



**PLANNING & ZONING
COMMISSION MINUTES**

**PLANNING & ZONING COMMISSION
REGULAR MEETING
THURSDAY, SEPTEMBER 8th, 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 September 8th, 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 , Absent
Ted Gambogi, Vice-Chairman
Stan Goligoski
Susan Graham
Thomas Hutchison
Thomas Reilly
Butch Tracey

Staff:

Kirby Snideman, Community Development Director
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
Councilmember Cathey Rusing
Councilman Eric Moore
Mayor Phil Goode

3. REGULAR AGENDA

A. Approval of the regular session minutes from the August 25th, 2022 meeting

Commissioner Reilly moved to approve the August 25th, 2022 regular meeting minutes, seconded by Commissioner Tracey: Passed (6-0).

B. 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 (AVO) District criteria and create district boundary.

Vice Chair Gambogi opened the meeting by stating that a vote would not be made today, that this meeting is to further promote discussion and education among all stakeholders.

Community Development Director, Kirby Snideman, introduced himself and stated that Planning staff will be providing an AVO approach, proposed AVO Schedule and addressing common concerns & rumors regarding the AVO today.

Planning Manager George Worley stated that staff is going to keep today's presentation brief to encourage further public input. Mr. Worley stated that there will be an updated AVO draft released to the public soon as well as the possibility of (3) options being presented to the PZ Commission and Council in the future, being:

- 1) Smaller AVO/less protective/less restrictive
- 2) Larger AVO/ more protective/more restrictive
- 3) An option in "the middle"

Mr. Worley shared that the AVO can also be reorganized into multiple zones and that there is an aim for zero "legal non-conforming" statuses on existing residential properties. Mr. Worley shared a proposed AVO schedule that details several, future meetings regarding the AVO, including public outreaches as well as public hearings.

Mr. Worley and Airport Director, Dr. Robin Sobotta, presented a slide to detail and debunk common concerns and rumors regarding the AVO adoption, including:

- Trinity School (the AVO will *not* inhibit their plans for expansion)
- Future Hospital Site for YRMC *will* still be allowed (could require some rearrangement of structures, however)
- Fed Ex will *not* be bringing in B-757s
- Road noise in town is *not* louder than airport area aircraft overflight (the levels are calculated differently)
- City *cannot* buy all blocked airline seats to help mitigate financial impacts to airlines (because they cannot be sold)
- Essential Air Service (EAS) airline subsidies will *not* exist forever
- FAA's base airspace analysis is *not* all that is needed to get a new structure approved
- FAA has *not* reviewed and approved all Development Agreements (DAs)/plans around the airport
- The AVO *is* compliant with Federal regulations per FAA Order 1050.1F.

Dr. Sobotta also presented a slide detailing why 55 or 60 DNL contours are more appropriate than a 65 DNL contour. These reasons include:

- Reflective of decades of city plans
- Promotes safety

- Locks in current compatible uses
- Easements are not enough to protect the Airport
- 65 DNL “threshold of significance” fails to protect airports & citizens
- Land use is a local decision
- More reflective of rural ambient noise levels

Commissioner Reilly asked Dr. Sobotta and Mr. Worley to clarify what “locking in current uses” means.

Mr. Worley answered that a major concern from the public in response to prior meetings was the legal non-conforming status that may be applied to their properties. As such, existing residential areas may be permitted to continue to develop subject to the existing zoning standards, which includes additions/expansions. Mr. Worley added that they would address this concern more in the future with the different [AVO] options that will be presented, and the goal is to not create any non-conforming residential properties in the area.

Rob Pecharich, resident of Prescott and general counsel for James Deep Well Ranch, referred to the Development Agreement the City entered with his client and Chamberlain Development, which took two years to produce. Mr. Pecharich and his colleague, Stephen Polk, presented highlights of the Deep Well DA to the audience. These included:

- An anti-moratorium paragraph (pg. 7)
- A paragraph regarding the encouragement of schools within the development (pg. 18)
- A paragraph regarding the required Airport Avigation Easement form (which is currently being enforced by the developer) that has and will be included in every title report for Deep Well Ranch properties (pg. 24)
- A paragraph regarding the time of essence and successors as well as termination upon sale to public (pg. 26) (i.e., the right to a clear title upon Certificate of Occupancy for homebuyers)

Mr. Pecharich also presented excerpts from other pertinent legal documents, including:

- ARS 9-500.05, which addresses requirements for all Development Agreements within the State of Arizona
- ARS 9-462.04, which addresses the proper processes for public hearings within the State of Arizona
- ARS 38-231, which addresses the oath of office that all public officials in the State of Arizona take
- The Fifth Amendment of the United States Constitution
- Arizona Constitution Article II Section 17 (Eminent Domain)

Commissioner Reilly asked Mr. Pecharich if he and his clients were part of an impasse meeting that took place yesterday (September 7th) with representatives of the City as well as Dr. Sobotta.

Mr. Pecharich answered yes. Mr. Pecharich stated that the meeting did not result in the City agreeing to pause the AVO process, hence why he is giving his presentation today.

Commissioner Reilly asked Mr. Pecharich what a pause on the AVO would mean in terms of time.

Mr. Pecharich answered that it would mean to table it and that the current timeline presented by the City is unrealistic.

Mr. Pecharich stated that the initial notice for the August 25th Public Hearing was insufficient as it was postmarked 13 days prior to the hearing, not the required 15. As such, the City has still not held a [proper] Public Hearing. Mr. Pecharich also commented on the confusion behind the “legal non-conforming” status presented by staff during the meetings. More specifically, will residents within the AVO be able to expand their non-conforming uses and will such status hurt the values of the properties it is applied to? Also, is the City prepared to compensate those who have lost values in their properties as a result?

Mr. Pecharich referred to FAA Order 1050.1F that Dr. Sobotta presented earlier; he said there is more to the regulation. Specifically, the City must apply the lower DNL standard to the rest of the City if they are going to apply it to one portion. Mr. Pecharich also stated that the claim that citizens would like the convenience of more flights is inaccurate and would be limited to those not [potentially] impacted by the AVO adoption.

Mr. Pecharich concluded by saying that citizens’ Fifth Amendment rights must be upheld and trying to prevent them from voicing concerns about Airport expansion and/or operations by adopting the AVO is unconstitutional.

Commissioner Graham asked if she could get a copy of the Deep Well DA, staff answered yes.

Commissioner Goligoski asked whether he can get the full FAA statement on the DNL, staff answered yes.

A ten-minute recess was taken from 10:17 a.m. to 10:27 a.m.

Planning Manager George Worley made a statement regarding public noticing requirements. Mr. Worley said that the state gives several options to notice, including publishing within a newspaper of general circulation, [physically] posting the properties and mailing notices to residents within the affected area(s). Staff chose to do two of these methods of noticing, as physically posting all properties affected by the AVO was not feasible.

Stephen Polk, legal representative for James Deep Well Ranch, stated that yesterday was the first that he and his clients learned of the AVO-R zoning designation (which would replace legal non-conforming uses). As such, the public needs more information regarding the AVO-R. Mr. Polk also reinforced that his firm and his client wants to see that James Deep Well Ranch is clearly exempted from any restrictions that may be imposed by the AVO that are beyond that of the existing Master Plan and Development Agreement. Mr. Polk also expressed concern that the City has not approved any appraisals of vacant land owned by his client that may be impacted by the AVO.

Mr. Polk presented an excerpt of a document produced by the FAA regarding jurisdictional noise regulation. The document does state that they [jurisdictions] have the ultimate responsibility for determining the acceptability of land uses at particular noise levels. As such, the City does need to provide more information on the future, 65 DNL contour that they have previously referenced before any more decisions are made regarding it.

Mr. Polk also presented a draft of the Noise Control & Compatibility Planning Document currently under consideration by the FAA which highlights a general aim of keeping DNL levels in proximity to Airports between 65 and 75 DNL. Mr. Polk presented FAA Order 5190.6B, which provides guidance to sponsor’s [i.e., airports] regarding restrictions on airport noise and balance. The order recommends a balanced approach to noise mitigation as well as using cumulative noise metrics. It also states that a community is not precluded from adopting a cumulative noise exposure limit different than 65 DNL, but “cannot apply a different standard to aircraft noise than it does to all other noise sources in the community”.

Mr. Polk presented a table from the 5190.6B document that details Land Use Compatibility among different DNL thresholds—which details that residential and public uses (i.e., schools, churches and hospitals) are acceptable within the 65 DNL threshold.

Mr. Polk presented the Deep Well Ranch Master Plan (MP), which was prepared to follow the City’s General Plan, the Airport Specific Area Plan (ASAP) and the Prescott Regional Airport Master Plan (PRC MP). The Deep Well MP contemplates the relationship between airport protection and a regional economic core, placing Deep Well Ranch in the middle. Mr. Polk also shared that other Airports were researched in developing the Deep Well MP, including Scottsdale, which abides by a 65 DNL contour standard for residential development. Mr. Polk also presented maps from the Deep Well MP which detail several areas of protection designated within Deep Well in regard to the Airport. Deep Well created four Land Use Group (LUG) classifications as a result to clearly depict which uses are allowed in specific areas.

Commissioner Hutchison asked Mr. Polk whether this would be filed in federal or state court if it would be litigated. Mr. Polk answered that it would be handled by a special land use attorney, not him, as such he does not have an answer.

Jonathan Millett, general counsel for Yavapai Regional Medical Center (YRMC), presented a map detailing where YRMC’s proposed North Campus will be in relationship to the current noise contours. It shows most of the proposed campus within the 65 DNL contour. As such, it would be difficult to “rearrange” the structures on the campus to be entirely outside of such. If a 55 DNL contour is proposed, the entire campus would be precluded from development.

Mr. Millett presented ARS 12-1134, which states that a government must provide just compensation to those landowners who have their land values negatively affected by any land use law enacted.

Mr. Millet presented a map of airports within the region, focusing on those that have been specified as small/non-hub airports. Prescott is included in that classification, as well as Flagstaff, Tucson, Yuma and Henderson. All four of these other small/non hub airports permit residential in the 65-70 DNL zone. Tucson, Yuma and Henderson permit hospital development in the 65-70 DNL , with Henderson permitting hospitals in the 70DNL. All four of these municipalities also separate zones for noise and impact.

Mr. Millet is asking that the City honor the Oct 2013 DA between the City and YRMC and specifically exempt YRMC’s parcels from the AVO as well as permit residential in the 55 and 60 DNL zones, with noise abatement during construction required. He also requested that the City separate the ordinance into two sections: one for clear or risk zones and another for noise.

Mrs. C. Garthwaite, resident of Saddlewood, stated that she believes confusion is being perpetuated by City staff. She also stated that she is not anti-airport, however, this AVO is not needed for the Airport to succeed. The FAA does not require it. She also asked Dr. Sobotta if she thinks she cannot get funds in the future from the FAA if this AVO is not passed.

Dr. Sobotta answered that she believes that the [FAA] funds and future of the Airport will be at risk.

Mrs. C. Garthwaite stated her opinion that what the City is proposing is illegal and that the Deep Well DA cannot be modified without permission and that multiple lawsuits will be waged if it is passed.

Richard Garthwaite, resident of Saddlewood, expressed concern that the proposed schedule presented by staff presents a short time frame, especially regarding public hearings.

Daryl Austermilller, resident of Prescott, member of the Airport Advisory Committee (AAC), private aircraft owner and pilot expressed his concern about the lack of concern for Airport protection from the community. Mr. Austermilller explained that home values in the area will be protected by the market, also, that Saddlewood was initially touted as affordable housing for the workforce and is now priced in the \$400,000 range. He also shared that we [the City] have yet to see the full 199 acres of open space promised by the developer. Mr. Austermilller also stated that much misinformation has been circulated about the AVO proposal, putting unnecessary fear in homeowners in the Airport area.

Whitney Walters, Senior Pastor of Willow Hills Baptist Church, shared that his fellowship has grown and has been looking for a location for a new facility in the last few years. He stated that a property next to Trinity School is an ideal location for Willow Hills and was previously cleared by the City during a Pre-Application Conference and now the City is renegeing on this approval.

Bob Maro, resident of Prescott, stated that he did receive a postcard in the mail advertising the first public hearing meeting on August 25th. He has been reviewing the meeting videos and minutes, he referenced a statement previously given by Dr. Sobotta in which she expressed concern that future FAA funding will be at risk if the AVO is not adopted. He specifically referred to subsection 5.2.8 of the proposed AVO which he feels does not follow any important guidance from the FAA. He also presented a photo of a private airplane crash that occurred in May merely 600 ft from his home. Mr. Maro states that City liability for these types of events is tremendous, specifically for private aircraft incidents, which do not have insurance to cover such events. As such, he asks that section 5.2.8 of the AVO be amended using guidance from the FAA regarding land and easement acquisitions as well as being subjected to a more in-depth review from the P & Z Commission and the City Legal Department.

Michael Blackburn, resident of Walden Farms, stated that the details regarding the AVO seem to be constantly changing and that he and other residents in the Airport area want to know the real purpose of this adoption. He is also involved with the construction of a church in the proposed [AVO] area which he feels will be “financially devastated” by its adoption. Mr. Blackburn also stated that he feels mailings should be sent for all public hearings and that putting a legal non-conforming disclosure in title packages will absolutely diminish home values.

Michael McCumber, resident of Saddlewood, expressed that a comparison between Prescott’s Airport and Santa Monica is not sensible as the Prescott Airport has much more land than Santa Monica. Mr. McCumber also stated that he feels this is a barrier for the community as a whole and that the legal non-conforming status previously discussed is very concerning.

William Lawrence, resident of Saddlewood, stated that he is for the runway extension but not for a rezone and/or making his property legal non-conforming. He moved into his home approximately 5 months ago and was well aware of the significant Airport activity nearby. However, he could not find any published information on flight routes for PRC. He expressed specific concern about the low altitudes the [Embry Riddle] students fly at. As such, he recommends the City provide clear flight path guidelines.

TK Morand, resident of Prescott, stated that he disagrees with Dr. Sobotta stating that vehicle and aircraft noise as being incomparable. He lives near a busy roundabout which is very disruptive. Mr. Morand wonders where the homeowner protections are—also, that newspaper notifications are antiquated as many don’t receive a newspaper in this day and age.

Robin Ralston, resident of Saddlewood and employee of Trinity Christian School, explained that she did significant research before buying her home. The AVO adoption presents a real threat to the livelihood of her family and of those in her neighborhood and all of Deep Well. Mrs. Ralston asked why this AVO is being considered considering that it may go directly against FAA guidance as well as State and Federal

laws? She also expressed concerns about home devaluation, possible just compensation owed, legal non-conforming statuses, additional permitting requirements and violations of the Deep Well DA.

Recording Secretary, Kaylee Nunez, read three comment cards from the public which included a statement of opposition from Sandy Griffis, President of Yavapai County Contractor's Association. As well as statements of opposition from residents Daniel Roose and Lyn Garard.

Commissioner Goligoski commented that he and his fellow Commissioners' comments have been few today as they are in "receive mode" and that they are absolutely absorbing all this information.

Commissioner Reilly stated for the public to pay attention as new information comes available.

Mr. Worley reiterated that the AVO schedule is proposed and, as such, can change and staff will take all the time needed to get proper input, particularly from the general public.

Commissioner Hutchison shared that he feels we are making good progress at thinking together.

Vice Chair Gambogi stated that he feels the Commission has learned a lot as a result of today's meeting. They are now charged with sifting through the facts, and

Commissioner Gambogi moved to continue the public hearing for LDC22-001 to October 13th, 2022, seconded by Commissioner Reilly. Passed (6-0).

4. UPDATE OF CURRENT EVENTS OR OTHER ITEMS OF NOTE

None

5. ADJOURNMENT

There being no further business to discuss, Chairman Michelman adjourned the meeting at 12:09 PM.



Kaylee Nunez, Recording Secretary

ATTEST:


Don Michelman, Chairman