



Minutes Tempe Aviation Commission December 9, 2008

Minutes of the Tempe Aviation Commission meeting held on December 9, 2008, 6:30 p.m., at the Public Works Conference Room, Garden Level, City Hall Complex, 31 E. Fifth Street, Tempe, Arizona.

(MEMBERS) Present:

Tara Ellman
Gary Goren
William Justus
Gloria Regensberg
Barbara Sherman
Connie Thompson (per conference call)
Alyson Star
David Swanson (Vice Chair)
Duane Washkowiak (Chair)

(MEMBERS) Absent:

Sally Clements (Excused)
Curtis Ritland
Edwin R. Wiggington (Excused)

City Staff Present:

Charlotte Benson, Senior Assistant
City Attorney
Gerald Koziol, Senior Plan Check
Engineer
Oddvar Tveit, Environmental Quality
Specialist

Meeting convened at 6:30 p.m.

Duane called the meeting to order and asked the members to introduce themselves.

Agenda Item 1 – Public Appearances

There were no public appearances.

Agenda Item 2 – Consideration of Meeting Minutes (November 12, 2008)

With suggestions for a change on page 2 and corrections on page 3 and 4, the draft November 12th, 2008 meeting minutes were unanimously approved as amended.

Agenda Item 3 – Updates From Staff

PAUWG November 20th, 2008 Meeting

The PHX TRACON had submitted the first drafts for new RNAV departure procedures to AVN for approval and publication in 2009. The drafts have been developed with assistance from Southwest and US Airways that did the flight simulator testing of the new procedures, which are designed to keep planes within alignments of the classic instrument departure procedures in use today. Inquiry as to the possibility for PAUWG members to see the drafts with reference to the settlement agreement with Tempe in 2004 (0501-04), was answered by the PAUWG chair who pointed to FAA policy of not releasing procedure drafts to the public considering the

potential of AVN making changes to what had been proposed locally by the PHX TRACON. The work of Congressman Harry Mitchell to get a list of projects that can be started within 60 days as part of a stimulus packager was also mentioned and discussed among the members.

Council Transportation Committee meeting November 20th 2008

A status report was given at the meeting on the QED study and the potential future use of QED recommendations when the airport is ready to initiate a new Part 150 update. The members had already agreed that the chair or vice chair would be representing TAVCO at the committee meetings. The members expressed the need to work to get priority and money to airport related initiatives that could benefit Tempe.

Noise Sensitivity Map

The map layers requested had been received and a map was developed by ITD.

Follow Up:

The members would be notified when the map is forwarded to the Mayor.

The members also addressed a map giving updated information on completed sound mitigation projects and projects under construction in Tempe. The map was provided by one of the members. Arguments were made as to the need for citizens that would like to participate in the Phoenix Residential Sound Mitigation Services program to declare their interest now before new and presumably shrinking noise contours are developed and approved in a future update of Part 150 study. This brought about a discussion of why residents in eligible homes decide not to participate in the program.

Agenda Item 4 – Candidates for Officers Positions

The members agreed to nominate Gloria Regensberg for the Chair position and David Swanson for the Vice Chair position.

Agenda Item 5 – National law on aviation noise, and how it affects citizens

Charlotte gave the members a handout giving a legislative history of aircraft noise. In chronological order she addressed aviation legislation under US Code Title 49, and a case from US Supreme Court (411 US. 624) was included to show how federal law and the authority to regulate interstate commerce preempted a local airport curfew ordinance to reduce nighttime noise. Aviation noise in the context of unconstitutional taking of private property was also addressed with reference to US Supreme Court ruling from 1946. In a 5:4 split decision the Court found that the nuisance caused by frequent, low flying military aircraft would prevent the owner from using the land as a chicken farm. The need to make distinctions between situations where monetary compensation lawsuits are filed over aircraft noise are presented as nuisance claims, and when aircraft over private property is presented as takings were explained.

Charlotte also talked about how the statutes empowered the FAA to carry out provisions, e.g. CFR 14 FAR Part 150 about noise compatibility planning came about because of the Aviation Safety and Noise Abatement Act of 1979. The Airport Noise and Capacity Act of 1990 restricted the airport proprietors in limiting or banning operations based on aircraft certifications (Stage 2 restrictions). The way FAA issues orders and advisories were briefly mentioned. The members were told that statutes dealing with aircraft noise lacked citizen suit provisions found in federal environmental statues like the Clean Water Act or the Clean Air Act. State laws and local regulations are also preempted by federal law. This makes it difficult for citizens and local governments to deal with airport noise issues. Airport proprietors can only take actions on noise that do not impact interstate commerce and can get federal approval. Legal challenges based on local concerns over aircraft noise typically come when the federal actions needs to be environmentally assessed through the NEPA process.

The presentation ended with questions and answers on legal options for citizens as property owners and limitations that existed for the City after the IGA with Phoenix in 1994.

Gerald talked about how the city was preparing for implementation of the international energy efficiency code and what upgrades single family homes receive that participate in the airport's noise mitigation program. New ways of doing enforcement by Phoenix of the international code was explained.

Agenda Item 6 – Commissioners' Business (topics for future discussion)

The following items were suggested:

1. Discuss a draft letter to Congressman Harry Mitchell about the need to make insulation projects eligible for economic stimulus monies.
2. Invite PHX to talk about the Residential Sound Mitigation Services program and the prospect of making a last push to include any remaining, eligible properties in Tempe.

A member's letter to Mayor and Council that emphasized the importance of maintaining the aviation coordinator staff position through economic difficult times for the City was distributed. A second letter to the Mayor and Council thanking them for hiring a noise consultant was also distributed.

Agenda Item 7 – Schedule Next TAVCO Meeting

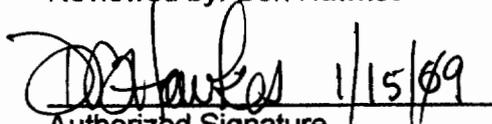
The next meeting was scheduled to January 13, 2008.

Agenda Item 8 – Adjournment

The meeting was adjourned at 8:15 p.m.

Prepared by: Oddvar Tveit

Reviewed by: Don Hawkes


Authorized Signature
Water Utilities Department Manager