CITY OF PRESCOTT
Everybody's Hometown

BOARD OF ADJUSTMENT AGENDA

BOARD OF ADJUSTMENT
PUBLIC HEARING
THURSDAY, MARCH 18, 2010
9:00 AM

COUNCIL CHAMBERS
201 S. CORTEZ STREET
PRESCOTT, ARIZONA
(928) 777-1207

The following agenda will be considered by the **BOARD OF ADJUSTMENT** at its **PUBLIC HEARING** to be held at **9:00 AM** on **MARCH 18, 2010,** in **COUNCIL CHAMBERS, CITY HALL, 201 S. CORTEZ STREET, PRESCOTT, ARIZONA**. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02.

I. CALL TO ORDER

II. ATTENDANCE

Members

Mike Klein, Chairman
Duane Famas, Vice Chairman
Johnnie Forquer
Calvin Fuchs
Tom Kayn
Ken Mabarak
William Warren

III. REGULAR AGENDA

1. **Approve the minutes** of the February 18, 2010 public hearing.

2. **Request to reconsider V09-006** at the April 15, 2010 public hearing. **1373 Dalke Point**. APN: 113-10-312 and totaling ± 0.73 acre. *Land Development Code, Section 3.3.3.F.* Zoning is Single Family 35 (SF-35 District), per changes made by owner/applicant is Hehlen Family Trust--Rob & Susie Hehlen. Community Planner is Steve Gaber (928) 777-1206.

THE CITY OF PRESCOTT ENDEAVORS TO MAKE ALL PUBLIC MEETINGS ACCESSIBLE TO PERSONS WITH DISABILITIES. WITH 48 HOURS ADVANCE NOTICE, SPECIAL ASSISTANCE CAN BE PROVIDED FOR SIGHT AND/OR HEARING IMPAIRED PERSONS AT PUBLIC MEETINGS. PLEASE CALL 777-1272 OR 777-1100 (TDD) TO REQUEST AN ACCOMMODATION TO PARTICIPATE IN THIS MEETING.

IV. REVIEW ITEM

3. **Request for extension V08-001, 324 S. Mt. Vernon.** APN: 110-03-021. Zoning is Single Family 9 (SF-9). Historic Preservation District #12. **BOA Approved 08-29-08.**

V. SUMMARY OF CURRENT OR RECENT EVENTS

VI. ADJOURNMENT

THE CITY OF PRESCOTT ENDEAVORS TO MAKE ALL PUBLIC MEETINGS ACCESSIBLE TO PERSONS WITH DISABILITIES. WITH 48 HOURS ADVANCE NOTICE, SPECIAL ASSISTANCE CAN BE PROVIDED FOR SIGHT AND/OR HEARING IMPAIRED PERSONS AT PUBLIC MEETINGS. PLEASE CALL 777-1272 OR 777-1100 (TDD) TO REQUEST AN ACCOMMODATION TO PARTICIPATE IN THIS MEETING.

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall and on the City's website on March 12, 2010 at 3:00 PM in accordance with the statement filed with the City Clerk's Office.

Kathy Dudek, Administrative Assistant
Community Development Department

BOARD OF ADJUSTMENT
PUBLIC HEARING
FEBRUARY 18, 2010
PRESCOTT, ARIZONA

MINUTES OF THE PUBLIC HEARING OF THE BOARD OF ADJUSTMENT held on FEBRUARY 18, 2010 in CITY COUNCIL CHAMBERS, CITY HALL located at 201 S. CORTEZ STREET, Prescott, Arizona.

I. CALL TO ORDER

Chairman Klein called the public hearing to order at 9:00 AM.

II. ATTENDANCE

MEMBERS PRESENT
Mike Klein, Chairman
Duane Famas, Vice Chairman
Johnnie Forquer
Calvin Fuchs
Tom Kayn
Ken Mabarak
William Warren

OTHERS PRESENT
George Worley, Asst. Community Development Director
Matt Podracky, Senior Assistant City Attorney
Ian Mattingly, Traffic Engineer
Dick Mastin, Development Services Manager
Steve Gaber, Community Planner
Wendell Hardin, Community Planner
Kathy Dudek, Recording Secretary

III. REGULAR AGENDA

1. **Approve the minutes** of the November 19, 2009 public hearing.

   Mr. Fuchs, **MOTION: to approve the minutes** of the November 19, 2009 public hearing. Mr. Mabarak, 2nd. **Vote: 6-0-1** (abstention due to absence: Klein).

2. **CUP09-006, 202 S. Montezuma Street.** APN: 109-02-046A and totaling ± 0.25 acre. *Land Development Code*, Section 2.5.13. Zoning is Downtown Business (DTB). Request conditional use permit to operate a mobile food cart on various occasions throughout the year. Owner is Brad Christensen. Applicant is Diane Rosito. Community Planner is Wendell Hardin (928) 777-1259.

   Mr. Hardin presented the staff report and indicated:
   - the request is for a conditional use permit at the southwest corner of Gurley and Montezuma Streets for a mobile food vendor (hot dog cart) at Eco 3 Oil;
   - there are no external impacts;
   - the project will be an accessory to the primary use;
   - the outside site triangle is not blocked;
   - no new infrastructure will be needed;
   - the request is consistent with the General Plan;
   - no more than 40 square feet may comprise the hot dog area; and,
   - the DTB allows this use with a CUP.

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Board Members queried and remarked on the following:
- the standard for granting a CUP is different from a variance;
- a CUP is brought to the Board to ascertain if the use is compatible with the *Land Development Code* that City Council has approved;
- if the applicant is open to limiting the hours of operation [Mr. Hardin: the cart may operate until 10 PM];
- if the vendor will be required to keep the area clean of trash [Mr. Hardin: yes, within 15'];
- if parking shown on the site plan is adequate for the primary business [Mr. Hardin: that is correct];
- where the cart will be stored [Mr. Hardin: on site];
- will drive up food sales take place [Mr. Hardin: this is not allowed under the *LDC*]; and,
- will motorists be allowed to park on Eco3's lot and make a purchase [Mr. Hardin: the City indicates that this should not be allowed].

Ms. Diane Rosito, (no signature on attendance roster), applicant 2155 Chippany Creek Place [?] and lessee of the property noted:
- she understands the Prescott Downtown Partnership (PDP) has influence;
- she has upgraded the property so that it is not an eyesore;
- it is a difficult economy and feels that the hot dog cart on her corner is an ideal location; and,
- she doesn't feel that she will be competing with any downtown restaurants or event vendors.

Board Members queried and remarked on:
- what days the hot dog cart will be operational [Ms. Rosito: Thursday, Friday, Saturday and as the weather gets warmer more days].

Mr. Cliff Petrovsky, president of PDP, 2775 W. Vista Pines Trail, representing the PDP commented:
- the PDP wrote a letter in support of Eco3 Oil and felt that it was an enhancement to the property; and,
- he has questions for both the applicant and City planner.

Mr. Petrovsky continued by asking questions and/or stating to Mr. Hardin/Ms. Rosito:
- will there be any tables placed in the area [Mr. Hardin: there is not an indication of whether or not tables would be used] [Ms. Rosito: she will start with two small café tables that are ADA compliant];
- that there are concerns of competition with the area non-profit organizations during special events on the square;
- if this is just a hot dog stand, or will popcorn, nuts, snowcones, etc., compete with food vendors [Mr. Hardin: when an applicant comes in, the applicant must specify the items that will be sold. The application included hotdogs (sauerkraut), sodas/water, and chips]; and,
- will customers be permitted to use the restrooms.

Board members further queried and discussed:
- if the business wanted to expand, would that be possible [Mr. Hardin: an additional CUP request would be needed to add additional items].

Ms. Jennifer Campbell (no signature on attendance roster), 141 S. McCormick,

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Suite 212, as a friend of Ms. Rosito, stated reasons she is in support of the request.

Mr. Kayn, **MOTION: to approve Conditional Use Permit CUP09-006** subject to the terms and conditions of the staff report dated January 21, 2010. Mr. Warren, 2nd. **Vote: 7-0.**

3. **V09-006, 1373 Dalke Point**. APN: 113-10-312 and totaling ± 0.73 acre. *Land Development Code, Section 3.3.3.F.* Zoning is Single Family 35 (SF-35 District). Request is for a variance to reduce side yard setbacks from the 12' requirement to 3' to the east, 7' to the south and 7' to the west. Owner/applicant is Hehlen Family Trust--Rob & Susie Hehlen. Community Planner is Steve Gaber (928) 777-1206.

Mr. Gaber reviewed the staff report and indicated:
- the request contains three parts: 1) the garage is proposed to be positioned with the northeast corner of the building located 3 feet from the northerly property line, as measured to the wall, with 3' of eave projecting to the property line; 2) the garage is proposed to be positioned 7 feet from the easterly property line, as measured to the wall, with 3 feet of eave projecting towards the property line; and, 3) the residence is proposed to be located 10 feet from the westerly property line, as measured to the wall, with 3 feet of eave projecting towards the property line;
- the plat includes areas exceeding a 20% slope and has a "disturbable envelope" that conforms to the City's Hillside Development Regulations (*LDC* Section 6.8);
- the five variance criteria in *LDC* Section 9.13 were discussed;
- the adjoining property owners have been apprised and have no problems with the request as a whole;
- Ms. Marcia Stafford who owns property to the west (Lot 72) requests the following two conditions of approval: 1) that drainage control measures occur to insure runoff from the Hehlen's roof and property does not impact the Stafford driveway; and, 2) that the trees that are located adjacent to the property line separating the two lots not be removed, and that any required trimming of the trees to meet fire-wise requirements be as minimal as possible.

Board members questioned and remarked on:
- clarification of the overhang and setback requirements;
- the PAD development with 72 lots and the concern that all lots will require variances;
- setting a precedent as this is the first home proposed to be built in the development;
- granting a variance requires other, unusual circumstances;
- the request is a self-induced hardship and cannot be granted under the laws of Arizona;
- a 2,000 square foot home is a reasonable size for the request; and,
- saving natural rock outcroppings is desirable.

Mr. Rob Hehlen, 1380 E. Valley View, noted for the past two years he has tried to work with more than one developer who went out of business during these economic times. Not all of the 72 lots are covered with boulders and he is working to preserve the natural rock outcropping.

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Board members further queried:
- the large garage and whether it will be used as a secondary housing place [Mr. Hehlen: no].

Mr. Warren called the question.

Mr. Fuchs, **MOTION: to deny Variance V09-006**. Mr. Warren, 2nd. **Vote: 6-1** (dissenting: Kayn).

(An 8-minute recess was taken at the conclusion of this item).

4. **CUP09-007, 650 Miller Valley Road.** APN: 113-07-031A totaling ± 0.47 acre. Request conditional use permit to allow a Pawn Shop. *Land Development Code,* Use Table 2.3. Currently zoned Business General (BG). The property owner is Canant Family Trust. Applicant/agent G&S Pawn LLC/Terry Garside. Community Planner is Steve Gaber (928) 777-1206.

(This item was moved after Item #5).

Mr. Gaber reviewed the staff report and indicated:
- the request is to relocate the pawn shop currently at 231 N. Cortez Street;
- the applicant's lease has expired and a CUP will be needed for relocation;
- the property has been vacant and was previously a tortilla factory/food outlet, drug store, etc.;
- there is adequate parking for the request;
- the five criteria of granting a CUP were reviewed; and,
- in looking at the Miller Valley Road area, over 50 Board of Adjustment actions have been taken in the past.

The applicant, Michelle Garside, 486 Robin Drive, was present to answer questions.

Board Members queried and noted:
- if there are any specifications in the *LDC* about bars on windows, security, etc. [Ms. Garside: it is our intention to put the bars and security inside the windows and also to landscape the premises so that the shop will not look tacky or seedy];
- if the business could place merchandise outside the store [Mr. Gaber: yes, with limits];
- a CUP cannot be conditioned to the extent that the suggestions are not within the purview of the BOA.

Mr. Podracky, Senior Assistant City Attorney, reiterated that the applicant has been asked not to place bars on the outside of the building to which she has agreed. This fact becomes part of the official minutes and she will be held to the agreement.

Mr. Fuchs, **MOTION: to approve Conditional Use Permit CUP09-007** allowing Prescott Pawn and Coin to relocate to 650 Miller Valley Road subject to the terms and conditions of the Staff Report dated January 21, 2010. Mr. Famas,

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2nd. **Vote: 5-0**. *(Mr. Kayn and Mr. Warren were excused from the meeting prior to this vote).*

5. **CUP09-008, 1455 Willow Creek Road.** APN: 116-17-270B totaling ± 6.37 acre. Request conditional use permit to allow a school (K-8) on property with a Single Family 9 (SF-9) zoning. *Land Development Code,* Use Table 2.3. Property owner is First Assembly of God Prescott Arizona, Inc. Applicant/ agent is Mountain Oak School-Cindy Roe/Dave Conners. Community Planner is Steve Gaber (928) 777-1206.

(This item was moved before Item #4).

Mr. Gaber reviewed the staff report and indicated:
- the CUP request is to relocate Mountain Oak School;
- the property is owned by the 1st Assembly of God and has been in operation as a church since the 1980s;
- in 2006 this property was subject to a rezoning request which failed;
- the church has been looking for a change for a number of years;
- the school is looking to purchase the rear area of the property, approximately 3.8 acres, where the present parking lot is located;
- the church would retain the 2.3 acres on the west side toward Willow Creek Road;
- the church will cease to operate and the school will move in;
- primary access would be taken from Willow Creek Road;
- a TIA was conducted and has been deemed up to date;
- the previously proposed commercial center would have been a more intense use;
- the school could function at the proposed site with a right-in, right-out access on the south portion of the property; and,
- the school has indicated that they are willing to create an east driveway to Northside Drive if that would be mandated for adequate access.

Board Members queried:
- the anticipated traffic flow traveling north on Willow Creek Road [Mr. Gaber: 155 students presently with 225 maximum students with the peak arrival time of 7:30 to 8:00 am, but at the end of the day, the trips would be staggered due to meetings, different dismissal times, etc.];
- would the proposed driveway at Northside be usable or unusable once ingress and egress is established;
- if the traffic pattern would be different if the property was used for commercial purposes; and,
- would the proposed project impact the traffic for Prescott High School.

Mr. Ian Mattingly, Traffic Engineer, in responding to Board questions indicated:
- the TIA was conducted in 2005 using office space and medical parking for calculation purposes;
- the proposed school use would generate substantially less traffic;
- the school traffic would result in a total of 57% generated from the TIA study of the peak build out of commercial versus the school's proposal;
- the generated traffic in the afternoon would result in only 12% of the total of the peak build out of commercial versus the school's proposal;
- the back access is legal but could be chained by the school, albeit the school has the right to open the access and use it at any time;

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- the Black Drive access will not generate an additional traffic increase for students;
- if safety problems arise, the City will mandate mitigation;
- the median will be extended to prevent to prevent left turns;
- signalized intersections occur within 600 feet of the school per State law;
- 15 mph signage can only be placed under certain criteria, and this proposal does not meet the criteria;
- the speeds on Willow Creek Road would remain the same;
- if necessary, both posting and red curbs would be installed.

(Mr. Warren asked to be excused from the meeting at 11:06 PM, and Chairman Klein granted his request).

Mr. Gaber reviewed the neighborhood meeting where the proposal was discussed at length; and, safety is a concern for both the Mountain Oak School and residents of the neighborhood. Other subjects at the area meeting included:
- the significant drainage of the property [future development would have to maintain the drainage];
- the neighbors and school having positive conversations at the meeting;
- traffic, noise and increased activity;
- the intensity of the school being less than the prior commercial proposal;
- the school would be compatible with the surrounding area;
- the exit impact to the neighborhood;
- the infrastructure for the church and school is adequate;
- the proposal is consistent with the General Plan and Willow Creek Commercial Corridor Overlay; and,
- staff is recommending approval.

Board members further queried and remarked on:
- if the church will maintain any activity on the property in the future [Mr. Gaber: no, the church would vacate the property];
- the last two conditions of the staff report [Mr. Gaber: the last two conditions are no longer a part of the proposal]; and,
- can motorists change lanes [Mr. Mattingly: yes, but mitigation will take place with perhaps a solid line].

Ms. Cynthia Roe, (no signature on attendance roster), principal of Mountain Oak School further clarified the traffic generations, i.e., some students are tardy, some students arrive with siblings, some students carpool, etc. Both the morning and evening traffic will be staggered, i.e., teachers arrive at 6:45 and 8:00 a.m., some students leave early for appointments, etc.

Ms. Sarah Twombly, 1319 Northside Drive, indicated she has met with the principal; however, she questioned the TIA that was conducted a few years ago. She is concerned with the traffic impact if trip generation from the school occurs at the intersection of Northside and Prescott Heights Drives; and, she is concerned with vehicles and the right-in, right-out ingress/egress as well as the vehicles coming from the south.

Mr. Mattingly indicated the study was done four or five years ago. When the TIA was done, it was done with a three- to four-percent growth prediction and the economy and growth rate has slowed. Mr. Mattingly agreed that if Willow Creek Road starts to have a traffic backup, motorists will turn right.

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When asked about a ban on access to Northside drive from the school, Mr. Gaber stated that there is not a ban as it would not be enforceable.

Mr. Kayn, **MOTION: to approve Conditional Use Permit CUP09-008, 1455 Willow Creek Road** subject to the terms and conditions of the Staff Report dated January 21, 2010 removing conditions 1 and 2 from the suggested motion in the staff report. Mr. Famas, 2nd. **Vote 6-0.** *(Mr. Warren was excused from the meeting prior to this vote.)*

IV. SUMMARY OF CURRENT OR RECENT EVENTS

None.

V. ADJOURMENT

Chairman Klein adjourned the meeting at 11:58 AM.

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Michael Klein, Chairman

_____
Kathy Dudek, Recording Secretary &
Administrative Assistant
Community Development Department

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V 09-006 **VARIANCE** Agenda # 2

Request for Reconsideration
Revised Request for Setback Variances
1373 Dalke Point

COMMUNITY DEVELOPMENT - PLANNING & ZONING DIVISION
BOARD OF ADJUSTMENT
March 18, 2010

STAFF REPORT

From Tom Guice, Community Development Director
George Worley, Assistant Community Development Director
Steven Gaber, Community Planner

Date March 11, 2010

Location 1373 Dalke Point **Zoning** SF-35

APN 115-10-312

Owner/Applicant Hehlen Family Trust
Rob and Susie Hehlen
1380 E. Valley View Road
Prescott AZ 86303
925-1779

REQUEST
Rob and Susie Hehlen are requesting that the Board conduct a second Public Hearing on their Variance Application. If this is to occur one of the Board Members who voted to deny the request would have to "sponsor" the request for reconsideration. If the Board chooses to reconsider this item the Public Hearing will be scheduled for the Board meeting on April 15, 2010.
The Hehlen's are revising their plan to reduce the encroachment of the garage into the easterly and northerly setbacks. Additional information will be provided at the meeting on March 18, 2010.

March 2, 2010 **Agenda # 3**

Mike Bacon
201 S. Cortez Street
Prescott, AZ 86303

VAR08-001

Dear Mr. Bacon:

I'm writing to request that you extend the variance approved for 324 S. Mt. Vernon Street for as long as possible. It remains my intention to improve the property for owner occupancy. However, current economic circumstances, specifically the current value of the home being less than the purchase price, and any reasonable sales price after improvement being less than the purchase price and improvement costs, has forced me to rent the property until home values recover.

It remains my intention to improve the property to the historic spirit and pride of the neighborhood and city, and to reside in the property myself or to provide it as a residence for my mother.

I look forward to working with you, the city of Prescott, and local outstanding licensed builders and designers, to improve property pursuant to all city code and historic approvals, hopefully sooner, rather than later. However, the current down turn in the housing market prevents me from investing in such a venture at this time and likely for at least another year. Therefore, please continue to the variance for as long as possible.

Should any city codes change in the time the variance is extended, I am happy to work with the city to make adjustments to our plans if necessary.

Thank you.

Jeff Riley

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CITY OF PRESCOTT
COMMUNITY DEVELOPMENT