

Solano County Airport Land Use Commission



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COUNTY**

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**MINUTES OF THE  
SOLANO COUNTY AIRPORT LAND USE COMMISSION  
MEETING OF JANUARY 10, 2019**

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.

**MEMBERS PRESENT:** Commissioners Baldwin, Vancil, DuClair, Meyer, Sagun, Seiden, Cook, and Chairman Randall

**MEMBERS ABSENT:** Commissioner Cavanagh

**OTHERS PRESENT:** Jim Leland, Resource Management; Lee Axelrad, Deputy County Counsel; Kristine Sowards, Resource Management

**Call to Order & Roll Call**

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

**Approval of the Agenda**

Lee Axelrad noted that the Closed Session listed last on the agenda is no longer needed. The agenda was unanimously approved with the removal of the closed session.

**Approval of the Minutes**

The minutes of the meeting of December 13, 2018 were approved with a correction to note that Commissioner Cook was present at the meeting.

**Reports from Commissioners and/or Staff**

Commissioner Vancil announced that Gary Gottschall, 60<sup>th</sup> Operations Group Deputy Commander at Travis Air Force Base is finishing his time at Travis and will be moving on to continue his work with the Air Force in Montgomery Alabama. Mr. Vancil stated that Gary has been a tremendous help to the commission for numerous years and was key in helping to update the Travis Land Use Compatibility Plan. Mr. Vancil stated that he wanted to publicly thank Gary for all the service he has provided to the commission and to wish him a fond farewell. Although Mr. Gottschall was not present in the audience, there was a round of applause.

**Items from the Public**

There was no one from the public wishing to speak.

**Consent Calendar**

Chairman Randall opened the public hearing for public comment. Since there was no one from the public wishing to speak on the consent calendar, the public hearing was closed.

1. Public hearing to consider a Consistency Determination (ALUC-18-12) for the proposed Suisun Valley Museum Ordinance (ZT-17-02) with the Travis Air Force Base Land Use Compatibility Plan. (Sponsor: County of Solano)

A motion was made by Commissioner Meyer and seconded by Commissioner DuClair to approve the consent calendar. The motion passed unanimously. (Resolution No. 18-12)

### Old Business

There was no old business to discuss.

### New Business

Public Hearing to consider potential revisions to the Public Hearing Procedures.

Lee Axelrad, deputy county counsel, made note of the brief conversation that took place at the last commission meeting in response to a topic raised by Commissioner Sagun. The topic raised was the issue of what the hearing procedures and policies of the commission are and should be concerning one-on-one briefings by applicants to the commission, also referred to as ex parte contacts. Mr. Axelrad described this event to be when an individual has a project that will be coming before the commission for an approval and prior to the hearing on the matter, that individual may ask one or more commissioners to meet with them separately, in a setting that is other than the full commission in the formal hearing process.

Mr. Axelrad stated that while this question was raised at the last meeting, the commission could not address the matter because it was not an agenda item. He noted that the idea tonight is to have some discussion but to take no action. Staff will listen to any concerns or views expressed by commissioners individually and then attempt to craft something that reflects what was expressed to be brought back at the next regular meeting.

Mr. Axelrad stated that the general question is what the rule of the commission is concerning whether individual commissioners can meet privately with individuals who are applying to the commission for approval and what would be the commission's preference. He explained that since ALUC commissioners are public government officials, the public at large cannot be prohibited from seeking to speak to an individual member of the commission. Mr. Axelrad stated that this is also an area within which the commission can exercise some preference.

Mr. Axelrad stated that if this activity does occur and if a commissioner does have an ex parte contact on something such as a permit application or similar approval, that commissioner would have an obligation to share any substantive information that they acquired with the entire commission when the hearing on that matter comes before them. He noted that anyone who may be concerned with a land use proposal has a right to know what each of the commission members are taking into consideration, and therefore the information received concerning the project must be made public to allow that person the opportunity to either agree or disagree.

Commissioner Sagun stated that he became concerned about this issue when he received a request from a party that wanted to brief him on something that will possibly come before the commission in the future. He said that person prefaced the request by stating that they were going to do the project anyway, but just in case they wanted to invite him to a briefing. Commissioner Sagun stated that this approach did not sit well with him. He said the idea of these ex parte meetings seem to him to violate the spirit and intent of what the commission is trying to accomplish. He said that he agreed commissioners are public officials and there is nothing that prevents the public from requesting to meet individually, but it seems when a party, especially one that is requesting or will request in the future a determination of land use compatibility where there is going to be a vote, when they start to appear to peel the commission off individually to try and convince

them that the compatibility is there when the commission has not yet made that determination as a group just did not seem appropriate to him.

Commissioner Sagun questioned what the value is of this process to the commission and to the public who are not privy to the discussion. He felt it could be a better process if the proponent would instead take the time to make their presentation to the entire commission. That would give the public who may be in attendance and the commission as a group an opportunity to question the presenter on the specifics of the item. He said that process would be much more fulfilling of the commission's mission than to receive individual briefings.

Commissioner Sagun commented that he is aware of past ex parte meetings that have occurred with individual commissioners and he did not recall receiving a detailed briefing on any of those meetings. The public would also not be privy to something that may have come up at one of those ex parte meetings which may be a project detail that may affect them personally. Mr. Sagun believed that there could also be some significant legal implications for future litigation that may or may not be known at the time of the briefing about the person that is being briefed, as well as the person providing the briefing or possibly others that are not at the briefing but are affected by the project.

Commissioner Sagun made a motion requesting staff draft a recommendation for a future meeting that embodies the following: 1) as a matter of policy, the commission strongly discourages ex parte briefings, especially from applicants seeking a determination of land use compatibility; 2) ex parte briefings should be made known to the commission prior to their occurrence; and 3) if an ex parte briefing is attended by a commission member, that commission member should thoroughly brief the entire commission in detail on the information shared at the next meeting or as soon as possible thereafter.

Mr. Axelrad added for clarification that if the commission were to direct staff to come back with a resolution covering this topic, staff may have additional language to incorporate as well. Mr. Axelrad said that it is his understanding that the motion made by Commissioner Sagun is not to approve that specific language but to direct staff to come back with appropriate language.

Commissioner Sagun agreed, stating that he was not trying to pin down the exact language, but he did hope that if this moves forward the language that comes forth would at least embody these concepts.

Commissioner DuClair spoke about the time he was approached by several residents who were concerned about a project taking place within the City of Vacaville. The residents were opposed to communication towers that were being located up on a hillside and were concerned that the view from their homes would be impacted. Commissioner DuClair said he recommended those folks contact the City of Vacaville to voice their concerns. The residents were upset that he was not able to provide them with any answers. Commissioner DuClair stated that he did not bring this to the attention of the commission because at that time it was a City of Vacaville matter.

Commissioner Seiden stated that he believes strongly in having trust in one another and in believing in the integrity in one another. He said through the years he has served on the commission it has been an ongoing precedent for commissioners to be approachable by the public. He stated that he did not have any concerns about his own personal integrity nor any of the other commissioners in meeting with someone if the purpose of that meeting is to become better informed.

Commissioner Seiden stated that he too was invited to the same meeting that Commissioner Sagun spoke of and he did meet with the individual. He said he has no objection with reporting back to the commission if that is an appropriate procedure for the commission. Mr. Seiden stated that he believes knowledge is power and in the instance of the commission, that power is the ability to make a more informed vote. He stated that the commissioners do not have to allow themselves to be placed in a position of being inappropriately persuaded for anything. As far as giving notice prior to an ex parte briefing, he was not aware of anything that would require such notice and said that he would not be inclined to be in favor of that.

Commissioner Meyer commented that her thought is that there is information that could possibly be gleaned from such ex parte meetings, where in the public meeting setting it may be more difficult to get into the nuts and the bolts of a project if there were in fact any. She said there is a lot of generic information that comes before the commission and something that would get into a lot of detail and require investigation by both staff and the commission, she thought might take something more than the public forum can present. Commissioner Meyer said she would like to see that if a commissioner did meet with an individual that the information be shared, possibly through email, to other commissioners in a timely manner. She said there are people with different expertise in different areas that maybe someone would glean something from by discussing something more in detail that others might be able to point to or that was possibly not previously thought of. She commented that this is the very point of having a commission made up of various people with expertise in aviation.

Commissioner Vancil commented that in the past the commission has encountered issues that are somewhat controversial, and the applicant would approach the commissioners individually. He said if the commission establishes a policy discouraging that, one thing he could see happening is it might force the applicant to deal more with the staff between meetings. And by doing that, by closing the communication and the ability for the individual to talk to the commissioners directly, the commission would be doing their information gleaning strictly at the public meetings. Commissioner Vancil said he did feel there is some value to be gained from engaging applicants if they want to engage the commission. Mr. Vancil said that the commissioners also have the right if they decide they do not want to engage with someone. He believed that the commissioners are astute enough to know that an applicant is trying to sell their position, but they may have some valuable information to share.

Commissioner Vancil did think that Commissioner Sagun's efforts have highlighted some of the concerns that the commission might have if deciding to meet applicants and the potential for future litigation. He said that this highlights some of the risks the commissioners take in meeting with applicants individually. At the same time, he stated that the commissioners are public officials and they need to be at least somewhat available to the public to hear not only from an applicant, but from someone who may be opposed to a project as well. Commissioner Vancil stated that there is at least one occasion he recalls where there were several people opposed to an application who began calling commissioners. Commissioner Vancil stated that for the most part he is not in favor of following this avenue but noted that he is approaching it with an open mind. He said some of the risks the commissioners face in these one-on-one meetings have been highlighted and he appreciated Commissioner Sagun for bringing it up.

Mr. Leland stated that staff will come back with something that reflects the discussion amongst the commission and will provide some options. He said he wanted the commission to understand that the commission operates in a state that have principles embodied in law like transparency and accountability and are not written to impugn the integrity of any individual commissioner. The state values that public officials disclose to the public when they are hearing a matter, how they have

been involved in the item, and if they meet with the developer. He said the commission has an obligation to report who they have met with, identify the person or persons, and what was talked about. Mr. Leland spoke to his own personal experience as an elected official commenting that it can be uncomfortable at times, but it is generally easily handled by declaring the meeting took place and where, identifying the person or persons, and being open to answering any questions about the specific matter. Mr. Leland commented it is a process in this state the commission must go through because the legislature and the voters have mandated a Brown Act and other such acts that address such issues.

Mr. Leland stated what the commissioners do not want to do is communicate with one another outside the hearing on the item because that evokes a Brown Act violation that someone could litigate over. The only discussion the commission would have with each other about visits or information they obtained would be at the hearing at the time the proponent came forward with their application, which could either be immediately or months later.

Commissioner Meyer inquired about what some of the foreseeable legal issues are and what commissioners should be wary of. Mr. Leland stated that the person wanting to meet with commissioners are going to try and sell them on something, either their opposition or support of the project. They may say things such as they have talked with other commissioners who support the application. They are now engaging the commissioner in a serial deliberation outside of an agenda meeting because the commissioner is being traded information about what another voting member has said. Mr. Leland stated that some people will try to influence the commissioners in those kinds of ways which perhaps is a violation. This is the potential litigation that can arise, and if the opposition becomes aware of such things, they can charge that the hearing was unfair. Mr. Leland said there are several areas where commissioners can unknowingly get into trouble because of what is being said by another party.

Mr. Axelrad pointed out one of the underlying dynamics of a meeting of that nature is a commissioner in that setting are still bound by some degree of formal rules. It may be a friendly casual sounding conversation but there are some things a commissioner can and cannot do. The applicant in that setting does not abide by those same rules, and so it requires some diligence on the part of the commissioner to be attentive to such guidelines. Mr. Axelrad referred to a statement made earlier by one of the commissioners concerning whether it is required that commissioners provide notice to the commission prior to having an ex parte contact. He stated that background law does not require that. There is a right of the individual citizen to contact a commissioner and the commissioner has a right to speak with that individual citizen.

Mr. Axelrad explained that the restraint that the law places on these ex parte contacts is focused on situations where someone has a project or plan approval that is coming in front of the commission where it is their project or their plan. That is a different situation than when a commission is formulating their own plan. When a commission is formulating their own plan, they are acting like legislators and therefore in that setting they can gather all matter of relevant information from all types of sources. He noted that this is probably why one would see, for example, members of the Board of Supervisors attending meetings regarding the general plan update where they travel to various public meetings to gather input.

Mr. Axelrad stated that it is a different situation when someone is coming to the commission for approval on a plan or project of their own because at that point a commissioner is acting more like a judge than a legislator. Mr. Axelrad said it is quasi-adjudicatory and in that setting the commissioner would need to have information upon which a decision is being made available to the project opponent as well as a project proponent. Mr. Axelrad noted that this does not affect every area of

the commission's activities, but it does on these types of things where the commission is going to hear approvals on a proposal.

Commissioner Cook stated that she is more in allegiance with Commissioner Sagun because she believed there is a high risk that the applicant is not going to be consistent in what they say, and other commissioners meeting with these individuals' one-on-one may not be getting the same information. She commented that as much as one would try to debrief the rest of the commission after the fact, it may be difficult because everyone may not receive the same information. Commissioner Cook said when commissioners are in the position of having to decide on a project she felt it to be in the commission's best interest and a better course to follow to receive the same presentation in the public setting.

Commissioner Seiden stated that he would credit the commission with understanding the idea that anyone who wants to meet with individual commissioners want to try to persuade them one way or another. Mr. Seiden stated that in his own personal instance he does not share his opinions with these individuals, he just acknowledges their information and thanks them for providing the material and sharing their perspective. He said that this is a hard and fast rule for him whether he likes or dislikes a project. Mr. Seiden stated that he believes it is good for a commissioner to be more informed. He stated that the commission have necessary rules to follow. He commented that he has in the past voted in favor of a project that he strongly disagreed with, because the project met the letter of the law. He stated if it meets the letter of the law then the commission is obligated to vote in favor.

Commissioner Sagun stated that in no way was he impugning the integrity of this commission or others to come, but he could not say that for everyone that could potentially approach a commissioner trying to lobby for or against a project. He questioned what the value is in an individual commissioner being briefed on something than being briefed in front of the full commission where commissioners can ask questions and be provided the same information. He stated that he has heard a lot of concern amongst the group about the specific language in his motion. He noted that he was trying to focus on those things that would come before a vote and not individual projects that the commission are trying development. He suggested that perhaps the motion should be amended to request staff to come back with what they think might be a good solution to this problem now that they have heard input from other commissioners.

Commissioner Vancil stated that in hearing both the pros and cons, he can see some benefit to both. He suggested one solution may be to consider adding something to the commission's bylaws that would provide guidelines to recommend any commissioner who meets with an individual party should notify the commission that the meeting took place and any substantial information shared. He stated that this may be a potential solution and a way to handle this so that the commission still have some freedom to choose who they meet and talk with, but also have guidelines that advise the public that individual meetings will be reported to the full commission.

Commissioner Randall stated that as an advisory group, he believed transparency is very important. He believed the commission should hear all sides of the story. He said when staff bring a project forward they provide as much information as possible to help the commission make their determination. He stated that knowledge is important and commented that the more he knows about a project allows him to ask the proper questions. Commissioner Randall stated that he too has met with individuals in the past and much of the time those individuals just want to know what pleases the commission. They want to know if their project is presentable. He stated his answer is always that the project must meet the regulations. Commissioner Randall stated that through talking to those individuals and knowing their questions and what they are desiring, a commissioner could

put together an idea of what they are trying to accomplish. Mr. Randall stated that these individuals are not the enemy, they are just trying to make something happen, they have already invested time and money in these projects and want to see them through. Commissioner Randall commented that this is the reason sometimes subcommittees are formed so that information can be gathered and brought back to the commission. If commissioners can ask questions and are able to put an end to a meeting when desired, he did not oppose the idea.

Commissioner Sagun stated that since there are concerns amongst the commission on both sides and staff has brought up issues both pro and con, he amended his motion to table his previous motion and made a motion to request that staff come back with some suggested language that embody the commission's concerns as a group as discussed and bring it back before the commission at the next regular meeting.

Mr. Axelrad said staff could bring back some of these issues that have been raised in a more systematic and comprehensive fashion in addition to consideration of guidelines or other requirements.

Mr. Leland clarified his interpretation of how he understands staff's task under the amended motion: Staff will come back and present an array of options that embody within them all the comments from every commissioner, regardless of which perspective they held, and to also bring back some options on an implementation process such as a change to the bylaws, a policy determination by the commission, or a legal opinion from county counsel. Mr. Leland said staff would like to be able to have the freedom to explore the way it is implemented as well as the options for policy implementation.

Commissioner Seiden commented that the county provides training sessions regarding the Brown Act and stated that this is something that would be helpful to include in those training sessions.

Commissioner Sagun amended his motion which was seconded by Commissioner DuClair to table the prior motion and substitute the action to direct staff to come back with suggested approaches as specified by Mr. Leland. The motion passed unanimously.

#### Closed Session

This item was removed from the Agenda.

#### Adjournment

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