

# MINUTES–CITY OF ASHTON

## SPECIAL CITY COUNCIL MEETING

Wednesday, October 6, 2021

6:00 p.m.

714 Main (North Entrance)

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*The purpose of the Agenda is to assist the Council and interested citizens in the conduct of the public meeting. Careful review of the Agenda is encouraged. Testimony from the public will be solicited for any item or issue listed under the category of **Public Hearings**. The Mayor will not normally allow audience participation at any other time. Idaho Law prohibits council action on items brought under this section except in an emergency circumstance.*

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**PRAYER: Teresa Hansen**

**CALL TO ORDER & WELCOME**

**PLEDGE OF ALLIEGENCE: John Kaelberer**

**CALL TO ORDER & WELCOME**

**In Attendance:** Tom Mattingly, Teresa Hansen, Tadd Atchley, Jerry Funke and John Kaelberer.

**Also, in attendance:** City Clerk Stegelmeier, Deputy Clerk Warnke, City Attorney Angell, P & Z Administrator Bowersox, Joseph Corbett, John Gaynor, John Scafe, Rachel Hatton, and Sheryl Hill.

Mayor Mattingly welcomed everyone and opened the meeting at 7:00 pm

**1. Public Hearing: Conditional Use Permit at 24 S 5<sup>th</sup> Street – **ACTION ITEM****

Mayor Mattingly turned the meeting over to City Attorney Angell who then opened the public hearing. City Attorney Angell asked City Clerk Stegelmeier if proper notice was given. City Clerk Stegelmeier replied that the property was posted and a copy of the proof of publication was provided to the council in the meeting packet. City Attorney Angel then asked the Council and Mayor by roll call if any had a conflict of interest in the matter. Each replied that they did not have a conflict of interest.

City Attorney Angell then asked P&Z Administrator Bowersox to give her report on the proposed permit. P&Z Administrator Bowersox explained that the city received an application for a conditional use permit from Joseph Corbett with WERC LLC at 4 S. 4<sup>th</sup> Street. The applicant is applying for a permit to allow him to convert the former key bank building into a vacation rental. It will be an Airbnb. Administrator Bowersox explained that the comprehensive plan outlines the vision or plan for the city. The Development Code puts that plan into enforceable regulations to support that plan. The vision that the code and the plan outline for the city in this area is to create a defined and delineated commercial business area downtown on Main Street. She read a section the following from the Comprehensive Plan: 'This classification (Community Core Commercial) recognizes the "main street" development pattern that serve the day-to-day needs of the community as well as the surrounding neighborhoods and residential areas'. To align with that the Development Code chapter 17.36.10 reads 'the purpose of the community core zoning district is to provide for a traditional "main street" pattern of development in downtown Ashton'. It goes on to say that permitted uses are all commercial uses, minor utility installations and residential use of upper floors. The purpose and intent of a conditional use is stated as recognizing that an increasing number of new kinds of uses are appearing daily, and that many of these and some other more conventional uses possess characteristics of such unique and special nature relative to location, design, size, method of operation, circulation and public facilities that each specific use must be considered individually (ACC 17.16G.010A). Later in that section the code specifies that a conditional use permit shall not be considered as establishing a binding precedent to grant other conditional use permits. In the general standards for conditional uses the code states that conditional uses will be harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan and/or this article. Further in that section the code reads: 'That the site is large enough to accommodate the proposed use and meets all the dimensional and development regulations in the district in which the use is located'. Administrator Bowersox then explained that this means

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that if a conditional is granted the property must adhere to all the general regulations listed in that zone such as setbacks, parking, signs, etc. She then stated that given all of the above and the fact that the comprehensive plan and the development code states that Main Street downtown is a commercial zone and it's intended to provide a commercial, well-defined downtown business area – it is her recommendation that the city deny this application. The application is not 'harmonious' with the intent and plan of our code to turn an entire building on Main Street into a residential use of a vacation rental. In the purpose of a conditional use permit it speaks about a 'unique or special nature' which on Main Street or in any other area in the city is not of a unique and special nature. There are plenty of places in residential zones inside or outside the city limits. Administrator Bowersox restated her recommendation that the permit be denied. She then asked if the Mayor or Council had any questions. There were none.

City Attorney Angell thanked Administrator Bowersox and then asked Mr. Corbett to give his presentation of his application. Mr. Corbett thanked the Mayor and Council for letting him come and speak to them. He asked if they had read his description or not but offered to read it if they hadn't read it already. After the Council explained that they had read his description, he asked if they would just want to ask him questions. They did not ask a question so he expressed concern over some of the administrator's report. He asked if hotels are a residential use. Administrator Bowersox replied that in land use planning – hotel, motels or short-term rentals are classified as a residential use. He was unaware of that. He then explained that coming up in March, since the building had been occupied. There has been ample time for someone to come in to use the building for commercial use. Mr. Corbett did have one business person who had showed interest but in the end was not interested in that he was not in Ashton enough to really use the building. He has had other people inquire about it because he has a sign up stating it is for rent. The point he is trying to get across is that it has been open to the public for three years to get someone to come and open some sort of traditional business in the building. People have some great ideas for the building, Administrator Bowersox did make some suggestions as well. Mr. Corbett stated that he would be happy to lease it out for businesses, that was his whole intent in purchasing the property. Unfortunately, after covid, some of those plans have changed in the sense that some of the people he had talked to now are working and getting paid for an office at home. He did have some plans prior to finalizing the purchase of the property but those plans went out the door prior to closing because of covid. Mr. Corbett does not want to see the building vacant. He feels that no one wants to see a business vacant and/or dilapidated in the town where they live. He wanted to see it stay in this community and not have someone from out of town purchase the property. In the future – if someone wants to come in – like a bank or a credit union – and wants to rent the whole space – he would like it because it would be a lot less work than a nightly rental. He would rather have that because they would take care of the remodel and building and everything. That is the ideal option for him. As it sits now – it is an empty building. He has owned it since January 2021. The question Mr. Corbett has is does the city want buildings sitting there, vacant, sticking to a traditional thing. How many more years is the city going to wait and let a building sit. The other thing is the hotel being on Main Street. This is the kind of way people are traveling now a days. It used to be that you would come to town in your horse and carriage and stay in town in the hotel on Main Street. He is of the opinion that it would bring business to town as they would use the restaurants and bars on Main Street. He feels like there is a conditional use process for a reason – that's why he has that opportunity to apply for one. Mr. Corbett asked if there were any question, etc. on the information he has conveyed. He is not trying to not go over the information he provided, he just didn't want to go over it again if they have already read it. City Attorney Angell asked if the Council had any questions for the applicant.

City Attorney Angell thanked Mr. Corbett for his presentation and then explained that he would start with those wishing to speak in favor of the approval of the conditional use permit. There were no names on the sign in sheet so he asked if there was anyone in the audience who wished to speak. Rachel Hatton who lives at 969 Cherry Street, Ashton. Rachel explained that in looking at what Ms. Bowersox

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has said and what Mr. Corbet has said she would be in favor of this because she agrees that we don't want empty buildings. When there is an empty building, it gets really worn down and it doesn't make the city look alive. According to what has been said she knows that the comprehensive plan and planning code is all to create a commercial downtown which is what we always want. But at the same time, we are in the conditional use era because of the different situations that have come about unexpectedly. The pandemic is a great example. It is unfortunate that it happened but it has and so she feels that with that we need to think of this conditional use. Rachel explained that she knows that there is a family that is residing in one of the Airbnb while they build a home - making it so they don't have to travel from Henry's Lake to town for school through the winter. If the many people are moving here – if we don't have places for them to stay, we lose that economic benefit. Permits like this would be an economic benefit in a different way for Ashton. Whether it is a business that sells something or a place to rent you are still creating revenue in the community. So, she is in favor of this conditional use permit.

City Attorney Angel thanked Rachel for her comments. He asked if there was anyone else who would want to speak in favor of the application. Hearing none, he then explained that he would move on to those who wished to testify as neutral to approval of the application. City Attorney Angel said there was only one name listed and called on Sheryl Hill for her testimony.

Sheryl Hill who lives at 308 Highland Street, Ashton. Sheryl explained that she is here to remind the Mayor and Council that on September 11, 2019 they approved a conditional use permit for the building that was formerly occupied by Ott's Place as a motel. That is listed as a use under Development Code g.10.d where it says 'the following uses and structures may be permitted in the Community Core Zoning District'. There it specifically lists motels and motor hotels. If they recall – there were several meetings and a couple of public hearings before Jeff Patlovich, who is a former planning administrator, amended the owner's application and it was approved. Sheryl said that although the code states that precedent may not be binding, she thinks that it would be difficult to convince a new applicant that or how you would justify not using that as precedent. Sheryl was surprised when she learned of the application and she got a copy of it from the city. There was nothing in the application that specified anything about a motel or motor hotel as stated in the development code. Sheryl thinks that Mr. Corbett did not get full advice from the city on what his options were and she believes that is an oversight on the part of the city. This is an expensive process for the city and the applicant and she feels that it is important to make it as streamlined as possible by making sure that the applicant is fully informed. Furthermore, Sheryl went on, the letter informing the neighbors does not say anything other than and Airbnb and again. Councilwoman Hansen interrupted Sheryl and asked if Sheryl is for or against the application because she feels that Sheryl's information is not helping. Sheryl explained that she is neutral and that she is talking about process. Councilwoman Hansen did not realize that there was a place for neutral testimony and apologized to Sheryl. Sheryl reported that she was interrupted in her testimony and went on and said that she believes that Mr. Corbett was not fully informed of his options under the Development Code. The code is online – strictly stated – and four of the five of them (Mayor and Council) voted to approve the conditional permit in 2019. Councilwoman Hansen said that her information is wrong. Sheryl said she may be wrong but that is not the issue and said she was done.

City Attorney Angel thanked Sheryl for her comments. He asked if there was anyone else who would want to speak as neutral to the application. Hearing none, he then explained that he would move on to those who wished to testify against approval of the application. There were none. He then explained as there were no testimonies against the application there would be no need for rebuttal by the applicant but asked Mr. Corbett had any rebuttal or if he had any other information he would like to give the city council.

Mr. Corbett asked if there were more questions from the City Council. There were none.

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City Attorney Angel then asked Administrator Bowersox if she had any rebuttal that she would like to offer. Administrator Bowersox said she had no rebuttal but would like to echo Mr. Corbett's thought in asking if the council if they have any questions for her. Councilman Funke asked her to refresh his memory as to when the development code was put into effect that covers this application. Administrator Bowersox asked if he meant the conditional use permit. Councilman Funke said yes and she replied she is unsure but believes it was 2018 or 2019. City Attorney Angel said it was after 2017 or so because of when he started at the city. Administrator Bowersox will look it up and let him know. City Clerk Stegelmeier asked if he was talking about the Comprehensive Plan and Development Code – they were put in force in 1997 and the Comprehensive Plan was updated in 2008 and the Development Code was updated a few years later. Councilman Funke was wondering if they should go back and review that code because times have changed. Councilman Atchley explained that Administrator Bowersox was in the process of updating the Comprehensive Plan. Administrator Bowersox explained that in late 2019 and 2020 the P&Z Commission was in the process of revisiting the comprehensive plan. Changing one means that the other needs to be changed as well and she agrees that it is time to revisit and make some changes.

City Attorney Angel closed the public comment portion at 7:27 pm and opened up discussion by the council. The Council can make a decision after discussion but it needed, the council does have 60 days to make a decision and it will be made in writing. He turned the time back to the council

Councilman Atchley explained that he cast one of the votes in favor of the Ott's Place permit and he feels that this building has the parking that was missing in the Ott's Place application. He also said that there haven't been any nuisance problems with the other Airbnb on Main Street. Mayor Mattingly asked if there is any discussion on the other side of the issue. Councilman Kaelberer is concerned that there may be so many that want to convert to an Airbnb that there won't be a place to rent/buy for a business who would like to come to town. He feels like Main Street is a business street and he doesn't like the idea of having that kind of use out of control on Main Street. He feels for the property owner and the problems that many people have encountered due to Covid but he feels that Main Street should be for businesses. Councilwoman Hansen explained that she was one that voted no on the Ott's Place permit because the city has a P&Z Administrator so that there is someone who goes through the code and does the ground work to find if the application meets the code. She trusts that Administrator Bowersox knows what she is doing and Councilwoman Hansen agrees that an Airbnb is not unique enough to fit the conditional use guidelines. It is nothing against a person or growth – it is a decision to follow city code. If the code changes, she would follow what the code allows. Councilman Funke thinks that the city needs to revisit Development Code and Comprehensive need to be updated. He wants to see more local by the city on Airbnb because we don't really even know how many we have in Ashton. He is concerned that the city is not even sure if the state is collecting the lodging tax. His position is that we need to revisit code and plan before we approve any more of these permits. Councilman Atchley can see their points but he feels that with more Airbnb on Main Street it will bring more business to town. Councilwoman Hansen agrees that it will bring more people but is not sure it brings more business because most people get an Airbnb so that they can bring their own stuff to cook and use the gathering areas to watch movies and things without having to go to other places. Councilman Atchley said that maybe his family does that when he travels but he thinks most people using them in Ashton use them because there is not enough lodging otherwise. Councilman Kaelberer is concerned that there will be no new businesses brought to town if there is no place to put a business. Councilman Atchley explained that he feels many people use Amazon and other mail services and would not use a business on Main Street. He thinks that that is the way the world is now. Councilman Atchley went on to say that the council does have another meeting the following week so they could think it over and make a decision at the next meeting. City Attorney Angel asked if he could interject with a thought. Mayor Mattingly allowed him to explain. He wants to revisit the idea that the council is new at acting in the role of the Planning and Zoning Commission. The process for the commission is sitting in the quasi-judicial role in

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this situation. That means that you are hearing an application for a specific piece of property that involves an individual’s property rights. Their job is to analyze whether that use fits the law. It is different than the legislative role where you get to decide for example ‘I think we should have it in this area here in town’. That legislative process is for when the council sets comprehensive plans or development code. In the quasi-judicial role concerning a conditional use permit the council needs to look at what the law allows, look at if the permit fits that law and make that decision which has to be based in that rationale under the law. City Attorney Angel believes it is wise to listen to the city’s P&Z Administrator better than he or the council do as she works with it all the time. All in all, that is a safe place for the city to be. After the decision is made, he will work with Administrator Bowersox to make sure that the council has a decision that is supported by the law. Councilman Kaelberer expressed his thoughts that as it is now – the application does not meet the standard for approval. Councilwoman Hansen also wants to remind everyone that the last decision did not set a precedent by law. Conditional Use Permits are approved/denied individually.

Councilman Atchley made a motion to table the decision to discuss at the meeting on October 13th. Councilman Funke seconded the motion. The motion passed unanimously.

P&Z Administrator Bowersox reminded everyone that the next meeting is not a public hearing. City Attorney Angell explained that the public hearing has been closed. The council may deliberate at the next meeting but there will be no more public comment. The council has 60 days to make the decision.

## 2. Adjournment

Councilman Funke made a motion to adjourn. Councilman Kaelberer seconded the motion. The motion passed unanimously.

The meeting ended at 7:42 pm.

### **NEXT MEETING**

- ◆ City Council 7:00 p.m. – Wednesday, October 13<sup>th</sup>, 2021 Council Chambers, Ashton City Building – 714 Main, Ashton.
- ◆ Public Hearing 7:00 p.m. – Wednesday, October 20<sup>th</sup>, 2021 Council Chambers, Ashton City Building – 714 Main, Ashton.
- ◆ Questions concerning items appearing on these Agendas or requests for accommodation of special needs to participate in the meetings should be addressed to the Office of the City Clerk or call 208-652-3987.

Minutes respectfully submitted by Cathy Stegelmeier, City Clerk

Attest

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Cathy Stegelmeier  
City Clerk

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Teresa Hansen  
Council President