



**PLANNING & ZONING
COMMISSION MINUTES**

**PLANNING & ZONING COMMISSION
REGULAR MEETING
THURSDAY, AUGUST 11th, 2022
9:00 AM**

**Virtual Zoom Meeting + Council Chambers
201 S. CORTEZ ST.
PRESCOTT, AZ 86303
928-777-1207**

Minutes of the Planning & Zoning Commission on August 11th, 2022, on a Virtual Zoom Meeting and in Council Chambers at 201 S. Cortez St. Prescott, Arizona.

1. CALL TO ORDER

Chairman Michelman called the meeting to order at 9:00 A.M.

2. ROLL CALL

Members:

Don Michelman, Chairman
Ted Gambogi, Vice-Chairman
Stan Goligoski
Susan Graham, Absent
Thomas Hutchison
Thomas Reilly
Butch Tracey

Staff:

George Worley, Planning Manager
Tammy Dewitt, Community Planner
Kaylee Nunez, Recording Secretary
City Attorney, Joseph Smith
Assistant City Attorney, Matt Podracky

City Leadership:

Councilman Brandon Montoya, Liaison, Absent
Councilmember Cathey Rusing
Mayor Phil Goode

3. REGULAR AGENDA

A. Approval of the minutes from the July 14th, 2022 meeting

Commissioner Reilly moved to approve the July 14th, 2022 meeting minutes, seconded by Commissioner Tracey: Passed (5-0). Commissioner Hutchison recused himself from voting as he was not present at the July 14th, 2022 meeting.

- B. Discussion and review of LDC22-001 Land Development Code Amendment to Section 2.1.4 and Section 5.2 to replace the Airport Noise Overlay District (ANO) with a new Airport Vicinity Overlay District criteria and create district boundary.

Planning Manager George Worley explained that the purpose of today's meeting is to introduce Commissioners to the Airport Vicinity Overlay (AVO) language and that the presentation from staff will be very similar to the presentation made to the Mayor's Ad Hoc Committee on August 4th, 2022.

Airport Director, Dr. Robin Sobotta, presented a timeline of plans adopted by the City which have established various land use protections and guidelines for the Airport and surrounding area. These include: the 2009 Airport Master Plan, the 2001 Airport Specific Area Plan (ASAP) and the City's 2015 General Plan. Dr. Sobotta presented a diagram of Airport Impact Zones (AIZs) which are based on National Transportation Safety Board (NTSB) data. The aim of the impact zones is to limit damages caused by an aviation accident, protect airport viability and to limit noise and overflight impact on residential/sensitive areas.

Commissioner Hutchison asked whether the impact zone methodology is common to [most] airports. Dr. Sobotta answered that it is.

Dr. Sobotta presented a diagram of the ASAP, which depicts three land use classes in the Airport area. They are: Commercial, Commercial/Employment and Commercial/Recreation. She also presented a map of the ASAP with the 60 DNL (day-night average noise level) contour included. A noise contour map was also presented, which used overflight noise data gathered from 2021 to create. Dr. Sobotta explained that Federal Aviation Administration's (FAA) grant assurances are tied to observing and strictly complying with these land use and noise contour parameters.

Commissioner Gambogi asked whether an airline "reducing seats [to ensure proper takeoff clearance] is a normal airport operation". Dr. Sobotta answered that it is not.

Commissioner Reilly asked for clarification regarding protections in the "[one engine inoperative] splay area".

Dr. Sobotta explained that the FAA requires that carriers must assure that they have a safe pathway to depart an airport if they only have one operable engine. She pointed out the OEI Splay area on one of the diagrams provided to the Commission and clarified that it is currently being validated by an airspace expert and that uses in the splay area will be very limited in height.

Dr. Sobotta also explained that the FAA recommends that Airports create current, and 5-year future noise contours and that the city is currently having the future noise contours estimated. The report will be delivered in 6-8 weeks.

Commissioner Gambogi asked whether most Airport noise complaints are based on a single noise event or an average of noise events (i.e., DNLs).

Dr. Sobotta answered that complaints are generally based on single noise events.

Dr. Sobotta also explained that 60-70% of residents near an airport are "highly annoyed" within a 65 DNL noise contour. This data is based on a 2021 Neighborhood Environmental Survey conducted by the FAA. This suggests that 65 DNL is too high of a threshold for residential uses. Dr. Sobotta presented a list of benefits of the proposed AVO, which include safety protections for residents, hazard prevention, clear

boundaries, and explanation(s) of such boundaries as well as compliance with Federal grant assurances. Ms. Sobotta also presented a map which depicts all current Airport overlays and areas of protection as well as the proposed, AVO overlay.

Commissioner Reilly asked for clarification on the yellow, rectangular area depicted on the map. Dr. Sobotta explained that it is an area that coincides with the One Engine Departure (OED) splay, where pilots can safely re-orient and return for a safe landing in case of complications during take-off.

Chairman Michelman asked for clarification on the 7460 process (through the FAA).

Dr. Sobotta answered that it is required for every new structure within the Airport Influence Area and involves plugging in a series of GPS coordinates to an online tool. This process is simple to complete, but it can take several weeks for the FAA to evaluate.

Planning Manager George Worley presented proposed Land Use Density and Open Space requirements. Density is defined as dwelling units/acre for residential uses and persons/acre for nonresidential uses. There are 6 zones proposed, zones 1-3 not allowing any residential uses. The percentage of minimum open space recommended lessens as the zones go up (i.e., Zone 1 recommends 100% open space, whereas zone 6 recommends 10% open space). Mr. Worley presented another, larger noise contour overlay map, which depicts most of the impact zones lying within one or more noise contours.

Mr. Worley presented the current draft of the AVO, which will be adopted into section 5.2 of the City's Land Development Code. He explained that the AVO will codify the Airport Influence Area, Airport Impact Zones, and Noise Contours altogether, creating clear standards to protect the Airport's utility, enhance nearby resident safety, and to comply with FAA standards and protect airport viability.

Mr. Worley presented the Airport Impact Zones Land Use Compatibility Table (Table 5.2.3.b), which has been simplified to depict all uses as either 'N' (not permitted) or 'P' (permitted) within each of the six impact zones.

Commissioner Reilly asked for clarification on current uses that do not comply with this table, specifically, whether they'd be able to continue to operate if this code is adopted. Mr. Worley answered that existing, non-conforming uses would be allowed to continue but any future uses would be required to comply with the parameters set forth by the table.

Chairman Michelman asked whether a non-conforming use could be 'replaced' once removed.

Mr. Worley clarified that replacement is only allowed in circumstances where damage or destruction occurs by circumstances outside the owners' control (i.e., acts of God).

Mr. Worley shared that staff is considering relaxing restrictions on the 'Personal Services, Health Clinics' use classification as they have a relatively high turnover of individuals going in and out of their facilities. That is, individuals using these businesses are generally staying for a short period of time. Mr. Worley also highlighted that 'Large Gathering Venues, e.g.' should remain quite restrictive as users are generally bound to those facilities for longer periods of time, which makes them more sensitive to substantial overflight.

A ten-minute recess was taken from 10:10 to 10:20 AM

Mr. Michelman asked whether the 'Athletic Fields' use comprises athletic facilities that may draw large crowds, Mr. Worley clarified that it does not, it more closely encompasses practice fields where less individuals will be congregating for shorter periods of time (in comparison to athletic events).

Commissioner Reilly asked for the difference between existing zoning use restrictions (LDC Section 2.3 Use Table) and the table presented. Mr. Worley explained that the Airport Impact Zone Land Use Compatibility Table will be separately and additionally applied over the LDC within the AVO boundaries.

Mr. Worley explained that all residential uses are controlled in nearly the same manner under the Land Use Compatibility Table, as they are all very sensitive to overflight noise/activity.

Dr. Sobotta presented sections 5.2.4 and 5.2.5 of the AVO document, noting that Section 5.2.5 was largely borrowed from other municipalities. She explained that this section seeks to ‘package’ together all FAA obstruction and airspace requirements for user clarity, whereas all these requirements are delivered through multiple means of communication currently. This includes restrictions on structure height, lighting, objects that emit glare and equipment height (i.e., cranes, ramps, tanks).

Mr. Worley presented Section 5.2.6 of the AVO document (‘Existing Structures and Natural Growth’), sharing that they “borrowed” much of the language for this section from the City of Scottsdale’s Airport Master Plan.

Commissioner Reilly commented on Section 5.2.6, specifically item C, which can require owners of legal-nonconforming structures to install marking and/or lighting on the structure if the City deems it necessary for Airport safety, noting that this requirement seems unfair and incongruent with the City’s values.

Dr. Sobotta commented, that based on an analysis performed in 2017, there were no structures that met this requirement. Any structures built since then should have undergone a 7460 evaluation with the FAA, which would reveal any potential issues prior to construction.

Commissioner Reilly commented that the language in Section C should be modified to reflect more closely what Dr. Sobotta shared. He also added that he has a problem with residents not being able to replace their non-conforming structures on a voluntary basis.

Mr. Worley answered that the purpose is to prevent non-conforming uses from expanding and, if possible, to reduce them.

Commissioner Hutchinson commented that he agrees with Commissioner Reilly’s input on this matter.

Chairman Michelman shared that it might be helpful to have two options for this section ready for the next meeting.

Dr. Sobotta presented Sections 5.2.7 and 5.2.8 of the AVO document (‘Critical Airspace Surfaces’ and ‘Avigation Easements and Fair Disclosures’), emphasizing that owners of properties within the AVO shall be required to provide the City with a [recorded] Avigation Easement prior to issuance of any new building or development permit(s).

Chairman Michelman commented on Paragraph 3 of Section 5.2.8, expressing concern over whether the City can enforce an easement on an area outside the City.

Mr. Worley explained that our mechanism of enforcement will be through conditioning utility service(s) if desired. More specifically, those outside of the City but within the AVO, seeking connection to City utilities must record an Avigation Easement prior to gaining said connections.

Commissioner Reilly asked whether the City has any Intergovernmental Agreements (IGAs) regarding the Airport with neighboring jurisdictions . Mr. Worley answered that we did have IGAs with Prescott Valley and Chino Valley [regarding the Airport], but they have since expired. Mr. Worley added that reinstating them is certainly a possibility.

Commissioner Reilly also asked how owners and renters in the AIA are notified of all the additional requirements and information, especially the Fair Notice Disclosure and Airport Area Map. He added that the current delivery mechanism “needs more teeth” to ensure that individuals in this area are fully aware of the AIA as opposed to just being more documents added within closing or rental agreement packets.

Chairman Michelman expressed his concern about putting the burden for enforcing this [the AVO] entirely upon property owners.

Mr. Worley answered that staff is still working on methods in which to potentially alleviate this burden, including the City taking on mailing notices to all owners within the AVO detailing what the new requirements are and/or where they can get more detailed information.

Commissioner Gambogi stated that he believes the Airport should be held to a higher standard and, as such, he recommended the Ad Hoc Committee that convened last week. He believes that this helped reach an appropriate level of transparency.

Commissioner Reilly asked why Neighborhood Meetings haven’t been conducted for this update. Mr. Worley answered that this is the 4th public hearing regarding this issue, which invites public input. Mr. Reilly stated that he still objects to how this ‘is being done’ and will have trouble voting on it as a result.

Mr. Worley answered that over 2,000 mailings will be sent out today to residents within the AVO informing them of Planning & Zoning Commission meeting on August 25th and that an open house was conducted approximately one month ago, notices being sent to approximately 500 residents in the immediate vicinity of the Airport. Mr. Worley also shared that he believes the process has been transparent thus far, yet staff is open to conducting additional open house meetings if need be.

Assistant City Attorney, Matt Podracky shared concern about Section 5.2.6.D. noting that it may get legal push back, especially due to inconsistencies with other municipalities in Arizona. He also shared concern about 5.2.8, especially regarding renters, and stated that legal can work with staff to get more solutions.

Commissioner Hutchison expressed his hope that the City keeps its promises to key stakeholders who may be impacted by this process.

Councilmember Cathey Rusing made a personal statement on the proposed AVO, emphasizing that it must be codified to give the City “teeth” to prevent development that may have adverse impacts on Airport and citizen safety within the Airport area. Mrs. Rusing shared concerns that delaying the AVO might negatively impact plans for a runway extension which could, in turn, negatively impact emergency flight operations (for Forest Service aircraft during wildfires).

Stephen Polk, an Attorney representing James Deep Well Ranch, expressed concerns about how the meeting was agendized. More specifically, that it should have been made clear that public comment would be taken at this meeting. Mr. Polk stated that there is a Master Plan in place for Deep Well Ranch, and if the City enacts the AVO over the Deep Well Ranch Master Plan, it will be considered a taking under the Arizona Constitution. If the City does so they will need to make adequate financial assurances to Deep Well Ranch and other affected landowners. Mr. Polk also expressed concerns about the City requiring

more onerous noise restrictions than that of the FAA (i.e., instating residential restrictions within the 55 DNL contour as opposed to the 65 DNL contour).

Mark Guerra, General Counsel for Chamberlain Development LLC, referenced the 2017 Development Agreement (DA) and Master Plan (MP) adopted for Deep Well Ranch, which the proposed AVO will impair if adopted. Mr. Guerra also shared that the FAA has absolute primacy over any local authority regarding Airport noise land use compatibility. As such, the 65 DNL boundary needs to be upheld over the City's proposed, 55 DNL contour. Lastly, Mr. Guerra explained that there has been no change to federal or state law that would prompt the creation of the AVO.

Ron James, Prescott resident and part owner of Deep Well Ranch, expressed his concerns that the transparency of this process has been "next to none". Mr. James also speculated that the FAA would not have given the City \$50 million thus far without fully researching what [residential] development plans were approved within the Airport area, including Deep Well Ranch. He believes this process is being hurried and that the full details of the potential impacts of the AVO have not been revealed to the Commission.

Sandy Griffis, President of Yavapai County Contractors Association (YCCA) and member of Yavapai County Planning & Zoning Commission shared her support for protecting the Airport and Embry Riddle University. However, she believes the belief that moving the 55 DNL contour [to 65] will elicit more complaints from annoyed residents is manufactured. Ms. Griffis expressed that predicting noise complaints should be outside the purview of the City and that the AVO draft needs much more work and time for review. She also suggested that the City circulate the AVO draft to more stakeholders including local Realtors, the Prescott Chamber of Commerce, and local Contractors.

Luther Kraxberger, resident of Prescott and local Realtor, echoed previous public comment sharing that this process needs more time and needs to elicit more input from stakeholders.

Commissioner Reilly asked why a timeline was put in place, specifically, why does this process need to be completed by next month?

Planning Manager George Worley answered that it is to get it within the Public Hearing process sooner. The Commission can require more hearing meetings if need be.

Chairman Michelman asked whether the noticing list should be expanded beyond property owners within the proposed AVO area, specifically to include stakeholders Ms. Griffis has mentioned. Mr. Worley answered that staff can certainly do that.

Commissioner Goligoski asked Mr. Polk whether there is a Plat already approved for the referenced Deep Well Ranch area. Mr. Polk answered that there are approved Land Use Groups, which were established when the MP was adopted in 2017. The individual Plats come along as sections Deep Well Ranch are developed. Mr. Goligoski also asked for clarification on Mr. Polk's request for an overlay of exempt properties—more specifically, is he looking for a general boundary or for each individual property to be depicted? Mr. Polk suggested a map that shows exactly which properties will be affected by the restrictions of the AVO.

Commissioner Reilly commented that a map that depicts all properties impacted by the AVO adoption would be helpful in the Commission and Councils' decision making. Mr. Worley explained that such a map could be produced by staff.

Commissioner Tracey echoed that he would also like a map of all properties that will be impacted.

4. UPDATE OF CURRENT EVENTS OR OTHER ITEMS OF NOTE

- a. Staff Announcements
- b. Staff General Plan Update- The General Plan Committee kick off meeting will be held on August 24th. All meetings will be offered in person plus Zoom (hybrid format).
- c. City Council action on projects reviewed by the Planning and Zoning Commission- Commissioner Gambogi expressed his concern that the Commission is not being noticed as to when PZ items are taken to Council so that they may attend if they desire.

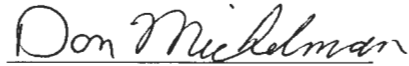
5. ADJOURNMENT

There being no further business to discuss, Chairman Michelman adjourned the meeting at 12:00 PM.



Kaylee Nunez, Recording Secretary

ATTEST:



Don Michelman, Chairman