



KAPLAN KIRSCH ROCKWELL

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MAY 5 2009
PLANNING
DIVISION

April 29, 2009

Marion Radson, City Attorney
City of Gainesville
200 E. University Avenue, Room 425
Gainesville, Florida 32601

Re: Gainesville Regional Airport, Noise Exposure Map

Dear Mr. Radson:

On April 20, 2009, the Federal Aviation Administration accepted the 2007 and 2012 Noise Exposure Maps ("NEMs") for the Gainesville Regional Airport ("Airport"), but did not accept the 2027 NEM for the Airport.¹ Our client, East Gainesville Development Partners LLC, now looks to the City of Gainesville to promptly replace the existing noise zone map in Appendix F of the Land Development Code with the current map.

We remind you that Appendix F *requires* the City to replace the noise zone maps found at Attachment 3 of Appendix F. The Land Development Code provides, "Notwithstanding other provisions of this section, should the Gainesville Regional Airport amend its official 14 CFR Part 150 study, the boundaries of the Airport Noise Zones *shall be modified* to comply with the amended official noise study."² We know that you agree, since you stated previously, "It is the opinion of this office that Appendix F requires the City to adopt the appropriate updated maps."³

Replacing Attachment 3 is a ministerial function, based on the plain language of Appendix F and the circumstances.⁴ In particular, there can be no question that the NEMs accepted by the FAA

¹ See Letter from Juan Brown, Acting Manager, FAA Orlando Airports District Office to Allan Penska, Airport Manager, Gainesville Regional Airport (April 20, 2009) (copy attached).

² Land Development Code of the City of Gainesville § 30 app. F § II(C)(1) (emphasis added).

³ Memorandum from City Attorney to Mayor and City Commissioners at 5 (Sept. 19, 2007) ("September 2007 Memorandum"). See Memorandum from City Attorney to Mayor and City Commissioners at 2 and 5 (Oct. 8, 2008) (quoting and reaffirming the previously-cited quote in the September 2007 Memorandum). See also September 2007 Memorandum at 5 ("Article II.C of Appendix F of the City Code requires the City to amend its Airport Noise Zone to reflect any changes in the documented noise levels.").

⁴ "A duty or act is defined as ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law." *RHS Corp. v. City of Boynton Beach*, 736 So.2d 1211, 1213 (Fla. Dist. Ct. App. 1999) (internal citation omitted). The Land Development Code's direction that "the boundaries of the Airport Noise Zones *shall be modified* to comply with the amended official noise study" requires the City to act and leaves no

Marion Radson, City Attorney
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are the appropriate maps for inclusion in Appendix F. As you previously stated, "FAA staff advised the City that in updating the noise contour maps in its local code, the City should adopt NEM's that have been reviewed for compliance by the FAA, as these are the only officially recognized maps for noise contour regulation purposes. City staff concurs with this position."⁵ Further, the appropriate replacement map unquestionably is the Future (2012) Noise Contour Map (there is only one future NEM accepted by the FAA for the Airport), just as, when Appendix F was adopted, the City included the future condition map as Attachment 3 to Appendix F. As a result, City staff should replace Attachment 3 immediately; City Commission action is not required.

Considering that my client's project has been placed on the agenda for the May 14, 2009 meeting of the Development Review Board ("DRB"), we would appreciate your office immediately notifying the relevant City staff and the DRB of the replacement for Attachment 3. My client will be prepared at the DRB hearing to discuss the application of the new map to the site plan.

Thank you in advance for your cooperation.

Sincerely,



Daniel S. Reimer

cc: Lawrence Calderon
Erik Bredfeldt
Sergio Reyes
Linda Shelley, Esq.
Ron Carpenter, Esq.
East Gainesville Development Partners LLC

Enclosures

room for discretion, making the replacement of Attachment 3 a ministerial function. *See Stranahan House, Inc. v. City of Fort Lauderdale*, 927 So.2d 1068, 1069-70 (Fla. Dist. Ct. App. 2006).

⁵ September 2007 Memorandum at 6.

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U.S. Department
of Transportation
Federal Aviation
Administration

ORLANDO AIRPORTS DISTRICT OFFICE
5950 Hazeltine National Drive, Suite 400
Orlando, Florida 32822
Phone: 407-812-6331 Fax: 407-812-6978

April 20, 2009

Mr. Allan J. Penksa
Airport Manager
Gainesville Regional Airport
3880 N.E. 39th Avenue, Suite A
Gainesville, Florida 32609

Dear Mr. Penksa:

RE: Noise Exposure Maps Compliance Determination

This is to notify you that the Federal Aviation Administration (FAA) has evaluated your final submission of the Noise Exposure Maps (NEM) and supporting documentation transmitted by your letter of March 13, 2009, in accordance with Section 103(a)(1) of the Aviation Safety and Noise Abatement Act of 1979 (ASNA), (49 U.S.C., Section 47503). We have determined that they are in compliance with applicable requirements of 14 CFR Part 150. Further, we have determined that the maps entitled "Existing (2007) Noise Contour Map" and "Future (2012) Noise Contour Map" fulfill the requirements for the current year and the future year noise exposure maps.

FAA's determination that your Noise Exposure Maps are in compliance is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of 14 CFR Part 150. Such determination does not constitute approval of your data, information or plans.

Should questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on your Noise Exposure Maps, you should note that the FAA will not be involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of ASNA (49 U.S.C., Section 47506). These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's determination relative to your Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with you, the airport operator, or with those public agencies and planning agencies with which consultation is required under Section 103 of ASNA (49 U.S.C., Section 47503). The FAA relies on the

certification by you, under 150.21 of 14 CFR part 150, that the statutorily required consultation has been accomplished.

The FAA will publish notice in the Federal Register announcing its determination on the Noise Exposure Maps for the Gainesville Regional Airport.

Your notice of this determination and the availability of the Noise Exposure Maps, when published at least three times in a newspaper of general circulation in the county or counties where affected parties are located, will satisfy the requirements of Section 107 of the ASNA Act (49 U.S.C., Section 47506).

Your attention is called to the requirements of Section 150.21(d) of 14 CFR Part 150, involving the prompt preparation and submission of revisions to these maps of any actual or proposed change in the operation of the Gainesville Regional Airport which might create any substantial, new, noncompatible use in any areas depicted on the Noise Exposure Maps, or significant reduction in noise over noncompatible land uses that were previously included in the Noise Exposure Map contour. Remedial mitigation is limited to existing non-compatible land uses located within the existing 65 DNL noise exposure contour of the official Noise Exposure Maps (Existing (2007) Noise Contour Map) and is consistent with FAA's 1998 remedial mitigation policy (64 FR 16409).

Sincerely,



Juan C. Brown
Acting Manager

cc:
APP-400
ASO-610
ASO-7



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April 29, 2009

Marion J. Radson
City Attorney
City of Gainesville
200 E. University Avenue
Gainesville, FL 32601

RE: Hatchet Creek Design Plat Application

Dear Mr. Radson:

We have been advised by representatives of East Gainesville Development Partners LLC ("EGDP") that the City Attorney's Office is requesting that EGDP provide written assurance to the City that it will drop its pending comprehensive plan amendment application when EGDP's request for design plat is approved by the City Commission. If this is true, we respectfully decline this request for the following reasons.

At the outset, we believe that this request is neither legally mandated nor correct. Approval of a comprehensive plan amendment is a discretionary act by the City Commission. The prior approval of a design plat for a portion of the same property is legally irrelevant to the City's deliberations on a comprehensive plan amendment. In this instance, it is also factually irrelevant because EGDP can revise the design plat as necessary to conform to the PUD comprehensive plan conditions if the plan amendment is subsequently approved. Moreover, it is the City Attorney's unfortunate and incorrect interpretation of the provisions of Appendix F that has compelled EGDP to seek validation of its existing residential development rights on the subject property. It would be ironic indeed if, having been forced to defend its existing property rights, that defense is used as a basis to require EGDP to abandon its request for a plan amendment.

Requiring EGDP to withdraw its application for a comprehensive plan amendment would also frustrate the common purpose that the City and the Applicant have been working together to achieve since September 2006. As several City Commissioners and, importantly, residents of East Gainesville have noted, the PUD is more desirable to the residents and the community in several aspects: a mix of land uses with quality residential, retail, office and assisted living

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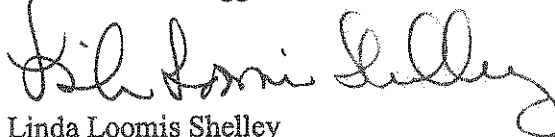
Marion J. Radson
City of Gainesville
April 29, 2009
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facilities, far superior protections to Gainesville Regional Airport¹, broader environmental mitigation plans covering the entire 500 acres, future enhancement of the golf course, annual economic impact to the immediate area of over \$250 million, and more and better jobs.

We have understood the position of the City Attorney for the past two years to be that the Hatchet Creek land use amendment should not be adopted until there is an updated FAA approved map. Although the City Attorney's office has also suggested that Appendix F must first be amended, EGDP is virtually the only party affected by the noise contours and therefore the more restrictive development standards under discussion for the site can be achieved without such an amendment. The 2007 and the 2012 Gainesville Regional Airport Noise Exposure Maps were accepted by the FAA on April 20, 2009. We will request that the City Commission determine where it will allow residential and ALF development on the 500 acre site for the PUD based on the 2012 NEM, which is the more restrictive of the two maps that were accepted by the FAA. The 2027 Gainesville Regional Airport Noise Exposure Map was not accepted by the FAA.

Please feel free to contact me if you would like to discuss the issues raised in this correspondence.

Sincerely,
Fowler White Boggs P.A.



Linda Loomis Shelley

LLS/br

cc: Erik Bredfeldt
Lawrence Calderon
Sergio Reyes
Ron Carpenter, Esq.
Rob Simensky, Esq.

¹ By the terms of the PUD, which are more restrictive than Appendix F for the following reasons: 1. No Residential or ALF in the 65 DNL, 2. Avigation easement over entire 500 acre site for all uses, 3. Better building materials for Residential on entire site, 4. Notice to purchasers for all uses on entire site.