

## Solano County Airport Land Use Commission



# SOLANO COUNTY

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Bruce DuClair  
Vice-Chairman

### MINUTES OF THE SOLANO COUNTY AIRPORT LAND USE COMMISSION MEETING OF MARCH 10, 2016

The meeting of the Solano County Airport Land Use Commission was held in the Solano County Administration Center, Board of Supervisors Chambers (1<sup>st</sup> floor), 675 Texas Street, Fairfield, CA 94533

MEMBERS PRESENT: Commissioners Baldwin, Vancil, Randall, Sagun, and Chairman DuClair

MEMBERS ABSENT: Commissioners Cavanagh, Baumler, and Meyer

OTHERS PRESENT: Jim Leland, Resource Management; Lee Axelrad, County Counsel; Kristine Letterman, Resource Management

#### Call to Order & Roll Call

Vice-Chairman DuClair called the meeting to order at 7:00 p.m. Roll call was taken and a quorum was present.

#### Approval of the Agenda

The agenda was approved as prepared.

#### Approval of the Minutes

The minutes of the meeting of January 14, 2016 were approved as written.

#### Reports from Commissioners and/or Staff

Commissioner Vancil took this opportunity to introduce Ross Sagun as the newest member of the commission representing District 2. Commissioner Vancil noted that he and Ross have a work history as they are both United Airlines pilots. In addition to being a pilot, Ross is a former air traffic controller and was a tower controller at the Concord Airport. Ross has also done a lot of aviation safety work with the Labor Union. The commissioners welcomed Ross to the commission.

#### Items from the Public

There was no one from the public wishing to speak.

#### Old Business

There was no old business to discuss.

#### New Business

Commissioner Vancil stated that he intends to recuse himself from agenda item no. 1 due to a conflict of interest, but in doing so, that would leave the commission without a quorum to discuss the item.

Lee Axelrad, deputy county counsel, stated that after conferring with planning staff, it is recommended that the commission change the sequence of the agenda to hear item no. 2 first to allow time for Commissioner Baumler to arrive.

2. **Workshop** to consider a Preliminary Consistency Determination for the proposed Mount Calvary Baptist Church Campus (ALUC-16-02) with the Travis Air Force Base Land Use Compatibility Plan (City of Suisun City)

Jim Leland gave a brief introduction to the staff report. The Mount Calvary Baptist Church (MCBC) is proposing to develop a multi-purpose campus on Peterson Road, east of Walters Road in the City of Suisun City. The project includes the construction of a sanctuary, education center and a senior affordable housing project as well as a business center, a family life center, and a conference and banquet center. The project is located within the Area of Influence of the Travis Plan. MCBC is in the preliminary stages of planning for their project and the design of the project raises some policy questions which require an interpretation by the ALUC of certain provisions of the Travis Plan. Staff has recommended this workshop as a means of presenting the policy questions to the commission and recommends that the commission provide direction to staff and the city on the policy questions raised by this workshop.

Commissioner Sagun spoke with regard to the Sunday school. He asked if the reason for the density restriction is based on a safety concern due to the potential that a more serious incident could occur at a higher density. Mr. Leland explained the purpose of the intensity limitations, noting that the limit is set at 75 persons per acre indoors.

Commissioner Sagun wanted to know how subject material being promulgated in the school relates to the concern for limiting the potential impact of an occurrence. Mr. Leland stated that the plan lays out intensity limitations that apply to non-residential uses. Independent of that, specific land uses are discouraged or prohibited, one of them being a children's school regardless of intensity. That is one question staff is asking the commission to provide feedback on, based on the plan's own definition of a children's school, is a Sunday school within that definition. Staff has taken the approach that the definition seems to imply it is talking about public education or its equivalent.

Commissioner Sagun addressed the senior living facility and the characterization that it is similar to an independent living facility. He wanted to know if it was taken into consideration that there will be a banquet room that holds 250 persons and wanted to know how that density issue will be accommodated.

Mr. Leland explained that when addressing residential uses, the limitation of the plan is based on dwelling units per acre not people. The limitation for residential is 11 units per acre and the project meets that limitation. Mr. Leland stated that this is one of those prohibited use questions because separate from the residential density limitation is the consideration that assisted care facilities not be located where it is difficult for residents to get out in case of an emergency. Mr. Leland explained that this is not assisted care, it is age restricted senior housing and that is why it is being brought before the commission. Mr. Leland said staff believes it should be treated as market rate housing because it is independent living.

Vice-Chairman DuClair wanted to know the minimum age that will be accepted with regard to the senior affordable housing. He also commented on the maximum number of class attendees where it is indicated the range will be between 5 and 20 youths per class and stated that he personally did not believe that the maximum would be met each time. Commissioner Randall agreed that he also believed class attendance would fluctuate.

Commissioner Vancil commended the church on what he believed to be an outstanding project. He said that a lot of vision has gone into the planning and it is potentially a great proposal for the City of Suisun. Mr. Vancil stated that the project site is near what he would call the industrial part of the base and Petersen Road is used by the trucks entering that area. It is also the section of the base where the aero ports are located. He said planes sometimes have hazardous cargo and park on the section of the base which will be close to the project area. Commissioner Vancil believed that some of the property actually has a hazardous and explosive easement across it and wanted to make sure that is examined. He noticed from the design of the project that the senior area will be located closest to the base, the truck traffic, and the potentially hazardous material. He wanted to know how large the banquet facility will be and how often it will be used. With regard to the school and the issue of senior housing, Mr. Vancil wanted to make sure that there is a process to know what the limitations are so after the site is built, any expansion will not go beyond the intent of what was originally approved.

Mr. Leland commented that the county has had experience in the past with local agencies changing the rules after action has been taken on a project. It occurred to staff that the commission might want to consider some accommodation such as the requirement of an avigation easement on the property which could set forth the limitations of the proposal. That is a way for the commission to have its own control on the property and not be reliant on entitlements that may be issued or modified over time by another agency. He noted that the commission could always re-negotiate with the property owner at a future date.

Vice-Chairman DuClair encouraged staff to include language in the project conditions to discourage after the fact modifications, making the church aware that they are going to be restricted and would have to come back before the commission for any proposed revision.

Commissioner Vancil commented that historically the commission has looked primarily at noise abatement and height obstruction as criteria. He said this project is located within a zone where this type of construction is permitted. However it is not far from the Travis airfield and there will be noise in the area. Mr. Vancil noted that the air force does fly on Sunday mornings and Wednesday evenings and he wanted to reiterate the importance that everyone is aware of this activity. He voiced his appreciation of staff holding this workshop before bringing the project before the commission for action.

Commissioner Sagun inquired about height restrictions and asked if the TERPS criteria used for the building site itself was reviewed. Mr. Leland stated that staff has not looked at that criteria at this stage. He did not believe any of the airspace protections are going to be a factor, but said there will be a full analysis if there is indication on the part of the commission that they are open to the approach that staff is recommending. Mr. Leland commented that he did not believe height will be an issue.

Vice-Chairman DuClair opened the floor for comments.

Paul Junker spoke on behalf of the City of Suisun. He said the church has more than a 50 year history within the city and within the community, and Suisun finds this proposal very exciting. Mr. Junker commented that the staff report was adequate and well informative. He shared with the commission their thought process on how they reached their conclusion with regard to the intensity analysis. He said this project is at the preliminary stage and the design is subject to refinement. They anticipate working closely with ALUC staff and the applicant. Mr. Junker addressed the issue of school density stating that this is an education center and has a range of services that will be offered; everything from Sunday school to counseling. It is not a traditional school in the sense that the classrooms will be full of children for long periods of time. Mr. Junker said that there is a large use on Sunday but beyond that the combination of staff and students within this facility is relatively

low. The applicant's estimates are probably on the high side, but they did not want to underestimate the activities.

Mr. Junker said if this project moves forward the property will be annexed into the City of Suisun. When that occurs, they anticipate a road that would be more substantial than the current Petersen Road. It would consist of two travel lanes, a stacking lane for trucks, a center lane that would function as a turn lane, and if necessary acceleration and deceleration lanes. He said they would ensure that whatever the configuration it would be safe and they would recognize the truck traffic that occurs at the base. With regard to the hazardous easement that was discussed earlier, there was a lot line adjustment that was accomplished before the property was purchased and it excluded all of those lands that are within the explosion hazard easement. The senior housing is relatively close to the industrial activities at the base as currently planned, but it may be as further study occurs that uses will shift on the property. There will to be an environmental analysis and a CEQA review, and so conditions can be imposed by the city and mitigation measures incorporated in the environmental document.

Commissioner Sagun spoke with a regard to the MCBC occupancy analysis matrix. He wanted to know the rationale for using the total area in the calculations when the concentration of occupants will only inhabit approximately 1.84 acres of the site. Mr. Junker stated that the concentration of people would be within the sanctuary. The 60 acre site was looked at as a whole which they believed was a seemingly simple way to estimate. Mr. Junker said if the commission did not see this as the right methodology then they would like to discuss it further.

Commissioner Sagun agreed with Commissioner Vancil and his comments about the project as a whole, but he was trying to understand the calculation and how it relates to the density limit. He said it appears the overriding concern is the higher concentration of occupants in a specific space can present a safety risk in the event of an aviation incident. He commented that there is a difference if the maximum occupancy of 4,000 is spread across 16 acres or set in the sanctuary building. He wanted to know staff's rationale for using the total area of space vs. the building itself.

Mr. Junker explained that the rationale is people would be arriving, parking, or involved in some outdoor activities as well as indoor activities would be occurring and the approach was to look at that area dedicated in total to the sanctuary.

Dr. Claybon Lea, Jr., Mt Calvary Baptist Church, 1735 Enterprise Drive, Fairfield, provided a photo presentation of the church as it currently operates. He spoke to the church's mission, their vision and values, where they are and where they are going. He spoke to the issue of the children's school and the senior center. The Sunday school covers Christian education training for children, for youth, and for adults. It is not a formal or private school or a charter school with traditional subjects, hours and things of that nature. At their current facility they have 40 classrooms and those classrooms are being maximized. That is the reason they anticipate the need for more classrooms. Their largest day for the entire church for worship and education classes will be on Sunday, but will be within a restricted timeframe. During the week there will not be anywhere near the numbers of people that would be seen on a Sunday morning. There will not be the volume of traffic coming in or out of the church campus or that sort of occupancy level during the course of the week. Because the activities are spread out during the week there will be a very low population at any given time that will be in those particular facilities.

Dr. Claybon spoke with regard to the senior center. He said the center will be for those persons 55 years of age and older and is intended for those who are independent. He said they have had an excellent working relationship with Travis AFB throughout their entire existence. He said they are aware of the decibel levels and of the potential for loud airplane noise and this is something that is being considered as they attempt to move forward. He stated that the plans contained in the staff

report are their visionary concepts and the positioning of the buildings on the campus are not yet settled. He said they would adhere to any of the recommendations by the commission and consider them as they lay the final plotting of the property to ensure the best and safest usage of those buildings and the occupants.

Commissioner Vancil felt this to be a very visionary project while reaching out to meet the needs in the community of all ages. He thanked the applicant for their time. He said that he would like to see the dialogue continue between the parties involved to make the best project possible.

Vice-Chairman DuClair asked for clarification with regard to the hours of the Sunday services. Dr. Claybon noted that there are currently 4 services, each approximately 90 minutes. He commented that one of the reasons they are looking to move forward is so they can reduce the number of services and still keep the time conscientiousness.

It was agreed upon by the commission that they were comfortable with the presentation and information provided and have no further questions or comments. It was stated that the commission looks forward to seeing the project come before them as it moves through the process.

1. Conduct a public hearing to consider the consistency of ALUC-2016-01 (**Verizon**) with the Nut Tree Airport and the Travis AFB Land Use Compatibility Plans. Sponsor: City of Vacaville

Commissioner Vancil stated that after conferring with county counsel, what he thought was potentially a conflict of interest will not be and so he will remain on the dais to hear the next item.

Jim Leland gave a brief presentation of staff's written report. The City of Vacaville is in the process of reviewing a conditional use permit to permit the construction of a new major telecommunication facility adjacent to an existing church located at 66 Vine Street. The proposed facility would include an 80 ft. monopine structure with nine panel antennas, and an approximately 1,130 sq. ft. equipment enclosure. The project site is located within Zone D of the Travis Plan. The project site is also located in Zones F of the Nut Tree Plan at an elevation of 278 ft. above mean sea level. (AMSL). Zone F allows a maximum height limit of 263 ft. AMSL, except that properties with an elevation exceeding the height limit shall be allowed a maximum height limit of not less than 35 ft. above the ground level. The applicant is requesting an exception to the maximum 35 ft. height limit to allow the construction of a major telecommunication facility with a maximum height limit of 80 ft. above ground level.

Mr. Leland said that based on the analysis, staff recommends the commission determine that a height exception is not justified because development of the property has already occurred negating any argument that the property cannot be reasonably developed, and further determine that the application is inconsistent with the Nut Tree Plan and consistent with the Travis Plan.

Commissioner Vancil wanted to know how far into the Part 77 airspace the antenna protrudes. Mr. Leland responded that it would be 91 feet. He also noted that the FAA issued a No Hazard Determination on the project. Mr. Leland explained that the finding the commission will have to struggle with is the concern of what constitutes a Taking of property rights. He said the focus is not on the issue of safety.

Vice-Chairman DuClair opened the public hearing.

Albert Enault, City of Vacaville, appeared before the commission. He stated that the city is looking for a determination of consistency or inconsistency from the ALUC on how the city should be moving forward with this project. He said the applicant looked to the FAA for a determination as to whether or not this was going to create a hazard for the Nut Tree Airport. The FAA issued a No

Hazard Determination as long as the applicant accommodates the beacon lighting on the top of the monopine. The applicant recognizes the county's staff report and had comments about how better the project could be utilized or designed to reduce any concerns about the 80 foot height limit.

Commissioner Sagun inquired if an antenna penetrates the Part 77 floor, and in light of the fact that the FAA has given a No Hazard Determination, has there been consideration given on the potential for future lost economic revenue for the airport when presumably in the future newer technology could allow a lower visibility and lower minimums approach than currently exists. He said as avionics and technology improve, other benefits could be gained by lowering existing minimums. He said he would not like to see the commission potentially approve a project that penetrates that Part 77 floor which precludes the use of future technology to increase the efficacy of the Nut Tree Airport and the economic benefits for the city and the county. He asked if city staff has looked at that balance.

Mr. Enault stated that unfortunately is not something they have examined and believed the reason is because they do not know what those potential future technologies could be. He said they are not aware of any additional technologies that could potentially lower possible flight or aviation paths in that vicinity that would allow the limitation to be lowered. Mr. Enault said in the event that those newer technologies come into play, possibly a review of the compatibility plans would be conducted in which it would evaluate the surrounding areas and take into consideration those structures that do puncture or penetrate the surface area.

Vice-Chairman DuClair wanted to know if the frequency that Verizon will be transmitting will interfere with ground to aircraft communications. Mr. Enault said that he did not know the answer to that question and would rely on the determination from the FAA and representatives from Verizon.

The representative from Verizon, Jenny Blocker spoke on behalf of the company. She gave a quick overview of the facility by way of PowerPoint presentation. She noted that the project will be located 1.2 miles from the runway and that there are some existing tall tree covers. She discussed the significant benefits this facility will have for the residents, businesses, and tourists in the area. Ms. Blocker brought copies of the FAA letter citing No Hazard Determination and passed them out to the commission. Ms. Blocker stated that the site has been designed to be compliant with the City of Vacaville and stated that Verizon is willing to compromise on the height and willing to decrease the overall height of the facility by 15 feet. She addressed the specific language found in the Nut Tree Plan that staff is relying on.

Commissioner Vancil inquired if alternate sites were looked at. Ms. Blocker said they looked at a total of 7 sites, this one being optimal for Verizon's purpose to close the significant gap in coverage, as well as being the least intrusive. She explained that the reason it was most optimal is because they would like to get the most height possible. The alternative sites they looked at offered lower elevations and were not feasible.

Commissioner Vancil commented about the FAA Notice. He said that the division of the FAA that reviews telecommunication towers is primarily concerned with in-route navigation and are not as concerned with the local procedures at airports. In this particular case it looks like they did some evaluation on the arrival and departure routes, but he was not sure they actually looked at the approaches. The FAA relies heavily on local agencies to monitor approaches and obstacles close to airfields and so the division that administers the No Hazard Determination focuses primarily on in-route navigation.

Ms. Blocker pointed out that no objections were presented to the FAA during the public comment period for this project.

Commissioner Randall said that he shared the concerns that were voiced by Commissioner Sagun with regard to new technologies in the future and the limited ability to change the site to accommodate those changes in the future.

Ms. Blocker stated that she was not sure how frequent it would be that things would change that would require a decrease in height of a facility, but Verizon would not be opposed to a condition of approval that the city would require the facility be re-evaluated by the FAA in the event that technology changes. Ms. Blocker commented that they want to operate a safe facility and are willing to work with the commission and the city. She stated that they are happy to lower the tower by 15 feet should that be requested by the commission.

Vice-Chairman DuClair asked if consideration was made to removing the crown over the antenna to help reduce the height. Ms. Blocker stated that they would be willing to compromise on the stealth nature of the facility and would be more than willing to eliminate the aesthetic crown. She said if they were to keep the antennas at the height they desire and remove the crown, it would decrease the site by 7 feet; lowering it to the compromising position with the elimination of the crown would reduce the overall height considerably.

Mr. Leland explained that the City of Vacaville has slightly different regulations embedded in their development code than in the county's Nut Tree Plan. He said that sometimes there is reference made to 35 feet as allowed which is the city's regulation, not county policy. The argument being offered is they are a new user of the property and they want the commission to consider whether they are unreasonably restricted, not taking into account that the property has been utilized already. Mr. Leland stated that under that kind of a precedent, any number of tenants can come forward on property already utilized. The staff argument is that the plan says the property, not the specific tenant or use or building, cannot reasonably be utilized and staff believe the property has been utilized. The commission has several choices, but even if the commission were to say they are finding this inconsistent, the city has a process where they can override the commission and go through a statutory process where they can list reasons to make the findings which are different findings from what the commission may decide. Mr. Leland stated that he believed the city then takes the liability for the decision they make.

Commissioner Sagun provided a scenario where the structure is approved by the commission and a 54 foot centerline antenna is erected on the property with known penetrations of the Part 77. He wanted to know what would then happen if a ham radio operator for example decides they would like to put up a 54 foot antenna tower on their property. He inquired if ham antenna would be given the same consideration as the Verizon commercial antenna from a perspective of approval by the county and the city.

Lee Axelrad, deputy county counsel, stated that this is the same issue staff would be concerned with. If the county starts making decisions that a subset of a property is what they are going to think of as the property, then it will always be possible for someone to say they are being prevented from making reasonable utilization of the square footage, and a precedent for disapproving projects that exceed the height limitation would be set. Mr. Axelrad stated that if this project were denied, the only way the exception could be shown would be an analysis submitted by the city showing there is nothing else that this property could be used for. Even if it were applied to this smaller area of the overall parcel, it is hard to imagine how that could be demonstrated. Staff is finding it difficult to see how this can fit within an exception available under the plan.

Since there were no further speakers, Vice-Chairman DuClair closed the public hearing.

Commissioner Vancil noted that the commission has before them a draft resolution which would find this project consistent with the Travis Plan but inconsistent with the Nut Tree Plan. He stated

that it appears there is potential for modifications to the proposal. He said he understands time is money, but perhaps there is some avenue to look at alternative sites or alternate designs and bring it back before the commission to reconsider after allowing county and city staff to time to confer.

Commissioner Sagun wanted to know if the 60-day clock for processing this application would then be reset if the item is continued.

Mr. Axelrad explained that the application is considered submitted and so the 60-day clock is already running. If the commission would like to continue the item and act at a later time within those 60 days they could, but if the city did not waive the time limit the clock could not be reset. He said in this situation the way the scenario is customarily handled is the commission would make a determination of inconsistency, make a determination that the exception does not apply, adopt a resolution to that effect and the resolution would be transmitted to the City of Vacaville. He stated that the city code provides language on this subject and the city would be responsible to inform the applicant whether or not it applies in this situation. If the applicant is able to lower the antenna to 35 feet above ground level or move it to another location, the city decision makers can decide that the identified concerns have been satisfied. Mr. Axelrad stated that would be the usual way to go about this rather than bring it back before the ALUC at a future time.

Mr. Enault reappeared before the commission. He stated that the application was submitted to the County on February 12, 2016. He said the City of Vacaville is looking for a determination from the ALUC and if that determination comes in the form of a modification to the project in which it could be determined to be consistent, that is something their code identifies provisions for in moving this forward. He noted that if a determination cannot be made at this time and postponement is necessary, it is something that is also accommodated in the city code and they would be looking for that determination within the timelines allotted. Mr. Enault noted that in this case it would not be a modification but a brand new facility so he did not believe the 60-day timeline is referred to in this particular project. In the event the ALUC finds the project to be inconsistent with the Nut Tree Plan, there are provisions within the city's code on how to move forward with that determination.

Mr. Axelrad wanted to clarify that nothing he said previously should be interpreted as binding the City of Vacaville to proceed with the application in one way or another based on the action the commission takes this evening.

Vice-Chairman DuClair said that he would like to approve the project but with the condition as presented in staff's report.

Mr. Axelrad said the question is whether or not the commission can make the finding that the property can be reasonably utilized without this project. That question needs to be answered to the commission's satisfaction first and if the determination is made that the property can be reasonably utilized, in order to approve the project the commission would have to find conclusively that the property cannot be reasonably utilized without violating the height limit. He said the commission is not being asked by the city to approve the project, but whether an exception to the height limit can be given. He said the Nut Tree LUCP indicates that this is a fair question to ask and the exception can only be granted if the commission cannot make that finding because given the fact the property is already developed it cannot be shown that it cannot be reasonably utilized.

Ms. Blocker pointed out that the specific language says that it cannot be conclusively shown that the property cannot be reasonably utilized without violating the standard. It does not say that simply because the property has been developed that the property cannot be reasonably utilized. She said this facility itself cannot function at 35 feet which is why she supplied the propagation models, but it can function and be utilized at a lesser height than originally proposed. Ms. Blocker said that simply because there is a church there she did not believe the language of that provision prevents another



use on the property. She did not feel that it precludes a secondary use and there is no specific language that talks about primary use or anything of that nature. Ms. Blocker emphasized that this Verizon facility will be a great benefit to the community and that it would warrant an exception.

Mr. Axelrad said that it is his belief and interpretation of the rule that it is referring to a so called Takings standard, but the essential rule regarding Takings is that a regulator can regulate land and diminish its use or set a low level of use to the point where the property is deprived of all reasonable use. At that point the regulation of what you can do on the land is essentially taking the land from the owner because they cannot do anything on it. In both the Nut Tree Plan and the Vacaville City Code there is a standard that essentially says in different words if you apply this strict rule to that piece of land in a way that wipes out its value, that is Taking and even though this rule about the height limit is on the books we have to allow something to happen there because that is what the US Constitution says and the Constitution trumps the rules of the city and the commission. So when this rule inside the Nut Tree Plan uses the language, it is his belief that it is invoking a Taking standard. Similarly there is comparable language in the Vacaville City Code to the same effect and that standard would be if you can do something productive on the property for value, a Taking will not have occurred even if the application of the regulation prevents you from doing something additional on another square foot of the property. Mr. Axelrad said that in his opinion, with respect, the applicant's proposed interpretation is incorrect.

Commissioner Baldwin stated that he did not believe this is a Taking because there is an approved use on the property and this would be a secondary use.

A motion was made by Commissioner Vancil and seconded by Commissioner Baldwin that the commission finds and determines that the Project is consistent with the provisions of the Travis Air Force Base Land Use Compatibility Plan and inconsistent with the Nut Tree Airport Land Use Compatibility Plan. The inconsistency with the Nut Tree Airport Land Use Compatibility Plan is based on the Commission's finding that:

*The project site is located in Zone F of the Nut Tree Airport Land Use Compatibility Plan; in Zone F the maximum height limit is 263 feet above sea level, except that properties with a ground elevation exceeding the height limit are allowed a maximum height limit of 35 feet above ground level under the Vacaville Code; the height of the proposed project exceeds the maximum height limit of 263 feet above sea level; the height of the proposed project exceeds the maximum height limit of 35 feet above ground level; because the property is already developed with an existing church, it cannot be conclusively shown that the property cannot be reasonably utilized without violating the Nut Tree plan's standards; therefore, an exception to the height limits is not available to the proposed project in this circumstance.*

The motion passed unanimously. (Resolution No. 16-01)

### Adjournment

Since there was no further business, the meeting was adjourned.