

# TOWN OF JEROME

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

## SPECIAL MEETING OF THE TOWN OF JEROME BOARD OF ADJUSTMENT

DATE: Wednesday, January 22, 2020 TIME: 4:00 pm

PLACE: **JEROME CIVIC CENTER**  
600 Clark St., JEROME, ARIZONA 86331

## AGENDA

Pursuant to A.R.S. 38-431.02, notice is hereby given to the members of the Board of Adjustment and to the general public that the Board of Adjustment will hold the above meeting in Council Chambers at Jerome Town Hall. Members of the Board of Adjustment will attend either in person or by telephone, video or internet conferencing. Upon motion and approval, the Board of Adjustment may recess the public meeting and convene in Executive Session for the purpose of discussion or consultation for legal advice with the Board Attorney, who may participate telephonically, regarding any item listed on this agenda pursuant to A.R.S. § 38-431.03 (A)(3).

### ITEM 1: CALL TO ORDER/ROLL CALL

ITEM 2: **APPROVAL OF MINUTES:** Regular Meeting of November 7, 2019  
**Discussion/Possible Action/ Possible Direction to Staff**

### ITEM 3: **CONSENT TO EXTENDED TOLLING AGREEMENT**

APPLICANT: Windy Jones & Josh Lindner

MAILING ADDRESS: 2549 Haskell Springs Rd. Clarkdale, AZ 86324

PROJECT ADDRESS: 324 Queen St.

ZONE: C-1

OWNER OF RECORD: Cuban Queen Bordello LLC

APN: 401-06-127

The Applicant requests that the Board of Adjustment consent to a 90-day extension of the tolling agreement ("Tolling") to April 22, 2020. The Tolling was previously extended by the Board of Adjustment at their November 2019 meeting to January 23, 2020. The Tolling extends the appeal period regarding the upholding on July 18, 2019, by the Board of Adjustment of the Zoning Administrator's decision that a parking variance granted in 2009 to 324 Queen Street is no longer valid.

### **Discussion/Possible Action/ Possible Direction to Staff**

### ITEM 4: **ADJOURN**

### **Discussion/Possible Action**

The undersigned hereby certifies that this notice and agenda was posted at the following locations on or before 6 p.m. on \_\_\_\_\_.

970 Gulch Road, side of Gulch Fire station, exterior posting case

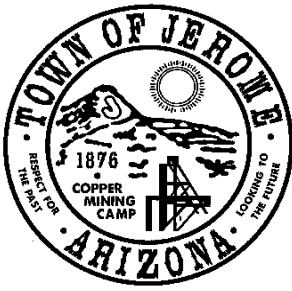
600 Clark Street, Jerome Town Hall, exterior posting case

120 Main Street, Jerome Post Office, interior posting case

\_\_\_\_\_  
Attest - Rosa Cays, Deputy Town Clerk

Persons with a disability may request a reasonable accommodation such as a sign language interpreter by contacting Deputy Town Clerk Rosa Cays at (928) 634-7943. Requests should be made as early as possible to allow sufficient time to make arrangements. Anyone needing clarification on an agenda item may call Jerome Town Hall at (928) 634-7943 and ask to speak with John Knight, Zoning Administrator.

**Jerome Town Hall Located at 600 Clark Street, Jerome Civic Center**



# TOWN OF JEROME

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## SPECIAL MEETING OF THE TOWN OF JEROME BOARD OF ADJUSTMENT

DATE: Thursday, November 7, 2019 TIME: 6:00 pm  
 PLACE: JEROME CIVIC CENTER  
 600 Clark St., JEROME, ARIZONA 86331

## MINUTES

### ITEM 1: CALL TO ORDER/ROLL CALL

The meeting was called to order by Chair Gary Shapiro at 6:04

Members present were Chair Gary Shapiro, Vice Chair Carol Yacht, Suzy Mound, Chris Babbage and Natalie Barlow.

Staff present were John Knight, Zoning Administrator, Joni Savage, Deputy Clerk and Candace Gallagher, Town Manager/Clerk.

**6:04 (00:30) ITEM 2: APPROVAL OF MINUTES:** Minutes of Special Meeting, Executive Session and Regular Meetings of July 18, 2019

#### Motion to Approve the Closed Session Meeting Minutes of July 18, 2019

BOARD MEMBER	MOVED	SECONDED	AYE	NAY	ABSENT	ABSTAIN
SHAPIRO			X			
YACHT	X		X			
BABBAGE		X	X			
BARLOW			X			
MOUND			X			

#### Motion to Approve the 6:00 pm Meeting Minutes with Corrections of July 18, 2019

BOARD MEMBER	MOVED	SECONDED	AYE	NAY	ABSENT	ABSTAIN
SHAPIRO			X			
YACHT	X		X			
BABBAGE		X	X			
BARLOW			X			
MOUND			X			

#### Motion to Approve the 5:00 pm Session Minutes of July 18, 2019

BOARD MEMBER	MOVED	SECONDED	AYE	NAY	ABSENT	ABSTAIN
SHAPIRO			X			
YACHT		X	X			
BABBAGE	X		X			
BARLOW			X			
MOUND			X			

### 6:09 (5:45) ITEM 3: CONSENT TO EXTENDED TOLLING AGREEMENT

APPLICANT: Windy Jones & Josh Lindner

MAILING ADDRESS: 2549 Haskell Springs Rd. Clarkdale, AZ 86324

PROJECT ADDRESS: 324 Queen St.

OWNER OF RECORD: Cuban Queen Bordello LLC

ZONE: C-1

APN: 401-06-127

The Applicant requests Board of Adjustment consent to the extension to January 23, 2020 of the tolling agreement previously approved by the Board Chair, Mayor and Town Attorney. The tolling agreement extends the appeal period regarding the upholding on July 18, 2019 by the Board of Adjustment of the Zoning Administrator's decision that a parking variance granted in 2009 to 324 Queen Street is no longer valid.

6:10 (06:10) Vice Chair Yacht asked if the Board of Adjustment Attorney had been consulted.

6:10 (06:20) Chair Shapiro explained he has spoke with both attorneys regarding the matter of extending the tolling agreement. He feels it is perfectly in order.

6:11 (07:27) Vice Chair Yacht believes that the tolling agreement applies to Item #3 from the last meeting (the appeal of the Zoning Administrator.)

6:11 (07:55) Chair Shapiro explained his conversation with the attorney.  
It was unfair to limit their possibility to litigation

6:12 (08:02) Mr. Knight offered to enlighten her.

6:12 (08:05) Vice Chair Yacht stated she would prefer that Chair Shapiro continue with his explanation.

6:12 (08:10) Chair Shapiro explained further to the Board about the extension and the tolling agreement. This is to clarify their rights and to extend beyond the 90 days from July 18, 2019.

6:13 (09:15) Vice Chair Yacht said she still had questions.

6:13 (9:23) Mr. Knight offered again to clear up some of Vice Chair Yacht's questions. He spoke with Bill Sims today and have been in discussion with the other attorney, Bill Ring. (He handed them a document with three possibilities.) The goal of the tolling agreement is to give staff and the applicants additional time to come up with a solution to avoid going to court.

6:15 (11:16) Mr. Babbage asked why they had received this today.

6:15 (11:18) Vice Chair Yacht thanked Mr. Babbage for asking the questions and then stated she was not happy about getting this information at such a late date. She addressed Mr. Knight saying this is not the way this board does things.

6:16 (12:00) Mr. Knight continued explaining himself. He apologized to them for the short notice he wants to describe the three options.

6:16 (12:27) Vice Chair Yacht asked for five minutes to read the document word-for-word.

6:17 (12:40) Mr. Knight continued by stating there are two variances, the tolling only affects one. The one we are talking about tonight is the subject of tolling. The other variance has been withdrawn.

6:18 (13:30) Vice Chair Yacht asked him to be specific about the variance

6:18 (13:35) Mr. Knight explained it was a decision made to give five spaces back in 2009. The other variance is for five new spaces and it has been withdrawn.

6:19 (14:14) Vice Chair Yacht said the one that has been withdrawn is based on what the Council does, isn't it?

6:19 (14:25) Chair Shapiro explained that in negotiating with the Council, the applicant withdrew the application for the variance. Apparently, they are changing their building plan in an attempt to work with the Town in regard to parking.

6:20 (15:50) Mr. Knight spoke again about parking and it is an item on the next Council agenda.

6:21 (15:57) Chair Shapiro explained why it was removed from their agenda.

6:21 (16:08) Vice Chair Yacht asked, "So it is our attorney's opinion, Bill Ring, that we should make a decision before the changes have occurred?"

6:21 (16:18) Chair Shapiro said, "No, we're just extending them the right beyond the 30 days after the July 18, 2019 meeting."

6:21(17:01) Vice Chair Yacht said again that she needed to read the document. She would like to take a break and read it.

6:22 (17:14) Ms. Barlow asked a question, "You gave us this and the attorney's got together today and these are the three what?"

6:22 (17:23) Mr. Knight said the only thing to deal with tonight is the tolling agreement. We can extend the tolling. The second option is the board can decline the consent. Then the applicants only option is to appeal to the Superior Court. The third option is the Board can table and bring Attorney Ring back to e-session with the Board.

6:23 (18:41) Vice Chair Yacht asked are the applicants withdrawing the variance for parking if the Town agrees to the parking overlay or parking in-lieu-of fee.

6:23 (18:28) Windy Jones, the applicant, explained they had been told they could re-apply for a new variance at a later date. She continued to speak about the parking overlay district.

6:24 (19:30) Ms. Barlow called a Point of Order.

6:24 (19:38) Mr. Knight continued to explain the variance status.

6:24 (19:50) Chair Shapiro talked about when and if an agreement would be made, they would need to apply for another variance if it were off the property.

6:24 (20:05) Mr. Knight doesn't believe they wouldn't need a variance if we work something out with the Town.

6:24 (20:11) Chair Shapiro believes it needs to be on-site otherwise a variance would be required.

6:25 (21:02) Vice Chair Yacht does not believe this is their purview. We need the process to be finished before we accept or don't accept.

6:26 (21:39) Chair Shapiro stated they withdrew the application for the variance.

6:26 (21:47) Vice Chair Yacht said that is not what she read in the MOU and she is unsure if the process is incorrect. "Getting this (document) at the meeting bothers me."

6:27(22:18) Chair Shapiro said to take a few moments to read the document.

6:30(25:55) Vice Chair Yacht read, "Mr. Ring acknowledged that consenting to the tolling agreement would give the parties time to determine if this matter could be resolved. But as the Board's attorney he was not willing to agree that the Board should consent to the tolling agreement."

6:31(26:23) Ms. Mound said if you read on further, he says, "The Town and the applicant could continue with the Tolling agreement and not obtain consent from the Board of Adjustment." She said in good faith she would like to say okay on the tolling agreement. It is in everyone's best interest to agree with the tolling agreement. It avoids a lot of expense for the Town and applicant.

6:32 (27:31) Chair Shapiro concurred with her opinion.

6:33 (27:43) Vice Chair Yacht stated her thoughts are with number three. This process is not following what we did at the last meeting. She believes that Bill Ring should be in attendance. She would like to table this.

6:34 (28:32) Chair Shapiro understands her quandary and agrees that receiving the information only the day before the meeting was troubling to him.

6:34 (28:38) Vice Chair Yacht spoke in detail about her opposition to the process.

6:35 (29:10) Chair Shapiro described his interactions with the attorneys.

6:35 (29:30) Vice Chair Yacht continued to explain her disapproval.

6:36 (30:34) Ms. Gallagher approached the dais to explain the tolling agreement. She agreed that it is very confusing. She explained there was an appeal of the Zoning Administrator's decision, and that was denied. The tolling agreement just extends the amount of time for the applicant. The Town Attorney asked for the Board's consent and it is just simply to have additional time. This has nothing to do with the MOU or a new variance. If there is another request for variance it will come before you if necessary. This is only to give them extra time so that they don't have to go to court.

6:38 (32:45) Mr. Babbage would like to make a motion that we give them the time, consent to the tolling.

6:38 (32:56) Vice Chair Yacht said she would add to it and not leave it open.

**Motion to Extend the Tolling Agreement until January 23, 2020 that Applies to the July 18, 2019 Decision by the BOA of the Zoning Administrators Decision That a Parking Variance Granted in 2009 to 324 Queen Street is no Longer Valid**

BOARD MEMBER	MOVED	SECONDED	AYE	NAY	ABSENT	ABSTAIN
SHAPIRO			X			
YACHT			X			
BABBAGE	X		X			
BARLOW			X			
MOUND		X	X			

**ITEM 4: ADJOURN**

**Motion to Adjourn at 6:42 p.m.**

BOARD MEMBER	MOVED	SECONDED	AYE	NAY	ABSENT	ABSTAIN
SHAPIRO			X			
YACHT	X		X			
BABBAGE			X			
BARLOW			X			
MOUND		X	X			

Approval on next page.

**REGULAR MEETING OF THE TOWN OF JEROME  
BOARD OF ADJUSTMENT**

**DATE: Thursday, November 7, 2019 TIME: 6:00 pm**

**PLACE: JEROME CIVIC CENTER**

**600 Clark St., JEROME, ARIZONA 86331**

**MINUTES**

*Respectfully submitted by Joni Savage on xxxxxxxx, xxxx*

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
*Board of Adjustment Chair*

Attest: \_\_\_\_\_ Date: \_\_\_\_\_  
*Board of Adjustment Vice Chair*

**DRAFT**

## TOLLING AGREEMENT LEGAL DEFINITION:

A tolling agreement is an agreement to waive a right to claim that litigation should be dismissed due to the expiration of a statute of limitations or notice of claim requirement. Its purpose is typically to allow a party additional time to assess and determine the legitimacy and viability of their claims and/or the amount of their damages without the necessity of filing an action. During this period, the parties waive any defense by way of any statute of limitations or notice of claim requirement, which would otherwise arise during such period.