

TOWN OF SOUTH PRAIRIE
SPECIAL COUNCIL MEETING
JANUARY 30, 2006, 7:00 PM

CALL TO ORDER:

Mayor Peggy Levesque called to order and presided over the Special Council Meeting of January 30, 2006 at 7:03 PM, and requested everyone stand for the "Pledge of Allegiance."

ROLL CALL:

Council Members: Dave Lykstad, Chandra Hairston, Robert Stanbary and Virginia Thompson were present. Laura Heideman was absent due to a family emergency.

Also in attendance: Michael J. Reynolds, Town Attorney; Michael Tierney, Litigation Attorney; Robert Battles, South Prairie Creek RV Park Attorney; Barbara Hansen, Gazette Reporter and daughter Karen; Barbara Wigton, citizen; and Marla Nevill, Clerk/Treasurer

EXECUTIVE SESSION:

- ❖ At 7:06 PM, **Councilor Robert Stanbary** moved to recess to Executive Session for approximately thirty minutes to discuss settlement of the litigation with the South Prairie Creek RV Park. **Councilor Chandra Hairston** seconded the motion. **Motion carried unanimously.**

CLOSE EXECUTIVE SESSION:

- ❖ At 7:25 PM, **Councilor Robert Stanbary** moved to close the Executive Session. **Councilor Chandra Hairston** seconded the motion. **Motion carried unanimously.**

***Amend Agenda:** **Mayor Peggy Levesque** said we are going to amend the Agenda to allow Michael J. Reynolds to explain settling the remaining issues on Resolution No. 151 prior to Council Action on the Settlement Agreement.

NEW BUSINESS:

Michael J. Reynolds – Explanation on settling remaining issues on Resolution No. 151:

Michael J. Reynolds said the action before you tonight is the settlement of the litigation between Dwight Partin and the South Prairie Creek RV Park and the Town of South Prairie. We have a Settlement Agreement on two separate Causes of Action that was worked out between Mike Tierney, our legal counsel, and Robert Battles, the legal counsel for Mr. Partin. The settlement agreement was provided to Council and is posted as part of this meeting to authorize the Mayor to accept the settlement agreement. The settlement agreement essentially would dismiss the Damages Cause of Action and the Declaratory Cause of Action. It all comes about with Mr. Partin offering to dismiss the Damages Cause of Action and our insurance carrier, who has retained Mike Tierney, has also indicated they are desirous of accepting the agreement. The insurance carrier is in it for the purposes of defending the Damages Cause of Action. With the Damages Cause of Action being resolved, that absolves them of their responsibility. It also has the effect of dismissing out the Town, its current Council and former Council Members and the Mayor too. Under the Town's indemnity ordinance they are protected as well. What it leaves is still some issues to be resolved with Resolution No. 151. There is still some ambiguous issues and issues of non-compliance, but we look forward to resolving those issues ourselves. He said Mike Tierney, upon the conclusion of this litigation, has satisfied his responsibility and has done an excellent job of doing so. At that point, it would be our responsibility, the Mayor and myself, to work with Mr. Partin and Mr. Battles in trying to obtain a satisfactory clarification to Resolution No. 151. It would be in the best interest of the Town and also the South Prairie RV Park. Once the Mayor and myself work with them for a satisfactory resolution, it would come back to Council and they would act upon that as a Land Use matter, which would require a public hearing. If after the public hearing, the Council then opts to accept that resolution then that would be passed in an open meeting. So, again this doesn't resolve all the questions but it takes care of the Damages Action, and in view of the position that Mr. Partin is taking and due to the position that the insurance carrier is taking, it is a satisfactory resolution at this point in time. I look forward to the temperatures of a lot of people being de-elevated and we could work toward a meaningful resolution of the Land Use issues. **Mayor Peggy Levesque** said she would agree with that. She asked Mike Tierney if he would like to say anything. **Michael Tierney** said no, I don't think I need to say anything else, other than I recommend the adoption of this Settlement Agreement. He said it doesn't settle all the issues between the Town and Mr. Partin but it settles some of them. And, it still leaves the Town able to make the arguments, or the most important arguments it was making in the Declaratory Action. And, it leaves Mr. Partin free to make some arguments and hopefully resolve the issues. **Mayor Peggy Levesque** asked if there were any questions.

Possible Council Action to Settle Litigation with South Prairie Creek RV Park:

Mayor **Peggy Levesque** said she would entertain a motion for Council Action to authorize the Mayor to sign the Settlement Agreement.

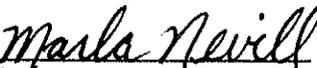
- ❖ **Councilor Chandra Hairston** moved to authorize the Mayor to execute the Settlement Agreement on the litigation between South Prairie Creek RV Park and the Town of South Prairie. **Councilor Robert Stanbary** seconded the motion. **Motion carried unanimously.**

Michael J. Reynolds stated again that he is really appreciative of the efforts of Mike Tierney. He said he's a veteran attorney and he's excellent to work with and very pleasant, and I really enjoy that. **Mayor Peggy Levesque** agreed with Mr. Reynolds. Mayor Peggy Levesque signed the Settlement Agreement.

ADJOURNMENT:

- ❖ **Councilor Chandra Hairston** moved to adjourn the Special Council Meeting of January 30, 2006, at 7:35 PM. **Councilor Virginia Thompson** seconded the motion. **Motion carried unanimously.**


Peggy Levesque, Mayor


Marla Nevill, Clerk/Treasurer

SETTLEMENT AGREEMENT
South Prairie Creek RV Park & Town of South Prairie

THIS SETTLEMENT AGREEMENT is executed by SOUTH PRAIRIE CREEK RV PARK and the TOWN OF SOUTH PRAIRIE for purposes of fully and finally settling and releasing certain claims as described below.

1. Definitions.

A. **Lawsuits.** "Lawsuits" means the Petition for Declaratory Judgment in Pierce County Superior Court Cause No. 00-2-05842-5 and the First Amended Complaint filed in Pierce County Superior Court Cause No. 00-2-08061-7

B. **Claims.** "Claims" means the following incident events and causes of action which were contained in the Lawsuits:

1. Cause No. 00-2-05842-5:

a. Whether the Resolution 151 land use permit was invalid due to the City Attorney's failure to "approve" the Resolution as to form;

b. Whether the Resolution 151 land use permit was invalid due to an alleged appearance of fairness violation; and

c. Whether the Resolution 151 land use permit was invalid due to lack of "consideration".

2. Cause No. 00-2-08061-7

a. Whether the Town's actions on or about February or March 1997 influenced the Pierce County Department of Health to deny Plaintiff's application for a permit approving his on-site septic drainfield system,

b. Whether the Town's above described actions on or about February or March 1997 were arbitrary, capricious, unlawful, or have exceeded lawful authority in violation of Chapter 64.40 RCW.

c. Whether the Town's above described actions on or about February or March 1997 resulted in deprivation of the South Prairie Creek RV Park's property interests without procedural or substantive due process and without just compensation. In violation of 42 U.S.C. §1983

d. Whether the Town's above described actions on or about February or March 1997 constitute tortious interference with Plaintiff's contractual relationships or business expectancies.

ORIGINAL

e. Whether the Town's above described actions on or about February or March 1997 caused Plaintiffs to suffer damages, losses, reasonable expenses, and attorney fees.

C. **South Prairie Creek RV Park.** "SOUTH PRAIRIE CREEK RV PARK" means South Prairie Creek RV Park and or Dwight Partin and or Dwight Partin Enterprise and their spouses, agents, assigns, beneficiaries, predecessors or successors in interest, servants, employees, attorneys, trustees, representatives, insurers, or whomsoever may be liable for their actions, and each of them.

D. **Town of South Prairie.** "TOWN OF SOUTH PRAIRIE" means the TOWN OF SOUTH PRAIRIE, a Municipal Corporation, Pierce County Washington, BILL THURSTON AND JANE DOE THURSTON, a marital community; BARBARA WIGTON AND JOHN DOE WIGTON, a marital community; BETH HOFFMAN AND JOHN DOE HOFFMAN, a marital community; DAVE LICKSTAD AND JANE DOE LICKSTAD, a marital community; ANTHONY CALDWELL AND ARLYNN CALDWELL, a marital community; HILLIS LAYNE AND MARLIS ROSS, a marital community; HARRY "JAKE" DOTY AND JANE DOE DOTY, a marital community; and their spouses, agents, assigns, beneficiaries, predecessors or successors in interest, servants, employees, attorneys, trustees, representatives, insurers, or whomsoever may be liable for their actions, and each of them.

E. **Parties.** "Parties" means the Town of South Prairie as defined herein above and the South Prairie Creek RV Park.

F. **Released Claims.** "Released Claims" shall encompass all Claims described in Section I.B. and all claims for attorney's fees and/or costs, claims for insurance coverage, counterclaims, debts, damages, demands, expenses, liabilities, losses, and obligations arising from the claims described in Section I.B.

2. Recitals

WHEREAS, the Town of South Prairie filed its Declaratory Judgment action against the South Prairie Creek RV Park and the South Prairie Creek RV Park filed its Complaint for Damages in the Lawsuits against the Town of South Prairie;

WHEREAS, the Town of South Prairie and South Prairie Creek RV Park have agreed to fully and finally release all Released Claims in exchange for the consideration provided by the Town of South Prairie and South Prairie Creek RV Park in this Agreement;

NOW, THEREFORE, the Town of South Prairie and South Prairie Creek RV Park agree as follows:

3. Release, Dismissal, and Accord and Satisfaction.

- A. Release of Claims.** By executing this Release, the Town of South Prairie and South Prairie Creek RV Park forever releases and discharges each other from all Released Claims.
- B. Waiver and Release of Rights to Sue.** The Parties hereby waive any and all rights each may have or have had to bring any action or lawsuit against each other based specifically upon any Released Claims, or to recover any monetary damages or obtain any other legal or equitable remedy related thereto.
- C. Dismissal of Lawsuits.** The Parties agree to direct their attorneys to execute a stipulation and order of dismissal of the Lawsuits, with prejudice and without costs to any party, in a form consistent with this agreement, promptly upon execution of this Agreement.
- D. Effect of Dismissal of Lawsuits.** The Parties agree that the dismissal of the Lawsuits shall not be construed to have any effect on any claims, contentions or arguments that the Parties might decide to assert in the future other than the Released Claims. The Parties agree not to contend or argue that the dismissal of the Lawsuits affects any claim, contention or argument other than the Released Claims.
- E. Effect of Release on Other Legal Rights.** The Parties acknowledge that nothing contained herein releases or discharges them from the rights, duties and obligations assumed under this Agreement.

4. Consideration for Agreement.

This Agreement is executed by the Town of South Prairie and South Prairie Creek RV Park based on the mutual consideration of each Party's agreement to dismiss its Released Claims against each other.

5. Consideration Not an Admission.

It is hereby acknowledged by the Parties that this Agreement reflects the compromise and accord and satisfaction as to disputed claims, and that nothing about this Agreement is to be construed as an admission of liability, wrongdoing, illegality or other default or breach of contract on the part of any entity.

6. Own Counsel; No Construction Against Drafter.

The Parties acknowledge that they have had adequate opportunity to consult with independent legal counsel of their own choosing and freely to negotiate this Agreement, that they have had ample time and opportunity to review and consider the Agreement's terms, and that they understand the terms and effects of this Agreement. It is therefore agreed that in any interpretation of the language hereof no interpretation shall be made against or for any party simply on the basis of who drafted or created such language. Further, the Parties represent and warrant that in making this Agreement, they have relied only on their own investigation and the investigation and advice of their own counsel and agents, and have not been influenced to any extent whatsoever by any

representations or statements regarding injuries, damages, liabilities or any other matters made by the other party, except as may be expressly contained in this Agreement. The Parties acknowledge that no other entity or agent or attorney has made any promise, express or implied, not contained in this Agreement to induce them to execute this Agreement, and further acknowledge that they are not executing this instrument in reliance on any promise, representation or warranty not contained in this instrument.

7. Entire Agreement.

This Agreement contains all terms and conditions concerning the subject matter hereof, and supersedes and replaces all prior communications, negotiations, proposed Agreements and Agreements, written or oral, and representations relating to the subject matter of this Agreement.

8. Authority.

Each person executing this Agreement represents and warrants that he/she has the absolute authority and power to do so, and that the other party may rely upon such representation and warranty in executing this Agreement and undertaking the obligations herein. Each Party represents that it has not heretofore assigned or transferred, or purported to assign or transfer, any Released Claim to any other person, and is fully entitled to compromise, settle and release the same.

9. Successors.

The terms of this Agreement shall be binding upon and inure to the benefit of the Parties, and the past and present agents, servants, officers, directors, employees, trustees, representatives, shareholders, parent and subsidiary corporations, successors, heirs, administrators, insurers, and assigns of each with respect to all Claims and causes of action described herein.

10. Severability.

If any provision of this Agreement is deemed unlawful or unenforceable, such provisions, terms or portion thereof shall be fully severable, and the remainder of this Agreement shall be in full force and effect with the automatic addition of a provision as similar in its terms to such illegal or unenforceable provision as may be possible to make such provision legal and enforceable.

11. No Modification.

This Agreement may not be altered, modified, or amended without the express written consent of both Parties.

12. Counterparts.

This Agreement may be executed by duplicate originals or facsimile copies.

executed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

(Print Name)

NOTARY PUBLIC in and for the State of
Washington residing at
My Commission expires on

On this date appeared before me DWIGHT PARTIN D/B/A/ SOUTH PRAIRIE CREEK
RV PARK and he/she each acknowledged that he/she signed this instrument and
acknowledged it to be his/her free and voluntary act for the uses and purposes
mentioned in the instrument

SUBSCRIBED AND SWORN to before me this 20th day of January 2006.

Sandra Ramsey
NOTARY PUBLIC in and for the State of
Washington residing at
My Commission expires on

