



TOWN OF JEROME

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

MINUTES

SPECIAL MEETING OF THE JEROME TOWN COUNCIL

HELD VIA ZOOM VIDEO CONFERENCE

MONDAY, SEPTEMBER 21, 2020 AT 10:00 AM

<p>ITEM #1: 10:03 (4:46)</p>	<p>CALL TO ORDER/ROLL CALL</p> <p>Mayor/Chairperson to call meeting to order.</p> <p><i>Mayor Alex Barber called the meeting to order at 10:03 a.m.</i></p> <p>Town Clerk to call and record the roll.</p> <p><i>Town Manager/Clerk Candace Gallagher called the roll. Present were Mayor Barber, Vice Mayor Sage Harvey, and Councilmembers Mandy Worth, Jane Moore, and Dr. Jack Dillenberg. Also present were Town Attorney Bill Sims, Town Wastewater Operator Henry McVittie, Town Engineer Krishan Ginige, Mike Krebs of PACE Engineering, Chris Montague-Breakwell of ADEQ, Fire Chief Rusty Blair, Zoning Administrator John Knight, and Deputy Clerk Rosa Cays.</i></p>
<p>ITEM #2: 10:04 (5:18)</p>	<p>POSSIBLE AMENDMENTS TO ZONING ORDINANCE</p> <p>Council will discuss with the Zoning Administrator and Town Attorney possible zoning ordinance amendments, including, but not limited to, amendments regarding setbacks, yard requirements and appeals to Council.</p> <p><i>(6:07) Town attorney Bill Sims clearly stated that this item was not about a specific matter, and if it were, Councilmember Worth would not be participating. He said the Council is to use that previous experience as guidance to amend the zoning ordinance and to address issues that have arisen. Mr. Sims repeated that the discussion is not about a specific project but to move on and learn from the project. He said he had talked to Mayor Barber and Councilmember Moore about things that need fixing in the ordinance; for example, the appeal process for a site plan review was not found in the code. Mr. Sims said he wanted to go through his four questions provided in his memorandum, included in the agenda packet, and that the goal for the session was to give guidance so the P&Z Commission understands the Council's intent is and can come back to the Council with recommendations.</i></p> <p><i>Councilmember Jane Moore brought up the definition for "setback (for access stairs)" in the ordinance, and pointed out that stairs fall under "Accessory features" and "Architectural features and details" (ordinance pages 38-39). She then referred to page 53 and fire escape stairs and what <u>can</u> be in a setback. Ms. Moore pointed out several inconsistencies in definitions throughout the ordinance that need to be revised. She said in some instances, stairs are the only access to a building, and those stairs must go to the lot line or the street. She said nonconforming buildings also come in to play with regard to setbacks. Ms. Moore said she doesn't see how the ordinance can easily be changed because so many references to stairs and setbacks need to be made consistent so that anyone reading the ordinance gets a clear definition. Setbacks and stairways are there for a reason: access and safety. Building and fire codes also need to be considered when it comes to setbacks.</i></p> <p><i>Vice Mayor Harvey agreed that building and fire codes must be part of the review process. Mayor Barber also agreed that the town building official and fire chief should be part of the preliminary site plan review.</i></p> <p><i>(13:48) Fire Chief Rusty Blair said the main issues that come into play are the nonconforming situations. He said anytime an applicant wants to infringe on an already nonconforming situation, there is an issue. He emphasized that fire is his main concern. The Chief said the building codes dictate how a project is built; the zoning ordinance protects the town [as far as parameters are concerned], and that minimum standards are not being met with some of the nonconforming projects. He talked about the confusion of defining front yards and backyards. Chief Blair said he researched setbacks in other local jurisdictions (Cottonwood, Clarkdale, Camp Verde) and shared some of those findings, but Jerome's topography determines what is uniquely best for the town. He shared statistics of fires on the hill versus on flat land, mentioned the 1928 Mexican Town fire as an example of how quickly fire spreads on a slope, and talked about other past fires and damage caused due to poor setbacks. He said the current minimum setbacks are very limited for the firefighters to work with. Chief Blair said current setbacks need to be addressed and wants to come up with a solution, especially in nonconforming situations, to make Jerome a safer community. He said minimizing setbacks is not the answer and that Planning and Zoning should be taking care of this before it gets to him; that code is already in place, and that in all of these nonconforming situations, it worsens his ability to fight fire and protect the community. He said applicants cannot circumvent the zoning code by redefining yards and that safety is the primary concern for Jerome's citizens.</i></p> <p><i>Mayor Barber agreed that the Fire Chief should be a part of the site plan review process.</i></p> <p><i>Councilmember Worth said she wanted to hear from the town attorney to get a synopsis and highlights of his memorandum.</i></p> <p><i>(23:33) Mr. Sims said Chief Blair gave a good argument about public safety, but that the Council has the responsibility of protecting property rights under the US and Arizona Constitutions. He said we have a "collision" of protecting public safety versus property rights and a zoning ordinance that is "ferrible"—the ambiguity needs to be cleared up. He said</i></p>

Ms. Moore gave a good example of how conflicted and incomplete the code is. He said the reason we have this issue is because the zoning ordinance is not clear on requirements for setbacks or access stairs. Mr. Sims offered a solution Council could recommend to the commission: in recognition of fire safety needs, prohibit structures in the setback and require a minimum of five feet. He said that if the ordinance had made it clear that stairs were absolutely prohibited in the setback, then a variance application would have been the logical next step for the homeowner. Mr. Sims went on to say that the town zoning ordinance is hopeless in defining yards. He suggested the Council provide a norm for front, back, and side yards, which would determine the setbacks based on the different yards. He asked if they would like the commission to come back with a recommendation or allow applicants to determine the yards.

Mr. Knight said Ms. Moore did a good job of pointing out the conflicts and ambiguities in our Zoning Ordinance. He said amending the ordinance will take time and be challenging, but ultimately it will help in clarifying the issues with setbacks and other features. He said Section 501 on nonconforming situations is clear. Mr. Knight went on to point out that the code generally allows a minimum of three feet of space between the property line and any structure, but that in some sections it refers to five feet [audio issues here] with allowances for refrigeration units, awnings, etc. He said he also wanted to talk about the appellate process.

Chief Blair said that a lot of Jerome stairs do end up in the setback because they butt against streets and sidewalks, and that between structures three feet is good. He said new structures need a five-foot setback, so ten feet between two new homes. He agreed with Mr. Knight about the setback allowances for awnings and such, but noted that Jerome's code cannot be compared to other towns' codes when it comes to setbacks. He talked again about the firefighting challenges in town and that he'll take as much setback as the code will allow without limiting homebuilders to 200 square feet. Chief Blair brought up stairs and the different kinds in town and said requiring noncombustible materials would be ideal.

Ms. Worth thanked Mr. Sims for his memo and for keeping the discussion cohesive. She went on to say that requiring three feet for a setback is the norm for stairs and suggested the commission delineate requirements for the rehabilitation of stairs for safety and to make the process of applying for a variance clear in the ordinance. Ms. Worth also suggested that required materials for stairs also be defined in the code.

Chief Blair said that regarding property addresses, the fire department has traditionally provided information to Yavapai County, APS, and Unisource so that they can all respond to an emergency in a unified manner. He said there is a process in place for addressing.

Ms. Moore said this will not be an easy fix and suggested continuing the item to another meeting or work session. She suggested Mr. Knight could go through the ordinance where stairs and yards are mentioned and list what needs to be changed. She sees exceptions to the rule for the town, but the ordinance needs to be clear for all applicants. Mayor Barber agreed with Ms. Moore.

Ms. Gallagher said her understanding was that Council was going to give general recommendations to P&Z, but if Council wanted to go through the nuts and bolts of it all, it was up to them. She deferred to Mr. Sims.

Mr. Sims suggested he go through the four points of his memo, and that his understanding was that Council would provide general guidance to the commission and let the Commission do the "heavy lifting"—or the Council could give more than general guidance. He then went through the memo points: 1) The zoning ordinance needs to make clear that there can be no impediment to safety in the setback; that it should be a minimum of five feet and subject to variance; 2) The code could have presumptions about front, back, and side yards on a rectangular parcel, and that for something more vague like a corner or odd-shaped lot, the commission could discuss and make a recommendation to the Council; 3) Clarify the role of the commission when reviewing site plans; he suggested they make recommendations to Council, rather than final approvals. Vice Mayor Harvey said she agreed with Mr. Sims.

Ms. Gallagher restated the question: Do you want the commission to continue making final decisions or do you want them to make recommendations and have the Council make the final decisions on all site plan reviews? Mayor Barber, Vice Mayor Harvey, and Dr. Dillenberg all said they wanted the commission to make recommendations. Ms. Worth said she needed more information to form an opinion.

Mr. Knight said if the P&Z is recommending on projects that go to Council, they may want to distinguish which projects, as the vast majority are small, like gazebos or a small addition. He pointed out that it will create more work for staff and create more time for the applicant to wait. He said for new construction he could see the Council wanting to make the decision.

Ms. Moore wondered if projects involving nonconforming buildings should go before Council as well. Mr. Knight said nonconforming buildings are almost always involved in Jerome.

Mr. Sims said the nonconforming statute exists to protect the property rights of someone who built something before the rules changed. He agreed with Jane that nonconforming projects should go before Council for final decision.

Mr. Sims referred to the list. 3) It was decided that site plans would come as recommendations to the Council; 4) the town code has no consistency for the appeal process—it needs to be fixed. He referred to page 4 of his memo. For the Board of Adjustment, the appellate process is guided by statute, so no need to make any changes to it. For Conditional Use Permits (CUPs), the process is schizophrenic in the code and CUPs are not subject to appeal.

The question is who should have the right to appeal decisions? Right now, the ordinance says anyone. The standard 300-foot limit may not work in Jerome and discussions showed an inclination to extend appellate rights within the jurisdiction if it concerns the town's historic status. He said guidance is needed here.

Vice Mayor Harvey suggested residents (or homeowners and tenants) of Jerome can appeal and to extend the deadline to appeal to 30 days instead of 15 days.

Ms. Worth pointed out that in Jerome, constituents can see and hear much further than 300 feet. She said the Council likely needs legal guidance on how to make the appeal process as inclusive as possible. Mr. Sims said he can easily do that but let the commission grapple with it first and come back with a recommendation.

Ms. Gallagher asked if the Council would want to make the site plan review and design review appeal process the same.

Mr. Sims pointed out in the DRB process that "ethics and design standards" could not be appealed, which does not make sense—that IS design review. He suggested Council go to the commission with a few parameters: do not leave the appellate rights open to the world and perhaps start with the 300-foot standard and customize it to Jerome. Or perhaps Council would like to leave it open so that anyone with a property interest can appeal; the question is how close they must live to the project in question.

Chief Blair pointed out that distance from a structure is tricky in Jerome (vertical distance? As the crow flies?) and that the definition would need to be carefully worded in the ordinance.

Dr. Dillenberg asked if any action needed to be taken in the ten minutes he had before having to leave the meeting.

Ms. Worth said she wanted to make sure residents who live just outside the town limits are not excluded from the appellate process. [audio issues here]

Mr. Sims said this needs to be specifically addressed in the code and that the commission can look at this. He opined that appellants should only be allowed to appeal based on impact to their property.

1:01:06 Jerome businessowner Windy Jones said she was concerned with setting the distance to a mile for someone to have the right to appeal. She said that from experience, this can end up with too many people involved who are not even directly affected by the appealed project. She suggested rather than a mile or the entire town, and that if 300 feet was not enough, perhaps set the distance to 500 feet.

Ms. Moore gave examples of where she was impacted by projects more than 300 feet from her property: the Eagle's Nest, though physically distant, is situated such that sound carries down the mountain to Ms. Moore's home because it is essentially above her property; when ADOT was working on the highway just below the Eagle's Nest, boulders tumbled down into her yard. She said the impact is different in Jerome because of how it's built and that sound carries.

Mayor Barber said Council is considering allowing all residents/business owners in Jerome to appeal because of how the town is stacked and the sound carries; Ms. Moore's examples pointed this out. The mayor said we cannot mirror other municipalities for this reason. She asked the councilmembers how they could move forward on this item.

Vice Mayor Harvey motioned to send this information to P&Z, have Ms. Gallagher clarify where the Council is going with the amendments, and see what the commission comes up with.

Discussion ensued about how to best word the motion. Dr. Dillenberg was willing to second the motion.

Mr. Sims asked for clarification on the number of days an appellant has to submit an appeal; councilmembers said they wanted it to be 30 days instead of 15 days.

Ms. Gallagher asked for clarification on several items to be outlined for the Jerome Planning and Zoning Commission. Regarding setbacks and access stairs: anything without a five-foot setback would require a variance; yards - have the commission come up with definitions for front, back, and side yards and present to Council; the commission will make recommendations for site plan reviews and any nonconforming situations, and Council will make final decisions.

Ms. Worth would like to see smaller projects continue to be handled by the commission. She named a few examples.

Ms. Gallagher asked for further clarification, then continued: The Board of Adjustment appeal process will be left as is; for CUPs, the reference to a CUP appeal will be removed from the ordinance since it is simply a recommendation from the commission and not subject to appeal; for site plan reviews, the commission will make recommendations, and the process should be consistent for P&Z and DRB appeals, with P&Z recommending who has a right to appeal without leaving anyone out whose property would be impacted.

Mr. Sims added that aesthetics and design should be appealable, and that the only person who can currently appeal a DRB decision is the applicant. He said the commission needs to discuss and change this.

Jane suggested that anyone who lived within 300 feet of a project, or whose property would be directly affected by it, would have the right to appeal a site plan review decision.

[Mr. Sims, Chief Blair, and Dr. Dillenberg, left the meeting at this time.]

Motion to present the proposed ordinance changes to P&Z for their consideration and recommendation to Council

COUNCILMEMBER	MOVED	SECONDED	AYE	NAY	ABSENT	ABSTAIN
BARBER			X			
DILLENBERG		X	X			
HARVEY	X		X			
MOORE			X			
WORTH			X			

ITEM #3:
11:14 (1:15:15)

WASTEWATER TREATMENT PLANT: AZPDES PERMIT

Council will discuss with our engineers possible changes to the AZPDES permitting for our wastewater treatment plant in light of the new Federal Navigable Water Protection Rule (NWPR).

[A short break took place between items as the Council waited for participants of this item to rejoin the meeting.]

(1:15:53) Mike Krebs of PACE referred to the memo from PACE in the agenda packet and the new requirements under the Federal Navigable Water Protection Rule (NWPR). He described a scenario comparable to Jerome's where it is unknown if a waterway is connected to a Water of the US (WOTUS). Mr. Krebs said ADEQ is unsure if Jerome's wastewater treatment plant connects to the Verde River, which is a WOTUS, and want Jerome to make the determination. Council can decide whether to continue to be monitored by ADEQ under its AZPDES permit.

Mr. Krebs spoke of the copper and ammonia levels in Jerome's effluent, which are currently in excess of AZPDES permit limits. He continued to address points made in his memo and went over the pros and cons of keeping or eliminating the AZPDES permit, including the financial ramifications and possible changes in requirements, which would likely be more stringent. His recommendation was to continue with the project and the permitting. He said a self-testing protocol was another option, but not the best option.

Mr. Krebs spoke of the reasons PACE would recommend continuing with the AZPDES permit process listed in the memo.

(1:29:53) Town Engineer Krishan Ginige from Southwest Environmental Consultants added that there are certain unknowns, so before the town changes course, we need to understand why we would be doing that and what the process would be to come back under the permit if that became necessary

Henry MacVittie said he agreed with the description from Mr. Krebs and the consideration for Bitter Creek being a WOTUS. He stated that, based on a simple definition he was given, anytime Bitter Creek is flowing enough to reach the Verde River, especially after a good rain, it would be treated as a WOTUS. Mr. MacVittie said he has been in the Verde Valley for 20 years and after a good 1- to 2-inch rainfall, it would be easy to float a wooden boat down Bitter Creek to the Verde River. He feels it is not worth dropping the AZPDES permit.

Ms. Gallagher asked if there was a limited time within which we are able to withdraw from the permit.

Mr. MacVittie read the comment Chris Montague-Breakwell of ADEQ posted in the Zoom chat feature: that Jerome could withdraw from the permit at any time.

Ms. Moore asked for clarification: if Jerome had good enough quality effluent to reuse, with an injection well for example, the town would not need this permit, and Mr. Krebs confirmed that this was true.

Mr. Krebs went on to say that the town would want to keep ADEQ informed in case of any future work so that they would be aware of it.

Ms. Worth said that she would side with continuing with the permit process. She said looking at injection wells as a cost-saving measure could be researched in the future.

Mayor Barber said it seemed to be in the town's best interest to keep the permit for now. She also suggested the Council plan another field trip to the treatment plant.

Mr. MacVittie said he would be happy to take the Council on a field trip and suggested they also visit a similarly sized water treatment plant in Sedona. Mr. Krebs said he would also like to attend.

Motion to continue with the AZPDES permit process

COUNCILMEMBER	MOVED	SECONDED	AYE	NAY	ABSENT	ABSTAIN
BARBER	X		X			
DILLENBERG					X	
HARVEY		X	X			
MOORE			X			
WORTH			X			

ITEM #4:

ADJOURNMENT

Motion to adjourn at 11:37 a.m.

COUNCILMEMBER	MOVED	SECONDED	AYE	NAY	ABSENT	ABSTAIN
BARBER	X		X			
DILLENBERG					X	
HARVEY		X	X			
MOORE			X			
WORTH			X			

APPROVE:


Christina "Alex" Barber, Mayor

ATTEST:


Candace B. Gallagher, CMC, Town Manager/Clerk

Date: 10-14-20