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TOWN OF JEROME, ARIZONA

POST OFFICE BOX 335, JEROME, ARIZONA 86331
(928) 634-7943 FAX (928) 634-0715

MINUTES

SPECIAL MEETING OF THE JEROME TOWN COUNCIL
JEROME CIVIC CENTER - 600 CLARK STREET - COUNCIL CHAMBERS
WEDNESDAY, JULY 24, 2013 AT 6:30 P.M.

ITEM #1:	<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 to order the meeting of the Jerome Town Council and made notice of attendance of a quorum of members of the Planning & Zoning Commission. The Mayor noted the time as 6:35 p.m.</i></p> <p><i>Town Manager/Clerk Candace Gallagher called roll. Present from the Town Council were Mayor Nikki Check, Vice Mayor Lew Currier and Councilmembers Anne Bassett, Randall Hunt and Bill Phinney. Present from the Planning & Zoning Commission were Chair Lance Schall, Vice Chair Ellen Smith and Board members Sybil Malinowski-Melody and Leo Shakespeare.</i></p> <p><i>Other staff in attendance at roll call included Zoning Administrator Carmen Ogden and Deputy Town Clerk Rosemarie Shemaitis.</i></p>
ITEM #2:	<p>EXECUTIVE SESSION: TRANSIENT DWELLING RENTALS</p> <p>The Mayor and Council will enter into executive session, pursuant to A.R.S. §38-431.03.A.3 for the purpose of consultation with the Town Attorney and with consulting attorney Grady Gammage regarding Transient Dwelling Rentals, commonly referred to as "vacation rentals."</p> <p><i>Motion:</i> Councilmember Bassett made a motion for Council and the Planning & Zoning Commission to go into executive session with Attorneys Grady Gammage and Bill Sims. It was seconded by Vice Mayor Currier and approved by all.</p>
6:38 pm 7:18 pm	<p>Council and Planning & Zoning convened in Ms. Gallagher's office for executive session.</p> <p>Council and Planning & Zoning reconvened in Council Chambers.</p>
ITEM #3:	<p>TRANSIENT DWELLING RENTALS</p> <p>Attorney Grady Gammage will lead Council and the public in a discussion regarding Transient Dwelling Rentals, commonly referred to as "vacation rentals." THIS DISCUSSION WILL NOT BEGIN BEFORE 7:00 P.M.</p> <p>Following the public discussion, Council may again enter into executive session pursuant to A.R.S. §38-431.03.A.3 for the purpose of further consultation with the Town Attorney and Mr. Gammage.</p> <p><i>Mayor Check introduced Grady Gammage, Jr., and explained that he would help us to understand the scope of vacation rentals, our current Code, what other municipalities are doing and what our options are in this regard.</i></p> <p><i>Mr. Gammage introduced himself as a land use lawyer from Phoenix, and clarified that he is <u>not</u> a general municipal attorney – he deals only with land use and zoning issues, and represents both private property owners and cities. Mr. Gammage explained why they spent</i></p>

the time they did in executive session – he said that this is an unusual circumstance for him: to be hired by a town to provide thoughts about the legality of various approaches. He noted that, if a client and attorney discuss something in private, such as during an executive session, it is considered privileged information, but anything said in public makes that privilege go away, so they were exploring the nature of what it is that Council, who is his client, is comfortable having him say in open session. During the executive session, Mr. Gammage said, they agreed to some tentative guidelines that he will try to adhere to, but there may be some questions that he cannot answer in open session.

Mr. Gammage handed out copies of an article from the February 2013 Planning and Environmental Ledger regarding residential short-term rentals¹. He commented that this is a hot topic all over the U.S. – not just in Jerome – and he believes that it is because of the internet. The internet has made it easy for people to find lodging, and that has given rise to a proliferation of this issue, particularly in resort communities, destination places, and tourism locations.

Mr. Gammage said that, across the United States, communities are grappling with the exact same problems that the residents of Jerome are grappling with – there are unanticipated negative aspects to a high turnover of occupancy in residential areas which weren't designed or thought about for that, and the immediate question that communities are facing is, "Is this permitted under our existing zoning ordinance?" This is not a simple question, he said. Courts are split as to whether or not simply the residential designation and language about the residential character of the area is sufficient to prohibit short-term rentals. The strong weight of authority, he said, is that it is not – that you cannot prohibit short-term rentals. The reason, he said, is that "courts are not in the business of drawing lines and crafting specific rules, so you inevitably face the question: What's a short-term rental? Is it one day? Is it anything less than 30 days? That is simply not the kind of decision that courts are equipped to make. That is a classic legislative decision. So, most communities have come to the conclusion that they have to make that decision as to how long the duration of a rental they want."

Mr. Gammage said that many communities around Arizona have adopted a 30-day standard and put it in their ordinance. If it is less than 30 days, it is prohibited in a residential zone. Phoenix has that standard and most of the larger cities have that standard, he said, but it was a legislative standard. Jerome's ordinance, he said, is silent. Mr. Gammage said that there are some cases in the United States that say, even in the circumstance of a silent ordinance, short term rentals should not be considered prohibited in residential zones.

Mr. Gammage said "I only know of one case that does that, and it's an Indiana case, about a town on the lakeshore, surrounded by a national park. Unfortunately, this is the example of the deficiencies of judicial interpretation. The court appears to come down saying that rental is not permitted, period. Anywhere." You can't tell what happened after that case, he said, because after the appellate court speaks, then it goes back to trial court and it has to work its way through the process. But, he noted, that court did not create a 30-day rule, or a 7-day rule, or a 45-day rule. They just said that they are persuaded that "single family residential means a single family residential."

Mr. Gammage went on to say, "More often, what has happened when this issue has been litigated, absent the standard that has been legislated in an ordinance, is that the court has said, despite the fact that there is a different family there every night, it still feels like residential use to them."

¹ A copy of the article is included at the end of these minutes.

Mr. Gammage said that communities are dealing with this in different ways. One way, he said, is to pass an ordinance that defines a limit – anything less than 30 days is short term and is only allowed pursuant to a use permit, or is simply prohibited. In Phoenix, anything less than 30 days in a residential zone is prohibited; however, he added, “they don't enforce it much – it's very hard to enforce.”

Mr. Gammage said that there are many ordinances (as set forth in the article he provided) that adopt very specific standards, if it is regulated, subject to a conditional use permit, regarding how much parking must be provided, the hours of operation, noise levels, occupancy, etc. All those standards can be applied, he said.

Mr. Gammage commented that he has a cabin in the mountains outside Payson, and there is a vacation rental down the street from him that he doesn't like, particularly, because it often has a dozen people in it at a time, and they are often unrelated, college-age, people (like his children, he said, who go to his cabin to stay, and annoy his neighbors, so “I can't be entirely 'holier than thou' in this matter.”) Those renters, he said, often have too many people there, drive their ATVs up and down the street all day long, and “drive me crazy,” but “needless to say,” he added, “we were not going to get Pima County zoning enforcement to do anything about that.”

Mr. Gammage explained that there are other ordinances that can be enforced, including noise ordinances, ordinances regarding light, etc., and many communities are taking that approach. He added that, if things are bad enough, the neighbors can file a nuisance lawsuit. “The problem with that,” he said, “is that they would have to file multiple lawsuits, which would get expensive, but at some point, if something is a nuisance, that is the remedy.”

Mr. Gammage said that he had explained that to the Council with some additional thoughts that he is less comfortable expressing in open session. His basic conclusion after all his research, he said, is that this is a complicated question – “it is not a slam dunk.” “Most courts,” he said, “have come down on the side saying that short-term vacation rental is permitted in residential zones.”

Michael Thompson, a Jerome resident and owner of a vacation rental, commented that he has never had any disturbances. Someone in attendance made a comment and an argument ensued. Mr. Gammage said that he is there to answer questions about the law.

Mayor Check asked that all those in attendance be respectful and stay relevant to the scope of policy development and the issues that the town is facing. She asked that personal issues not be discussed.

Susan Cloud-Hall, a Jerome resident, commented that she has lived in Jerome for 38 years. She noted that many hold up Prop 207 as “the bee's knees,” but it does have exemptions to protect public health and safety. Ms. Cloud-Hall made comments regarding visitors to Jerome, that the fire department has had to rescue them and that they are bad drivers. She said that health and safety are the predominant things to look at.

Rebekah Kennedy, a Jerome resident, asked how residents might protect their right to a quiet neighborhood. She bought her house with the intention of raising a family and living in a nice residential neighborhood, she said, and is frustrated with the idea that there could be people in and out of those rentals and she would have no idea of their backgrounds.

Mr. Gammage said that they are raising an issue that he hasn't discussed, but if they are not comfortable that the existing ordinance gives them the protection that they need, then they should consider passing a new ordinance. And, there is a whole range of options. He said

that he has seen the ordinances that have been drafted and are "floating around," but has not studied those at great length. He also has not been hired to draft an ordinance for the Town. But, he said, the Town could pass a new ordinance (which is what most communities that have decided that this is a problem are doing) that would impose some measure of regulation. The Town could regulate via Conditional Use Permits (CUPs), limit what zones they could be attained in, and they could be made a permitted use in certain zones. The ordinance could impose standards on the CUPs in terms of parking, etc. "Going forward," Mr. Gammage said, "the way to deal with possible problems in the future is to create a new ordinance, now, that addresses the areas of concern."

Mr. Gammage then addressed Prop 207, which was brought up by Ms. Cloud-Hall. He said that Prop 207 is "like a bogey man that floats over all the municipal actions in Arizona, and it has frozen cities, keeping them in a state of inactivity from changing their zoning ordinances." He opined that that is an extreme over-reaction, and, although he generally represents private property owners rather than cities, he thinks that cities have been far too timid, in the face of Prop 207, to go ahead and change ordinances when they need to change them. He noted that, if there is a problem, Prop 207 allows you to waive things as to the individual property owners.

Mr. Gammage reiterated that, if vacation rentals are a problem for the community here, he thinks that the Town should consider a new ordinance to regulate things going forward.

Ms. Shemaitis reminded and requested that all state their names before speaking.

Glenn Odegard, a property owner in Jerome, asked if Mr. Gammage could address, from the legal aspect, other case history in Arizona on this issue. He asked what has been proven in court in the Sedona issue. Mr. Gammage responded that he works primarily in Maricopa County and most of the cities there have adopted a 30-day rule – either by ordinance, or in some cases, by a formal interpretation under their zoning ordinance. To his knowledge, none of the formal interpretations have been challenged, and, he is not aware of any litigation involving ordinances that have the 30-day rule.

Margie Hardie, a Jerome resident, asked, "If things do not go the way those in opposition want, can a proposition be passed to vote against vacation rentals?" Mr. Gammage replied that Arizona is one of the few states that allow local initiative and referendum. He explained that a referendum is done in response to the Council's passage of "something you don't like," and puts it on the ballot for the voters to decide. Alternatively, if the Council has NOT done something that you want them to do, he said, an initiative petition can be circulated to create a new ordinance.

Ms. Hardie asked about Prop 207 in this respect. Mr. Gammage said that Prop 207 is a state statute that was passed by the legislature. After some discussion he clarified that Prop 207 was an initiative.

Mr. Gammage went on to explain that the powers of a referendum or initiative are legislative, so citizens cannot circulate a petition to force a decision to do something that is not legislative; for example, he said, they could not fire the Town Manager through an initiative, but they could use an initiative to pass a new ordinance. He added that, in order to get the question on the ballot, they would need to obtain a requisite number of signatures, which for an initiative would be 15% of those who voted in the last election in which the mayor and council were elected. The signatures would have to be validated by the Town Clerk as belonging to registered voters. He added that drafting an initiative is not easy – it is a very technical and difficult process.

Paul Groseta commented that Prop 207 passed in 2006. He said that many other cities have

addressed it in their zoning ordinance regarding vacation rentals, but Jerome has not. He asked Mr. Gammage to comment on this.

Mr. Gammage said that Prop 207 has created new constraints. In order to violate Prop 207, he said, there has to be a new land use law that regulates the use of property, and it has to diminish the fair market value of property. He added that he doesn't know if there have been any studies regarding diminished value, and it is not clear to him if passing a new regulation that regulates vacation rentals would somehow violate Prop 207. He said that it would have to be determined on a case-by-case basis, as to its impact on a property. He added that, if the city determines that, in a given circumstance, a property value was diminished, the city can waive the impact of the new ordinance as to that property – that right to waive is build into the statute. "I think that cities are too timid in adopting new regulation," he said, "because they can always decide not to apply it to certain properties."

Lisa Whitacre, a Jerome resident, asked Mr. Gammage if, in his opinion, adding the 30-day provision to our ordinance would be our best defense against vacation rentals. Mr. Gammage responded that he doesn't know if he can answer that. "There is a policy question as to what exactly are the problems with vacation rentals that you are trying to cure," he said. He said that he has noticed that two of the ordinances that have been floating around Jerome have dispersal requirements – you can only have one or two vacation rentals per geographic neighborhood. Other cities have spacing requirements, he said—for example, they have to be at least half a mile apart. The feeling is that, if you disperse them, the negative impacts (traffic, noise, etc.) are more dispersed throughout the community. He said that dispersion is a "time-honored land-use technique," and is used with marijuana dispensaries, adult bookstores, topless bars, etc. That may be the best way to regulate, given the problem we have in Jerome, he said. He added that maybe the best way to regulate is with the 30-day provision. "I think this is a policy question," he said. "The Council needs listen to the citizenry and figure out what problem they are trying to cure."

Suzy Mound, a Jerome resident, noted that Jerome is a unique town, and is on the National Register of Historic places. There are certain requirements that have to be met in order to maintain that status, she said. Mr. Gammage agreed that the fact that Jerome is a National Historic Landmark makes it "a notch up" from other towns. Ms. Mound went on to say that this is a "great honor that we have had since 1967," and, in order to maintain that status, it "has been imperative that the town not abuse its building codes." There are only about 140 homes in Jerome, Ms. Mound said, and we have an aging infrastructure. She said that, at a meeting [of the General Plan Steering Committee] the night before, Henry MacVittie (of Contract Wastewater Operations) and Fire Chief Rusty Blair explained that Jerome is close to reaching its maximum capacity for the sewage plant, and, at times, does reach its capacity with water usage. "We are being faced," she said, "with needing to limit how much we grow and how many more people we bring in – especially over a nightly basis," noting that those staying overnight use more of our water and sewer facilities than do typical daytime tourists. She asked if those facts help Jerome in its stance against allowing vacation rentals or hotels into our residential areas, as the infrastructure in those areas has not been updated for quite some time.

Mr. Gammage replied that, if the Town chooses to regulate or limit vacation rentals in some way, it is prudent to recite why, and those could all be proven reasons to recite.

Michael Thompson, a Jerome resident and owner of a vacation rental in Jerome, noted that a vacation rental actually uses less than half the water and sewer that what would be used by a full-time resident, as it is often vacant.

Ms. Mound said that Jerome residents know about the fragile infrastructure, and do not flush

things that shouldn't be flushed, or pour things down the drains. Residents, she said, are more careful about that than visitors. Mr. Gammage said that Mr. Thompson's response to that would be that most of his guests don't cook – they go out to eat at the restaurants. We can go back and forth about the facts, he said.

At this point, several people began speaking at once. Mayor Check sounded the gavel and said that Mr. Gammage is running the meeting and he will call on people to speak.

Ms. Cloud-Hall stated that she had lived in an old house on Company Hill which she had renovated with her ex-husband. When they had visitors, she said, they didn't obey the house rules about flushing inappropriate materials down the toilet.

Ms. Hardie asked how to balance this. She said that more people have come forward against vacation rentals than there are the number of vacation rentals. She also wanted to know the relevance and the rights of the majority.

Mr. Gammage replied that, if she is talking about passing a new ordinance, then that balance is for the Council to sort out. They decide if and how they want to regulate, he said. "This is what politicians are for ... to test the waters, figure out which way the wind is blowing, go with the flow or make that decision as they see fit," he said. "In the representative democratic process, that is what elected officials do." He added that, if there is an initiative, then, in that case, "more votes wins."

Mr. Gammage went on to say, "If your question is, what about the existing ones that are out there, that is a different question. And, that is not a question about winning the actual initiative, that's a question that the law gives us guidance about." He added that we haven't talked about that yet, but he suspects that at least some will want to hear that.

Ms. Shemaitis commented that Ms. Hardie brought up a good point, that it seems like the majority does not want to have vacation rentals; however, what is hanging over our heads is the Goldwater Institute ... "they have this idea that they can come in and . . . it almost feels like bullying." Several people commented that it is bullying.

Mr. Gammage said that he has many opinions about the Goldwater Institute. There are many sides and many issues. Some of it is good and some of it is bad. However, he said, the point we were getting to was the existing properties, and he went on to speak about that.

Mr. Gammage said that we have a very strong private property rights tradition in the United States, and even more so in Arizona, and the law has very strong protections built into it for people whose uses are legally established. In order to really talk about those, he said, we have to go back to the first thing he talked about, which is, "Are these prohibited by your existing ordinance?" The weight of authority of the United States, he said, would seem to say "no." "I'm not saying that there is no possibility of taking a contrary position," he said. "You can take the position that they are prohibited by your existing ordinance, because this is a relatively open question," but, he went on to say, "the weight of authority is, and it's pretty strong, that this kind of use is permitted in a residential zone unless it is very explicitly spelled out. If that is the weight of authority of the United States, and Arizona is one of the most pro-property jurisdictions in the United States, it would suggest that, that is probably even more likely to be a result in Arizona." Mr. Gammage went on to say that, if that is the case, that they are legal under the existing ordinance, and we pass a new ordinance regulating or prohibiting them, "those uses that were legal under the prior ordinance become legal non-conforming uses and they can continue. They are 'grandfathered.'"

Carol Yacht, a Jerome resident, asked, if he is suggesting that the existing ones need to be legal, how they would establish non-conforming use.

Mr. Gammage said, "Yes, a legal non-conforming use has to be legal at the time it was established, so it is a complicated question." He said that they would have had to be in operation at the time a subsequent law is passed. If so, he said, then they would continue as a legal non-conforming use, and they are subject to the rules of non-conforming use. He added that he does not know what Jerome's rules are in that regard, but, typically, the ability to expand a non-conforming use is limited. "It has to continue to be operated in the way that it was previously operated," he said. "If it is destroyed by an act of God, it can't be put back, and if you abandon it, you lose it."

Ms. Yacht said that she understands that he is saying that it is best to be legal at the time they become established, but, she asked, "What creates that? If they had been located in the R-1 single family zone, and then it became lodging or a temporary residence . . ."

Mr. Gammage replied that now she is going to his basic question and he is not willing to give a full opinion on that. "The question," he said, "is whether that use is a legal use under the existing ordinance in a residential zone. The weight of authority of the U.S. would say that it is."

"Even though it changed from a single family to a non-conforming...?" Ms Yacht asked.

"No, no, no, no," Mr. Gammage said. "You are not following. Is a vacation rental a permitted use in a residential zone?" "Not per our ordinance," Ms. Yacht replied. "The weight of authority of the U.S. says 'yes,'" he answered.

Doug Freund, a Jerome resident, asked if that is based on the fact that it is not specifically prohibited. He noted that there is a clause in our ordinance that states that anything not specifically permitted is prohibited.

"No, no ... that's not what it's based on," Mr. Gammage replied. "What it's based on is that it is still being used in a residential way – people are living in it—they are just living in it for very short times, and... the courts are not going to decide what is an appropriate time. And, so long as it continues, that nobody is selling anything out of it, nobody's running a business out of it, it is being used as a residential, but it is a short-term residential ... that is permitted under the residential zone. That is where most courts come down – that the duration of the residential period does not turn it into a non-residential use. That's where most courts come down."

Mr. Freund said that the City of Scottsdale considers vacation rentals to be hotels and regulates them accordingly, excluding them in residential zones. He asked why we shouldn't be able to do the same.

Mr. Gammage asked if that is in their ordinance. Mr. Freund replied that it is in their Zoning Administrator's interpretation.

Mr. Gammage said that he would need to look at their ordinance very carefully. A formal interpretation is not quite as good as putting it in an ordinance, he said. He added, "I think that trying to rely on the definition of 'hotel,' ... I don't think that helps you at all. I think that the definition of 'hotel' is so clearly inapplicable, as it is in your ordinance, that you would be better off, should you want to pursue this under the existing ordinance ... the better argument is that this is inconsistent with residential zoning. Just that. Forget the hotel definition – I think that muddies the water."

Mr. Gammage added that he doesn't think that the tax argument helps either, because the tax code does not decide what is or is not permitted. It only dictates who has to pay money. If you decide you are going to tax something, he said, then you must implicitly conclude that it is legal. "So, I think the tax code argument doesn't help," he said. "I think it actually

hurts."

Ms. Yacht asked about the Arizona statutes that define who a resident is for voting purposes. She said that, here, the vacation rentals became part of the commercial zone, which is where most of them are. In the commercial zone, vacation rentals have replaced old time residents. "With our census," she said, "we only have 444 residents, so I'm wondering why... "

Mr. Gammage said that these are policy arguments, not legal arguments.

Ms. Yacht went on, "But basically, I wonder how the vacation rentals impact permanent residents." She noted that 102 residents so far want to see vacation rentals stay in the commercial zone, "because we have seen what happened in the commercial zone – they replaced permanent residents. So, when we see them filter into the residential zones . . . there is no space between houses."

Mr. Gammage said that these are all cogent arguments for why we should regulate, but they are not arguments relevant to whether or not our current code regulates.

Mr. Odegard asked if any municipalities in Arizona have enacted these ordinance clauses after Prop 207, and if so, if they have stood up, or if any have been challenged.

Mr. Gammage said that he couldn't say, regarding vacation rentals, whether or not there have been things enacted after Prop 207, but he was fairly certain that no lawsuits have been filed.

Mr. Sims said that there has only been one ordinance passed – in Page. There has been no lawsuit.

Mr. Gammage said that there have been ordinances passed since Prop 207 that people have complained about as violating Prop 207. There have been a few lawsuits filed, he said, and a couple of settlements. There has not been, to his knowledge, a judgment of a 207 damage claim.

Mr. Sims noted that Sedona's case is a Prop 207 case, but there are no damages and it is still being litigated.

Mr. Gammage said once again that he is not particularly worried about Prop 207 exposure because it can always be waived. If you think there is a big risk, he said, you can waive it and avoid the damages. Councilmember Phinney asked him to explain that. Mr. Gammage said that, before someone sues you regarding Prop 207, they must first serve a demand letter telling you that they are going to sue you, and what they estimate the damages are. At that point, he said, the Town can talk to its lawyer and its risk management people, look at its insurance, and consider how big a problem it is. "If you enacted a city-wide ordinance that had Prop 207 implications, and two people complain," he said, "you could waive it as to the complainers and enforce it as to the people who are not complaining."

Mr. Sims said that many cities and towns in the Risk Pool have done just that. Initially, when Prop 207 passed, everyone was frozen, so they went on the road and told city and town attorneys, managers and councils that the way to address it is "the Swiss cheese model." A town could adopt an ordinance, and, under the statute, the property owner has to respond quickly to contest it. If they contest it, then the town has the right to waive it as to that property owner, who would then be excluded. There are 70 cities and towns in the Risk Pool, he said, and they haven't lost a Prop 207 claim yet. What 207 does, he said, is require planners and property owners to sit down and talk, and solve the problem – that is the goal of 207. Mr. Sims said that more and more town attorneys are getting away from telling towns to do nothing. "We are now telling you to go ahead," he said, "take the action, and put the public on notice. The statute requires the public to respond fairly quickly if they want to

waive, then you have the right to waive. That's what some cities and towns are doing."

Councilmember Bassett asked if the Goldwater Institute should be allowed to bully the Town and determine Jerome policy.

Mr. Gammage said that he thinks that that is a political and policy question. He added that Mr. Sims' answer regarding Prop 207 was "wonderful and well done. ... The Swiss cheese stuff is rather disturbing as a matter of public policy," he said, "... to decide which of your citizens has to comply with your law and which don't, but it's built into the statute." He added that he thinks that all Prop 207 is bad as public policy. He then addressed Ms. Bassett's question, saying, "How afraid should you be of the Goldwater Institute? They sue lots of people and they are primarily in the business of recovering their attorneys' fees – and they are good at it. They are very smart and they are good lawyers. Jerome's Council should determine Jerome policy." (There was applause from the public.)

Ms. Mound noted that Mr. Gammage had said that there are two ways of dealing with this. One was to pass an ordinance that defines these, but she missed what the second alternative was. Mr. Gammage replied that he didn't remember, but, he said, there is a wide range of alternatives. We could define what zones a use is permitted in, he said. It could be fully permitted in some zones, and a conditional use in others. It could be a conditional use in all zones. It could be a conditional use subject to very specific criteria. We could create geographical limits, and provide that there could only be two within each defined area.

Ms. Mound then commented that Mr. Gammage had mentioned that we could do a formal interpretation of the Town's ordinances. Mr. Gammage said that he doesn't know what Jerome's zoning administration process is for interpretations. He asked who makes the interpretations – the Zoning Administrator, the Planning Commission, or the Council? Mr. Sims responded that Jerome's Zoning Code is somewhat deficient – most jurisdictions copied provisions from the county, he said, but Jerome doesn't have an elaborate process for interpretations. He said that, under the law, if the Zoning Administrator were to make an interpretation, he suspects that they would immediately go to the Board of Adjustment and Superior Court, and that we would be in court immediately.

Ms. Mound noted that Mr. Gammage had said that we could write a new ordinance. She asked if we could do both. Mr. Gammage replied that, if we want to head down the path of trying to use the existing ordinance, we could, conceivably, start with the interpretation of the current ordinance. That would be one way to start, he said, and we could do both that and create a new ordinance.

Ms. Yacht said that we have a definition for "dwelling," which is, "a building or a portion thereof designed exclusively for residential purposes, including one family but not including hotels or lodging." She asked if that would be an interpretation of what short-term lodging would be. Mr. Gammage said that it would not, and added that it is very similar to what is in many cases where courts have concluded that short-term rental of houses is not prohibited. Ms. Yacht commented that it says "lodging." Mr. Gammage asked if "lodging house" is a defined term in the ordinance. Ms. Yacht said that they use it basically for the hotels and B&Bs. Mr. Gammage said that there is a difference, and the problem that exists is the commonly accepted definition of a rooming house, lodging house, hotel, or motel is a building containing multiple rooms rented by the room. He said that Jerome's ordinance has "this quirky thing where a hotel is nine or more rooms." He has no idea why it would specify nine rooms. The dictionary definition of a hotel, he said, is multiple transient lodgers at the same time. "Where many of the courts go with this," he said, "is, if it is a house and it is being rented to a family or family group, that is not a hotel – it is a single house being rented. Does

the fact that it is rented for one night, or two nights or three nights make it different than if it is rented for three weeks, or four weeks or five weeks? As a practical matter it may. As a legal matter, most courts conclude that it does not."

Ms. Yacht pointed out that Mr. Gammage had used his visit to Payson as his own example and obviously it wasn't a family, but a frat party at the vacation rental nearby. Mr. Gammage agreed and said that, frankly, that's when he would have a nuisance lawsuit. And, he added, he would call the county, and has called the county when that's happened, to enforce the noise ordinance and the nuisance ordinance.

Mr. Groseta commented that he has heard several times at this meeting that the majority of Jerome wants to regulate or do away with vacation rentals, but he does not think that that's the case. He said that there are over 400 people in the town and he thinks that most people just don't like to attend the public meetings. He thinks that it is a very small group that is applying the "squeaky wheel." Mr. Groseta also noted that the Goldwater Institute is being referred to as a bunch of bullies, but they protect property rights. "What do property rights mean?," he asked. "That is why Prop 207 was enacted." It's a very new law, he said, and it's very big in property law. He made reference to 19 firefighters who died recently fighting the Yarnell Fire, and said "What did those firefighters go in and protect? Property!" Mr. Groseta guessed that the mining companies are the biggest property owners in the Town of Jerome, and asked, "What are their thoughts on regulating? Their properties would be included in this." Mr. Gammage replied that that is not a legal question. It is a question for Freeport-McMoRan or Verde Exploration.

Mayor Check said that she could respond briefly – the mining companies, she said, have tapered off from even leasing land, so she doubts that they are going in that direction, "but that is a valid question that might be posed."

Ms. Hardie said that she had recently submitted to the Town a formal complaint, feeling that there was a violation of the Zoning Ordinance. She hasn't heard anything about it and she doesn't know if the town is obligated in anyway to respond to her complaint. She has been told that there is research going on to determine how to respond, and she was wondering, legally, if there is a reason. Her complaint was that she felt there was a violation, she said, but she could be wrong. A lot of what Mr. Gammage has said has clarified some of that, she said, but nevertheless, she wants to know, legally, what type of process should happen, if any. Mr. Gammage said that every town is different in its response to complaints. Ms. Hardie clarified that it was a zoning violation.

Councilmember Bassett asked if this is related to the subject on the agenda.

Mr. Sims said that this is all part of the same topic. Phoenix has adopted a prohibition on vacation rentals, he said, and has difficulty in enforcing it. One of the basic questions that he thinks the constituents have is, "How do we enforce this Code?" To answer Ms. Hardie's question, he said, " I have talked to Council about this – we have a zoning code that has two very minimal provisions on zoning enforcement and then it kicks it immediately into criminal proceedings before the magistrate. ... It should be a series of steps, where you have a hearing officer, you have a compliance officer, you have a zoning administrator – I think that here, it is all one person. The town has such a small staff . . . we should strive for a provision in our code that accomplishes our goal of identifying the problem, getting the neighbors to communicate, seeing if they can solve it, then going for the more formal enforcement. This code requires almost immediate enforcement."

Ms. Hardie said that she isn't sure if the situations are comparable, but the situation was that the Zoning Administrator made a determination on a building on 5th Street as to whether a duplex was allowed or not. "All I'm getting is that was a process," she said. "Maybe they're

different situations." Mr. Sims replied, "That is a fact. If the Zoning Administrator had provided an interpretation, that wouldn't be a zoning code enforcement. She would have the right to appeal that decision to the Board of Adjustment, and, if she didn't like the decision from the Board of Adjustment, she could take it to Superior Court."

Gretchen Groseta stated, "With all due respect, ... that particular case that you are speaking of, Ms. Hardy, was already adjudicated in Yavapai County Superior Court and the house was adjudicated to be a single family residence. My father owns the house and it is being used as such, in a vacation rental usage but as a single family residence. So... there wasn't a violation."

Ms. Cloud-Hall said that there is a volunteer fire department here. The residents don't pay a lot in taxes for the fire department because they are volunteers. She asked how much the visitors will overtax them, and if we would have to start paying them. "The whole vacation rental thing affects everyone," she said.

Ms. Kennedy asked how the rights of one property owner can override the rights of the others. She said that she is invested in the town and would like a harmonious decision to be made. She has served on Council, she said, and she would like to think that the decisions she made served the community and not just herself. She said that she doesn't feel that a lot of respect is given to those who have lived here. People come to Jerome and expect to make lots of money here, she said, which is fine, but they are impeding on her pursuit of happiness. She said that she would like to know how to find common ground.

Mr. Gammage replied that the process of drafting, adopting, and working with the city council and planning commission regarding a new ordinance is a way to do that, "if you think your current ordinance is insufficient, and most here seem to think that. Whichever side of the issue you are on," he added, "the current ordinance does not do much, one way or another." Mr. Gammage said that the process of coming together and identifying the issues ... How often do we want to deal with this? ... What are the problems we are trying to fix? Is it there are too many of these grouped together? Is it that there are too many in one rental at a time? Is it that there too many in the town? Or is it that we just don't want these, and want to find a trigger that can prohibit them? ... talking about what to do in a new ordinance, he said, is the best way to find common ground.

Ms. Kennedy commented that, when investors come in, the available housing shrinks. She is concerned that her children, who have been raised here, will not be able to get a place here. She asked how to protect their communities.

Mr. Gammage said, "The United States is a place that tries to balance the rights of the many and the rights of the few – we are not a pure 'majority rules' country because we protect the individual's rights and we protect property rights. And so, the whole process of legislating, of litigating, of working through all these issues, is exactly about sorting out the rights of individuals and the rights of community – that's what happens. That's the social contract – to what extent do we each give up some measure of our individual rights so that we can live together as members of society? The way in which we transact the social contract is this. This is what you are doing. That's what this is about. This is about your right to sort out your rights vs. others' rights. ... Not everybody is going to be happy with the way the balance is struck, but that's what democracy is all about -- figuring it out."

Someone asked if everyone was going home unhappy. Mr. Gammage said that that might be the perfect measurement of democracy – everybody goes home unhappy.

Mayor Check said that she would like to close the discussion and asked if there were any questions. She opined that they had gone through a lot of issues tonight, but it might be time

	<p>to start wrapping things up.</p> <p>Mr. Gammage let everyone know that if they were particularly interested in this issue, they should get a copy of the article he brought in. He then thanked everyone, and there was applause.</p> <p>Mayor Check asked if the plan was to go back into executive session.</p> <p>Motion: Vice Mayor Currier made a motion for Council and the Planning & Zoning Commission to go back into executive session with Attorneys Grady Gammage and Bill Sims. It was seconded by Councilmember Phinney and approved by all.</p> <p>Council and members of the Planning and Zoning Commission went into executive session at 8:24 p.m. and reconvened in open session at 9:25 p.m.</p>
ITEM #4:	ADJOURNMENT <p>Upon motion by Councilmember Bassett seconded by Councilmember Phinney and unanimously approved, the meeting was adjourned at 9:26 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: _____