



TOWN OF JEROME

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Founded 1876
Incorporated 1899

MINUTES

SPECIAL MEETING OF THE JEROME TOWN COUNCIL

JEROME CIVIC CENTER - 600 CLARK STREET - COUNCIL CHAMBERS

TUESDAY, FEBRUARY 19, 2013 AT 7:00 P.M.

<p>ITEM #1:</p>	<p>CALL TO ORDER/ROLL CALL</p> <p>Mayor/Chairperson to call meeting to order. Town Clerk to call and record the roll.</p> <p><i>Mayor Check called the meeting to order at 7:02 p.m.</i></p> <p><i>Town Manager/Clerk Candace Gallagher called roll. Present were Mayor Nikki Check, Vice Mayor Lew Currier and Councilmembers Randall Hunt, Bill Phinney and Anne Bassett.</i></p> <p><i>Other staff in attendance at roll call included Town Attorney Bill Sims, Deputy Town Clerk Rosemarie Shemaitis and Zoning Administrator Carmen Ogden.</i></p>
<p>ITEM #2: 7:02 pm</p>	<p>FINANCIAL REPORTS</p> <p>Issued checks and Budget to Actual report for the month of January 2013. Figures included therein are presumed accurate as of the report's preparation date, but are subject to adjustment as further information is gained.</p> <p><i>Following brief review and discussion:</i></p> <p>Motion: Vice Mayor Currier made a motion to accept the financial reports. It was seconded by Mayor Check.</p> <p><i>It was noted that there have been quite a bit of legal fees charged lately to Planning & Zoning, while litigation charges under General Government have remained low. Ms. Gallagher noted that these are both part of the General Fund.</i></p> <p><i>Councilmember Bassett asked what charges constituted the large amount under "R&M – Equipment" in the properties budget. Ms. Gallagher will look at that</i></p> <p><i>Ms. Bassett asked if the Town has collected hookup fees yet from the vineyard and Ms. Gallagher responded that we have not.</i></p> <p><i>Ms. Bassett commented that the "R&M – vehicles" line looks really good in the Sanitation budget.</i></p> <p><i>Mayor Check called the question and it was approved by all.</i></p>
<p>ITEM #3: 7:05 pm</p>	<p>APPEAL FROM DECISION OF PLANNING & ZONING COMMISSION</p> <p>Council will continue their review of an appeal filed by Roberto Rabago of a decision rendered by the Planning & Zoning Commission imposing certain requirements for a</p>

	<p>"Conditional Change of Use Permit for residential use in a commercial zone."</p> <p>Mayor Check explained that this issue should be almost resolved. Mr. Rabago would not be losing parking because the property is mixed use, and because of that, a Prop 207 waiver would not be needed. The Mayor said that she would like to go into a brief executive session for further discussion with the attorney.</p> <p>Motion: Vice Mayor Currier made a motion to move to executive session. It was seconded by Councilmember Bassett and approved by all.</p>
<p>7:06 pm 7:09 pm</p>	<p>Council moved to executive session.</p> <p>Council returned to Council chambers without going into executive session.</p> <p><i>It was noted that a closed session had not been agendized for this topic, therefore none was held.</i></p>
	<p>Discussion continued regarding Item #3.</p> <p>Town Attorney Bill Sims explained that our Code and land use laws are complex. He said that the Town's Zoning Ordinance requires a Prop 207 waiver when you restrict an existing use or grant a change in use. Based on the Code, you must have a Conditional Use Permit (CUP) if you have any residential use in a commercial zone.</p> <p>Mr. Sims added that, at this time, he is preparing a recommendation to Council regarding Prop 207 waivers, which, he explained, are related only to things a property owner <u>asks</u> the government to do. He said that, over the years, property owners would request something, and the government would respond. Then, if it didn't work out, the property owner would sue the government. Now, the legislature says that we can ask for Prop 207 waivers in these circumstances, and our Zoning Administrator asked for that here.</p> <p>Mr. Sims explained that there had been concern about the risks to the town associated with Mr. Rabago losing his five parking spaces. There would be a risk, Mr. Sims said, if Mr. Rabago went to purely residential use for five years. However, since the property is mixed use, he will not lose the parking spaces, therefore we don't have to worry about a Prop 207 waiver.</p> <p>Mayor Check stated that Council can uphold the decision of the Commission without the requirement for a waiver. Councilmember Phinney noted that there was another item that needed to be addressed. Ms. Gallagher stated that the correction to the terminology of the CUP title has been taken care of administratively.</p> <p>Councilmember Bassett asked if this would set a precedent for Council not requiring Prop 207 waivers. Mr. Sims responded that Council will be receiving a memo regarding bringing the Code up to date, which will include the discretion to ask for waivers. He does not believe that this sets a precedent, because, in this instance, the property had continuously been mixed use and would continue to be mixed use, so the property owner was still entitled to the five parking spaces. A future Council cannot take away the parking spaces if the property is not converted to residential use only. Mr. Sims added that, in the future, Mr. Rabago may be asked to consider signing a Prop 207 waiver if there is a change of use, but it is not needed now, and this does not set a precedent.</p> <p>Vice Mayor Currier asked if it is four parking spaces or five that we are talking about. Ms. Ogden said that it is not defined and they did not measure the building, but, based on</p>

how it is described in the Code, they theorized the number of spaces. Mr. Sims said that whatever the number of spaces, four or five, Mr. Rabago will not lose any as long as he continues some commercial use.

Mr. Currier observed that Mr. Rabago has no idea, then, of how many spaces he has or will have. Ms. Ogden and Mr. Rabago agreed with that. Mr. Currier asked why the Zoning Administrator did not know the number of spaces, and Ms. Ogden replied that she had not been asked to determine that or told that she needed to.

Councilmember Bassett said that the spaces were grandfathered and that they do not really exist, so it doesn't matter until there is a request to change the use. At that time, we could measure the dimensions.

Mr. Rabago commented that the provisions of the Code say that parking spaces are needed but does not say where. He said that, at some point, the Town is going to have to deal with that issue. Mayor Check agreed that this does need to be addressed and said that Council will try to get to it.

Motion: Councilmember Phinney made a motion to **uphold the Planning and Zoning Commission's decision without the requirement for a Prop 207 waiver.** It was seconded by Councilmember Bassett.

Vice Mayor Currier asked at what point the property ceases to be commercial or mixed use. Mr. Rabago and Ms. Ogden confirmed that the property is currently mixed use, and Mr. Rabago noted that there is nothing in the ordinance that defines a change of use.

Mayor Check said that one indicator is a business license at that address and if transaction taxes are collected. That would indicate that there is commercial use.

Councilmember Hunt noted that Magpie is a commercial use and the Mayor replied that there are suites associated with the business. Mr. Rabago said that it is all in the same building, but the fire department has assigned different numbers for each floor in case of fire.

Vice Mayor Currier asked if anyone had an answer regarding at what point the property ceases to be mixed use and goes one way or the other.

Mr. Sims read a portion of the Code aloud and said that it could be instantaneous – it could change it in one day. The Zoning Administrator, he said, was concerned that if it was turned into a residential use, and it was residential alone for five years, it would lose some parking, which could be considered disadvantageous to the applicant. This is why she was requesting a Prop 207 waiver, but with input from Council and Mr. Rabago, we have now determined that the waiver is not necessary because the property is currently mixed use.

Ms. Shemaitis commented that it had been discussed that Magpie could probably never be residential because there are no amenities. Mayor Check agreed and said that it would probably never receive a CUP.

Mayor Check called the question and the **motion passed with 4 ayes and 1 nay** (the nay vote cast by Vice Mayor Currier).

<p>ITEM #4: 7:21 pm</p>	<p>ADOPTION OF A CITIZEN REVIEW PROCESS FOR LAND USE ACTIONS</p> <p>The Mayor and Council may go into Executive Session, pursuant to A.R.S. §38-431.03.A.3 and A.R.S. §38-431.03.A.4, for the purpose of consultation with the Town Attorney regarding the adoption of a citizen review process of rezoning, specific plan applications</p>
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and the modification of land use regulations or the adoption of land use regulations not previously imposed. Following the Executive Session, Council may wish to give staff direction to prepare an ordinance to establish process for citizen review of land use actions by the Town.

Mr. Sims explained that there is now an Arizona statute that requires the governing body to adopt by ordinance a citizen review process that applies to many things. That review process is meant to be an initial step prior to the formal public hearing process for any rezoning or any action that modifies or imposes new regulations on any property that has not been previously regulated.

Mr. Sims said that the process would require a neighborhood meeting and would put the burden on the applicant to reach out to his or her neighbors to get input regarding what they are proposing. He said that this will require an ordinance, and will precede the Transient Dwelling Rentals ordinance. Mr. Sims said that there needs to be a parallel process for citizen review so that adjacent land owners or those who will be affected have the opportunity to express opinions before it goes to public hearing. He added that Council's recent meetings regarding transient dwelling rentals have not been formal public hearings – they were discussions only. He added that no action will be taken at this meeting other than to brief Council on the requirements for a formal citizen review process.

Mr. Sims explained that the Citizen Review Process is an attempt to require good government by having applicants reach out to their neighbors to get input before going to the formal hearing process. Council will receive the draft ordinance tomorrow, he said, and would then come back with guidance and direction for staff.

Mayor Check asked about the structure of the citizen review process. Mr. Sims replied that there is no defined structure – typically, the applicant just has to meet with the neighbors. This ordinance will put the burden on the applicant to accomplish the citizen review.

Vice Mayor Currier asked if it would be a standing committee or an ad hoc committee. Mr. Sims responded that there is no committee - it is just a meeting with neighbors so that they can provide input, but they cannot make any decisions on zoning issues, plans, etc. Council will receive a report from the applicant with the input provided.

Mr. Sims also noted that an applicant must provide an affidavit that they had a meeting or their application can be rejected. This is a way to get information to Council and to the Boards. It also forces the property owners to meet with their neighbors and see if compromise can be reached.

Deni Phinney, a Jerome resident and member of the DRB, asked if anyone would be facilitating or recording these meetings. Mr. Sims replied that the Zoning Administrator would be at every neighborhood meeting, hoping to facilitate a compromise. It's an attempt to get the neighbors to talk to each other and is governed by statute.

Tracey Freund, a Jerome resident, asked what happens if all the neighbors are against what is proposed and come up with a statement. In this case, she said, it's gone before DRB and P&Z, and in both cases was approved, but the neighbors are all against it.

Mayor Check responded that that would be an additional piece of information that is recorded.

Several members of the public spoke at the same time asking, "What is the point?" and "What is the point of talking when there are no concrete results?"

Mayor Check responded that we are trying to comply with state regulations.

Ms. Freund said that she does not understand this or why we are doing it.

Councilmember Phinney said that he thinks that the reason for this is to make sure that the government doesn't leave out the people who will be impacted by a new regulation, or a new conditional use permit. He said that this is to get feedback so they have an understanding of what the populace wants. It's information that Council can use to make a decision.

Councilmember Bassett pointed out that we operate differently from other cities in that we allow people to speak, and speak at length. She said that we have already complied with this requirement for a citizen review process. This ordinance is just what we have to do to satisfy technical requirements, but it is already standard operating procedure here.

Vice Mayor Currier asked if state law does indeed mandate this, and Mr. Sims confirmed that it does.

Margie Hardie, a Jerome resident, asked what would trigger this neighborhood meeting, because there are all kinds of land use regulations that could be changed. She asked if there would be a public meeting, who would initiate the meeting, and if there would be a meeting for any issue coming before the Planning & Zoning Commission. She used the deck ordinance as an example.

Mr. Currier said that this would come into play with an application from somebody who is going to do something. He said that when the board made a rule on decks, it was not tailored to one applicant; they were passing a town-wide regulation.

Ms. Hardie pointed out that the deck ordinance was a modification of land use regulations, which would require citizen review.

Mayor Check asked if the Town could be an applicant. Mr. Sims replied that it could be, and if we adopt an ordinance that imposes a new regulation, the statute would want us to have neighborhood input. He added that the goal of the CRP is to facilitate discussion between property owners.

Carol Yacht, a Jerome resident, commented that, for rezoning issues, neighbors within a specific distance have to be contacted. Everything needs to be in writing, meetings must be posted and a percentage of those people need to approve. She asked if that would be the way to do the citizen review process. Ms. Yacht said that it is a good thing that the applicant would need to write a report and she thinks that will be interesting.

Mayor Check said that Council hasn't had the opportunity to review the ordinance yet, and Mr. Sims added that he has just worked this out with the Town Manager and Zoning Administrator. He wants to make sure that we have this in place. Mr. Sims again said that, if the applicant does not provide a report, they don't receive approval.

Doree Christensen, a Jerome resident, asked if this process would be retroactive to include the current situation that has been explosive to all. Mayor Check said that Council is not prepared to discuss that yet but is trying to parallel this with the TDR ordinance that the Town is working on and any conditional use permits that are coming up. She said that they cannot make it retroactive, and Mr. Sims agreed, adding that it would be difficult to impose this retroactively.

Ms. Christensen expressed her concern that P&Z and DRB have already approved certain things without this process in place. She added that people were not allowed to ask questions and that added more animosity.

Suzy Mound, a Jerome resident, commented that this topic affects her greatly and adversely. She said that some specific rules and requirements were not adhered to at the DRB meeting and she would like for the decision made at that meeting to be rescinded, because the DRB did not make their decision based on the correct paperwork and numbers. Ms. Mound opined that this has been handled very poorly.

Mayor Check said that she cannot address this directly because she was not at that meeting but she and Mr. Sims have agreed that DRB will readdress those issues, which includes the lack of scaled drawings.

Councilmember Bassett asked if that constitutes an appeal of the decision. Mr. Sims responded that it is not an appeal but a procedural issue. He has recommended that P&Z and DRB meet again with the Code-required documents at hand, which will allow them to make a decision based on properly scaled drawings.

Mayor Check commented that we might be getting off topic and Mr. Sims replied that this is actually related to this item because it involves citizen review and input. He said that the reason that he, the Town Manager and the Zoning Administrator are recommending that we formalize the review process is because of the scrutiny that we are getting. He said that the DRB should have seen scaled drawings and they may not have –they are intending to fix that.

Ms. Christensen asked if the CRP would be in place before the DRB meeting.

Councilmember Phinney responded that we don't have the ordinance in place yet.

Ms. Christensen commented that maybe that should be the first ordinance.

Mr. Sims responded that state law does not require citizen review for site plans unless it requires a CUP that modifies an existing regulation or rezoning. Any site plan that would trigger rezoning or a new regulation requires citizen review. Mr. Sims said that Council could choose to extend citizen review to include all site plans. He said that he plans to prepare a memo and brief Council, and get the citizen review process up and running and on parallel with review of the draft ordinance on transient dwelling rentals.

Mayor Check said that her direction would fall in line with that.

Councilmember Bassett asked how a neighbor to a project would appeal a "bad" decision. She asked who would be the appellate board for Design Review. Mr. Sims said that there are two provisions in the Town Code, one dealing with DRB and one with P&Z. He said that a DRB decision on an aesthetic issue is not appealable to Council, yet Council reserves the right to review any DRB decision. In addition, the Zoning Administrator could make a recommendation to the Council, contrary to DRB. Mr. Sims added that site plan decisions of the Planning & Zoning Commission decisions are appealable to Council by the applicant or by any directly affected party.

[CANDACE: THERE ARE OTHER STANDARDS FOR THE APPEAL OF P&Z DECISION WHEN THE DECISION IS OTHER THAN SITE PLAN REVIEW. FOR EXAMPLE, ANY MEMBER OF THE PUBLIC MAY APPEAL A P&Z REZONING RECOMMENDATION.]

Vice Mayor Currier asked how the Zoning Administrator would appeal a DRB decision to the Council, and how that would get onto a Council agenda for consideration. Mr. Sims replied that she would write a letter to the Town Manager or the Mayor.

Ms. Gallagher noted that Council doesn't have to wait for the Zoning Administrator; the Councilmembers can opt to review DRB decisions on their own. Vice Mayor Currier said that he would like to see this on an agenda. Ms. Ogden asked if the DRB should look at the scaled plans first. Mr. Currier opined that the DRB made a mistake in considering

	<p>that the plan was appropriate for the neighborhood, and he thinks that he and Council should review that and determine whether it fits the neighborhood.</p> <p>Councilmember Phinney said that the DRB appeal process, per the Code, says that the applicant can appeal and also, that the Zoning Administrator can appeal if the decision does not conform to the Zoning Ordinance or the Comprehensive Plan. It also says that the Mayor and Council shall maintain the right to review any and all decisions of the Design Review Board. Mayor Check said that, based on that, any Council-member can opt to have this placed on the agenda. She then said that she would like to continue with the agendized topic.</p> <p>Councilmember Bassett said that she is relieved that the applicant has to create the neighborhood meeting, as staff is overextended.</p> <p>Mr. Sims said that he would like to address the previous question by the Vice Mayor. He said that the statute states that any new regulation would require a neighborhood meeting, so we need to figure out a way to rationalize this. Mr. Sims added that the constituents are asking very good questions and are holding the Council and him to the details of the Code – the problem is that some provisions of the Town Code are not very clear.</p> <p>Ms. Ogden said, regarding Mr. Currier's question about the DRB decision, that, because there was a procedural issue with their decision, it needs to be addressed before it is presented to Council. Vice Mayor Currier asked when the clock started on the 30 day appeal period. Ms. Ogden said that, because there was a procedural issue with that decision, the clock may not have started yet because the decision has to be rendered.</p> <p>Mr. Sims said that it was a procedural issue and we need to address it. He said that, if there is any clock ticking, he will write a letter, as Town Attorney, saying that the decision is void until we get it addressed. He would rather let DRB and P&Z have the opportunity to review the scaled plans.</p> <p>Mayor Check said that that sounds appropriate to her and she directed staff to come back with a recommendation regarding the ordinance. She said that she would like for Council to go into a brief executive session and she asked that the audience stay.</p> <p style="text-align: center;">Motion: Vice Mayor Currier made a motion to move to executive session. It was seconded by Councilmember Phinney and approved by all.</p>
<p>7:50 pm 8:09 pm</p>	<p>Council moved to executive session, and left the chambers.</p> <p>Council returned and reconvened in general session.</p>
<p>ITEM #5: 8:09 pm</p>	<p>“VACATION RENTALS” ALSO KNOWN AS “TRANSIENT DWELLING RENTALS”</p> <p>The Mayor and Council may go into Executive Session, pursuant to A.R.S. §38-431.03.A.3 and A.R.S. §38-431.03.A.4, for the purpose of consultation with the Town Attorney regarding the use of property commonly known as “vacation rentals” and also referred to as “Transient Dwelling Rentals” or “TDR’s” and the options for reviewing and approving an amendment to the Jerome Zoning Ordinance to allow TDR’s as Conditional Uses in residential and commercial zones with appropriate regulations and restrictions for TDR’s located in residential zones. Following the Executive Session, Council may wish to give staff direction to initiate a process to solicit community input and hold public hearings.</p> <p><i>At this time, the draft TDR ordinance was provided to the public in attendance. Discussion ensued.</i></p>

Mayor Check commented that Council has done a lot of listening regarding this topic and they have had a lot of legal discussion in several executive sessions. Council now has a presentation for the public and she hopes for discussion afterwards, from the public and Council. The Mayor said that there are many issues and concerns regarding Transient Dwelling Rentals (TDRs), and Council has been trying to figure out how to limit them. They started out with an ordinance from Page, Arizona, but it did not have enough teeth, so they have been working on a different draft ordinance. The Mayor said that she hopes that the concerns of the public are addressed.

Councilmember Phinney said that Council has listened to all. They are very concerned and want to do what is best for the Town. Unfortunately, regarding this situation, no one is going to get everything that they want. He said that Council has done a lot of work on this and he thinks that the residents will like their solution better than they think they will. He asked all to look over the proposed ordinance, think about it and give feedback. Mr. Phinney said that Council is trying to restrict TDRs as much as possible, but also attempting to be fair to all.

Councilmember Bassett asked about the process for implementing this ordinance, and Mr. Sims explained that it will have to go through Planning & Zoning and then come back to Council. Ms. Bassett clarified that, when it goes to P&Z, there will be public hearings.

Mayor Check said that Council has been very concerned about this and so had plenty of legal counsel regarding this topic. The ordinance is now ready to go back to Planning & Zoning. She said that this ordinance, defining and dealing with transient dwelling rentals, will not sidestep any of the responsibilities of Design Review Board or Planning & Zoning. All of those steps would remain in place if we were to put together a conditional use permit for transient dwelling rentals.

Vice Mayor Currier said that he has watched all this develop and that Council has worked hard on this, trying to satisfy both sides. He sympathizes with what they are trying to do. He said that Council is trying to find a path through a minefield and both sides have lots of problems. Mr. Currier went on to say that he doesn't think that Council has found the right path, and they know that, but he wants to see how this goes through the process. He said that he will try to keep an open mind until they get to the vote, but they have been trying to find a compromise and he doesn't think compromise will work in this case.

Mayor Check explained that there are details that Council cannot divulge that have been discussed at length in executive session. She said that, essentially, this document will regulate CUPs as well as their density. It is generally accepted by the Council as the best defensible legal path toward any form of regulation.

Ms. Gallagher offered that she will email the document, upon request, to anyone who would like to review it. She added that it will also be on the Town's Facebook page and hard copies will be available for review.

Councilmember Phinney explained that, per this plan, the residential and agricultural zones in Town have been subdivided into seven zones and a maximum of two TDRs will be allowed in each zone. Council created the zones based on current residential density and he noted that the additional information at the back of the packet includes the parcel numbers that comprise each zone. Commercial and industrial zones were not included because this does not apply to them.

Ms. Hardie asked what would happen if more than two apply for a TDR CUP within the same zone. Mr. Phinney replied that any TDR currently in existence will not be

grandfathered in – they will have 60 days to put in an application. He said that only two will be allowed per zone and if there are more than two applying after this goes into effect, there will be a blind drawing. If there is an established TDR in that zone and it is not drawn, it will revert to a residence. Mr. Phinney said that, in the future, if a property owner with a TDR decides to revert to residential, then someone else could apply for that TDR – there can never be more than two per TDR zone.

Richard Johnson, a Jerome resident, asked, if a permit expires, can another TDR apply? Mr. Phinney replied that the permits for the TDRs do not expire – they stay in effect as long as they do not violate the ordinance or until the TDR decides to close. They can renew their permit every year as long as they are in compliance.

Ms. Christensen asked how any ordinance would not trigger Prop 207.

Mr. Sims said that there is no Prop 207 issue with this ordinance. He said that this will not be doing anything to current property rights because, at this time, they have no rights – they have a commercial enterprise in a residential district, which is completely barred. In order to receive a permit, there are lots of restrictions that must be met and adhered to. Council has worked hard to give this ordinance teeth – there is an enforcement process included with many requirements. Prop 207, he explained, is only triggered when the government takes away rights – vacation rentals are commercial enterprises and commercial enterprises in residential districts are not allowed, so they have no rights at present. He said that the Town is giving them rights, which are circumscribed by all these restrictions and by density.

Doug Freund, a Jerome resident, said that a major issue of concern right now is Groseta's claim that they have an existing use for their commercial enterprise in this location, so having this ordinance is not going to change their perspective on the matter. He said that if they are one of the two selected they will be delighted, but if not, they will probably bring a lawsuit.

Mr. Sims said that the drawings for TDR CUPs would only occur if there are more than two applicants. Mayor Check said that Mr. Freund is correct – people can bring lawsuits no matter what steps we take. She said that, after looking at the legal information, how other courts have ruled and case law, this seems to be the most defensible position, and Mr. Sims agrees.

Mr. Freund asked why we are giving away use permits, and said that he and others still maintain that it is not in our ordinances and it's not a conforming use. He asked why the Town does not go into legal battle now – if we allow this, he said, we are conceding that it is an existing use.

Councilmember Phinney disagreed. He said that what we are saying with this ordinance is that we are going to allow, with a conditional use permit, a particular kind of commercial use in a residential area.

Mr. Freund said that we should be able to rely on our zoning ordinance, which already says that this is not allowed. He said that applicants for vacation rentals should be told that, per our existing ordinances, that kind of non-residential activity is not allowed in residential zones, and we should not do anything that would trigger Prop 207.

After brief further discussion, Mayor Check said that she was calling order because she would prefer not to discuss legalities at this time. She said that she would like all to know that Council has discussed this at length.

Ms. Christensen commented that, even with only two TDRs per residential zone, this impacts all of the neighbors in that area. She said that, in theory, it sounds good, but it

doesn't solve the problem of having a vacation rental ten feet from her back door. It doesn't matter how few there are, she said, when that neighborhood is a tight, small neighborhood.

Councilmember Phinney agreed, and said that he understands that she is concerned about what happens to her, but, he said, Council is concerned about what happens to the town as a whole. Council has to protect the entire town, he said, and that is what they are doing here.

Ms. Christensen asked why we are giving rights to TDRs that they don't already have, when no one around them wants that. Mayor Check said that Council cannot discuss that now.

Vice Mayor Currier said that, throughout this debate, he has had two major problems with the vacation rental situation: 1) they reduce housing, and 2) the town is run by volunteerism. He said that about 10% of Jerome's population is involved on Council and the boards and other things in Town – for free. Transients do not care, he said, and that will weaken the fabric of the community. He said that this ordinance does not address either of these issues.

Mayor Check said that the rest of the Council supports the Vice Mayor's statements regarding housing and volunteerism, but she feels that the ordinance does address those issues. "We disagree," she said, "and that's alright."

Ms. Hardie asked if Council will agendaize a public hearing for this ordinance for a regular Council meeting to get public input before it goes to Planning & Zoning. She was on Planning & Zoning for six years, she said, and when things were presented, it was a "done" document that they were voting on, and it would be difficult to change it. She thinks it would be nice to give the public a chance to be heard. Ms. Hardie said that it would be good to have a public meeting with the Council present.

Mayor Check said that it would not be difficult to change the document once it is written.

Ms. Hardie commented that Council has been agendaized about six times for executive session – she doesn't think that Planning & Zoning will put that much effort into it. She is concerned that the public won't get a change to voice their opinions. Ms. Hardie added that commercial or transient rentals could lead to other types of transient or halfway housing – the ordinance does not restrict it to vacation rentals.

Mayor Check said that if you look into case law regarding that, it is an uphill battle as well and you cannot categorically rule that out either.

Mr. Sims said that we are fearful of a lawsuit whichever way we go.

Mr. Sims stated that our Code says that text amendments have to start with Planning & Zoning. We have not called these Council meetings "public hearings" because they cannot violate the Code – a text amendment must start with P&Z. There will be a hearing with Council, he said, after P&Z acts. He said that Planning & Zoning must discharge their responsibility and the public must demand that of them. Mr. Sims said that Council, along with Ms. Gallagher and Ms. Ogden, have brought us this far, and now the public process begins. He said that, if we can get the citizen review process up and running, we will go through that process. The ordinance will go to Planning & Zoning and then back to Council for two readings, and then a final action. That is what the Code requires.

Jane Moore, a Jerome resident, said that a petition had been signed by just about as

many people as the votes that elected Council to their seats. The petition asked that we restrict commercial use in the residential zones. She then asked if the Council could wait to take any action until the Arizona Supreme Court makes its ruling on Sedona's vacation rentals. She said that the League of Cities and Towns is standing by Sedona and there are other towns that have stood by their zoning ordinances, saying that commercial use is restricted or prohibited in residential neighborhoods.

Mr. Sims said that that case was not helpful for Sedona. The city must now establish by a preponderance of evidence that the law they enacted was for a proper public purpose. Mr. Sims said that everyone needs to understand that this is not a Prop 207 case – this is restricting the use of property in this jurisdiction to promote the public health and safety. There is no Prop 207 issue here, but there was one in Sedona. TDRs are not residential. They have applied for business licenses. Council has fashioned a much more supportable defense as to where we are going. Council has created a document that has incorporated many of the concerns that have been voiced. We are not at all like Sedona, he said.

Ms. Yacht said that she had spoken with Sedona's attorney and read aloud a letter which is included at the end of these minutes. She noted that there are 91 signatures on the petition referenced by Ms. Moore, which, she said, represents more people than had voted for Council. Mayor Check said that this is why she is working hard to address these concerns.

Ms. Yacht thanked Council. She said that, in her conversations with Sedona's attorney, he had recommended that we avoid adopting new ordinances because they put Jerome in a weakened position regarding Prop 207. She said that a Clarkdale official agreed, and they are standing by their ordinance that commercial activity is restricted in the residential district. Ms. Yacht said that she is asking that Council follows their example and that they listen to Jerome's citizens who are asking that they restrict vacation rentals to the commercial zone. Also, she suggested that they contact the League to see about sharing the expense for their legal counsel, Paul Eckstein.

Ms. Yacht asked why Council would do something that the citizens do not support. She then read some news items regarding vacation rentals and said that there have been vacation rental bans that have gone through within the last few months.

Mr. Sims said that he wanted to make clear that this is not a Prop 207 issue –the reason that Sedona lost is because they changed their ordinance retroactively, which triggered Prop 207. He said that Prop 207 does not apply here at all and the Sedona case is not even applicable to what is happening here. The Court of Appeals kicked it back to Sedona to document why they can limit vacation rentals.

Ms. Yacht interrupted to say that that is why they are in summary judgment right now. Mayor Check asked Ms. Yacht to please keep order and let Mr. Sims speak or she would be asked to leave.

Mr. Sims said that this case was held because Sedona changed the rules; we are not changing the rules. That is why he is fearful that, if we continue down the path of saying that we are creating a Prop 207 issue, then we are creating a record that those who are trying to allow vacation rentals in Jerome will argue that we have acknowledged that Prop 207 applies. It doesn't apply, he said, and he has spoken with Sedona's city attorney about it.

Mayor Check said that Jerome has its own unique history and we are different from other towns. We have looked at other towns and our recommendation comes from our

	<p>understanding of that.</p> <p>Ms. Moore said that her question has not been answered. If we are doing nothing to trigger Prop 207, then we are in standing with our ordinance that says that commercial activities are not allowed in residential zones, so why are we doing anything that would change that by creating an ordinance which would allow that.</p> <p>Mr. Sims said that we cannot answer that outside of e-session because we do not want to create a record that discloses legal advice. Ms. Moore said that she would like her question to stand and she would like us to stand by our ordinance.</p> <p>Vice Mayor Currier noted the hour (almost 9 p.m.) said that this is a "heavy, complicated document." He said that he thinks it would be best to let everyone have a chance to read it. All agreed, and the Mayor said that it should go now to Planning & Zoning.</p> <p>Ms. Mound thanked Council for all their effort and read a letter sharing her thoughts. Her letter is included at the end of these minutes.</p> <p>Mayor Check said that her recommendation is to take Mr. Sims' advice and get this ordinance to Planning & Zoning so we can start the public hearing process. Council agreed, and staff was directed to send the ordinance to the Planning and Zoning Commission to begin the public hearing process.</p>
<p>ITEM #6:</p>	<p>ADJOURNMENT</p> <p>Upon motion by Vice Mayor Currier, seconded by Councilmember Bassett and unanimously approved, the meeting was adjourned at 8:53 p.m.</p>

Edited by Town Manager/Clerk Candace Gallagher from minutes taken and transcribed by Deputy Town Clerk Rosemarie Shemaitis.

APPROVE:

ATTEST:

Nikki Check, Mayor

Candace B. Gallagher, CMC, Town Manager/Clerk

Date: _____