

**Petition PZ-09-19 SUB Eng, Denman, and Associates, Inc., agent for East Gainesville Development Partners LLC. Design plat review for an environmental cluster subdivision. Zoned: RSF-1 (3.5 du/ac single family) and RSF-4 (8 du/ac single family). Located at 2100 NE 39th Ave, adjacent to the Ironwood Golf Course.**

Clay Sweger abstained from this petition due to a conflict of interest.

Scott Wright, Sr. Planner, gave the staff presentation and stated that this petition is a proposal for an environmental cluster subdivision that has a land use of Single Family with surrounding uses of Residential, Commercial and Light Industrial. Mr. Wright further stated that they are proposing 734 single family residential lots on property that has a significant ecology community overlay, regulated surface waters, wetlands and Airport Hazardous Zoning Regulations. Mr. Wright added that staff is recommending denial of this petition primarily due to the Airport Hazardous Zoning Regulations, as the Airport Noise Zone covers a significant part of the residential area of this proposed subdivision.

Ted Baldwin, environmental consultant for the City of Gainesville, stated that it is his conclusion that future residents of this proposed development are very likely to find the aircraft noise exposure are intrusive and annoying. Mr. Baldwin further stated that he does not believe that requiring 25 decibel noise level reduction or sound insulation as a condition for development approval will adequately address the situation because:

- it is the normal level of attenuation of modern construction and meeting building codes in Florida;
- that benefit goes down to almost zero when windows are open or enjoying an open lifestyle;
- there is absolutely no benefit outdoors

Mr. Baldwin further stated that the aviation easement option is preferable because it is a way of providing advance notice to potential residents regarding their proximity to the airport and the fact that they are likely to be exposed to somewhat high level of aircraft noise exposure.

Chair Brown inquired if what types of health effects would exist to those residents who were exposed to high levels of noise over a prolonged period time. Mr. Baldwin stated that the research on health effects from aviation noise states that it is extremely unlikely that the types of noise levels that residents are exposed to around airports or anywhere in the US, are high enough to have any health effects. What the studies have generally shown is that if the noise levels aren't loud enough to risk permanent hearing loss that there really is no credible evidence of any health effects. Mr. Baldwin further stated that the term 'annoyance' is used in respect to a nuisance factor and is a significant constraint on airport operations and airport development in the United States.

Ron Carpenter, attorney for the petitioner, inquired from Mr. Baldwin if it is his opinion that based upon the current map associated with the existing Appendix F, that residential is permitted within the 65 DBL and provided that either a 25 decibel sound attenuation take place or an aviation easement be granted. Mr. Baldwin stated that the current Appendix F that depicts the contours has a requirement that states that the development has to be consistent with the Part 150 Study, and that the previous Part 150 Study regarding the noise compatibility program has not been updated by the airport. Mr. Baldwin further stated that in some areas all residential land uses are incompatible with the 65 DBL, regardless of sound

insulation or avigation easements, and that it is an ambiguity and he does not know how to rectify those two conditions. Mr. Baldwin added that to the extent that the City does update the noise exposure maps, that inconsistency may go away.

Mr. Carpenter gave a PowerPoint presentation of the site and its surrounding area and stated that in 2003 the city changed the zoning on this property from Commercial/Office to Residential due to a Comprehensive Plan Amendment and the areas that were changed are now in the area where staff is denying them to build their residential development and lends itself as to how Appendix F should be interpreted. Attorney Carpenter further stated that under the existing zoning and land use they would be able to develop a maximum of 1,073 lots and they are instead proposing 734 lots.

Attorney Dan Reimer, representative for the petitioner, stated that for the last 11 years he has been focusing exclusively on airport legal issues, and has particular experience in airport noise, airport use restrictions, land use compatibility and Part 150 Studies. Attorney Reimer further stated that the nature of the dispute that separates staff from the applicant is that staff believes that the proposed use is prohibited under the Land Development Code; and the petitioner feels that it is a restricted use, subject to the conditions all of which can be satisfied. Attorney Reimer added that:

- Appendix F unequivocally states that residential development within the area is a restricted use subject to conditions
- the City has designated the area single family residential in the Comprehensive Plan and zoned the area for single family use
- the current noise exposure maps have already been accepted by the FAA but not by the City of Gainesville, and these maps place all of the areas designated as residential use for this proposed development outside any of the noise zones
- Appendix F requires that the City replace the outdated maps and he contends that it should have already been done by staff and presented to this board for consideration
- staff is recommending denial; however, neither the City Attorney's memos nor the City's environmental expert have done so
- the study that staff is relying on explains that the tables that are cited reflect non-compatible land use as defined in the Part 150 Study
- the tables that the board has been given as evidence of incompatibility does not constitute any deliberate decision on the part of the airport authority, the City or the County to declare residential as non-compatible
- the Part 150 Study uses the FAA guidelines, however the FAA does not dictate local land use standards
- staff is relying on a 23-year-old report as a basis for a decision and it highlights the danger of their approach to interpreting Appendix F
- the examples that have been pulled out of the report by staff have unfairly and inappropriately been taken out of context, and the residential development as proposed by the applicant is compatible with the study and the recommendations of the study

Attorney Reimer concluded that since annexation, the City has never taken any action to either prohibit residential development or to declare development to be incompatible with the airport. Upon annexation, the City designated this property on the future land use map as single family residential and in doing so the City determined that this designation is consistent with the goals, objectives and polices of the Comprehensive Plan, including those

that relate to compatibility with the airport. Attorney Reimer further concluded that after this area was annexed into the City, a portion of this property was changed from commercial land use and office designation to a residential land use and the evidence is within an ordinance. Attorney Reimer added that beyond the change in the designation, the City has allowed residential development in the same area in which they are now saying residential uses are not allowed.

Pete Wallace, environmental consultant for the applicant, stated that he has 25 years of environmental consulting experience and is a professional wetland scientist with other memberships and associations. Mr. Wallace further stated that they have met a 12% set aside on the site and that the majority of the wetlands they have established will have additional buffers. Mr. Wallace added that the total open space on the site is 189 acres, which is almost 65% of the total site, leaving only 35% for housing and roads for the proposed development. Mr. Wallace further added that the ecological values of the wetlands are low because the area has been drained for 41 years and there are significant vegetation changes that have occurred in these wetlands with no new growth. Mr. Wallace stated that the mitigation that they are proposing will provide for a greater long term value than what currently exists and that they intend to impact 8.412 acres of wetlands, with additional wetlands that will be placed in a conservation site on the proposed development that will be designated green space and/or undeveloped areas. Mr. Wallace further stated that this proposed development satisfies the intent of the environmental regulations and the wetland impact will be less than what the City has permitted for other developments in this area.

Mark Garland, Environmental Coordinator, stated that the wetlands that are on the proposed development are in bad shape, however, that they are still considered as wetlands by the State of Florida. Mr. Garland further stated that the environmental features on the site in the significant ecological communities overlay district have to be considered as a whole; the presence of the mosaic of wetlands and uplands is why he has recommended a larger preservation area in the form of a wildlife corridor. Mr. Garland added that some of the set aside area that the petitioner's representatives are talking about is very narrow and fragmented and that he does not really consider that to be an effective upland set aside.

Chair Brown inquired if there are any floodplain areas on the proposed development. Mr. Garland stated that a large portion of the site is currently listed within the 100-year floodplain.

Chair Brown opened the floor for public comment and those comments were:

- this development should not be allowed in this area with the proposed amount of density
- the noise contours parameters would not allow for residential development
- because there is an easement or noise insulation on the property it does not make this proposed development compatible
- the community has a great investment in the airport and the decisions that are made regarding this proposed development may have far reaching consequences
- there could be a huge financial burden associated with residential properties in close proximity of airports
- the FAA believes that 65 dnls are insufficient and encourages municipalities to go beyond those dnls with their land use planning

- surrounding neighborhoods are concerned with trespassing due to the proposed connectivity that will be provided to their neighborhoods via a public right-of-way from this proposed development

Marion Radson, City Attorney, reminded the board that the criteria that this board needs to address in reaching a determination is whether or not the proposed development should be permitted under the City's airport hazardous zone regulations, and that this was addressed in their memorandum. Attorney Radson further stated that this evening there were two airport zoning maps presented, and would advise and instruct this board that the map that is in effect at this time is the one that is adopted as part of the Land Development Code and is in the City Attorney's memorandum as Exhibit 3.

Attorney Carpenter stated that the applicant had already started on development criteria long before there was a new Part 150 Study and the new maps are radically smaller in terms of affected areas.

Allan Penska, Chief Executive Officer of the Airport Authority, stated that there are two parts to a Part 150 Study, the appendix and a noise compatibility plan.

Jeffrey Haviland inquired what is the projection for the near future growth or expansion of the airport. Mr. Penska stated that the Part 150 Study noise exposure maps in Phase 1 did show moderate growth for the airport over the next 20 years. Mr. Penska further stated that as a small airport there could be sudden significant changes that could change the dynamic of the noise footprint and it does not take much for legal courts to say that a change has been significant and that is where airports are at risk.

Chair Brown inquired from Mr. Penska if there is a more appropriate land use for this property. Mr. Penska stated that the FAA tables show that what could be compatible with airports are Recreational, Industrial and Commercial uses; pretty much anything except for residential, hospitals or uses when people have an expectation of quiet surroundings, particularly at night.

Chris Ellis stated that the issue is what the City currently has in place and what is in place needs to be the standard.

Angela Gant stated that the noise of the airport will be a big concern with the neighbors and the residents and this proposed development will be messing with the environment and with all the trees and animals there. Ms. Gant further stated why mess with the environment as it is there for the animals and it needs to be left alone.

Jeffrey Haviland stated that he is concerned about the noise zones and the sound ordinance. Mr. Haviland further stated that if this petition was adopted with what is currently on the plat, it should be continued until the City Commission can meet and discuss some of the issues that have been presented this evening.

Doug Nesbit stated that the main thing is that the airport noise zone map looks like it encompasses most of the property and whether or not that changes with the next map, the noise zones will continue to change and it, more than likely, will not continue to shrink. Mr. Nesbit further stated that there will eventually be houses in these zones and it will become a

pretty complicated issue; as there are a lot of problems created by this proposed development and that he does not see fixing it with just conditions.

James Miller stated that he is opposed to continuing this petition as it has been presented with a quantity of information this evening as with the last meeting and this can be settled this evening.

Chair Brown stated that this is a real mess and has been for quite some time, and it looks like the worst petitions are always the ones where the land was at some point in the County and then annexed into the City and we end up trying to push square pegs into circular holes. Chair Brown further stated that this petition is compounded by the fact that there is a golf course in the middle of the wetlands and as it stands now these wetlands will never function as nature had intended. Chair Brown added that it bothers him that there is this parcel of land that is shown on our future land use map with a designation that does not seem well suited for where the land is; and that is what we were supposed to be avoiding with the Comprehensive Plan. Chair Brown further added that despite the fact that we have several inches of documents before each member this evening, there still is a lack of a coherent timeline of the events, with starkly varying legal opinions, and with pending changes to the way the city views the impacts from the airport. Chair Brown stated that planning decisions last a long time and would not want to see the City approve something quickly that is going to almost immediately contrast with what is best for the overall community. Chair Brown further stated that he feels a sense of empathy for the land owner who is being caught in the middle of all of this and fears that the ultimate decision on this will be made by a judge; and he would rather err on the side of caution and will not be able to support this petition this evening. Chair added that if the property can be rezoned to Commercial or Industrial that would be an option, and once the City Commission decides on the noise zones, perhaps this application can be reviewed in a different light.

<b>Motion By:</b> James Miller	<b>Seconded By:</b> Doug Nesbit
<b>Moved To:</b> Denied based on the findings of fact citing: <ul style="list-style-type: none"><li>➤ the staff report and its recommendation and those findings</li><li>➤ evidence presented as testimony</li><li>➤ the Comprehensive Plan and the Land Development Regulations</li><li>➤ the protected environmental features and other impacts</li></ul> (This is a recommendation to the City Commission)	<b>Upon Vote:</b> 5 – 0. (C. Sweger abstained.)