

July 17, 2023

Despite sending a letter of complaint on the morning of June 30, 2023 and filing an online complaint on or about July 1, (after responses from town officials and town attorney dodged the issue of illegality of the commercial use on residentially-zoned private property), the ongoing illegal commercial use at approximately 170 E 100 S continues and has not been adequately addressed. A commercial Outfitting/Guide/Tour business is a "Permitted Use" in the Commercial Zone, not in the Rural Residential Zone. In Virgin Town, "uses fall into one of four categories, namely Permitted, Permitted with Conditions, Conditional Use, and Prohibited." (See VULU 34.04) If a use is not explicitly "Permitted" or "Conditional," uses are usually considered "Prohibited." This is the common structure of zoning in Utah.

Neighbors have documented between 30-45 buses and/or vans entering and exiting this location daily for now over 3 weeks. The buses enter the property, back into their pickup location (complete with reverse sirens beeping), load passengers then depart every 10-15 minutes from roughly 10:30 AM to 6:30 PM, 7 days a week. It is common for one vehicle to be pulling out and another to arrive within only a few minutes. Each week there are between 240-250 bus trips in and out, which if you count both directions is 480-500. In three weeks it is well over 700 trips, 1400 counting both directions.

Our neighborhood kids are not able to safely ride their bikes and scooters on our street now.

Council members have stopped by to talk with neighbors. The town attorney has weighed in. They make two common points: 1) the use is "temporary," and 2) the company both has the permission of the landowner and has a right to use town property. Neither of these circumstances changes the illegality of the use. Nor does the tubing company asking their drivers to "slow down" in the neighborhood. The use is illegal. It is not a "Permitted" or "Conditional Use" in the Rural Residential Zone. This amount of traffic is an unmitigatable impact.

Virgin Town is a long but narrow community, constrained to the north and south by public lands. While our town may benefit financially from tourism, our ordinances seek to confine commercial activity to SR-9 to protect neighborhood safety, peaceful quiet, and resident's individual use and enjoyment of their land. (See VULU Chapter 40, Commercial Zone).

It has been stated to those of us in the impacted neighborhood that the tubing company is negotiating for egress out of the river on commercially zoned property. This is good news. Town Officials seem to be trying to help the company continue their business in the interim, but the approach taken is at the expense of Town Residents. Town Officials should be using their clout to immediately arrange a takeout on a commercial property, even if temporary, NOT arranging for and allowing such use in a residential neighborhood!

I consulted with the Utah Office of the Property Rights Ombudsman on July 13. I read attorney Marcie M. Jones the list of permitted and conditional uses in the Rural Residential Zone. She stated it appeared the use is inconsistent with the zone and that the town is legally obligated under state law to enforce its ordinances. She encouraged me to continue to pursue the issue in the Town Council meeting.

Virgin Town has repeatedly made the decision to focus on complaints as the trigger for enforcement of our ordinances. And because of this, there is a very clearly written complaint protocol in VULU, which does not seem to have been followed with my complaint. Have not received response per VULU Chapter 2.22. I appreciate that the issue has been placed on the agenda and I look forward to a resolution of the matter.

Thank you

Lani Rose

RECEIVED
JUL 17 2023

Original letter of Complaint

June 30, 2023

Mayor Jean Krause
Town Attorney Health Snow
Virgin Town Council
Loren Campbell, President, Rio de Sion HOA

Re: Use of 100 South, Virgin Town property, and Rio de Sion Home Owners Association property for commercial access in residentially zoned neighborhood

Mayor Krause and others,

For the past several days, over and over throughout the day, Zion Tubing has been accessing the Virgin River with their commercial bus vehicles to pick up commercial tubing customers exiting the river on private property at approximately 100 south 170 E. The property where this use is occurring is zoned Rural Residential. No commercial business use at this location has been legally authorized by the Town's Planning Commission or Town Council per the official processes in place to consider such a request. Meanwhile, the impacts to the immediate neighbors (who were not consulted) are significant; substantial dust, noise, increased traffic, and safety are the primary issues. Multiple families with small children (who like to ride their bikes...it is summer after all and they are out of school) live in the immediate neighborhood. The corner is a blind corner. The commercial buses have a steep climb out of a sandy low area to reach 100 South. Neighbors watched them have a near-collision with each other this week as one bus pulled in and another was pulling out. This is a dangerous and un-mitigatable situation.

It is my understanding this use is occurring with the knowledge and "authorization" of Town officials and the private property owners.

Because this commercial use of private property is neither a "Permitted" or "Conditional" use in the Rural Residential Zone, the use must stop immediately. Also, contrary to what neighbors report they were told by town officials, there is no public easement though this private property. This is readily confirmed by public records accessed on the County Recorder's website.

With the Fourth of July holiday weekend upon us, the impacts of this illegal use on neighbors is both unbearable and unsafe. The town will be liable if anyone is hurt.

Isn't the Town's primary responsibility to protect the health, safety, and welfare of its citizens? Thank you for your immediate attention to this matter.

Sincerely,



Lori Rose
83 E 100 S

c: Marilyn Wilcox
Trevor Cowley

2.22 ENFORCEMENT

- A. ENFORCEMENT. The Virgin Town Zoning Administrator is authorized as the officer charged with the enforcement of this ordinance. It shall be the duty of Zoning Administrator to enforce the provisions of this ordinance, and shall enforce all provisions, and the failure of the Zoning Administrator to do so shall not legalize any violations of such provisions.
- B. COMPLAINTS¹. The Town of Virgin encourages citizens to bring forward legitimate grievances regarding any violation of law or ordinance which affects them. In light of the heavy workload sometimes visited upon our staff and volunteers, it is to the advantage of all concerned to have a procedure for the investigation of the more serious allegations and underlying circumstances so that *complaints can be resolved*.

As a rule, complaints will be handled according to the following steps:

1. Citizen submits a complaint to a local police officer, or completes a complaint form or letter, available at Town Hall or the town website, and submits it to the Town Clerk. Unsigned complaints may not be investigated.
 2. If received at Town Hall, Clerk date-stamps the complaint after verifying that:
 - a. Signature is readable or printed name of complainant is included;
 - b. complaint is clearly described and identified;
 - c. complainant has described how the alleged violation has personally affected him or her; and
 - d. any efforts made to resolve the problem, including contacts with associated property owners, are described.
 3. If the complaint was received by the police, an officer determines whether he or she should proceed to investigate. If the complaint was received by the Town, the clerk shall file the original complaint in a master Complaints file including all complaints received in chronological order, make a copy to attach to the Complaint Log and begin investigation. Complaints involving private information about individuals will be investigated by the Mayor or his designee.
 4. The clerk may consult with the Zoning Administrator, the Mayor, or others to determine if the complaint requires official town action. If found to require further investigation, Town Clerk shall notify the complainant, in writing or by phone, as soon as practicable, that the office acknowledges receipt of the complaint, and that the complaint is under investigation. If it is determined the complaint should be dismissed, the clerk shall notify the complainant of the reason for dismissal. Phone calls shall be logged in complaint file.
 5. Dismissal may result for various reasons, including but not limited to:
 - a. the action complained of is not a violation of any law or ordinance;
 - b. the action is a violation of a law not enforceable by the Town;
 - c. the complaint is determined to be frivolous;
 - d. investigation showed the complaint to be resolved or untrue;
 - e. the action complained of has been satisfactorily addressed in the past;
 - f. a seeming violation of the ordinance is actually a legal non-conformity;
 - g. the complaint is of a nuisance not specifically addressed in the ordinance (this case may result in a request that Planning and Zoning consider amending the ordinance to avoid future nuisance)
 6. If the complaint is found to have merit, Clerk shall call or write the subject of the complaint and ask that the problem be corrected, logging the results in the complaint file. If the complaint is found to have merit requiring official town action, the Mayor will be informed and the complaint will be prioritized based on anticipated risk to and impact on complainant and the public. When it is determined to take action, the complaint shall be addressed under a Complaints item on a Town Council agenda.
 7. Complaint items shall be addressed in summary by the Town Council within the next two regularly scheduled meetings, as follows. Dismissed complaints and those under investigation will be reported in summary in work meeting, and those requiring official action of the council will be addressed under a separate item in the regular council meeting. Town Clerk shall give 48-hour notice to both complainants and subjects of complaints, in writing or by phone, when complaints are scheduled for council action, and when final action is decided upon. Copies of public and private notices and excerpts from meeting minutes shall be included in the complaint file.
- C. RELATIONSHIP TO OTHER ORDINANCES. No business license, building permit, occupancy permit, street encroachment permit, water connection, sewer connection or other permits, licenses or services provided by the Town of Virgin shall be granted to any person whose use of land, use of structures or whose construction of buildings or other structures is in violation of this ordinance, except those uses for which a valid order of the Appeal Authority or a court of competent jurisdiction has been issued.
- D. VIOLATION UNDER PREVIOUS ORDINANCES. The adoption of this ordinance shall not void or abate any violations occurring under the Town of Virgin zoning ordinance as heretofore in effect, nor any prior zoning ordinance providing for zoning of property within the Town of Virgin, nor shall it affect any debt or fee which has accrued any debt imposed, any penalty incurred, any action or proceeding commenced under or by virtue of such ordinances.

E. EXTRAORDINARY REMEDIES. The Town of Virgin may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or any other appropriate action or actions or proceedings to prevent, enjoin, abate or remove the unlawful building, use or act carried on in violation of this ordinance.

¹ Section 2.24 B was amended 9-25-2013 pursuant to Ordinance # 13-092513-2

HISTORY

Amended by Ord. 2019-19 on 11/19/2019