

CITY OF SILVERTON
CITY COUNCIL SPECIAL MEETING MINUTES

Silverton Community Center – Council Chambers – 421 South Water St.

May 2, 2019, 6:30 p.m., or immediately following the Executive Session, whichever is earlier

I. OPENING CEREMONIES – Call to Order, Pledge of Allegiance & Roll Call

Council President Jason Freilinger called the Special Meeting to order at 7:25 p.m.

Present	Absent	
_____	<u>Excused</u>	Mayor
X	_____	Kyle Palmer Council President
_____	_____	Jason Freilinger
X	_____	Jim Sears
_____	<u>Excused</u>	Matt Plummer
X	_____	Dana Smith
_____	_____	Laurie Carter
X	_____	Crystal Neideigh

Staff Present: City Manager, Christy Wurster (*via the phone*); Community Development Director, Jason Gottgetreu; and Assistant to the City Manager/City Clerk, Angela Speier

II. DISCUSSION ITEMS

2.1 If necessary, take final action on any matter discussed or deliberated on during the Executive Session

Councilor Carter moved to authorize the City Attorney to negotiate a settlement and release related to the Gossack litigation that includes the following terms:

1. Stipulated Dismissal of all claims that were raised or could have been raised between the parties, with prejudice, to be filed after the settlement and release agreement is executed. The agreement will include the provision that a Stipulated Judgment of Dismissal with Prejudice of all claims will be filed by the City.
2. Each party bears their own costs and fees, no monetary damages, costs or sanctions awarded to any party.
3. This settlement agreement is not an admission of liability by either party.
4. Mutual releases by the parties for any and all claims, demands, causes of action and damages of any kind, including but not limited to inverse condemnation, trespass, state and federal takings claims, property damage claims, prescriptive easement, adverse possession and common law dedication which the parties now have or had, or may hereafter have related to the subject matter of the lawsuit, or the damages alleged by Plaintiffs concerning storm water drainage onto the subject property.

5. Easement
 - a. The parties agree to negotiate in good faith an easement or a greater fee interest in the City's favor such that the storm water flow from the City's out-fall drains from the out-fall to the box-culvert at the railroad.
 - b. Easement is perpetual and runs with the land; the Plaintiffs will not impair, impede or interfere with City's use of the easement area.
 - c. The failure to provide information as to why a party's proposed easement area is not reasonable constitutes bad faith.
 - d. The City will incur the costs of a survey.
 - e. The City agrees that the easement or greater fee interest will not give the City the right to build a storm water detention or retention facility on the land.
 - f. If the proposed and agreed upon easement area includes the area where fill is currently located on the property, or if the easement area would be impacted by the fill and any removal of the same, the Plaintiffs would commit to removing the fill by a date certain.
 - g. The parties and their experts will cooperate to agree on the capacity needed for the easement area to accommodate the current water capacity of storm water drainage onto the property.
 - h. Plaintiffs agree to take whatever steps necessary to maintain the easement area and to keep the storm water within the easement area (e.g. berms, ditches, etc).
 - (1) Plaintiffs acknowledge that DSL may need to permit or otherwise approve the steps/construction necessary to maintain the easement area.
 - (2) To the extent Plaintiffs are unable to maintain the storm water within the easement area, Plaintiffs release the City from any future claims related to storm water drainage which may flow outside of the easement area and further grants the City an easement or a license for whatever water is outside of the original easement area.
6. If the good faith negotiations fail to lead to an agreement regarding the easement, the parties agree to mediation with a mediator acceptable to both parties, whose consent shall not be unreasonably withheld. Said mediator will, if no agreement is reached, issue a binding order as an arbitrator.
7. Plaintiffs agree to execute a covenant not to sue ODOT with respect to ODOT's highway drainage onto this site. ODOT's highway drainage, if any, may flow into the agreed upon easement with the City.

The settlement and release will substantively follow the stated terms but with the understanding that the specific language will be negotiated by the City Attorney. The City Council also authorizes the City Manager to sign the negotiated settlement and release. Councilor Smith seconded the motion.

Councilor Sears asked if the City decides to move ahead as outlined, in the future will there be an opportunity for Council to review the settlement agreement, because the terms in the motion are fairly broad. City Attorneys Heather Martin and Mallory Beebe explained that per the motion the City Manager is authorized to sign the settlement and release agreement, but Council will be discussing and approving the easement location at a future meeting. There will be two agreements that ultimately govern the settlement. The motion passed 4-1 (voting yes: Councilors Freilinger, Carter, Neideigh, and Smith and voting no: Councilor Sears).

III. ADJOURNMENT

Councilor Smith motioned to adjourn and Council President Freilinger adjourned the meeting at 7:33 p.m.

Respectfully submitted by:

/s/Angela Speier, Assistant to the City Manager/City Clerk