

ARIZONA STATE LEGISLATURE

LEGISLATIVE GOVERNMENTAL MALL COMMISSION

Minutes of the Meeting

**Tuesday, September 19, 2000 - 3:30 P.M.
House Hearing Room 3**

Members Present:

Tom Knapp, Chair
Senator Tom Smith
Leroy Brady
John Clements

Joy Rich
Norman Hintz
Donald P. Keuth, Jr.
David Richert
Polly Rosenbaum

Members Absent:

Representative Roberta Voss
William McMullen
Elliott Hibbs

Staff:

Larry Chesley, House Analyst

Tape 1, Side A

OPENING REMARKS

Chairman Knapp called the meeting to order at 3:35 p.m. and attendance was noted. He reminded the members that the minutes of August 1, 2000 meeting reflect that the Commission moved to table the issue of the Grace Court School to the next meeting. He pointed out at that time the Commission strongly urged negotiations between the City of Phoenix, owners and potential developers with the understanding of bringing it back for action, which could result in a denial of a permit. He stated that is the situation, and there is no carry-over action other than the fact it was tabled until today's meeting.

Mr. Knapp commented that he would allow public testimony to be heard before the Commission makes a decision. He indicated the time limit for presentations will be held to five minutes.

PUBLIC TESTIMONY

Mr. Knapp noted that **Tom Chapman, Capitol Mall Association**, was present in opposition of the Grace Court School demolition.

Shannon Dubasik, Capitol Mall Association, testified in opposition of the demolition of the Grace Court School. She stated the Association's opposition is based upon the building's historical significance. The Association is aware of plans that exist to develop the area to the benefit of the neighborhood, and does not want to lose any more significant historical properties in the downtown area as has occurred in the past.

Robert Varnicke, resident of Phoenix, testified in opposition of the demolition of Grace Court School. He commented he had attended Kenworth and noted that there are not many of the old buildings in Phoenix remaining. He recollected field trips that he had attended, as a child, to other school buildings including Grace Court. He commented there are many people who share his views that to demolish Grace Court School and turn it into a parking lot would be a shame.

Tom Simplot, Chair, City of Phoenix Historic Preservation Commission, testified in opposition of demolishing Grace Court, which he classified as a beautiful, historic landmark building. He noted that the Preservation Commission voted to spend up to \$40,000 to aid in the prevention of the demolition. He urged the members to not approve the demolition today.

Reid Butler, Regional Partner, Legacy Partners, testified in opposition of demolition of Grace Court School. He indicated from 1988 to 1995 he was a member of the City of Phoenix Historical Preservation Commission. He stated that Legacy Partners is the developer of a housing community that is to be built in the Capitol Mall on 12th Avenue and Van Buren adjacent to University Park. He explained it is a 200-unit housing community that will be under construction in November. Mr. Butler stated that Legacy Partners is one of the three companies involved in the Request for Proposal (RFP) that was conducted this summer for the acquisition and development of the Grace Court School. He explained that their proposal was to retain the school as a centerpiece with housing in the school as it would be redeveloped. He noted the entire development would include a mixed-use plan with housing around the school, office components in the core, and retail development along Seventh Avenue wrapping around to Van Buren. He said the status of the RFP that was submitted is still in the process of consideration. Mr. Butler stated the reason Legacy Partners is interested in becoming involved with the redevelopment of this site is because it will be an opportunity for a private sector connection between the activity within the Governmental Mall and the activity downtown that is moving west towards Seventh Avenue.

James Braselton, Attorney representing Russell Estate, the owners of Grace Court School property, stated that at the last meeting he made reference to the fact that he does not believe, as a matter of law, that the Commission has jurisdiction in this matter. In response to the comment made by Mr. Varnicke, Mr. Braselton stated that he was not aware of a parking lot being proposed for this site. He asked the Commission to think seriously on this issue before any vote is taken. He commented that the Commission has specific statutory authority that is set forth in A.R.S. 41-1362, subsection B, number 4, which states the Commission's jurisdiction is limited to the review and approval or disapproval in writing regarding requests for permission to

develop structures or sites. He said he knew the Commission has the opinion of an attorney that indicates the words "develop structures or sites" somehow gives the Commission authority to act on applications to demolish buildings. Mr. Braselton opined there is no conceivable way a court is going to construe that authority to encompass demolition. With respect to the jurisdictional question, he commented it is important to remember that what the Commission is really acting on is an application that his client filed with the City of Phoenix. He noted it is a City of Phoenix Historic Preservation ordinance, enacted by the City Council and enforced by the City of Phoenix. He added that for the State Governmental Mall Commission to purport to enforce a city ordinance is, in his opinion, unprecedented. He commented that any decision made by the Commission would be unenforceable.

Mr. Keuth remarked that at the last meeting there was a discussion about an impending appraisal of the site to help clarify whether there was a possibility to move forward with any of the three applications. He asked Mr. Braselton about the status of that appraisal. Mr. Braselton replied the appraiser informed him this morning that the appraisal report would be delivered to him sometime today. In response to Mr. Keuth, Mr. Braselton stated he has not seen the appraisal, and is not aware of whether there would be any movement with any of the potential developers on the site.

Mr. Braselton explained that the property owner, Mr. Russell, is deceased and two trustees are responsible for handling the property in his estate. He commented that in order for the trustees to act responsibly in their fiduciary capacity, they needed to get an appraisal of the property before they could make any decisions. He stated, with regard to the RFPs, the proposals have been received and none have been rejected. He commented that the next step is to obtain the appraisal indicating the property value before moving forward with any negotiations or actions on the property.

In response to Mr. Clements, Mr. Knapp explained that the City cannot issue any permit in this overlay zoning area without first seeking permission of the Governmental Mall Commission. Mr. Clements said his recollection was that the City was prepared to issue the demolition permit. Mr. Knapp said that is also his recollection. Mr. Clements said his understanding is that the Commission basically roadblocked that situation based upon the statutes. Mr. Knapp replied he would explain the events that transpired. He noted the reason Grace Court School is an issue before the Governmental Mall Commission is because of the overlay zoning. It has nothing to do with the City ordinance, but rather because of the Capitol District Development Guidelines which were adopted by the Legislative Governmental Mall Commission. He said those are the Planning Guidelines, and he said he had copies available if anyone wished to review them. He noted certain highlighted pages within the Guidelines, which had been discussed previously that would oppose any demolition of Grace Court School. For example, page 3, the establishment criteria for review and approval of development processes, item number six of planning and development, which is historical character and structures in the Woodland Historic District should be preserved and enhanced through rehabilitation and adaptive use. He indicated that Exhibit Map 3 in the

Guidelines clearly shows the Grace Court School, and is also addressed specifically on the land use plan on Map 4.

Mr. Knapp stated that when the City called and asked if this Commission had an issue with the proposed demolition permit, he researched the Commission's Planning Documents and identified six items where the Grace Court School was specifically addressed to be brought before the Commission. He stated that is why the issue is before the Commission. He stated that while he respects Mr. Braselton's opinion, as he would of all council, the Commission's council is the Legislative Council who issued an opinion on March 27, 2000 to the members. He stated it is the opinion of Legislative Council that the Commission clearly has the authority and responsibility to make a decision. He noted that it is the Chairman's opinion that it is clearly the Commission's responsibility to act on this issue today.

Mr. Clements stated that these types of properties are typically governed by economic issues. He noted his surprise that someone would try to demolish the School in the face of an offer to buy it that requires that the property be improved. He asked Mr. Braselton if the owners had any evidence which shows that the property would be worth more if it were unimproved than if it were improved with the Grace Court School. Mr. Braselton replied that he was not aware whether the family had appraisals done prior to the time of his involvement, which was earlier this year. He noted that there have been verbal indications to the family that the property may be more valuable unimproved, but he is unaware of anything in writing.

Mr. Clements stated he was surprised to hear of Mr. Braselton's answer that the family would ask to demolish a building prior to learning from the public or pool of buyers what they would be willing to pay for it whether it was improved or unimproved. He asked Mr. Braselton to comment as to why discussion is taking place about a demolition permit until there is evidence that indicates the property is more valuable unimproved than improved.

Mr. Braselton responded there was a demolition permit issued by the City of Phoenix in 1996 or 1997 time frame. He explained that a number of buildings on the site were demolished at that time and Mr. Russell, the owner, decided not to pursue demolition of the main school building. In response to the question of why the demolition permit process is being pursued to obtain approval, he said it is not to bring a bulldozer there tomorrow. He explained because of the way the City Ordinance is structured, there is a one-year waiting period involved before demolition can commence after an application is filed with the City. He stated the purpose here before the Commission is to try to move the process along on a parallel tract whereby the owners obtain the right to demolish in the event it is determined it is the highest and best use of the property. He added that the goal of the trustees of the Russell estate is to maximize the value of the property for the beneficiaries of that estate, which is their duty as fiduciaries. He commented that it is not their intention to demolish the building if someone will pay more for the property with the building in place. However, the trustees intend to exercise all

options in terms of investigating what would be the highest and best use, and how they can realize the highest value for the property.

Mr. Clements asked for clarification on the one year waiting period. Mr. Braselton replied they would have to wait one year to receive the permit to move forward from the date the request was made. He stated that that particular date precedes his involvement with the property, but opined it was in 1996 or 1997. He reiterated that there was a permit issued for this site and they are here to get that permit renewed.

In response to Mr. Knapp, Mr. Braselton remarked that he has a copy of the permit in his file issued by the City of Phoenix and that Mr. Knapp's prior recitation of the history of the property is not accurate with the events. He indicated the permit was granted and a number of buildings have already been demolished on the site. Mr. Knapp responded that is true.

Mr. Keuth noted that if the Commission gave its approval, then Mr. Braselton could obtain the demolition permit tomorrow, as the one-year waiting period has passed as required by the revised Historic Preservation statutes.

Mr. Braselton replied he has waited the one-year period. He said if the Commission approved or disapproved, it would not matter because he does not think it would have any bearing on whether he is entitled to the permit. However, he said if the Commission approved the permit, and the City agreed, then the one-year waiting period is over.

Mr. Clements stated that he was a member of the Commission when this issue was first heard. He said his recollection is that the first demolition permit was issued for the outbuildings, including a garage, an administration building, and a smaller building, but did not include the school. He noted that shortly thereafter, Mr. Killian and he met with David Russell in an attempt to develop a plan to satisfy Mr. Russell and keep the building in place into a productive situation. He commented that although Mr. Russell was very gracious about the situation, they were unable to meet his expectations to reach any agreements.

Mr. Clements stated that there needs to be a balance between the rights of people to do what they want with their real estate and the needs of the public. He said if the public cannot produce a logical buyer or undertake to maintain this building for the estate, then it is difficult to argue that the owners should hold for an indefinite period of time. He stated he is torn both ways on this issue. He remarked that as a child, he sang on the steps of the Grace Court School with the Phoenix Boys Choir. Now that he is a real estate broker/developer he stated he understands the burden placed on the owners in holding a piece of property, similar to Grace Court, while trying to maintain it. He opined if the public cannot produce a logical buyer or undertake the maintenance of a building for the estate, then it would be difficult for the Commission to argue that the property should be held for an indefinite period of time. He proposed a compromise that the Commission should deny the demolition permit, or grant it with the stipulation that they have to wait an "X" period of time.

Mr. Knapp stated it will be the Chair's position to hear a motion to either approve or deny the demolition permit. He stated that the opportunity for compromise has been explored since March, and he opined that there has been sufficient deliberation time for this issue. He remarked that the Commission has received legal advice with regard to the Commission's authority and responsibility to act regarding the permit, therefore, he said he would entertain a motion to either to approve or deny the permit.

Mr. Keuth noted that the owner applied to the City of Phoenix over a year ago for a demolition permit, and he waited that one-year period. Subsequently the issue was brought before the Commission. He opined that the owner has, in essence, met the requirement of the revised Historic Preservation Statute. Therefore, he believes the Commission cannot impose any restrictions. Mr. Knapp agreed.

Mr. Richert stated he wanted to re-emphasize the authority issue. He noted if this matter goes to a court, the issue discussed of the State not having the ability to override the City is incorrect. He said the City gains its powers from the State. He added that as a Board representing State legislation that was intended to create a higher authority in the Governmental Mall because of the problems, some authority was given to the City. He said the development and the theory that was given through the review of the statutes was strong and went back to the basis of how the word "development" came about. He commented that development begins with making the land ready. He concluded he wanted his remarks on the record so that a judge would have something to refer to regarding Mr. Braselton's comments today. He said although he appreciates Mr. Braselton's opinion, it is the State that has the ultimate authority.

Mr. Hintz commented as with Mr. Clements, he also is torn with this issue. He noted that this is a classic conflict between private property rights and what is good for the public. He remarked that the Commission took no action last time, because the members were led to believe that there were prospects for development of the property that would not involve demolition. He stated that at least one of those prospects is still viable today.

Mr. Hintz moved that the Commission recommend denial for the demolition permit. The motion was seconded by Mr. Richert. The motion CARRIED by voice vote with one abstention.

Conceptual Approval for the New State Department of Environmental Quality and Department of Administration Buildings

Mr. Knapp remarked that those buildings were part of the master plan that Mr. Hibbs and his staff have shared with the Commission on a number of occasions. He said he believed one of the Commission members was on a selection committee. He noted the Commission has been a very active participant in the process toward hopefully the development of these buildings.

Tim Brand, Arizona Department of Administration (DOA), distributed a handout entitled "Background" (Attachment A). He stated that approximately 18 months ago DOA presented a ten-year Capitol Mall Master Plan to the Commission, which was very enthusiastically endorsed. He noted that six months ago DOA presented to the Commission the first phase of implementation, which was development of the 17th Avenue pedestrian enhancements, which is currently under construction. He thanked the Arizona Department of Transportation (ADOT) for partnering with DOA on that project. He commented that last month DOA briefed the Commission on the details of Privatized Lease to Own (PLTO), and stems from DOA's efforts in the Legislature and Governor's Office for approval to obtain creative financing to bring new office buildings to the Capitol complex.

Mr. Brand stated that DOA will request two actions. A presentation will be given on the conceptual design for two buildings. One is a DOA consolidation building, approximately 185,000 square feet. The second building is the Arizona Department of Environmental Quality (ADEQ) building, comprising of approximately 300,000 square feet. Specifically a request by DOA will be made to the Commission to approve amending one of the Capitol District Planning Guidelines. Secondly, DOA will request conceptual approval of the design presented in the hopes that DOA will then be able to work with the City of Phoenix in coordinating the project.

Mr. Brand remarked that a representative was present from Opus West, the architects selected as development corporation for the project.

Robert Carli, Director of Architects and Engineers, Opus West Corporation, stated he represents the development team on the projects. He proceeded with his presentation and distributed handouts entitled "Arizona Department of Administration" and "Arizona Department of Environmental Quality" (Attachments B and C). His presentation and testimony were taken directly from the handouts.

Mr. Knapp suggested reviewing the Building Design Guidelines on page 10 forward. He said the presenters today asked for basically two "variances." He said page 13 contains an amendment procedure, which states how a document may be amended. He commented there are two choices: an amendment may be made, or it can be viewed on an individual basis and agreement reached that the change being requested is either acceptable or not acceptable. He said if the Commission chooses to amend, it then goes back to the City and the County. He added the Commission cannot amend on its own because the document was adopted by both the City and County Planning Departments. Mr. Knapp provided a copy of the Guidelines for review by the Commission.

Senator Smith commented that there appears to be an increase in the use of glass in construction. He asked if the glass design would conform aesthetically with the surrounding buildings, and asked if it is less costly to use glass. Mr. Cartley replied that architects attempt to provide a different façade on the buildings so they are not

repetitive or monotonous. He stated that might be one reason why there are more buildings using glass.

Alan Tarbe, Director of Construction for Opus, stated that with respect to the cost of using glass, there is not a lot of difference between glass and precast material. He stated that the large use of glass is primarily for the benefit of the occupants so that all workers will have visual access to day lighting, as required in the RFP.

Mr. Keuth said one of the items not in the Guidelines, but important to address, is traffic impact. He noted two large parking garages are being built, and there is a historic single-family residential neighborhood nearby. He suggested a direction of flow of traffic to minimize cut-through traffic relating not only to this project, but other projects in the future in this area. He said it may be appropriate to review overall traffic master plan so as the buildings are completed, it will not be intrusive into the neighborhoods.

Mr. Tarbe replied meetings have taken place with City Development Services to approach the traffic concept. He noted the Capitol Mall Association also expressed an interest that a lot of traffic not be put into the neighborhood. He said that request has been incorporated into the design. The Association also requested that the visual corridor of 11th Avenue be left open, which has been accommodated into the design.

Mr. Richert commented he met with Opus and State representatives. He said anytime there is new construction, an attempt is made to bring zoning in the area into compliance with the City's desires. He said the City is willing to ask the Planning Commission to initiate zoning on its behalf in a timely fashion. He added he will be requesting that to happen on September 27. He noted there are a few remaining issues regarding setbacks that need to be resolved. The other item is the two-story element in front of the one structure, which was there for the historic preservation of the house.

Mr. Richert referred to amending the procedure, and believes that the rules need to be followed. He also has a concern regarding glass, but the sensitivity is how much depth from the outer portions of the building to where it "breaks up" the structure. He explained his concerns. He said although the projects appear conceptually ready, he feels certain details need to be resolved.

Ms. Rosenbaum commented on the parking garages and security. She said there have been concerns whether it will be a harbor for transients.

Mr. Brand replied the first deck of each parking garage will be accessible for public parking. Anyone that needs to do business with the State has the most readily available parking. He noted they tried to minimize the building impact of the ADEQ project and took some of that space and moved it over into the parking garage to be incorporated on the first deck.

TAPE 1, SIDE B

Mr. Brand said the upper deck will be restricted, and security will be provided for both parking garages.

Mr. Knapp, referred to amendments and variances, and indicated that one of the issues that the Building Design Guidelines addressed is the incorporation of retail into the parking garages on the public side. He reminded the Commission of a previous meeting when the County presented its new building, which was an area of discussion and concern for members. He said he agreed with Mr. Richert that it is a good preliminary effort, but there will be further discussions on various issues in the future. He referred to the ADEQ building, where the office, retail, and the five-and-a-half-story parking deck faces inward. He commented this is responsive to the primary tenants and very commendable. He noted that when the Guidelines for the Commission were written, there was concern to create a pedestrian atmosphere within the Governmental Mall jurisdiction. He urged the Commission to look hard at the retail, and opined that its current placement is not in concert with the intent of the guidelines. In addition, he said there are minor details such as the sidewalks along the DOA building, and the Commission suggested that those be set back eight feet from the street in order to recreate landscape areas and pedestrian pathways. He remarked that there are some details that appear to be at odds with the planning guidelines, and noted that they will have to be addressed at the proper time in the future.

Mr. Knapp referred to Mr. Brand's letter regarding an amendment to the Guidelines to allow six-story construction on the south half of the block bounded by 11th Avenue on the east, 12th Avenue on the west, Washington Street on the south and Adams Street on the north. Mr. Knapp noted that being on the Committee that helped draft the Guidelines and on the Commission that adopted them, he agreed that the concern was the protection of the Evans House and the visual avenues to that structure. He stated in that particular case, an amendment makes sense. He recommended that a motion on this issue be addressed first and commented that the motion should address that the Commission is not the final authority or the single authority on this issue, but that it must go to the City of Phoenix Planning Department and the Maricopa County Office of Planning and Infrastructure Development. He stated there are "hoops" to jump through and commented that Mr. Brand needs the Commission's approval in concept first before the issue moves on to the City of Phoenix. In other words, the Commission is the first step, not the only step in the process.

Mr. Keuth moved that the Commission approve the revisions to the Guidelines as it relates to the height restrictions in the area from 11th Avenue on the east, 12 Avenue on the west, Washington Street on the south, and Adams Street on the north to be revised from a two-story limit to a six-story limit, and to forward that recommendation to the appropriate City and County bodies for their concurrence. The motion was seconded by Mr. Clements.

Mr. Richert commented that in general conformance to the site plan or the activity that has been presented here today, that there is a reference to that effect by the Commission. Mr. Keuth agreed, and replied his amendment is amended to that effect.

Joy Rich complimented the applicant on the way they have responded to the Adams House, and opined the reconstruction work is very nice in the way that it embraces the House.

Mr. Bramley Paulin, Chairman, Capitol Mall Association, testified in support of the ADOA building plans and stated the Capitol Mall Association has seen these plans as was presented by ADOA and Opus. He commented the Association supports the general concept of the plan, however they have a couple of concerns. Mr. Paulin stated several of their concerns had been addressed in the hearing today, but they are concerned with traffic as it could relate to the neighborhood to the north in the Woodland District. He stated he is concerned with the traffic during the construction process and the long-term permanent traffic situation entering and exiting the garage. He stated there are two properties that are side-by-side, the State parking lots on the north side of Adams between 15th and 10th Avenues. He said while these lots are currently underutilized, he understands where the DOA building is planned, those lots will be used especially during the construction period. He added that because of the Woodland neighborhood immediately adjacent to the north, there is concern for traffic in that area. He stated the Association would like to encourage the Commission through this process, to continue to follow its Guidelines regarding services that could be used for the tenants and the neighborhood on the first floor of the development.

Mr. Knapp noted that he had aerial views of the parking lots to which Mr. Paulin referred, and opined that he does not believe there is anything in the Development Guidelines that speaks to the developing sequencing in the issues raised by Mr. Paulin. He opined that the City has requirements that speak to those issues.

The motion CARRIED by voice vote.

Mr. Knapp stated the second issue is the approval of the conceptual design for the ADOA and ADEQ projects as presented, so the permitting through the City of Phoenix may proceed. He commented that however the motion is worded it should be clear that this issue is a beginning step of the process, and the Commission will be an active participant in the planning process.

Mr. Hintz moved that the Commission support the schematic design presented today with the expectation that Commission will see the design development drawings at some future date. The motion was seconded by Mr. Keuth. The motion CARRIED by voice vote.

Future Meeting Dates

Mr. Knapp commented that the Commission has had an approach that if there is nothing to put on an agenda, the Commission does not meet. He opined that the Commission is doing a disservice to the public. He explained that for the Commission to go from March through the end of September with only one meeting, on an issue as volatile as the Grace Court School, is a disservice to the property owner and to the public. He proposed that the Commission have regularly scheduled meetings through the end of the year.

There being no objection from the members, he asked staff to prepare agendas, and obtain room reservations for future meetings. Mr. Knapp announced the next meeting will be held Tuesday, October 17.

Without objection, the meeting was adjourned at 4:45 p.m.

Respectfully submitted,

Nancy L. DeMichele
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 113.)