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# TOWN OF JEROME, ARIZONA

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

## MINUTES

### SPECIAL MEETING OF THE JEROME TOWN COUNCIL JEROME TOWN HALL, SECOND FLOOR WEDNESDAY, DECEMBER 20, 2017 AT 5:00 PM

<p><b>ITEM #1:</b></p>	<p><b>CALL TO ORDER/ROLL CALL/PLEDGE OF ALLEGIANCE</b></p> <p>Mayor/Chairperson to call meeting to order.</p> <p>Mayor Vander Horst called the meeting to order at 5:00 p.m.</p> <p>Town Clerk to call and record the roll.</p> <p>Town Manager/Clerk Candace Gallagher called roll. Present were Mayor Vander Horst, Vice Mayor Kinsella, Councilmember Bachrach, Councilmember Barber and Councilmember Currier.</p> <p>Other staff present were Kyle Dabney, Zoning Administrator, and Joni Savage, Deputy Clerk.</p> <p>Mayor/Chairperson or designee to lead the Pledge of Allegiance.</p> <p>Mayor Vander Horst led the pledge.</p>
<p><b>ITEM #2:</b> <b>5:01</b></p>	<p><b>AMENDMENT TO NOVEMBER 14, 2017, REGULAR MEETING MINUTES</b></p> <p>Council may amend the minutes of November 14, 2017 to include, as an addendum, information regarding cell towers/sites that had been provided by Jane Moore prior to that meeting.</p> <p>Mayor Vander Horst explained that a citizen asked to include in the November 14 minutes some documents that she had provided to the Council prior to that meeting. Council has already approved these minutes so they would have to be amended. He asked Ms. Gallagher if this is something we've done before.</p> <p>Ms. Gallagher replied that we had not, as we have not had this type of request after the fact. Generally, she said, documents that we include in the minutes are those that were discussed or read at the meeting itself. These were not, which is why Ms. Moore requested that they be referenced in the minutes. All members did receive the documents prior to the meeting, however.</p> <p>Following a brief discussion,</p> <p><b>Motion: Councilmember Bachrach moved to amend the regular meeting minutes of November 14, 2017, to include the information regarding cell towers that had been submitted by Jane Moore. The motion was seconded by Councilmember Barber and unanimously approved.</b></p>
<p><b>ITEM #3:</b> <b>5:04</b></p>	<p><b>COUNCIL REVIEW OF DESIGN REVIEW BOARD ACTIVITIES</b></p> <p>Council will review the discussion of the Design Review Board on December 11, 2017, regarding the request by Liz Gale for the installation of a new sign, and may take action regarding same. Part of this discussion may take place in executive session with the Town Attorney (who would attend telephonically), pursuant to A.R.S. § 38-431.03 (A)(3) and (A)(4).</p> <p>Mayor Vander Horst explained that this review was requested by Ms. Gale regarding her application to the Design Review Board for an interior-lighted sign. Our Code prohibits these, he said; however, there are at two other signs in town that are interior-lighted.</p> <p>Ms. Gallagher noted that the Town Attorney is standing by to discuss this in closed session, by telephone, if Council wishes.</p> <p>Councilmember Currier said that, as he understands it, Council would be acting as Board of Appeals for the Design Review Board. He asked if they would need to adjourn as Council and convene into a special session for this. Ms. Gallagher stated that they would not, and that they are not acting as a Board of Appeals, but as Council. The Code states that Council may</p>

review any decision of the Design Review Board.

Vice Mayor Kinsella noted for the record that he works for an organization for which the Design Review Board approved an exterior sign with interior lighting in 2009. "I am referring to the New State Motor Company," he said.

Mayor Vander Horst noted that the DRB has approved two signs with interior lighting since the sign ordinance was enacted several years ago.

Councilmember Currier asked Vice Mayor Kinsella, "Do I understand that you're recusing yourself?"

"No," Mr. Kinsella replied. "I am not recusing myself."

Mayor Vander Horst asked Mr. Dabney to explain this matter.

Mr. Dabney read aloud his analysis, which had been included in the December 11, 2017 Design Review Board packet and read at that meeting:

"This sign design is identical to property directly behind the building. I have spoken with the applicant and given my views on the sign. The recent, previously approved sign behind the building is clearly a violation of the Zoning Ordinance. "Internally lighted signs shall be prohibited." The statement is clear; however, after reviewing the Arizona State Statutes, I believe the writers of the Ordinance may have been referring to Plexiglas or Lexan signs that are completely lit up from the inside, producing a brightly lit sign. I don't believe a sign like the one being presented here was ever thought of when adopting these ordinances. Again, it is a clear statement, but the Design Review Board approved an identical sign in the recent past. Due to that recent approval, I recommend approval for this project. I have a hard time saying no when an identical sign was approved knowing that the sign was internally lit."

Mayor Vander Horst clarified that the result of the Board's discussion at that meeting was to table the matter, and there was a request that the applicant to go the Board of Adjustment for a variance. Mr. Dabney was asked if either of the other two internally-lit signs (the New State Motor Company – 2009 - and the Haunted Hamburger - 2014) had gotten a variance. He replied that neither had.

Mr. Dabney added that there is only one DRB member still on the board who was there in 2014. Mayor Vander Horst asked if that person was on the board in 2009, and Mr. Dabney did not know.

Vice Mayor Kinsella asked if there had been any discussion at the DRB meeting regarding the Haunted Hamburger's sign.

"Slightly," Mr. Dabney responded. "There was some discussion on that sign versus this sign."

Councilmember Bachrach opined that those who wrote this ordinance may have been targeting blinking signs. He asked, "Would it behoove us to modify our ordinance to include language that would clarify that?"

"Yes," Mr. Dabney responded. He added that he has prepared a draft amendment to the sign ordinance.

Councilmember Currier said that he would like to hear the Attorney's opinion.

Vice Mayor Kinsella commented, "We're discussing two things: one is the complaint from a petitioner, and the other is something in our books that either needs to be changed, revised or removed, because the Town is not following it."

Mayor Vander Horst agreed, and said, "The authors didn't even know about this type of sign when they wrote it." He added that he believes there were three issues with the sign proposed by the Mile High: 1) It was lit internally; 2) the size of the sign; and 3) the question of how many signs are permitted on a business.

It was determined that a sign can be up to 16 square feet, and the size of the proposed sign is 16 square feet.

Mayor Vander Horst asked how many signs are on the building.

Mr. Dabney explained there would be one sign going up and one coming down.

Mayor Vander Horst stated, "We don't have an issue with the number of signs, therefore the only issue is whether it is internally lit, and whether or not it should be approved."

Liz Gale, the owner of the Mile High, pointed out that this is the same sign as that on the Haunted Hamburger.

John Alvey, the maker of the sign, gave a brief demonstration of how the Haunted Hamburger and the sign proposed by Ms. Gale are constructed. The cabinets are made of steel, and the

light shines through exposed areas, creating a halo image at night. "My interpretation," he said, "is that Jerome doesn't want a Plexiglas translucent sign."

Mark Venker, Chair of the DRB, spoke to clarify the viewpoint of the DRB. He said that he perceives that the spirit and intent of our ordinances was to eliminate light pollution. This sign, and the other two examples of backlit signs, use recessed lighting, so there is no direct outward projection. He said that he believes that the goal is achieved of not creating light pollution, and he does not see that as an issue.

Mr. Venker then mentioned the issue of the sign's square footage. Two 16-square-foot sides would be acceptable, he said, but because it is a three-sided sign, the third side he would interpret as an additional sign front.

There followed a discussion regarding the actual square footage of the sign in question, as there had been some confusion about that. The Mayor and Mr. Dabney had believed that all three sides of the sign, taken together, totaled 16 square feet. Mr. Alvey confirmed that all three faces are equal in size, and each face is 16 square feet.

Ms. Gale commented that the New State sign is three-dimensional, and her take is that it is considered one sign.

Mr. Dabney noted that the ordinance reads, "A sign of two sides equals one sign."

Mr. Venker said, "It's great to hear that this ordinance is being looked at. I was going to recommend that action." He said again that he believes that the intent of the original ordinance was to prevent light pollution, and that this sign falls within the realm of what the ordinances are aiming for. He added that, to say "you can't light a sign" would be arbitrary, as there are already spotlights on signs in Jerome.

Councilmember Bachrach mentioned that Council had once discussed a dark sky ordinance. "I looked at the Haunted Hamburger signs last night," he said, "and it dawned on me that I had never really noticed them before, and they are not garish at all."

Councilmember Currier said that he doesn't have a problem with the lighting of this sign, but rather with the number of signs.

Vice Mayor Kinsella asked Ms. Gale how many businesses there are. It was confirmed that there are two businesses – the inn and the restaurant. "Mr. Jurisin has two businesses," he said, "... a t-shirt shop and a restaurant. He has a two double-sided signs in the front, then he has it painted on the side of the building, and then another placard. I counted six sides of signs for two businesses. You're in the same boat and you're asking for a total of four signs."

Ms. Gale confirmed that she would have a three-sided sign, which pertains to the Grill, and would leave the "Inn" sign up on the other side. She added that she would be willing to paint over the "Mile High Grill and Inn" that appears on the front of the building.

Vice Mayor Kinsella recapped: "You have two separate businesses under one roof and you're asking for four signs."

Councilmember Currier suggested that Mr. Jurisin's signs were put up without approval, and Mayor Vander Horst disagreed. "No," he said, "They were approved."

Mayor Vander Horst said, "She has two businesses and is asking for four signs, which is allowed."

Ms. Gale clarified that there is the three-faced sign she is proposing that says "Mile High Grill," the painted sign on the building which says, "Mile High Grill and Inn," and she is leaving a sign hanging that says "Mile High Inn."

John Schroeder, Vice Chair of the DRB, said that he wished to reiterate what he had said at the DRB meeting. "I thought she did a great job designing it and I doesn't find it offensive at all," he said, "but we have a certain way of doing things here in Town and you have to get a variance. And unless we want to change those rules, that is what I have to follow as a DRB member. I think it should be approved by the Board of Adjustment, but as a DRB member I had to vote the way I voted, because that's my job."

Mayor Vander Horst explained to Mr. Schroeder that DRB's appellate board is not the Board of Adjustment but the Council.

Mr. Schroeder said that he thought that the Board of Adjustment was the body that granted variances.

Kevin Savage, a Jerome resident, added his interpretation of the sign ordinance, which had

already been clarified.

Mr. Schroeder said, "My concern was the internally lit part, and I thought it would require a variance, even though it got through in the past."

Mr. Dabney read from the ordinance, "A sign can be painted on one surface or both surfaces." It was clarified that this was part of the 1977 ordinance.

Councilmember Bachrach asked Mr. Dabney, "Are you seeing anything in the ordinance that requires the signs to be extinguished by 11:00 at night or a certain hour, or can they run 24 hours?"

Mr. Dabney replied that he did not.

Councilmember Currier asked, "Is there an objection to hearing the attorney's opinion at this point?"

Mayor Vander Horst said that he wanted to take Ms. Gale's comment.

Ms. Gale said that she plans on turning the light off at 8:00 each night.

Vice Mayor Kinsella said, "I think we all have tough jobs, and if we're expecting the boards to make proper decisions, then we need to take a look and see if things need to be revised and updated. Technology has changed so much." He spoke about the process that the Jerome Historical Society had gone through with the Design Review Board with respect to their lighted sign. The board had suggested using florescent lighting, he said, and they went with LED lighting. He noted that they aren't as offensive as spotlights, which can often be blinding.

Mayor Vander Horst said that he was prepared to call the attorney at this time.

**Motion:** Councilmember Currier made a **motion to move into closed session** and it was seconded by Councilmember Barber. **The motion failed with 2 ayes and 3 nays.**

Mayor Vander Horst and Vice Mayor Kinsella said that they thought it would be good that everyone hears what the Attorney has to say, especially since there were board members present.

Councilmember Currier said, "Taking legal advice in public is a dangerous move."

Ms. Gallagher called the attorney at 5:36 p.m. and explained that we were in open session.

Mayor Vander Horst explained to Mr. Sims about the interior lit sign that the ordinance seems to prohibit, however the DRB has approved two of these signs in the past. He asked what our options are. "Can we, as the Council, approve the sign as the appellate to the DRB?" he asked.

Mr. Sims replied, "You can. Under your Code, you can step in even if the Zoning Administrator doesn't appeal, and you can reject or affirm the actions by the Board."

Mr. Sims explained Council's options here.

"This type of use is prohibited expressly by your zoning code," he said. "The applicant has asked to install a sign prohibited by the zoning code. There are at least two other instances when a use otherwise prohibited has been permitted, and this applicant desires to be permitted. In Arizona, there is case law that allows the government to correct prior action, and so if you wish, one option would be to just say 'no.' I would expect litigation, because the applicant would want to be treated the same. If we go to court, the only winners would be the lawyers."

"Another option," he said, "would be that the applicant would ask for a variance. Others have been granted this right. It shouldn't have been permitted. Again, the applicant would make the request to the Board of Adjustment. ... Neighbors or the applicant could sue. We would have a court decide it with no certainty of outcome other than legal fees."

"The third option, and I think you have the power to take this option, you as the Council could, under your authority after review of the Design Review Board's recommendation ... make your own decision. ... 'In light of the uncertainty regarding prior action, and in light of the potential cost and uncertainty of the outcome, we are inclined to authorize this use conditioned upon one thing, we would like staff to develop a text amendment through the Planning and Zoning commission to narrowly limit the types of signs that could be permitted.' The utility of the third option," he said, "is that you don't cast your lot to the vagaries of a judge, and you can narrowly define the types of signs you permit so that it doesn't run afoul of the nature of the Jerome area. Mr. Dabney and I have a draft that we can run past you if you're inclined."

Mayor Vander Horst asked, regarding the first option, "Where the Council decides to go back

and correct previous decisions made inappropriately, does that mean we have to have those previous signs removed?"

"No," Mr. Sims said, "you can't. They'll argue that they spent money in reliance on prior approvals, and they would win that argument. Now you're holding up this third applicant to a standard you didn't hold the earlier applicants to. If you wish to go down that path, we have lawyers who have litigated that and have won. The downside of that is you may not win, and it is expensive."

Councilmember Currier asked for clarification regarding the second option.

Mr. Sims explained that it is the reverse of the first option. "The first option is to say no," he said. "You can do that under the theory of correcting prior errors. The second option is to say yes, arguing that the applicant would have to apply for the variance. Neighbors could argue that it is inappropriate. The downside of that is we have no idea what the Court would say or how much we would spend. The third option is to narrowly define the kinds of signs you are willing to tolerate."

Councilmember Currier said that, what confuses him is that the second option seems to revert to the Board of Adjustment, which he didn't understand that we could or would want to do.

Mayor Vander Horst said that his understanding also is that the appellate to the DRB is the Council, not the Board of Adjustment.

Mr. Sims said, "You're right, that's what we're doing. ... There may have been some inappropriate recommendations by the DRB about the utility of a variance. The applicant has the power to ask for a variance. That takes it entirely out of this process, kicks it over to the Board of Adjustment and then kicks it to a Superior Court Judge."

Councilmember Currier said, "That's what I don't understand. You're saying that an appeal from Design Review can be sent to the Board of Adjustment."

Mr. Sims responded, "I didn't say that at all. What I said was, if you wanted to go down the path, the applicant could force you down the path of requesting a variance. The downside of that is you lose control and the third option leaves you in control. It allows the use, but conditioned upon you directing Planning and Zoning to come back with a narrowly defined ordinance. Mr. Dabney and I have one we can recommend. Mr. Dabney deserves the credit."

Mr. Dabney distributed the proposed change to the Council members.

Vice Mayor Kinsella asked, "Would this be under the third option, allowing the petitioner to get the sign?" He noted that the proposed language would be added to the section regarding lighting, so that we will not run into this situation again.

Mr. Sims responded, "Exactly. ... If indeed you as a Council grant the applicant's request for the sign, this gives you the ability to say to your constituents, 'It isn't a blank check. We are going to correct the errors of our predecessors, not by asking a court to tell us what to do, but by directing Planning and Zoning to come back with a narrowly defined ordinance that would permit the kind of signs the community would believe may be tolerable for Jerome."

Mr. Dabney referred to Section 509.E.7 and read the proposed ordinance change: "Lighting shall be directed at the sign from an external incandescent light source and shall be installed so as to avoid any glare or reflection into any adjacent street or onto a street or alley so as to create a traffic hazard. Internally lighted signs may only be permitted if the sign is constructed of opaque materials that block the transmission of light except through the apertures in the sign that constitute no more than (a blank percentage to be determined later) of the area of the sign." For example, he said, a sign with internal lighting, that is constructed of steel and has apertures designed to form the image of letters, would be permitted if the area encompassed by the apertures is less than that percentage of the sign. He went on to read, "No sign that flashes or blinks shall be permitted. No visible bulbs, neon tubing or luminous paints shall be permitted as part of any sign."

Vice Mayor Kinsella asked Mr. Venker what he thought of that proposed change.

Mr. Venker responded agreeably.

Mr. Schroeder said that he was told that internally lit signs were not permitted, but not with any of that detail, and that this was never explained at the DRB meetings.

Vice Mayor Kinsella explained that this language is the proposed NEW language, a change to the existing ordinance.

Mr. Schroeder said again that Mr. Dabney had specifically explained in his memo that

	<p>internally lit signs were forbidden by the Town code. "Now I understand that is a little bit different," he said. "It was explained completely different to me during the DRB meeting as opposed to what you're saying now."</p> <p>Councilmember Bachrach explained again to Mr. Schroeder that this is a proposed change to the ordinance.</p> <p>Mr. Sims disconnected at this time.</p> <p>Mr. Venker expressed support for the proposed change. He added that the other "can of worms" is the number of faces on a sign, and what the total square footage is considered to be. "I believe that is a slippery slope," he said, "but I'm sure the Council will weigh in on it. I would like to find a way to limit the square footage allowed. It could easily be exploited. From a business perspective, the more signs I could put out, the happier I would be."</p> <p>Councilmember Bachrach said that he feels that the better the ordinance is defined, the easier it will be for the Design Review Board. He added that "there is a lot we're not covering here. Right now it says 'two-sided,' but somebody will come up with a six-sided sign down the road."</p> <p>Mr. Dabney said that amending the sign ordinance is needed.</p> <p>Councilmember Currier asked, "Is the applicant allowed to go forward and have we resolved the number of signs?"</p> <p>Vice Mayor Kinsella clarified that each business (the Inn and the Grill) would have two signs. He added that the wood sign will come down. "If she left that up," he said, "it would make five signs."</p> <p>Mr. Venker approached the dais with his drawings for the proposed sign placement. He pointed out two signs for the Inn and two signs for the Grill with a total of four signs.</p> <p>Councilmember Bachrach asked for further clarification. This is a three-sided sign, he said, and our verbiage says a sign can have two sides, so a three-sided sign would count as two signs.</p> <p>Council determined that there was consensus on the quantity of signs (four).</p> <p>Councilmember Barber asked Mr. Dabney what SHPO thinks about our signage. "These signs are the reason people say we're turning this town into Disneyland," she said. "People hate the New State Motor sign." She said that she doesn't feel it matches with anything else, and began discussing "dark skies" and unapproved signs.</p> <p>Mayor Vander Horst pointed out that this was not on the agenda.</p> <p>Councilmember Bachrach noted that the area in question is in the commercial zone.</p> <p><b>Motion:</b> Vice Mayor Kinsella made a <b>motion to allow Ms. Gale to put in the sign that she applied for at Design Review, and that the Zoning Administrator, along with Design Review, revise section 509.E.7 to reflect interior lit signs.</b> He added that we should leave "no stone unturned" regarding the sign ordinances, and we should go through them all</p> <p>It was clarified that the Zoning Administrator would work with Planning and Zoning to revise the ordinance, rather than with Design Review, and that there is a member common to both boards that would be knowledgeable about the issue.</p> <p>Councilmember Bachrach seconded the <b>motion.</b></p> <p>Mr. Dabney wanted to be clear that the sign application was being approved "as presented."</p> <p>Mayor Vander Horst called the vote and the <b>motion passed with 4 ayes and 1 nay.</b></p>
<p><b>ITEM #4:</b></p>	<p><b>ADJOURNMENT</b></p> <p>Upon <b>motion</b> by Vice Mayor Kinsella, seconded by Councilmember Currier and unanimously approved, the <b>meeting was adjourned at 6:04 p.m.</b></p>

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

APPROVE:

ATTEST:

\_\_\_\_\_  
Frank Vander Horst, Mayor

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

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