



**PLANNING & ZONING  
COMMISSION MINUTES**

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**PLANNING & ZONING COMMISSION  
REGULAR MEETING  
THURSDAY, OCTOBER 13<sup>th</sup>, 2022  
9:00 a.m.**

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

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Minutes of the Planning & Zoning Commission on October 13<sup>th</sup>, 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:**

Kirby Snideman, Community Development Director  
George Worley, Planning Manager  
Tammy Dewitt, Community Planner  
Kaylee Nunez, Recording Secretary  
City Attorney, Joseph Young  
Assistant City Attorney, Matt Podracky

**City Leadership:**

Councilman Brandon Montoya, Liaison  
Councilmember Cathey Rusing  
Councilmember Constance Cantelme

**3. REGULAR AGENDA**

A. Approval of Executive Session Minutes from August 25<sup>th</sup>, 2022 and Regular Session Minutes from September 29<sup>th</sup>, 2022.

**Commissioner Gambogi to approve the August 25<sup>th</sup>, 2022 executive session minutes, seconded by Commissioner Hutchison: Passed (5-0). \*Commissioners Reilly & Goligoski recused themselves of voting as they were not present at the August 25<sup>th</sup> meeting\***

**Commissioner Reilly moved to approve the September 29<sup>th</sup>, 2022 regular session minutes, seconded by Commissioner Tracey: Passed (7-0).**

**B. LDC22-001: Continuation of 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.**

Planning Manager George Worley presented an overview of the topics Planning staff has presented relating to the Airport Vicinity Overlay (AVO) thus far, which was comprised of the following four sections:

- History of Planning Actions (preempting the AVO)
- Current Land Use Controls (pertaining to the Airport)
- Timeline of the Proposed AVO (beginning in June 2022 to present)
- Questions

\*Commissioner Goligoski joined the meeting via Zoom videoconferencing at 9:07 am\*

Chairman Michelman asked about the area of the AVO that is outside City limits, specifically whether if those within it desire to annex into the City at some point could we [the City] could require them to abide by the requirements of the AVO.

Mr. Worley answered that we cannot compel those outside City limits to agree to the rules of the AVO but that the City will have rules & processes in place should any of those properties request to Annex into the City or voluntarily adopt the AVO.

Commissioner Hutchison asked about the language in the Avigation Easement, specifically whether it is comprised of general language that other municipalities use.

Mr. Worley answered that staff tailored some of the language to be specific to the area, however, there is not much variance from the [national] standard.

Commissioner Reilly asked whether the City has begun to contact adjacent jurisdictions regarding the AVO. Mr. Worley answered that we have not as we don't want to begin negotiations without a final, Council approved plan for the AVO.

Commissioner Reilly asked when individuals within the AVO would be notified of the Avigation Easement(s).

Mr. Worley answered that they would receive a copy in their closing package but there are other ways and times that it could be provided as well. Mr. Reilly stated that the current version does very little to notify potential buyers or renters about the AVO and needs to be strengthened.

Commissioner Tracey asked when Covenants Conditions & Restrictions (CC & Rs) are presented to a prospective buyer.

Mr. Worley answered that he does not know exactly when they are presented but that CC & Rs are recorded at the same time as the Plat they are tied to and that they are usually in the closing package as well.

Commissioner Reilly clarified that there have been only three public hearings to date.

Mr. Worley added that we had four Airport Open House sessions in addition to the public hearings.

Airport Director Dr. Robin Sobotta presented a 5 -Year Contour Map produced by HMMH Engineering as well as 5- Year Operations Forecast provided by Coffman Associates. Both firms are private and were contracted by the City to provide the information presented. The operations forecast predicts 440,500 annual operations by 2026 and the contour map shows the noise contours expanding throughout the airport area by 2026.

Commissioner Goligoski asked whether we would lose commercial flights in the future without a runway extension. He also asked for a timeline of when the contracted firms conducted these analyses to point of receipt of information by the City.

Dr. Sobotta answered that flights would likely remain steady as a result [not increasing nor decreasing] and that commercial flights are just a small percentage of the overall operation volume.

Charlie McDermott, Aviation Planning Manager from Dibble Engineering, added that the reports were ordered in August and received recently (in the past week).

Commissioner Gambogi asked for clarification on the term ‘density altitude’.

Dr. Sobotta explained that density altitude affects the performance of aircraft. Specifically, that aircraft need a longer length of runway [to take off at higher altitudes]. Dr. Sobotta explained that there are numerous factors that can affect aircraft performance and that temperature is another major factor. Prescott Airport (PRC) is a “hot and high” airport which poses additional challenges for aircraft takeoff.

Mr. McDermott explained that Dibble Engineering has evaluated four similar airports within Arizona and analyzed their operations as well as their subsequent residential and sensitive use restrictions. All four protect sensitive uses beyond the 60 DNL.

Commissioner Gambogi asked whether that means there are no homes within the 60 DNL in these jurisdictions.

Dr. Sobotta clarified that the restrictions were enforced following the time the overlays were adopted for the referenced jurisdictions.

Commissioner Reilly asked whether that means the protections [restrictions] do not extend over existing residential areas in those instances [jurisdictions].

Dr. Sobotta answered that the protections were deliberately stopped at residential areas that were already built.

Mr. Worley explained that it is illegal to apply zoning restrictions retroactively so the AVO would *not* do so to existing structures or to subdivisions that have prior agreements.

Dr. Sobotta reiterated FAA Order 1050.1F which states “Local land use jurisdictions may have noise and land use compatibility standards that differ from the FAA’s land use compatibility guidelines with respect to 65 DNL dB”.

Dr. Sobotta presented the most recent map of the One-Engine Inoperative (OEI) Departure Path (i.e., the “Splay”) produced by Lean Engineering. The new map validates the boundaries that the Airport Department previously depicted in their OEI splay. Dr. Sobotta also remarked that the splay is an industry standard.

Commissioner Reilly asked whether the dark red on the OEI map means there should be no structures above ground level in that area. Dr. Sobotta answered yes.

Dr. Sobotta presented a map of the AVO area depicting the current Noise Contour Overlays and Airport Impact Zones. She also presented a list of optional AVO elements for consideration, which include:

- Non-Conforming Language Removed
- Avigation Easements
- Fair Notice Disclosure Requirement for Renters and Buyers
- AVO (Draft) Land Use Table
- AVO (Draft) Text
- Airspace Protection
- Contours & Land Use Limits

Commissioner Reilly asked for clarification as to whether noise contours that go outside impact zones can be regulated.

City Attorney Joseph Young answered that outside City Limits they cannot, but within they can be regulated.

Dr. Sobotta presented the Original AVO “Modified 55 [DNL]” Option, which is the most protective/restrictive.

City Attorney Joseph Young followed by stating that there will be three more options, however, but that the City is not limited to these options. The options presented are ones that staff came up with as viable and that we [the City] are open to more possibilities.

Dr. Sobotta presented Option 1 which is labeled as “least protective/restrictive”. Option 1 would honor current Airport Impact Zones (AIZs) and the most recent (2021) contours. Residential, Hospital and Sensitive Uses would be permitted in AIZ 6 but outside the 60 DNL contour. Hotels/Motels and Correctional Facilities would be permitted in AIZ 6 but outside the 65 DNL contour.

Commissioner Reilly asked if a noise contour covers a portion of a parcel whether the entire portion of the parcel will be subject to its restrictions. Mr. Worley answered that the City has not determined that yet and that it is likely it would only be the area of the development that would be evaluated.

Dr. Sobotta added that the Commission can suggest clarifying language in that portion of the AVO.

Dr. Sobotta presented Options 2 & 3 which are labeled “moderately protective/restrictive”. Option 2 would honor current AIZs but would utilize future (2026) contours. Residential and Sensitive uses plus Hospitals, Hotels and Correctional Facilities would be permitted only in AIZ 6 but outside the future 60

DNL contour. Yavapai Regional Medical Center (YRMC) North would be accommodated within the current 60 DNL contour.

Option 3 would encompass Option two with exceptions for Deep Well Ranch (DWR) existing Annexed areas. This would include Residential, School and Sensitive uses being permitted only in AIZ 6 but outside the future 65 DNL contour. Impact Zone 3 “South Skirt” would have a selected sensitive use exception, allowing short stay residential uses as long as they are outside the future 65 DNL contour.

Commissioner Gambogi asked for clarification on a reference made to an FAA standard at a previous meeting. The individual making the reference implied that a noise contour adopted by a jurisdiction due to an Airport must be applied to the entire city (i.e., other types of noise).

Dr. Sobotta answered clarified that the FAA firmly opposes community-imposed aircraft operating restrictions unless those restrictions apply to all other noise sources in the community. That is, communities are not permitted to discriminate solely against aircraft noise and operations.

Commissioner Gambogi also asked about the rights of Trinity School in regard to the proposed AVO.

Mr. Worley answered that Trinity School falls under a pre-existing agreement and will therefore be allowed to develop as planned.

Commissioner Gambogi also asked about YRMC’s ability to Develop. Mr. Young answered that the City has an obligation to provide sewer and water main extension to YRMC’s proposed north campus.

Commissioner Graham stated that many residents have expressed concern about Embry Riddle’s early morning and late-night flights and have asked for explanation as to why the Airport has historically responded to these complaints by saying that they cannot be restricted.

Dr. Sobotta answered that it is difficult to restrict Embry Riddle’s operating hours due to access use restrictions that have been pre-approved by the FAA. She followed by remarking that its possible we can have more discussions with Embry Riddle at how we can mitigate these complaints, however.

\*A ten-minute recess was taken at 10:20 AM\*

Chairman Michelman called for public comment, noting that the Commission prefers that those who have not spoken on this matter get to speak first and that the larger entities involved just have one representative speak.

Reverend Philip Shaw of St. Luke’s Episcopal Church expressed his concern that his Church may not be able to expand according to the current AVO parameters. Reverend Shaw noted that the City has approved expansion according to their Site plan approved in the early 2000s and, as such, the Church has been relying on this assurance. Reverend Shaw also expressed great concern about the Church and other property owners within the AVO being required to sign a hold harmless, which could equate to a taking.

Community Development Director Kirby Snideman commented that the AVO is definitely still a work in progress and can be tailored further according to input received at this meeting

Saddlewood resident Carin Brown asked whether her subdivision would be “grandfathered” in by the AVO as well as voiced concerns whether it would become a misdemeanor if homeowners do not inform buyers or renters of their home being in an Airport zone. Ms. Brown also questioned why Embry Riddle

has to fly planes over homes versus over the [plentiful] open land nearby. She also expressed her favor for Option 3 presented today.

Recording Secretary Kaylee Nunez read a letter of support for the AVO from Prescott resident Maxine Snyder.

Mrs. Nunez also announced that she received a petition of opposition signed by 45 residents immediately prior to today's meeting.

Saddlewood resident Cindra Garthwaite shared that Dr. Sobotta is a former employee of Embry Riddle University, which is for profit. Ms. Garthwaite shared that she contacted Tim Morrison, a regional FAA manager, and that Mr. Morrison responded that this AVO is not required by the FAA. She also shared that she believes that the residents do not need more protection from the Airport.

Stephen Polk, legal representative of James Deep Well Ranch, asked whether the Commissioners have received drafts of the Avigation Easement and the Fair Notice Disclosures referred to in the AVO presentations.

Mr. Polk stated that the only [noise contour] debate should be between the current and future 65 DNL contours due to current FAA guidance. He also shared that staff statements about "exempting Trinity school" should be applied to others with pre-existing development agreements, including Deep Well Ranch and YRMC.

Mr. Polk presented Mesa Falcon Field Airport's public disclosure map, which shows noise contours very "tight" to the airport (Falcon Field having approximately 516,000 operations a year). He noted that the contours are small compared to PRC noise contour maps which has less operations annually.

Mr. Polk continued to present contour maps from other, comparable Arizona airports along with satellite imagery noting that the contours for these airports seem to be largely contained within airport property, unlike Prescott's contours. Mr. Polk also pointed out several school and church uses in close proximity to these other airports.

Mr. Polk presented the 2018 noise contours for PRC which show them "tight" to the airport as well. He compared these contours to the 2022 which show them significantly further out. Mr. Polk stated that the 2018 map was created using FAA approved methodology

Commissioner Graham asked whether Mr. Polk had any information regarding how many nautical miles the proposed 65 DNL contour is out [from the center of the remember]. Mr. Polk says it appears to be ½ mile. Ms. Graham asked the same for the Falcon Field Airport map, Mr. Polk measured approximately ¼ mile.

Mr. Polk also presented a table of FAA funding received by comparable jurisdictions since 2018, which was pulled from the FAA's website. It states that PRC has received approximately \$38 million. Polk's conclusion from these statistics is that FAA grant funding is not contingent upon the parameters proposed in the AVO.

Mr. Polk presented a table summarizing the comparable airports' residential and noise sensitive use allowances in 55-60 DNL contours. All allow these uses, some with noise mitigation required. He then presented a 60-65 DNL table, all jurisdictions except Scottsdale allow sensitive uses within these contours (with mitigation required). He summarized that the FAA imposes no land use requirements outside [impact] zones 1 & 2 as well as stating that there is no convincing evidence that this AVO is necessary.

He urges Commissioners to vote no on the AVO, but if they must vote on something to vote yes on an option with conditions of exemption for all of Deep Well Ranch.

Commissioner Goligoski asked whether DWR has had meetings with the City since the last Planning & Zoning meeting. Mr. Polk answered that the meetings have continued but that DWR has still not received land appraisals that have been referenced at prior meetings. Mr. Polk added that he is optimistic that a good solution will be reached between the parties.

Jenna James, representative of DWR and Vice President of the James Family Foundation spoke. She reiterated that DWR does not agree with this proposed AVO and that the AVO is inconsistent with the James' family vision. This vision includes several civic, fine arts, health and educational facilities within the proposed AVO area. Ms. James stated that the enactment of the AVO would likely leave several planned sites for fire and police facilities inaccessible.

Ms. James also shared that she does not agree with Dr. Sobotta's endeavor to protect the OEI splay, which is an airline requirement, not an Airport or FAA requirement. Ms. James stated that establishing a lesser threshold of significance did nothing to protect Flagstaff from losing its commercial service, she also pointed out that Flagstaff Airport hosted many more commercial passengers than Prescott has.

Dr. Barbara Lichman, representative of James DWR, stated that a lot of new information was presented today and, as such, the public needs more time to review this information. Dr. Lichman reiterated comments from a prior meeting stating the Federal Government has exclusive rights over all airspace in the United States, including issues of noise. As such, the FAA has prescribed 65 DNL as the threshold of significance. Dr. Lichman also reiterated that the City can only apply a lower threshold of significance if they do so to all other noise within the City.

Dr. Lichman also addressed the OEI splay, which she stated is dictated by airlines and specific aircrafts and cannot be included under FAA requirements. Dr. Lichman urged the Commission to continue to study the information presented and consider other options.

Rob Pecharich, resident of Prescott and legal counsel for DWR, stated that the City's proposed Avigation Easement goes too far and would amount to a taking from all those it is applied to. Specifically, the City's requirement for the individuals to hold the city harmless from any claims as well as indemnify the city from any claims. Mr. Pecharich asked how the City is prepared to compensate all individuals this may apply to.

Mr. Pecharich also addressed Fair Disclosure, commenting that there are few ways it can be enforced, which occurs at sale. Mr. Pecharich also commented on the timeline presented by Mr. Worley, which indicates that the City started working on the AVO a long time ago. He expressed that his client was surprised to learn about the AVO while they were trying to cooperate with the City on land acquisitions to protect the Airport.

Mr. Pecharich clarified that the Open Houses that the City conducted are not part of the public hearing process. He said that the Open Houses were one-sided and that large stakeholders were not invited.

Mr. Pecharich addressed several other items, including YRMC not being included in discussions with the City, property values being potentially diminished and the 2017 Deep Well Ranch Development Agreement and Master Plan. He reiterated that the City Attorney, Department Heads (including Airport) and Mr. Worley all signed this.

Mr. Pecharich presented ARS 9-462.04, highlighting the requirement for the Planning Commission to give their recommendation in writing to the Council, he also pointed out that there is no time requirement. He also re-presented the Oath of Office that all public officers and employees are required to take and Article 2 Section 17 of the Arizona Constitution that addresses private property rights.

Mr. Pecharich presented the Avigation and Hazard Easement that was recorded for all of DWR in 2017, which is very comprehensive. He questions why the City is requesting another from individual property owners.

Mr. Pecharich stated that the AVO would take away from affordable housing supply as well as negatively impacting infrastructure and essential service development (including YRMC). He also told the Commission that if they decide they need to pass the AVO that they need to be certain how much money they will be required to give for just compensation and where this money will come from.

Mr. Pecharich concluded by saying that the Airport does not need protection from residential encroachment, that the scenario is rather the opposite—the airport is encroaching on existing and proposed residential properties.

Jonathan Millett, Prescott resident and legal counsel for YRMC, presented an Opinion article published in the The [Prescott] Daily Courier on September 12<sup>th</sup>, 2022. The article’s author is Anthony Torres MD, President and CEO of Dignity Health YRMC. Dr. Torres details how the AVO would threaten the future of healthcare in the community—particularly the increasing population in the Northern portion of the City.

Mr. Millet presented photos and video from YRMC’s proposed north campus, which show that the Airport is barely visible from it. Mr. Millet estimated that the southern boundary line of YRMC north campus is approximately 0.8-1 mile from the closest runway. He presented a map that he made incorporating all the existing and proposed noise contours and emphasized that noise and safety are not proportionally related. That is, noise concerns should not be confused with safety concerns.

Mr. Millet presented the section of Deep Well Ranch’s Master Plan regarding noise abatement. He stated that there are many techniques that can be used to reach proper, internal dB levels for both residential and commercial uses. He also expressed concern about the City’s ability to pay for infrastructure to the [proposed] north Campus.

Mr. Millet presented information about the improperly calculated Airport Impact Zones that were discovered earlier this year, specifically due to a miscalculation of the Crosswind Runway. The new impact zones are significantly larger and, therefore, create negative impacts for more landowners—including YRMC.

Mr. Millet proposes taking 10% off the south end of Crosswind Runway (by striping it off), which would effectively return the impact zones to their prior state. In doing so, the City would not have to negotiate with Chamberlain Development for additional land acquisitions due to the miscalculation.

Chairman Michelman asked how this impact zone modification relates to YRMC.

Mr. Millet answered it is because they [YRMC] will be “piggybacking” off of future adjacent, residential development that is threatened by the AVO. YRMC would not be able to shoulder paying for infrastructure to their site by themselves.



Mr. Millet also re- presented the City's 2018 noise contours, which are based off of 262,347 annual operations. He pointed out a note on the document (Item 4) that states that the noise contours presented are for a projection through 2036. He also pointed out that the City's newly proposed 2026 contours are significantly larger than these.

Mr. Millet presented an FAA map of classifications of Airports in Arizona, which designates Prescott as a small, non-hub airport. As such, he compared PRC to other small, non-hub airports which all permit residential uses within the 55-60 DNL. Mr. Millet recommends the City get a new noise contour map using the FAA approved model, also that the City separate concerns of noise from safety. He also requests that YRMC be exempt from AVO requirements should it be passed.

William Lawrence, resident of Westwood, believes that the noise contours as presented are not accurate. Specifically, that the numerous low flying planes due Embry Riddle's training operations may artificially expand the bounds. Mr. Lawrence also supports the City producing another noise contour map using the FAA approved model.

Charlie McDermott, with Dibble Engineering, explained that the firm (HMMH) used for the presented, 2026 contours is a nationally recognized firm. He stated that the contours were developed using FAA modeling software and claimed that his firm did not take on the contour projects as he does not have the specific expertise that it requires. It took HMMH 3-4 days to produce the report, which uses proprietary software approved by the FAA.

Commissioner Gambogi asked about the presentations that were made by others today comparing the size and shape of the noise contours of PRC to other, comparable airports. He questioned how comparable the other Airports really are due to Prescott's high flight training volume from Embry Riddle.

Mr. McDermott answered that it is indeed an "apples to oranges" comparison.

Commissioner Tracey asked whether the other airports presented have vacant impact zones like those presented in the AVO.

Dr. Sobotta answered that they do.

Dr. Sobotta also clarified that Embry Riddle is a not-for-profit institution. Dr. Sobotta shared that the City has discussed the AVO with 5 representatives of the FAA and that our funding comes from a "discretionary pot" that is highly competitive. She commented that just because other airports have churches and other sensitive uses near them doesn't mean the City of Prescott should follow suit as its dangerous. She also touched on claims of taking away from affordable housing and that the Airport is encroaching on residential areas, disagreeing with both claims.

Dr. Sobotta concluded by saying that all the suggestions made to take away from airport rights and operations are exactly why the AVO is needed as there will be more people moving into the Airport area who want to continue to restrict Airport activities and expansion.

Commissioner Gambogi asked for Dr. Sobotta to re-address Dr. Lichman's comments regarding the FAA not allowing local jurisdictions to place noise restrictions on land due to aircraft operations unless they apply it to all noises within the City.

Dr. Sobotta clarified that if you attempt to put noise restrictions on aircraft as a jurisdiction you must do so to all other noises in the community. However, a jurisdiction can use overflight noise to inform local land use as it [overflight noise] can be seen as directly correlated with risk level, contrary to what was

presented by Mr. Millet earlier. Dr. Sobotta also commented that the study that Dr. Lichman referenced to as “experimental” is not experimental and is an established study with a 95% level of statistical confidence.

Commissioner Tracey asked for clarification on the surveying mistake of the Crosswind Runway that was discussed earlier.

Dr. Sobotta answered that it occurred during the creation of the [Airport] Land Use Plan that was approved by Council in 2011 and that the table within the plan is accurate but the diagram associated with the table was drawn with impact zone 2 short. The subject areas are on the north and south ends of the Crosswind Runway and were not a surveying error but a drawing error.

**Commissioner Reilly moved to continue the public hearing for LDC22-001 to the October 27<sup>th</sup>, 2022 Planning & Zoning Commission, seconded by Commissioner Gambogi. Passed (7-0).**

**4. UPDATE OF CURRENT EVENTS OR OTHER ITEMS OF NOTE**

No updates.

**5. ADJOURNMENT**

There being no further business to discuss, Chairman Michelman adjourned the meeting at 1:28 PM.

  
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Kaylee Nunez, Recording Secretary

ATTEST:

  
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Don Michelman, Chairman