



**TOWN OF PRESCOTT VALLEY**  
**BOARD OF ADJUSTMENT**  
Meeting Minutes  
*Monday, February 25, 2019*  
*Prescott Valley Library Auditorium*

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**I. Call to Order**

Chairperson Shimmin called the meeting of the Board of Adjustment to order at 5:30 p.m. and outlined the public hearing rules and procedures for the Board of Adjustment.

**II. Roll Call**

Members present: Chairperson Shimmin, Vice-Chairperson Johnson, Member Brower, Member Corrigan, and Member Van Boening. Staff present: Fernando Gonzalez, Code Enforcement Supervisor, Kristi Jones, Administrative Support II and Steven Zraick, Deputy Town Attorney.

**III. Approval of Minutes – December 17, 2018**

Chairperson Shimmin asked if there were any changes to the minutes from the December 17, 2018 meeting. There were none; thus, Chairperson Shimmin called for a motion to approve the minutes. Member Van Boening made the MOTION, seconded by Member Corrigan, to approve the minutes as submitted from the December 17, 2018 Board of Adjustment meeting.

Board members voted as follows: Chairperson Shimmin YES, Vice-Chairperson Johnson YES, Member Corrigan YES, Member Van Boening YES, and Member Brower YES. MOTION carried with 5 ayes and 0 nays.

**Review of Minutes** – Per the request of Thomas P. Kack, Esq., Agent for Cindy Brown, Owner, a review of the September 24, 2018 minutes that were approved on December 17, 2018.

Chairperson Shimmin stated that the request pertaining to the September 24, 2018 minutes was not an application item; nor would it affect the outcome of the Board action; therefore, the request would not be heard.

**IV. Announcements**

- ✚ Fernando Gonzalez introduced the newest Board member, Douglas Van Boening.

**V. Action Items**

- 1. INT18-003.** Upon the application of Thomas P. Kack, Esq., Agent for Cindy Brown, Owner, a request for the interpretation of Town Code Section 13-22-010 (Land Splits), 13-23-140 (Billboard Regulations), 13-15-020.B.3 (Use Regulations – Prohibited Uses: Any other use whose primary purpose or nature is first specified as a permitted use or use

permitted in PM [Performance Manufacturing], M1 [Industrial; General Limited], or M2 [Industrial; Heavy] districts) of the Town of Prescott Valley Zoning Ordinance. The subject property is located on State Route 69, APN # 402-14-703C (previously known as APN # 402-14-703B).

Mr. Kack, Attorney for Cindy Brown, inquired as to the procedural order for the agenda items.

Chairperson Shimmin explained that after the application is read into record, the Town gives their presentation, the Board may ask questions of Staff, and then the applicant may address the Board.

Fernando Gonzalez, Code Enforcement Supervisor, stated that the Town received a request today to remove land splits from the interpretation request. Since it wasn't received in a timely manner, the item was not removed given the agenda, legal ad and packets had already been completed. Mr. Gonzalez asked Mr. Zraick to speak to the timeliness of the filings.

Steven Zraick, Deputy Town Attorney, addressed the Board. Mr. Zraick stated that he would be discussing INT18-003 and APL18-003 simultaneously; however, separate motions are required for each application. He reported that Town Code §13-29-050 has long established a thirty (30) day time period for appeals to the Board of Adjustment. Mr. Zraick stated that the thirty (30) day period represents the exclusive jurisdiction of the Board to decide the validity of such decisions. Once the time prescribed has expired and an authorized Town Officer has issued a civil citation, the Board of Adjustment no longer has jurisdiction to consider the appeals or other matters related to the citation. He noted that jurisdiction passes to the Administrative Hearing Office exclusively to decide and resolve the citation. He explained that if the Board were to consider and rule upon such appeals, it would subvert the Hearing Office and could delay enforcement actions.

Mr. Zraick reported that the applicant was issued a final notice of violation on October 26, 2018 and a citation was issued on November 21, 2018. He noted that the applicant submitted the appeal and interpretation applications on December 21, 2018 which is past the 30 day timeframe; therefore, both INT18-003 and APL18-003 are time barred from being heard.

In conclusion, Mr. Zraick recommended that the Board dismiss the applications for lack of jurisdiction due to untimely filing of the applications.

Chairperson Shimmin opened the item to questions or comments from the Board.

Chairperson Shimmin asked for clarification on whether Mr. Zraick was presenting both applications together or separate.

Mr. Zraick stated that both applications should be dismissed for untimely filing.

Member Corrigan asked if there was a policy in place that would give Town Staff the authority to deny applications not submitted in a timely manner.

Mr. Zraick said that it is not up to Town Staff to determine the timeliness of filings; they accept anything that is submitted and then it is presented to the Board.

As there were no further questions from the Board of Staff, Chairperson Shimmin invited the applicant to address the Board.

Thomas Kack, Attorney for Cindy Brown, addressed the Board. Mr. Kack clarified that they did not file a new motion today; they filed a withdrawal for one of the interpretation items and withdrawals are typically allowed up to the last minute. He also noted that there is a difference between an interpretation and an appeal as an appeal involves a stay whereas an interpretation does not. Mr. Kack stated that the appeal was filed in a timely manner.

Mr. Kack provided each Board member an exhibit book. He displayed exhibits of the initial notice of violation (postcard) issued on October 11, 2018 as well as the citation issued on November 21, 2018 – neither of which mention an appeal process. Mr. Kack stated that they are appealing the citation; therefore, they are within the 30 day timeframe.

Mr. Kack indicated that the only authority any municipality has to regulate zoning comes from Arizona Revised Statutes (ARS). He read ARS §9-462.01 A. 1 and 2 and emphasized that signs and billboards are treated differently. Mr. Kack referenced the Supreme Court pertaining to statutes and regulations passed by any towns.

Mr. Kack read Town Code Section 13-29-050 (Hearing Applications) A to the Board. He noted that the Town Code allows for an interpretation as well as an appeal. Mr. Kack discussed Town Code Section 13-29-060 (Hearings and Rulings) as well as ARS§9.462.06 (Board of Adjustment.) He emphasized paragraphs D, E and G.1 which pertain to appeals. Mr. Kack expressed that his client, Cindy Brown, is being coerced into removing a billboard that she is rightfully entitled to have under Town Code Section 13-23-140 and if she removed the billboard, she could be sued and incur great financial loss. Mr. Kack stated that the Town hadn't read its own code nor does the Town understand the difference between an interpretation and an appeal. He noted any decision can be appealed. Mr. Kack reported that Town Code doesn't require staff to send a notice of violation; they can go straight to citation. He questioned the right to appeal under that circumstance. Mr. Kack noted that the Town's argument is in direct conflict with Town Code.

Mr. Kack asked if the Board wanted him to move forward with the interpretation as he had only addressed the appeal. He indicated that he would do a single presentation for both items.

Chairperson Shimmin stated that she didn't have an issue with both items included in a single presentation if done expeditiously. She reiterated that separate motions would be made for the applications.

Mr. Kack reported that he would present the interpretation item by item to establish a record as required by the Supreme Court.

Mr. Zraick interjected that the Town presented solely on the timeliness of the applications. If the Board wants to move forward, Mr. Gonzalez should be allowed to present the merits of each case before the applicant's presentation.

Chairperson Shimmin asked Mr. Zraick to readdress the Board.

Mr. Zraick referenced the final notice of violation that was mailed to the applicant on October 26, 2018. The final notice listed the appeal rights and also stated that a civil citation would be issued if the property was not brought into compliance. He emphasized that the thirty (30) day timeframe starts from the issuance date of the final notice of violation; not the date the citation was issued. The property was not brought into compliance and a citation was issued on November 21, 2018. The appeal application and interpretation applications were not submitted until December 21, 2018; thus, making them untimely.

Mr. Zraick stated that the applicant has erroneously pointed to ARS §9-462.0 (which gives municipalities the option to delegate to a hearing officer authority to hear and decide matters within the jurisdiction of the Board of Adjustment) as a basis for argument. He reported that Ordinance No. 539 made it clear that the intent of the Town Council was to create the Office of the Hearing Officer (HO) under ARS §9-500.21. Nothing therein indicates any intention for the HO to decide matters that would otherwise be heard before the BOA (Board of Adjustment.) To argue such an application of ARS §9-462.06 ignores the clear intent of the Town Council. Mr. Zraick stated that Ordinance No. 539 established a Hearing Office that would run concurrently to the Board of Adjustment. He noted that the decisions of the Hearing Officer have no effect on the Board's determinations and vice versa. Mr. Zraick reported that the Hearing Officer stayed the matter to allow the Board to determine if it is within their jurisdiction.

Mr. Zraick recommended that the Board dismiss the applications for lack of jurisdiction due to untimely filing of the applications. If the Board doesn't find that the applications are untimely, he will have Mr. Gonzalez present the facts of the cases and then Mr. Kack will be allowed to present his case.

Chairperson Shimmin asked if the Town's position is that the Board can dismiss interpretation INT18-003 for lack of jurisdiction due to untimely submissions.

Mr. Zraick replied "absolutely."

**Action INT18-003:**

**Chairperson Shimmin moved to dismiss interpretation INT18-003 for lack of jurisdiction due to untimely filing of the application.**

Vice-Chairperson Johnson seconded the motion.

MOTION carried unanimously by roll call vote as follows: Chairperson Shimmin YES, Vice-Chairperson Johnson YES, Member Corrigan YES, Member Van Boening YES, Member Brower YES.

MOTION carried with 5 ayes and 0 nays.

2. **APL18-003.** Upon the application of Thomas P. Kack, Esq., Agent for Cindy Brown, Owner, a request to appeal the decision of the Zoning Inspector to cite the Owner for a violation of Town Code Section 13-15-020.B.3 (Use Regulations – Prohibited Uses: Any other use whose primary purpose or nature is first specified as a permitted use or use permitted in PM, M1 or M2 districts) of the Town of Prescott Valley Zoning Ordinance. The subject property is located on State Route 69, APN # 402-14-703C (previously known as APN # 402-14-703B).

Mr. Gonzalez asked Mr. Zraick to speak to the timeliness of the filing.

Mr. Zraick reiterated that the applicant was issued a final notice of violation on October 26, 2018 and a citation was issued on November 21, 2018. He noted that the applicant submitted the appeal and interpretation applications on December 21, 2018 which is past the 30 day timeframe; therefore, APL18-003 is also time barred from being heard.

Chairperson Shimmin announced that the application would not be heard for lack of jurisdiction due to untimely filing and made a motion to dismiss the case.

**Action APL18-003:**

**Chairperson Shimmin moved to dismiss appeal APL18-003 for lack of jurisdiction due to untimely filing of the application.** Member Brower seconded the motion.

Mr. Kack interjected (off microphone) and requested the opportunity to respond. He referred to Arizona Revised Statutes as well as Town Code.

Chairperson Shimmin reiterated that they were dismissing the case; therefore, they were not going to hear the case and asked for the vote to be called.

MOTION carried unanimously by roll call vote as follows: Chairperson Shimmin YES, Vice-Chairperson Johnson YES, Member Corrigan YES, Member Smith YES, Member Brower YES.

MOTION carried with 5 ayes and 0 nays.

3. **INT18-001.** Upon the application of Thomas P. Kack, Esq., Agent for Sam and Tina Knoy, Principals of Knoy Living Trust, Owner, a request for the

interpretation of Town Code Section 13-21-080 (Accessory Buildings, Structures and Uses) of the Town of Prescott Valley Zoning Ordinance. The subject property is located on State Route 69, APN # 402-02-052M.

4. **APL18-001.** Upon the application of Thomas P. Kack, Esq., Agent for Sam and Tina Knoy, Principals of Knoy Living Trust, Owner, a request to appeal the decision of the Zoning Inspector to cite the Owner for a violation of Town Code Section 13-21-080 (Accessory Buildings, Structures and Uses) of the Town of Prescott Valley Zoning Ordinance. The subject property is located on State Route 69, APN # 402-02-052M.
5. **INT18-002.** Upon the application of Thomas P. Kack, Esq., Agent for Sam and Tina Knoy, Principals of Knoy Living Trust, Owner, a request for the interpretation of Town Code Sections 13-26-040 (Landscaping Provisions), 13-26-050.F.1.a (Screening Provisions – Screening for Protection of Adjacent Properties) and 13-26-020 (Site Development Standards – Applicability). The subject property is located at 170 S. State Route 69, APN # 402-02-052S.
6. **APL18-002.** Upon the application of Thomas P. Kack, Esq., Agent for Sam and Tina Knoy, Principals of Knoy Living Trust, Owner, a request to appeal the decision of the Zoning Inspector to cite the Owner for a violation of Town Code Sections 13-27-020 (Zoning Permits), 13-26-040 (Landscaping Provisions), 13-26-050.F.1.a (Screening Provisions – Screening for Protection of Adjacent Properties) and 13-26-020 (Site Development Standards – Applicability). The subject property is located at 170 S. State Route 69, APN # 402-02-052S.
7. **V18-004.** Upon the application of Thomas P. Kack, Esq., Agent for Sam and Tina Knoy, Principals of DM Storage LLC, Owner, a request for a Variance from Town Code Section 13-26 (Site Development Standards) as applied to the real property located at 170 S. State Route 69, APN # 402-02-052S.

Fernando Gonzalez, Code Enforcement Supervisor, stated that he will defer to Mr. Zraick due to timeliness of the filing.

Mr. Zraick stated that he would address the timeliness of the filings. If the Board doesn't find that the applications are untimely, he will have Mr. Gonzalez present the facts of the cases and then Mr. Kack will be allowed to present on behalf of his clients.

Mr. Zraick noted that the Board's jurisdiction and the governing law is the same as the previous applications. Mr. Zraick stated that the Town has tried to work with the defendant for quite some time; however, unable to achieve compliance, a final notice of violation was mailed on June 5, 2018 which outlined the appeal process and also stated that a civil citation would be issued if the property was not brought into compliance. Compliance was still not achieved; therefore, a citation was issued on July 26, 2018. A variance application was submitted on December 4<sup>th</sup>, 2018. Appeal applications and interpretation applications (one for each property) were submitted on December 7, 2018. Mr. Zraick acknowledged that it took a few days to accept the applications; however, the applications were submitted over 180 days after the issuance of the final notices of violation.

In conclusion, Mr. Zraick recommended that the Board dismiss appeal APL18-001, appeal APL18-002, interpretation INT18-001, interpretation INT18-002, and variance V18-004 for lack of jurisdiction due to untimeliness. He noted that a variance cannot be requested after being cited for the violation.

Chairperson Shimmin moved to dismiss the applications for lack of jurisdiction due to untimeliness.

Member Corrigan recommended that the applicant be allowed to present their case on the timeliness of the filings.

Chairperson Shimmin asked if the Board can dismiss the applications and not hear the cases due to untimeliness.

Mr. Zraick stated that it is in the Board's purview to dismiss the applications; however, he agreed that the applicant should be allowed to present their cases limited to the timeliness of filing.

Joel Fornara, Attorney for applicants Sam and Tina Knoy, members of DM Storage LLC and Knoy Family Living Trust, addressed the Board. Mr. Fornara read Town Code Section 13-29-010 which states that the Town Council shall establish and appoint the Board of Adjustment which shall, in turn, perform the duties prescribed by Title 9, Chapter 4, Article 6.1, Arizona Revised Statutes. Mr. Fornara read ARS §9-462.06 Paragraph D emphasizing "within a reasonable time" and pointed out that this Statute differs from the thirty (30) day requirement in Town Code Section 13-29-050. He indicated that under Arizona law, "reasonable time" is always determined under the circumstances on a case by case basis. Mr. Fornara noted that at times, thirty days may be reasonable and other times, it is not. He stated that the Knoys were out of state at the time the final notice of violation was issued. They were traveling from May to September or October of 2018. Mr. Fornara reported that upon the Knoys return, they met with their legal counsel to discuss options which included bringing the matter before the Board of Adjustment. However, they opted to meet with Town Staff to see if they could resolve the issues. The parties were not able to come to an agreement; therefore, the applicant submitted the various applications within 30 days from the meeting.

In conclusion, Mr. Fornara stated that the applications weren't submitted within thirty days from the issuance of the final notice of violation; however, they were submitted within a reasonable time under the circumstances.

Member Corrigan asked for clarification as to whether Mr. Fornara said that the Town couldn't set the thirty day limit for filing an appeal.

Mr. Fornara stated that it shouldn't be a set rule. If he were on the Council, he would mirror the ARS and make it a reasonable time. Ultimately, the Board should be given the discretion to determine what is a reasonable time on a case by case basis.

Member Corrigan stated that the Board is there to interpret the Ordinance to ensure the applicants receive a fair deal.

Mr. Fornara reiterated that Town Code Section 13-29-010 which states that the Board of Adjustment which shall perform the duties prescribed by Title 9, Chapter 4, Article 6.1, Arizona Revised Statutes. He noted that although the Board does interpret and hear appeals, variances on Town Code; they are also bound and governed by state law.

Member Corrigan asked if state law precludes setting a thirty day limit.

Mr. Fornara replied "it doesn't."

Member Corrigan asked if Mr. Fornara would concede that thirty days is a reasonable amount of time and it is within the power of the Town to set such a time period.

Mr. Fornara stated that it is within the Town to pass whatever Code Ordinances they deem necessary as long they don't exceed the power to regulate given to them by the state legislature. He indicated that with a hard and fast rule such as thirty days, they will run into issues as thirty days may not be deemed reasonable in certain circumstances.

Member Corrigan stated that it wasn't the Board's problem that the applicants were traveling for an extended time and didn't receive their notice.

Member Brower asked what the address of record for the applicant and if they have an agent that manages the properties.

Mr. Fornara stated that the applicant does have an agent that oversees their properties while they are gone. He noted that the notices were mailed to the address of record.

Member Brower asked if the agent notified the applicant when the notice of violation was received.

Mr. Fornara indicated that the owners were informed of the notice of violation while they were traveling.

Member Brower asked if they received the actual notice of violation or were they just verbally informed.

Mr. Fornara said he wasn't sure; he'd need to ask his clients.

Mr. Zraick readdressed the Board. He stated that the Town believes thirty days is reasonable and has specifically established that in Town Code. Mr. Zraick reported that Mr. Gonzalez had been in contact with the representative for the properties throughout the violation process.

**Action INT18-001:**

**Chairperson Shimmin moved to dismiss interpretation INT18-001 for lack of jurisdiction due to untimely filing of the application.**

Member Brower seconded the motion.

MOTION carried unanimously by roll call vote as follows: Chairperson Shimmin YES, Vice-Chairperson Johnson YES, Member Corrigan YES, Member Smith YES, Member Brower YES.  
MOTION carried with 5 ayes and 0 nays.

**Action APL18-001:**

**Chairperson Shimmin moved to dismiss interpretation APL18-001 for lack of jurisdiction due to untimely filing of the application.**

Member Brower seconded the motion.

MOTION carried unanimously by roll call vote as follows: Chairperson Shimmin YES, Vice-Chairperson Johnson YES, Member Corrigan YES, Member Smith YES, Member Brower YES.  
MOTION carried with 5 ayes and 0 nays.

**Action INT18-002:**

**Chairperson Shimmin moved to dismiss interpretation INT18-002 for lack of jurisdiction due to untimely filing of the application.**

Member Brower seconded the motion.

MOTION carried unanimously by roll call vote as follows: Chairperson Shimmin YES, Vice-Chairperson Johnson YES, Member Corrigan YES, Member Smith YES, Member Brower YES.  
MOTION carried with 5 ayes and 0 nays.

**Action APL18-002:**

**Chairperson Shimmin moved to dismiss interpretation APL18-002 for lack of jurisdiction due to untimely filing of the application.**

Member Brower seconded the motion.

MOTION carried unanimously by roll call vote as follows: Chairperson Shimmin YES, Vice-Chairperson Johnson YES, Member Corrigan YES, Member Smith YES, Member Brower YES.  
MOTION carried with 5 ayes and 0 nays.

**Action V18-004:**

**Chairperson Shimmin moved to dismiss interpretation V18-004 for lack of jurisdiction due to untimely filing of the application.**

Member Brower seconded the motion.

MOTION carried unanimously by roll call vote as follows: Chairperson Shimmin YES, Vice-Chairperson Johnson YES, Member Corrigan YES, Member Smith YES, Member Brower YES.  
MOTION carried with 5 ayes and 0 nays.

**VI. Call to Public**

Chairperson Shimmin called for public comment.

Mr. Kack asked for the exhibit books to be returned to him except one to be preserved for the record.

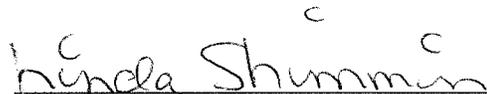
**VII. Adjournment**

There was no further public comment related to any item presented during this meeting; therefore, Chairperson Shimmin called for a motion for adjournment.

Vice-Chairperson Johnson made the MOTION to adjourn by roll call vote. Board members voted as follows: Chairperson Shimmin YES, Vice-Chairperson Johnson YES, Member Corrigan YES, Member Smith YES, Member Brower YES.

MOTION carried with 5 ayes and 0 nays

The February 25, 2019, Board of Adjustment meeting adjourned at 6:46 p.m.

  
Linda Shimmin, Chairperson