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**TOWN COUNCIL SPECIAL MEETING MINUTES
THURSDAY, SEPTEMBER 27, 2012
Town Hall Council Chambers
551 Hot Springs Blvd.
12:00 P.M.**

- I. **CALL MEETING TO ORDER** – Mayor Aragon, Council Member Alley, Council Member Bunning, Council Member Cotton, Council Member Lattin, Council Member Schanzenbaker, Council Member Volger
- II. **APPROVAL of MEETING MINUTES FROM SEPTEMBER 6, 2012** –Minutes were approved as read.
- III. **PUBLIC COMMENT** – No Public Comment
- IV. **LIQUOR LICENSE**
 1. **Liquor License Transfer – From Em & Randolph Fehrenbacher dba Thai Chilie to Prasit Muenwong dba Thai Chilie of Pagosa Springs 565 Village Drive Suite D Pagosa Springs** – Council Member Volger moved to approve the transfer of Thai Chilie from Em & Randolph Fehrenbacher to Prasit Muenwong dba Thai Chilie of Pagosa Springs, Council Member Alley seconded, unanimously approved.
 1. **Liquor License Renewal – Pagosa Lodge LLC dba Quality Resorts & Suites, 3505 W Hwy 160 Pagosa Springs**
 2. **Liquor License Renewal – Asset Management and Marketing LLC dba Oakridge Lodge, 158 Hot Springs Blvd. Pagosa Springs**
 3. **Liquor License Renewal – Bessie Montoya dba Elkhorn Cafe 438 Pagosa St Pagosa Springs** – Council Member Lattin asked about an underage serving citation given to the Elkhorn Cafe May of 2012, the Elkhorn has worked with their waitstaff training them to check for identification regularly. Council Member Lattin moved to approve the liquor license renewal of Pagosa Lodge LLC dba Quality Resorts & Suites, Asset Management and Marketing LLC dba Oakridge Lodge, and Bessie Montoya dba Elkhorn Cafe, Council Member Bunning seconded, unanimously approved.
 4. **Special Events Liquor Permit – Pagosa Mountain Morning Rotary Club, Roller Girls Fundraiser at South Pagosa Park on 8th Street Pagosa Springs September 29, 2012** – Council Member Lattin moved to approve the Pagosa Mountain Morning Rotary Club liquor permit, Council Member Volger seconded, unanimously approved.
- V. **NEW BUSINESS**
 1. **Iverson Properties Purchase Offer Consideration** – Mr. Sherwin Iverson contacted the town regarding the sale of four lots at the SE corner of San Juan Alley and 10th Street. These four lots were originally looked at for trails through the area and noted on the trails map in the comprehensive plan. The lots have some topography and flood challenges that may restrict the use of the land. Staff has not identified a specific use for these lots as of

yet, however, public parking may be a good use of this area, considering it is mostly in the West McCabe Creek Floodway and Flood Plain or used for the possibility of expanding the width of the San Juan Alley. The estimated value is between \$5,000 and \$10,000 per lot. The fiscal impact could be between \$20,000 and \$40,000 if purchased. Council Member Volger moved to table this item until additional research on the property and discussion with the library can be reviewed, Council Member Lattin seconded, unanimously approved.

2. Resolution 2012-15, Stipulated Procedures for Appeal - An appeal of the Design

Review Board's approval of Wal-Mart's major design applications was presented to the Town Council. The LUDC sets criteria for submitting an appeal; however it does not address the process of an appeal. Resolution 2012-15 provides for the process of the appeal. The process to determine the procedures for this appeal was discussed by the appellants, Steven and Vivian Rader, Town Attorney Bob Cole, the applicant Wal-Mart representative and planning director James Dickhoff. Signatures from those parties have been received approving the outline of the orders of the procedures. Mrs. Vivian Rader said that she and her husband received an email from Attorney Cole asking the Rader's to let the council know if they had any concerns with the stipulated resolution and she said that is why they have appeared today before council. She read a list of items including town staff moving the appeal process forward without informing the Rader's and rushing for completion of the resolution. She said the Rader's object that special rules are being imposed upon them for this appeal. She said the resolution presented today with their names attached is a document they have never seen or approved. She said she has been defrauded of due process and said numerous criminal statutes are being violated. She said the time she was going to spend reviewing the record for their opening brief was diverted because of the changes, and says she does not have time to complete the brief that is due Friday September 28th per this resolution. She does not take away the appeal but does redact and rescind her and her husband's signatures on the document. Attorney Cole said that the staff had been working amicably with the Rader's and is surprised by Mrs. Rader's statements. He explained to council that the stipulated orders signed by the Rader's is different from the one in the council pack because of two subsequent revisions, once being the addition of the resolution no. 2012-15 and a correction of the location of the hearing from the address of town hall to the community center address. The Rader's were contacted by email with the changes and asked to provide any problems with the changes, and told that if they did have a problem they could withdraw their consent or appear today to council to say they did not agree to the changes. He said there has been no fraud as Mrs. Rader stated and he said that the Rader's should have provided staff with objections to the stipulated order prior to their signing the affidavit. Disagreement to the two changes on the document he said were not opposed. He advised council to allow the Rader's to pull their signatures from the document and then consider moving forward with procedural orders to provide some order to this appeal. Mrs. Rader said she received an email on a Saturday asking her to attend a phone conversation on that Monday and said should would appear under protest. Mrs. Vivian Rader said the phone conversation was not amicable and said that every step of the way she objected to the procedure. She said she received the final revision on Tuesday morning and was rushed to get an affidavit sworn before she went out of town she didn't have a fair opportunity to review the document. Attorney Cole said that if the Rader's no longer agree to the procedural order, then the council should withdraw the Rader's signatures from this order and move forward to consider approving the resolution. Mr. Steven Rader said the rules and procedures for appeals should have been put in the LUDC to start with, he said to make them up now is ridiculous. He said to approve the order with the Rader's signature shows a bias and is not completing due process. Attorney Cole said the current procedure does show fair due process to both the applicant and appellant. He said council may elect to follow the LUDC which provides for a

fundamental due process allowing a notice of appeal and a hearing, with no comment or briefs from either the Rader's or town staff. Town Manager Mitchem recommends the council move forward with the resolution which gives a clear and orderly process and gives the appellant the opportunity to give present their case. Council Member Volger moved to remove the Rader's signature pages prior to moving forward with this resolution, Council Member Cotton seconded, motion carried with one nay (Council Member Schanzenbaker). Council Member Alley asked the Rader's if there were problems with the process in the document or concerned with the two changes made in the document. Mrs. Rader said that she is objecting to being rushed into the document without Steve's involvement and the signature pages being attached to a different document and then presented to council. Mr. Steven Rader said that when Vivian left town it was made clear that the Town was to contact him at home if there was any communication needed, however no one contacted him. Attorney Cole said the Rader's are trying to make something out of nothing and said it was made clear to them the resolution number and location change would be included in the documentation sent to council and they were given the opportunity to raise an objection. He said the Rader's characterizing the document and the process as a fraud is unfounded. He said he hadn't heard if the Rader's are objecting to a briefing schedule or opportunity, limitation on length of argument or elements in the order and suggests council discuss the Rader's objections. Mrs. Rader said that because of the objection to this document she spent all of her time preparing the notice of redaction, she didn't have time to prepare the brief that is due September 28th. Attorney Cole read an email from Mrs. Rader on September 17th, 2012 stating Mr. and Mrs. Rader believed the resolution to be acceptable. Attorney Cole continued reading the email where Mrs. Rader asked the final version be emailed before 8:15am the next morning for their signatures, which it was. Attorney Cole said that the fax cover page from Mr. Rader with the affidavits raises objections. Attorney Cole said the Rader's were told several times that if they objected they could remove their signatures and were given plenty of time to withdraw their signatures from this stipulated order. Mrs. Rader said she didn't receive the updated resolution until Tuesday of this week, she said they are feeling rushed and it was beyond her control that there were no internet connection at the hotel. Council Member Schanzenbaker would like to continue the item until a later date when all parties can agree. Council Member Alley asked again if there were any objections to the process besides the two changes. Mrs. Rader said she objects to the entire resolution because she believes it does not provide them proper opportunity. Council Member Cotton asked Attorney Cole if all that was changed on the original document the Rader's attested to were the resolution number and the location of the hearing, Attorney Cole said that at 9:45am on the 18th of September an email indicating the two modifications were sent to the Rader's as well as the town planner, manager, and Wal-Mart attorney. Council Member Schanzenbaker asked if the Rader's would be willing to sign this revised resolution, Mrs. Rader said she will not sign the current resolution because the due date for the opening brief does not give her enough time to prepare the brief. Mr. Rader said he would not sign the resolution and would like to start the process over to prepare the stipulated resolution. Council Member Volger moved to forward the Rader's their legal rights and the changes made on the document were not substantive and the procedures are fair and appropriate therefore move to approve Resolution 2012-15, a stipulated resolution and order regarding procedures governing the appeal of resolution no. 2012-12 of the Town of Pagosa Springs design review board, Council Member Cotton seconded. Attorney Cole said the council is certainly within their rights to approve the resolution, however understands that Mrs. Rader's objection to the resolution is due to her lack of sufficient work on her brief and her inability to file the opening brief by the deadlines. He suggests the council change the hearing dates to allow the Rader's sufficient time to prepare the opening brief. Council Member Volger withdrew his first motion and moved to approve Resolution 2012-15 a Resolution and

order regarding procedures governing the appeal of Resolution No. 2012-12 of the Town of Pagosa Springs design review board with the changes discussed including removal of Recital F, and changes to dates in paragraph 3 to Tuesday October 23 at 12 o'clock noon, paragraph 6 first date change to October 15 and second date to October 23, change 7a date to October 5, 7b date changed to October 11, 7c date change to October 16, and 7d date changed to October 17, Council Member Bunning seconded, unanimously approved. Mr. Bill Hudson said he did not have the opportunity to make any comment. Staff apologized for the error.

3. **Conference with Town Attorney Regarding Contract Negotiation with Possible Executive Session per C.R.S. Section 24-6-402(4)(b)** - Council Member Lattin moved to enter executive session pursuant to CRS Section 24-6-402(4)(b) to discuss with the town attorney regarding contractual negotiations, Council Member Volger seconded, unanimously approved. Mayor Aragon declared back in session at 2:30pm.
4. **Town Manager Annual Performance Review with Possible Executive Session per C.R.S. Section 24-6-402(4)(f)** - Council Member Lattin moved to go into executive session for town manager performance review per C.R.S. Section 24-6-402(4)(f) and dealing with an employee who has not requested discussion not in executive session, Council Member Volger seconded, unanimously approved. Mayor Aragon called the meeting back in session at 3:34.

VI. OLD BUSINESS

1. **Sales Tax Brief** - In September, the Town of Pagosa Springs' sales tax revenue decreased by 2.14% or -\$6,917 compared to September, 2011 (base on July retail sales). Year-to-date (January through September 2012) Town sales tax revenue has increased by 2.35% or +\$53,520 compared to the same period in 2011.

VII. DEPARTMENT HEAD REPORTS

1. **Community Center Report** – Cheryl Bowdrige was selected as the new Community Center Director starting September 10th. The ten year celebration was successful with about 80 attendees, music, food, and generously donated door prizes were provided. A fall rummage sale, Halloween carnival and festival of trees are all being prepared for by staff. The community center will be assisting the parks department with event scheduling for the parks and beginning children's programs with the help of the recreation department.
2. **Parks and Recreation Department Report** - This year's soccer season will conclude Oct. 11; registration for youth volleyball for ages 9-12 will close Oct. 5. Youth volleyball will begin in mid-October and run through mid-November. Registration for the first session of youth basketball (ages 7-8) will begin in late October; the season for this division will begin in early November and run through mid-December. The parks crew has been aerating and fertilizing the turf in each of the Town parks for the final time this year. Top dressing and seeding on portions of Yamaguchi Park will be occurring over the next several weeks. The crew also recently completed hauling the remaining slash piles left over from this year's thinning efforts on Reservoir Hill to the burn pile at the lagoons. Installation of a shade for the playground and roofing for the ball field dug-outs is scheduled for this fall. The shade is due to be shipped on Sept. 28; roofing on the dug-outs began this week. The new bathrooms at the park are essentially complete except for the final installation of sod, landscaping and minor electrical corrections, which are required to complete grant requirements. Those tasks will be completed before the end of the year. The tennis courts in South 8th Street Park was resurfaced in small areas for the upcoming fundraiser.
3. **Town Tourism Committee Report** - Lodgers tax collections were down 8.54% in July 2012, as compared to July 2011, a decrease of \$4,893.66. Despite the decrease, July was the 2nd strongest July on record. Year to date, lodger's tax collections are up

6.07% over 2011, or an increase of \$13,236.03. August visitor center traffic was down at both the downtown and west side locations. Visitor center traffic to the downtown visitor center was down 11.37% versus 2011; West side visitor center saw 493 visitors. Overall traffic was down 4.53% in Aug 2012, compared to 2011. Reporting through Internet Honey has provided additional information regarding overall traffic patterns and statistics related to the www.visitpagosasprings.com website. Between January and September: unique 90,269 website visitors; 67.88% of site traffic are new visitors (total visitors 130,023) with an average 4:42 minutes spent on the website per visitor, and average of 7.77 pages viewed per visit (1,010,459 pages total).

4. **Planning Department Report** – The HPB has changed their regular meeting to the second Wednesday of each month, 4-6pm in the town hall. A proposed demolition of the DeVore house on Lewis Street will be heard by the HPB in October. Staff is working with Davis Engineering to improve the southwest corner of Pagosa Street and 2nd Street to accommodate the power source for new lights. The planning commission is recommending the Council approve the 2012 3-Mile plan. The final engineering for the paving of 2,000 lineal feet of Majestic Drive is underway. CMAQ funds are being used for this project with hopes to construct this paving in 2013. The McCabe Creek Culvert replacement is being considered for 2014 and property owners are being included in the discussion. There is a delay with the utility location in the 200 block of Lewis Street; the contractor hopes to be completed this season. Staff is working with CDOT to finalize plans for improvements to the downtown mid-block pedestrian crosswalks. The southwest solar initiative gives reports and information for use of solar photovoltaic panels in the town, staff believes this information will help when updating the town's comprehensive plan. Staff was approached by Norm Vance regarding the hunter's hospitality event asking others to take on some of the project. The ATV club has taken on bringing information to the hunter's camps; the Quick Draw Club has taken on the hunter's hospitality event, and would like to hold it at the Overlook Parking area this year. Staff will be working on this possible event in this location with the consensus of the council. The traffic street at 8th Street is underway with conduit for power and light bases, with potential completion at the end of November.
5. **Town Manager Report** – The San Juan River well permit submitted was modified to include a small well adjacent to the river in order to use this water for the irrigation of Centennial Park as well as use in the geothermal heating system. The well owners are being contacted to endorse the small well with hopes to begin this process in spring 2013. A project manager has been selected and an offer is in the process, with hopes for this individual to begin October 8th.

VIII. APPROVAL OF AUGUST FINANCIAL STATEMENT AND ACCOMPANYING PAYMENTS – Council Member Volger moved to approve the August financial statement and accompanying payments, Council Member Bunning seconded, unanimously approved.

IX. PUBLIC COMMENT – Mrs. Muriel Eason with the Pagosa Springs Community Development Corporation said that they have kicked off a downtown revitalization effort. Downtown Colorado will be from the 13-15 November and will talk with downtown businesses. They are asking funding for the 2013 year. Catherine Brackhahn said that she is sad to see no response, no comment, and no input from the council or the public regarding the removal of a sworn affidavit and applied it to a changed document, she is shaken by the shape our town is in and how wounded our constitution. Council Member Cotton said the signature pages were removed from the document. Attorney Cole said the affidavit was not changed and remained with the original agreement, the town suggested that the affidavits be attached to the revised resolution. The Rader's were given the opportunity to object which they did and their affidavits were removed from the resolution that was adopted by Council. Attorney Cole said it is clear there were protections in place afforded to the Rader's for

their decision to accept their affidavit being attached to a revised document or to reject that document. He said staff has worked diligently to make sure no affidavit was changed and all parties received the document information and were given the opportunity to reject if they desired.

X. NEXT TOWN COUNCIL MEETING OCTOBER 9, 2012 AT 5:00PM

XI. ADJOURNMENT – Upon motion duly made, the meeting adjourned at 3:35pm.

**Ross Aragón
Mayor**