

**CITY OF PEORIA, ARIZONA
HISTORIC PRESERVATION COMMISSION MEETING
August 29, 2007 MINUTES**

A **Regular Meeting** of the Historic Preservation Commission of the City of Peoria, Arizona, was convened at 8401 W. Monroe Street in open session at 6:12 p.m. in the Peoria City Council Chamber.

MEMBERS PRESENT: Priscilla Cook, Harold McKisson, Mark Hackbarth, and Gary Nelson.

MEMBERS ABSENT: Jodey Elsner and Ken Feldman.

Others Present: Steve Kemp, City Attorney, Mary Jo Kief, City Clerk, William Emerson, Assistant City Attorney, Glen Van Nimwegen, Community Development Director, Karen Flores, Planner, Cathy Griffin, Executive Assistant.

Audience: 27

A motion was made by Commissioner McKisson to approve the absences of Commissioners Elsner and Feldman. The motion was seconded by Commissioner Hackbarth and carried unanimously.

COMMENTS ON NON-AGENDA ITEMS:

Comments from the floor:

Eva Osuna stated that she is not in favor of moving the Women's Club. Ms. Osuna believes that the history of Peoria will be removed if the building is removed. Ms. Osuna stated that she listened to the last City Council meeting, which Dave Pearson stated that we need to preserve our history. She asked if this commission in favor of keeping the history.

Kathy Montoya-Moore stated that she wanted to make record that there is a "Save the Peoria Women's Club" petition, and currently have over 100 names. To Ms. Montoya-Moore this means that not everyone in Peoria has been informed. Ms. Montoya-Moore when on to read the petition statement: Save the Peoria Women's Club, the below signed names are Peoria residents that are opposing to moving and/or destroying the historical Peoria Women's Club building that was built 1918 by the women of Peoria. It is located at the corner of 83rd Avenue and Washington Street. It is symbol of our heritage and we do not want the building moved to another site without a vote of the people of Peoria, Arizona".

Grace Gibson stated that she was appalled that she had not heard about moving the Women's Club. She also stated that the people in Peoria need to know what exactly is happening for the history.

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Karen McQuiston stated that her husband is a former Peoria resident and that she is concerned that if the Women's Club is moved, if it breaks down or is destroyed in the move, is there a backup plan for that?

Betty Jo Hucklebe-Cochran stated that the Women's Club issue is very important to her. Ms. Cochran explained her history with the Women's Club and with her parents. She went on to explain that her brother was killed in 1955 at 91st Avenue and Olive. This was the first and only time Peoria had a black funeral at the Women's Club. Both white and black students attended the funeral. Ms. Cochran asked that the Women's Club not be moved to preserve the history and preserve what "we know".

Elida Vidales and Dorothy Rodriguez completed speaker request forms, but did not talk to the Commission.

Chair Cook thanked the speakers for their input and asked if staff had any answers. Staff replied they did not. Chair Cook went on to state that this committee cannot reply to these concerns. This would have to go to the City Council since they make the decision to move the Women's Club or not.

Kathy Montoya-Moore provided a copy of a document to the staff secretary dated August 28, 2007, signed by Kenneth R. Carroll, Co-Chair Peoria Posse Preservation Committee, a petition to the Peoria Municipal Court for "Motion for a request for an ex parte order, and a temporary restraining order to halt any demolition, or moving, of the Peoria Women's Club building, and request for a hearing to show cause". This document noted that it was mailed to Steve Kemp, Peoria City Attorney, on August 28, 2007.

***CONSENT AGENDA**

All items listed with an asterisk (*) are considered to be routine by the Historic Preservation Commission, and were enacted by one motion. There was no separate discussion of these items during this meeting.

Commissioner Nelson moved to approve the Consent Agenda items. The motion was seconded by Commissioner McKisson and upon vote, carried unanimously.

***Minutes:** Approved the minutes from the August 1, 2007 meeting.

***DISPOSITION OF ABSENCE:** Approved the absences of Commissioners Priscilla Cook and Harold McKisson from the August 1, 2007 Meeting.

REGULAR AGENDA

NEW BUSINESS:

1. Mr. Kemp, City Attorney for the City of Peoria, reviewed the Open Meeting Laws using a PowerPoint presentation. A printed version of this presentation is attached to the minutes.

Mr. Kemp explained that on the last agenda (August 1, 2007) the Commission took action on a couple of items that were not on the agenda. Mr. Kemp noted that at the same time, there was a lengthy discussion of another item that was not on the agenda. He went on to explain that the problem with that is, under the State of Arizona Open Meetings Act and the City Charter, you are not permitted to do that. Mr. Kemp stated that when this happens, we do an educational item to review the Open Meetings Law because compliance with the Open Meeting Law is part of the public policy of both the City and the State. This review of what is required so that the board and staff liaison are clear about the requirements of the law.

Mr. Kemp explained that the need to start on the Open Meeting Law with basic understanding that if there's ever an issue in doubt, the State law says we presume it in favor of Open Meetings. All meetings of any city board or commission have to be open meeting. And, any time action is taken, it has to occur during a public meeting. A board or commission can't go into the back room in Executive Session and take a vote. It has to be done in front of the reporters, in front of the public and everyone.

Mr. Kemp asked "what is action". He explained: first, a meeting is any time there is a quorum of this body. That constitutes, under State law, a meeting. Action can be any one of four things, it doesn't have to be a vote. In order to discuss an item, that action has to be identified on the agenda. To vote on an item, that is an action that has to be on the agenda. To talk about something and the commission is not sure they are going to vote on it, but just going to talk about it. That has to be agenda sized. For example, to discuss "discussion guidelines for residential development in a historic district" there would need, even if the commission doesn't intend to vote on it, an item on the agenda, such as: "discussion regarding residential guidelines for development in a historic district".

Mr. Kemp explained further, if that is not on the agenda, what the State Law says is that the board or commission violated the Open Meetings Act. The item must be on the agenda to discuss.

Regarding quorum, an alternate member can count as part of the quorum if the rules and regulations of the board state that it can have an alternate member. Then the alternate member steps in their place.

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Mr. Kemp stated that it is very important to keep in mind, commissioners can't meet outside of a meeting and discuss public business. Mr. Kemp provided an example of a board that several members would meet for dinner. The Attorney General actually filed suit, had all three board members removed from office and the superintendent resigned. The fact is, if commissioners are going to meet and discuss the public business, it's done in a meeting, with an agenda. If all of the commissioners talked by e-mail, as far as the Attorney General and Mr. Kemp is concerned, that's a meeting and the law says, not to do that.

Mr. Kemp explained the posting requirements: There has to be a notice of the meeting posted at least 24 hours in advance. Mr. Kemp also explained about emergency meetings, which are very rare. The notice has to identify the name of the body, and where it will meet. The City has specific locations for posting and the staff liaison will work with the City Clerk's office to ensure that is always done.

Mr. Kemp stated that the issue that came before the Commission at the last meeting, and what is important is the agenda. The agenda must list items to be discussed. He then explained the detail necessary for the agenda items. It has to be specific. Boards or commissions can only discuss, consider or make decisions on those items that are listed on agenda. At the last meeting there were two motions undertaken regarding items that were never listed on the agenda at all. This can not be done. The law does not permit this. The item must be listed on the agenda if there is going to be a discussion and vote. And, once within 24 hours of the meeting, the agenda cannot be changed.

Mr. Kemp explained that one of the reasons we have a staff person at the meeting is that the law requires that minutes be taken. Mr. Kemp then explained what the minutes must contain. What the law says the minutes must contain is a general description of what was considered. They do not have to be verbatim, but they have to provide sufficient detail that we know that the item was related to what was on the agenda. The minutes are made available to the public, which is required by law, within three business days after the meeting and then posted on-line. Mr. Kemp also explained about executive sessions and that those minutes would be confidential, pursuant to State law. He then explained that there are seven reasons to have an executive session, and most of them don't apply to advisory boards and commissions. They include: discussion regarding negotiations with labor unions, discussion to acquire real property, discussion regarding negotiations with a Native American tribe, discussion with legal council for legal advice on legal issues, discussion on pending litigation, discussion regarding contracts and purchases and discussion regarding certain types of inter-governmental agreements. Other than those reasons, everything must be done in open session. Executive sessions still have an agenda and a general description of a matter.

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Mr. Kemp explained Calls to the Public or comments on non-agenda items. Keep in mind: individuals can comment, but commissioners can't discuss the merits of the item, because it is not on the agenda. The appropriate response is for the Chair or the commission to say "we'll refer that matter to staff, and we may want staff to bring back an agenda item". But the board, because it's not listed on the agenda, can not discuss or take action on the matter.

Mr. Kemp further explained that the commission can ask staff to work with the Chair of the commission to bring this back for future agenda. The general City policy is that we limit comments to three minutes. That applies to all boards and commissions. It's permissible for the Chair to grant a little more time if they deem appropriate. If the time of the comments wasn't limited, not everyone that wants to speak, may get the opportunity.

Mr. Kemp stated that violations are very serious for a number of reasons. First, if the law is violated, anything done is null and void. Secondly, the Attorney General or the County Attorney may commence an investigation and file suit. There can be a civil penalty for any board or commission member and staff. And, they can seek attorney's fees, personally, against the individuals and removal from an office or prohibition against holding any other type of office in the future.

Mr. Kemp reviewed the key points: 1. only discuss those items that are on the agenda. 2. If things are brought up during a call to the public or call on non-agenda items, it can not be discussed by the board because they are not on the agenda.

Mr. Kemp also explained that a City attorney has been assigned to attend all future Historic Preservation meetings. This will ensure that the agendas meet the necessary requirements. Mr. Kemp stated that this is a partnership between City Council, staff and the attorneys so that we can work with boards and commissions and make sure that the meetings meet all the requirements of the law.

Commissioner Nelson asked Mr. Kemp to explain how to get items on the agenda. Mr. Kemp explained that the basic way is to request the Chair to place an item on the agenda. If the Chair doesn't want to do that, then at the following meeting could have an agenda item that states "discussion and possible action to place on the Commission's agenda XYZ". Then, the commission will vote and if a majority says "yes, we want it on the agenda" then it will go on the agenda.

Commissioner Hackbarth asked how specific does it have to be for an item to be on the agenda. Does each and every question need to be included? Mr. Kemp gave an example that if the commission wanted to discuss residential standards, he suggested saying "Madam Chairman, would you please ask that an item be placed on the next agenda to discuss proposed residential development

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standards in an historic district". That's all that's necessary. The agenda item needs to be specific enough that a person looking at it knows what's going to be discussed.

Commissioner Hackbarth verified that the proper procedure to place items on the agenda is to ask the Chair person. Mr. Kemp explained that the Chair sets the agenda. Normally the Chair will work with the staff. Technically, it is the Chair that sets the agenda. Mr. Kemp said that it is fine to ask Mr. Van Nimwegen to place an item on the agenda, he will then respond back to the Chair that there is a request, is that agreeable? The ultimate decision-making on an item, is the Chair. It is okay to ask the staff liaison, who will then ask the Chair. Mr. Kemp explained that this would occur under "New Business". If the Chair did not want to place it on the agenda, then, under "New Business" would be "discussion and possible action to place on an upcoming agenda, XYZ."

Commissioner Nelson asked if a member of public comes and makes a statement or question, can a member of the commission ask to place it on the agenda for the next meeting? He also questioned that it can't be discussed at the current meeting.

Mr. Kemp answered that it can't be discussed at the current meeting. It needs to be placed on an agenda. A response to the person saying "if you need further information, you're free to contact staff, but for us as a board or commission to discuss the merits of this, we need to place it on an agenda".

Commissioner Hackbarth asked what is the role of parliamentarian. Mr. Kemp replied that the role of parliamentarian, which generally is the City Attorney's office, is if there's issues with either how a motion is made or if question of a second or questions some rule or procedure or rule of practice, we will make a recommended ruling to the Chair person on that. But, in terms of the Open Meetings law, we'd say to the Chair person "we don't believe under the Open Meeting law you can do this and our advice to you would be not to do it".

Commissioner Nelson asked if after this meeting he and another member of the commission walking down the street and a member of the public wanted to talk about one of the items, are we in violation of the Open Meeting law. Mr. Kemp stated that he would recommend telling the member of the public "thank you for coming, we certainly appreciate your comments, but the two of us cannot discuss with you the merits of this item." Because what the law says that even if you don't have a quorum, if two members of a board or commission discuss it and perhaps call other board or commission members, that essentially constitutes a discuss by the public body and a violation. So, don't discuss the item, inform the person that it perhaps can be placed on a future agenda.

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Mr. Emerson, Assistant City Attorney, explained that item #2 on the agenda is not for vote, the intent is for staff to discuss these items with the commission.

Mr. Kemp explained the powers and duties of city advisory boards including but not limited to:

- a. Responsibilities of other boards and commissions.
- b. Direction of staff.
- c. Board relationships with City Council.
- d. Legal Authority for Historic Preservation and policy decisions.

Mr. Kemp continued by explaining the responsibilities of the other boards and commissions. There may be a zoning case that comes before this board that has aspects of historic preservation. It is appropriate for this board to discuss the historic preservation part, but, it would not be for this board to make a recommendation on zoning. State law states that recommendations on zoning are to be made by the Planning Commission, not by any other board. One of things that staff will work with this commission on is to do a better job at explaining which part of an item fits into each board or commission.

Mr. Kemp explained that this commission is an advisory board of the City Council. The City Council establishes a work plan for the Community Development Department for an entire year. If a board or commission requests staff to work on "x". But, the City Council has set "Y" as a priority to the department. Therefore, staff has been directed by Council as to what their work plan should be.

Boards and commissions are created by the City Council and every board and commission in the City has enabling ordinance. As this board, which is in 2-121 through 2-125 of the City Code. Mr. Kemp has asked staff to provide this board a copy of this. This outlines what powers the Council gave when creating this board.

Mr. Kemp stated that Mr. Van Nimwegen will be working with this board to develop a staff work plan. This is done by asking the board members what is it that the board would like the staff to do.

Mr. Van Nimwegen stated that it does help to have an opportunity to brain storm with the commission what is important to the members, perhaps for the next 12 months that should be the staff's focus. And, with this particular board, it lends itself to future thinking. What Mr. Van Nimwegen would like to suggest is that perhaps what the next meeting should be devoted to, with the help of a facilitator. If that's a direction from the Chair person, that will be arranged.

Chair Cook stated that was a very good idea and feels that the board would benefit greatly. All commissioners agreed.

Chair Cook allowed an additional comment from the floor.

Ramiro Espinoza, stated that he was here to represent the past and the future of this community. He lived in Varney track since 1948. Mr. Espinoza stated that he is not familiar with the Historical Society as far as changing things and unless they are informed by it, we don't know what's going on. As residents of the community, would like to know. He would like to know more about what the Historical Society is doing as far as old Peoria is concerned. Mr. Espinoza stated that from what he has seen today that the cart is before the horse.

Chair Cook stated that her advice would be to be involved and attend Council meetings and be aware of what is going on.

Mr. Kemp explained that agenda item 2. e, (see note below) was discussed at the last meeting without being on the agenda. Mr. Kemp recommended that this should be discussed with staff as part of the next work study meeting and try to decide what piece of this is Historic Preservation and what piece is Economic Development.

Chair Cook stated that she does recommend that this be discussed at that meeting.

NOTE: 2. e. Staff report and recommendation with regard to the unnoticed vote made August 1, 2007, to require City staff to report to Commission within 30 days regarding design guidelines for the proposed façade program of the City's Economic Development department.

Mr. Kemp explained that item #3 on the agenda which that the board voted at the last meeting to approve minutes that were not on the agenda. He recommended that the board adopt item #3 "Discussion and possible ratification of unnoticed vote made August 1, 2007, to approve minutes of October 11, 2006". And, that would take a motion and second from the board.

A motion was made by Commissioner Hackbarth to approve the ratification of the unnoticed vote made August 1, 2007. The motion was seconded by Commissioner McKisson and carried unanimously.

Kathy Montoya-Moore asked if she could ask staff a question. Mr. Kemp explained the correct procedure is for the citizen should ask the Chair, and it is up to the Chair to decide whether if they want that question asked or not.

Chair Cook asked the citizen what is the question.

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Kathy Montoya-Moore asked if they were at the wrong meeting. Should this group be at the City Council?

Mr. Kemp stated that the Historical Commission is one of the 22 advisory boards and commissions of the Council. The actual decision to move a City building, close a building, open a building, under the City Charter is first rested with the City Manager and two, the expenditure of the money rests with the City Council. This board certainly can make recommendations as far as historic preservation matters are concerned. The actual decision is in terms of approving the expenditure rests with the City Council. The City Council made a decision to authorize the expenditure, so they would have to reverse that decision. Even if this board said that they wanted that decision changed, it would have no impact. It's the City Council who would have to do that, they are only entity under State law and the City Charter given the expenditure authority. This board would make recommendations on historical preservation, but not on expenditures.

Chair Cook stated she would like discuss this at a future meeting.

REPORT FROM THE HISTORIC PRESERVATION COMMISSION

Commissioner McKisson stated that in reviewing the minutes of the last meeting, which he was not able to attend, found some discrepancies stated by staff. Staff stated a plan was adopted in 1999, this Historic Commission was not in existence in 1999. Commissioner McKisson recollection of the decision to move the Women's Club is that it was a done deal, not a matter for review or advice. He also stated that he may need to review past meeting minutes to verify. Commissioner McKisson asked if there is a 10 year plan for the Heritage Square? Are more building in line to be re-shuffled? What will happen to Heritage Square in 10 years? Will this Commission be involved in advising and reviewing that? On numerous occasions this Commission as requested staff to implement some type of procedure to notify the Commission of requests to the City by property owners for the demolition and/or major modification of properties so that this commission could work towards preservation of historic properties. Commissioner McKisson stated that he has never gotten a satisfactory response and regularly Peoria old properties are disappearing. Can this Commission get a formal response from staff regarding this issue? Finally, on numerous occasions, Commissioner McKisson stated that he has suggested that staff look into the "Weedville area" and its historic buildings, but it has never been placed on the agenda and nothing has come forth from staff. He asked for a formal response from staff on this matter. Commissioner McKisson concluded by stating perhaps he can take more responsibility with the Chairman and have some of these issues resolved so that we can address those.

Chair Cook asked Mr. Van Nimwegen if he had an answer, which he stated he did not. Chair Cook requested that Mr. Van Nimwegen take it under consideration and be one of the items that could be discussed at another meeting.

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Commissioner Hackbarth stated that although as an advisory role, he would like to see action or discussion continuing about the Women's Club, as well as other things in the downtown and requested Madam Chairman that this is brought up at the next meeting.

Chair Cook stated she will discuss this with staff. Chair Cook also stated that she would like to see a meeting called with the merchants and the people that the old downtown heritage will affect, so that we can explain to them what the advantages to them and what will happen if we go forward on this. She also stated that she is as interested in keeping our history as anyone else.

COMMENTS FROM THE PUBLIC

Betty Jo Hucklebe-Cochran asked how is this commission is going to ensure that the people of Peoria that there is going to be an old downtown when things are constantly disappearing and there are false walls standing to give the impression that things are there that aren't.

Chair Cook stated that she appreciated the comment and that we will try to work toward that.

REPORT FROM STAFF: Mr. Van Nimwegen stated that there wasn't anything additional.

ADJOURNMENT

There being no further business, the meeting adjourned by Chair Cook at 7:14 p.m.

Priscilla Cook, Chair

Harold McKisson, Acting Secretary

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