



## Minutes Tempe Aviation Commission May 12, 2009

Minutes of the Tempe Aviation Commission meeting held on May 12, 2009, 6:30 p.m., at the Public Works Conference Room, Garden Level, City Hall Complex, 31 E. Fifth Street, Tempe, Arizona.

**(MEMBERS) Present:**

Sally Clements  
Tara Ellman  
Karyn Gitlis  
Gary Goren  
William Justus  
Gloria Regensberg (Chair)  
Barbara Sherman  
David Swanson (Vice Chair)  
Duane Washkowiak (On Phone)

**Citizens Present:**

Darlene Justus

**Meeting convened at 6:35 p.m.**

Gloria called the meeting to order.

**Agenda Item 1 – Public Appearances**

Darlene made an account of North Tempe Neighborhood Association (NTNA) activities: A May 11, 2009 meeting that addressed airport and quality of life issues and concerns, the impacts on endangered species at the Phoenix Zoo, and on historic Pueblo Grande sites. She announced that she had called for action on opposing a potential 4<sup>th</sup> runway at Sky Harbor. The association had meetings scheduled for June 8, 2009 at 7:00 p.m. where a presentation on future plans for the Phoenix-Mesa Gateway Airport Authority would be given and for October 12, 2009 7:00 p.m., where the Maricopa Air Quality Department would address air quality and airports. NTNA had also comments on the joint Papago Park Master Plan. Included in the comments were NTNA concerns over aircraft emissions and noise from air traffic going over the park, and how it impacted the public's enjoyment and experience of the park, the endangered species in the zoo, the botanical park desert vegetation, the native habitat, and safety. Darlene ended her address by producing the agenda for the NTNA May 11, 2009 meeting and Papago Park Master Plan recommendations from the NTNA sub-committee, and by recommending the members to check out [www.discoverpapagopark.com](http://www.discoverpapagopark.com).

**(MEMBERS) Absent:**

Dick Collins  
Curtis Ritland (Excused)  
Connie Thompson (Excused)  
Alyson Star

**City Staff Present:**

Charlotte Benson, Senior Assistant  
City Attorney  
Oddvar Tveit, Environmental Quality  
Specialist

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**Agenda Item 2 – Consideration of Meeting Minutes (April 14, April 22, and May 6<sup>th</sup>, 2009)**

With suggestions for an edit to the April 14<sup>th</sup> meeting minutes, Barbara moved to accept the minutes with Tara seconding the motion. After a discussion among the members about the appropriateness of approving the April 22, 2009 meeting minutes, Barbara amended the motion to approve the April 14<sup>th</sup> and May 6<sup>th</sup> meeting minutes only. The amended motion was seconded by Karyn. The amended motion carried by unanimous vote.

**Agenda Item 3 – Updates From Staff**

*Open Meeting Law:*

This was a periodic update provided to the members by Charlotte. She distributed her talking points to the attending members and addressed the following issues;

a) The application of the Open Meeting Law: She explained about the function of the State Attorney General's office Open Meeting Law Enforcement Team ("OMLET"), and how the City exercised its control to ensure that boards and commissions and other public bodies of the City of Tempe complied with the Open Meeting Law. The statute is supplemented by Attorney General Opinions initiated by complaints or investigation by the enforcement team and cases brought before the Court. Boards and Commissions are public bodies, and have to comply with the Open Meeting Law. She explained that a public meeting is a gathering of a quorum, which is a simple majority of the Commission's total membership. What is considered to be "deliberations" under Open Meeting Law has been addressed by the Attorney General, and includes all sharing of information, facts or opinions, discussions and deliberations. If a violation occurs, as the example of only 4 members of the Commission met in April when a quorum requires 7, the Commission would not have a valid public meeting. Actions taken at such a meeting would be null and void. The members asked about working groups and subcommittee meetings, where the intention was not to bypass the need for a quorum to take actions, but motions were used to have the meeting proceed in an orderly fashion to agree on language or substance of a researched topic. Charlotte responded that sub-committees and advisory committees established by public bodies are subject to the Open Meeting Law. However, an informal working group is different from a formally appointed sub-committee or advisory committee with appointed members.

b) How to comply with the Open Meeting Law: She pointed to the importance of keeping to the agenda; avoid discussing or taking action on items not published as discussion or action items. She also went through the motion process and emphasized the difference between the need for a majority to pass actions and the need for a quorum to participate to have a valid meeting where actions could be taken. The City made a change to the code because the wording indicated that TAVCO needs a unanimous vote of the quorum to pass any actions. This was why the wording was changed to a majority of those participating at the meeting. Future agenda items cannot indicate what action to take, only what item to discuss and if wanted, a request that the board or commission take action on the item. Proposed items or public comments cannot be discussed or commented on. The Chair could refer an item raised by the public to staff for follow up or for the item to be put on a future agenda. The Chair could also defend the Commission, by denying allegations set forth in a public comment. All Commission meetings were open to the public since the charge of the Commission did not give the members reasons to have executive sessions. She advised against the Commission scheduling special meetings to discuss one subject only, because monthly meetings were held and special meetings could be perceived as if the Commission had something to hide from the public, or some impropriety going on. She also addressed what was required to be included in the meeting minutes.

Meeting notices should indicate to the public if an item was only to be discussed or be decided upon at a particular meeting.

c) How to comply with the Open Meeting law outside the Public Meeting: Charlotte explained that communication between members of a quorum constituted a violation of the Open Meeting Law, and it included simultaneous and serial communication through the use of technology, if the communication was about commission business. E-mails should not be forwarded or replied to all recipients, due to the risk of engaging a quorum outside a public meeting in discussions about commission business. To propose that a legal action be taken by the Commission outside a public meeting would be a violation of the Open Meeting Law. E-mails about the Commission business are public records. She advised filing Commission business e-mails in a separate folder. Members engaged in groups dealing with airport issues outside TAVCO should be conscious about any overlaps to Commission business.

Finally she addressed the Commission's mandate and how it limited what the Commission could address in its public meetings. The Commission's only authority was to advise Mayor and Council e.g. no separate authority to for example do political outreach, but can recommend additions or changes to their mandate to Mayor and Council.

#### **Agenda Item 4 – QED Noise Study Report**

The Chair solicited input on each of the 3 motions from the April 22, 2009 meeting for possible ratification.

1. Motion by Barbara to accept the QED study, with explicit concerns crafted by members in two memos and presented verbally during the meeting. Motion seconded by Duane. The Chair summarized the content of the written memos. The motion carried by unanimous vote.
2. Motion by Karyn to recommend that the City not circulate copies of the report in the future without attaching the position letter from the Commission. Motion seconded by Barbara. The motion was accepted without discussion by unanimous vote.
3. Motion from Barbara to include a statement in the position letter expressing the opinion that the IGA was not believed to have been negotiated or implemented in good faith. The members discussed the motion and misgivings were expressed with regard to including such a statement in a position/recommendation letter to the Mayor and Council. The motion to include the statement failed by 6 members opposing the motion, 3 members abstaining.

*Due to lack of notification of each action to be ratified in advance by 72 hour public notice, the attempted ratification was null and void.*

The members proceeded discussing a draft letter from the Chair that had been subject to comments from members that had been forwarded to staff. Gary moved that the letter as amended and approved be attached to the QED report. Karyn seconded the motion. The members discussed the version of the draft presented and the need for more time to review it before accepting it. Gary called the question, whereupon the members decided by 6 members in favor, 2 voting against and 1 member abstaining to end the discussion on whether or not to act on Gary's motion. With 4 members voting for the motion, 4 members voting against and 1 member abstaining, Gary's motion failed. Barbara moved to give members time to review the draft to come up with a final letter of recommendation. The motion was seconded by Karyn. With 6 votes for the motion, 2 votes against and one not voting, the motion passed.

**Agenda Item 5 – Mandate and Future Strategies**

A prepared spread sheet with suggestions made at the May 6<sup>th</sup> meeting from the Chair was presented. With reference to advice received at the meeting, Gary moved to reevaluate the suggestions made at a future meeting. Dave seconded the motion. The motion passed by unanimous vote.

**Agenda Item 6 – Commissioners’ Business (topics for future discussion)**

The following item was suggested:

- Discuss how often the Commission should make recommendations
- Discuss an area in the Town Lake/ Rio Salado area that could be wild-life hazard

Barbara handed over the following documents to staff: An airport/ Tempe history account from NTNA, a memo on bird strikes, and a collection of web site articles.

**Agenda Item 7 – Schedule Next TAVCO Meeting**

The next regular meeting was scheduled to June 16, 2009.

**Agenda Item 8 – Adjournment**

The meeting was adjourned at 8:46 p.m.

Prepared by: Oddvar Tveit

Reviewed by: Don Hawkes

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Authorized Signature  
Water Utilities Department Manager

Attachment

## **Unapproved Minutes Tempe Aviation Commission April 22, 2009**

**Minutes of the Tempe Aviation Commission special meeting held on April 22, 2009, 6:00 p.m., at the Public Works Conference Room, Garden Level, City Hall Complex, 31 E. Fifth Street, Tempe, Arizona.**

**(MEMBERS) Present:**

Karyn Gitlis  
Gloria Regensberg (Chair)  
Barbara Sherman  
Duane Washkowiak

**City Staff Present:**

Oddvar Tveit, Environmental Quality  
Specialist

**Meeting convened at 6:17 p.m.**

Gloria called the special meeting to order, after a discussion of meeting procedure.

**Agenda Item 1 – QED Aircraft Noise Impact Study Report**

The chair went through the QED scope of work with the attending members. The members discussed how QED had adhered to what the city had asked for, and how to deal with statements in the final report that were problematic. Written comments on the QED final report from two members were addressed. Barbara moved to accept the study with explicit concerns crafted by members in two memos and presented verbally during the meeting. The motion was seconded by Duane. Upon a motion by Karyn that was seconded by Barbara, the members agreed by unanimous vote to recommend that the City do not circulate copies of the report in the future without attaching a position letter from the Commission. The members proceeded by discussing the crafting of a position letter that included both recommendations and critique of the report, and agreed it should be drafted by the Chair and include concerns over statements in the QED report that were considered to be inaccurate or misleading. Members expressed particular concerns over a statement in the report saying that the IGA by most measures had been achieved, and agreed that Tempe's design and promotion of a "corridor concept" also should have been included in the report.

Barbara made a motion to include a statement in the position letter expressing the opinion that the IGA was not believed to have been negotiated or implemented in good faith. The motion was seconded by Karyn and unanimously accepted without discussion.

*Duane left the meeting at 7:20 p.m.*

A statement about the 4DME procedure being generally favorable to Tempe was also discussed and the members agreed on adding a comment in the position letter expressing that the statement was questionable considering how compliance with the procedure was measured. It would only be valid using the Phoenix gate measure. The QED report understated the fact that the Gate had reduced the effectiveness of the Salt riverbed corridor, and the report did talk about enforcement of the 4-DME gate when it should say that the gate was used by Phoenix to enforce the 4 DME Standard Instrument Departure procedure agreed upon with Tempe in the IGA. The members expressed their agreement with a written memo from a member that rejected the discussion in the report of applying a lower threshold noise level than 65 DNL in Tempe, and a comment in the report about the noise monitoring system functioning reliably. This statement could be easily misinterpreted to mean that the data produced by the system was reliable. The QED did no verification of the reliability of the data, because it was not part of their scope of work.

The members agreed that a statement regarding Tempe's design and promotion of a "corridor concept" also should be included, and to recommend to the Mayor and Council that the City vigorously pursue with Phoenix the implementation of QED's recommendation to relocate monitoring sites within Tempe after all sites in Tempe had been appropriately evaluated in cooperation with Phoenix and NFTMS provider (Era Corporation & Brüel & Kjær).

**Agenda Item 2 – Adjournment**

The meeting was adjourned at 7:55 p.m.