



**PLANNING & ZONING
COMMISSION MINUTES**

**PLANNING & ZONING COMMISSION
REGULAR MEETING
THURSDAY, AUGUST 25th, 2022
9:00 a.m.**

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

Minutes of the Planning & Zoning Commission on August 25th, 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
Thomas Hutchison
Thomas Reilly
Butch Tracey

Staff:

George Worley, Planning Manager
Tammy Dewitt, Community Planner
Airport Director, Robin Sobotta
Kaylee Nunez, Recording Secretary
City Attorney, Joseph Young
Assistant City Attorney, Matt Podracky

City Leadership:

Councilman Brandon Montoya, Liaison, Absent *recused himself to avoid Open Meeting Law violation*
Councilman Eric Moore
Councilman Clark Tenney
Mayor Phil Goode

3. REGULAR AGENDA

A. Approval of the minutes from the August 11th, 2022 meeting

Commissioner Reilly moved to approve the August 11th, 2022 meeting minutes, seconded by Commissioner Tracey: Passed (6-0). Commissioner Graham recused herself from voting as she was not present at the August 11th, 2022 meeting.

- B. CSP22-002: Consideration of a Comprehensive Sign Plan for Calvary Chapel of Prescott for a New Digital Monument Sign; 2311 E State Route 69; Property Owner: Calvary Chapel of Prescott; Applicant: A and B Sign Company; APN 112-05-024H.

Planning Manager George Worley presented an aerial and zoning map view of the subject property, which is located directly off State Route 69 and is in Business Regional (BR) zoning. Mr. Worley also presented a site plan detailing the location of the existing and proposed signage. The proposed sign will have better visibility for passing traffic. The existing sign is 78 sq ft and completely digital, and the proposed sign has 40 sq ft of digital signage and 35 ft of identification (static) signage requested. It will be 19'-2" tall.

Chairman Michelman asked how often the digital component would be changing, applicant Brian Wieweck with A & B Sign clarified that it would comply with current code requirements.

Mr. Worley clarified that the text may not change more often than every 30 seconds.

Commissioner Hutchison moved to approve CSP22-002, seconded by Commissioner Reilly. Passed (7-0).

- C. CSP22-003: Consideration of a Comprehensive Sign Plan for 7th Day Adventist Church and School for a new digital monument sign; 2980 Willow Creek Road; Property Owner: Arizona Conf Corp Seventh Day Adventists; Applicant: A and B Sign Company; APN 106-21-237A.

Planning Manager George Worley presented an aerial and zoning map view of the subject property, which is located directly off Willow Creek Rd and is in Single Family 25 (SF-35) zoning. The existing monument sign does not have any digital components and is within the code requirements for square footage. The proposed sign is 15'-1/2" tall with 24 sq ft of digital signage and 16 sq ft of identification (static) signage requested.

Commissioner Reilly moved to approve CSP22-003, seconded by Commissioner Tracey. Passed (7-0).

- D. LDC22-001: Public Hearing for 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.

Chairman Michelman announced that he would like to give ten minutes each for public comments and asked Commissioners if this was acceptable, all Commissioners agreed.

Mr. Worley gave a presentation on what the Airport Vicinity Overlay (AVO) would do if adopted. He laid out ten main points, including:

- Provide clearly mapped boundaries
- Include allowable uses & limits
- Provide fair notice disclosure requirements to buyers & renters
- Provide measures for hazard prevention and promote community health, safety and welfare
- Comply with federal grant assurances (FAA)

- Support future Airport development, improvements and protect it as a major employment center and economic driver
- Reflect a tapestry of prior Airport plans; including the Airport Specific Area Plan (ASAP), Airport's Land Use Plan (ALUP) and the 2015 voter approved General Plan.

Mr. Worley also presented a list of what the AVO would not do if adopted, including: change airport operations, prohibit compatible development and prohibit legal nonconforming uses from being rebuilt if they are damaged or destroyed by [natural] disasters. Mr. Worley then presented section 10.3.3. of the City's Land Development Code (LDC), which addresses circumstances in which nonconforming structures may be rebuilt.

Chairman Michelman and Commissioner Reilly expressed concern about citizens within the AVO not being able to rebuild, remodel or expand their homes. Mr. Worley explained that most remodels and additions will be allowed within the parameters of the AVO, however, those who voluntarily demolish and desire to rebuild their homes entirely will have to go through an appeal process to do so.

Commissioner Graham asked whether residents in the AVO would be able to add a guest house on their property if they desired to, Mr. Worley answered that they would be able to so long as they followed the parameters set by the current zoning code.

Mr. Worley presented a slide summarizing changes that have been made to the proposed AVO since the last Planning & Zoning Commission meeting on August 11th, including; minor text changes in the Land Use Table, substitution of existing LDC nonconforming uses language, and establishing that noise contours are only applicable in Airport Impact Zones (AIZs) 1 through 6.

Commissioner Hutchison asked Assistant City Attorney, Matt Podracky, about this possibly taking the form of ex post facto law. Mr. Podracky answered that he is not concerned with an ex post facto law argument as the new law will not be retrospective nature.

Mr. Worley clarified that legal non-conforming status will be applied to existing non-conforming uses in the AVO area.

Commissioner Reilly asked about businesses that may be negatively impacted by the AVO, specifically, business that may be made legal non-conforming by the AVO and plan to expand. Mr. Worley explained that business would not be able to add new incompatible uses but could continue and maintain existing uses. Mr. Reilly asked for clarification whether they would be able to expand, Mr. Worley re-iterated that that would be acceptable they just could not add a new, nonconforming use. Any expansions must be consistent with the allowances of the AVO.

Mr. Worley presented slides on how the AVO adoption would specifically affect major subdivisions/neighborhoods within the proposed area, including:

- Antelope Hills
- Granite Dells Estates
- Saddlewood and Westwood
- Pinon Oaks
- Walden Farms

Mr. Worley also presented maps of the boundary of the AVO in relation to these neighborhoods.

Commissioner Hutchison asked how vacant lots within the AVO would be affected, specifically those that are intended for residential development. Mr. Worley explained that they would be subject to the requirements of the AVO, which may require notching out residential designations in certain areas.

Commissioner Reilly asked how and when the Fair Notice Disclosures would be provided to citizens within the AVO. Airport Director Robin Sobotta explained that paperwork will be provided to the Community Development Department, who will provide the information to applicants prior to any new permits within the AVO area. Renters will need to have the paperwork provided by the property owner/landlord. The City will make endeavors to make this paperwork as widely available as possible, however.

Commissioner Reilly asked how the noise contours work with the impact zones. Mr. Worley explained that the two are separate layers, however, they build off of one another to provide appropriate and adequate protections for those located within.

Commissioner Graham asked for clarification on the Avigation Easement Form that homeowners within the AVO may be required to fill out for home improvement projects, specifically whether they will incur costs in doing so. Mr. Worley explained that the City will provide the Avigation Easement form at no cost, and there is a \$30 recordation fee [currently] for the County Recorders Office.

Mr. Worley presented an overview map of the proposed boundary of the AVO, which maintains the existing boundary of the Airport Influence Area, as adopted in 2001.

Commissioner Reilly asked how the City will codify exemptions for development of non-compatible uses. Mr. Worley answered that most will be covered under the definition of legal non-conforming uses previously presented. Mr. Podracky answered that the AVO enactment will be tantamount to a re-zoning and will, therefore, be subject to the same conditions.

Airport Director, Dr. Robin Sobotta, presented information on Airport (Safety) Impact Zones which are adopted standards to limit damages caused by an aviation accident, protect airport viability and limit noise and overflight impact on residential/sensitive uses. She explained that there are six zones, which are in order of decreasing risk. Dr. Sobotta also presented a map of Noise Contours in the Airport area, explaining that they are a graphical representation of average noise exposure levels associated with aircraft operations. The metric used for noise contours is DNL, which is the Day-Night Average Sound Level. Dr. Sobotta added that the 55 DNL contour is largely contained within the existing, Airport Impact Zones.

Dr. Sobotta presented a comprehensive map of all the Airport “layers”, including:

- Airport Impact Zones (AIZs)
- Noise Contours
- Airline One- Engine Departure Splay/Path (OED)
- Airport Influence Area (AIA)
- Public Airport Disclosure Map
- Fair Notice Disclosure Map

She also shared that there are other impacts and considerations that are considered in the Airport area, including: smoke, lights, solar (glare), drones, wildlife attractants and development agreements

Commissioner Reilly asked why the 55 DNL noise contour was chosen. Dr. Sobotta referenced a recent survey produced by the FAA in that has identified that the original, 65 DNL threshold established in the 1978 Schulze Curve study may no longer be adequate. Dr. Sobotta explained that excessive overflight noise

can annoy residents to the point of taking contrary action against the Airport. Mr. Reilly asked whether the Avigation Easement Disclosure that residents within the AVO would be required to sign would indemnify the City so that the 55 DNL might not be necessary. Dr. Sobotta answered that even with signing the Disclosure, the residents in the AVO could still oppose future development of the Airport.

Commissioner Hutchison asked whether the 55 DNL could be construed as being a potential, national standard. Dr. Sobotta answered that it is a strong possibility, and that the FAA will be employing a variety of metrics into the future to establish proper contours.

Commissioner Reilly asked about the FAA Grant Assurances that Dr. Sobotta has previously referred to, specifically, whether they have directly told us that they are at risk. Dr. Sobotta explained that a current contract signed by the City with FAA specifically indicated that compatible land uses must be established and protected in the area to receive additional funding.

Commissioner Goligoski asked how many FAA grants the City has received thus far. Dr. Sobotta explained that she has received more than \$50 million in grant assurances since she began her position in January 2018. She also explained that there is the potential for \$80-100 million more in grant assurances if we properly protect the Airport area. Mr. Goligoski asked if the FAA specifically asked for the AVO to be adopted, Dr. Sobotta asked that she and the City are establishing the AVO based on what they strongly believe will be needed to gain further grant assurances.

A ten- minute recess was taken from 10:19 to 10:29 a.m.

Chairman Michelman announced that we will begin taking public comments at this point; and to limit redundancy of comments for the sake of letting others comment.

Mark Guerra, general counsel for Chamberlain Development, emphasized that Deep Well Ranch, which will be impacted by the AVO, is already subject to zoning agreements under its Master Plan and Development Agreement. He introduced Dr. Barbara Lichman, who has a PhD in Urban & Regional Planning.

Dr. Lichman explained that the Federal Government has exclusive jurisdiction over airspace in the United States, including regulation of noise. She emphasized that the 65 DNL is still the National standard and has been since 1994. Dr. Lichman shared that the Schultz curve is still in effect according to recent, federal documents and, as such, a 55 DNL requirement would be in direct conflict with federal rulings. Dr. Lichman also referred to the OEI-Splay, stating that it is airline and aircraft specific and is therefore not determined by the FAA. Dr. Lichman concluded by stating that a Development Agreement establishes a vested right for those within the contract and that Chamberlain Development intends on keeping it.

Commissioner Gambogi asked Dr. Lichman what her position on the Impact Zones is. Dr. Lichman answered that she does not have enough data to answer this question directly. Commissioner Gambogi referenced the Santa Monica Airport closing and whether noise contributed to it directly. Dr. Lichman answered that the main reason the Santa Monica airport was closed because there was a cliff at the end of a major runway.

Rob Pecharich, general counsel for James Deep Well Ranch, expressed concern over the proposed AVO. Mr. Pecharich commented that the information provided in the packet was incomplete. Mr. Pecharich went on to share that the City approached Ron James about annexing some of his land into the City (which is now known as Deep Well Ranch) and that this process took nearly 2 years. He feels that this process is not being afforded enough time in comparison. Mr. Pecharich referred to a miscalculation of one of the Airport Impact Zones that the City admitted to [recently]. When this miscalculation was discovered, the City

approached Ron James and Chamberlain Development to discuss the possibility of compensation in exchange for this property, which they previously thought as developable. He says there has been no follow up on the matter in following months. Mr. Pecharich also shared that he believes the public notice mailed was not sufficient in size or time, stating that it did not give citizens ample time to reply from the time it was mailed, and the mailing did not meet the 15-day Arizona statutory requirement. Therefore, another public hearing must be held. Mr. Pecharich stated that this is not about safety, but about funding.

Commissioner Gambogi asked Mr. Pecharich whether he had any questions about the science behind the impact zones. Mr. Pecharich answered yes, the impact zones cover 25% of the land in the City of Prescott. Mr. Pecharich re-emphasized that this is not about safety in his opinion, but about funding. Commissioner Gambogi asked Mr. Pecharich if he feels the Airport will get further FAA grants without the AVO adoption. Mr. Pecharich answers that he believes they will.

Commissioner Goligoski asked Mr. Pecharich whether he believes the AVO could compromise the entire [Deep Well Master Plan] project, not just the 2,500 citizens currently living within the proposed area. Mr. Pecharich answered that he does.

Stephen Polk, legal representation for James Deep Well Ranch, asked for staff to pull up the diagram of the Airport Impact Zones (AIZs) again. He stated that the Deep Well Master Plan meets or exceeds FAA requirements for impact zone protections. Mr. Polk shared concerns that the 55 DNL is an extremely large area. Mr. Polk also pointed out section 10.3.3 of the City's LDC which states "the size of the nonconforming structure shall not be expanded"; which means that those within the AVO would not be able do additions if their use is deemed non-conforming. Mr. Polk also pointed out that the Fair Notice Disclosure includes criminal penalties for those who do not comply, which might open citizens [unknowingly] to legal ramifications. Mr. Polk advised that this might open the City up to a major eminent domain case as it could negatively affect property values.

Mr. Polk explained that Development Agreements can only be amended by mutual consent. The City does not have mutual consent in this case and that the landowners and developers involved, specifically James Deep Well Ranch and Chamberlain Development, have already invested significant time and money. Therefore, they request that this be considered carefully and adequately.

Commissioner Reilly asked Mr. Polk whether he was wholly opposed to the Fair Notice Disclosure or just how the City is presenting its requirements. Mr. Polk answered that he is not wholly opposed but he believes that it is being presented in haste and unfair manner, specifically, that the ramifications for not having the Disclosure signed are quite serious and need to be fully understood and made apparent to the public.

Commissioner Hutchison asked whether the City is creating a nuisance by allowing houses to be built in a nonconforming area.

Mr. Polk clarified that there are no houses within the DWR Master Plan that would be nonconforming under existing FAA regulations.

Ron James, owner of James Deep Well Ranch and resident of Prescott, spoke his opposition for the AVO. Mr. James referenced the 2017 DA for Deep Well Ranch, which he says would be blatantly disregarded by the passing of the AVO. Mr. James also shared that the City explicitly stated that the 2017 Deep Well Ranch Master Plan was in conformance with the General Plan and the Airport Specific Area Plan. Mr. James shared that the City approached him to annex his property approximately 15 years ago. The annexation was City initiated. Mr. James gave Yavapai Regional Medical Center 100 acres on the North

end on the Deep Well area for future development of a hospital. He explained that the 55 DNL contour would prohibit this very hospital from being built.

Ashley Marsh, representative for Ash-Dorn (Dorn Homes), stated that her client shares the same concerns that the previous two developers presented (James Deep Well Ranch and Chamberlain Development). Ms. Marsh requested more information on how active development is going to be affected and actuated by this proposed code change as her clients have several projects in the works that are already being delayed. Ms. Marsh read the publication provided by the City regarding the Saddlewood and Westwood areas which states that the City “will be working with the developer to provide more details”, they have not received a proposal involving these details so they can’t comment more on it. As such, it is important that the City provide further information and have further public hearings on this matter.

Commissioner Goligoski referenced the OEI Splay and asked Ms. Marsh whether she had any specific concerns regarding future development in it. Ms. Marsh explained that Ash-Dorn would like more details regarding the splay, however, she believes they do not have anything planned within it. Dr. Sobotta added that the referenced area for Dorn’s development is clear of the splay based on studies received this past week.

Jonathan Millet, general counsel for Yavapai Regional Medical Center (YRMC) stated that YRMC objects to the proposed AVO. He presented documents and maps that bolstered his argument for concern that the AVO will adversely affect future development(s) for YRMC. Mr. Millet referred specifically to the North Campus that YRMC plans on developing upon a 173-acre parcel within the northeastern portion of Deep Well Ranch. The parcel is within impact zone 6, which will not allow convalescent facilities, nursing homes and hospitals according to the Table 5.2.3.b within the proposed AVO document. This is a major concern and contrary to the Deep Well Ranch DA regarding YRMC North Campus rights. The DA expressly grants rights to YRMC for a host of medical uses—including a hospital(s), medical clinics, and nursing homes.

Mr. & Mrs. Garthwaite, residents of Saddlewood subdivision, expressed their opposition to the AVO adoption, specifically citing concern about the people within the structures and their livelihoods which might be compromised by such. They don’t want or need a larger Airport; they want more infrastructure and essential services for the City. Mrs. Garthwaite also expressed concern about her home value being diminished by a legal nonconforming status. Mr. Garthwaite expressed concern that City of Prescott has not even begun to think about providing compensation to citizens within the AVO should their property values diminished

Ken Luddon, resident of Prescott and Director of Margot Fonteyn Academy of Ballet expressed his opposition to the AVO, specifically how it will negatively impact schools within the area. He stated that he believes interest in schools in the area will fall with the adoption of the AVO, and development of new schools will be very difficult. They do not have adequate time and money to overcome additional hurdles that may be posed by the AVO. Their plan is to have a Fine Arts village in the Deep Well Ranch area.

Jim Huffman, resident of Prescott and member of the City of Prescott Airport Advisory Committee (AAC), read a statement from the AAC voicing support for the AVO adoption. The AAC statement referenced several City adopted plans regarding the Airport, specifically the ASAP that was established in 2017. Mr. Huffman added that the ASAP seems to “be of little interest” to developers in the Airport area. Long established traffic patterns from the Prescott Airport indicate that those within the airport area are likely to become annoyed or even become activists against the Airport because of significant air traffic. Mr. Huffman reiterated the importance of the Airport to the City’s economy and to provide national and international connectivity.

Sandy Griffis, president of Yavapai County Contractors Association (YCCA), expressed her opposition to the AVO, stating that it is tearing the community apart. Ms. Griffis feels that noise concerns are not the proper approach for this matter, and that the City needs to work further with all stakeholders to come up with a better solution that is not so overreaching.

Daryl Austermilller, resident of Prescott and member of the Prescott Airport Users Association (PAUA), read a statement from the PAUA voicing support for the AVO adoption. He stated that there is no need to put sensitive uses within impact zones and that there is enough open space in the airport area to create appropriate buffers and move the sensitive uses out.

TK Morand, Saddlewood resident, expressed his opposition to the AVO, echoing Ms. Griffis' statements that the City needs to work further with key stakeholders to reach a better solution.

Byron Tabbut, resident of Prescott and member of Canyon Bible Church, expressed his opposition to the AVO adoption. He shared that the Church has been in looking for a new location for a few years now and that they spoke with the City (including the Airport Department) about acquiring a parcel within Deep Well Ranch for their new location. The City had indicated this parcel suitable during a Pre-Application Conference (PAC) held in August 2021. The Church came back for a Pre-Application Conference in June 2022, during which they were told that the church was now an incompatible use. Mr. Tabbut referred to the Deep Well Ranch DA and MP agreements, which the AVO will cause great legal entanglements with if adopted.

Commissioner Gambogi gave a statement summarizing that the input today has shown him that we need more time and conversation

Commissioner Gambogi moved to continue LDC22-001 to the September 8th Planning & Zoning Commission meeting (leaving the Public Hearing open), seconded by Commissioner Reilly. Passed (7-0).


4. UPDATE OF CURRENT EVENTS OR OTHER ITEMS OF NOTE

a. Staff Announcements

Planning Manager George Worley shared that three Site Plan applications that were previously recommended by the Commission were all approved at the August 23rd City Council meeting.

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