

County of Santa Clara
Airport Land Use Commission

Wednesday, May 23, 2007
Minutes

Regular Meeting

1. Call to Order/ Roll Call.

The regular meeting of the Airport Land Use Commission is called to order by Chairperson Sturdivant at 6:03 p.m. in Room 157, County Government Center, 70 West Hedding Street, San Jose. A quorum is present.

Members Present:

Robert Sturdivant
E. Ronald Blake
Ralph Britton
Arthur Knopf
Jack Morton
Ira Spector (Alternate for
Commissioner Barbara Spector)
Walter Windus

Ex-Officio Members Present:

Cary Greene
Carl Honaker

At the request of the Chairperson, Alternate Commissioner Spector introduces himself and states that he has been a pilot and aircraft owner for approximately 35 years and has been flying aircraft for 47 years. He notes that he operates his aircraft primarily from San Jose International Airport and that he is pleased to serve on the Commission.

2. Public Presentations

There are no public presentations.

3. Consider Presentation by Office of the Clerk of the Board of Supervisors relating to various Commission processes and procedures.

Chairperson Sturdivant advises that this item will be held to the June workshop meeting of the ALUC.

4. **Approve minutes of March 28, 2007.**

Commissioner Blake notes that page 8, Item 13, the third paragraph should be amended to read "...and utilize the former FMC property. He further advises that this topic will be discussed in more detail at the meeting of the San Jose Airport Commission on April 2, 2007 at 6:00 p.m. at the City Airport Offices, 1732 North First Street, San Jose."

Commissioner Blake reports that page 7, the first paragraph should be amended to read "...substantially toward the centerline of the runway...".

On motion of Commissioner Windus, seconded by Commissioner Britton, it is ordered on a vote of 5 to 0, with Alternate Commissioner Spector abstaining and Commissioner Morton absent, that the minutes of March 28, 2007 be approved, as amended.

5. **Review recent meeting with City of San Jose Planning Department.**

Commissioner Windus informs the Commission that he attended a follow-up meeting with Stan Ketchum, City of San Jose Planning Department; Mark Connolly, County of Santa Clara Planning Department; and Chairperson Sturdivant. He reports that all outstanding issues relating to the revised Comprehensive Land Use Plan (CLUP) for Reid-Hillview Airport (RHV) were discussed, and he expresses the opinion that the ALUC is very close to gaining the agreement of the City of San Jose on the CLUP. Commissioner Windus continues by providing an overview of the change to the proposed safety zone, noting that its length has been reduced to the length of the current safety zone, and it has been widened to include the Arcadia property. He further states that the language in the CLUP has been amended to reflect this change. He concludes by reporting that with this change, the City of San Jose is now in agreement with the boundaries of the safety zone.

Chairperson Sturdivant provides a brief overview of the referral zone for mandatory referrals to the ALUC. Mr. Connolly states that he and Mr. Ketchum are working to define a discretionary threshold for referrals to the ALUC and notes that the Commission would be unable to review every building permit application in the City of San Jose and a threshold is needed for various types of permits. Lizanne Reynolds, County Counsel,

advises that the City of San Jose (City) has reduced the number of voluntary referrals they send to the ALUC, and she inquires if the City is agreeing to other types of referrals beyond requests for amendments to the General Plan. Commissioner Windus states that the City is not agreeing to specific types of voluntary referrals and is instead agreeing with ALUC policies in the CLUP that the City will apply when issuing permits for development projects.

(Commissioner Morton arrives at 6:15 p.m.)

Commissioner Windus clarifies that the City is agreeing to require avigation easements for some types of development, such as a second living unit on a residential property within the Airport Influence Area (AIA). Commissioners discuss alternatives for establishing criteria to identify projects requiring avigation easements and the process for issuing avigation easements. Staff verify that the County can assist with processing the paperwork for avigation easements from the City. Ms Reynolds explains that RHV will likely use the same process that San Jose International Airport (SJI) currently uses, providing the resident with a template to complete that includes contact information. Commissioner Windus inquires about the time it takes to obtain an avigation easement, and Ex-Officio Member Greene responds that it takes approximately two weeks, if the applicant provides all necessary information immediately.

6. Review status and updates of the Reid–Hillview Airport draft Comprehensive Land Use Plan.

Commissioner Windus reports that there have been a number of minor changes to the draft revised CLUP since the last time it was distributed to the Commissioners. He notes that Mr. Ketchum recommended an outreach program to allow the general public to be informed about and review the CLUP. He advises that outreach has been ongoing and that he plans to attend several meetings of "Strong Neighborhood" associations in the vicinity of RHV to provide information about the CLUP. Commissioner Windus continues by stating that it would also be desirable to reach the commercial developer population and that the CLUP has little impact on residential or rental property owners because it only impacts new development.

Ms Reynolds advises that a public hearing regarding changes to the planning boundaries will need to be scheduled, pursuant to Section 21675 (c) of the Public Utilities Code. Commissioner Windus states that the AIA boundaries will not change as a result of the revised CLUP, and Ms Reynolds clarifies that the change to 500 feet above ground level (agl) from the former height restriction of 250 feet agl is technically a change in the AIA because incorporating it into the CLUP makes it an ALUC referral boundary. Commissioners and staff discuss county-wide ALUC policies or a county-wide CLUP as opposed to a self-contained CLUP for each Airport. Commissioner Britton expresses the opinion that a county-wide policy is needed relating to the height restriction that specifically references that the ALUC utilizes the current version of the Federal Aviation Regulations (FAR) Part 77 maps.

Mr. Connolly reports that the Environmental Initial Study (EIS) is nearly complete and that there are a few minor issues remaining to resolve. He notes that the issues that have already been resolved include the shape for the General Plan map, which is now included in the EIS, the aviation easement issue with the City of San Jose, and the modified safety zone with the turning protection zones included in the discussion of acreage. He continues by advising that the changes to the CLUP have also been included in the EIS, and that a vacant land survey will be included as an appendix. He states that the EIS will be published as a mitigated negative declaration for 20 days for public comment and is expected to be complete and ready for approval by the ALUC at the July meeting.

Mr. Connolly emphasizes that the CLUP can only be amended once per year and suggests that the Commission note any minor revisions needed. There is general consensus that this will be agendaized for the June workshop meeting of the ALUC. At the request of the Commissioners, Ms Reynolds agrees to provide wording for incorporating by text the current FAR Part 77 maps as part of the CLUP.

Alternate Commissioner Spector distributes a copy of a Federal Aviation Administration (FAA) document from FAA Order 7200.2f relating to the 500 feet agl height restriction. He

notes that the document contains a diagram which clearly demonstrates the height restriction, and he suggests that it be included in the CLUP. Ms Reynolds suggests that any document that is too specific should not be included in the CLUP and should be referenced in the text of the CLUP instead, because the CLUP can only be amended once per year and specific documents may change frequently. Commissioners discuss the document.

Chairperson Sturdivant requests an overview of the workshop relating to land use planning that took place at the University of California, Davis on April 19, 2007. Mr. Connolly states that he attended the workshop, which was hosted by ESA Airports, a consulting firm, and that this was the first such workshop ever scheduled. He advises the Commission that the ALUC is more advanced than many jurisdictions and that many Airport Land Use Commissions in California are only meeting once or twice per year. He further reports that topics covered in the workshop included defining an Airport Land Use Commission, preparing a CLUP, defining a Community Noise Equivalent Level (CNEL) contour, Airport Master Plans, and Airport Operations. Mr. Connolly continues by explaining that he provided information at the workshop relating to the override process. He states that it would be beneficial if future workshops included two tracks to incorporate a more advanced implementation session. He emphasizes that the workshop was general and addressed the different formats that a CLUP can have under State law. He concludes by highlighting a court case in Solano County in which the AIA was declared to be the entire County. Ms Reynolds states that this case will be heard in the State Supreme Court. Chairperson Sturdivant inquires if the outcome of the case will affect the ALUC, and Ms Reynolds responds that the ruling in the case will affect the California Environmental Quality Act (CEQA) and will not affect the ALUC directly.

7. Accept verbal minor project referral report.

Mr. Connolly advises that there was one minor project referral received regarding a request for a special permit to construct a second living unit approximately 100 feet from the main housing unit on the property, which resulted in the issuance of an avigation easement. He further reports that referrals to the ALUC will be submitted for two subdivisions, one of which is located in an airport safety zone. He informs the ALUC that the applicant is proposing to construct homes very near one edge of the property and to declare

approximately 80 percent of the property to be a no-build zone.

On Commission consensus, it is ordered that the verbal report relating to minor project referrals be accepted.

8. **Consider/approve comments to be forwarded to the Federal Aviation Administration and the City of San Jose, regarding the consistency of the proposed project with "Land Use Plan for Areas Surrounding Santa Clara County Airports" (City file number H06-082 at 1 South Market Street, APN: 008-05-005).**

Mr. Connolly reports that the FAA is completing a height study on the proposed project, and that the ALUC has an opportunity to forward comments relating to the consistency of the proposed project with the CLUP. Ms Reynolds inquires if the proposed project has been referred to the ALUC as a voluntary referral, and Mr. Connolly responds that he received a postcard notifying the Planning Department of the FAA study and then contacted the City of San Jose to obtain additional information. He informs the Commission that the FAA has issued a Presumed Hazard Determination (PH) on the proposed project, pending further study, and that the City referred the project to the ALUC late in the process.

Ms Reynolds informs the Commission that it may take two actions, to determine consistency with the CLUP and to provide comments to the FAA. Alternate Commissioner Spector inquires if an automatic referral to the ALUC results when a PH is issued, and Ms Reynolds responds that an automatic referral does not result because of the type of permit requested. She notes that the proposed project can be referred to the ALUC voluntarily.

Commissioner Windus states that the current CLUP contains an outdated FAR Part 77 map, and the proposed project may not be inconsistent with the CLUP even though it violates current FAR Part 77 height restrictions. Commissioners discuss the former height restrictions as included in the CLUP and the new height restrictions in FAR Part 77. There is general consensus that the proposed project violates the height restrictions of both the CLUP and the current FAR Part 77 map. Ex-Officio Commissioner Greene advises that the City of San Jose staff recommendation is that the ALUC not approve the proposed project at the proposed height of 338 feet above mean sea level (msl). He notes that the proposed

project is a residential tower that would be located on the edge of the CNEL noise contour. He further reports that a previous proposed project on the same site received a No Hazard Determination from the FAA; however, the project was not constructed and the No Hazard Determination expired.

Commissioner Morton inquires about the effect of a finding of inconsistency by the ALUC, and Ms Reynolds responds that the proposed project is a voluntary referral and so there is no legal requirement regardless of the determination made by the ALUC.

On motion of Commissioner Morton, seconded by Commissioner Britton, it is unanimously ordered that the ALUC finds the proposed project inconsistent with the CLUP because it exceeds the height restrictions of FAR Part 77 as included in the CLUP, and while the ALUC recognizes that the map included in the CLUP is outdated, the proposed project also exceeds the current FAR Part 77 restrictions.

It is further ordered that the ALUC recognizes the One Engine Inoperative Surfaces Study that is currently being conducted by the City of San Jose.

9. **Discuss/adopt Federal Aviation Regulation (FAR) Part 77 map for San Jose International Airport.**

Ms Reynolds informs the Commission that the FAR Part 77 map can be incorporated into the CLUP for San Jose International Airport in one of several ways. She recommends that the Commission incorporate the current map by reference in the text, so that when the map is updated the CLUP will not need to be amended to reflect the current information.

10. **Accept Staff Reports**

a. **Airport Planner, San Jose International Airport**

Ex-Officio Commissioner Greene states that there are several proposed projects for high rise buildings in downtown San Jose, and he distributes copies of a list of proposed projects that have been submitted to the FAA from January 2007 to May 2007. He provides an overview of the report and states that SJI has submitted comments to the FAA and that the comment period is still open.

Mr. Connolly notes that the proposed projects listed in the report are for types of permits that are not usually referred to the ALUC. Commissioners and staff discuss requesting voluntary referrals from the City of San Jose, sending comments to the FAA about the proposed projects, and the process for doing so.

Chairperson Sturdivant inquires about the effect these projects may have on approaches to SJI. Ex-Officio Commissioner Greene responds that the FAA considers violation of FAR Part 77 surfaces to be an indicator of the need for further review, and that if the Terminal Procedures (Terps) surfaces are not violated the FAA will tend to issue a No Hazard Determination. Ex-Officio Commissioner Greene clarifies that none of the proposed projects violate the Terps surfaces other than the standard departure Terps surfaces, which the FAA does not usually consider. He notes that the proposed projects fall within the ALUC referral zone and have been referred to the FAA. Commissioners and staff discuss the process for receiving notification of such proposed projects and alternatives for obtaining information, such as the FAA website.

Commissioner Morton inquires as to the benefits of formally responding to the City of San Jose with a letter outlining the major concerns of the ALUC. Commissioner Windus expresses the opinion that the primary issue is that the ALUC has adopted the FAR Part 77 height restriction surfaces as its limit, and the City of San Jose prefers to use FAA No Hazard Determinations as its limit. Commissioner Britton states that the ALUC adopted the FAR Part 77 surfaces because it is also concerned with noise and other issues. He notes that the City of San Jose overrides some ALUC determinations of inconsistency. He additionally expresses the hope that when the City of San Jose completes the current study, both the ALUC and the City will be able to adopt the City's recommendation of using One Engine Inoperative (OEI) surfaces as the limit.

Commissioner Morton inquires about the process for commenting or expressing concern and the benefits of establishing a consistent record of objecting to proposed projects that violate the FAR Part 77 surfaces. Chairperson Sturdivant suggests that this report of proposed projects submitted to the FAA be distributed at each regular meeting and listed on the agenda so that action can be taken, if desired. Ex-Officio Commissioner Greene advises that a letter to the FAA expressing concern over violation of the FAR Part 77 surfaces will have no significance to the FAA, and Ex-Officio Commissioner Honaker adds that it may be more effective to comment to the City of San Jose regarding concerns, regardless of whether the City has submitted a referral to the ALUC for the proposed project.

b. **Director of County Airports**

Ex-Officio Commissioner Honaker states that contractors for the noise and flight track monitoring system have been screened and he expects that a contractor will be selected and construction of the system will begin in the late Summer. He reports that the City of San Jose is deferring the Evergreen-East Hills Specific Plan so that it can be added to the City's General Plan review. He further advises that the San Jose City Council approved a motion by Council Member Cortese that no residential development be permitted in this area until the adjacent property zoned as industrial has been developed as industrial. Ex-Officio Commissioner Honaker expresses the opinion that the effect of this will be that there will not be any new development on these properties for at least the next five years. He summarizes the concerns with the proposed development, including quality of life and the traffic impact of 4,700 to 5,700 new homes being constructed in this area.

On Commission consensus, it is ordered that the reports be accepted.

11. **Accept Chairperson's verbal report.**

There is no report.

12. **Announcements/ Correspondence**

- a. Chairperson Sturdivant announces that Commissioners may order business cards if they desire.
- b. Chairperson Sturdivant directs attention to the revised Boards and Commissions Handbook, and copies are distributed to Commissioners who did not receive a copy last month.
- c. Mr. Connolly states that two additional items will be agendized for the June ALUC workshop, including the current FAA study and the final revisions to the CLUP. He agrees to distribute copies of the draft revised CLUP, Environmental Initial Study, and maps on disc to the Commissioners.
- d. Commissioner Morton inquires when the Palo Alto Airport (PAO) CLUP will be updated, and Commissioner Windus responds that this will take place after the PAO Master Plan is completed. Commissioner Windus estimates that the PAO CLUP will be updated towards the end of 2008.

13. **Adjournment**

On order of the Chairperson, there being no objection, the meeting is adjourned at 8:00 p.m. to the next workshop session on June 27, 2007 at 6:00 p.m. in Room 157, County Government Center, 70 West Hedding Street, San Jose.

Respectfully submitted,

JoLene Mittelsteadt
Deputy Clerk