

EXHIBIT 6




MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229^{#090182}
Box 46

TO: Mayor and City Commission
Russ Blackburn, City Manager
Thomas Saunders, Director of Community
Development

DATE: April 12, 2007

FROM: Marion J. Radson, City Attorney 

SUBJECT: Notice from the U.S. Department of Transportation, Federal Aviation
Administration regarding proposed development adjacent to Gainesville
Regional Airport

Attached is a letter from the Federal Aviation Administration (FAA) regarding a proposed development of a residential community near Hatchet Creek adjacent to the Gainesville Regional Airport. This letter is in response to a letter sent by the Director of Aviation dated April 3, 2007.

The FAA is notifying the City that the proposed development near the Gainesville Regional Airport would fall in an area impacted by airport noise. Specifically, the FAA states that the area appears to fall within the 65 DNL Contour of the airport's noise exposure map. The FAA also notifies the City of its obligations under the grant assurances that require the City to not cause or permit any change in land use, within its jurisdiction "... that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended." Additionally, the FAA "strongly advises against such a change in zoning".

I am advising the City Manager and the Director of Community Development to review any requested change in land use or zoning on this property in view of the matters addressed in the FAA's letter. Any change in land use would be a legislative matter, and any change in zoning would be a quasi-judicial matter, which decision ultimately rests with the City Commission. At this time this office does not express any opinion as to the merits of the FAA's assertions or recommendation.

MJR/afm

Attachment

cc: Kurt Lannon, Clerk of the Commission



U.S. Department
of Transportation
**Federal Aviation
Administration**

Orlando Airports District Office
5950 Hazeltine National Dr., Suite 400
Orlando, FL 32822-5003

Phone: (407) 812-6331

Fax: (407) 812-6978

April 9, 2007

Mr. Allan Penksa
Interim Chief Executive Officer
Gainesville Regional Airport
3880 N.E. 39th Ave., Ste A
Gainesville, FL 32609

RE: Proposed Land Use Change
Gainesville, Florida

Dear Mr. Penksa:

This letter is in response to your April 3, 2007 correspondence regarding the proposed development of a residential community, Hatchet Creek, adjacent to the Gainesville Regional Airport. We understand that this plan allows for up to 2,900 residential dwelling units to be constructed nearly 2,700 feet from the threshold of Runway 29.

In 1984, the Federal Aviation Administration (FAA) funded a Federal Aviation Regulation (FAR) Part 150 Noise Study through AIP grant number 3-12-0028-02. The results of this study are depicted in the Gainesville Regional Airport Noise Compatibility Plan, approved by FAA October 19, 1987. We have reviewed this document in comparison with the developer's plan, and we note that the proposed development would fall in an area impacted by airport noise. Specifically, the area appears to fall within the 65 DNL contour of the airport's noise exposure map.

We understand to facilitate this development, the City of Gainesville, co-sponsor of the Gainesville Regional Airport, would be required to change the land's existing zoning from industrial to residential. FAA would like to remind the City of Gainesville of their federal obligation to ensure compatible land use. In reference to the sponsor's responsibilities, Grant Assurance 21, Compatible Land Use, states:

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and taking off of aircraft. *In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land*



*use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.**

*Emphasis added

Therefore, if the City of Gainesville, co-sponsor of the Gainesville Regional Airport, elects to make this change in zoning, FAA may find the City's actions to be in conflict with federal grant assurances, and future airport improvement program funding may be in jeopardy. Further, any noise mitigation measures required for residential properties constructed in this rezoned area would be ineligible for FAA funding.

Ultimately, the decision to facilitate this development lies in the hands of Gainesville City leaders. However, FAA strongly advises against such a change in zoning.

If you have any further questions on this matter, please feel free to contact me at (407) 812-6331, ext. 121.

Sincerely,

Original Signed By

Rebecca R. Henry
Program Manager
Planning and Compliance

cc: Roland Luster, FDOT/2
Marion Radson, Gainesville City Attorney
Russ Blackburn, Gainesville City Manager

EXHIBIT 7

HARRIS MILLER MILLER & HANSON INC.

77 South Bedford Street
Burlington, MA 01803
T 781.229.0707
F 781.229.7939
W www.hmmh.com

July 12, 2007

Ralph Hilliard, Planning Manager
City of Gainesville, Florida
P.O. Box 490, Station 11
Gainesville, FL 32602

Subject: Summary Opinion Related to Hatchet Creek Development Rezoning Proposal
Reference: HMMH Project No. 302390

Dear Mr. Hilliard:

In response to your request, I am pleased to provide this letter summarizing my professional opinion regarding the proposed rezoning of areas immediately west of Gainesville Regional Airport (GNV) from "R-1" and "I-1" to permit residential development of the "Hatchet Creek Planned Use District" ("PUD"). My opinion addresses noise-related land use compatibility issues that are the focus of my career.



Basis of Opinion

I have based my opinion on the following primary sources that you provided me:

1. April 2, 2007 letter from Mr. Allan Penska, GNV, to Mr. Russ Blackburn, City of Gainesville.
2. April 9, 2007 letter from Ms. Rebecca Henry, Federal Aviation Administration (FAA), to Mr. Allan Penska, GNV.
3. May 10, 2007 letter from Mr. John Collins, Aircraft Owners and Pilots Association (AOPA), to The Honorable Pegeen Hanrahan, Mayor, City of Gainesville.
4. June 27, 2007 letter from Mr. William Ashbaker, Florida Department of Transportation (FDOT), to The Honorable Pegeen Hanrahan, Mayor, City of Gainesville.
5. July 11, 2007 letter from Mr. Ronald Carpenter, Carpenter & Roscoe, P.A., to Mr. Dean Mimms, City of Gainesville, including the following attachments: (1) revised text for subarea policies of the PUD Overlay comprehensive plan, and (2) response to comments from GNV.
6. Appendix F. Airport Hazard Zoning Regulations, including Attachments 1 – 4, showing (1) "Airport Runway Height Zones," (2) "Airport Runway Clear Zones," (3) "Airport Runway Noise Zone," and (4) "Restrictions on Educational Facilities," and Exhibit A showing "Airport Facility Zoning Map."
7. Pages 5-13 through 5-28 of June 2006 Environmental Overview section of GNV Master Plan Update Final Report
8. Multiple figures depicting the project site in relation to the airport and Day-Night Average Sound Level (DNL) contours prepared under previous planning studies for GNV

I also have based my opinion on my experience in airport noise compatibility planning, as summarized in the attached copy of my professional resume.

Project Understanding

It is my understanding that a mixed land use development, named "Hatchet Creek," is proposed adjacent to GNV, in an area generally bounded to the west by NE 15th Street, to the south by NE 39th Avenue, to the north by NE 53rd Avenue, and to the east by the Gainesville city limits and the GNV property line.

The developer is petitioning the City to approve the development as a Planned Use Development (PUD). The PUD will require City approval of a Planned Development (PD) zoning ordinance. The application includes a request that the City rezone the eastern portion of the site from "industrial" ("I-1") and the western portion of the site from "single family" ("R-1"), to permit higher density residential development. These two areas surround a golf course zoned "recreational." That use will not change.

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Ralph Hilliard, Planning Manager, City of Gainesville, Florida
 Summary Opinion Related to Hatchet Creek Development Rezoning Proposal
 July 12, 2007
 Page 2

The applicant requests permission to develop up to 1,300 single and multi-family residential units (reduced from an earlier request for a maximum of 2,900). The applicant also requests approval to develop up to 500 assisted living facility units (another form of residential use), 50,000 square feet commercial use, and 60,000 square feet of office use. The applicant has proposed that the development would not include any residential units within the 65 decibel (dB) DNL contour east of the Ironwood Golf Course; i.e., in the area currently zoned I-1.

A majority of the site (and the portions currently zoned R-1 and I-1) fall within "Airport Noise Subzones" "A," "B," or "C," defined by the City's Airport Hazard Zoning Regulations (item 6, above). The three subzones correspond to the following DNL exposure bands, from a previous GNV noise study:

- * Subzone A: 75+ dB DNL
- * Subzone B: 70 - 75 dB DNL
- * Subzone C: 65 - 70 dB DNL



It is my understanding that the noise subzone regulations were adopted largely in response to recommendations from a Federal Aviation Regulation ("FAR") Part 150 "Airport Noise Compatibility Study" that GNV adopted in March 1986.

The Airport Hazard Zoning Regulations permit residential development and "homes for the aged" (e.g., assisted living facilities) in Subzones A, B, or C when two conditions are met:

1. The developer verifies to the City in writing that the structures are designed to achieve an outdoor-to-indoor noise level reduction (NLR) of at least 25 dB. Office and commercial uses are permitted, with no NLR requirements.
2. The proposed development is compatible with the "Official 14 CFR Part 150 study." Since the 1986 Part 150 study is the only one that GNV has conducted, it remains the "official study." The noise contour figures from that study designate residential land within the 65 dB DNL contours as "noncompatible," without any provision for exempting dwelling units meeting the 25 dB NLR requirement; this implies that *all* residential uses are incompatible, making the first condition moot.

More recent noise contours, prepared for the 2006 GNV Master Plan Update (item 7, above) appear to be smaller than those on which the noise subzones were based; however, the 65 dB DNL contours presented in that study encompass a significant portion of the proposed development. Moreover, those contours do not represent an official Part 150 study, in terms of GNV policy nor in terms of FAA policies and procedures for study preparation, public notice, submission, review, and approval.

Summary Opinion

The following statements summarize my major conclusions and recommendations.

1. The City has adopted airport noise zone regulations that reflect relatively high levels of sensitivity to airport noise compatibility in general, and to recommendations from the GNV Part 150. Overall they are consistent with widely accepted "best practices" in those areas. In my 30 years of professional practice, I have found few jurisdictions that have adopted such complete compatible land use regulations related to airport noise.
2. Permitting residential development in the area currently zoned I-1 and permitting an increase in the density of the residential development in the area zoned S-1 would be inconsistent with the best practices adopted by the City.
3. Even if future residents are alerted in advance of current and projected noise exposure; e.g., through a noise notice in the purchase and sale negotiation process, many are likely to be surprised by the exposure once they move into the development.

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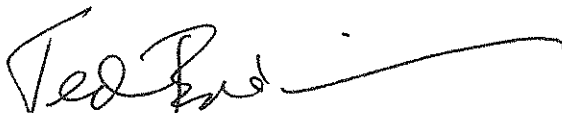
Ralph Hilliard, Planning Manager, City of Gainesville, Florida
Summary Opinion Related to Hatchet Creek Development Rezoning Proposal
July 12, 2007
Page 3

4. Even with sound insulation to achieve the NLR criteria set by the Airport Hazard Zoning Regulations, many residents of the proposed development are likely to be highly annoyed by aircraft noise. I would expect many future residents would express their annoyance through complaints to the airport and developer, and request compensation or changes in airport operations.
5. Moreover, since it appears the GNV Part 150 study designated residential uses as incompatible with aircraft noise of 65 dB DNL and higher, regardless of the extent of sound insulation treatment, literal interpretation of the Airport Hazard Zoning Regulations suggests that *all* residential uses (including assisted living) are impermissible within the noise subzones (which cover a majority of the development site), *regardless of NLR status*.
6. For the major reasons cited above, I recommend *against* approval of the proposed comprehensive plan amendment.
7. If the City does proceed with approval of some or all of the development application, I recommend that the approval include the following conditions:
 - The developer and purchasers of individual properties should provide GNV with avigation easements.
 - The developer should be required to alert prospective residential property purchasers and rental tenants (including potential residents of the assisted living facility) of the avigation easement requirement, of the proximity of the development to GNV, and of the aircraft noise and overflights to which the development is currently and projected to be exposed. This notice should be provided no later than during purchase-and-sale negotiations.
 - The NLR requirements for any residential development, including single or multi-family dwelling units, and assisted living, nursing home, or other similar facilities, be increased to 30 dB, and that any office space development should be required to meet the 25 dB NLR requirement.
 - Educational facilities, places of worship, auditoriums, concert facilities, or similar uses should not be permitted.
 - The exclusion of residential units within the 65 dB DNL contour should extend over the entire site (for that contour value).
8. I support the observations made by GNV, FAA, AOPA, and FDOT commenters (items 1, 2, 3, and 4, above) regarding the general inconsistency of the development proposal with the City's federal grant obligations, with current noise zoning, and with generally accepted compatible land use practice designed to protect residents, the airport, airport users, and local public interest.

I appreciate this opportunity to assist the City on this matter. Please do not hesitate to contact me with any questions. I look forward to presenting my opinions in person at the July 19 City Plan Board Zoning Meeting and Plan Board meeting and at an upcoming City Commission meeting.

Sincerely yours,

HARRIS MILLER MILLER & HANSON INC.



Ted Baldwin
Senior Vice President

attachment

HARRIS MILLER MILLER & HANSON INC.

Ralph Hilliard, Planning Manager, City of Gainesville, Florida
Summary Opinion Related to Hatchet Creek Development Rezoning Proposal
Attachment to Letter of July 12, 2007
Page A.1



Ted Baldwin

Senior Vice President and Supervisory Consultant

Experience

1984 to present	Harris Miller Miller & Hanson Inc.
1981 to 1984	Bolt Beranek and Newman Inc., Senior Consultant
1980 to 1981	Massachusetts Port Authority, Aviation Planner
1977 to 1980	Massachusetts Port Authority, Noise Abatement Office

Professional Responsibilities

Mr. Baldwin specializes in airport environmental analysis. His professional experience includes Part 150 noise compatibility studies, Part 161 use restriction studies, state and federal environmental impact assessments, noise elements of Airport Master Plan studies, the design and use of permanent noise and operations monitoring systems, noise measurement and modeling, and expert testimony.

Before entering consulting, Mr. Baldwin held several responsible staff positions at the Massachusetts Port Authority (Massport), operator of Boston-Logan International and L.G. Hanscom Field (Bedford, MA). Through his Massport experience he gained an understanding of an airport operator's perspective on planning, operational and environmental issues.

Education

M.C.R.P., Harvard University, 1977, Department Scholar
B.S., Engineering, Cornell University, 1975, Honors Graduate

Honors and Affiliations

Federal Aviation Administration Certificate of Appreciation, 1989
Member, American Association of Airport Executives
Member, Institute of Noise Control Engineering
Associate Member, Acoustical Society of America

Representative Publications and Presentations

- "What Do Users Say About Their Monitoring Systems?" Florida Airports Council Environmental and Noise Conference, Daytona, FL; January 2007
- "The Naples Stage 2 Ban," Airports Council International - North America Annual Conference; Toronto, Canada; September 2005
- "Emerging Aircraft Noise Issues," FAA/Airport Consultants Council National Management Conference Environmental Workshop; Washington, D.C.; July 2000.
- "Political Acoustics: The Changing Dynamics of Aircraft Noise," Florida Airport System Planning Process meetings; Fort Myers and Fort Lauderdale, FL; February 2000
- "The Anatomy of a Successful Project," Airport Consultants Council Annual meeting; Palm Springs, CA; November 1997
- "Hot Topics in Aviation Noise: A Selective List"; Florida Airport Managers Association Noise Abatement and Community Affairs Annual Seminar; Orlando, FL; October 1997.
- "The Evolution of Airport Noise Monitoring Systems: Recent Achievements and Further Needs," NOISE-CON 93; Williamsburg, VA; May 1993.
- "Limitations of Ldn in the Assessment of Airport Noise," American Society for Testing and Materials, Noise Subcommittee E-33-96; Bal Harbour, FL; October 1987.
- "Airport Noise Annoyance at Three Joint Air Carrier and General Aviation Airports," Journal of the Acoustical Society of America, Vol. 77, No. 3, March 1985, page 1054 (with Fidell, et al.).

HARRIS MILLER MILLER & HANSON INC.

Consultants in Noise and Vibration Control

HARRIS MILLER MILLER & HANSON INC.

Ralph Hilliard, Planning Manager, City of Gainesville, Florida
 Summary Opinion Related to Hatchet Creek Development Rezoning Proposal
 Attachment to Letter of July 12, 2007
 Page A.2



Ted Baldwin

Senior Vice President and Supervisory Consultant

page 2

Representative Projects

Part 150 Studies

- ✱ Boston (MA) Map only (1984)
- ✱ Bridgeport (CT) (1989)
- ✱ Brunswick (GA) (1992)
- ✱ Burlington (VT) (1989, 2006)
- ✱ Chattanooga (TN) (1994)
- ✱ Danbury (CT) (1987)
- ✱ Fort Lauderdale International (FL) (1994)
- ✱ Ft. Lauderdale Exec. (FL) (1985, 1997, 2002)
- ✱ Fresno-Yosemite (CA) (2006)
- ✱ Groton-New London (CT) (1985)
- ✱ Guilford-Biloxi (MS) (1991)
- ✱ Jackson (MS) (1989)
- ✱ Lansing (MI) (1992)
- ✱ Lehigh Valley (PA) (1991, 2004)
- ✱ Macon (GA) (1989)
- ✱ Manchester (NH) Map only (2004)
- ✱ Mobile (AL) (1990)
- ✱ Nantucket (MA) (1987)
- ✱ Naples (FL) (1997, 1998, 2000)
- ✱ Palm Beach (FL) (1994)
- ✱ Piedmont Triad Int'l (NC) (2004)
- ✱ Providence (RI) (1982)
- ✱ St. Lucie County (FL) (2004)
- ✱ Salt Lake City (UT) (1986, 1998)
- ✱ Scottsdale (AZ) (2004)
- ✱ Tampa International (FL) (2000)
- ✱ Vero Beach (FL) (2004)
- ✱ Youngstown (OH) (1994)

Airport Noise and Operations Monitoring Systems

- ✱ Airports Company South Africa (2003)
- ✱ Baltimore-Washington Int'l (MD) (1986)
- ✱ Boston Logan and Hanscom (MA) (2003)
- ✱ Chicago O'Hare and Midway (IL) (1995)
- ✱ Denver Stapleton (CO) (1988)
- ✱ Denver Int'l Airport (CO) (1995)
- ✱ Easthampton (NY)
- ✱ Fort Lauderdale Int'l (FL) (1995)
- ✱ Indianapolis (IN) (2003)
- ✱ Lehigh Valley Int'l (PA) (2003)
- ✱ Louisville (KY) (2003)
- ✱ Minneapolis-St. Paul Int'l (MN) (1993)
- ✱ North Palm Beach County (FL) (1997)
- ✱ Naples (FL) (1997)
- ✱ New Orleans (LA) (1995)
- ✱ Orange County (CA) (1995)
- ✱ Palm Beach County Park (FL) (1997)
- ✱ Palm Beach Int'l Airport (1997)
- ✱ Port Columbus Int'l (OH) (1992)
- ✱ Raleigh-Durham Int'l (NC) (2003)
- ✱ Reno (NV) (2006)
- ✱ Salt Lake City Int'l (UT) (1993)
- ✱ San Antonio (TX) (2003)
- ✱ San Francisco Int'l (CA) (2004)
- ✱ Tampa International (FL) (2001)
- ✱ White Plains (NY) (1984, 1995)

Airport Master Plan Noise Analyses

- ✱ Ft. Lauderdale Exec. (FL) (1985, 1997, 2002)
- ✱ Bridgeport Municipal (CT) (1995)
- ✱ Danbury Municipal Airport (CT) (1983)
- ✱ Ft. Lauderdale Internat'l (FL) (1994)
- ✱ North Central State (RI) (1987)
- ✱ Salt Lake City Intern'l (UT) (1990)
- ✱ Salt Lake City No. II (UT) (1987)
- ✱ Tampa International (FL) (2000)

Environmental Assessments or Impact Studies

- ✱ Runway Extension EIS, Fort Lauderdale International (FL) (2003)
- ✱ Runway Extension EA, Palm Beach International (FL) (1998)
- ✱ Runway Extension EIS, Bridgeport Municipal Airport (CT) (1996)
- ✱ EA of Parallel Runway EA, Salt Lake City International Airport (UT) (1992)
- ✱ Runway Strengthening EA, Myrtle Beach Jetport (SC) (1988)

Part 161 Studies

- ✱ Stage 2 Jet Use Restriction Study, Naples Municipal Airport (FL) (2001)
- ✱ Part 161 Study, Van Nuys Airport (CA) (underway)

Other Airport Noise Exposure, Abatement, and Land Use Compatibility Studies

- ✱ Noise Abatement Study, Barnstable Municipal Airport (MA) (1998)
- ✱ Noise Exposure Update, Dallas-Love Field (TX) (1983, 1984, 1985, and 1986)
- ✱ Evaluation of Reinstitution of Night Landings at Westchester County (NY) (1982)
- ✱ ANCLUC Study, Hanscom Field (MA) (1980)

Expert Testimony and Litigation Support

- ✱ Osipovs vs. Chesapeake Airport Authority (2007)
- ✱ City of Naples (FL) Airport Authority vs. Federal Aviation Administration (2003)
- ✱ NBAA and GAMA vs. City of Naples (FL) Airport Authority (2001)
- ✱ Aircraft Owners and Pilots Association et al. vs. City of Chicago et al. (1995)
- ✱ Wakefield/Austin vs. Broward County (FL) (1992)
- ✱ Stark vs. City of Atlanta (GA) (1988)
- ✱ Sarasota-Manatee Airport Authority vs. Manatee County (FL) (1986)
- ✱ Katsos et al. vs. Salt Lake City International Airport Authority (1986)
- ✱ Gratiek et al. vs. Allegheny County (PA) Department of Aviation (1983)
- ✱ National Business Aircraft Association et al. vs. Westchester County (1982)

HARRIS MILLER MILLER & HANSON INC.

Massachusetts ✱ California ✱ Virginia ✱ Washington, D.C.

EXHIBIT 8



**FOWLER WHITE
BOGGS BANKER**

ATTORNEYS AT LAW
ESTABLISHED 1943

Memorandum

TO: Ron Carpenter, Esq. *Linda Shelley*
 FROM: Linda Shelley and Karen A. Brodeen
 DATE: July 30, 2007
 RE: Hatchet Creek

This memorandum addresses the issues raised by Ted Baldwin in his July 12, 2007, letter regarding the comprehensive plan amendment which would allow the Hatchet Creek property to develop as a Planned Development. In summary, Mr. Baldwin's conclusions and recommendations are that the City of Gainesville deny the plan amendment because of various noise related considerations which are not based on any controlling legal authorities. The City's Airport Noise Zone and Regulations do not prohibit residential development within any of the three subzones, including the contour for the 65 decibel ("dB") Ldn (referred to as such in the City's ordinance, but elsewhere in this memo as DNL). See Appendix F. Airport Hazard Zoning Regulations Sec. II.C. Additionally, the Federal Aviation Administration ("FAA") does not require the City to prohibit or restrict development based solely on noise. As a non-lawyer, and as an environmental consultant to airports, Mr. Baldwin's recommendations for denial are based on his personal opinion and not on applicable legal requirements or authorities.

City's Noise Zone Regulations-Analysis

The City's land development regulations include three separate zones of influence: (1) the Airport Height Notification Zone; (2) the Airport Runway Clear Zone; and (3) the Airport Noise Zone. See Appendix F. Section II, Airport Hazard Zoning Regulations. As to the first zone, the FAA reviewed a notice filed by the Hatchet Creek project and found that the project poses no obstructions. As to the second zone, the Hatchet Creek property does not lie within the runway clear zone as defined by the FAA, in whole or in part.

The purpose of the noise zone is "to regulate land uses sensitive to sound levels generated by the routine operation of the airport." App. F. Sec. II.C. The noise regulations establish three separate noise subzones. Subzone A approximates a day/night average sound level of 75 DNL; subzone B approximates a day/night average sound level of 70 DNL, exclusive of Subzone A; and Subzone C approximates a day/night average sound level of 65 DNL, exclusive of Subzones A and B. The subzones are based on the forecast of DNL sound levels documented in its approved airport master plan, or airport layout plan, or both. Under the terms of the ordinance, if the "official 14 C.F.R. Part 150 Study" is amended by the Airport, the subzone boundaries shall be modified accordingly. The ordinance is unclear as to whether amending the "airport master

plan” or the “airport layout plan” is the equivalent of amending its “official 14 C.F.R. Part 150 Study,” but it is construed to be so.

The noise zone regulations include lists of permitted uses and restricted uses. App. F. Sec. II.C.2.d and e. Any use that is not specified in either of those lists is strictly prohibited within the noise zone. Offices and retail businesses are among the permitted uses and, as such, do not require a project to comply with any additional noise related regulations.

Residential (other than mobile homes) and similar uses are classified as restricted uses that “shall be permitted within the established noise overlay zone” if the proposed development complies with the criteria contained in the ordinance and is compatible with the Official 14 C.F.R. Part 150 Study. The Airport Noise Zone and Regulations specifically allow residential uses in any of the three noise subzones (65, 70, and 75 dB DNL). Residential uses are conditioned upon compliance with the building design criteria of an outdoor to indoor noise level reduction (“NLR”) of at least 25 dB (“Normal residential construction can be expected to provide an NLR of 20-25 decibels.” See App. F. Sec. II.C.2.e.) or, in lieu of providing 25 dB NLR, at the election of the developer, the provision of an avigation easement to the Gainesville-Alachua County Regional Airport Authority in a form acceptable to the city attorney and airport authority. The regulations only require denial if the restricted use lies within the runway clear zone or is inconsistent with the applicable zoning district regulations.

The FAA Does Not Regulate Local Land Use Regulations or Decisions

The noise zone regulations are part of the City’s Airport Hazard Zoning Regulations. Zoning ordinances are exercises of the state’s police powers and that of its political subdivisions. *City of Euclid v. Ambler Realty*, 272 U.S. 365 (1926). It is undisputed that the FAA has no jurisdiction over local land use. In fact, the FAA itself acknowledges local government preeminence regarding land use authority in its regulations regarding noise.

“* The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. **The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.**” (Emphasis added)

Appendix to Part 150, Table 1 – Land Use Compatibility* With Yearly Day - Night Average Sound Levels. (Attached as Exhibit A.) Identical language is found in Table 10, page III-19 of the FAR Part 150 Study adopted by the Gainesville-Alachua County Regional Airport Authority in March 1986 (hereinafter referred to as the “GNV FAR Part 150 Study,” which is attached as Exhibit B). For purposes of this memorandum, it will be considered the “Official 14 C.F.R. Part 150 study” referenced in the City’s Airport Noise Zone and Regulations. It is noted that the Gainesville-Alachua County Regional Airport Authority adopted an update to its master plan in 2006, but that the City Commission has not yet approved the master plan update. It is clear,

however, that regardless of whether the 1986 GNV FAR Part 150 Study or the 2006 update to the master plan is used as the controlling document, residential uses are permitted within the 65 dB DNL contour under the conditions set forth in the City Airport Noise Zone and Regulations. Identical language is contained in Table 5-1 of the 2006 Master Plan Final Report. (Attached as Exhibit C).

Compatibility

The City-retained expert, Mr. Ted Baldwin, who apparently based his opinions regarding the Hatchet Creek project on the incorrect conclusion that the GNV FAR Part 150 Study prohibits all residential uses. This is correct as to noise contours above 75 dB DNL (although transient lodging is permissible up to and including 80 dB DNL), but not as to the 75 dB DNL or lower noise contours (the Hatchet Creek project is located in noise contours of 65 dB DNL or lower). Moreover, although the restricted use regulation requires that the proposed development be “compatible” with the GNV FAR Part 150 Study, the definition section of the regulations does not include a definition of compatibility. Compatibility with the GNV FAR Part 150 Study is determined by reference to the Study’s Table 10, p. III-19, which includes a land use compatibility table required by the FAA for FAR Part 150 noise studies. Noise exposure maps are required by the FAA to contain and identify “noncompatible” land uses within the noise contours, including the 65 dB DNL contours.

The FAA defines “compatible land use” as “the use of land that is identified under this part as normally compatible with the outdoor noise environment (or an adequately attenuated noise level reduction for any indoor activities involved) at the location because the yearly day-night average sound level is at or below that identified for that or similar use under Appendix A (Table 1) of [C.F.R. 150].” 14 C.F.R. Part 150.7 (2007). The FAA Note #1 to Table 1, Appendix A, states in its entirety:

“(1) Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB **should** be incorporated into building codes and **be considered** in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.” (Emphasis added)

Additionally, the GNV FAR Part 150 Study itself acknowledges in the introduction to the “Implementation” section that the local jurisdiction is responsible for implementing any noise compatibility program initiative to the extent it deems appropriate. “Implementation of the recommended noise compatibility program initiatives is the responsibility of the City of Gainesville as the owner and operator of the Airport, and Alachua County as the jurisdiction controlling land use in the Airport environs.” (p. VI-1) Today, the Hatchet Creek property is no longer in Alachua County; therefore, the City of Gainesville has exclusive control with respect to implementation of any noise compatibility program initiatives – which it addressed when the City adopted Appendix F. Airport Hazard Zoning Regulations in 1999. Furthermore, the GNV

FAR Part 150 Study concludes in the Implementation section (Section VI) that Alachua County should “Revise Section 13 of the Zoning Regulations as it relates to...the enforcement of the disclosure statement practices [which apply to residential property sales in areas of 70 – 75 Ldn].” Thus the GNV FAR Part 150 Study states that this is a way, as outlines in its recommendations, to make residential development in 70 – 75 dB DNL areas “compatible” with the study. See p. VI-2 and p. IV-10.

Although it now objects to residential development, the Airport in its adopted plans does not find that all residential development in the 65 dB DNL noise contour should be prohibited as “noncompatible.” Consistent with FAA guidelines, the GNV FAR Part 150 Study shows residential uses are “normally noncompatible” (p. III-18) within the Airport’s 65 - 75 dB DNL noise contours, but recognizes that residential uses in those areas are allowed and can be made “compatible” with the FAR Part 150 Study and FAA guidelines if the construction standards require at least 25 dB NLR, i.e., at least 5 dB above normal construction techniques. Table 10 of the GNV FAR Part 150 Study shows residential uses as “noncompatible” in the 65 dB DNL and higher noise contours, however, the Table also includes Notes to the 65 - 70 dB and 70-75 dB DNL noise contours which tracks the language contained in the FAA regulations. See Table 10, GNV FAR Part 150 Study (p. III-19), which relates to Table 1, Appendix A of 14 C.F.R. pt. 150 (2007). Furthermore, Mr. Penksa, in his letter to the City Manager dated April 2, 2007, states that it is “technically feasible to allow residences within the city’s 65 ldn noise contours.”

Mr. Baldwin overlooks Note #1 to Table 10 in the GNV FAR Part 150 Study regarding enhanced noise construction for residential uses and incorrectly concludes that the GNV FAR Part 150 Study prohibits all residential development within the 65 – 70 dB DNL noise contour. In fact, Note #1 makes clear (when compared to Notes #2, #3, and #4) that the FAR Part 150 Study and Appendix A of 14 C.F.R. pt. 150 (2007) only recommend and do not require such 25 dB NLR for permissible residential construction in such areas. The oversight by Mr. Baldwin of Table 10 in its entirety formed the basis of his conclusion that the Study prohibits residential uses. As the City provides for a design standard or easement option for residential development, it obviously has determined that residential uses are permitted in such areas. This was the County’s position as well, prior to annexation of the Hatchet Creek property. See Appendix A, GNV FAR Part 150 Study which states in part “This does not mean residential development is prohibited...”. Letter from Alachua County Department of Planning and Development, December 16, 1985. At the time, Alachua County had an adopted policy with regard to Airport impact, which are summarized in the Report as follows:

“...4. Residential development shall be generally permitted in the 65-70 Ldn area subject to the requirements of 24 CFR 51 (U.S. Department of Housing and Urban Development regulations concerning noise abatement and control, as established in Part 51, Environmental Criteria and Standards of Title 24 of the Code of Federal Regulations) and further subject to the limitations in the overflight area.”

See GNV FAR Part 150 Study p. IV-10. None of the Hatchet Creek property is in the “overflight area”. Alachua County reviewed the findings of the GNV FAR Part 150 Study before the study was finalized (see GNV FAR Part 150 Study, p. V-1) and determined that it would continue to allow residential development in the area that currently represents the Hatchet

Creek property. “[T]he regulations relating to such [residential] development can incorporate the noise attenuation guidelines presented in FAR Part 150 [i.e., Appendix to FAA Part 150, Table 1 – Land Use Compatibility, which is the same as Table 10 of the GNV FAR Part 150 Study].” See GNV FAR Part 150 Study, p.V-4.

As can be seen above, “compatibility” according to the GNV FAR Part 150 Study and the FAA (Appendix A of 14 C.F.R. pt. 150 (2007) is not dispositive of the ability to have residential land uses in 65-75 dB DNL noise contours. Furthermore, compliance with the City’s ordinance via enhanced sound construction design or the granting of an avigation easement would make residential land use in such areas “compatible” with the GNV FAR Part 150 Study and the FAA guidelines (Appendix A of 14 C.F.R. pt. 150 (2007). Page III-18 of the GNV FAR Part 150 Study states in its entirety “Both Tables 8 and 9 indicate the extent of land uses which may be considered **normally** noncompatible as defined in FAR Part 150 within the resultant Ldn contours **and** presented in Table 10.” Emphasis added. (Table 10 is on the next page, p.III-19.) Ted Baldwin is relying on Tables 8 and 9 and completing ignoring their nexus to Table 10, which illustrates how to make a “normally noncompatible” use into a “compatible” use according to the GNV FAR Part 150 Study itself.

In addition to Table 10, the GNV FAR Part 150 Study itself recognizes another way that the Airport can “reduce the amount of incompatible land use through: (1) acquisition of the property; (2) acquisition of air rights; (3) acquisition of avigation easements; and (4) acquisition and transfer of development rights.” GNV FAR Part 150 Study, p. IV-6. Although the City’s regulations do not require both enhanced construction standards and an avigation easement, the option provided to a developer of granting an avigation easement in order to develop residential uses in areas with 65 – 75 dB DNL noise contours provides a direct benefit to the Airport by not requiring the Airport to pay for such an easement.

Benefits of Avigation Easements

Avigation easements are an effective way to protect the Airport from lawsuits claiming the “taking” of private property, such as those at issue in the *Causby* and *Griggs* cases referenced in Mr. Penksa’s letter. Once an avigation easement is acquired, it bars the adjacent property owner from seeking damages for the “taking” and damaging of his property. *Institoris v. City of Los Angeles*, 210 Cal. App. 3d 10, 22 (Cal. App. 2d Dist. 1989).

Avigation easements also provide protection for future operational changes and expansions. Easements are not limited to the conditions at the time of the easement’s creation and can be deemed to be expanded. *See Easton v. Appler*, 548 So. 2d 691, 695 (Fla. 3d DCA 1989). Changes in flight paths, operating procedures, noisier aircraft, and airport capital improvements are to be reasonably expected by adjacent property owners. Persons who give avigation easements may not recover inverse condemnation damages where the operational changes and airport expansion were reasonably anticipated at the time the easements were given. *City of Jacksonville v. Schumann*, 199 So.2d 727, 728 (Fla. 1st DCA 1967). If changes and improvements that were not reasonably expected at the time of the easement result in a “taking,” the amount of damages are limited to the impact of those new intrusions. *See Id.*

Avigation easements also would protect the Airport from noise nuisance lawsuits. Florida case law requires that the invasion complained of in a nuisance claim be unreasonable, unwarrantable, or unlawful. *Corbett v. Eastern Air Lines, Inc.*, 166 So. 2d 196 (Fla. 1st DCA 1964). Avigation easements place property owners on direct notice of various airport related nuisances.

The Airport recently updated its Master Plan in 2006. That document can be referenced in any avigation easement so that adjacent property owners have no legal right to property or personal damages based on changes shown in that plan, as well as any other reasonably expected changes or improvements.

“Best Practices”

Mr. Baldwin praises the City’s noise zone regulations as highly sensitive to airport noise compatibility and the GNV FAR Part 150 Study recommendations as consistent with widely accepted “best practices.” In his second Summary Opinion, Mr. Baldwin incorrectly concludes that the requested increase in density would be “inconsistent with the best practices adopted by the City.” As discussed above, the GNV FAR Part 150 Study does allow residential uses within 75 dB DNL or lower noise contours and the Hatchet Creek project will be developed in accordance with the “best practices” identified by Mr. Baldwin.

Funding

In Summary Opinion Number 8, Mr. Baldwin states that he shares the concern of the Airport and various agencies as to the “general consistency of the development proposal with the City’s federal grant obligations.” To date, neither Mr. Baldwin nor any of those entities has demonstrated how Airport grant funds are at risk because of the project.

If the concern is for an already approved grant, the FAA has held that Congress has not provided any authority for grant nullification. *See In the Matter of Compliance With Federal Obligations by the Naples Airport Authority, Naples, Florida v. FAA*, FAA Order No. 2003-1 (Part 116, Subpart G) (Aug. 25, 2003), 2003 WL 22257716. As for future grants, insufficient details have been provided as to which types of grants the Airport seeks, the grant criteria, the amount, and how the project would prejudice a grant application.

In Mr. Penksa’s July 2, 2007 letter, the Airport Director notes that the FAA provides funds for future noise mitigation projects under 14 C.F.R. Part 150 (2007), and that remedial noise funding only covers pre-existing incompatible neighborhoods. The GNV FAR Part 150 Study and the FAA recommend but do not require 25 dB NLR building standards be incorporated into building codes for residential uses in areas with 65 – 75 dB DNL noise contours. The City’s ordinance exceeds the GNV FAR Part 150 Study and the FAA requirements by requiring either enhanced construction techniques or the provision of an avigation easement, at the developer’s option, in areas with 65 – 75 dB DNL noise contours.. Hatchet Creek neither requests nor requires any noise mitigation funds from the FAA, and no entity has shown how approval of Hatchet Creek would jeopardize FAA noise mitigation funds for other projects or areas.

Mr. Penksa's letter dated July 2, 2007 suggests that the City's regulations adequately work within the framework necessary to secure federal funds. Mr. Penksa states that "[i]n order to qualify for federal funds, acquisition of land, avigation easements or other mitigation efforts must be identified in an FAA approved Noise Compatibility Program." The City's requirement for either enhanced sound construction of at least 25 dB NLR or an avigation easement are practices consistent with the Airport Improvement Program from which the FAA derives funds for approved noise mitigation efforts. **Furthermore, and more importantly, if the City's ordinance is complied with (i.e., 25 dB NLR or avigation easement, at the developer's option), then there is no issue related to FAA funding for noise mitigation costs.**

Conclusion

The concerns raised by the Airport and Mr. Baldwin do not demonstrate any inconsistency between approval of the Hatchet Creek project and adopted Airport plans, City regulations or FAA policies or regulations. Both the City and the FAA recognize that residential development within the 65 to 75 dB DNL noise contours is compatible with airport operations. In such noise contours, the GNV FAR Part 150 Study and Appendix A of 14 C.F.R. pt. 150 (2007) recommend, but do not require, 25 dB NLR. The City goes one step further – requiring either 25 dB NLR or the provision of an avigation easement in such areas. Neither Mr. Baldwin nor the Airport has demonstrated that residential development, in compliance with the City's ordinance, reduces the Airport's ability to secure FAA grants. The City's regulations adequately protect its citizens and the Airport and do so in a manner more restrictive than the GNV FAR Part 150 Study or FAA requirements (Appendix A of 14 C.F.R. pt. 150 (2007)).

Federal Aviation Administration, DOT

Pt. 150, App. A

TABLE 1—LAND USE COMPATIBILITY* WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS

Land use	Yearly day-night average sound level (L _{dn}) in decibels					
	Below 65	65-70	70-75	75-80	80-85	Over 85
RESIDENTIAL						
Residential, other than mobile homes and transient lodgings	Y	N(1)	N(1)	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N(1)	N(1)	N(1)	N	N
PUBLIC USE						
Schools	Y	N(1)	N(1)	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Governmental services	Y	Y	25	30	N	N
Transportation	Y	Y	Y(2)	Y(3)	Y(4)	Y(4)
Parking	Y	Y	Y(2)	Y(3)	Y(4)	N
COMMERCIAL USE						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail—building materials, hardware and farm equipment	Y	Y	Y(2)	Y(3)	Y(4)	N
Retail trade—general	Y	Y	25	30	N	N
Utilities	Y	Y	Y(2)	Y(3)	Y(4)	N
Communication	Y	Y	25	30	N	N
MANUFACTURING AND PRODUCTION						
Manufacturing, general	Y	Y	Y(2)	Y(3)	Y(4)	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	Y(6)	Y(7)	Y(8)	Y(8)	Y(8)
Livestock farming and breeding	Y	Y(6)	Y(7)	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
RECREATIONAL						
Outdoor sports arenas and spectator sports	Y	Y(5)	Y(5)	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts and camps	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation	Y	Y	25	30	N	N

Numbers in parentheses refer to notes.
 *The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

KEY TO TABLE 1

SLUCM—Standard Land Use Coding Manual.
 Y (Yes)—Land Use and related structures compatible without restrictions.
 N (No)—Land Use and related structures are not compatible and should be prohibited.
 NLR—Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.
 25, 30, or 36—Land use and related structures generally compatible; measures to achieve NLR of 25, 30, or 35 dB must be incorporated into design and construction of structure.

NOTES FOR TABLE 1

- (1) Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.
- (2) Measures to achieve NLR 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
- (3) Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
- (4) Measures to achieve NLR 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal level is low.
- (5) Land use compatible provided special sound reinforcement systems are installed.
- (6) Residential buildings require an NLR of 25.
- (7) Residential buildings require an NLR of 30.
- (8) Residential buildings not permitted.



Table 10
LAND USE COMPATIBILITY* WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS

Land Use	Yearly Day-Night Average Sound Level (L_{dn}) in Decibels					
	Below 65	65-70	70-75	75-80	80-85	Over 85
<i>Residential</i>						
Residential, other than mobile homes and transient lodgings	Y	N(1)	N(1)	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N(1)	N(1)	N(1)	N	N
<i>Public Use</i>						
Schools	Y	N(1)	N(1)	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Governmental services	Y	Y	25	30	N	N
Transportation	Y	Y	Y(2)	Y(3)	Y(4)	Y(4)
Parking	Y	Y	Y(2)	Y(3)	Y(4)	N
<i>Commercial Use</i>						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail—building materials, hardware and farm equipment	Y	Y	Y(2)	Y(3)	Y(4)	N
Retail trade—general	Y	Y	25	30	N	N
Utilities	Y	Y	Y(2)	Y(3)	Y(4)	N
Communication	Y	Y	25	30	N	N
<i>Manufacturing And Production</i>						
Manufacturing, general	Y	Y	Y(2)	Y(3)	Y(4)	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	Y(6)	Y(7)	Y(8)	Y(8)	Y(8)
Livestock farming and breeding	Y	Y(6)	Y(7)	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
<i>Recreational</i>						
Outdoor sports arenas and spectator sports	Y	Y(5)	Y(5)	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts and camps	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation	Y	Y	25	30	N	N

Numbers in parentheses refer to notes.

* The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

KEY:

- SLUCM Standard Land Use Coding Manual.
- Y (Yes) Land Use and related structures compatible without restrictions.
- N (No) Land Use and related structures are not compatible and should be prohibited.
- NLR Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.
- 25, 30, or 35 Land used and related structures generally compatible; measures to achieve NLR of 25, 30, or 35 dB must be incorporated into design and construction of structure.

NOTES

- (1) Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.
- (2) Measures to achieve NLR of 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
- (3) Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
- (4) Measures to achieve NLR of 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
- (5) Land use compatible provided special sound reinforcement systems are installed.
- (6) Residential buildings require an NLR of 25.
- (7) Residential buildings require an NLR of 30.
- (8) Residential buildings not permitted.

SOURCE: Federal Aviation Regulations Part 150.



Table 5-1
LAND USE COMPATIBILITY GUIDELINES WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS
GAINESVILLE REGIONAL AIRPORT - MASTER PLAN UPDATE

Land Use	Yearly Day-Night Average Sound Level (DNL) in Decibels					
	Below 65	65-70	70-75	75-80	80-85	Over 85
Residential						
Residential, Other than Mobile Homes and						
Transient Lodgings	Y	N(1)	N(1)	N	N	N
Mobile Home Parks	Y	N	N	N	N	N
Transient Lodging	Y	N(1)	N(1)	N(1)	N	N
Public Use						
Schools	Y	N(1)	N(1)	N	N	N
Hospitals and Nursing Homes	Y	25	30	N	N	N
Churches, Auditoriums and Concert Halls	Y	25	30	N	N	N
Governmental Services	Y	Y	25	30	N	N
Transportation	Y	Y	Y(2)	Y(3)	Y(4)	Y(4)
Parking	Y	Y	Y(2)	Y(3)	Y(4)	N
Commercial Use						
Offices, Business and Professional	Y	Y	25	30	N	N
Wholesale and Retail-Building Materials, Hardware and Farm Equipment	Y	Y	Y(2)	Y(3)	Y(4)	N
Retail Trade-General	Y	Y	25	30	N	N
Utilities	Y	Y	Y(2)	Y(3)	Y(4)	N
Communication	Y	Y	25	30	N	N
Manufacturing and Production						
Manufacturing, General	Y	Y	Y(2)	Y(3)	Y(4)	N
Photographic and Optical	Y	Y	25	30	N	N
Agriculture (Except Livestock) and Forestry						
Livestock Farming and Breeding	Y	Y(6)	Y(7)	Y(8)	Y(8)	Y(8)
Mining and Fishing, Resource Production and Extraction	Y	Y(6)	Y(7)	N	N	N
Recreation						
Outdoor Sports Arenas and Spectator Sports						
Outdoor Music Shells, Amphitheaters	Y	Y(5)	Y(5)	N	N	N
Nature Exhibits and Zoos	Y	N	N	N	N	N
Amusements Parks, Resorts and Camps	Y	Y	N	N	N	N
Golf Courses, Riding Stables and Water Recreation	Y	Y	Y	N	N	N
	Y	Y	25	30	N	N

Source: FAR Part 150

Key: SLUCM: Standard Land Use Coding Manual.

Y (Yes): Land use and related structures compatible without restrictions.

N (No): Land use and related structures are not compatible and should be prohibited.

NLR: Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.

25, 30 or 35: Land use and related structures generally compatible; measures to achieve NLR of 25, 30 or 35 dB must be incorporated into design and construction of structure.

Notes:

- (1) Where the community determines that residential or school use must be allowed, measures to achieve outdoor to indoor NLR of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as five, ten or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year-round. However, the use of NLR criteria will not estimate outdoor noise problems.
- (2) Measure to achieve NLR 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal level is low.
- (3) Measures to achieve NLR 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal level is low.
- (4) Measures to achieve NLR 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal level is low.
- (5) Land use compatible provided special sound reinforcement systems are installed.
- (6) Residential buildings require a NLR of 25.
- (7) Residential buildings require a NLR of 30.
- (8) Residential buildings not permitted.



EXHIBIT 9

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August 5, 2007

Ralph Hilliard, Planning Manager
City of Gainesville, Florida
P.O. Box 490, Station 11
Gainesville, FL 32602

Subject: Review of July 30, 2007 Fowler White Boggs Banker "Hatchet Creek" Memorandum
Reference: HMMH Project No. 302390

Dear Mr. Hilliard:

In response to your request, this letter briefly summarizes my review of the Fowler White Boggs Banker (FWBB) memorandum on my July 12, 2007 letter on the Hatchet Creek application for a comprehensive plan amendment.



On the most significant level, the authors of the memorandum appear to have misunderstood the purpose of my review, which, as I stated in the first sentence of my letter, was to present "my professional opinion regarding the proposed rezoning" [emphasis added]. The FWBB memorandum focuses on whether residential use is permitted in the Gainesville "Airport Noise Zones." In my opinion, that issue is relevant only to the extent that an area is already zoned residential. The zoning regulations clearly characterize residential development as permissible only on a "qualified" basis (i.e., with special noise-reduction construction or an avigation easement). The key issue facing us is the request to change the permitted land use in a manner that will change the zoning in the area affected by the highest noise exposure from industrial (which is compatible on an unqualified basis) to residential, and permit higher density residential development in other areas. Regardless of the permissibility of residential use in a noise zone, increasing the numbers of residents to high levels of noise exposure is undesirable.

The FWBB memorandum included a relatively lengthy discussion of "Compatibility," that focuses to a large extent on "Note 1" of FAA's land use compatibility guidelines (e.g., Table 1 of Part 150 Appendix A). FWBB correctly points out that FAA guidelines suggest that otherwise noncompatible residential land uses may be permitted within the 65 - 70 dB or 70 - 75 dB DNL contour intervals with the application of at least 25 dB or 30 dB of Noise Level Reduction (respectively). However, the note starts as follows "Where the community determines that residential or school uses **must** be allowed," [emphasis added]. The word "must" is of critical importance; it implies that the community has identified a significant local need or purpose that impels the jurisdiction to override the land use compatibility objective. I am not aware that such a local need or purpose has been identified in Gainesville.

FWBB asserts I "apparently based [my] opinions ... on the incorrect conclusion that the GNV FAR Part 150 Study prohibits all residential uses." Item 6 of my letter clearly states that my opinions were based on five items. In the fifth item, I stated that "since it appears that the GNV Part 150 study designated residential uses as incompatible with aircraft noise of 65 dB DNL and higher, regardless of the extent of sound insulation treatment, literal interpretation of the Airport Hazard Zoning Regulations suggests" such a conclusion. Objective reading of my letter clearly reveals that interpretation of the GNV Part 150 was only one of the bases for my opinion (and the last one listed, reflecting its lowest priority), and also that ambiguity in the study left it open for interpretation (i.e., my use of the terms "suggests" and "appears").

On a more detailed basis, I have the following observations about the manner in which FWBB memorandum addresses my full list of opinions and recommendations:

HARRIS MILLER MILLER & HANSON INC.

Ralph Hilliard, Planning Manager, City of Gainesville, Florida
 Review of July 30, 2007 Fowler White Boggs Banker "Hatchet Creek" Memorandum
 August 5, 2007
 Page 2

1. *The City's noise zone regulations reflect high levels of sensitivity to noise compatibility and are consistent with widely accepted "best practices."*

The FWBB memorandum argues that since residential use is permitted under some conditions in the noise zones, it is a "best practice." This argument ignores my second point; i.e., that the existing industrial zoning properly limits residential development in the highest noise exposure area.

2. *Permitting residential development in the area currently zoned I-1 and permitting an increase in the density of the residential development in the area zoned S-1 would be inconsistent with the best practices adopted by the City.*

The FWBB memorandum does not address this point which, as I noted above.

3. *Even if future residents are alerted in advance of current and projected noise exposure; e.g., through a noise notice in the purchase and sale negotiation process, many are likely to be surprised by the exposure once they move into the development.*

The FWBB memorandum does not address this point.

4. *Even with sound insulation to achieve the NLR criteria set by the Airport Hazard Zoning Regulations, many residents of the proposed development are likely to be highly annoyed by aircraft noise. I would expect many future residents would express their annoyance through complaints to the airport and developer, and request compensation or changes in airport operations.*

The FWBB memorandum does not address this point.

5. *Since it appears the GNV Part 150 study designated residential uses as incompatible with aircraft noise of 65 dB DNL and higher, regardless of the extent of sound insulation treatment, literal interpretation of the Airport Hazard Zoning Regulations suggests that all residential uses (including assisted living) are impermissible within the noise subzones (which cover a majority of the development site), regardless of NLR status.*

As noted above, this item identifies the ambiguity of the Part 150 and is only one of the bases for my opinions and recommendations.

6. *For the major reasons cited above, I recommend against approval of the proposed comprehensive plan amendment.*

As discussed above, the FWBB memorandum ignores this item and asserts that my opinions and recommendations were based on item 5.

7. *If the City does proceed with approval of some or all of the development application, I recommend that the approval include the following conditions: ...*

FWBB addresses one of the conditions only – aviation easements – and focuses on the protection it provides the airport and ignores the interests of future residents. Easements serve only as a means of notifying residents of potential noise exposure. They do nothing to prevent exposure, mitigate exposure, or compensate residents for unmitigated exposure; as such, they are generally considered a land use measure of last resort. Clearly, the airport is one of the parties interested in obtaining protection through easements. However, residents deserve protection as well. It is interesting that the developer's attorneys choose to ignore the interests of the development's ultimate "clients." In preparing my opinion, I assumed the City takes a broader perspective and has a keen interest in protecting the health and welfare of current and future residents.

HARRIS MILLER MILLER & HANSON INC.

Ralph Hilliard, Planning Manager, City of Gainesville, Florida
Review of July 30, 2007 Fowler White Boggs Banker "Hatchet Creek" Memorandum
August 5, 2007
Page 3

8. *I support the observations made by GNV, FAA, AOPA, and FDOT commenters regarding the general inconsistency of the development proposal with the City's federal grant obligations, current noise zoning, and generally accepted compatible land use practice designed to protect residents, the airport, airport users, and local public interest.*

FWBB focus solely on whether "Airport grant funds are at risk because of the project." More specifically, they focus on potential jeopardy of future noise mitigation funding, which they point out is not an issue, because no such funding request is anticipated. They also argue that no one has demonstrated how Airport grant funds may be at risk because of the project.

The FAA's letter states that the change in zoning may cause the FAA to "find the City's actions to be in conflict with federal grant assurances, and future airport improvement program funding may be in jeopardy." This statement is a clear warning from the FAA that "grant funds may be at risk" and also clearly applies to all funding for all purposes, not just noise mitigation. AIP funding is a significant revenue source for most airports. I did a quick Google search and found references to many millions of dollars in AIP applications from GNV over the past five years or so.

In closing, the FWBB memorandum states that my concerns do not demonstrate any inconsistency between approval of the development and FAA policies or regulations. The FAA's written opposition to the project clearly contradicts that statement.

I appreciate this opportunity to assist the City on this matter. Please do not hesitate to contact me with any questions. I look forward to presenting my opinions in person at the July 19 City Plan Board Zoning Meeting and Plan Board meeting and at an upcoming City Commission meeting.

Sincerely yours,

HARRIS MILLER MILLER & HANSON INC.



Ted Baldwin
Senior Vice President

EXHIBIT 10

HOUCK ANDERSON

ATTORNEYS AT LAW

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Reply to: Miami Office

August 24, 2007

VIA E-MAIL

Marion Radson, Esq.
City Attorney
City of Gainesville
P.O. Box 490
Station 46
Gainesville, FL 32602-0490

Re: East Gainesville Development Partners LLC
Hatchet Creek Development

Dear Mr. Radson:

Please be advised this firm has been retained by East Gainesville Development Partners LLC ("EGDP") regarding the Hatchet Creek comprehensive plan amendment and matters relating thereto. The purpose of this letter is to address certain issues that may still linger and prevent this matter from coming before the City Commission to be voted upon with proper legal guidance in the near future.

In becoming familiar with the status of this matter, we have reviewed various items including letters and e-mails prepared by Allan Penksa, Chief Executive Officer for the Gainesville Regional Airport, a letter from a special interest group, and newspaper articles from the Gainesville Sun quoting Mr. Penksa with regard to certain airport related issues. Based upon what we have reviewed and has been circulated, one of our primary concerns is Mr. Penksa's apparent willingness to distort the facts in such a way as to create an unfair bias against EGDP.

With regard to Mr. Penksa, there are numerous instances of factual distortion. An example of such instance relates to Mr. Penksa's representation that "[p]lanes will come within 100 feet of

Marion Radson
August 24, 2007
Page 2

homes "See the Gainesville Sun article entitled "New community possible hazard to airport" dated March 23, 2007. In another instance, he represented "[a]ircraft on final approach will overfly (sic) portions of this development at altitudes of less than 150 feet." See Mr. Penksa's letter to Russ Blackburn dated April 2, 2007. Such a circumstance is simply ludicrous. Less than 100 feet is 1/3 the length of a football field. You don't need to be a pilot to envision that planes don't fly over homes at 1/3 the length of a football field; not in cruise flight or take-off or landing configurations. We encourage you to read 14 CFR Part 91.119 and 177 of the Federal Aviation Regulations which sets forth minimum safe altitudes for visual and instrument flights over rural and congested areas. The lowest allowable legal altitude in cruise is 500 feet above the surface in areas *other than congested areas*. Over congested areas such as Gainesville, the minimum safe cruise altitude would be 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft. We assume there is no disagreement that the area around Gainesville Regional Airport is not considered a rural area. The Airport Authority's obvious rebuttal relates to departing aircraft from Runway 29 or aircraft on final approach landing on Runway 11. In either instance, an altitude of less than 150 feet above the rooftops of homes would not be a legal flight level at the horizontal distance EGDP's eastern most property line is located from the departure and approach ends of the runway at issue. With regard to landing traffic, simple trigonometry evidences on a standard 3 degree glide slope to the approach end of Runway 11, the distance is much greater than 150 feet over EGDP's property. With regard to departing traffic, as a former flyer on DC-8s based in Miami, you can be assured take-off procedures require a rate and angle of climb that would place any aircraft significantly greater than 100 feet above the area in question. We have flight manuals that would substantiate this as fact. Further, current commercial jets are more powerful with a greater thrust to weight ratio and therefore, more able to achieve a greater rate of climb. This is just one example of the type of misstatements being proffered by Mr. Penksa. At a meeting with Mr. Blackburn, Mr. Bredfeldt, and Mr. Simensky on August 23rd, Mr. Penksa now claims planes will be flying over EGDP's property as low as 400 to 500 feet or maybe lower based on pilot technique or weather. Which is it, 100 feet as he represented to the Gainesville Sun, 150 feet as he wrote Mr. Blackburn or 400 to 500 feet as he advised our client, Mr. Blackburn and Mr. Bredfeldt yesterday? There are numerous other misstatements made by Mr. Penksa, and, as the City Attorney, we are sure you can appreciate the significant legal problems that arise from such actions.

With regard to Mr. Penksa, we respectfully request if your office has any influence, to caution him from making future misstatements similar to what has been referenced above. The latest rumor, and we hope it is just that, has Mr. Penksa showing up at the Plan Board and City Commission meetings when EGDP's project is considered with 100 pilots in opposition to the development. Now one might reasonably ask, what does a pilot sitting in an aircraft

Marion Radson
August 24, 2007
Page 3

manipulating the controls know about what the noise level is 400 to 500 feet below his seat. We have deposed many pilots and not one yet knows anything about a 65 dB DNL noise contour, where it exists, or what it even means. That is not to say pilots don't know about noise abatement procedures around airports and when they violate those procedures, the penalties involved. However, this does not qualify them as knowledgeable about the issues being raised, but rather serves as another façade for Mr. Penska's smoke screen of deception.

In addition, we have reviewed the letter from AOPA (the Aircraft Owners and Pilot's Association) dated May 10, 2007, and note that this special interest group has no particular interest in Gainesville Regional Airport. In response, EGDP can produce letters ten-fold from local suppliers, contractors and subcontractors, with a direct economic interest, who would refute the opinions set forth in the letter Mr. Penska has solicited. What has been achieved is the real issues get lost in the posturing and the legitimate interest of those concerned gets overshadowed. EGDP would prefer to avoid this circumstance.

We were hopeful that at the City Commission meeting last week (8/13/07) we might have an opportunity to raise some of these issues and get some feedback regarding the City's current position with respect to the legality of building in 65 dB DNL noise contours. However, the length of the meeting prohibited such a dialogue. At almost the midnight hour, Commissioner Henry raised the question regarding the status of this development and his concerns regarding the appropriateness of the application process. In a response that surprised myself and EGDP, Mr. Blackburn stated that the only cause for the months of delay with respect to EGDP's application is two items: (i) Mr. Blackburn has been advised by the City Attorney's office that it may be illegal to build residential units in a 65 dB DNL noise contour; and, (ii) Mr. Blackburn would like to have the smaller noise contours adopted by the City Commission, as adopted by the Airport Authority in its 2006 Master Plan Update (2006 FAR Part 150 Noise Study) and he is in the process of determining how to effect this change. Again at the meeting on August 23rd, Mr. Blackburn articulated his concern that, based on advice from the City Attorney's office, it is illegal to create new residential land use in a 65 dB DNL noise contour. Mr. Blackburn suggested that your office could explain this interpretation of your ordinances. Perhaps your office can clarify if indeed this is your position and if so, please provide us with the case law, statute or ordinance you are relying upon as well as an explanation of your interpretation.

In addition, we have read the opinion letters of the City of Gainesville's recently retained expert, Ted Baldwin, dated July 12, 2007 and August 5, 2007 regarding the legality issue of building residences in a 65 dB DNL noise contour. There is nothing in Mr. Baldwin's letter very enlightening or persuasive. We are not sure why the City retained an engineer as an expert

Marion Radson
August 24, 2007
Page 4

to render a legal opinion. As an engineer, he has in the past served as an expert witness for lawyers with respect to airport noise related issues. Notwithstanding, this hardly qualifies him to render legal opinions as to whether or not residential use is permitted in any airport noise zone. We understand you have been provided and read the legal brief prepared by Linda Shelley, Esq. and Karen Brodeen, Esq. of Fowler White Boggs Banker (FWBB) dated and delivered to your office on July 30, 2007 regarding the issues raised in Mr. Baldwin's letter of July 12, 2007 whereby he concludes Gainesville FAR Part 150 study dated March 1986 prohibits all residential uses in a 65 dB DNL noise contour. Apparently, having concluded he was acting outside the scope of his expertise, in his August 5, 2007 letter in response to Ms. Shelley's memorandum, Mr. Baldwin flip-flops and concedes the correctness of her representation as to the legality of allowing residential development in a 65 dB DNL noise contour when he states "FWBB correctly points out the FAA guidelines suggest that otherwise noncompatible residential land uses may be permitted within the 65-70 dB or 70-75 dB DNL contour intervals with the application of at least 25 dB or 30 dB of Noise Level Reduction (respectively)." However, this is again an incorrect interpretation of the Federal Aviation Regulations 150, Appendix A, footnote 1 and Table 10, footnote 1 from the 1986 FAA Noise Study adopted by the City of Gainesville insofar as it relates to the mandatory nature of the noise level reduction when building in this zone as well as the NLR suggested. Mr. Baldwin again interjects his flawed opinion when he states such land uses may be permitted within these zones *with the application of certain noise level reductions*. However, footnote 1 specifically states "Noise Level Reductions (NLR) of at least 25 db and 30 db *should* be incorporated into building codes and considered in individual approvals..."(emphasis added) The Noise Level Reductions are not mandatory as opined by Mr. Baldwin, but rather discretionary. Furthermore, and as important, only the 25 dB NLR relates to residential construction. The 30 dB NLR construction techniques relate to building schools, not residences. The 30 dB NLR *suggestion*, not requirement, has absolutely nothing to do with residential construction in 70 – 75 dB DNL noise contours as stated by Mr. Baldwin. Again, the problem is created when an engineer untrained as a lawyer renders legal opinions. We were provided a copy of Mr. Baldwin's August 5, 2007 letter before the City Commission meeting on August 13, 2007. Therefore, we reasonably assumed that Mr. Blackburn also had a copy of this letter prior to the meeting. Hence the reason for our surprise at the City Commission meeting on August 13th when he stated there was a question of the legality of building residences in a 65 dB DNL noise contour and then stating again on August 23rd that he has been advised by your office that it is illegal to create new residential land uses in 65 dB DNL noise contours.

Notwithstanding the afore-stated, we understand Mr. Ron Carpenter acting on behalf of EGDP met with Ms. Nicole Smith of your office on August 20th, whereupon she represented your office has concluded building residences in a 65 db DNL is legal, but permitting

Marion Radson
August 24, 2007
Page 5

residential land use in this zone is a decision for the City Commission and that it would not be illegal for the City Commission to allow new residential land use in 65 dB DNL noise contours. If this is not accurate, please advise our office immediately. Further, please advise Mr. Blackburn of your office's determination so we can get past this issue.

Another red herring that keeps being circulated relates to the FAA funding issue. We have reviewed Mr. Penksa's e-mail dated April 3, 2007 to Rebecca Henry, the Program Manager of Planning and Compliance with the FAA Airports District Office in Orlando and her response by letter dated April 9, 2007. Based upon the rather one-sided nature of Mr. Penksa's e-mail, we can appreciate her response citing concerns she would have over future funding issues if residential development is constructed in a 65 dB DNL noise contour. While not specifically set forth by Ms. Henry, you are certainly aware the FAA has no control over local land use issues. The U.S. Supreme Court case of *City of Euclid v. Amber Realty* dated 1926 stands for the proposition that zoning ordinances are part of a state's police powers and those of its political subdivision. Ms. Shelley addresses this issue in more detail in her legal brief and it does not bear repeating here. However, since Mr. Penksa raised this issue, we were forced to take this issue to Rusty Chapman, Manager of the Airports Division, FAA Southern Region in Atlanta, who is Ms. Henry's supervisor, and provided him with a more balanced rendition of the facts and circumstances regarding these issues. He responded by e-mail on August 10, 2007 by stating federal funding for the Gainesville Regional Airport would NOT be in jeopardy with regard to any future airport improvements to which it would be deemed eligible. The only qualifying statement in Mr. Chapman's e-mail is any residential development built within the preexisting 65 dB DNL noise contour after FAA approval of a Part 150 noise program would not be eligible for federal funding to buy it out in the future (i.e., FAA funds would not be available to retrofit such new homes for 25 dB NLR or to acquire an aviation easement from such homeowners. Such a condition could never arise and is a factual impossibility anyway if the City's Appendix F is complied with, as EGDP must do.) This qualification is not of concern since EGDP has offered (conditionally, assuming other development conditions are agreed to by the City and EGDP) to build to a 25 NLR standard for its residential construction on the entire property, provide notices to potential purchasers of residences, and provide the airport with an aviation easement consistent with the City's Appendix F. This proposal by EGDP goes far beyond the legal requirements of the City's Appendix F. These circumstances are clearly different from where an airport expands its runways, thus placing the various noise zones in closer proximity to existing residential units. This scenario seems highly unlikely since the departure end of Runway 29 is already abutting Waldo Road. There can be no future expansion in a westerly direction, unless Waldo Road is closed down or rerouted, which seems highly unlikely. In any event, the location of the 65 dB DNL noise contour is irrelevant and a

Marion Radson
August 24, 2007
Page 6

major distraction if conditions are agreed to which results in EGDP providing 25 dB NLR and an avigation easement for all residential development on the entire site.

When Mr. Penksa was told of the response from the FAA at the August 23rd meeting, he stated if the FAA wants to "wimp" out, then so be it and that Mr. Penska could not force the FAA to withhold funding. Mr. Penksa then went on to say that he supposed this was good news, if it is indeed the case. The attitude that is being displayed over this issue by the airport's CEO is shocking.

We understand you have arranged a call with Rebecca Henry of the FAA's Orlando office for September 5th. We strongly urge you to either include Mr. Chapman, her superior in Atlanta, in this conversation, or have a separate conversation with him. We also formally request to be included in that conference call since it was our firm that took the initiative to make sure this issue was properly and thoroughly addressed. In this way, you can be better assured that the information you receive will not be biased. Obviously the answers you get depend on the questions you ask. This is why stating the exact fact pattern in this case is essential to receiving accurate responses from the FAA. To this end, we believe it would be ill-advised to permit a member any special interest group such as AOPA from participating in this call and turning the call into a political circus.

Another legal opinion Mr. Penksa is espousing is that the City is creating the legal issues similar to those Naples experienced. Mr. Penksa repeatedly refers to the case of *Naples Airport Authority v. FAA*, 409 F. 3d 431 (U.S. App. D.C. 2005) in support of his position that lawsuits will abound if such a zoning change is allowed. We understand Mr. Penksa's passion for referencing this case as a sword to stop this development. However, like Mr. Baldwin, Mr. Penksa is not a trained legal professional and his interpretation of the case and its holding is extremely flawed. We ask you to review this case and advise Mr. Penksa to refrain from any further misstatements that are not consistent with your office's interpretation.

Although we can't immediately redirect Mr. Penksa's blitzkrieg attack upon EGDP, we are hopeful you will in the future direct him to act with caution and in a more prudent and responsible manner. Should he continue to proceed with all reckless abandon, quite possibly outside the scope of his employment, it fails to serve the Airport Authority, the City Commission and the taxpayers of the City of Gainesville. We do not in any way discourage honest and responsible debate and welcome community concerns. EGDP has attempted on numerous occasions to talk with and meet with Airport Authority board members and its CEO in an attempt to work together to formulate a reasonable solution to any legitimate concerns they may have. Since an agreement has not been possible, EGDP has offered, conditioned on

Marion Radson
August 24, 2007
Page 7

all other development conditions being agreed to with the City, to go far beyond the City's legal requirements as they exist in its Appendix F.

Yesterday, EGDP learned of a new delay tactic being pursued by Mr. Penksa and endorsed by Mr. Blackburn which could easily delay this project for another 18 months. Mr. Penksa informed Mr. Blackburn, Mr. Bredfeldt, and Mr. Simensky that the airport is initiating a new Part 150 Study. The airport is so eager to pursue this tactic that it is proceeding without FAA funds in place with hopes to be reimbursed by the FAA in the future. It is unclear why it would not be sufficient to file with the FAA the noise study that was just completed and adopted by the airport board on June 22, 2006 (if it has not been filed to date) to stay current with the FAA for noise abatement funding eligibility regarding preexisting homes – a matter which is completely irrelevant to EGDP. Mr. McEachern, at last night's airport board meeting, indicated that EGDP's land use amendment application has created a sense of urgency to conduct a new Part 150 study, which he said they had wanted to do for a number of years. Much more importantly, any Part 150 study is irrelevant to the approval process of EGDP's land use application. Such a study's purpose is to determine exact areas that qualify for the FAA to consider funding noise abatement remodeling of preexisting homes, purchase of preexisting homes, or purchase of aviation easements from preexisting homeowners.

Besides this effort being a complete squandering of resources by the airport authority and perhaps in breach of the airport board's fiduciary duties, tying EGDP's land use amendment approval process to a lengthy and completely irrelevant Part 150 study would have the direct effect of preventing this land use amendment application from having a fair opportunity to be heard by the decision makers. There should be a desire to be good neighbors by listening to the legitimate concerns raised by each and finding real world solutions. No legitimate purpose can come from unreasonableness that creates a wedge between the parties which can lead to unfortunate consequences which serves the interests of none.

We would appreciate a response to the issues raised in this letter as soon as practicable and are available at your convenience to discuss any aspect of this letter in greater detail.

Very truly yours,

HOUCK ANDERSON, PA

Mark A. Schneider

Marion Radson
August 24, 2007
Page 8

MAS/cc

cc: Mayor Pegeen Hanrahan (Via e-mail)
Commissioner Ed Braddy (Via e-mail)
Commissioner Rick Bryant (Via e-mail)
Commissioner Jack Donovan (Via e-mail)
Commissioner Scherwin Henry (Via e-mail)
Commissioner Craig Lowe (Via e-mail)
Commissioner Jeanna Mastrodicasa (Via e-mail)
City Manager Russ Blackburn (Via e-mail)
Community Development Head Erik Bredfeldt (Via e-mail)