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# TOWN OF JEROME

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

## MINUTES

### REGULAR MEETING OF THE JEROME TOWN COUNCIL

**JEROME CIVIC CENTER - 600 CLARK STREET - COUNCIL CHAMBERS**

**TUESDAY, SEPTEMBER 13, 2016, AT 7:00 P.M.**

<b>ITEM #1:</b>	<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><i>Mayor Currier called the meeting to order at 7:00 p.m.</i></p> <p><i>Town Manager/Clerk Candace Gallagher called roll. Present were Mayor Currier, Vice Mayor Freund, and Councilmember Barber. Councilmember Vander Horst was present telephonically.</i></p> <p><i>Other staff present were Fire Chief Rusty Blair, Police Chief Allen Muma and Joni Savage, Deputy Clerk.</i></p>
<b>ITEM #2:</b> <b>7:01</b>	<p><b>PLEDGE OF ALLEGIANCE</b></p> <p>Mayor/Chairperson to lead the Pledge.</p> <p><i>Mayor Currier led the pledge.</i></p>
<b>ITEM #3:</b> <b>7:02</b>	<p><b>STAFF REPORTS</b></p> <p>Written staff reports by the Town Manager/Clerk, Deputy Town Clerk, Utilities Representative, Public Works Department, Building Inspector, Library, Municipal Court, Police Chief, and Fire Chief.</p> <p><i>Mayor Currier noted a reference in Ms. Gallagher's report to logging activity on Mingus Mountain and asked her to contact the Forest Service to find out more about that.</i></p> <p><i>Councilmember Vander Horst requested and received clarification regarding the flow readings at Walnut Springs and Verde Central. The Verde Central reading does not include the Walnut Springs flow, but is in addition to that. Vice Mayor Freund commented that the flow rates are "dismal."</i></p> <p><i>Vice Mayor Freund asked whether a suicide listed on the police report occurred in Jerome. Chief Muma said that it happened out of town. Mr. Freund suggested that future reports indicate, especially for items of that nature, whether the incident happened in town or outside of town. Chief Muma said that he would see if it was possible to create a filter for the report to indicate in town or out of town incidents.</i></p> <p><b>Motion:</b> Vice Mayor Freund made a motion <b>to accept the staff reports.</b> It was seconded by Councilmember Barber.</p> <p><i>The motion passed, 4-0.</i></p>
<b>ITEM #4:</b> <b>7:06</b>	<p><b>FINANCIAL REPORTS</b></p> <p>Issued checks and financial reports for the months of July and August 2016. 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>Financial reports for July had been tabled to this meeting, and were included along with the August reports. Because not all of the reports were included in the advance meeting packets, and Council did not feel that they had enough time to review the information, approval of the reports was tabled to the next meeting.</i></p> <p><b>Motion:</b> Vice Mayor Freund moved <b>to table all of the financial reports</b> and it was seconded by Councilmember Barber.</p> <p><i>The motion passed, 4-0.</i></p>

<p><b>ITEM #5:</b> <b>7:08</b></p>	<p><b>PLANNING AND ZONING AND DESIGN REVIEW MINUTES/ RECOMMENDATIONS/ZONING ADMINISTRATOR'S REPORT</b></p> <p>Minutes are provided for the information of Council and do not require action.</p> <p><i>Vice Mayor Freund mentioned that the General Plan Steering Committee had a "fascinating discussion" at their last meeting.</i></p> <p><i>Ms. Gallagher said that the Design Review Board met the night before, on September 12.</i></p>
<p><b>ITEM #6:</b> <b>7:09</b></p>	<p><b>COUNCIL MEETING MINUTES</b></p> <p>August 9, 2016 regular meeting; April 14, 2016 special meeting</p> <p><i>Mayor Currier noted that Councilmembers Stewart and Vander Horst were not present at the April meeting. Councilmember Barber noted that Councilmember Stewart was not present at the August 9<sup>th</sup> meeting.</i></p> <p><i>Mayor Currier referenced the August 9<sup>th</sup> minutes, where during review of the March 22 minutes, Ms. Gallagher said that she would ask other Clerks, via the listserve, how their towns dealt with the problem of multiple utility accounts serviced by one meter. He noted that she had done this, but received no responses.</i></p> <p><b>Motion:</b> <i>Vice Mayor Freund made a motion to approve the minutes of August 9, 2016. It was seconded by Mayor Currier. The motion passed, 4-0.</i></p> <p><i>Mayor Currier noted that Councilmember Vander Horst was not present at the April 14 meeting.</i></p> <p><b>Motion:</b> <i>Mayor Currier made a motion to approve the minutes of April 14, 2016. It was seconded by Vice Mayor Freund. The motion passed, 3-0. Councilmember Vander Horst did not vote.</i></p>
<p><b>ITEM #7:</b> <b>7:12</b></p>	<p><b>PETITIONS FROM THE PUBLIC</b></p> <p>Pursuant to A.R.S. § 38-431.01 (H), public comment is permitted on matters not listed on the agenda but the subject matter must be within the jurisdiction of the Council. All comments are subject to reasonable time, place and manner restrictions. All petitioners must fill out a request form with their name and subject matter. When recognized by the chair, please step to the microphone, state your name and please observe the three (3) minute time limit. No petitioners will be recognized without a request. The Council's response to public comments is limited to asking staff to review a matter commented upon, asking that a matter be put on a future agenda, or responding to criticism.</p> <p><i>Mayor Currier informed the Council that Jay Kinsella would like to speak on the subject of Douglas Road.</i></p> <p><i>Jay Kinsella, a resident of Jerome, stated that it had come to his attention that there was a meeting between the Mayor, Town Manager and Yavapai County representatives regarding monies given to the Town of Jerome. He said that he spoke with Supervisor Chip Davis, and the County was asking for money to redo the State Park Road. "That deal fell through," he said, "which is unfortunate, because there are a lot of vehicles that use that road." Mr. Kinsella said that he agreed with Mayor Currier that Jerome's streets are also in rough repair, but, "subsequently, something happened to where Yavapai County got upset and has now taken away our flood control money for fiscal year 2016 and 2017. ... I am hoping we will not have any floods next monsoon," he said, "because we won't have the County's assistance, which is scary." Mr. Kinsella went on to say that there will be a meeting next week with the new Supervisor who will fill Mr. Davis's seat, and "if everything works out, hopefully we can remedy the situation. ... But the part that is most disheartening, more than anything else, is, Al Palmeri, Jane Moore, Jay Kinsella, Nikki Check, and all the other previous Mayors spent so much time building a good relationship with Yavapai County, and now we have to start over again. For that to happen it is very frustrating. I want to be on record," he said, "this is water under the bridge. We have a five member council and the reason is that the five members should make decisions for the Town." He thanked the Council for their time.</i></p> <p><i>Vice Mayor Freund asked if he could ask a question based on Mr. Kinsella's comments. "No," Mayor Currier replied.</i></p>
	<p><b>Motion:</b> <i>Vice Mayor Freund made a motion to move item 10F forward before the discussion of the ordinances, and it was seconded by Councilmember Barber. The motion passed, 4-0.</i></p> <p><i>Item 10F was addressed at this time, but is reflected in the minutes in the order originally agendized.</i></p>

<p><b>ITEM #8:</b> 8:01</p>	<p style="background-color: #00aaff; color: white; padding: 2px;"><b>ORDINANCES</b></p> <p><b>ITEM #8A: FIRST READING: ORDINANCE NO. 421, AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF JEROME, YAVAPAI COUNTY, ARIZONA, RESCINDING SECTION 10-1-1, "BEES," OF THE JEROME TOWN CODE IN ORDER TO REMOVE THE PROHIBITION ON BEEKEEPING</b></p> <p>Council may conduct the first reading of an ordinance to remove the current prohibition on beekeeping within the Town of Jerome.</p> <p><i>Mayor Currier read Ordinance 421 by title.</i></p> <p><i>Ms. Gallagher explained that, at the last meeting, Councilmember Barber said that she would like to see beekeeping allowed in Jerome. This would require deleting a small paragraph of the Town Code that was apparently added in the 1970's after someone got stung by a bee. This Ordinance would eliminate this prohibition and beekeeping would be allowed once again in the Town of Jerome.</i></p> <p><i>Ms. Gallagher noted that this is the first reading of the ordinance, and it could be adopted at the next meeting.</i></p> <p><i>Mayor Currier said, "For anyone who is pro or against bees, now is the time to get hold of your Councilmembers."</i></p> <p><i>Vice Mayor Freund quipped, "It gives me the hives just to think about it."</i></p>
<p><b>ITEM #9</b> 8:03</p>	<p style="background-color: #00aaff; color: white; padding: 2px;"><b>UNFINISHED BUSINESS</b></p> <p><b>ITEM #9A: RESOLUTION NO. 541, A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF JEROME, YAVAPAI COUNTY, ARIZONA, REGARDING SENATE BILL 1350</b></p> <p>Council will review and may approve Resolution No. 541, recommended by the Jerome General Plan Steering Committee, which would express the Town's desire to "take all necessary action, working with the Arizona State Legislators, Yavapai County Supervisors, and the League of Arizona Cities and Towns, to overturn or amend Senate Bill 1350."</p> <p><i>Vice Mayor Freund said that he sponsored this item, and it is being presented by the General Plan Steering Committee. He then read the following statement:</i></p> <p><i>The Steering Committee, which is presently at work on a new General Plan for the Town of Jerome, at its meeting of August 24<sup>th</sup>, 2016, voted unanimously to submit the attached resolution to the Jerome Town Council for consideration.</i></p> <p><i>The General Plan Steering Committee is appalled by SB1350 and is particularly frustrated by the impact that this legislation will have on the planning process. In taking a wrecking ball to Jerome's long-standing Zoning Ordinance, SB1350, which will take effect on December 31<sup>st</sup>, 2016, the last day of this year, violates language in Jerome's existing General Plan and endangers the Town's future as a community of resident citizens. SB1350 devalues Jerome's right to govern itself and thereby devalues its responsibility and labors to plan for a stable future.</i></p> <p><i>The General Plan Steering Committee strongly recommends that the Jerome Town Council adopt this resolution and work to change or repeal this flawed legislation.</i></p> <p><i>Respectfully, Douglas Freund, Chairman, GPSC</i></p> <p><i>Mayor Currier then read aloud Resolution No. 541:</i></p> <p><i>Be it resolved by the Town Council of the Town of Jerome, Arizona as follows:</i></p> <ol style="list-style-type: none"> <li><i>1. Senate Bill 1350 is not in the best interests of our community.</i></li> <li><i>2. By denying Jerome the right to enforce its longstanding Zoning Ordinance regarding residential use, and by denying Jerome the right to stand by its General Plan, which opposes the encroachment of commercial use upon residential neighborhoods, SB1350 endangers the future of Jerome.</i></li> <li><i>3. The Council of the Town of Jerome therefore stands with other Arizona communities in a desire to take all necessary action, working with the Arizona State Legislators, Yavapai County Supervisors, and the League of Arizona Cities and Towns, to overturn or amend said Senate Bill 1350.</i></li> </ol> <p><b>Motion:</b> <i>Vice Mayor Freund made a motion to approve the Resolution. It was seconded by Mayor Currier. Discussion ensued.</i></p> <p><i>Councilmember Vander Horst asked, "Who is the anticipated audience of this Resolution?"</i></p> <p><i>"Presumably, the State legislature and the Governor," Mayor Currier replied.</i></p> <p><i>"What is the expected outcome of this Resolution?" Mr. Vander Horst asked.</i></p> <p><i>"That they will change their minds, decide that we are the good guys, and repeal SB1350," the Mayor responded.</i></p> <p><i>"You think this resolution will actually have that effect?" Mr. Vander Horst asked.</i></p>

"No," the Mayor replied.

"Then why are we going to antagonize them?" Mr. Vander Horst asked.

"Because they have antagonized our Boards," Mayor Currier said.

"We've got the County angry at us, we're going to get the State angry at us ... what are we going to do about the Federal government, make them mad at us too?" Councilmember Vander Horst asked.

Mayor Currier said, "We have in the past come up against them. In the matter of the ERA, we were the first city in the state to pass ERA. We have passed many other ordinances and resolutions that were not popular, and I don't see anything different with this."

"We don't believe it will have any effect but we're going to do it anyway?" Mr. Vander Horst asked.

Vice Mayor Freund interjected, "We are hopeful that it will have an effect."

"I heard the Mayor say that there's going to be no effect," Councilmember Vander Horst said.

Mayor Currier explained that he said that because he has "no faith in the State Legislature."

Councilmember Vander Horst responded, "We're going to take some action that will antagonize people, that we believe will have no positive benefits to the Town."

Mayor Currier replied, "I don't know that it won't have a positive effect. Sometimes you have to take a position that has its own merits or demerits. In this case, I think it is meritorious to take a position that is hostile to SB1350."

Councilmember Vander Horst said that he agreed that SB1350 is a horrible thing for Jerome, however he is not in agreement with the Resolution.

Resident Jane Moore asked Councilmember Vander Horst if, when the State makes over-reaching rulings that negatively impact communities, the communities should say nothing and just roll over.

"It may be," Mr. Vander Horst replied. "It depends on the circumstances."

Mayor Currier said, "I think there is a difference of opinion here."

Resident Mansel Mathews chimed in, "Tyranny and evil always rule when good men do nothing."<sup>1</sup>

Mr. Kinsella stated that he believes SB1350 was over-reaching, "but with that said, this is a recommendation coming from a group of individuals that has not yet shown the Jerome Town Council anything to do with the General Plan. The reason why the committee was formed was to bring us in compliance with what we want to see in the future. So, before anyone has seen anything with the General Plan, we are already doing Resolutions that have been recommended by this committee and we haven't seen the whole picture yet." He said that he thinks we need to "see the big picture before we jump in with a Resolution."

Ms. Moore said that she sits on that committee, and the meetings are open to the public. "SB1350 undermines everything a town can do," she said.

Mr. Kinsella commented that he had asked to be on that committee and he never received a reply. He said that he asked when the first meeting was and someone was to get back to him, but that never happened, so he "took that as 'thank you but no thank you.'" Mr. Kinsella added that he appreciates all the time that the committee members are putting in, "but it needs to be done. My opinion is we're putting the cart before the horse."

The question was called and the **motion passed, 3-1.**

**ITEM #10**

**NEW BUSINESS**

**8:12**

**ITEM #10A: RESOLUTION NO. 542, A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF JEROME, YAVAPAI COUNTY, ARIZONA, DECLARING AND ADOPTING THE RESULTS OF THE PRIMARY ELECTION HELD ON AUGUST 30, 2016**

Council may adopt Resolution No. 542, to declare and adopt the results of the August 30 primary election.

<sup>1</sup> While approving these minutes, Councilmember Vander Horst recalled having said, at this point, "Oh good. Now we're saying the governor is a tyrant." Mr. Vander Horst was participating by phone, and his comment was not audible on the tape, so this footnote has been added to document the statement he recalled making.

Ms. Gallagher explained that the law requires that Council adopt a Resolution to canvass the vote and declare the results of the election. She reviewed the information included in the Resolution:

- The number of ballots cast was 173. The number of ballots rejected was 7.
- The votes cast for Councilmember were as follows: Hunter Bachrach 103, Christine "Alex" Barber 88, Lew Currier 80, Dwaine Dement 28, Jay Kinsella 105 and Frank Vander Horst 110.
- The Resolution declares that Hunter Bachrach, Alex Barber, Lew Currier, Jay Kinsella and Frank Vander Horst received more than one half the number of valid votes cast for Council member and are thereby elected.
- The Resolution also declares that Proposition 439, Home Rule, was approved by the voters by a vote of 143 for to 20 against.

Ms. Gallagher explained the formula used to determine if someone was elected at the primary. They take the number of total votes that were cast for the office of Council member, divide that by the number of seats to be filled, and divide that number by 2. Anyone who receives more than that number of votes, which in this case was 53, is considered elected at the primary.

Mayor Currier said that he doesn't understand the logic behind that formula, and so he will not vote on this Resolution.

**Motion:** Vice Mayor Freund made a motion **to adopt Resolution No. 542**. It was seconded by Councilmember Barber.

The **motion passed, 3-0, with one abstention.**

Mayor Currier called a short break. At 8:17 he called the meeting back into session.

8:17

**ITEM #10B: BURN PERMITS**

Fire Chief Rusty Blair will seek direction from Council regarding the issuance of burn permits within the Town of Jerome.

Chief Blair said that he has received complaints about burning in the Gulch due to the smoke; however, he said, it is "really not feasible for the Firewise program to continue without issuing burn permits." He requested direction from Council giving him permission to issue burn permits, and to conduct Firewise program burning to mitigate fuels. "It would be very difficult for anyone to remove all the fuels out there," he said. "There are huge amounts." He added that it is too labor intensive, and not feasible, to haul all of it to the burn pile.

Mayor Currier expressed concern about people with health issues. This was discussed at some length. Chief Blair noted that burn permits are issued all over the State, and the Forest Service burns constantly. Entire communities are sometimes inundated with smoke. "This is a crucial function in order to mitigate these fuels in order to make it a safer community," he said.

Vice Mayor Freund asked if it would be possible for the Chief to work with individuals that have health concerns, and who are expressing a concern about burning, to schedule burns in advance and notify them. Chief Blair said that this would be difficult. There are red flag days where there is too much wind, and he must decide at the time if conditions are right for burning. It is too unpredictable to schedule in advance, he said, and sometimes he will receive a request to burn the same day.

Resident Jane Moore suggested a phone tree.

Councilmember-elect Hunter Bachrach asked if it would be possible to issue a 24-hour permit. Chief Blair said that he was not certain if that would be feasible, as there are many factors involved.

Tracy Freund, a resident, asked if Chief Blair could ask the permittee to contact their neighbors. The Chief replied that he could ask, but would have no control over whether or not they actually do it.

Vice Mayor Freund suggested soliciting through the newsletter a database of people with health issues. It would be their responsibility, he said, to contact the Town. Then, whenever anything comes up in that neighborhood, he could contact that individual beforehand. Chief Blair agreed that this would be a feasible solution. He could notify them and suggest that they evacuate for the day, or go to the Fire Station.

Chief Blair added that we do have Forest Service burns right above us. Usually the piles that we are burning are short-term and low-impact compared to burns by the Forest Service, he said.

8:27

Mayor Currier expressed support for the Vice Mayor's suggestion.  
 Ms. Gallagher recapped: Chief Blair has permission to burn and issue burn permits anywhere in Jerome, and in the meantime, we will solicit information from our residents, to determine which of them with health issues want to be notified.  
 Mayor Currier clarified that they should have a medical issue. Chief Blair shouldn't have to notify them unless it is medically necessary, he said.

**ITEM #10C: COUNCIL VACANCY**

Council will discuss the vacancy created by the resignation on September 1 of Councilmember Abe Stewart, and may make an appointment to fill that vacancy for the remainder of the unexpired term.

Mayor Currier explained that State statute says that Council SHALL appoint someone to fill the vacancy. "I was thinking we might ask one of the new Council members to join us and get his feet wet," he said. "I thought about Hunter Bachrach."

Councilmember Vander Horst said that Council should appoint the person who got the most votes. He may accept or decline, and if he declines, they could go to the next one. Councilmember Barber said, "That sounds fine."

Vice Mayor Freund said that he would like to table the appointment. "Appointing someone to Council is a weighty matter and we should solicit applications," he said.

Councilmember-elect Jay Kinsella, who received a higher number of votes than Hunter Bachrach, said that he appreciates what Councilmember Vander Horst has said, but added, "I would tend to ask Hunter if he would like to step in. If he doesn't, I will jump in."

Mr. Bachrach said that he would welcome the opportunity.

**Motion:** Mayor Currier made a motion to nominate **Hunter Bachrach for the seat and appoint him effective immediately.** It was seconded by Councilmember Vander Horst.

The **motion passed, 3-1.**

Mayor Currier administered the Oath of Office to Hunter Bachrach, who took his seat on the dais.

The Mayor then declared, "We have a full Council."

8:32

**ITEM #10D: LEGAL SERVICES – TOWN ATTORNEY**

The contract with Bill Sims of Sims Murray Ltd. has recently expired. Council will discuss whether to enter into a renewed agreement with Mr. Sims or to issue a Request for Qualifications for legal services.

Councilmember Vander Horst commented that he would have liked for this to come before Council before the contract expired. Mayor Currier agreed, and asked if Mr. Jolley's contract had expired also (see Item #10E). Ms. Gallagher confirmed that both contracts had expired (in May and June).

Councilmember Vander Horst said that he is very comfortable with and appreciative of Mr. Sim's legal advice and would like to retain him.

Mayor Currier asked if he would like to make that a motion.

**Motion:** Councilmember Vander Horst moved to **retain Mr. Sims as Town Attorney.**

Ms. Gallagher noted for the record that Mr. Sims has agreed to continue at the same rate he has charged since beginning his service to the Town in 2011, \$195 per hour.

Mayor Currier **seconded** the motion.

Vice Mayor Freund said that he would like to discuss this in executive session. Ms. Gallagher explained that the attorney would need to be present, yet he is the subject of the discussion, which creates a dilemma. "I don't think he needs to be present in this case," Mr. Freund said.

Ms. Moore noted that Councilmember Vander Horst has, in the past, for example with the Town Engineer, suggested that professional contracts be put out to bid, and asked him why he is not doing that at this time. Councilmember Vander Horst said that this was not true in every circumstance - we just renewed with Contract Waste Water, he said, with no consideration of anybody else.

"There is no requirement that we be consistent," Mayor Currier said.

"That is one of the reasons I want these things done before they expire, not after," Mr. Vander Horst said.

Councilmember Bachrach asked, "Is there a reason why we wouldn't want to renew Mr.

Sim's contract?"

"There might be," Vice Mayor Freund responded and added that he would prefer to discuss that in executive session.

At this time, Ms. Gallagher sent a text message to Mr. Sims to ask if Council could enter into executive session without his being present, and awaited his response. In the meantime, discussion continued.

Ms. Moore said that she respects and likes Mr. Sims, however there are times that she felt he didn't understand the community, and that we are not like other towns. She said that she would like to find someone that understood the Town better.

Councilmember Barber said that she is impartial on the issue. "I think he has done a good job," she said, "but I also agree with Ms. Moore."

Councilmember Bachrach asked, "Other than the lack of 'small town lawyer feel,' are there any issues that have occurred in the past that would preclude Mr. Sims from having his contract renewed?"

Vice Mayor Freund said that they would not preclude it, but he agrees with Ms. Moore and feels that we should find someone "with a better understanding of our Town."

Councilmember Bachrach asked if Mr. Sims has a good understanding of the law.

Mr. Kinsella asked Vice Mayor Freund if his opinion has to do with Mr. Sims' view on land use. "In part," the Vice Mayor responded, "but it also has to do with a specific situation that arose and how he handled it. That is something I can't talk about."

Mr. Kinsella stated, "It is pretty well documented that Bill Sims is the second best land use attorney in Arizona. The best one is Grady Gammage." He said that their views are "not necessarily everyone's cup of tea," but he and Mr. Gammage have been summoned to testify in various places throughout Arizona. Compared to some of the attorneys we've had, Mr. Kinsella said, "he seems to have worked out."

Mayor Currier noted that newly-appointed Councilmember Bachrach is not as familiar with the situation. "I think the whole issue with Mr. Sims hinges on the vacation rentals," he explained. Ms. Moore shook her head "no." "Maybe I've over-simplified," the Mayor said.

Councilmember Vander Horst said that he understands the Vice Mayor's issue, but he feels it should have been dealt with at the time and not now. "I don't know why Vice Mayor Freund is making an issue about this now," he said. "It has never come up in a previous council meeting." "I think it would be appropriate now to discuss it," Mr. Freund said.

Councilmember Vander Horst reminded Council that there is a motion and a second on the floor. "I would, if appropriate, rescind my motion and make a different one," he said, and asked if that is allowable. Mayor Currier said that he thought it would be allowable.

Ms. Gallagher informed Council that she had received a text response from Mr. Sims. This agenda, she said, will only allow a closed session with the attorney for legal advice. Mr. Sims suggested that the discussion could be re-agendized for the next meeting as a personnel discussion, then he would not need to be present.

Councilmember Bachrach asked if that would leave the Town without an attorney. Mayor Currier explained that he would continue as our attorney in the meantime. He then asked Councilmember Vander Horst if he would like to reconsider or rescind his motion.

**Motion:** Councilmember Vander Horst said that he would, and would like to make a motion **to table this until the new Council comes in.**

Mayor Currier rescinded his second of Councilmember Vander Horst's first motion and he **seconded Councilmember Vander Horst's second motion.**

Vice Mayor Freund noted that he would not have any input at that time, "which makes the e-session moot."

The **motion passed (item tabled), 3-2.**

8:46

**ITEM #10E: LEGAL SERVICES – TOWN PROSECUTOR**

The contract with Andrew Jolley of Prescott Law Group, PLC, has recently expired. Council will discuss whether to enter into a renewed agreement with Mr. Jolley or to issue a Request for Qualifications for prosecutorial services.

Mayor Currier noted that Mr. Jolley would continue at the same rate of pay.

**Motion:** Vice Mayor Freund moved **to reappoint Andrew Jolley as Town Prosecutor** and it was seconded by Mayor Currier.

The **motion passed, 5-0.**

7:16

**ITEM #10F: SLIDING JAIL AND SUBSIDENCE AREA**

Council will review a letter received from the Jerome Historical Society regarding that portion of the property deeded to the Town by the Society in 1964 which is currently barricaded and closed to the public due to a subsidence. The Society indicates in their letter that, unless the Town resumes using that property to provide "recreational facilities for the general public," they will demand that the title revert to the Jerome Historical Society. Any or all of this discussion may take place in executive session with the Town Attorney (who may participate telephonically), pursuant to A.R.S. § 38-431.03 (A)(3) and (A)(4).

*Councilmember Vander Horst said that he will recuse himself from the Council on this matter because his property is below the area that is sliding. Any comments he makes will be as a citizen, and not as a Council member, he said. He added that he checked with a legal advisor and this is possible.*

*Mayor Currier said that the Council has always intended to re-develop the subsidence area around the sliding jail. The minutes show that, he said, as well as the actions of the Council. "As soon as the subsidence began," he said, "we sent in the crew to secure the area and brought in the engineers to consider how to handle the situation. The crew put in many hours, not just putting up fencing but also searching for line breaks and other contributing problems that might be causing the slide. We located a few breaks and repaired them. The culvert off of Queen Street was re-worked and upgraded to eliminate issues there. Bringing in engineers costs money, but we happily paid that in order to get a handle on the events. We brought in our town engineers, county engineers, state engineers and Freeport engineers. We came up with a short-term plan and a long-term plan. The short-term plan was simple – wait until the situation stabilized, and all of the engineers agreed. We fenced off the area to protect the public and kept monitoring things. The long-term plan came out of the Drainage Master Plan – it is to remove the failed roadway, reconstruct Queen Street, replace and re-route the drainage culverts and raise Queen Street to divert the flow away from the neighborhood. That is the recommended way to proceed; unfortunately, the cost was estimated at \$450,000. It's not impossible, that's about the cost of putting the tanks on Sunshine Hill. It's not something we can do overnight. Now, the Historical Society is demanding we do something immediately or they want the property back. It's not clear what we're supposed to do to satisfy them other than to take the fence down." He added, "I expect that most of us want the same thing – a bit of green park and some more parking."*

*The Mayor went on to say that "we can't just give them the property – perhaps the Society is offering us a graceful way to improve the situation." He added that he would be surprised if they really want the entire parcel back, and said "maybe we can find some kind of compromise." "I am open to suggestions," he said. "They have an interest, and the funds. I doubt, however, that they have the \$450,000 that is needed." He then turned the floor over to Allen Muma, President of the Historical Society.*

*Mr. Muma said that the Historical Society got involved because many of its board members have said "we have to do something." He explained that this property was given to the Town by the Historical Society in the 1960s so that it could be used for parking. Now, it is shut down and causing problems for the town. "The Sliding Jail, which is a jewel of the Town, a historical artifact, looks horrible sitting down there in this bowl."*

*Mr. Muma went on to say that:*

- The fill there was not properly placed. It should have been benched and compacted in layers, making sure that the fine and coarse fills were mixed properly. The "bowl" was not lined with any type of impermeable membrane, so the fine fill all washed away, leaving just the coarse material. The coarse material was dumped there during construction at the Grand Hotel, when they were allowed to dump large boulders there. In addition, none of the vegetation was removed, which created a "slip line." When the cracks formed, water seeped down into those and compromised the entire area.*
- The Historical Society just wants to see the property "go back to how it was." They are not interested in creating additional parking at this point. They want to see the Sliding Jail become a park and the parking that was there before put back. "We believe that we can do that," he said. "We don't have the same restrictions as you do."*
- They have talked with their attorneys and, he said, "it is clear in the deed that the property is to be maintained and we think it is lacking that right now." He stressed that "it is not to say that we won't work with somebody," but added that he has*

Board members that "are pretty livid over the whole thing." "I think we can do something together where we can get it back and do something that benefits the city – and that is a park and parking rather than how it is fenced off."

- "We are not trying to rebuild Queen Street," he said. "Our intention is to grade it so that water sheds off that property, which was never done before."

Mayor Currier opened the floor for questions.

Vice Mayor Freund said that he had a different perspective, and read aloud the following statement:

"Ever since the Jerome Historical Society deeded certain properties to the Town, and that was 1964, the use restrictions of that deed have been honored. Portions of the deeded property have been used for parking, basketball and volleyball courts, picnic areas and retaining walls. It is appropriate that these uses are largely open, since the deeded property is at the epicenter of a subsidence and slide area that has bedeviled the Town since the late 19<sup>th</sup> century. The great slide that swept away dozens of buildings on the East side of Main Street in the 1930's passes directly through the lower park. The new slide is not in fact new.

When the current slide in the lower park began to move, the Town immediately sought an explanation. The Town was reminded of a Geological Study prepared by Paul Lindberg and Associates, which was presented at the 56<sup>th</sup> Highway Geology Symposium in 2005. This study was precipitated by discussions in 2002 between the Town and ADOT, regarding a proposed rest stop and bathroom in Middle Park, which was never adopted. This study includes a map from a prior 1988 study which describes the current slide as being in the rapid slide area. From the mid 1930's on, this slide area was gradually refilled with dirt, rubble and debris. The most recent fill was done at the tail of the slide zone, the area which is presently failing, to extend that part of the lower park to provide additional parking spaces. This fill activity was done without engineering and despite the history of the area.

From reading the 2005 report, it appears that the Town was fortunate indeed that the present slide has occurred gradually and that no lives or property were threatened. The present failure might have been far more dangerous if precipitated by a seismic event. The immediate proximity of the Verde fault and other faults in the region increase the likelihood of minor earthquakes. Therefore, any development and use of the rapid slide area is an invitation to liability. To fill a dangerous slide area and load it with tons of parked vehicles is a mistake, which the Town cannot allow to be repeated. The estimated costs to mitigate any threat of landslide in this area, if even possible, is hardly justified by restoring a relatively small number of parking spaces.

This area should be put to other use which minimizes the liability threat, yet honors the deed restrictions imposed in 1964. One such use could be a Town Garden. I invite the Historical Society to partner with the Town in determining the best possible use of the lower park slide area, which will protect the health and safety of Jerome's residents and visitors, without subjecting the community to liability risk. Such redevelopment does not require that the citizens of Jerome give up their parks, playgrounds and picnic areas to the Historical Society."

Councilmember Barber said, "We like green parks and not parking lots. A community garden sounds awesome."

Mayor Currier recommended that representatives of the Historical Society and the Town meet together to discuss the matter. Chief Muma agreed.

Mr. Muma then asked the Vice Mayor about the results of ADOT's inclinometer readings near the sliding jail. Vice Mayor Freund explained that the inclinometers are both currently outside of the slide area. The slide is getting closer and closer to the inclinometer that is in the lower park. The problem isn't in the entire area, he said. Mr. Muma stressed again that the Society is not trying to increase the parking.

Vice Mayor Freund stated that the parking lot is a relatively recent use of that space, and asked Jane Moore to comment. Ms. Moore said that there has once been a trail that went down from the Sliding Jail area to behind the Powder Box Church. In the late 1980's or early 1990's somebody started dumping dirt in there and that path was obliterated. There had been some parking, she said, but not to the extent it was after the dirt was dumped in. She has tried to remember how all that dirt got dumped there. It was unbeknownst to Councils as well, she said, and never should have been allowed. Ms. Moore said that she believes that parking should not be allowed around the jail, and hopes that the Historical Society could work with the Town and leave the property under the Town's ownership.

Jay Kinsella said that, at one time, you could access Rich Street from near the House of Joy. He commented that Jack Guth brought in dirt when he was part of the Parks and Rec department. The Town has encroached up to 30 feet on private property, he said. He also noted, for the record, that the Town sold a piece of that deeded property to his sister-in-law many years ago.

Regarding the inclinometers, Mr. Kinsella said that he was there when ADOT was doing the last readings. There is movement in that area, he said. The inclinometers were put there in

1998 and, since that time, the ground has moved 7/8's of one inch in an east-southeast direction. The ADOT engineer couldn't tell him if there was any further movement because they were gathering information at the time.

Being a neighbor of this property, Mr. Kinsella said that "having a greenbelt would be wonderful." "The Sliding jail is one of the cornerstones in this Town," he said. "It has great history. The jail isn't moving. Having that open, where people can enjoy lunch in the park, is a great idea." He added that, as an employee of the Society, he would be happy to sit down with the Town and work something out.

Mr. Muma added that a part of their plan includes a walking trail in front of the Sliding Jail. "All we want to do is see the parking that was there, say, five years ago," he said. "We want to see the Sliding Jail and parking on the right side as you face the basketball court."

Mayor Currier asked if they have a drawing. "We aren't going to spend the money until we know what we can do," he said. He spoke of other projects that the Historical Society has done, and said "We don't have the cumbersome issues that the city has. We just want to get something done and if the Town can't, then we're going to. We don't want to get into a legal thing, we're just trying to come to a solution."

Mayor Currier agreed. "I think we're all trying to do the same thing," he said.

Carol Yacht, a resident, thanked the Town for maintaining Middle Park so nicely. She said that it is good to hear talk about a green space near the Sliding Jail. She suggested that historical placards could be placed there, and some benches. Parking, however, might be a problem, she said. "According to the geologists' report, we have a lot of movement around there, and I would like to see it as a park."

Fire Chief Rusty Blair said that he worked on the Sliding Jail project in 1987 when they poured the concrete around it. The jail has a huge foundation with beefy retaining walls. "If it moves, it will be in one chunk," he said. He added that he has photos that show the natural grades.

Cynthia Barber, a resident of Jerome, stated that, in 1991 and 1992, there was a volleyball court down there. There was a natural wall that kept the balls from going to the Powder Box Church. Then they started moving dirt there.

Donna Chesler, Vice President of the Chamber of Commerce, read a letter from the President of the Chamber recommending that the Town allow the Historical Society to take over this area<sup>2</sup>. She went on to say that she thought greenbelts, gardens and trails are all fantastic ideas. She thinks everyone could work together to make this happen.

Mayor Currier said again that he thinks we all want the same thing. "The question," he said, "is how do we achieve it?" He noted the importance of repairing the drainage there, which will be very expensive.

"It's not cheap," Mr. Muma said, "but we don't think it's undoable. I've talked to our engineer." The Mayor said that he would like to see something from their engineer.

Mr. Muma replied, "We get into a quagmire whenever we get into government. The government is bound by a lot of restrictions that we're not bound by." He spoke of the importance of doing a risk assessment. He noted that "we go through life risk-assessing everything. Without doing a risk assessment in crossing the street, we wouldn't live our lives. ... If there's a one in a billion chance that something would happen, is that a good trade off?"

Mr. Muma said that he is not willing to "spend a bunch of Historical Society money and then get into a quagmire with the Town where nothing gets done. It is not fair to kick it down the road to another Council."

Mayor Currier said, "In the long term, \$450,000 is not going to come our way, so that situation will sit there as it is. We might stick a tree in or we might do better fencing ... On the other hand, if we ignore the engineers' reports that we've got with the problem of drainage on Queen Street ... Mr. Vander Horst is going to suffer with water running into his yard."

Mr. Muma said that he is not going to ignore the engineering report.

"Then are you going to fix that?" the Mayor asked.

"If we have the property, then that's what we're going to have to do," Mr. Muma replied.

"Okay, that's what I want to hear," Mayor Currier said. He said that he would like to schedule a meeting between Town and Society representatives as soon as possible. As Mr. Muma will be away until early October, Ms. Gallagher was asked to arrange a meeting as

<sup>2</sup> The Chamber's letter is included at the end of these minutes.

soon as possible after his return.

Jane Moore stated that she does not want the Town to give the property back to the Jerome Historical Society. She would like to see the two entities work together on this. Mayor Currier encouraged everyone in Town to let the Council know what they think. Hunter Bachrach, a resident and a Councilmember-elect, said that the Historical Society is here because of inaction by the Town. "I don't remember the exact date of the collapse," he said, "however it's been some time ago. Unless the town makes it a priority, then the Historical Society would like the opportunity."

Mr. Muma commented, "This wasn't my idea; a number of people brought this to their board.... Community members have brought it to us because they see what we can do. It is not an individual's idea here. We try to do what's best for the Town."

"I believe you," Mayor Currier said. Mr. Muma expressed hope "that we can have a committee meeting and get somewhere with that." "If not," he said, "we'll decide what our next course of action is."

Mansel Mathews, a resident, said that he agrees with Mr. Muma and asked if it just needs to be dug out. Mr. Muma explained that there was never a drainage plan in place. He reviewed the mistakes that were made in this area, and said "I just want to see something happen, rather than an ugly fence." Mr. Mathews asked if it would be possible for the Historical Society to take only the parcel they want to work on. "Those are the details we have to work out," Mayor Currier said.

Mr. Muma stated that he does not believe that the Society needs to reclaim all of the property.

Dave Hall, a resident, suggested that the Historical Society wouldn't necessarily have to own that property. "If they have money," he said, "they could do a grant with the Town ... do the development and yet not own it."

Mr. Muma stated, "We gave the property to the Town and it has not been maintained."

"It wasn't like they didn't do anything," Mr. Hall said. "It's just that there is a spot there where a lot of mistakes were made, granted. The Town and Historical Society have always worked together. This letter almost seems adversarial." He repeated that there may be a way to make it happen without the Society actually owning the property.

Mayor Currier agreed that the Town has always worked together with the Historical Society and said that we should continue to work together. Addressing Hunter Bachrach, Mr. Currier said, "It looks like we haven't been doing anything, however the reason we haven't done anything is that the movement has not stopped. ... The engineers have told us we should wait until it is stable. We can't send in heavy equipment if it is going to collapse further, that would be suicide. We all want to get this thing out of the way." The Mayor noted that, in 1936, there was a huge collapse in the middle of Town and they dumped all the debris in that location. He added that he believes that the Sliding Jail is sitting on a "shelf" of some sort.

Mr. Muma explained that their initial plan is to dig a trench so that a soil engineer can look at it and say this is a good plan, or this is not a good plan.

"I believe that is a wise course of action," Mayor Currier said.

Chief Blair noted that the property in question is comprised of several parcels.

Vice Mayor Freund stated that there are photographs of bore samples they took of the content of the soil in 2005. "I still think we should look at alternatives that aren't costly," Mr. Freund said.

"Well, we disagree," Mr. Muma replied.

"Trying to stop nature and this slide is a fool's errand," the Vice Mayor said.

"It was a fool's errand to dump tons and tons of fill in an area without any kind of a plan," Mr. Muma replied. He said once again, "We're not trying to add cars, I want to make that clear. One of the biggest things is keeping the water out of the cracks. We will continue to have movement until that is packed properly. Let's get together and have a meeting and see what comes from that."

Mayor Currier asked for some sort of a conceptual drawing.

"I want people to see what we envision," Mr. Muma said. "Our vision is six or seven years ago, how it looked. The jail wasn't in a bowl. The parking that was there six years ago. The Historical Society does not want to add parking but get back the historical artifact there, Improving it so that the public can use it in another way -- a walking trail, a fitness trail, and a natural amphitheater.

<p><b>8:48</b></p>	<p>Mr. Muma thanked the Council for their time and said, "we'll get a report back for the next Council meeting."</p> <p><b>ITEM #10G: EXECUTIVE SESSION</b></p> <p>Council may enter into executive session to discuss with the Town Attorney (who may participate telephonically), pursuant to A.R.S. § 38-431.03 (A)(3) and (A)(4), a claim filed against the Town with the Equal Employment Opportunity Commission by former employee Roy Shelly.</p> <p><b>Motion:</b> Vice Mayor Freund moved <b>to go into Executive Session</b> and the motion was seconded by Councilmember Barber.</p> <p>The <b>motion passed, 5-0.</b></p>
<p><b>ITEM #11</b> <b>9:27</b></p>	<p><b>TO AND FROM THE COUNCIL</b></p> <p>Council may direct Staff as to items of pending importance that they would like placed on a future meeting agenda.</p> <p>Councilmember Bachrach said that he was happy to be on the Council.</p> <p>Councilmember Vander Horst said that he would like a report from our engineers about their efforts at getting grants for us.</p> <p>Ms. Gallagher said that she had discussed with them their coming to a meeting and making a presentation; however, we would be paying them for that. The grants they came up with so far are the CDBG and the Freeport grant, which we are already working with, as well as one more she could not recall offhand. She said that she would ask for a written report, rather than have them come to a meeting, which would cost hundreds of dollars. "That would be fine," Councilmember Vander Horst said, "but I'm concerned they are not living up to the expectations they had set for themselves." Mayor Currier agreed.</p> <p>Vice Mayor Freund suggested that we provide a list of projects and see if they could find grant money for them.</p>
<p><b>ITEM #12</b></p>	<p><b>ADJOURNMENT</b></p> <p>Upon <b>motion</b> by Vice Mayor Freund, seconded by Councilmember Barber and unanimously approved, the <b>meeting was adjourned at 9:32 p.m.</b></p>

Edited by Town Manager/Clerk Candace Gallagher from minutes taken and transcribed by Deputy Town Clerk Joni Savage.

APPROVE:

ATTEST:

\_\_\_\_\_  
Lew Currier, Mayor

\_\_\_\_\_  
Candace B. Gallagher, CMC, Town Manager/Clerk

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