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TOWN OF JEROME, ARIZONA

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MINUTES

SPECIAL MEETING OF THE JEROME TOWN COUNCIL JEROME TOWN HALL, SECOND FLOOR TUESDAY, NOVEMBER 14, 2017, AT 4:00 P.M.

<p>ITEM #1:</p>	<p>CALL TO ORDER/ROLL CALL/PLEDGE OF ALLEGIANCE</p> <p>Mayor/Chairperson to call meeting to order.</p> <p><i>Mayor Vander Horst called the meeting to order at 4:00 p.m.</i></p> <p>Town Clerk to call and record the roll.</p> <p><i>Town Manager/Clerk Candace Gallagher called roll. Present were Mayor Vander Horst, Vice Mayor Kinsella, Councilmember Bachrach, Councilmember Barber and Councilmember Currier.</i></p> <p><i>Also present were Kyle Dabney, Zoning Administrator; Joni Savage, Deputy Clerk; Allen Muma, Police Chief; Henry MacVittie of Contract Wastewater Management; and Bill Sims, Town Attorney.</i></p> <p>Mayor or Mayor's designee to lead the Pledge of Allegiance.</p> <p><i>Vice Mayor Kinsella led the pledge.</i></p>
<p>ITEM #2: 4:01</p>	<p>ABATEMENT OF PUBLIC NUISANCES</p> <p>Town Attorney Bill Sims will advise Council regarding options for abatement of public nuisances, and civil vs. criminal penalties. Prosecutor Andy Jolley may participate in the discussion as well. Some or all of this discussion may take place in executive session, pursuant to A.R.S. § 38-431.03 (A)(3) and (A)(4).</p> <p><i>Mr. Sims distributed a copy of a document from Al Sengstock (who had been the previous Zoning Administrator) dated 2015 to all Council members. "The question becomes," Mr. Sims said, "to what extent do you use the criminal process to respond to your neighbors' infractions? Is the goal penalty or remediation?" Criminal penalties, he said, are "almost your exclusive remedy" under our existing Code.</i></p> <p><i>Mr. Sims provided two examples from another jurisdiction where criminal penalties were used. In one instance, a gentleman was cited who doesn't mind going to jail. He was cited, went to jail, was happy there and nothing happened to abate the nuisance. In another instance, a woman had hundreds of cats, some of which had died and were creating odor problems for the neighbors. They used criminal penalties, and the nuisance abatement statute allows a Town to address public health and safety matters. A police officer forcibly removed her from her home and removed the cats, and the Town lost a huge lawsuit as a result. "Even though the statute said that you could summarily abate a public nuisance," Mr. Sims said, "our courts were offended."</i></p> <p><i>Mr. Sims noted that this discussion is not about a specific homeowner, and said that when staff contacted him to ask what to do about a dilapidated building, he had noted that "as with almost everything with your Code, you have four or five different options, none of which refer to each other and all of which are inconsistent."</i></p>

"We're going to talk about that," he went on to say, "and talk about the two core options, civil and criminal. Steven Polk, from the Prescott Law Group, will help us to understand the distinction between civil and criminal prosecution." Mr. Sims said that Sections 108 and 109 of our Zoning Code puts it on the Zoning Administrator to police things, and then to kick it over to the Prosecutor. "The only option," he said, "is to cite one of your neighbors criminally, and that will be on their record permanently. The question is, 'Can we do something different?'"

Mr. Sims commended the work done previously by Mr. Sengstock, who had looked at other jurisdictions to see how we might use a judicial process, and work through the issues with property owners as opposed to going to court. This would require amending the Code to include the deterrent of a criminal prosecution, but precede that with the remedial measures of a hearing officer. "The best solution," he said, "is that is your public employee would talk to the property owner and say 'you are violating our Code, we'd like you to remediate.' If it happens, end of story it works. If that doesn't happen, what would the next step be? Mr. Sengstock's recommendation, and my recommendation, is take it to a hearing officer Eventually it could be appealed to the magistrate, but I would rather have a hearing officer first. If the goal is not to throw your neighbors in jail, but to address the dilapidated building, then the right course of action is the hearing officer, and then, if it fails, you go to criminal." Mr. Sims asked Mr. Polk to explain what happens if it goes to criminal court.

Stephen Polk, an attorney with the Prescott Law Group, replied, "It starts with either the police officer doing a direct citation in criminal court, or it can be referred to the Prosecutor's office. It starts as a criminal misdemeanor case. At that point, the Municipal Court issues an Order to Appear, and that's what legally requires the defendant to show up for court. If the defendant does not appear, then we can request a Failure to Appear warrant, which can either be citywide or statewide. In criminal court, that's our advantage – we can force them to appear. The other advantage is prosecutorial immunity, so there is no issue of a lawsuit.

There was a brief dialogue between Mr. Sims and Mr. Polk regarding the use of a "long form" versus having the court determine probable cause.

Mr. Sims asked Mr. Polk to explain the difference between civil and criminal prosecution. Mr. Polk replied that civil penalties are only fines, with no jail time. Also, criminal prosecution requires evidence "beyond a reasonable doubt," which civil prosecution does not.

Mr. Sims said that, if Council opted not to go with a hearing officer, after addressing the problem with the property owner, the next step would be going to the Prosecutor. He said that he spoke with Andrew Jolley, the Town Prosecutor, and he could act as a hearing officer to solve the problem; however, we would end up creating a criminal record for our neighbors. Mr. Sims asked Council where they would like to take the Town regarding addressing any sort of infractions, for example a dilapidated building, if they do not respond to Mr. Dabney's requests for compliance. "I am a fan of the hearing officer," he said, "and not a fan of dragging people into criminal court."

Police Chief Allen Muma addressed Council to say that this is the third time this has been brought up since he's been employed here. He currently operates under a set of procedures adopted in 2009, which, he said, is similar to what Mr. Sims has described, except that there is no hearing officer. He recalled that, at the time, Council preferred not to utilize civil penalties because of lack of immunity and the potential for awarding sizeable attorneys' fees. He provided written information to Council.

"We're just the police," Chief Muma went on to say. "We're not the Building Inspector or Zoning Administrator. We don't claim that as our specialty, however every time something goes astray, we're dragged into court." He said that everyone should "be on the same page before this moves forward."

Mr. Sims commented, "You shouldn't make a decision based on prosecutorial immunity. That's why you have insurance." He added that there would be indemnity defense for Council and the hearing officer if we were utilizing civil penalties.

Chief Muma described how two past building inspectors have asked him to cite people for building code violations. In one case, he said, he actually had to write the report for the building inspector, and he shouldn't have to do that. The existing policy, he said, guides them through the process so that the Prosecutor has all the information he needs. He recalled instances where someone was cited, got into pre-trial, and, in lieu of going forward in court, agreed to pay double fees for a permit or put things back the way they were. "The hearing officer is a good thing in between," he added.

Mayor Vander Horst asked for thoughts from the Council.

Councilmember Bachrach said that he believes a hearing officer would be useful as a reminder of what's coming next.

Mr. Sims said that a hearing officer would give us the first step. "You have to rely on the Zoning Administrator to be out in the community and speak to property owners to rectify noncompliance," he said. "If it fails, then it goes to the hearing officer, and if that fails, then to the Prosecutor."

Councilmember Bachrach asked Mr. Sims how often we would need a hearing officer.

Mr. Sims responded, "You could share one with Camp Verde or Cottonwood. I think you could have one on call." He added that the Verde Valley towns work well with each other, and said that the Camp Verde model is a good one, triggering the hearing officer when the matter can't be solved internally. "Sometimes you need litigators to go to war with you," he said. "Think how much time you spend going to court. A hearing officer would be much better than employing teams of lawyers."

Councilmember Currier asked how small claims courts fit into this system.

Mr. Sims said that he believes that this is beyond the jurisdiction of small claims court.

Councilmember Currier recalled that, during the time he served as Town Clerk, there was a building that needed some help, and the Town took the property owners to small claims court. "We won and nothing happened," he said.

Mr. Sims replied, "That's because, if they don't have money, small claims wouldn't work."

Councilmember Currier said, "If the police aren't the hammer, is there a hammer someplace else? When you run into resistance, the other side hires attorneys and then you're in a big suit. We were worried about the counter attack and we were threatened by several people capable of putting up a good fight, and the Council backed off and ignored it. That is reality, that's what happened. I don't see how what you're suggesting will solve anything. It doesn't give us another hammer."

Mr. Sims replied, "Your criticism is valuable. If we truly are litigating, odds are they don't have the resources to maintain the property. Can we cost effectively interpose a level above Kyle, prior to the prosecutor and Chief, to see if the hearing officer can induce cooperation?"

Councilmember Barber recalled that, during a prior discussion, Prosecutor Andy Jolley felt that this would be better, because "we thought throwing our neighbors in jail was not what we wanted to do." She agreed that we should be trying different avenues.

Vice Mayor Kinsella concurred that he doesn't want to give somebody a criminal record, but added, "At the same time, we have to have teeth." He said that we have been dealing with this issue for years, and he would like to figure out what we can do. He said that he believes that, if the Town attempts to resolve the issue by, first, a discussion with the Zoning Administrator, and then with a hearing officer, before going to court, the judge would say that the Town has bent over backward to try to work it out, and would be more apt to rule in the Town's favor.

Mr. Sims said that using a hearing officer would require an amendment to our Code to establish the procedure.

Chief Muma said, "If the Zoning Administrator or hearing officer doesn't work, then you end up in court." He repeated that, in a civil proceeding, the Town could be forced to pay attorneys' fees if we lost, and added that, in a criminal proceeding, the charge would be a misdemeanor and would not go on people's records. "It is not a horrible thing," he said, "and it's a way to solve a problem." He added that, over the past 19 years, he has seen it get to the prosecution phase only three times, and added, "I would be willing to bet, based on the past 20 years, that the chance we would get to a hearing officer would be 50/50, and less than that to get to a prosecutor." He added that it "doesn't cost that much to go to trial." He said that using a hearing officer would just add another step, and would not be changing the ordinance.

Mr. Sims said, "There are instances where public health and safety would need to get to the prosecutor. I don't think that the Chief and I are disagreeing, but I believe the current code does not allow a civil prosecution in the magistrate court, it only allows criminal." He added that we do have to report misdemeanors.

Mr. Polk agreed and said, "We do create a criminal record every time you've been charged with a misdemeanor." He added that Mr. Jolley has a lot of discretion to work with homeowners, and one tool is the deferred prosecution agreement. It works by putting the criminal case on hold for six months, and if the problem is fixed in that time, the case is dismissed. They are not convicted of the crime, he said, however they do have a criminal record as having been charged with a crime. One step below that would be the civil remedies. "As soon as you start the case," he said, "you do create that first record of being charged with a crime."

Mayor Vander Horst said that he is very interested in efficient remediation that is fair to everyone. "I wish we could go through the process without ever going to prosecution," he added.

Mr. Sims spoke of a case that Mr. Dabney and Ms. Gallagher have called him about involving a dilapidated building. "There is a nuisance abatement statute," Mr. Sims said, "that allows you, the government, without going to court, to give them 30 days notice to clean up the property, and if they don't, you as a government have a right to use public funds and remediate the property and then put a lien on the property. The beauty of the statute, that isn't in your ordinance and we need to fix, makes that lien a priority over everything but taxes.

Mr. Dabney said that he made a call to the property owner and discussed options. The owner's response was that there is nothing he can do, and he has the property listed for sale. It's a financial issue and he can't afford to do anything with it. Mr. Sims commented that the neighboring property owner worked out an agreement with that property owner.

"When you end up with me, the prosecutor or the chief," Mr. Sims said, "it's too late. The direction would be, if you wish, to direct us to come back with a hearing officer model, while preserving the criminal prosecution as a fallback. There, we have a process in place and when a problem arises, Mr. Dabney talks to them. We begin with the process of solving it."

Mr. Sims went on to say that, if we have a property where the owner isn't willing to listen and they have no money, the nuisance abatement statute is a viable alternative. "The second action item," he said, "would be to amend your Code and get it closer to the state statute."

Councilmember Currier asked, "Are you saying we don't have that now?"

Mr. Sims explained that we would not be able to place a lien without changing our ordinance.

Mr. Wolstencroft, the Town Building Inspector, pointed out that there are provisions in the adopted Property Maintenance Code that would allow us to place a lien.

Mr. Sims explained, "The problem with that is that it requires a Board of Appeals with people with professional competence to hear the appeal. No offense to the five of you, but I'm not sure you could hear the appeal." He explained that the statute requires that the board

members must have professional expertise in the area, or be engineers.

Councilmember Currier asked about using Camp Verde's Board of Appeals. "I'm their Town Attorney," Mr. Sims replied, "and we wouldn't use that because it's complicated." He explained that if there is a loan on the property, it takes precedence over the lien in that instance, but under the State statute, our lien would take priority over the home loan.

Mayor Vander Horst invited comments from the public.

Dave Hall, a Jerome resident, said that he is "dealing with a property that fits this description." He said that the condition of the property in question is "like a rat's nest," and presents a health and safety issue in a neighborhood where plague was found two years ago. He recommended that Council adopt this provision. "I think this is serious," he said, "and I could go to County Health, or an attorney. This property owner agreed to have it cleaned up in 30 days, and that was two years ago. There's been an ongoing process for quite a while now. I'm concerned that, if someone were hurt, there might be some legal liabilities."

Mr. Sims said, "If you could identify a public safety issue, that would probably go to Chief Muma and then go to prosecution."

"I'm trying to work with the owner," Mr. Hall said. "My main goal is to clean up the mess that has been there forever."

There were no comments from other members of the public.

Councilmember Bachrach said, "It is very important that we have a clear, concise and consistent procedure for handling this. By adding the hearing officer, the Town demonstrates they are giving everybody a fair shot. ... This gives everyone a clear procedure, and gives the homeowner a clear idea of what's coming up next."

Mayor Vander Horst asked Mr. Sims to outline the steps, and whether the lien is placed before or after the criminal proceeding.

Mr. Sims replied that the lien is completely independent of the criminal proceeding. He explained that there are two steps. He will send Mr. Dabney language (from Camp Verde) to amend the Town Code to provide for a hearing officer that will allow for a step above the Zoning Administrator. He will also "call around and see if we can't find a team of hearing officers." Secondly, he believes we should amend Section 109 of the Zoning Code to allow for civil matters to be heard.

Mayor Vander Horst asked if criminal prosecution would still be an option.

"Yes," Mr. Sims replied, "and you need to have that. ... The other action to is amend 7.9.1 to allow the Town to take advantage of State statute 9-499 that allows you, after appropriate notice and without judicial intervention, to abate the nuisance, only if the Zoning Administrator or the Building Inspector fail." He said that he wants us to have a priority lien. The judge would get involved when we try to foreclose.

Vice Mayor Kinsella said, "If we have a standard operating procedure, everyone is treated the same and we have the steps in place."

Councilmember Currier asked for clarification regarding foreclosure. Mr. Sims responded, "If they didn't pay you back, you would need to foreclose. You would be a lender and in order to get paid, you would need to foreclose."

Councilmember Currier said, "The point of the thing is to get the property cleaned up, and I wouldn't have a problem sitting on it if we have the money."

Mayor Vander Horst said, "I don't want to foreclose on anybody, but we need to have the option."

Mr. Sims agreed, and said, "You don't have to foreclose, but you have the right to, and you do accrue interest."

Mayor Vander Horst asked Mr. Sims if he had direction.

Mr. Sims responded that he did, and believes it will be a team effort. He added, "You have a great team and I enjoy working with them."

ITEM #3:
4:47

ZONING ORDINANCE AMENDMENTS

Town Attorney Bill Sims and Zoning Administrator Kyle Dabney will discuss with Council certain possible amendments to our Zoning Ordinance, including requirements for parking in the commercial zone. Some or all of this discussion may take place in executive session, pursuant to A.R.S. § 38-431.03 (A)(3) and (A)(4).

Mr. Sims said that Mr. Dabney is identifying problems and trying to solve them. It was noted that there have been five Zoning Administrators since Mr. Sims began representing the Town.

Mr. Sims continued and said, "We'll be talking about parking tonight, and there are two components, residential and commercial." Our minutes, he said, show that we have been wrestling with parking problems for years, and Chief Muma has told Council that he can't solve that without a permit process in the residential areas. He thinks the new ordinance will work.

"What I'll be talking about," he said, "is parking in the commercial district. Roughly 20 years ago, you imposed a parking requirement." He spoke of nonconforming use rights, and explained that if there was a business in the C-1 district when the ordinance was passed, our ordinance says that they can't change the use without meeting parking requirements. New businesses, he said, would have to provide parking. "The question arises," he said, "should we revisit parking in the C-1 zone?" He asked Mr. Dabney for an example of a building that is only partially occupied and is unable to expand their use due to the current parking requirements.

Mr. Dabney replied, "Nellie Bly has vacant space. If they opened up the extra space, then they would be required to provide parking, which they can't."

Mr. Sims said, "We have to be more studious in enforcing the nonconforming use regulations, and I don't think that we have been."

Mayor Vander Horst clarified that a new business would not have to provide parking if they were utilizing an existing space without a change in use. Mr. Sims agreed, and said that he was referring to new construction.

Mayor Vander Horst asked, "Is there really anything to keep a fast food restaurant or a Sunglass Hut from moving into Jerome if it is not a change of use?"

Mr. Sims said that he believes we could require a CUP, but he would have difficulty challenging the use. He said that Sedona has imposed Design Review. "They have turquoise golden arches in Sedona," he said. "You could make it so painful that it can't be done. ... It would very challenging. If you have a vacant building that doesn't require any modification, I would argue that going from a hamburger joint here to a franchise would be such a significant change of use that it would have to be done via Design Review."

Mayor Vander Horst asked about Starbucks. Mr. Sims replied, "That would be tough," and added that he does not believe McDonalds would locate here because our population is not large enough.

Councilmember Currier posed a scenario about adding a deck on Main Street.

Mr. Sims said that would be reviewed by the Building Official and the Zoning Administrator. "In America," he added, "we preserve property rights. As a government, you can impose restrictions carefully."

Councilmember Bachrach said, "All we have to do is go to Sedona and realize we don't want to live in that environment. I'd like to live here without it turning into Sedona. I think the commercial parking ordinance keeps them away. If Pink Jeeps came here today, we

probably couldn't keep them out legally. The rules that we think will protect us from franchises are not engraved in stone. I believe our goal is to keep Jerome the way it is. Jerome has an environment you just can't get anywhere else. ... That's why we live here. How do we achieve that?"

Mr. Sims responded, "Don't make parking easy. Parking limits your growth." He added that Sedona grew large enough to support the franchises. "I honestly believe," he said, "that the smallness of Jerome will protect us from franchises."

Returning to the prior discussion (**Item #2**), Councilmember Currier asked if it would be useful to amend our ordinance to create a financial penalty for leaving a house empty for a length of time. This has been done in Florida, he said. Mr. Sims said that, if the house is in a dilapidated state, we could abate it, place a lien against it and sell it. "That's how you would solve that problem," he said.

Mayor Vander Horst opened the floor to the public.

Mary Wills said that she and Sally Dryer own the Sullivan building. The cost of saving a historical building is at least 50% more than tearing it down and rebuilding, she said, and added, "We can only use about 25% of our building, so there is no incentive to restore if you can't use it."

Joey Steiner, who identified himself as someone who will be starting a business in the Verde Valley in the next 12 to 18 months, said that he understands that we don't want franchises here, "but when you have a business that can't expand, you're making it hard for the small business owner. You're also cutting yourself short on tax revenue, which would help the whole Town of Jerome out. It seems very hard for the local independent business to get through the whole process."

Crysta Mullen, who did not identify herself further, said that she would like to make sure that our parking ordinances keep franchises out, but not other small businesses.

Anne Conlin, a resident and business owner in Jerome, said that she agreed with what she was hearing and has no enthusiasm for franchises, but as a building owner, she would like a little more flexibility for building uses. She feels the current parking ordinance freezes certain uses in place. "While the businesses might evolve, the uses aren't permitted to evolve," she said.

Mr. Sims noted that the speakers support expanded use into a vacant portion of an existing building. "Right now you can't do that," he said, "but if you amend your Code, all three of them can go into their additional space and not be required to add parking." He referred again to franchises and said that they could be considered a change in use.

Carol Wittner-Rolland, said that she has owned a building on Main Street since 1982. She talked about the building that she rebuilt and said, "We can't do anything else because of the parking issue. I believe it hurts the Town and causes a lack of tax revenue. It's a building of almost 4,000 square feet. If we could do more, it could help the Town. I would like to see the parking ordinance amended."

Jane Moore, a resident and business owner in Jerome, stated that if you change a use to another use that requires the same amount of parking or less, then you can change it. However, if you take a shop and change it into a restaurant, you would have to require more parking. "A restaurant causes a higher parking impact that could impact everyone else in Town," she said. "You should take that into consideration." She recalled that, in 2004 or 2005, Council looked at an "in lieu of fee" where, if somebody wanted to change or expand the use, they would have to provide additional parking to help the town. It was only for existing buildings. "I want to see people use their buildings," she said, "but high impact restaurants, bars and hotels are hard on the community."

Mayor Vander Horst said, "That won't help Mary and Sally." The additional space in their building has been unused for over six months, he said, "so according to our current Code, it would require parking."

Kelly Foy, a resident, said that she understands how people want to use their buildings and have more versatility. "My concern," she said, "is Jerome has had this ordinance in place to control the growth. I don't know how we can adjust the parking. It is already chaotic and overflowing into the residential area." She said that she is afraid that, if we change our parking ordinance, we will not be able to keep franchises out. Ms. Foy added that she was happy to hear about the residential parking permits, and would like to see that enforced.

Doree Christensen, a resident of Jerome, resides on School Street. She said that she sympathizes with people uptown who can't use their buildings, but wonders how that would affect her street. "If restaurants, hotels and bars are on School Street, you'd have a mess," she said, and added that she brought that up because there are residences in the C-1 zone, which she feels protects the area. "I feel a use can't be changed," she said, "but perhaps choose the uses that are the least impactful. That means a cost analysis for the different types of uses."

Dave Hall, a Jerome resident, said that last three or four Zoning Administrators have identified four areas that are at capacity: sewer, water, parking and streets. "I agree that the parking ordinance needs some tweaking," he said, and added that it is "one of the tools we have to control these systems." "We need to get a plan in place," he said. "If we get too many people in town, how can we deal with them?"

Sally Dryer, a Jerome resident and business owner, asked if there could be a discussion on a case-by-case basis regarding use change for historical buildings. "Would there be a way to restrict growth but encourage people to restore historical buildings?" she asked. "I get the impact that restaurants and bars have. The most horrifying thing for me would be to see a franchise in Jerome."

Councilmember Bachrach asked Mr. Sims to comment, and Ms. Dryer clarified that she is asking if change of use could be restricted to just historical buildings.

Mr. Sims responded, "You could do that. ... The Council, as the drafters of the Code, could say that, for all historical buildings with excess space, we will allow a change in use to occur and not lose nonconforming use status. The argument would be that you're preserving a historical building. ... Allowing development without requiring more parking could be done quite simply by allowing a change of use." Mr. Sims added that it would be important to limit the scope of the change of use, as it could have an indirect consequence when a franchise approaches.

There was a brief discussion regarding the zoning of the Sullivan building, and Mr. Sims said, "We can't change the zoning."

There followed a brief discussion regarding scenarios for change of use and the parking requirements for wine tasting establishments.

Mr. Sims said, "You as a Council could say that you want the Code changed so that a change of use wouldn't cause the loss of grandfathered rights. Currently, it would ... and they would have to provide parking. I'm hearing from constituents that they want to be freed up from some of the parking constraints. What you could do is loosen up the restrictions on changes of use."

Mr. Sims read from the existing Code, "A nonconforming use of a building shall not be changed to another nonconforming use whatsoever. Changes in use may only be made to a conforming use."

Councilmember Bachrach said that he would be very hesitant to change the Code without understanding the complete impact of this change to the entire town.

Margie Hardie, a Jerome resident, noted that Passion Cellars is moving to a building that was a clothing retail shop and is now a wine tasting retail operation. "No change of use, no additional parking," she said.

Mr. Dabney confirmed that this was true for the interior space, but noted that the patio space was different.

Ms. Conlin spoke again to point out the previous change of use at the new Passion Cellars location, from Town Hall to a retail shop. "Maybe those instances illustrate the wisdom of possibly taking a really close look at this change-of-use trigger," she said, "and maybe that's not sensible or necessary to achieve the Town's parking laws."

Maybe those instances illustrate the wisdom of this change of use trigger," she said, "and maybe that's not sensible or necessary to achieve the Town's parking laws."

Ms. Gallagher asked if it would it be possible to say that existing buildings could expand into their vacant spaces and change the use without requiring additional parking, provided that the new use was not a bar, hotel or restaurant.

Mr. Sims replied that this would be possible.

Mayor Vander Horst asked if we could limit that to historical buildings, and Mr. Sims confirmed that we could.

Ms. Christensen spoke again, and said that "in-lieu-of fees" have been a questionable issue in the past. She said that she wonders if we could ask those requesting the change of use to pay something to help a trolley go back and forth between town and the 300 level parking area, and said that she feels we need more regular transit there.

Councilmember Bachrach said, "I believe everyone is pretty clear that we've hit the wall on parking opportunities in this Town. We're talking about the old Town yard, mainly for residential, to alleviate problem areas, but we don't have any other parking available. I've seen people backed up past the Gulch Road ... so, as far as taking funds to promote development of parking, there's no possible way to do that."

"That is a good point," Mayor Vander Horst said. "It has been my observation that there are only five or six days when we run out of parking. I don't think we have a parking capacity problem but a parking location awareness and traffic flow issue."

The Mayor asked if Council would like to speak to the attorney in e-session. "Do we have any direction to staff?" he asked. "Do we want to have a draft ordinance that would address some of these concerns, or do we want to leave things the way they are?"

Vice Mayor Kinsella added, " ... and deal with them again in six to twelve months."

Councilmember Bachrach said that, for him to proceed with any kind of an ordinance, he would need to understand what we're looking at, and he doesn't. "I'd hate to do something and have it turn out it was a really bad idea," he said.

Vice Mayor Kinsella asked, "Do we need to be educated on conforming and nonconforming uses?"

Councilmember Bachrach said that he lives in a C-1 zone, which makes his home a nonconforming use. He added that CUPs are supposed to be reviewed every year. He asked Mr. Sims, "If you said we can't change the zoning ..."

"You can," Mr. Sims interjected. "It has to go before Planning and Zoning. You have to go through the whole rigmarole."

Mayor Vander Horst said, "I do not want to change zoning." He then explained that some nonconforming uses can be allowed with a CUP.

Vice Mayor Kinsella asked Mr. Dabney where he would like to see this go.

Mr. Dabney said that we have had this problem since 1988. "I deal with it almost every day," he said. "Someone comes to me and wants to put in a business, and I tell them no, they can't do it. My thought is to get rid of the parking ordinance in the C-1 commercial district for historic buildings. Any change in square footage or new construction would require parking. But existing historic buildings shouldn't have to, it's unfair. To not be able to use your building, and then be told that you need to correct the building, there's no incentive, because you can't

	<p>use it. I would like businesses to be able to utilize their buildings." He noted that he "goes by the book" and doesn't treat anyone unfairly. "To answer your question," he said, "I don't think franchises should be here. I don't want them to come here. I don't think there is anywhere for them to build and I don't think they <u>want</u> to come here. ... I'd like to help business owners and amend some of these ordinances that don't make sense."</p> <p>Councilmember Currier said that he thinks there is a clash between the needs of commerce and the needs of the residents. "We've got space and business people tend to try and think of ways to make more money," he said. "They come up with pretty good ideas in many cases. But, we already are maxed out on water, sewer, street parking and that sort of thing. We don't want more people. It's not just the parking, it's the clash between business and residents."</p> <p>Councilmember Bachrach said that, while removing this ordinance would serve businesses, it may not serve the residential areas. "Many of the businesses in town don't serve the residents," he said, "so expansion of those would not represent the interests of residents, unless they are business owners. Many of the businesses in town are not owned by residents. I believe, if we modify the ordinance, it would have to serve everyone."</p> <p>Mayor Vander Horst talked about the problems we have experienced due to lack of consistency in the way we have applied our zoning ordinances. "I know of examples where things were just granted variances," he said. "Well, is that fair? I would say 'no.' I believe we should right the unfairness which has occurred in the past."</p> <p>Councilmember Bachrach said that he, Mr. Dabney and Vice Mayor Kinsella sat down and identified four or five buildings that changing the ordinance would affect.</p> <p>Mr. Dabney and Vice Mayor Kinsella clarified that it is actually just four buildings.</p> <p>Councilmember Bachrach said, "For now, but there's no telling what happens in the future." He said that he was concerned that changing the ordinance could create a problem. Mayor Vander Horst reminded him that it could refer only to historical buildings.</p> <p>Councilmember Bachrach asked, "Can you do that?"</p> <p>"Yes," Mr. Sims replied, and added that we would have to show that we were doing that for the purpose of preserving historical buildings that have a direct impact on the community in terms of keeping tourists coming here. "I believe that is perfectly permissible," he said.</p> <p>Councilmember Bachrach said, "That includes the Hotel Jerome, which, if it were turned into a hotel again, would have an impact on sewer, water, utilities and parking. My point is, we have to think it through."</p> <p>Vice Mayor Kinsella said, "I agree with everyone here. I would like to see more constructive conversations and how this can help the property owners in the C-1 zone and, at the same time, not impact the residential area. There is already an impact in the residential area. I see it on School Street, but then I see residents that live in another part of town park on School Street."</p> <p>Mr. Kinsella went on to say, "I don't want to see us drop this," and said that part of the problem is that the rules have not been applied equally in the past. Some people have had to have deed restrictions, and others have not. "You can't do that," he said. "It's just not right. A deed restriction costs around \$400, but to remove it is about \$14,000. The rules should apply for everyone and it has to be even. Fifteen years ago we kicked this back under the carpet and here it is again. ... I would like this Council to resolve this. That's all I'm asking."</p>
<p>ITEM #4:</p>	<p>ADJOURNMENT</p> <p>Upon motion by Councilmember Currier, seconded by Councilmember Bachrach and unanimously approved, the meeting was adjourned at 6:03 p.m.</p>

APPROVE:

ATTEST:

Frank Vander Horst, Mayor

Candace B. Gallagher, CMC, Town Manager/Clerk

Date: _____