

**Summary Minutes
City of Sedona
Board of Adjustment Meeting
Vultee Conference Room, Sedona City Hall, Sedona, AZ
Monday, April 27, 2015 – 1:00 p.m.**

1. Verification of Notice, Call to Order, Pledge of Allegiance and Roll Call.

Chair Gilgoff verified that the meeting had been properly posted and called the meeting to order at 1:00 p.m.

Roll Call:

Board Members Present: Chair Joel Gilgoff, Vice Chair Gary Rich and Board Members Robert Gordon and Mike Ward. (One position is vacant.)

Staff Present: Mike Goimaras, Audree Juhlin and Donna Puckett

Council Members Present: Scott Jablow, John Martinez and Mayor Sandy Moriarty

2. Approval of the following minutes: March 26, 2015 (R)

Chair Gilgoff asked for a motion to approve the minutes.

MOTION: *Board Member Gordon so moved. Vice Chair Rich seconded the motion. VOTE: Motion carried four (4) for and zero (0) opposed. (One position is vacant.)*

3. CONSIDERATION OF THE FOLLOWING REQUESTS THROUGH PUBLIC HEARING PROCEDURES:

Continuation of the March 26, 2015 public hearing. Discussion/possible action on an appeal filed by Ms. Krista Cline on behalf of Mr. Tanner Bryson of Bryson Ranch LLC, dba Horsin' Around Sedona concerning the operation of Horsin' Around Sedona at the Sedona Airport. The appeal is regarding an interpretation of the City of Sedona Land Development Code made by the Zoning Administrator (Community Development Director) pertaining to allowable uses within a Community Facilities District and mechanisms available for authorizing the use proposed by the applicant. Applicant: Ms. Krista Cline agent for Mr. Tanner Bryson, Bryson Ranch LLC, dba Horsin' Around Sedona Case Number: AP2015-01.

Christopher Schmaltz, Attorney with Gust Rosenfeld, Phoenix, AZ, introduced himself and explained that he is present in the capacity of representing the Board. Normally, the City of Sedona City Attorney's Office would be advising the Board, but because they are a party in this appeal, they have asked his firm to advise the Board. His background includes land use and zoning, Board of Adjustment, variances, interpretations, etc., and he has represented the Phoenix/Mesa/Gateway Airport, so he is familiar with those issues as well. His capacity today is not to advise you with regard to the merits; their representatives will do that. He is present to assist the Board in process, authority, and any legal questions the Board might have, in terms of options in front of you.

Chair Gilgoff thanked Mr. Schmaltz and asked if there was a representative from the applicant that wanted to speak.

Krista Cline, Appellant's Representative, Sedona, AZ: Krista explained that she is not an attorney. She is a licensed and degreed Planner with about 15 years of experience with private planning, and to her knowledge, she is currently the only private urban planner in Northern Arizona. She came to be involved in this project, because Mr. Tanner Bryson was conducting a trail ride business at the airport property until recently. To be clear, Mr. Bryson was invited to the airport to provide that service, in order to assist with revenue production to maintain the airport; he was invited by the Airport Authority.

Krista indicated that one of the things in the Staff Report that Mr. Goimarac had questioned was, "Why are we here?" We are not here to approve horses at the airport; that is not under this consideration, and we are not here to actually litigate this matter. Right now, we are having a conversation in a formal capacity, regarding interpretation of the Zoning Code, and that is really it. We're not here to get horses approved or not approved at this point in time.

Chair Gilgoff asked Krista to restate what it is that she is here for; we're not here for just a discussion obviously. Krista stated that they are here, because they disagree with the interpretations made by Director of Community Development, Audree Juhlin; interpretations that were made as part of the Notice of Violation letter that was received earlier this year. The Chair then asked what interpretations they are in dispute of, and Krista stated that is a very good question. They are actually in dispute of several, so she will walk through what is involved. She then confirmed that those were outlined in her letter and the last page with the summary content is really exactly what they are disputing, as interpretations.

Krista explained that they are stating that according to the Code and supported by case law that has been provided, the City's jurisdiction over the airport property includes all uses, structures not governmental or proprietary in nature, and they actually completely agree with the City in that interpretation. The item they do not agree with is in the original Notice of Violation letter that also was meant to be including non-aeronautical uses. Per case law, when you have county-owned property within a municipality, any governmental or proprietary use that is tied to that governmental property owner is exempt from the jurisdiction of the surrounding municipal area, and that means building codes and zoning codes. They agree with that point, but what they disagree with is also the characterization that the City has put forward that it also means, specifically to this case, that any aeronautical use is also exempt from jurisdiction of the municipality. We are saying that is not supported in case law, and in fact, the terminology aeronautical or non-aeronautical or even that definition doesn't exist within the City's Code, so the City can't say as a matter of zoning interpretation that aeronautical uses are automatically exempted from jurisdiction.

Board Member Ward requested a Point of Order and asked the Chair if he preferred to recognize the Board Members or if they could chime in with questions, and the Chair explained that the Board would ask questions after she is finished; he just wanted to find out what the case was and hear clearly what this is about.

Krista stated that their next dispute is on the interpretation that the Community Facilities . . . , within any use or with any structure that is within the City's jurisdiction, the Community Facilities zoning requires that all uses are subject to a Conditional Use Permit. That is their opinion on how that CF zoning is applied; that differs from what the City has said in the Notice of Violation letter, because it again tried to exempt aeronautical uses as being separate from or exempt from a Conditional Use Permit.

Krista then indicated that the next issue that they had with the interpretation is that the interpretation in the procedures that are standard to zoning enforcement have not been complied with in this matter. What she means by that is that the typical process for code enforcement has not been followed and is not in compliance in this matter, and so that one element, plus the other options of non-enforcement against all the other uses at the airport result in a targeted enforcement for her client's business. The next item is that, in their opinion, throughout staff's Notice of Violation letter, followed up by the Staff Report, followed up by verbal presentations before all of the written documentation happened, is the City has stated repeatedly that a Conditional Use Permit for her client's business is not possible. They disagree with that and consider that to be a predetermination on a Conditional Use Permit application that has yet to occur. The other ones are more minor elements, to wit, basically the traditional code enforcement process related to a fence permit and the business license was actually not complied with standardly as well.

Chair Gilgoff then asked Krista if she was saying, through at least the first four items, that it was not that you dispute the Code, but you say you should have an exemption to the Code, because other

people have had an exemption to the Code. Krista replied no; actually, she was saying exactly the opposite. What she was saying was that . . . , the Chair then interjected a question to ask if she was saying that it was because the Code wasn't enforced, and Krista stated that the Code is actually very clear that any use within the jurisdiction of the municipality that is not governmental is required to have a Conditional Use Permit, and she is saying that up until literally now, her client has tried to pursue a Conditional Use Permit while being blocked by the City, so they have been trying to comply with that and it literally only took this filing in order for honestly as clear a statement, and that is debatable, from the City that a Conditional Use Permit is possible.

Chair Gilgoff then stated, so the City did say it is possible; however, Krista stated that the City said it was not possible. The Chair referenced a letter in the file from Mr. Goimarac saying that we welcome you to apply for a Conditional Use Permit. Krista stated that is one document that says that; the other documents clearly state that it is the City's opinion that the Conditional Use Permit is not "permittal". Chair Gilgoff explained that Audree Juhlin, the Director of Community Development, was just basically saying, which is her job, that we don't issue Conditional Use Permits for uses that you are going to do. She was just trying to save you the money and hardship of going through six months of application to then be turned down, because we are a small town and want to make things right, and we try to help people. We'll continue the case, but I'm just trying to . . . , Krista interjected that what she would reference for you is, in her opinion and her client's opinion, while that may have been the intent, it is their interpretation that that line was crossed between being the good guy and putting out there, hey, don't waste the time, the energy and the money, but instead crossed over to preventative and enforcement.

Krista Cline then stated that basically, jumping back a little bit, again why are we here? We are not here to decide if horses should be on the airport or not, and we are not here to litigate out a matter; we're not at that stage to be honest. She has to admit she is a little taken back by the attorneys, because this is honestly just a very simple Board of Adjustment interpretation item. The facts to her are interesting. As somebody with her background, it is very interesting to her that we're now at this level of involvement and understanding and appeals and quite honestly a legal brief that was provided as a Staff Report with legal analysis, which isn't typical to the City's process in the past. We have all these items here for items that are essentially very, very simple, when you get rid of all the peripheral items. The Board of Adjustment is charged with hearing, reviewing and acting on appeals from the decisions of the Director regarding an interpretation of this Code. That is what the fact of the matter is here; we disagree on the interpretations. This isn't some large scale issue; it is very, very specific.

Krista indicated that she is just saying all of this because she wants to make sure they are on the same page with everybody that that is what they are talking about. It occurred to her when reviewing the Staff Report that there are rather large misconceptions and misunderstandings that are really kind of hurting resolution and are actually confusing matters, which you kind of pointed out. If we address those misconceptions and misunderstandings, then we will actually be able to get down to what really are the pertinent issues.

Krista stated that the number one misconception from you; this isn't litigation and they are not to battle or win. They are literally having an enhanced conversation about an interpretation, and the reason why they are going through this process is, yes, there may have been this intent to save time and money, but we are talking about her client's livelihood and businesses, and that had a monetary effect. He immediately shut down; that had a monetary effect. Anytime you have an application where there is a direct correlation to somebody's business, you know it matters and that is why we have process to go through this. The majority of the legal analysis contained within the Staff Report actually isn't applicable to what we are discussing today, and what she means by that is the conversation between the Sedona Airport Authority or the Lease and Conditions Agreement between the Sedona Airport Authority and the County; that is not applicable to the conversation today. They are talking about very specific interpretations of the Code that the Director has made. They are not talking about if the Airport Authority has done X or the County has done Y. Those are not applicable to the conversation, and she actually suggests that they be disregarded for the rest

of this conversation. Further, the lease items and the questions, in the Staff Report, the City says the question arises if the airport even had the authority under its lease to operate this private and commercial business. That's not in the conversation; that is not appropriate to this situation. Right here, right now, we are talking about specific interpretations the Director made, so that whole area of additional items and areas of additional input to the Staff Report is in her opinion not applicable to what they are talking about right now.

Krista stated that this is the appropriate venue to review the Director's interpretations and decisions. As a part of this process, the Director has made statements verbally and in writing regarding not only Horsin' Around, but also towards exceptions to those interpretations of the Code. What she means specifically by that is literally this incorporation of a non-application City jurisdiction for aeronautical uses. "Aeronautical uses", that term doesn't even exist in the ordinance; you can't interpret something that doesn't exist within the City's structure. It is those interpretations and identified interpretations that they object to, because in a sense, it creates this predetermined lack of success of a Conditional Use Permit. In the Staff Report, the City mischaracterizes that we are claiming discrimination based on equal rights pursuit; again, she is not an attorney, but she can specifically tell you, she did not include that in her letter of objection for the Board of Adjustment hearing.

Krista then indicated that she was going to quote, to get the feel for this from the Staff Report prepared by Mr. Goimarac, ". . . bogged down in factual arguments about how many businesses there are on Airport Mesa and whether or not the City has ever subjected other businesses such as Sky Ranch Lodge to its zoning regulations." [From footnote] "As indicated in Exhibit 5, and contrary to the assertions of HA, the City has frequently exercised its zoning and regulatory authority over businesses on Airport Mesa." She felt it made sense to read that, including what was actually a footnote, to clear up a misconception, and that is that they are claiming discrimination through various forms throughout the City's documents, and by interpretations presented within the communication through the violation letter and now in the Staff Report, that the City has made different interpretations of the applicability of the Code, which have resulted in her client's use being somehow different functionally than other commercial businesses for which the interpretation of the Code is somehow applicable and acceptable. That is a long way to saying that the initial Notice of Violation stated that any proprietary or non-aeronautical use is subject to its jurisdiction. The Code does not say non-aeronautical, so that means up there by the Code, every single business that is not governmental in nature is within the City's jurisdiction.

Krista indicated that the next thing the City said in the Staff Report is hey, we don't know about these other businesses, but probably most of them are legal non-conforming. You can't have it both ways; you can't not know about those instances and say they are legal non-conforming. Across the board, the standard interpretation for the zoning, which is what we are talking about right here, every business that is not governmental or proprietary in nature requires a Conditional Use Permit – point, end of story. There aren't exceptions; there aren't exclusions – anything within their jurisdiction.

Krista stated that the last misconception is the City has stated on more than one occasion that no predetermination has occurred within their review of her client's situation, and honestly, that is blatantly false. Within the Staff Report, staff says that instead her client has chosen not to apply for a Conditional Use Permit, and that is not accurate. Her client has had conversations with the City, specifically about going for a Conditional Use Permit, but as they have briefly discussed, they feel that at every instance that line between what should have occurred – yes, you require a Conditional Use Permit – point and end of fact, has become – sure, a Conditional Use Permit is required if you are not aeronautical, but we are not going to approve it for this list of reasons, and that crosses the line. To be clear, she is going to quote Audree Juhlin in a conversation with her client, "We have no problem with your operations; the problem is that your tours are not aeronautical. Frankly, if your horses could sprout wings it would be approved." That is the systemic problem; there is a predetermination that because it is not compliant with this larger-scale issue, it is not even an option to proceed, and that is outside the bounds. You can't make a

predetermination that something can't be approved, if you haven't made the application yet. We're several steps down the line, and while it may have been well-intentioned, she is sure it probably was, that's not what we're (audio unclear).

Chair Gilgoff asked in summary if she would just like for the Board to rule the fact you have the right to apply for a Conditional Use Permit without prejudice. Is that what you want from this group? Krista asked, from what she would like from this group? The Chair indicated yes and asked what it is that she wants as a result of this hearing; this is not a place to just air grievances. The Chair then asked for Krista to tell him what she would like for the Board to rule.

Krista stated that to be clear, she is not taking this as an opportunity to air grievances; these are legitimate factual concerns. Chair Gilgoff indicated that the Board understands her opinion, but again asked what she would like for the Board to rule. Krista asked that the Chair let her get there; honestly, what she would like for the Board to rule is literally, exactly what you just said, that her client can apply for a Conditional Use Permit without bias.

Chair Gilgoff asked if the City is okay with that, and Mike Goimarac stated that we certainly are. The Chair then stated that if the City is okay with that, he doesn't see that we have a problem. He then asked Krista if she is basically finished if the City is agreeing with that. He then explained that the Planning & Zoning Commission actually determines your rights to have a horse operation on the airport, so as long she assists you in filling out the application to the best of her ability and presents it to the Planning & Zoning Commission along with our standard ordinances, he doesn't see a problem, and he doesn't know that the Board needs to rule as a Board.

Christopher Schmaltz explained that the Board has a pending appeal; they have appealed the Notice of Violation, so there needs to be some action taken on that pending appeal for sure. Ultimately, the appeal letter lists a variety of . . . , Chair Gilgoff interjected that he asked her as the applicant to summarize what they want, and the City is willing to give them exactly what they want, so he doesn't see how the Board has a conflict any more. Mr. Schmaltz explained that there are a couple of ways it can be resolved, and you still haven't heard from the City. Chair Gilgoff stated that he just asked them; however, Mr. Schmaltz pointed out that there might be something that the City has to say about the argument that was made, but he is not going to speak for them. There are a couple of ways to resolve this. One is that they could withdraw the appeal, because they have the right, right now to apply for a Conditional Use Permit and that is actually not within the Board's jurisdiction to say whether they can or not – they can. Chair Gilgoff stated that he understands that they can. Mr. Schmaltz then pointed out that the Board could deny the appeal and say, as part of the denial and motion to deny the appeal, that you as the Board of Adjustment indicate that they have the right under the Code to apply for the Conditional Use Permit without bias on the part of the City — that could be one step, or the Board could uphold the appeal as to that point and deny the rest. Those are really your options.

Board Member Gordon indicated that he doesn't understand the last one, because you just said that it is not our role to tell them that they can have a Conditional Use Permit. Mr. Schmaltz explained that would be an action the Board could take on the appeal itself. Chair Gilgoff expressed that it seems like a colossal waste of this audience's time and everybody else's time, if we can't just resolve it. The Chair then asked if there is another way to resolve it; have the City agree to write them a letter saying they can do that. Mr. Schmaltz stated, for sure, but he is not going to speak for the City.

Chair Gilgoff then asked Krista if she would be okay with temporarily turning over the floor to the City with a chance to come back. Board Member Rich asked if the Board has been asked to overturn Audree's cease order requesting them to stop, and the Chair stated no, it is her interpretation. It is the interpretation of the Land Development Code, which he thinks is a misinterpretation of what she said – not really an interpretation of what the real facts are, because in the folder is a letter from Mr. Goimarac saying we are in no way trying to stop you from applying for a Conditional Use Permit, so he doesn't know what the Board is overturning.

Krista indicated she would agree, with the option for her to add, and Chair Gilgoff explained that he is saying if she temporarily passes control, the Board would come back to her if she wants to add more. He then asked if that is fair and Krista stated that's fair.

Mike Goimarac indicated he would begin by backing up a little bit to summarize how we got here. It is important to see the entire context, and it helps you understand why the City reacted the way it did and what might have given rise to some of the objections that we are hearing today.

Mike explained that last fall, the City became aware of the fact that there was a horse-riding operation up on Airport Mesa. There was no Conditional Use Permit granted for a horse-riding operation on Airport Mesa; there was no business license given for a horse-riding operation on Airport Mesa, and he doesn't believe that Yavapai County, as required in their lease, ever approved of leasing the property for a horse-riding operation. So, Community Development had to do something, and the first thing they did was try to set-up a meeting with the applicant, Horsin' Around and their representative. They did meet informally, and in that meeting, there were discussions about what they were doing and why there was a problem with how they had gone about doing it, and there were discussions about how we could resolve this and make this a legal operation, but included in that discussion was the fact that there is certain zoning on Airport Mesa. It is a unique zoning; it is Community Facilities zoning, and it is a very limited form of zoning. It is not the kind of zoning where you can have virtually any commercial operation you want.

Mike explained that he is sure you have looked at it and Ms. Cline has even quoted the entire section in her appeal letter; the Community Facilities zone is zoned primarily for public and semi-public uses and it gives a list of 14 uses -- things like libraries, cemeteries, museums and public parks, etc., so they sat down and the Community Development Director said, "I don't think you fit; there is nothing even close here in my opinion. You can go ahead and apply for a Conditional Use Permit, but you can't apply for a Conditional Use Permit for anything. Under the zoning, you have to apply for a Conditional Use Permit for the things operating under there." And, that is kind of how it was left, and there was an agreement that they would cease doing business. She even gave them a number of weeks or days through December 31st, so they could wrap things up.

Mike indicated that December 31st came and things weren't wrapped up. The business kept going on, and the next step we have to take is kind of that progressive discipline in enforcement, so we issued a Notice of Violation. We had to get their attention, and that is why we are here. In the Notice of Violation, we tried to lay out the fact that the City has jurisdiction. Yes, this is County-owned property leased to an Airport Authority, but in our opinion, because of the nature of the business we still have jurisdiction over you, in terms of our land use laws and our zoning -- just like we have jurisdiction over Sky Ranch Lodge. We required them to get a Community Plan Amendment and a rezoning, when they wanted to expand Sky Ranch Lodge. They understood that distinction, and we have heard a lot of talk about misinterpretation in terms of aeronautical versus non-aeronautical, and to make this clear, maybe "aeronautical" wasn't the best choice of words, but what the City was trying to convey to the applicant was that the law says you have two kinds of uses that establish jurisdiction. If you are a governmental-related use, if you are related to the airport, which is a governmental function there, and under their lease, they are asked to operate as sort of a public entity; they have a public purpose in providing air traffic and transportation, so if you are related to that, like if you own or operate a hangar or perhaps a related business, such as a restaurant inside the terminal, so people there can eat, then you don't fall under our zoning jurisdiction, but if you are something totally unrelated to the airport itself, like Sky Ranch Lodge is, then you are subject to our zoning jurisdiction, so in the case law, they talk about a distinction being termed as governmental function versus proprietary function, and what Ms. Juhlin was trying to convey to the applicant was, in her opinion, you are conducting a private commercial, yes, non-aeronautical function. You don't have to ride a horse to get to the airport; you don't have to do anything else. It is just a purely unrelated function, and therefore, you fall under our jurisdiction, and because of that, you have to get a Conditional Use Permit, but also, your Conditional Use Permit has to fall within one of those 14 categories.

Chair Gilgoff asked if within the ordinance, she could still apply for a Conditional Use Permit, even though you're advising that it is not going to go, because it doesn't fit with that. Would that still go to the Planning & Zoning Commission? Mike indicated that to the same extent that somebody wants to apply for a commercial building permit in a residential zone. We won't stop you from paying the application fee, but that doesn't mean we're agreeing that it is allowed, and she [the Director] was trying to give him a heads up by saying this is the obstacle she sees.

Chair Gilgoff then stated that there are two questions here. One is, is the use allowed and two is, is the application allowed? So, you are saying that the application is allowed, but the use probably wouldn't be allowed, and Mike indicated that is correct. The Chair then indicated that she would make her case, if she decided to go forward and fill out a Conditional Use Permit, that would be handled and forwarded to the Planning & Zoning Commission, and they would make a decision at that point as to whether her use fit within the Land Development Code. Mike stated they would make that decision, but as he indicated in his letter, just because you are saying you have the right to apply, it doesn't mean that we are going to change, at a staff level, our opinion or position that you really don't qualify, and you need to understand that. Certainly, we are human beings and can be wrong, but that is why the Board is here, to decide if we are missing something in terms of that interpretation. She is claiming we are, and we are claiming that we don't see how we are missing anything.

Chair Gilgoff explained that the discussion here is she is asking for the right to fill out the forms, have them submitted and have her hearing for a Conditional Use Permit, not your interpretation of whether she can operate a horse facility on Airport Mesa, so that is where we are at, and he thinks you are comfortable with that. Mike Goimarac stated that we are comfortable with that, but if you go into her appeal letter, she also disagrees with our conclusion that she cannot qualify for a Conditional Use Permit. The Chair then stated that in the Board's ruling, we aren't going to state anything, but hopefully, giving her the right to fill out the application, have that judiciously processed and go before the Planning & Zoning Commission – nothing to do with anything you have done wrong. Mike Goimarac indicated that he thinks we all stipulate to that; he just hopes we avoid the problem of going to the Planning & Zoning Commission and them saying something like the Board of Adjustment didn't say that it wasn't covered under the CF zoning; they didn't say anything about that, because that really is the fundamental issue here. Can a horse stable qualify in a CF zone? Chair Gilgoff then stated that is not what the appeal is, and Mike Goimarac stated that if the Chair doesn't think that is the appeal . . . , Chair Gilgoff interjected that he would just ask the applicant to state what the appeal is; she stated for the record that the appeal was just for the right to fill out that form, not for the right to operate a horse facility, because that is not within our purview to do that. Mike Goimarac indicated that he agreed 100% with that, and so to that extent, she said this is a very simple interpretation, and if that is the simple interpretation that she is looking for -- can we apply without prejudice – he doesn't know what that "without prejudice" means. Chair Gilgoff stated not the legal "without prejudice". Mike then stated certainly she can apply and if that is all she is looking for, we can do that.

Mike then indicated that he thinks he has addressed and heard her agree that yes, the City does have jurisdiction there over non-governmental activities, so he thinks we are in agreement there too, in that our zoning does apply to their kind of entity trying to come onto the Airport Mesa, and that our Zoning Codes do apply. Mike pointed out that she complained about us saying too much in our report; what he was trying to do was give you the background, the basis for your legal and the City's legal jurisdiction up there, and to help you understand where the City is coming from, because it really is, at a staff level's position, that Community Facilities district means Community Facilities district. Mike pointed out that district designation says, "The district is intended primarily for accommodation of public and semi-public uses." In our opinion, this is not a public or semi-public use. ". . . the identification of public-accessible areas where all persons would have the opportunity to be involved in and enjoy civic, cultural and recreational pursuits." You can argue that it is a recreational pursuit, but if you . . . , Chair Gilgoff interjected that Mike was stating something that has nothing to do with the case; he understands, the case is much simpler now. The applicant has changed what she is looking for and he thinks she is familiar with that. Mike Goimarac then

stated that he was going to be quiet, unless he hears something different, because if all they wanted was some affirmation that they could file an application, we are certainly willing to agree to that.

The Chair then asked Krista Cline if she had anything to add, and Krista thanked the Chair for assisting in breaking it down. She then stated that it really is functionally that that was their question and request all along for a whole lot of reasons, and it is kind of evident to everybody as to why a whole lot of reasons. That initial fundamental question was missed through this; an initial goal was missed through this. In an effort to explain and to pull (audio unclear), and Audree can tell her if she is wrong or not, we ended up with this process, which isn't exactly how Mr. Goimarac expressed it, but we ended up within this process with a Notice of Violation letter that typically only does maybe one or two things, and those one or two things are typically specific – this section of Code was violated, that section of Code was violated and you have 30 days to correct it. Those are the standard things that go out there.

Krista stated that in this case from the get-go, we had this mixed-up multiple issues on top of issues, on top of issues, so much so that it made something that was really fundamentally very simple to where we are having this whole other conversation, and that is the reason why her client decided to pursue an appeal based off of this very muddled and confusing issue, and then this had to get it down to the simple basics. So, the simple basics for them is yes, we identify we need a Conditional Use Permit to operate. They want the ability to apply without prejudice meaning obviously, since she is not a lawyer, not the legal definition of prejudice, but literally the ability to file one without having all of this other stuff come into play, or have it come into play in the appropriate venue. This is not the appropriate venue to pre-determine if it would be approved or not. Along with that, the last kind of thing that Mr. Goimarac mentioned that she wanted to clear up for the record in their opinion, and it comes into the other uses, and she knows a lot of people in the crowd are tied to these other uses that are currently operating at the airport right now, is with what has happened to date and where everything sits and every kind of position sits, is literally even per the information that Mr. Goimarac provided within his Staff Report, literally there has never been a Conditional Use Permit issued at the airport, and part of their confusion with this whole process is why now? Why all of a sudden, if it is so evident that a Conditional Use Permit is required and we all agree on that, then why is that happening now? And, she doesn't know that that is a question that anybody can answer. Chair Gilgoff pointed out that maybe nobody asked, and then he confirmed with Krista that she was finished.

The Chair closed this portion of the meeting and confirmed that the four people, who had indicated that they wanted to speak, still wanted to do so.

Chair Gilgoff opened the public comment period at this time.

Larry Jackson, Sedona, AZ: Indicated that he lives in the Saddlerock Subdivision, just below the north face of the Mesa. He has resided there for 17 years and one of the three selection criteria that he and his wife went through for a retiring location was the ability to ride horses, so he is speaking in favor of Tanner Bryson being allowed to operate this business. He understands that he will now be allowed to make an application for a Conditional Use, and behind that, somebody has to answer the question of zoning and that is why he still wanted to speak.

Chair Gilgoff explained that the place to speak would be at the Planning & Zoning Commission, not here, because the Board is only deciding whether she gets Conditional Use Permit, not whether she gets horses. He understands that Mr. Jackson likes horses, so the best thing would be to hold that until . . . Mr. Jackson interjected that he tolerates horses; his wife actually rides. The other criteria was year-around golf; that was his. Mr. Jackson then stated that he would like to support his application; he thinks it is good for the community.

Diane Jackson, Sedona, AZ: Indicated that she is the wife of the wonderful gentleman who just spoke; she is the one who likes the horses. She had a question; she would like to know regarding

the Planning & Zoning permit that is going to be discussed, if there will be a public forum for that, so they could come and speak. Chair Gilgoff stated yes, absolutely. Ms. Jackson then asked if it would be posted in the newspaper, and the Chair stated absolutely. Ms. Jackson stated super; that is all she needed to know.

Russ Demaray, Sedona, AZ, representative of the SAHO Committee: Indicated that he was present to bring the Board up on how Tanner ended up at the airport. He is a representative of the SAHO Committee, which is a stakeholders' group at the airport that represents over 80 people up there, and he also was on the committee, along with the President of the Airport Board and another board member, plus two other members of the stakeholders' committee to look for areas to develop revenue for the airport, and they thought about a horse ride. We are a tourist community; there are tourist items, things for tourists to do in this community and they thought about horses, so they directed him to reach out to Tanner Bryson to see if he would be interested in doing horse rides at the airport. He (Mr. Bryson) said he would think about it, so they asked him to meet with the group. They met with him and liked what Tanner's operation offered, and it fit with the airport, because it wasn't using any land that was usable for anything but a horse ride. It was outside the fence and still on the airport property. The committee unanimously voted to give Tanner a lease to run his horses to see how it went, and the Airport Manager signed the lease for Tanner and that is how this all got started.

Mr. Demaray explained that in their discussions, they are mandated by Yavapai County and the Federal Government to be self-sufficient up there and generate all of their own revenues, so Tanner was a source of revenue for the airport, which they have lost now for the last several months, because of what the City has done, and part of your point was, granting we can't go back, maybe they never asked for a special use permit before, and they just started asking because Tanner came up there, which is fine, but in their list of 14 items, he doesn't see the airport listed specifically on those 14 items in the zoning at that airport, and they can interpret it in there, but the airport is a big operation – it provides \$30 million in revenues to the City government through people that come to the airport and use the airport, so it is an important part and you would think it would be listed on one of those 14 items. It's not, but the point is if you approve and grant Tanner the right to apply for a special use permit, then they could no longer say they can't ask for a special use permit, so that means that every operation that comes up there – jeep tours, bus tours that are using the airport need to apply for a special use permit.

Chair Gilgoff explained that it is a land use permit; it is not a permit to drive onto the airport. Mr. Demaray stated that they are not; they are picking up passengers, using the airport to pick up passengers. The Chair explained that there are zoning codes and the zoning codes relate to land use, not somebody driving and picking people up. Mr. Demaray then asked if that means if Tanner doesn't base his horses there but brings them up to the airport, loads them up and takes them off The chair interjected that if he is operating a business on the airport, he needs a Conditional Use Permit for the property of the business. If a jeep tour company built a building on the airport, that may or may not need a Conditional Use Permit; that is at the determination of the Director of Community Development. One of the things is the airport is exempted, because the airport is actually a function of Yavapai County, and all Yavapai County functions are exempt, and that is why you didn't need a Conditional Use Permit. One of the proper things to do to increase the usage of the airport is to do a Master Plan of the Airport and have the Community Plan modified to allow that. Once you did that, then every other thing you leased could be done without even a Conditional Use Permit. The fact is you are operating the rest of the airport, under the airport operations, lies within the City of Sedona and is subject to City of Sedona ordinances. You may or may not be aware of that, but you were, and so, by signing the lease with them and not asking them to go to the City, they then spent a lot of money putting in a horse facility that probably would not have been allowed by the City.

Mr. Demaray then pointed out that they have a car rental agency up there, so they need to apply for a special use permit. The Chair indicated that is up to Audree, and Mr. Demaray stated that they are a special use; however, the Chair pointed out that they are ancillary to an airport. At this time,

Mr. Schmaltz indicated that issue isn't before the Board today, and the Chair indicated he understood.

Mr. Demaray then indicated that people fly in to take horseback rides. The Chair noted that he shouldn't have even commented, and Board Member Ward then asked Mr. Demaray to repeat who he is representing. Mr. Demaray stated the Sedona Airport Hangar Owners Association; he is not representing the airport. He was on the committee, because they had Board of Directors . . .

Board Member Ward then noted that Mr. Demaray had stated that the group then got the Airport Manager to enter into a lease; however, Mr. Demaray clarified that he (the Airport Manager) was on the committee, and he signed it. The Board Member then asked if that goes through the Airport Board of Directors, and Mr. Demaray stated yes, and they approved it. Board Member Ward explained that he was just trying to figure out what the facts are, and Mr. Demaray indicated that there was a committee that made recommendations and Board Members were on the committee.

Board Member Ward then stated that to clarify what was said, a committee made recommendations to the Board of Directors for the Sedona-Oak Creek Airport, and Mr. Demaray stated yes. The Board Member then continued to say, to invite an operation in. It was approved by the Board, then the Airport Manager . . ., Mr. Demaray interjected, signed the lease, which Board Member Ward repeated, and Mr. Demaray then added, and the Airport Board President. Board Member Ward then stated that it is the Board and the Airport Manager; he just wanted to clarify that, because he wasn't sure who Mr. Demaray was speaking for; it sounded like you were speaking for the Board of Directors, and Mr. Demaray replied, no, he is not speaking for the airport at all, other than as a stakeholder of the airport and trying to clarify this, because they still have the ongoing committee, and they need to know going forward whether there is a special use permit for a use at the airport. In other words, they have the Masonic Lodge that rents their building out on a regular basis; that's using it for profit. Chair Gilgoff suggested that Mr. Demaray have a separate meeting with the Director of Community Development to determine that. She will give you what she feels are appropriate uses for the airport land and the way to move forward to get those uses approved, which he assumes is a Community Plan change.

Vice Chair Rich asked if Yavapai County is required to approve that lease, and Mr. Demaray indicated that Yavapai County approves leases, but they don't approve all of the leases. They don't approve leases when land is leased to the Wine Festival to have a weekend Wine Festival; they should approve that he guesses. If they are going to approve his, they should approve the Wine Festival or they should approve anybody that comes up there and says they want to have a festival up there – that is a lease, the same as his lease. His was a temporary lease on a 30-day basis that was renewed if it was in good standing; the same as the Wine Festival. They come up and say they want to rent land up there and have a festival. Now, we are saying the County has to approve it and the City has to give a special use permit for any one-day or one-hour or whatever kind of event or timeline is required, so he is just trying to clarify this, because this seems to be muddling the waters. The Chair pointed out that has nothing to do with this appeal and Mr. Demaray agreed.

Dave Swartwout, Sedona, AZ: Indicated that he represents the Aircraft Owners and Pilots Association at the Sedona Airport, with over 350,000 members, and he just wants to state on the record that they want any kind of funding source to be implemented at the airport, because without that, the airport goes away and the 350,000 members can't come and visit Sedona and spend their money here, so that is the main thing. He appreciates the way you have broken it down and figured this out.

Note: Bob Villalovos, Cornville, AZ, filled out a Citizen Information Card indicating he is in favor of this appeal, but he did not wish to speak.

Having no additional requests to speak, Chair Gilgoff closed the public comment period.

Board of Adjustment's Summary Discussion:

The Chair asked the Board Members if there were any questions and Board Member Ward asked the appellant if there was any matter of fact that she disputes that was summed up by Mr. Goimarac or if she takes issue with anything that was said; however, Chair Gilgoff clarified that we are only talking about the Conditional Use Permit; that is what this is about. We honed it down . . . , Board Member Ward interjected that we are talking about the appellant appealing a decision of a staff member of the City of Sedona, and the Chair explained for her ability to file a Conditional Use Permit; that is the entire case. Board Member Ward indicated that he was just hoping for some information and the Chair stated certainly, as long as it relates to that. The Board Member then asked the appellant if she disputes anything that was said by Mr. Goimarac in terms of that. The Chair then noted that she didn't have to answer that question. He is sorry, but that's on record if she does.

Board Member Gordon indicated that he basically thinks the Chair has encapsulated his position on this whole case and we can dispose of it quite easily. Vice Chair Rich stated he had one question. Sky Ranch went through a Community Plan change in zoning, and there were concerns about a use permit, so is that an option as well to apply for a Community Plan Amendment either as a business or through the airport. Mr. Goimarac explained that was actually the recommended option given to the applicant (audio unclear). The Vice Chair then noted that the Airport Hangars Association could do the same thing; they could apply as the Airport Authority for a general plan amendment, but that takes time. Mike Goimarac agreed it is time consuming.

Chair Gilgoff indicated to Christopher Schmaltz that he thinks the Board is ready for a vote and asked if the Board could overrule the decision of the Director and say specifically that the applicant has the right to apply for a Conditional Use Permit, because we are not really agreeing or overruling. Mr. Schmaltz explained that is not really an overruling, because that is what the City has said. The Chair then stated okay, the Board accepts or upholds it then, and Mr. Schmaltz indicated that as it has been distilled, one option is that you can uphold the interpretation of the City with regard to their ability to apply, unbiased.

MOTION: Board Member Gordon moved to uphold the interpretation of the Zoning Administrator (Community Development Director) and deny the appeal as set forth in case AP2015-01 and affirm the right of the appellant to apply for a Conditional Use Permit without prejudice. Vice Chair Rich seconded the motion. VOTE: Motion carried four (4) for and zero (0) opposed. (One position is vacant.)

4. Adjournment

Chair Gilgoff called for adjournment at 2:01 p.m., without objection.

I certify that the above is a true and correct summary of the meeting of the Board of Adjustment held on April 27, 2015.

Donna A. S. Puckett, *Administrative Assistant*

Date