



**ENVIRONMENTAL QUALITY ADVISORY BOARD
CITY OF SCOTTSDALE
SCOTTSDALE FIRE STATION 2, COMMUNITY ROOM
7522 E. INDIAN SCHOOL ROAD
SCOTTSDALE, ARIZONA
WEDNESDAY, NOVEMBER 19, 2008**

SUMMARIZED REGULAR MEETING MINUTES

- PRESENT:** Brian Munson, Chair
Nancy Basinger, Board Member
Bill Gill, Board Member (arrived at 5:41 p.m.)
Jimmy Leung, Board Member
James Mulloy, Board Member (telephonic)
- ABSENT:** Ron Hand, Board Member (absence excused)
James McCay, Board Member
- STAFF:** Larry Person, Environmental Coordinator
Joey Miller, OEI
Andrew Kocsisky, OEI
Dennis Enriquez, Environmental Coordinator
Sherry Scott, City Attorney's Office
Jennifer Groves, Economic Vitality
Steve Venker, Planning and Development Services
- GUESTS:** Tom Dwyer

Call to Order and Roll Call

Chair Munson called the meeting to order at 5:35 p.m. A formal roll call confirmed members present as stated above, noting the presence of a quorum.

Public Comment

None

1). **Approval of Minutes**

a) October 15, 2008 Regular Meeting

Mr. Person corrected the spelling of Bob Wood's name. In the second sentence of the first paragraph of item 3, the word "of" was inserted after "outline," and in the last sentence of that paragraph, the word "language" was changed to "land use." He transposed "GPB" to "GBP" in paragraph two.

BOARD MEMBER LEUNG MOVED TO APPROVE THE MINUTES OF THE OCTOBER 15, 2008 REGULAR MEETING AS AMENDED. BOARD MEMBER BASINGER SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER GILL WAS NOT PRESENT.

2). **Presentation by Economic Vitality staff, discussion of ideas for providing support to city efforts to attract green businesses to Scottsdale**

Ms. Graves said the Economic Vitality Department considers clean technology as an area of focus. Manufacturing does not coincide well with Scottsdale's zoning regulations, so emphasis has been placed on attracting research and development divisions and corporate headquarters. ASU and SkySong attract small companies that are dedicated to exploring new frontiers within the sustainability field. The ultimate goal is to create an environment where the businesses can grow within the community, and become economic drivers. Economic Vitality is also looking to attract companies that may not be in the industry, but practice sustainability.

The Department has issued an RFP for a technology inventory study, to identify all the technology companies in Scottsdale. This will allow staff to get a clearer picture of Scottsdale's competitive advantages. The City is working with the Greater Phoenix Economic Council (GPEC), which has been focusing on solar recently. They are focusing on attracting companies from California and abroad, and on increasing the use of solar in the region. GPEC is trying to create tax incentives that would be linked to job creation and wages.

Board Member Basinger inquired whether there were any efforts to create incentives for homeowners to purchase solar systems. Ms. Graves responded that the Department supports efforts to offset green building costs through reduced fees. The only innovative program so far has been Solar Lease, which would make it easier for homeowners to install solar. The Department's focus has been on attracting companies that are going to be able to create jobs in Arizona, but she acknowledged that helping citizens implement a green lifestyle helps to perpetuate Scottsdale's image as a green-friendly community.

Chair Munson said EQAB made attracting sustainable businesses part of its work plan, in response to Mayor Manross' 2008 State of the City address. Ms. Graves said incentives are the name of the game when it comes to attracting these types of businesses. Other places offer them, and Arizona has to offer benefits that nobody else is.

Board Member Basinger encouraged keeping the direct lines of communication open between Economic Vitality and EQAB. The Board has and will continue to play a key role in keeping Scottsdale on the leading edge.

In response to Board Member Leung, Ms. Graves said SkySong is an asset to Scottsdale because it effectively allows small companies to partner with researchers at ASU. Scottsdale helps fund that project and is well positioned to assist those businesses in making the transition to full-fledged companies. Scottsdale has a good reputation, which helps to offset property costs. GPEC is the regional economic development group. They have the ability to introduce legislative initiatives, which Scottsdale cannot, and can represent the region internationally.

3). **Nominations, possible action to elect a new EQAB Vice Chair**

Chair Munson noted that EQAB's Vice Chair position is currently vacant. The annual elections for Chair and Vice Chair come in January. He invited nominations to serve during the interim. Board Member Leung suggested leaving the position open for the month of December. The interim Vice Chair would likely become a frontrunner for the elections in January, and that decision should be deliberated with the full Board. Board Member Mulloy agreed. Mr. Person noted that the appointment is in accordance with the bylaws. Board Member Gill nominated Board Member Leung. Board Member Leung took issue with the process, but said he would be willing to serve as Vice Chair until January.

BOARD MEMBER GILL MOVED TO ELECT JIMMY LEUNG TO THE POSITION OF VICE CHAIR OF EQAB FOR THE MONTH OF DECEMBER. BOARD MEMBER BASINGER SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER LEUNG ABSTAINED.

4). **Chair appointments of committee assignments**

- a. GBAC Chair to replace outgoing Michele Cohen

Chair Munson noted that the Green Building Advisory Committee (GBAC) also needs a Chair. Board Member Basinger suggested that Board Member McCay be appointed Chair, and Board Member Hand, Vice Chair. Mr. Person noted that the GBAC also has elections in January, so the appointments would only last until then.

Board Member Mulloy suggested that it might make sense to combine the Energy Advisory Committee (EAC) with the GBAC, since energy is such a big component of the green initiative. Vice Chair Leung noted that the only part of the EAC that would not fit into the GBAC would be automobiles, but there has not been much activity in that area. Board Member Mulloy questioned whether the aspects of energy that extend beyond structures would require a separate standing committee. Chair Munson requested that a joint meeting of the two committees be arranged to discuss this idea.

- b. Possible reassignment of existing EQAB members
- c. Possible assignment for new EQAB member Nancy Basinger

Board Member Basinger said she would be happy to serve wherever needed, though she suggested waiting until the new members are appointed in January. Chair Munson appointed Board Member Basinger as Vice Chair of the EAC.

Chair Munson invited public commentary.

Mr. Dwyer, whose appointment to EQAB starts in January, encouraged thoughtful discussion before moving ahead on a merger between the EAC and the GBAC. Many energy issues that play an important role in the future are beyond the scope of physical buildings.

5). **Discussion, possible action on the draft outline for review, analysis and recommendations to Council regarding possible expansion of the Green Building Program (GBP)**

Mr. Venker presented information on the Planning staff's effort to update the GBP website, a summary of the City's policies on sustainability, and staff's memorandum in response to Councilman Nelssen's conservation overlay proposal. These documents, along with the GBAC's Strategic Goals document of February 2008, will be referred to in the white paper that will be presented to Council regarding the expansion of the GBP.

Chair Munson noted that EQAB discussed the GBAC's Strategic Goals document before Councilman Nelssen's proposal was made. It was seen as a list of possible options that the City could consider. He was glad to see that staff is considering including them in their white paper.

Mr. Venker distributed information regarding the U.S. Green Building Council's (USGBC) LEED for Neighborhood Development. The entire 127-page document is being made available online, as part of an initial public comment period.

6). **Discussion regarding the City's general legal authority and laws limiting the City's ability to regulate private land use and development related to the City's possible expansion of the Green Building Program**

Ms. Scott discussed the legal parameters of land use regulation. Normally, the City prefers to maintain an attorney-client privilege when providing legal advice regarding the expansion of the GBP. EQAB could consider breaking into executive sessions when seeking specific legal advice.

She stated that Proposition 207 says that if a City enacts land use regulations that lower land values, property owners can make claims against the City and seek compensation. Prop 207 does not apply to land use laws that limit or prohibit a use for the protection of the public's health and safety, including rules and regulations regarding building codes, health and sanitation, solid or hazardous wastes, or pollution control. Design standards would likely not fall within that exception.

Board Member Gill inquired whether the Scottsdale has had a claim filed against it. Ms. Scott said no cases have come in to Scottsdale under Prop 207, though people have entered complaints. Claims have been filed against other communities, however, and it remains a real threat to the City. In order to make a successful Prop 207 claim, a property owner must produce evidence that their property's fair market value has been lowered by what a city has done.

Scottsdale is very careful to avoid enacting any laws that would actually lower somebody's property value. If EQAB recommends enacting reasonable legislation for the health and safety of the community, there should be no significant Prop 207 challenges, but the Legal Department would still like to look at anything before it goes to Council.

Ms. Scott said that in addition to Prop 207, the City must also consider standard rules and laws regarding regulatory takings. Mandatory regulations need to further a legitimate state interest, which is substantially advanced by the law at issue. If the law meets that test, the Board should also consider whether it denies the owner an economically viable use of their property. Success may be more achievable by arguing for environmental standards that would benefit the local community, than by regulating the local community out of concern for global environmental impacts. It is difficult to determine exactly what constitutes a "legitimate state interest," because there is no case law that gives a clear test. Some case law says that it is in the legitimate state interest to regulate something that is injurious to the health, morals, or safety of the community. For specific legal advice, the Board could opt to break into an executive session, or receive confidential memorandums.

In response to Board Member Basinger, Ms. Scott said there are fewer problems associated with incentive-based programs. As a general rule, the proposals that push the envelope are probably best left as incentives, whereas mandatory regulations should focus on what is best for the health and safety of the community. She added that the Legal Department would look at any recommendation the Board proposes with an open mind.

Board Member Basinger asked whether the policies of other communities would carry any weight from a legal perspective. Ms. Scott said it takes a while for case law to catch up to what society is doing, but the greater the number of communities that have similar programs, the better.

Ms. Scott encouraged the Board to allow enough time for the proper legal review of any proposals it may want to make.

In response to Vice Chair Leung, Ms. Scott explained that a building code is one type of land use law, while zoning is another. The Environmentally Sensitive Lands Ordinance is more of a conservation zoning ordinance. Zoning ordinances are regulated under different State laws, and every zoning district has to be treated uniformly in the City.

Chair Munson invited public commentary.

Mr. Dwyer said Councilman Nelssen's idea was to create mandatory environmental requirements for any rezoning application, with a conservation overlay. He asked

whether Prop 207 would impact that. Ms. Scott noted that Councilman Nelssen's proposal was not supported by the entire Council, who instead asked for an expansion of the GBP.

7). **Possible executive session and motion to recess into an executive session for discussion and consultation with attorneys of the public body for legal advice regarding the City's legal authority to regulate land use and development related to the possible expansion of the City's GBP**

The Board decided not to recess into executive session.

8). **Discussion on the EQAB '08-'09 workplan**

Chair Munson said the Board would set aside time in the near future to discuss specific objectives related to the work plan.

9). **Office of Environmental Initiatives (OEI) Staffing Update**

Mr. Person reported that Mr. Valliere has moved on to the Council Offices. He thanked him for serving as interim Director during the OEI's formative period. The Energy Coordinator position is still being advertised, while the Director position is in the evaluative phase. The Specialist position is frozen at this point because of the budget situation.

10). **Water Advisory Committee Report**

Board Member Gill said the WAC did not meet this month.

11). **Energy Advisory Committee Report**

Board Member Mulloy reported that the EAC did not meet.

12). **Green Building Advisory Committee Report**

No representatives from the GBAC were present to give a report.

13). **Area Plan Advisory Group EQAB Liaisons Reports**

Vice Chair Leung reported that the Airpark group has not met recently, and likely would not prior to 2009.

Board Member Gill said the Southern Scottsdale group plans to conduct public outreach in the near future.

14). **Board Member Suggestions for Future Agenda Items**

Vice Chair Leung requested a follow-up discussion with Economic Vitality in the future.

Board Member Gill said if the Board recommends something to Council, it should plan well enough in advance to allow the Legal Department to offer an opinion. Chair Munson suggested having the Legal Department review the GBAC Strategic Goals document to offer its opinion on what legal issues each option would involve. Board Member Basinger said they would need something very specific. Chair Munson felt parts of the document were specific enough. Board Member Basinger suggested the Board not get into the habit of submitting a steady stream of proposals for Legal to comment on. It would make more sense to only submit proposals that the Board definitely plans on making.

Mr. Person suggested that staff could get feedback from the Planning Department, which could be used to fine-tune any proposals before they are submitted to Legal. Chair Munson said the Board might decide that things are not being pushed hard enough, and would want to take an alternative route. At that point, the Board could ask Legal for advice on what the potential barriers would be. He also suggested agendizing a discussion to prepare feedback for Mr. Venker, as he develops his outline. He asked whether EQAB wanted to handle the entire analysis, or preferred issuing assignments to the standing committees. Chair Munson felt that it is too early to know what the Board's role is going to be. Mr. Person explained that staff is trying to draw everything together right now to see where the City stands. EQAB could offer suggestions.

In response to Board Member Basinger, Mr. Person explained that the Planning staff is gathering the data and analysis to assist EQAB in forming its recommendations. They want to get to the point where the Board and staff are in agreement on the direction the City should be moving in.

Chair Munson said he was under the impression that the Board was not going to be playing an active role in the process, and that staff would eventually ask for EQAB's endorsement of its work. Mr. Person explained that Council is expecting a recommendation from EQAB that is independent of staff's recommendation. Chair Munson said if that is the case, the level of discussion should be much greater than a simple monthly update. Mr. Person said EQAB should begin discussing the issue to determine how staff could fine-tune their proposal. Chair Munson said EQAB needs a better understanding of Mr. Venker's conceptual path, so it can be more involved in commenting on it. Board Member Basinger said she needed a clearer understanding of the role each entity is expected to play.

Vice Chair Leung said he preferred that staff provide feedback on the feasibility of the Strategic Goals document, rather than having both entities working on parallel paths. He does not understand whether the document was in conflict, or in concert with Council's intentions. Mr. Person explained that the document does not answer Council's questions, because it pre-existed their direction. EQAB needs to consider whether the document answers any of the questions Council has raised. He said Mr. Venker is presenting staff's version, while the Strategic Goals document is EQAB's contribution. Both documents need to be discussed and refined. Council wants an independent assessment from EQAB, not a rubberstamp endorsement. If the two versions differ radically from each other, then there would have to be a discussion on that as well.

Board Member Basinger said the Board just wants to understand how staff views the Strategic Goals document. Mr. Person said he would agendize an item to allow EQAB to provide feedback to staff, and a separate item for staff to provide feedback on the GBAC document.

Vice Chair Leung requested a discussion on combining the EAC with the GBAC.

15). **Updates and Reminders**

The next meeting is scheduled for December 17.

Adjournment

With no further business to discuss, the meeting adjourned at 7:52 p.m.

Respectfully submitted,

A/V-Tronics, Inc.