



**MINUTES**  
**PLANNING & ZONING COMMISSION**  
*Regular Meeting/Public Hearing*  
*Thursday, January 10, 2008 - 9:00 AM*  
**City Council Chambers, Prescott, Arizona**

**I. CALL TO ORDER**

Chairman Michelman called the meeting to order at 9:00 AM.

**II. ATTENDANCE**

**MEMBERS PRESENT**

Don Michelman, Chairman  
Joe Gardner, Vice Chairman  
Tom Menser  
Richard Rosa  
Seymour Petrovsky  
Len Scamardo  
George Wiant

**CITY COUNCIL PRESENT**

Jack Wilson, Mayor  
Jim Lamerson, Council Liaison  
Lora Lopas  
Bob Luzius

**OTHERS PRESENT**

Tom Guice, Community Development Director  
George Worley, Assistant Community Development  
Director  
Gary Kidd, City Attorney  
Matt Podracky, Senior Assistant City Attorney  
Mike Bacon, Community Planner  
Wendell Hardin, Community Planner  
Dick Mastin, Development Services Manager  
Kathy Dudek, Boards & Commissions Recording Secretary

**III. REGULAR ACTION ITEMS**

(May be voted on contingent upon any related public hearing item below also being acted on unless otherwise noted).

1. **Approve the minutes** of the 12-13-07 meeting.

Mr. Rosa, **MOTION: to approve the minutes** of the December 13, 2007 meeting. Mr. Petrovsky, 2<sup>nd</sup>. **Vote: 7-0.**

2. **Elect Chairman** for the 2008 calendar year.

Mr. Wiant, **MOTION: to elect Joseph Gardner** as Chairman for the calendar year 2008. Mr. Rosa, 2<sup>nd</sup>. **Vote: 6-0-1** (abstention: Gardner).

*(Chairman Michelman handed the gavel to the newly-elected Chairman, Joe Gardner. Mr. Gardner then continued the meeting).*

3. **Elect Vice-Chairman** for the 2008 calendar year.

Mr. Scamardo, **MOTION: to elect Tom Menser** as Vice-Chairman for the calendar year 2008. Mr. Rosa, 2<sup>nd</sup>. **Vote: 6-0-1** (abstention: Menser).

4. **ANX07-003, Kile Street Annexation.** APNs: 115-06-076; 115-06-076A, 115-06-076B, 115-06-076C, 115-06-077A, 115-06-077B, 115-06-078, 115-06-078A, 115-06-078B, 115-06-078C, 115-06-079, 115-06-118A, 115-06-118B, 115-06-119, 115-06-140Q, 115-06-140R, 115-06-140S, 115-06-140T, 115-06-140U: 8.9 acres of a triangular shape parcel, constituting a portion of Section 29, Township 14 North Range 2 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, commencing at the northeasterly right-of-way corner of Shoup Street and Adams Avenue. Introduction and recommendation on appropriate zoning designation at time of annexation. Wendell Hardin, Community Planner.

Mr. Hardin presented the staff report and indicated:

- current county zoning is C1-4;
- zoning upon annexation should be compatible with current zoning;
- adjacent zoning is Business General (BG) zoning;
- property to the northeast is zoned Multi-Family Medium (Manufactured Home) [MF-M (MH)];
- an automotive body shop currently exists on the property;
- the property is approximately 8.9 acres;
- a new lift station has been built nearby;
- Meadowridge Extension is in the vicinity;
- the annexed property has 12 acre feet of water; and,
- the General Plan projects a commercial corridor in the area.

Commissioners queried and commented on:

- the irregular rectangular piece of property stemming to the west;
- the notch of property on the north [Mr. Hardin: that is a right of way];
- whether existing businesses will fit into the proposed zoning [Mr. Hardin: yes]; and,
- what is proposed for the vacant area [Mr. Hardin: no current plans have been presented].

Chairman Gardner asked if any members of the public wished to speak. No one came forward.

Mr. Menser asked for a clarification of the difference between Business General (BG) zoning and Business Regional (BR) zoning. Mr. Hardin indicated that BR is more intensive.

Mr. Rosa, **MOTION: to recommend that the Business Regional (BR) zoning** be applied at the time of annexation into the City of Prescott. Mr. Michelman, 2<sup>nd</sup>. **Vote: 7-0.**

#### IV. PUBLIC HEARING ITEMS

(May be voted on January 10, 2008 unless otherwise noted).

5. **Sign Lighting, Land Development Code, Section 6.11.4.B.2, and Section 6.11.4.B.5** Discussion of proposed amendment to the *Land Development Code* to consider deleting watts as the measure of lighting illumination. George Worley, Assistant Community Development Director.

Mr. Worley reviewed the proposed amendment to Sign Lighting and indicated:

- the issue of the need for the *Land Development Code (LDC)* amendment surfaced when Tim's Toyota applied for new signage;
- allowance for background lighting is presently measured by wattage;
- new technology is emerging that cannot be quantified in watts;
- a suggestion is to go with typical approach to not allow white or very light backgrounds to be lighted at night;
- new language is recommended for:
  - 1) eliminating allowance for wattage; and,
  - 2) adding specific language to allow City Council to consider permitting white or off white lighting.

Commissioners queried and remarked on:

- will the illumination be brighter or less bright than the 80 watts presently allowed;
- what will the maximum allowance be when wattage is discontinued;
- how will fluorescent lighting and other types of lighting, i.e. digital or plasma lighting, be calculated;
- what constitutes internal vs. external lighting; and,
- how does this compare to Tim's Toyota lighting [Mr. Worley: it gives City Council the ability to determine the sign lighting; consequently, City Council has the option to decide each request. The idea is to try to eliminate light pollution].

Chairman Gardner indicated that the proposal is good.

Mr. Bob Luzius, 237 S. Arizona Avenue, indicated he was one of two persons on City Council that voted against Tim's Toyota lighting. He also asked that the "Dark Sky" Committee in Tucson be consulted for their regulations. Too much lighting will eliminate what the dark sky condition offers to the residents of Prescott.

Chairman Gardner asked if the public wished to speak. No one came forward.

Mr. Menser stated that this is a loophole that needs to be eliminated. Lumens are used as the typical measurement because the wattage is impossible calculate on a custom-made sign. The sign installers need to be educated as to the requirements. [Mr. Worley: we are trying to keep up with technology].

Commissioners further queried and remarked on:

- working with sign installers to inform them of the changes;
- the plasma sign in Prescott Valley; and,
- businesses must turn off lighting at the end of the business day [Mr. Worley: this will not change].

Mr. Wiant, **MOTION: to recommend** that City Council adopt the proposed revision in the *LDC*, Sections 6.11.4.B.2 and 6.4.141.B.5, for Sign Lighting as proposed in the staff report dated 01-10-08. Mr. Rosa, 2<sup>nd</sup>. **Vote: 7-0.**

6. **Transitional Housing, *Land Development Code*, Table 2.3, Section 2.4.45, Section 11.1.3, and Table 11.2.5, Definition of Family.** Discussion of proposed amendment to the *Land Development Code*. George Worley, Assistant Community Development Director. (May be voted on January 10, 2008).

Mr. Worley reviewed the staff report and indicated:

- this item is being introduced and staff is requesting input on transitional housing;
- several people in the audience will address the subject;
- provisions in the *LDC* address transitional housing, including persons living together without marriage;
- a number of criteria from the federal government address this issue, and there is a need to bring the *LDC* in line with those requirements; and,
- Sedona has modified the codes to conform to the federal law and the Fair Housing Act;
- Mike Bacon has studied the Sedona code and will give an overview.

Mr. Bacon proffered:

- Sedona was cited for being in violation of the Fair Housing Act by the Arizona Attorney General's office;
- Sedona was contacted and indicated that their revised code is working;
- the City of Prescott's *LDC* proposed revisions are consistent with Sedona's model that addresses several types of home occupancy;
- group homes are deleted in Sedona's code;
- legal staff may offer additional input.

Commissioners queried and remarked on:

- what category group homes would be placed in [Mr. Bacon: Sedona received the recommendation to take this category out];
- what is the State's definition of group homes [Mr. Bacon: the State's definition is "a residential setting of not more than six persons with developmental disabilities that is operated by a service provider under contract with the division and that provides in a shared living environment room and board and daily habitation. Group home does not include an adult developmental home, a child developmental foster home, [or] a secure setting for an intermediate care facility for the mentally retarded];
- what is the new definition of family;
- the City's current definition of "family" includes up to 8 unrelated persons;
- revising the definition of "family" that includes up to 4 unrelated persons; and,
- adding group home as defined by State under the guidelines which references the current state statutes.

City Attorney Kidd is currently looking into the issues and will have more information at the next meeting. Mr. Podracky is also looking into the issues. If there are changes in existing federal or state law, state statutes will track that change without having to come back immediately with a request for a change to the *LDC*. The changes proposed now will conform to existing state law. The definition of disability under the *ADA* has changed significantly in the last few years. It includes people with disabilities and drug and alcohol addictions; however, it also includes people who are perceived as having a disability. The perceptual issue varies on a case-by-case basis. The definition will be left with State law.

Mr. Podracky, Senior Assistant City Attorney noted:

- disability under the *ADA* is basically a mental or physical impairment that affects a substantial life factor, *i.e.*, ability to walk, to talk, or to think, etc.
- there are other definitions that are similar to group homes, *i.e.*, adult foster care service which means residential settings providing room and board for not more than four adults;
- the real issues and concerns will have to be ferreted out;
- Arizona law and case law will be looked at;
- the Legal Department has received calls regarding concerns with the definitions proposed;
- the change will attempt to remove defining “group homes” and will revert to the definition of a family; and,
- the Arizona Attorney General’s office will be involved.

Commissioners further queried and remarked on:

- the rationale of the definition of family being changed to four persons, *i.e.*, the same number as Sedona;
- looking at federal law to define “family”;
- convalescent homes [Mr. Podracky: convalescent homes are only located in certain zoning districts]; and,
- looking at a few examples of existing facilities might be beneficial;

Chairman Gardner opened the hearing to the public. The following persons spoke and the comments have been encapsulated:

- Mr. John Brakey, General Manager of Chapter 5, 818 W. Gurley, operator of two group homes in Prescott, worked with Nancy Burgess to restore The Flyn House at 717 W. Gurley Street. The State has asked for a committee to self-regulate facilities of this type. Individuals are recovering from drug abuse and drug addiction, and our operations are essential. Mr. Brakey invited the Commission to look at Chapter 5’s facilities. The City has granted operations to have up to 10 persons at each location, and we are still trying to figure out what category Chapter 5 fits under. The ¼-mile restriction is a problem. [Mr. Bacon: we are looking at removing the ¼-mile restriction].
- Ms. Tina Oberacker, 214 Hidden Drive [no signature appears on attendance roster], indicated she lives in the neighborhood where Chapter 5 operates. She would like some clarification about whether the residents are mandated to be there by the courts. Mr. Brakey indicated 50% to 60% are involved in the legal system, and 10 total residents reside at the facility.
- Mr. Bill Feldmeier, 314 S. Alarcon Street [no signature appears on attendance roster], owner of properties that are primarily residential, indicated he rents to students, to retired, to disabled persons, to individuals who have had, at one point, affiliation to sober-living type groups. He indicated he has never had a problem with any of his residences. Mr. Feldmeier is concerned with the [proposed] change that might limit his ability to rent his properties. Under the private properties initiative that was passed by the voters, limiting the number of persons who can rent under one roof might be considered as a taking [of property rights]. Mr. Feldmeier would propose that all language be eliminated.

Mr. Rosa indicated the problem is public perception.

Mr. Worley clarified that staff is bringing this forward because code language does not conform with federal law requirements. It is an attempt to fix the code. It is not an attempt to limit or address transitional housing as a public perception issue. The *LDC* needs to be fixed to eliminate conflict with the federal law.

- Mr. Alfred Falk, 1911 Atlantic Avenue, representing Project Aware, is concerned with these changes and how they will affect the services provided by social service agencies. Mr. Falk wants to ensure that the non-profit agencies have the ability to provide needed services.
- Mr. Jim Thomas, 910 W. Gurley Street, has eight children and 10 persons under roof. Mr. Thomas noted that he is a therapist and is licensed as a substance abuse counselor. He works for Sober Homes. Residences are separate from therapy facilities; consequently, the people are good neighbors and work within the community.

*(A recess was taken from 10:33 to 10:38 AM)*

- Mr. Noel Campbell, 146 N. Mt. Vernon, speaking for the homeowners in his neighborhood, noted that Prescott is being deluged by the halfway houses. These places are not appropriate for the neighborhoods. A ¼-mile distance is a good idea. Prescott is being called “the halfway rehab capital of Arizona.” People in the neighborhood want to know how many of these houses exist and want the places to be regulated by the City.

Chairman Gardner would like to have specific locations, numbers of people, and whether or not the places are compliant with code.

- Ms. Susan Perkins, 320 N. Mt. Vernon, indicated within 2½ blocks there are three of these [transitional] houses. The persons have no respect for the property owners. Police are often called to these houses for incidents that occur. Ms. Perkins asked for a solution to the problem.
- Ms. Nancy Schader, 227 N. Pleasant, indicated she lives two doors away from a transitional house that houses up to eight women. Across the alley is another transitional house. The problem is the lack of control. She understands that there are as many as 11 houses within a half-mile of Washington Elementary School. Parking is a serious, mushrooming issue. She favors less density. She wants to claim the neighborhoods back and make them more inhabitable for the resident owners.

Mr. Wiant asked if Mr. Feldmeier’s properties are treatment centers or rentals [Mr. Feldmeier: rentals. There is a concern with having the ability to rent to persons with licensed, unlicensed, profit or non-profit persons. The neighbors self-regulate their properties and help to solve problems.

Mr. Campbell asked what is so unreasonable with requesting a ¼-mile separation. We are not saying there is not a need; we know there is a need. When the properties are separated and the number of people in a family is defined, the economic incentive to put in the halfway or transitional house changes. We are concerned with the number of persons that “fly-by-night” and buy up the houses in the neighborhood. We are asking for reasonable regulation.

Mr. Rosa asked why a ¼-mile distance is being eliminated [Mr. Worley: we’ve been advised that overall, including the separation requirement, it is in violation of the Federal Fair Housing Act. From that point forward, we stopped attempting to enforce the ¼-mile separation, and that is a reason why we don’t have the statistics [about the number of existing houses]. The separation requirement constituted a discrimination against a housing use under that act.

- Ms. Stephanie Row, 524 Glenwood Avenue, indicated she was a recovering addict of eight years. She was released from probation and came to Prescott from the Valley to recover. She credits the halfway house on Ruth Street with her success.

Mr. Worley noted that it is hard to identify the houses. It is a complaint-driven issue. The City reacts to these complaints.

- Mr. Todd Nirschl, Men’s Manager, Providence Place Recovery Home , 424 N. Virginia Street, indicated he came to Prescott from Portland, Oregon because he heard that Prescott was the place to get sober. He lived on the streets while he was waiting to get into a treatment program here.
- Mr. Bryan Dufee, 421 Mt. Vernon Street, Providence Place attendee, questioned why no one questions a house with illegal immigrants, sometimes housing up to 15 or more persons.
- Mr. Bob Perrone, 824 Hoosier Pass, wants Council to be concerned with the federal struggle with setting the limits of family. The real issue is the social problem that cannot be fixed by legislation. Due diligence includes the county, the town or city, federal law, county law, city law. Neighbors are more protected with renting to a group home than someone just off the street. It is not a simple problem.
- Kathy Smith, Providence Place, 235 N. Pleasant Street, agrees with Mr. Feldmeier and would love to meet with the neighborhood group to listen to their concerns.
- Ms. Elaine Newlin, Deputy, Yavapai County Public Defenders, stated that many of the people that participate in the county programs are required to live in transitional housing or recovery homes. The specialty courts in the county are financed by grants from the federal government and by the Supreme Court of the State of Arizona’s Administrative Office of the Courts’ Committee by their funding.

Commissioners further queried:

- if there is a list of places that can be provided for persons coming out of a halfway house [Ms. Newlin: we have contract providers of transitional housing. There are also lots of halfway houses that are not contracted to the courts, so I

- can't give you a total of how many houses or persons living in them];
- does a contracted house have to be licensed and regulated by the State [Ms. Newlin: not at this time, Mr. Brakey has confirmed not at this time are they required to be licensed];
- the economics of renting to various groups [Ms. Newlin: it costs a lot of money for shelter, for managers, for insurance, etc.];
- concern with "warehousing" individuals without counselors, managers [Ms. Newlin: there are some homes that we do not use as providers in the specialty court systems];
- social issues not being a part of this item; and,
- limitation by Sedona to not more than 4 persons without reference to the disabled.

Mr. Brakey indicated that his organization is contracted with the Adult Probation and they have federal, state and local compliance issues that are followed. That is a form of licensure.

#### **V. CITY UPDATES**

None.

#### **VI. SUMMARY OF CURRENT OR RECENT EVENTS**

None.

#### **VII. ADJOURNMENT**

Chairman Gardner adjourned the meeting at 11:27 AM.

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Joseph Gardner, Chairman