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Arizona Court of Appeals hears arguments on Flagstaff hospital relocation ballot measure

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Representing Northern Arizona Healthcare, Daniel Arellano, in the right half of this screenshot, speaks to Arizona District 1 Court of Appeals Judges Cynthia Bailey, James Morse and David Gass during a hearing Thursday.

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The Arizona Court of Appeals heard oral arguments Thursday on a ballot initiative about the hospital relocation project.

Northern Arizona Healthcare (NAH) made its case that a ballot initiative letting voters weigh in on the project is misleading.

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The appeal came after a Coconino Superior Court judge ruled against NAH earlier this month.



Judge allows Flagstaff Medical Center campus referendum to proceed

The project by NAH, which hopes to construct a “health village” near Fort Tuthill County Park and was approved by Flagstaff City Council in June, has been controversial for many residents.

Throughout the hearing, judges questioned the lawyers representing NAH and Flagstaff Community First (FCF), the political action committee that organized the ballot initiative, along two main lines.

To the lawyers representing NAH, judges asked what options voters and residents of Flagstaff might have to reverse the new zoning if the hospital didn’t end up being built. Judges also questioned the assertion by NAH that the ballot measure didn’t make it clear that the development was medical in nature.

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Meanwhile, questions to lawyers representing FCF largely surrounded the prominence that retail development might take within the project, compared to the prominence given to retail within the voter initiative question.

Attorney Daniel Arellano, representing NAH, told the panel of three judges that the zoning change Council passed is primarily for the purpose of constructing the new hospital and wellness village, and states so clearly.

But Arellano said that in his view, the ballot measure obfuscates the medical purpose of the project, focusing primarily on how the change in zoning allows commercial and retail to be built in the area, making the ballot measure misleading for voters and inaccurate to the facts on the ground.

Judges pointed out that at the end of the day, the zoning change is distinct from the development that is proposed.

As an example, Judge James Morse set forth a hypothetical scenario in which the new hospital wasn't built and NAH sold the property with its new zoning in place. In that scenario, he wondered what recourse would voters have to reverse the zoning.

"I want to focus on the point; the voters may be completely without remedy at that point," Morse said.

Arellano said the city has the development agreement that commits NAH to produce the project approved by Council, and the city could reverse the zoning if NAH fails to deliver that.

And he said the question to be looked at was not one of a thousand hypothetical outcomes. Instead, Arellano said, the question is specifically whether the language within the ballot question accurately described the project.

Arellano said the ballot measure fails to state that the point of the project is to build a new hospital, and instead gives voters the impression that the project is one largely focused on commercial retail.

“We read this as a reasonable signer would, and I think when you read the term ‘retail trade business’ or ‘establishments engaged themselves primarily in the trade of goods,’ that’s a store. That’s what this is describing, is a retail store. We’re talking about a Walmart or a Best Buy or a strip mall. That is, I think, distinctly what this evokes and what it’s meant to evoke,” he said.

But that is not what the development is, Arellano said.

“If their description had said ‘for purposes of a hospital,’ those words?” Morse said.

Arellano: “If it didn’t address that retail point and just said ‘for purposes of a hospital,’ I do think that would have been sufficient.”

But Morse suggested Arellano’s argument seemed strained, especially given the ballot measure states the development is by "Northern Arizona Healthcare" and there is a retail component to the development.

“It seems like, boy, that’s an awfully fine hair for us to split,” Morse said. “For us to say ‘hospital’ would be enough but ‘NAH,’ ‘healthcare’ and ‘pursuant to the plan’ is not.”

Ballot measure questioned

For the other side, Jim Barton, representing Flagstaff Community First, said in his view the ballot measure made it very clear that the project is medical-related.

“I’ll just submit that if we were trying to hide the fact that this was a hospital, we did a bad job at that because we mentioned that it was a healthcare corporation and then we identified that the specific plan was actually called a health village phase 1 specific plan. No one is trying to hide anything,” Barton said.

Judges wondered how it was possible to have a ballot question focused on the zoning change when the city council had also approved a development agreement that was specifically related to the change in zoning.

Morse said that development agreement puts “severe limits” on retail within the project and wondered if it was accurate to emphasize retail within the ballot question. Morse asked Barton if he would acknowledge that the full plan limits retail within the development.

Barton took issue with that.

“No, your honor, I don’t acknowledge that, because the combined plan explicitly identifies a retail establishment such as a restaurant or café, such as a farmers market, such as a flea market,” Barton said.

But Judge Cynthia Bailey pointed out that much of the retail component is not in the first phase of the plan. And she suggested Barton was pointing to later phases of the development in terms of retail, but acting as if it was within the area designated mainly for the medical facilities.

“We understand this is a broader project that has other phases, but you made that [retail] reference specifically to the area where the appellant is saying, ‘This was for the hospital, free and clear,’” Bailey said.

Barton pushed back, adding that they are simply providing a description of how the zone allows commercial retail uses.

“Nothing we said is untrue, nothing we said is going to mislead anyone,” Barton said. “What we said about what highway commercial [zoning] does is true. There is no case where someone says, ‘It’s true but it was misleading.’ [...] Not only is it true, but it’s not misleading because, as it happens, they are going to do these things.”

Judges will make a decision on the appeal by Wednesday, Aug. 23.



Brothers Tyler and Chase Bruno drove up to Flagstaff Wednesday afternoon to hit the jumps at the Fort Tuthill Bike Park. The two hope to go pro someday, and were relieved to practice away from the heat of the valley.

RACHEL GIBBONS

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