesses in the community."*ⁱⁱ

- Town should consider prohibiting conditional uses for formula businesses from running with the property, but making the conditional use specific to a particular franchise name and owner.
- The ordinance should require neighbor notification of any application, and citizen input taken at noticed public hearings, by mail, and electronically.
 - The current process to develop an historic preservation ordinance and to identify a clearly defined historic district should be completed without delay, and formula businesses should be banned in the historic district.
 - Formula restaurants, fast food, and delicatessens should be limited to a maximum 1,500 square feet and drive-up windows should be absolutely prohibited. Town might also consider a limit on the maximum allowable frontage on Zion Park Boulevard for any formula business. Such restrictions have withstood legal challenges elsewhere.
 - The Town should consider capping the total number of formula restaurants. For example, Arcata, California, allows only a certain number of formula restaurants in the city at any one time;ⁱⁱ and McCall, Idaho limits formula restaurants to no more than 10 percent of the total number of "like businesses" in town.ⁱⁱⁱ This is an option worth exploring.

- Cannon Beach, Oregon has a ban on formula restaurants, drive-ins and mobile food vendors by identifying different commercial zones, which it calls C-1, Limited Commercial, and C-2, General Commercial. This is not unlike what Springdale has done with its Central Commercial (CC) and Village Commercial (VC). However, Cannon Beach strictly prohibits formula restaurants and drive-ins in its C-1 zone. If Springdale could do something similar, perhaps we could contain formula businesses to only one commercial zone.^{iv} This, coupled with much tighter regulations we referenced above, might limit the proliferation of formula businesses.
- Town should consider a fulsome preamble to a new formula restaurant ordinance that strongly references our General Plan and the citizen surveys in preparation for it; the preamble could even discuss courts' upholding the objective of promoting diverse commercial activity to prevent the town from being taken over by formula eateries as *not* a discriminatory purpose under the commerce clause, as we mentioned in Coronado, California case.

Please consider that much has been made of the fact that Springdale's original ordinance was crafted with reference to the Islamorada, Florida formula business ordinance, which was subsequently overturned by the Eleventh Circuit Court in 2011. Even in that case, the court maintained that *preserving distinctive community character was a legitimate public purpose for enacting a formula business ordinance*. The Islamorada ordinance was overturned primarily because the court found that Islamorada's leaders had not demonstrated that community character was in fact the purpose of the law. The court found that local officials had passed the law to protect particular local businesses, which is discrimination.^v That would not be the case in Springdale.

It is likely you have already thought of everything we bring up here. If so, then we share your hopes and vision for a formula business ordinance.

Finally, we all appreciate the difficult decisions you have had to make, and we know the pressure you've felt, having been there ourselves in many instances. We offer our suggestions having been in your shoes, and we hope that Springdale can weather this storm and remain a strong, vibrant community of friends and neighbors.

Sincerely,

Bruce VanderWerff, former Mayor

Pat Cluff, former Mayor

Louise Excell, former Town Council

NOTES:

ⁱ CORONADANS ORGANIZED FOR RETAIL ENHANCEMENT et al., Plaintiffs and Appellants, v. CITY OF CORONADO et al., Defendants and Respondents. COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE 2003 Cal. App. Unpub. LEXIS 5769

ⁱⁱ <http://www.ilsr.org/rule/formula-business-restrictions/2306-2/>

ⁱⁱⁱ <http://www.ilsr.org/rule/formula-business-restrictions/2863-2/>

^{iv} <http://www.qcode.us/codes/cannonbeach/>

^v IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT No. 07–11418 D.C. Docket No. 04-10097-CV-JLK