

May 30, 2019

Rezoning Section
City of Tucson
Public Works Buildings – 201 North Stone Avenue
Tucson, AZ. 85701

RE: Kino Area Plan Amendment, Northwest Corner of East Valencia Road and South Campbell Avenue, Received May 14, 2019

To Whom It May Concern,

Thank you for the opportunity to comment on the Kino Area Plan Amendment. This is an application for a Plan Amendment of an approximately 33 acre site which is located northwest of the intersection of East Valencia Road and South Campbell Avenue. Presently the Kino Area Plan promotes policies to develop this particular property into industrial types of uses. The representative of the property owner, for this Plan Amendment request, has expressed interest in ultimately rezoning this property to single family residential, multi-family residential, commercial, and office uses. The property owner needs to have the Kino Area Plan amended to allow for the residential uses at this location before proceeding with the rezoning application.

This site is within the Tucson International Airport aviation easement requirements and public disclosure area, City of Tucson Airport Environs Height Zones, City of Tucson Airport Hazard District, FAA traffic pattern airspace, and FAA Part 77 airspace.

The Kino Area Plan promotes policies to develop this particular property into industrial related uses since industrial uses are described as having long-term compatibility with airports. Residential related uses are not a preferred use since this property is located in close proximity to Tucson International Airport (this property is located approximately 150 feet north of Tucson International Airport). Individuals within these residential uses have a greater likelihood to be subjected to elevated aircraft noise, fumes, and other impacts from aircraft operations and other activities at Tucson International Airport through being in close proximity to the airport. There is the potential for residential uses to be determined to be incompatible with Tucson International Airport in the future due to increases in noise contours (increases to day night average sound level [DNL] to a level of 65 DNL or greater) through changes in the aircraft fleet mix, changes to FAA arrival and departure procedures, and increased aircraft operations at Tucson International Airport. Industrial related uses are compatible with all of the potential impacts which would be negative for a residential related use on this property. The proposed plan amendment is not recommended since there are many potential impacts to residential related uses, as described earlier, which would need to be mitigated.

The Tucson Airport Authority will not oppose the subject request contingent upon the inclusion of the following conditions of approval in any City approval of the Kino Area Plan amendment and the rezoning application that may follow. The Tucson Airport Authority reserves the right to request additional conditions of approval during the subsequent rezoning process if the proposed Kino Area Plan Amendment is approved.

Conditions of approval:

1. "Prior to the City's approval of this Plan Amendment request, the property owner/developer/applicant shall record the TAA approved form Avigation Easement which discloses the existence, and operational characteristics of the Tucson International Airport to future owners or tenants of the property and further conveys the right to the public to lawfully use the airspace above the property. The Avigation Easement shall be recorded in a manner with the Pima County recorder which shall document it as having title liability. The content of such documents shall be according to the form and instructions provided.

The current property owner/developer/applicant or other person authorized to sign on behalf of the current property owner shall complete, sign, and record the Avigation Easement with the Pima County Recorder's Office. Once the Avigation Easement is recorded send a complete copy of the recorded easement document, which contains all pages which were recorded, to Tucson Airport Authority by either email (send to srobidou@flytucson.com) or to the mailing address provided below.

Scott Robidoux
Senior Airport Planner
Tucson Airport Authority
7250 South Tucson Boulevard
Suite 300
Tucson, AZ 85756"

2. "According to the Federal Aviation Administration (FAA) Notice Criteria Tool, this project area is located in proximity to a navigation facility and could impact navigation signal reception. As the project site develops every project applicant for development of any portion of the subject property shall file FAA Form 7460 with the FAA at least 45 days before construction activities begin for every proposed project unless FAA staff, with the Obstruction Evaluation / Airport Airspace Analysis (OE/AAA), provides the project applicant with written communication that filing FAA Form 7460 is not required. It is highly recommended that the applicant file earlier than 45 days to provide the applicant with sufficient time to respond to any concerns which are identified by the FAA. Any cranes which are used must also be identified with Form 7460. Please file Form 7460 at <https://oeaaa.faa.gov/oeaaa/external/portal.jsp>"
3. "Applicable to residential uses only
 - a. The developer shall provide the Airport Disclosure Statement form, at time of sale, to the new property owners with all new unit purchases. In the event the development of any residential uses does not involve the sale of new units, but is instead offering rental residential units to the public, the new tenant of the rental unit shall be provided a copy of the Airport Disclosure Statement form. The intent of the Airport Disclosure Statement form is to educate and notify the new residents that they are living near an airport. The content of such documents shall be according to the form and instructions provided.

The property owner (for itself or its tenants) shall forward a signed copy of the Airport Disclosure Statement form to the Tucson Airport Authority within ten (10) days of signature, using the mailing address provided below.

Scott Robidoux
Senior Airport Planner
Tucson Airport Authority
7250 South Tucson Boulevard
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- b. Noise attenuation features shall be included in all residential uses to reduce interior noise levels to a level not to exceed a day night average sound level (DNL) of 45 decibels (dB).”
4. “Development of the subject property shall not cause or potentially affect aviation in the vicinity of the site, determined in the reasonable judgment of the Tucson Airport Authority, including but not limited to, physical obstructions to aircraft operations, interference with operations by way of electrical static, visual obstructions through emissions or glare, and/or the open storage of petroleum products, explosive materials, or materials which attract or lead to the concentration of wildlife.”
5. “The developer shall form a Home Owner Association (HOA) and shall include and enforce the following (or language closely resembling below, subject to TAA and City of Tucson review) in their adopted Covenants, Conditions, and Restrictions (CC&Rs).
 - a. All residential uses which are subsequently reconstructed, repaired, replaced, modified, or expanded shall include noise attenuation features to reduce interior noise levels to a level not to exceed a day night average sound level (DNL) of 45 decibels (dB).
 - b. All owners, tenants, residents and any other user of the residential property subject to these CC&Rs specifically acknowledge and agree that any and all aircraft operations, noise, emissions or other impacts from airport related activities in proximity to the [Property subject to the CC&Rs, however defined] are not a violation of the resident’s, user’s, owner’s or tenant’s quiet enjoyment of the [Property subject to the CC&Rs] and are not a nuisance, nor are they a reasonable and acceptable subject of a noise complaint by any owner or tenant under these CC&Rs. Any airport operation noise complaint filed by an owner, tenant, resident or other user of the [Property] shall be denied as in violation of this provision. Repeated complaints in violation of this provision will make the owner, tenant, resident, or other user of the [Property] subject to any and all applicable enforcement provisions under these CC&Rs.”

Please do not hesitate to contact me if you have any questions or concerns regarding this comment letter. I can be reached by email at srobidoux@flytucson.com or by telephone at 520-573-4811.

Respectfully,



Scott Robidoux,
Senior Airport Planner

cc MS
file

DECLARATION OF AVIGATION EASEMENT

THIS DECLARATION OF AVIGATION EASEMENT ("Declaration"), is made this _____ day of _____, 20__ by _____, a(n) _____ ("Declarant").

A. Declarant is the sole record owner in fee simple of certain real property (the "Property") located in Pima County, Arizona which is more particularly described in Exhibit "A" attached hereto; and

B. The Property is located in the proximity of Tucson International Airport (as it now exists or may hereafter be enlarged and/or developed, the "Airport"); and

C. The Property is now and in the future will be subject to noise and other effects emanating from aircraft operating at or departing from or arriving at the Airport, and changes in airport layout or operating procedures could result in increased noise influences.

NOW THEREFORE, for good and sufficient consideration, the receipt and adequacy of which Declarant hereby acknowledges, Declarant hereby covenants and declares that all of the Property shall be held, sold, used and conveyed subject to the following avigation easement, which shall run with the Property and be binding on all occupants thereof and on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, grantees, invitees and tenants.

DECLARANT HEREBY DECLARES, ESTABLISHES, GRANTS AND CONVEYS to the Tucson Airport Authority, the City of Tucson and all persons lawfully using the Airport ("Benefited Parties") the right to operate aircraft in and the right to cause in the airspace above or near the Property such noise, vibrations, fumes, vapors, smoke, deposits of dust or other particulate matter, fuel particles and all other effects as may be inherent in the operation of aircraft, now known or hereafter used, while landing on, taking off from, or operating at the Airport, as long as such operations are in compliance with applicable federal, state and local regulations concerning operation of aircraft and use of the Airport.

As used herein, the term "aircraft" shall mean any and all types of aircraft, whether not in existence or hereafter manufactured and developed, to include without limitation, jet aircraft, propeller driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all types of aircraft or vehicles now in existence or hereafter developed, regardless of existing or future noise levels, for the purpose of transporting persons or property through the air.

EXHIBIT A

(Legal Description)

AIRPORT DISCLOSURE STATEMENT

The undersigned owner(s) of a lot in the subdivision known as _____, a Pima County subdivision recorded in Book _____ at Page _____ of Maps and Plats, acknowledges that the property lies in proximity to Tucson International Airport and that the property is subject to aircraft overflight and noise that may be annoying or objectionable to some persons.

Flight patterns within 5 nautical miles of Tucson International Airport (TIA) are controlled by the Federal Aviation Administration (FAA) Air Traffic Control Tower (ATCT) according to rules and guidelines for maintaining aircraft separation. The ATCT at TIA is in operation 24 hours per day. According to FAA rules, except when necessary for takeoff and landing, aircraft may not fly below 1000 ft. above ground level in populated areas.

While air traffic may be generalized into tracks, it is, by nature, dispersed. Aircraft may approach and depart the airports from any number of directions. Flight paths vary depending on a variety of factors including origin/destination, wind conditions and other aircraft in the traffic pattern. As a result, any property in the vicinity of an airport is likely to be subject to aircraft overflight and its impacts to some degree.

As traffic approaches or departs from an airport, it is lower to the ground, more concentrated and more frequent. The area where air traffic converges as it approaches and departs the airport is represented by the FAA Traffic Pattern Airspace. This area is shown on exhibit A, attached. Lower altitudes and more frequent activity increase the impacts of aircraft on the ground within this area.

The most significant impacts occur within noise contours. Noise contours depict the area where average noise exposure over a 24 hour period is considered "significant" by FAA standards. Measures such as sound insulation of structures and land use planning to exclude noise sensitive uses are required to maintain compatibility within these areas. As explained, aircraft approach and depart the airport on dispersed paths. As a result, a property that is outside established noise contours may still be impacted by the effects of periodic aircraft overflights.

Flight patterns are apt to shift or change over time. Changes in operations may occur due to weather, changes in users, changes in aircraft type, military missions, weather conditions, etc. Similarly, TIA has a master plan that identifies plans for future expansion and development needs. These plans are updated every several years to respond to the needs of the aviation community.

The undersigned acknowledges the Owner(s) is aware of these impacts and that the Tucson Airport Authority and all persons lawfully using the Airport have the right to operate aircraft in the airspace above and near the property.

Dated this _____ day of _____, 20_____.

Owner _____ Date

Owner _____ Date

Tucson International Airport

