

**MEETING MINUTES**  
**City of Glendale**  
**Citizens Advisory Commission on Neighborhoods**  
**Glendale City Hall, Room B-3**  
**5850 W. Glendale Avenue**

**Wednesday, April 1, 2009**  
**5:45 p.m.**

**MEMBERS PRESENT:** Sharon Brown  
JoAnn Caufield  
Donna Duggins  
Derek Fowler  
Bill Jocewicz  
Vickie Loya  
Sharon Sprague  
Mathew Versluis

**MEMBERS ABSENT:** Mike Nave, Chair  
Lynda Vescio

**STAFF PRESENT:** Erik Strunk, Community Partnerships Director  
Matt Cohrs, Neighborhood Partnership Administrator  
Josie Romero, Neighborhood Services Coordinator  
Russ Romney, Assistant City Attorney

- I. **Call to Order**  
Commissioner Duggins called the meeting to order at approximately 5:45 p.m.
- II. **Roll Call**  
Commissioner Duggins noted that Commissioners Nave and Vescio were absent.
- III. **Approval of Minutes – March 4, 2009**  
Commissioner Duggins motioned to approve the minutes of the March 4, 2009 meeting, as written. Commissioner Loya made the second. **The motion passed 8-0.**
- IV. **Business from the Floor**  
None.
- V. **State of Arizona Appeals Court Ruling - NPO Program Impacts**  
Mr. Russ Romney, Assistant City Attorney, briefed the commission on the Court's ruling and its possible impact on the Neighborhood Improvement Grants and related public-service programs.

In December 2008, a legal case brought before the State of Arizona Appeals Court resulted in a new precedent being established regarding the use of public funds for private gain. Although this new interpretation may impact the use of public funds for areas such as economic development, it may also have an impact on the Neighborhood Improvement Grants program. Mr. Russ Romney, Assistant City Attorney, briefed the commission on the Court's ruling and its possible impact on the Neighborhood Improvement Grants and related public-service programs.

Mr. Romney opened by giving details of the City North project in Phoenix. The developer intended to construct 1.2 million square feet of retail space with 3,180 parking spaces, including 200 Park-n-Ride spaces. Under the development agreement, there would be no parking fee charged during a 45- year term. In exchange, the City would allow for a 50% rebate of sales tax revenues over a period of 11.25 years. The actual amount received by the developer would be approximately \$97.4 million over the rebate period.

After outlining both sides of the issue, Mr. Romney indicated that the Court ruled the development agreement constituted a violation of the “gift clause” of the Arizona Constitution. He further indicated that the appellate court decision only addressed the “gift clause” challenge.

Based on previous case law, Mr. Romney explained the legal test for a gift clause violation. Basically, when entering into such development agreements, there is typically some type of “broad” benefit to the public benefit that supersedes any incidental benefits that may flow to a private interest. The key is that the proportion of the benefit cannot be so disproportionate as to amount to an “abuse of discretion.” Simply stated, the benefit to the private interest cannot exceed that to the public.

The Appeals court ruling in December 2008 changed the test for applying the gift clause violation. Under this ruling, the new test for a gift clause violation still also considers the public benefit and proportionate interest, but must also take the private interests/gain into account. Government expenditures cannot unduly promote a private interest and expenditures cannot foster or promote purely private or personal interests. The holding reversed an earlier Superior Court ruling and remanded the case for further proceedings consistent with the opinion of the Appeals Court.

Mr. Romney then detailed how the ruling impacts both Glendale and other cities. It potentially eliminates rebates of sales taxed for the purposes of economic development opportunities. It may also be applied to other city programs and services that focus on private benefit while having an equal or greater benefit to the public.

Even so, there are challenges with how the ruling is worded. For example, the element of test mentions “unduly” benefit “purely” private interests, which is not clear and lowers the standard of acceptable court review. Also, the Court’s analysis does not match the language of existing case law as it fails to acknowledge the “unduly promote” language of Supreme Court opinions or discuss the focus on “any promotion” of private interest. It also introduces a new consideration - “indirect” and “direct” benefits - without defining the terms or providing the basis for determination.

Even if a detailed review was permissible, it fails to address the legitimate extent of the court’s review and the extent of the benefit to private interest that would constitute a violation.

Mr. Romney further elaborated that regarding separation of powers, expenditures are legislative matters. Judicial review should be limited to a level of abuse of discretion, and the court’s passing reference and dismissal of that fact is inconsistent with prior case law.

Mr. Romney concluded by stating an appeal is likely, either by developer or by developer and Phoenix. However, the decision creates law in the interim and a review by Arizona Supreme Court could take up to two years

The City of Glendale will consider an amicus brief, likely a joint effort with other cities. There is no need to review completed transactions unless they are challenged and the City Attorneys' office will continue to monitor legal discussions about effect of opinion and the actions by Legislature in light of opinion.

That being stated, Mr. Cohrs explained that because of the new case law, two of the existing neighborhood improvement grant projects – East Catlin Court and West Plaza II – would be in violation if they were to move forward. All other projects would move forward as planned. As a result, Neighborhood Partnership staff would be working with the impacted neighborhoods over the next month, to identify potential options of a more public nature. The intent is to bring these projects before the Commission at its May meeting, for review and approval. Mr. Cohrs additionally mentioned that staff will be reviewing the small improvement grants program to ensure it remains in compliance with new state law regarding the “gift clause” as determined by the Appeals Court.

**VI. Staff Updates**

The Neighborhood Partnership Administrator and staff shared information with the commission on key activities over the past month.

**VII. Floralcroft Neighborhood Tour**

In October 2008, a neighborhood profile was presented to the Commission by the Floralcroft neighborhood. The neighborhood completed a conceptual design grant in Spring 2008 and in Fall 2008 received a large grant for final design of right-of-way (ROW) improvements, which is now underway. After this brief overview, the commission then traveled to the Floralcroft neighborhood and conducted a walking tour with residents and staff.

The current design for rights-of-way-improvements and its impact on the neighborhood were discussed, as well as the condition of the neighborhood and homes within it, which is generally good. The commission inquired about the status of some homes in the neighborhood, as well as challenges in the design.

**VIII. Adjournment**

Commissioner Duggins motioned to adjourn the meeting at 7:20 p.m. **The motion passed 8-0.**

Respectfully submitted,

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Matt Cohrs, Administrator  
Neighborhood Partnership Office

