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# TOWN OF JEROME

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## MINUTES

### SPECIAL MEETING OF THE JEROME TOWN COUNCIL JEROME CIVIC CENTER - 600 CLARK STREET - COUNCIL CHAMBERS TUESDAY, OCTOBER 15, 2013 AT 6:30 P.M.

<p><b>ITEM #1:</b></p>	<p><b>CALL TO ORDER/ROLL CALL</b></p> <p>Mayor/Chairperson to call meeting to order. Town Clerk to call and record the roll.</p> <p>Vice Mayor Currier called the meeting to order at 6:38 p.m.</p> <p>Town Manager/Clerk Candace Gallagher called roll. Present at roll call were Vice Mayor Lew Currier and Councilmembers Anne Bassett, Randall Hunt and Bill Phinney. Mayor Nikki Check was en route.</p> <p>Other staff in attendance at roll call included Finance Director Becky Cretti, former Zoning Administrator Carmen Ogden and Deputy Town Clerk Rosemarie Shemaitis. Town Attorney Bill Sims was present telephonically during a portion of the meeting.</p>										
	<p><b>Motion:</b> Councilmember Bassett made a motion to <b>address Item 5 at this time</b>. It was seconded by Councilmember Phinney and <b>approved by all with 4 ayes, 0 nayses and 0 abstentions</b>.</p>										
<p><b>ITEM #5:</b> <b>6:42 pm</b></p>	<p><b>ACCOUNTS WITH ARIZONA STATE CREDIT UNION</b></p> <p>Council may approve the opening of checking, savings and money market accounts with Arizona State Credit Union and signatories for same.</p> <p>In their packets, Council had received a memo from Town Manager Candace Gallagher and Finance Director Becky Cretti recommending that Town funds be moved from Chase Bank to Arizona State Credit Union as follows:</p> <table border="1" data-bbox="378 1226 1450 1482"> <thead> <tr> <th>From Chase:</th> <th>To AZSTCU:</th> </tr> </thead> <tbody> <tr> <td>\$100,000 of General Savings</td> <td>Business Star High Yield Money Market (with maintenance of a minimum \$75,000 balance)</td> </tr> <tr> <td>Capital Improvement Savings</td> <td>Business Tiered Money Market</td> </tr> <tr> <td>HURF Savings</td> <td>Business Savers Money Market</td> </tr> <tr> <td>Checking + Balance in General Savings</td> <td>Business Advantage Checking</td> </tr> </tbody> </table> <p>This was discussed at some length. It was noted that the Town's payroll account is currently with the National Bank of Arizona and the rest of the accounts are with Chase. Only funds in the Chase accounts would be moved. The checking account at AZSTCU would function as the Town's primary activity account.</p> <p>Councilmember Hunt expressed concern that it may be unwise for the Town to put money into money market accounts. Councilmember Phinney stated that this plan would be effective (offering a higher yield than savings accounts) and safe. He explained that these accounts would be insured by the National Association of Credit Unions (NACU), which is a federal entity. Money market funds <u>can</u> be used to invest in stocks, he said, but they generally have a guaranteed return, which is fixed by the bank (or in this case, the credit union) and has no correlation with the stock market. Accounts are insured up to \$250,000, and can be insured beyond that through bonds.</p> <p>Councilmember Bassett said that she has had past good experience with Arizona State Credit Union, and proceeded to make a motion to accept the staff's recommendations.</p>	From Chase:	To AZSTCU:	\$100,000 of General Savings	Business Star High Yield Money Market (with maintenance of a minimum \$75,000 balance)	Capital Improvement Savings	Business Tiered Money Market	HURF Savings	Business Savers Money Market	Checking + Balance in General Savings	Business Advantage Checking
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	<p><b>Motion:</b> Councilmember Bassett made a motion to <b>accept the staff's recommendations.</b> It was seconded by Councilmember Hunt and <b>approved by all with 4 ayes, 0 nays and 0 abstentions.</b></p>
<p><b>6:47 pm</b> <b>6:55 pm</b> <b>6:56 pm</b></p>	<p><b>Vice Mayor Currier called a recess.</b> <b>Mayor Check arrived</b> <b>Council reconvened</b></p>
<p><b>ITEM #2:</b> <b>6:57 pm</b></p>	<p><b>INTERVIEW WITH APPLICANT FOR ZONING ADMINISTRATOR</b></p> <p>Council will interview Frank McCafferty for the position of Zoning Administrator. Following the interview, Council may enter into executive session, pursuant to A.R.S. §38-431.03.A.1, for the purpose of discussion with the Town Manager regarding the applicants, and may opt, upon reconvening into open session, to make an appointment to that position.</p> <p><i>Council interviewed Frank McCafferty for the position of Zoning Administrator. Highlights of the interview follow, not necessarily in chronological order:</i></p> <ul style="list-style-type: none"> <li>• <i>He resides in Golden Valley, Arizona, but would want to move here if he were appointed.</i></li> <li>• <i>He worked as City Planner for Kingman and as Assistant to the City Manager in Bullhead City, where he had no staff but the opportunity to work with the planning department to "start a new city." He has worked on general plans and area plans for Mojave County.</i></li> <li>• <i>He has been involved with historic preservation for over 17 years. He has purchased, restored and developed properties, keeping the original façades. He won a government historic preservation award for adaptive reuse by converting an old drugstore into a restaurant.</i></li> <li>• <i>He acknowledged that, while he has always been responsible for his own work, he is not good with computers.</i></li> <li>• <i>When asked about his skills in crafting policy, he stated that most policy would be based on state statutes. In the past, he has relied on the Arizona League of Cities and Towns for guidance in this area. He has developed hiring and other policies in the past.</i></li> <li>• <i>He has no problem with the grandfathering of non-conforming uses, noting that they are significant in Jerome.</i></li> <li>• <i>He has been a landlord for 17 years, and has no problem with enforcement.</i></li> <li>• <i>He would not view this job as a "stepping stone" to somewhere else, and has no intention of retiring soon. He would like to move here and "start a new life."</i></li> </ul> <p><i>Council thanked Mr. McCafferty for his time.</i></p>
<p><b>ITEM #3:</b> <b>7:25 pm</b></p>	<p><b>PRESENTATION: AMERICAN RIVERS BLUE TRAILS PROJECT</b></p> <p>Doug Von Gausig, representing Riparian Systems Consulting, will make a 30 to 45 minute presentation to Council to provide information about the <a href="#">American Rivers Blue Trails Project</a> for the Verde River, and to request a letter of support.</p> <p><i>Mr. Von Gausig made a presentation to Council regarding the American Rivers Blue Trails Project. A full copy of his presentation is attached to these minutes. He asked that Council express its support for the project in the form of a letter.</i></p> <p><i>Mayor Check said that, even though Jerome is the only community in the Valley that is not located directly on the river, many of our residents utilize it and it is a recreational treasure for us. She said that she feels very strongly that this is something Council should support, and she thanked Mr. Von Gausig for his presentation.</i></p> <p><i>Councilmember Hunt asked about the company. Mr. Von Gausig replied that American Rivers is a nonprofit organization that is based in Washington D.C., and it has been in existence for 42 years. They do many things, including taking out derelict dams – including the Fossil Creek Dam. Their funding comes from private donors and some corporations.</i></p> <p><i>Ms. Bassett agreed that Council should support keeping the Verde River flowing. Mr. Currier commented that he hasn't noticed people fishing on the Verde River, but Mr. Von Gausig</i></p>

	<p>assured Mr. Currier that people do fish there.</p> <p>Council was generally in favor of sending a letter expressing the Town's support for this project.</p>
<b>8:18 pm</b>	The Mayor called a recess.
<b>8:31 pm</b>	Council reconvened.
<b>ITEM #4:</b>	<b>ORDINANCES</b>
<b>8:31 pm</b>	<p><b>ITEM #4A: SECOND READING: ORDINANCE NO. 405, An Ordinance of the Mayor and Common Council of the Town of Jerome, Yavapai County, Arizona, Amending Sections 201, 504, 505, 506, 507, 508 and 512 of the Jerome Zoning Ordinance to Add Definitions for "Vacation Rental" and "Transient," Add "Vacation Rental" as a Conditional Use in the AR, R1-10, R1-5, R-2, C-1 and I-1 Zones; Add Vacation Rentals to the Schedule of Required Off-Street Parking; Add to the Jerome Zoning Ordinance a New Section 513, "Vacation Rentals," and Add a New Article 8-6 to the Jerome Town Code Regarding Nonconforming Vacation Rentals.</b></p> <p>Council may conduct the second reading of, and possibly adopt, Ordinance 405, an Ordinance to restrict and regulate Vacation Rentals within the Town of Jerome, and to acknowledge legal nonconforming uses. A public hearing on this ordinance was held by the Planning &amp; Zoning Commission on August 7, 2013, and they have recommended its adoption by Council.</p> <p><i>Mayor Check read Ordinance 405 in title only. Town Attorney Bill Sims was contacted and joined the discussion via speakerphone.</i></p> <p><i>Vice Mayor Currier read a prepared statement declaring his opposition to Ordinance 405. A full copy of his statement is attached to these minutes.</i></p> <p><i>Mayor Check said that Council has worked very hard on this topic, and it is difficult to say what will happen in the future – there are threats of lawsuits and Council has discussed that at length. She said that she feels that this Ordinance is the Town's most legally defensible option for controlling vacation rentals. She noted that, while some in attendance do not like the ordinance, "Council is charged with making the absolute best decision in their power for the Town at large." This is a very difficult decision, she said, but she feels strongly that Council should continue down this path.</i></p> <p><i>Councilmember Bassett commented that Council has carefully and thoroughly constructed a set of regulations for vacation rentals that will keep everything that people have complained to them about at bay, and minimize their impact. Through her many terms on Council, she said, she has seen how regional courts treat Jerome, and she does not "have a lot of faith in that realm." Ms. Bassett stated that she, personally, would like to forbid vacation rentals entirely, but she has no hope of that making it through the Arizona courts. "I cannot subject the town to being unprotected from vacation rentals," she said, "just because I want to please people that want Council to forbid them."</i></p> <p><i>Councilmember Hunt noted that Planning &amp; Zoning had been directed by Council to submit an alternative ordinance or parallel ordinance, which would disallow vacation rentals, and he asked if it was correct that that was not brought before Council.</i></p> <p><i>The Mayor responded that it <u>had</u> been brought before Council and discussed in the work session and joint meeting with Planning &amp; Zoning. She said that it went nowhere because the majority of the group did not care to put the alternative ordinance forward, opting for this ordinance instead.</i></p> <p><i>Curtis Lindner, a Jerome resident, commended Jerome's staff for all the work they have done on this, particularly Carmen Ogden, who worked with the County to resolve some of the language issues in the ordinances on this agenda. Ordinance 405 is better than it had been, he said, but it still has some inherent problems. "People want to know who their neighbors are," he said, and he feels that the zoning part of Ordinance 405 is somewhat problematic and could be challenged.</i></p> <p><i>Mr. Lindner went on to say that Yavapai County treats vacation rentals as a non-allowed use, whereas Ordinance 405, he said, makes it an allowed use in Jerome. He thinks that it is</i></p>

problematic for the public process, because the ordinance sets out specific criteria of what is allowed, and if an applicant meets those criteria, it would be an allowed use without consideration of the public's input. Some citizens may feel that it affects their property values or is just not a good fit for the community, he said, yet they would have no ability to turn the ordinance down in the Planning and Zoning session. He would prefer that it be listed as a non-allowed use.

Mayor Check said that her interpretation of this is that vacation rentals would not be an allowed use, but one could apply for a conditional use permit. Mr. Lindner responded that, under Ordinance 405, vacation rentals are a permitted use, given specific criteria. In the county, he said, they are listed as a non-permitted use, and there is a difference.

Councilmember Bassett interjected that it is a conditional use, not a permitted use. Mr. Lindner responded that, yes, it is a conditional use, but there are criteria listed in the ordinance, and if an applicant meets the listed criteria, "how could you turn it down?"

Mayor Check explained that the listed criteria provide objectivity "so that the Town isn't being totally subjective," and noted that there is subjectivity built into the process -- the ordinance is written in such a way that the Town must consider the impact of a use on the neighbors. She acknowledged the point Mr. Lindner was making, and asked the Town Attorney for his input.

Mr. Sims said that no vacation rental CUP can be issued unless the applicant can meet all of the objective requirements listed in the ordinance. The county, he said, is saying that the use is prohibited unless authorized, and we are saying that it's authorized if permitted, and there are objective criteria for that, something we did not have nine months ago. Further, Mr. Sims agreed with Mayor Check that there is a subjective layer folded into the process.

Mayor Check thanked Mr. Lindner for all the time that he has put into this matter, and for his input. Mr. Lindner thanked the Mayor and said that his objective is to see this resolved in a fair manner. He then read a sentence from the county's ordinance regarding use permits: "The applicant must demonstrate to the satisfaction of ... [and that would be the Council or Board of Supervisors, he said] ... that any structure or use permitted or requested will not be detrimental to persons or their property in the vicinity, and that it is in the best interest of public health, safety and welfare." He suggested that similar language be included in this ordinance. Mayor Check said that that is in the conditional use permit language and she feels that that is covered.

Susan Cloud-Hall stated that she lives on Company Hill and has read the Goldwater Institute's threatening letter, and it seems to be based on Prop 207, but the exemption for that is health and safety. There are cobblestone roads here with a 25-degree slope, she said, and the fire department reports show that a lot of their calls are for falls. Ms. Cloud-Hall opined that this is "the leg we have to stand on."

Mayor Check agreed and said that that's the leg that the proposed ordinance stands on as well. She said, "We all agree that we need to regulate this to whatever capacity we are able to," and noted that how to do that, whether through prohibition or a conditional use permit allowing for very limited use in the future, must be determined based on what policy will function best in the future, and make sense in 30 years. The two ordinances that were considered, she said, are very similar in their outcome. She added that we have legal non-conforming uses that won't be going away—she is talking about future uses. While Council could go either way with this, she said, she feels that the proposed ordinance offers the Town a stronger legal stance. She added that it also protects the commercial district and the residences that are located there.

Suzy Mound, a Jerome resident, stated that most residents live here for the quality of life, and not so much for the income potential. For the past 14 or 15 months, she said her "life has been destructed Monday through Friday, and some weekends, by constant construction by a person preparing a residential home for their business." She said there has been a constant barrage of noise between 7:00 a.m. and 4:00 p.m. in order "to prepare for total strangers to have a place to come for a quiet weekend." Ms. Mound said that she highly resents that her property value is dropping along with her quality of life, "all so that someone can run a business next door to my home that they are saying is not a business."

Ms. Mound asked whether Council represents the majority of the Town's residents, or makes decisions based on how they think it should be. Mayor Check replied that Council doesn't represent the majority, they represent everyone. She apologized that the Town hadn't crafted an ordinance to protect her in that situation, prior to now.

Ms. Mound said, "In this case, the person was told that they couldn't do it and then they were told that they could have a business license, then that person stood up in several meetings and said that this was not about a vacation rental, and then turned around and did a vacation rental while everyone stood there and allowed it." She said again that her property value is plummeting and so is her quality of life, and that of her neighbors.

Councilmember Phinney addressed Ms. Mound and stated that he is glad that Council is passing this ordinance, because it will restrict this and it will never happen to their neighborhood again. He added that existing rentals can't be changed now. Ms. Mound commented that they haven't taken a vote yet, and asked Mr. Phinney how he knows that the ordinance will pass. He replied that he doesn't know that. He was making the point that this ordinance will prevent other vacation rentals in her neighborhood. "You are not going to allow any more," she said, "but you are going to allow the one that just snuck in." Mr. Phinney said that that is already done, and, with this ordinance in place, they won't have any more.

Carol Yacht, a Jerome resident, stated that police were called at 2:00 a.m. because of the party at this residence. There were about 25 people on their deck, she said, and added, "our quality of life has just been thrown out by Council." She said that it is strange that Council is more concerned about lawsuits than about the referendum, and "about 126 people" who have asked Council to restrict vacation rentals to the C-1 zone. Ms. Yacht thanked Vice Mayor Currier for his earlier statement, and said that the zoning ordinance is clear about single-family primary use, but that was never enforced, so the legal non-conformances are awful for those who are within feet of 2:00 a.m. police actions.

Councilmember Phinney asked about the police response. Ms. Yacht responded that the police were called and they came. There was also a problem with five motorcycles. Mr. Phinney commented that this ordinance would not allow that. Although it does not address motorcycles, he clarified, it does restrict the number of people there, or loud parties. Councilmember Bassett interjected that we do have a noise ordinance, and that, if this ordinance had already been passed, that would have been adequate to void their conditional use permit and they would be out of business. It was then noted that a legal non-conforming use would not be subject to a conditional use permit.

Jane Moore, 747 Gulch Road, said that she is concerned about conditional use permits with respect to equal protection claims. If you are allowing some, and a certain number in different zones, she said, it could be challenged because someone could say, "you are allowing this person, and not me, and my rights are not being protected." In order to "stick" legally, she opined, "it needs to be all or none," and she thinks that it is the ordinance prohibiting vacation rentals that would be more likely to withstand a legal challenge. She added that she is also concerned with the acceptance of legal non-conforming uses, because that runs with the land, and with that continued use. If they continue using it as a vacation rental, she asked, couldn't they sell their property as a vacation rental, as long as they keep that use? Mayor Check stated that legal non-conforming uses don't run with the land, and an owner cannot sell a vacation rental that is a legal non-conforming use. Mr. Sims clarified that it would depend upon the transfer. That, he said, could cause and allow the Town to see if the conditions which permitted the legal non-conforming use are continuing. If the use hasn't changed, he said, it can continue, but it is possible that, upon the transfer, there would be changes in the use which could render a non-conforming use as no longer non-conforming. He added that, when people say that a non-conforming use doesn't run with the land, it is because, upon a sale, it triggers scrutiny as to whether that sale causes the new owner to use the property in a different way, which would discontinue the non-conforming use.

Ms. Moore said, "That is what I am saying ... if they continue the same use, then it runs with the land." She said that she also thinks that accepting this as a legal non-conforming use

conflicts with all the great work that was done researching health and safety issues, such as unsafe walkways, roadways, sewer problems, etc. Two of these non-conforming uses, she said, are on those types of unsafe roads. It seems, she said, that someone who was denied a CUP due to unsafe walkways and no parking could sue the Town based on the non-conforming uses being permitted under similar conditions. They would not be being "equally protected," she said.

Mayor Check asked Mr. Sims to comment.

Mr. Sims explained that the government can justify dissimilar treatment under the equal protection clause if the government has a rational basis by which to justify the unequal treatment. Once you have acknowledged a non-conforming use in the Code, he said, you have acknowledged a use that is different from a comparable user after adoption of the ordinance, and a court would acknowledge that as a rational justification. He added, regarding the concern Ms. Moore expressed about the CUP process and the "rationing out" of those CUPs, that this would be done under a "totally objective, non-value laden set of requirements." If you were able to ration them out only to friends or neighbors, he said, that would violate the equal protection clause. He compared this to the rationing of permits for group homes. Courts, he said, are more likely to uphold a conditional use permit process that rations out, as opposed to an ordinance that totally prohibits. By rationing them out, we are more likely to withstand a due process challenge that we don't have a rational basis to regulate the vacation rentals. He said that, although Jerome now has sufficient justification to go either route (conditionally permitting or prohibiting altogether), given the lessons learned from the rationing of group homes and the cases indicating that courts may be more likely to allow stringent regulation as opposed to absolute prohibition, he feels that it may be marginally safer to go down the path of regulating through conditional use permits.

Ms. Moore asked if the courts had overturned Mesa's regulations regarding spatial separation in a case involving a tattoo parlor. Mr. Sims responded that he spoke with Mesa's city attorney about this. Spatial separation was not determinative in that case, he said. He added that he had emailed information in that regard to Ms. Gallagher, who provided it to Council. Carol Yacht clarified that it was the ordinance that Mesa passed, and not the court case, which disallowed spatial separation.

Vice Mayor Currier said that he cannot think of any valid reason to deny anybody a vacation rental under this ordinance. "We have examples of all kinds of problems," he said, "which we are ignoring," and cited cobblestone streets and lack of parking. Mayor Check noted that the ordinance does address parking requirements. It was noted that some existing vacation rentals do not meet the parking requirements, and Mayor Check pointed out that they would not be subject to conditional use permits. Mr. Currier said that the next applicant for a CUP that is denied due to parking would point to an existing use without parking and say, "What about this?"

Mayor Check remarked that Mr. Sims just made the case that, if it is declared a legal non-conforming use, then the courts recognize that they can be treated differently. Mr. Sims then explained that courts historically balance the property rights of the individual, and in Arizona they are especially strong in their support for private property rights. The courts would acknowledge, he said, that the property rights are preserved, and not subject to a new ordinance. He added that, had Council adopted this ordinance nine months ago, some establishments here may not have been able to argue non-conforming use.

Ms. Moore said, "In other words, if somebody comes for a conditional use permit for a vacation rental and they do not have enough off-street parking and are turned down, and they decide that they want to sue, then chances are that the Town will win in court? ... if they decide to sue the Town, saying that 'this other vacation rental is a non-conforming use and has no parking, so I am being disallowed and I'm not being allowed my equal property rights protection?'" Mayor Check said that this is something that happens all of the time. New laws are made and people are grandfathered in and courts are used to seeing that. Ms. Moore commented that the Board could decide that parking is not that big of a deal, and grant a conditional use permit anyway.

	<p>Ms. Moore went on to say that she feels that Jerome's ordinance is fairly clear that a vacation rental use is more similar to a hotel, which is not a permitted use in the R-1 or AR zone, and it is not a residential use according to the definition of "residence." In our Zoning Ordinance, Town Code and tax codes, she said, the definition of a residence does not fit a vacation rental, which is a transient rental.</p> <p>Lastly, Ms. Moore said that existing uses should not be considered "legal" non-conforming uses because Jerome's zoning ordinance states that any uses that are not specifically permitted are not allowed, and it's not possible to foresee all the uses that could come into existence. She would rather see those uses given a certain time period within which to come into conformance. Either they would have the opportunity to apply for a B&amp;B, she said, or they would have to be a single-family residential home. She added that, in the event the Town was sued as a result, we "have a lot of briefs that the Town has prepared on why vacation rentals in residential zones are not safe and not a good idea."</p> <p>Mayor Check stated that, if everything that was not specifically listed as legal in our Code was deemed to be illegal, the Code would need to be much larger than it is, as it would need to accommodate State and Federal laws. She said that Jerome does not have anything written in our Code regarding vacation rentals, and noted that other Towns have opted to go different routes. Prescott, she said, has vacation rentals in their R-1 zone, but she does not know whether or not they are regulated. "That is something that happens on a regular basis in R-1 zones across the country," she said, and added that she hopes that Council will choose to "take this more restrictive route, which lays out some very clear methods for evaluating if this ordinance is being complied with or not."</p> <p>Ms. Cloud-Hall said that she had read about a vacation rental in Desert Hot Springs, where the police were called and the owner had to pay \$1,800. If Council chooses to adopt this ordinance, she said, she feels something like that should be included – a fine if the police or fire department are called out.</p> <p>Mr. Sims responded that there is a fee structure in the ordinance (\$300 for the CUP application, and \$250 per year thereafter), but that concept has not been added. Councilmember Bassett noted that there are also fees for violating our Code, including daily fines and potential jail time. In addition, the CUP can be terminated.</p> <p><b>Motion:</b> Councilmember Phinney made a motion to <b>adopt Ordinance 405</b>. It was seconded by Councilmember Bassett and the <b>motion passed with 3 ayes, 2 nays (by Vice Mayor Currier and Councilmember Hunt) and 0 abstentions.</b></p> <p>Mayor Check thanked everyone for their part in these discussions over the past year – everyone has really put their heart into it, she said.</p>
<p>9:20 pm</p>	<p><b>ITEM #4B: SECOND READING: ORDINANCE NO. 407, An Ordinance of the Mayor and Common Council of the Town of Jerome, Yavapai County, Arizona, Amending Section 302, "Conditional Use Permits," of the Jerome Zoning Ordinance.</b></p> <p>Council may conduct the second reading of, and possibly adopt, Ordinance 407, an Ordinance amending the Jerome Zoning Ordinance regarding Conditional Use Permits. A public hearing on this ordinance was held by the Planning &amp; Zoning Commission on September 4, 2013, and they have recommended its adoption by Council.</p> <p>Mayor Check read Ordinance 407 in title only.</p> <p><b>Motion:</b> Councilmember Bassett made a motion to <b>adopt Ordinance 407</b>. It was seconded by Mayor Check. Discussion ensued.</p> <p>Councilmember Hunt referenced Section D.2, which states that notice of a public hearing shall be given by publication "in the official newspaper of the Town." He commented that the Town newsletter is published only every two months. It was clarified for Mr. Hunt that this refers to the official newspaper, not newsletter, and it was noted that the Town's official newspaper is the Verde Independent.</p> <p>Councilmember Hunt then referenced the first sentence of Section D.1 which read:</p> <p>"It is the express intent of this Ordinance that any use for which a Conditional Use</p>

Permit is required shall be permitted as a Principal Use in the particular zoning district,..."

and said that this would indicate that, "Once you okay it, it is okay, period."

Ms. Ogden responded that there are time limitations, it is not just "okay." She said that there are restrictions and regulations that go along with the conditional use permit.

Councilmember Bassett noted that the same section requires the Commission to consider the influence that the use is likely to exert on adjoining properties.

Councilmember Hunt said that his concern is that, given the wording of the ordinance, once a CUP is issued for a particular use, it becomes a principal use in that District. He asked Mr. Sims for his opinion. Mr. Sims noted that the language in question is already in Jerome's Code, and is not part of what is being changed. He said that what it means is that it becomes a permitted use for that parcel. He noted language in Section B.2 of the ordinance, which provides that "every Conditional Use Permit issued shall be personal to the permittee and applicable only to the specific use and to the specific property for which it is issued." He added that, when the conditional use is transferred, it gives the Town the opportunity to step in and challenge the assumptions that the conditions that merited the initial issuance are still satisfied; but, he added, the CUP would be personal to the applicant and would not run with the land.

It was noted that some of this language was taken directly from the County's code.

Councilmember Hunt referenced Section E.4 and read:

. . . The Council shall within fifteen days after their regular meeting or public hearing act on the recommendation of the Planning and Zoning Commission by either affirming, reversing or modifying the action . . .

He asked if there is a timing conflict there. This was discussed briefly and it was generally agreed that this is not a problem.

Ms. Gallagher noted that there is a paragraph numbering issue, which she will correct.

Councilmember Hunt pointed out a typo on page 1. Ms. Gallagher made note of it.

Ms. Moore stated that, although this ordinance represents a change to provide that a conditional use permit is personal to the permittee and does not run with the land, if the person that purchases the property continues the same use, it would need to be permitted again.

Sybil Malinowski-Melody, a member of the Planning & Zoning Commission, explained that this ordinance was written specifically so that, when a conditional use permit is granted, it can be restricted. It was written to give the Town broader discretion as to the nature of the conditional use permit. She added that it can't address CUPs that have previously been granted, but would apply to those going forward, which can be made personal to the permittee.

Mayor Check read aloud Section B.3:

Every Conditional Use Permit issued shall be personal to the permittee and applicable only to the specific use and to the specific property for which it is issued. Use Permits may contain specific limitations on the scope, nature and duration of the use, as well as transferability of the Use Permit, as deemed necessary to secure the objectives of this Ordinance.. . .

Ms. Moore noted that this would allow the Commission to say, when granting a CUP, that the conditional use ends when the property is sold, if they so choose. However, as she reads it, the Commission would need to stipulate that.

Mayor Check agreed with both Ms. Moore and Ms. Malinowski-Melody. If the use of a property under a CUP has not changed, she said, the new owner should be able to obtain one as well, but they would need to go through the process again. It will no longer be automatic that the use permit runs with the property. "I think that is a big difference," she said.

Councilmember Hunt questioned whether a new owner continuing the same use would have to go through the permitting process again. Mayor Check stated unequivocally that they would. Mr. Hunt then asked, regarding vacation rentals specifically, if there is an existing non-conforming use [in a district] that does not have a CUP, then would no one else be able to get a CUP [in that district]? Mayor Check confirmed that.

Vice Mayor Currier asked if there was anything in the ordinance that would require an annual (or other periodic) review. "No," Mr. Hunt stated. Mr. Currier asked how, then, the Town would know if the ownership changes, and without that knowledge, how the Boards would review the situation to determine if the use should continue.

Ms. Shemaitis suggested that this would come to light when the new owner applies for a business license, or changes the information on the utility account. She said that Utilities Clerk Peggy Tovrea is very good about directing people who come in for that kind of thing to the Zoning Administrator.

Mr. Currier asked again if there is anything in the Ordinance that would require somebody to look at that. Ms. Ogden replied that, in the conditional use permitting process, there is an avenue to establish a review period, but there is nothing in place that stipulates a specific periodic review.

Ms. Malinowski-Melody said that, currently, once the permit is granted, it runs forever; there is no provision in place for looking at it at all. We operate on a complaint basis, she added. If someone is violating the conditions of their CUP, then that's grounds for someone to complain about it. The Commission did not consider, in drafting this ordinance, instituting a specific review period.

Councilmember Bassett noted that Ordinance 405, which was just adopted regarding vacation rentals, requires that the town be apprised of who the owner is and who the agent is, and includes a procedure for all complaints to be submitted to the Zoning Administrator, regardless of where they originate, "so the Town can take those black marks and deal with them."

Mr. Lindner stated, regarding concerns expressed about the transferability of use permits, that the Zoning Commission would be able stipulate non-transferability of a permit if they choose to, or in response to concerns from the public.

Mr. Lindner went on to state, regarding non-conforming uses, "If I heard Mr. Sims correctly, because of case law in Arizona ... they have an inherent right that goes along with the non-conforming use, and if someone wants to continue that non-conforming use, there could be an issue with that."

Mayor Check asked Mr. Lindner if he was suggesting that we write a non-transferable segment into this ordinance. "Yes," Mr. Lindner replied, and said that, with the Commission's recommendation for approval, they can include stipulations or requirements for the applicant. One of those could be non-transferability of the permit. Ms. Ogden noted that that is already in the ordinance. Ms. Malinowski-Melody agreed, and noted that that was missing from the existing ordinance and now we will have it.

Mr. Lindner said that what was of concern was use permits running with the land. He said that he hopes Council is clear about the concept of maintaining the integrity of the residential zones.

Ms. Malinowski-Melody noted that any future CUP (and not only CUPs for vacation rentals) would be subject to the revised rules.

Mr. Sims clarified that that the new language in Section B.3. would allow specific limitations to be placed on the duration and transferability of the use. Nobody had been watching these before, he said, because there was no duration requirement in the Code. Now there can be a limitation on that, and a prohibition on transferability.

Mayor Check called the question regarding the motion to pass Ordinance 407 with the noted typos corrected. The **motion passed with 4 ayes, 1 nay (by Councilmember Hunt) and 0 abstentions.**

<p><b>ITEM #6:</b> <b>9:40 pm</b></p>	<p><b>REESTABLISHMENT OF WATER SERVICE TO UNITED VERDE DEVELOPMENT</b></p> <p>Council will review, and may approve, a proposed agreement for the reestablishment of water service to properties owned by the United Verde Development Company and located outside of Town limits.</p> <p><i>Vice Mayor Currier said that, many years ago, he lived on property owned by UVX just outside town. At the time, in 1973, there was a requirement by the county that you had to have a septic or sewer system in place before you could get a water hook up. He said that the pipes at the engineer's building have not been activated since then and he doesn't think that there is any reason to believe that their septic system works, or if there even <u>is</u> a septic system. He suggested checking with the county to see if this is still required before going any further with this.</i></p> <p><i>Vice Mayor Currier also noted that recital E of the agreement states:</i></p> <p style="padding-left: 40px;"><i>Jerome Verde Development has paid for water services based on the Town Code as it existed prior to the current amendment of Chapter 16, Section 2.B.</i></p> <p><i>He pointed out that there is no Section 2.B in Chapter 16, and Article 16-2 of the Code refers to vineyards and vineyard parcels. He said that there are many more questions about this, and he recommended putting this off for future discussion.</i></p> <p><b>Motion:</b> <i>Vice Mayor Currier made a motion to <b>table this item</b>. It was seconded by Councilmember Hunt.</i></p> <p><i>Councilmember Bassett commented, regarding language proposed by UVX in paragraph 2 of the Agreements, that she is "absolutely against" agreeing that the properties may be used as a restaurant with a restaurant liquor license, serving food, beer and wine. Ms. Bassett noted that it would be served by city services but the Town would not receive any of the sales tax revenues. In addition, she said, it would be irresponsible to have people drinking and driving on State Park Road and the dirt road.</i></p> <p><i>Vice Mayor Currier noted that, if they were to establish a few shops there, which, he said, "is apparently what they're thinking of doing," those shops would compete directly with the shops that are in town, but they would not have to charge town sales tax. He questioned whether it is right to use town resources to develop an area outside of town that is not going to pay sales tax and would compete, with an advantage, against our own shops.</i></p> <p><i>Mayor Check agreed and said that, if this water line is reestablished, it might be wise to consider annexing that property. She added that she thinks that it would be wise to consider that anyway, because there are sales taxes being collected at the State Park, but not for the town.</i></p> <p><i>Vice Mayor Currier said that that is the problem, and we are talking about granting water to five buildings that are on one parcel. Mayor Check said that that was not the original discussion, but now it seems to have changed.</i></p> <p><i>Vice Mayor Currier continued and said that that parcel is around 400 acres and they could put several more buildings on it. He asked if we could deny a request for water for another building on that same parcel if we have already granted it for others.</i></p> <p><i>Mr. Sims said that this is on the agenda because it has been in the works for over two years. They wrote a demand letter, he said, that was very assertive, concerning liability and citing a statute that only burdens cities and doesn't burden counties. It requires us to reestablish water service. When they wrote their letter over two years ago, he said, the request was very narrow. In two years, it has become very broad. Mr. Sims went on to explain that there is a statute about this, and the statute <u>can</u> be interpreted narrowly. Mr. Sims asked that Council allow him and Ms. Gallagher to work further on this. He added that he thinks that what he is hearing from Council is that the proposal to broaden, as demonstrated in this draft, is probably something that does not garner their support. Councilmember Bassett and Vice Mayor Currier agreed. Mayor Check said that she does not mind the concept of a restaurant as much as she minds several other buildings being included. Mr. Sims said that that is inconsistent with what they first</i></p>
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	<p>told us, so, he said, "let us get back to them and we will get back to Council."</p> <p>Vice Mayor Currier pointed out that the agreement would be with a corporation that is called Jerome Verde Development Company, which has existed for a very short time. The engineer's building was owned by United Verde Exploration Corporation – an entirely different corporate body. Mayor Check asked Mr. Sims if it had always been the Jerome Verde Development Company that had been written in these drafts. Mr. Sims responded that it was, and added that they will need to demonstrate that Jerome Verde Development Company is a successor to UVX.</p> <p>Jane Moore opined that, if Council agrees to this contract, they are giving tacit approval to a commercial venture there, and a commercial venture there, especially one serving alcohol and generating a lot of traffic, would require a lot more of our town resources, including police and fire. She warned them to be careful.</p> <p>Ms. Malinowski-Melody suggested that we advise them to apply for annexation of that parcel. They want water and services, she said, and will be open to the public and receiving town services and water. They should annex just that portion of the property that they want to develop.</p> <p>Councilmember Bassett noted that, when this first came up, Council had nearly reached consensus to provide them with a domestic-sized water line to an office – one building with just an office, not a business. Councilmember Phinney commented that they've expanded their request. Mayor Check said that it wasn't so much that they expanded as that they were extremely vague, and Ms. Gallagher required them to state exactly what they wanted to do.</p> <p>Mr. Currier reiterated that the parcel that those buildings sit on comprises 400 acres. Ms. Malinowski-Melody noted that they would not have to annex all 400 acres – just the portion that they decide on. Mr. Currier asked if they can split a parcel in that way, and was told that they could.</p> <p>Councilmember Bassett said that the problem with the annexation solution is that a majority of that area has to agree to the zoning and restrictions that they will be under. Several people spoke up about the parcel and its relation to the town.</p> <p>Ms. Malinowski-Melody remarked that the town does not annex, the property owners must apply to be annexed.</p> <p>Mayor Check called the question on the motion to <b>table this discussion</b>, and it was <b>approved by all with 5 ayes, 0 nays and 0 abstentions.</b></p>
<p><b>ITEM #7:</b> <b>9:56 pm</b></p>	<p><b>PROFESSIONAL ENGINEERING SERVICES</b></p> <p>Council may enter into executive session, pursuant to A.R.S. §38-431.01(A)(4), to discuss contract negotiations regarding engineering services for upcoming projects.</p> <p><b>Motion:</b> Vice Mayor Currier made a motion to <b>go into executive session</b>. It was seconded by Councilmember Bassett and <b>approved by all with 5 ayes, 0 nays and 0 abstentions.</b></p>

<p><b>10:10 pm</b></p>	<p><b>Council reconvened in open session</b></p> <p>Staff was directed to discuss upcoming projects with our current engineering firm, including the drainage project through Yavapai County for flood management, and the sewer plant road engineering, and to solicit proposals from them for same.</p> <p>Mayor Check said that it would be pertinent to go back to Item 2 at this time to appoint the Zoning Administrator.</p> <p><b>Motion:</b> Councilmember Hunt made a motion to <b>appoint Rebecca Borowski as Zoning Administrator</b>. It was seconded by Vice Mayor Currier.</p> <p>Ms. Gallagher requested clarification regarding the effective date of the appointment and the starting salary. Following a brief discussion,</p> <p><b>AMENDED Motion:</b> Councilmember Hunt made an amended motion to <b>appoint Rebecca Borowski as Zoning Administrator, effectively immediately, at a starting salary of \$30,000 per year</b>. Vice Mayor Currier amended his second.</p> <p>Mayor Check called the question and it was <b>approved by all with 5 ayes, 0 nays and 0 abstentions</b>.</p>
	<p>Vice Mayor Currier requested permission to make <b>an informational announcement</b>. Ms. Gallagher said that it should be okay but Council cannot discuss it.</p> <p>Mr. Currier said that there has been discussion around town about <b>the reopening of the mine</b>. A Canadian company has been selling shares; he thinks it has to do with the West Jerome Mine. It would be just above Walnut Springs. He talked to Chip Davis about it and he didn't know anything about it. Mr. Davis had his secretary look into it and she contacted Duff Sorrells, who said that that goes on all the time – it is just exploratory stuff. If Mr. Sorrells is not correct, he said, the size of the mine could easily overtake the town. Mr. Currier said that we must keep a close eye on it. If people ask what is going on, it is probably not that significant, but we are paying close attention to it.</p> <p>Vice Mayor Currier added that Paul Handverger, who was the engineer and hydrologist for UVX, is supposed to get back to him about this. Mr. Handverger knows this area really well, he said, and has always been friendly personally and to the town. Mr. Currier said that he would trust his judgment on this question.</p>
<p><b>ITEM #8:</b></p>	<p><b>ADJOURNMENT</b></p> <p>Upon motion by Councilmember Phinney seconded by Councilmember Bassett and unanimously approved, the meeting was adjourned at 10:15 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

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Candace B. Gallagher, CMC, Town Manager/Clerk

Date: \_\_\_\_\_