



# CITY OF VENICE

FLORIDA

401 W. Venice Avenue • Venice, Florida 34285

Edward F. Lavallee  
City Manager


Office: (941) 486-2626 Ext 24006 • Fax: (941) 480-3031

Email: [elavallee@venicegov.com](mailto:elavallee@venicegov.com)  
[www.venicegov.com](http://www.venicegov.com)

## Interoffice Memorandum

### City Manager's Office

**TO:** Mayor Holic and City Council Members

**FROM:** Edward F. Lavallee, City Manager 

**RE:** Circus Property Proposals

**DATE:** June 22, 2017

---

The City has received two proposals to lease an eleven (11) acre parcel of Venice Municipal Airport land commonly referred to as the *circus property*. The proposals have been copied into Legistar for your review. Letters dated June 8, 2017 have been sent to: Mr. Kent Jacoby, representing JCRE Development, LLC, and to Mr. Joel Freedman, representing Venice Realty Group, LLC, inviting them to attend the June 27, 2017 meeting of the Venice City Council, at which time their proposals are scheduled for Council discussion and review. The letter of invitation to the applicants offers them the opportunity to speak to the City Council on behalf of their respective proposals.

In response to the invitation, Venice Realty Group has indicated their intention to attend the Council meeting. Mr. Jacoby indicated that neither he, nor any representative of his corporation will be able to attend. On June 21, 2017, our office contacted Mr. Jacoby, first by phone, and subsequently by e-mail, restating the invitation for him or an agent representing his corporation to attend the June 27<sup>th</sup> Council meeting. As of this date, they have not indicated to our office that they will attend.

The City has retained the services of Mr. Wayne Ruben to serve as consultant to this project, to assist in communicating with prospective bidders, providing details of the eleven acre parcel, relating the FAA, Venice Municipal Airport, and City of Venice relationship to the property and attendant regulatory issues. Mr. Ruben has been in regular contact with representatives of the two proposals throughout this process.

Circus Property Proposals

June 22, 2017

Page 2 of 2

Among the issues discussed with the prospective bidders is the FAA's oversight interest in the parcel. As a property of the Venice Municipal Airport, the FAA has authority to intercede in review of planned uses of the property to ensure that the uses conform to federal regulatory standards. Attached is an excerpt from the **FAA Airport Compliance Manual, Order 5190-6B; Part IV: Land Use**. The order defines residential use of land on airport property as generally incompatible with airport operations. The proposal submitted by JCRE Development, LLC, includes a significant residential use component. We find this project element to be problematic. In contrast, the proposal submitted by Venice Realty Group does not contain any residential component, but rather proposes to construct a hotel, retail complex, and restaurant. Over a period of months, through the evolution of the project proposals, City representatives have communicated directly with the prospective bidders, discussing elements of their proposals and emphasizing the FAA position on residential use.

Based on review of the enclosed proposals, the Venice Realty Group project appears to be compatible with FAA regulatory standards and, therefore, the most suitable for development on the circus property. City Council is requested to authorize the City Manager and the City Attorney to negotiate a contract with Venice Realty Group for lease of the circus property, subject to review and approval by the FAA, and subject to approval by the Venice City Council.

EFL/jg

Attachment

**Chapter 20. Compatible Land Use and Airspace Protection**

**20.1. Background.** Land use planning is an important tool in ensuring that land adjacent to, or in the immediate vicinity of, the airport is consistent with activities and purposes compatible with normal airport operations, including aircraft landing and takeoff. Ensuring compatible land use near federally obligated airports is an important responsibility and an issue of federal interest. In effect since 1964, Grant Assurance 21, *Compatible Land Use*, implementing Title 49 United States Code (U.S.C.) § 47107 (a) (10), requires, in part, that the sponsor:

*“...take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which federal funds have been expended.”*

Incompatible land use at or near airports may result in the creation of hazards to air navigation and reductions in airport utility resulting from obstructions to flight paths or noise-related incompatible land use resulting from residential construction too close to the airport.

Airports present a variety of unique challenges to those involved in community planning. Height restrictions are necessary in the vicinity of airports and airways for the protection of aircraft in flight. Residential housing and other land uses near airports must remain compatible with airports and the airport approach/departure corridors. Additional concerns include the airport's proximity to landfills and wetlands that may result in hazards to air navigation created by flocks of birds attracted to the landfills or wetlands. Unusual lighting in the approach area to an airport can create a visual hazard for pilots. Also, land uses that obscure visibility by creating smoke or steam may be hazardous to flight. Each of these concerns must be addressed in community planning in order to maintain the safety of flight as well as the quality of life expected by community residents.

As communities continue to grow, areas that once were rural in nature can quickly become urbanized. A result of “urban sprawl” is the loss of open space and the resulting loss of airports and/or their utility. Many communities have relied upon their airports as an economic engine. Proximity of industrial parks and recreational areas has proven not only to be compatible, but to be mutually beneficial as well. Some communities have used the resources of an airport to contribute to the quality of life for the local community.



In addition to the basic economic value of the airport, the preservation of open space and the ability to accommodate emergency medical airlifts are specific examples of this contribution to the community. Increases in air travel are placing an increasing demand on the nation's airports. Environmental concerns and cost may prohibit the establishment of new airports. This means that to accommodate air traffic demand, maximum utility must be achieved from existing airports. For this to happen, the land use in the vicinity of airports must be reserved for compatible uses.

Grant Assurance 21, *Compatible Land Use*, relates to the obligation of the airport sponsor to take appropriate actions to zone and control existing and planned land uses to make them compatible with aircraft operations at the airport. The

FAA recognizes that not all airport sponsors have direct jurisdictional control over uses of property near the airport. However, for the purpose of evaluating airport sponsor compliance with the compatible land use assurance, the FAA does not consider a sponsor's lack of direct authority as a reason for the sponsor to decline to take any action at all to achieve land use compatibility outside the airport boundaries.

In all cases, the FAA expects a sponsor to take appropriate actions to the extent reasonably possible to minimize incompatible land. Quite often, airport sponsors have a voice in the affairs of the community where an incompatible development is located or proposed. The sponsor should make an effort to ensure proper zoning or other land use controls are in place.

## 20.2. Zoning and Land Use Planning.

**a. Description.** Zoning is an effective method of meeting the federal obligation to ensure compatible land use and to protect airport approaches. Generally, zoning is a matter within the authority of state and local governments. Where the sponsor does have authority to zone or control land use, FAA expects the sponsor to zone and use other measures to restrict the use of



*Incompatible land use is one of the most serious problems affecting aviation today. (Above is an aerial view of residential development near the Lancaster Airport in Pennsylvania.) Zoning ordinances should be reviewed to determine what uses are currently permitted around the airport and to find out if there have been any recent changes in zoning. It is important that local land use planners become involved in the airport's master planning process by providing input on the potential impacts that future airport development plans may have on their communities. Coordination between the airport and the zoning entities is extremely important to achieve a successful cohabitation between airport and community. (Photo: FAA)*

land in the vicinity of the airport to activities and purposes compatible with normal aircraft operations. Restricting residential development near the airport is essential in order to avoid noise-related problems.

Sponsors and local communities should consider adopting adequate guidelines and zoning laws that consider noise impacts in land use planning and development. Similarly, any airport sponsor that has the authority to adopt ordinances restricting incompatible land development and limiting the height of structures in airport approaches according to the standards prescribed in 14 Code of Federal Regulations (CFR) Part 77, *Objects Affecting Navigable Airspace*, is generally expected to use that authority.

**b. Guidance.** There are a number of sources that can assist an airport sponsor in dealing with noise, obstructions, and other incompatible land uses. Some of these are:

- (1). *A Model Zoning Ordinance to Limit Height of Objects Around Airports*, Advisory Circular (AC) 150/5190-4A.
- (2). *Citizen Participation in Airport Planning*, AC 150/5050-4.
- (3). *Guidelines for Considering Noise in Land Use Planning and Control*, Federal Interagency Committee on Urban Noise, June 1980.
- (4). *Hazardous Wildlife Attractants on or Near Airports*, AC 150/5200-33B, August 28, 2007.
- (5). *Noise Control Planning*, FAA Order 1050.11A, January 13, 1986.
- (6). *Noise Control and Compatibility Planning for Airports*, AC 150/5020-1.
- (7). *Federal and State Coordination of Environmental Reviews for Airport Improvement Projects*. (RTF format) – Joint Review by Federal Aviation Administration and National Association of State Aviation Officials (NASAO), issued March 2002.
- (8). *Land Use Compatibility and Airports, a Guide for Effective Land Use Planning* (PDF format), issued by the FAA Office of Environment and Energy.
- (9). *Compatible Land Use Planning Initiative* (PDF format), 63 Fed. Reg. 27876, May 21, 1998.
- (10). *Draft Aviation Noise Abatement Policy 2000* (PDF format) 65 Fed. Reg. 43802, July 14, 2000.
- (11). *Airport Noise Compatibility Planning Toolkit – FAA's Initiative for Airport Noise and Compatibility Planning*, issued by the FAA Office of Environment and Energy.

**c. Master Planning and Zoning.** The airport master planning process provides a means to promote land use compatibility around an airport. Incompatible land uses around an airport can affect the safe and efficient operation of aircraft. Within an airport's noise impact areas,



residential and public facilities – such as schools, churches, public health facilities, and concert halls – are sensitive to high noise levels and can affect the development of the airport. Most commercial and industrial uses, especially those associated with the airport, are compatible with airports. An airport master plan is a published document approved by the governmental agency or authority that owns/operates the airport. The airport master plan should be incorporated into local comprehensive land use plans and used by local land use planners and airport planners to evaluate new development within the airport environs. Integration of airport master plans and comprehensive land use plans begins during the development of the master plan. Local municipalities surrounding the airport boundaries must be contacted to collect information on existing land uses in and around airports. Local comprehensive land use plans are also reviewed to determine the types of land uses planned for the future.

Additionally, sponsors should monitor local zoning ordinances to determine what uses are currently permitted around the airport and whether there have been any recent changes in zoning. It is important for local land use planners to become involved in the review and development of the airport's master planning process. They can provide input on potential impacts that future airport development plans may have on communities surrounding the airport. Any conflicts or inconsistencies between airport development plans and the local comprehensive plans should be noted in the airport master plan. The information on future airport expansion and development contained in the airport's master plan should be incorporated in the development of comprehensive land use plans or their subsequent updates or amendments to ensure land use compatibility with the airport. During the development of such plans, planners should coordinate and consult with the airport staff so that the airport's future plans for expansion can be taken into consideration. Local land use planners should review the airport's master plan to determine how future airport projects could affect existing and projected land uses around the airport. Other opportunities for coordination and communication between the airport and local planning agencies include the FAA noise compatibility planning process. (See chapter 13 of this Order, *Airport Noise and Access Restrictions*, for information on aircraft noise compatibility planning.)

Noise compatibility studies provide opportunities for input from airport users, local municipalities, communities, private citizens, and the airport sponsor on recommended operational measures and land use control measures that could minimize or prohibit the development or continuation of incompatible land uses. The airport master plan is also a tool to ensure that planning among federal, state, regional, and local agencies is coordinated. The incorporation and review of these plans provides for the orderly development of air transportation while protecting the public health, safety, and welfare. The legal structure of airport ownership will determine its power to regulate or influence land uses around the airport. Municipalities or counties with this regulatory authority need to be aware of existing and long-term airport development plans and the importance of using that authority to minimize development of incompatible land uses.

**d. Reasonable Attempt.** In cases where the airport sponsor does not have the authority to enact zoning ordinances, it should demonstrate a reasonable attempt to inform surrounding municipalities on the need for land use compatibility zoning. The sponsor can accomplish this through the dissemination of information, education, or ongoing communication with

surrounding municipalities. Depending upon the sponsor's capabilities and authority, action could include exercising zoning authority as granted under state law or engaging in active representation and defense of the airport's interests before the pertinent zoning authorities. The sponsor may also take action with respect to implementing sound insulation, land acquisition, purchase of easements, and real estate disclosure programs or initiatives to mitigate areas to make them compatible with aircraft operations. Sponsors without zoning authority may also work to change zoning laws to protect airport interests.

**e. Definition of Compatible Land Use.** Compatibility of land use is attained when the use of adjacent property neither adversely affects flight operations from the airport nor is itself adversely affected by such flight operations. In most cases, the adverse effect of flight operations on adjacent land results from exposure of noise sensitive development, such as residential areas, to aircraft noise and vibration. Land use that adversely affects flight operations is that which creates or contributes to a flight hazard. For example, any land use that might allow tall structures, block the line of sight from the control tower to all parts of the airfield, inhibit pilot visibility (such as glaring lights, smoke, etc.), produce electronic aberrations in navigational guidance systems, or that would tend to attract birds would be considered an incompatible land use. For instance, under certain circumstances, an exposed landfill may attract birds. If open incineration is regularly permitted, it can also create a smoke hazard.

**f. Definition of Concurrent Land Use.** In some cases, concurrent land use can be an appropriate compatible land use. Concurrent land use means that the land can be used for more than one purpose at the same time. For example, portions of land needed for clear zone purposes could also be used for agriculture purposes at the same time, which would be consistent with Grant Assurance 21, *Compatible Land Use*.

**g. Pre-existing Obstructions.** (1) Historically, some airports were developed at locations where preexisting *structures* or natural terrain (for example, hilltops) would constitute an obstruction by currently applicable standards. If such obstructions were not required to be removed as a condition for a grant agreement, the execution of the agreement by the government constitutes a recognition that the removal was not reasonably within the power of the sponsor. (2) There are many former military airports that were acquired as public airports under the Surplus Property Act, where the existence of obstructions at the time of development was considered acceptable. At such airports where obstructions in the approach cannot feasibly be removed, relocated, or lowered, and where FAA has determined them to be a hazard, consideration may be given to the displacement or relocation of the threshold.

### 20.3. Residential Use of Land on or Near Airport Property.

**a. General.** The general rule on residential use of land on or near airport property is that it is incompatible with airport operations because of the impact of aircraft noise and, in some cases, for reasons of safety, depending on the location of the property. Nonetheless, the FAA has received proposals to locate residences immediately adjacent to airport property or even on the airport itself, as part of "airpark" developments. "Airpark" developments allow aircraft owners to reside and park their aircraft on the same property, with immediate access to an airfield. Proponents of airparks argue that airparks are an exception to the general rule because aircraft



owners will accept the impacts of living near the airport and will actually support the security and financial viability of the airport.

**b. FAA position.** The FAA considers residential use by aircraft owners to be no different from any residential use, and finds it incompatible with the operation of a public use airport. It is common for private airparks to impose restrictions on the use of the airfield, such as night curfews, because aircraft owners have the same interest as other homeowners in minimizing noise and sleep disturbances at home. The FAA has no problem with such restrictions at private unobligated airparks operated by the resident owners for their own benefit. At federally obligated public-use airports, however, the existence of the incompatible land use is not acceptable. First, aircraft owners are entitled to the same protection from airport impacts as any other residents of the community. Second, the likelihood that residents of an airpark will seek restrictions on the use of the airport for the benefit of their residential use is very high, whether or not they own aircraft. A federally obligated airport must provide reasonable access to all users. Restrictions on the use of the airport for the benefit of airpark residents is not consistent with the obligation to provide reasonable access to the public.

**c. On-airport and off-airport residential use.** The general policy against approval of on-airport and off-airport residential proposals is the same. There are, however, different considerations in the review and analysis of on-airport and off-airport land use. The FAA has received proposals for airparks or co-located homes and hangars both on the airport itself or off of the airport, with “through-the-fence” access.

#### **20.4. Residential Airparks Adjacent to Federally Obligated Airports.**

**a. General.** In several instances, the FAA has received requests from airport sponsors and developers interested in developing residential airparks adjacent to federally obligated airports. These types of development include “through-the-fence” access to the airport and generally include aircraft hangars or parking co-located with individual residences.

The FAA has no problem with private residential airparks since there is no federal obligation for reasonable access. Residential owners can limit access to the airport as they wish. However, FAA approval of such developments on federally obligated airports cannot be justified. First, residential property owners tend to seek to limit airport use consistent with their residential use, which is contrary to the obligation for reasonable public access to the airport. Second, developers can tend to view Airport Improvement Program (AIP) grants for the airfield as a subsidy of the development, increasing the value of the airpark development at no cost to the developer or residents. The FAA’s AIP program is not a funding mechanism for improving or subsidizing private and residential development.

Any residential use existing on the airport or any residential use granting “through-the-fence” access is an incompatible land use.



***Any residential use on an airport or residential use granting “through-the-fence” access is an incompatible land use.***

**b. FAA Position.** Permitting development of a residential airpark near a federally obligated airport, through zoning approval or otherwise, would be inconsistent with Grant Assurance 21, *Compatible Land Use*. The FAA expects sponsors to oppose zoning laws that would permit residential development near airports.

For this purpose, the FAA considers residential use to include: permanent or long-term living quarters; part-time or secondary residences; and developments known as residential hangars, hangar homes, campgrounds, fly-in communities or airpark developments – even when co-located with an aviation hangar or aeronautical facility.

Allowing residential development on federally obligated airports is incompatible with aircraft operations and conflicts with several grant assurance and surplus property requirements, as mentioned above. Residential development inside federally obligated airports is inconsistent with federal obligations regarding the use of airport property.

Accordingly, the FAA will not support requests to enter into any agreement that grants access to the airfield for the establishment of a residential airpark since that access would involve a violation of Grant Assurance 21, *Compatible Land Use*.

**c. “Through-the-Fence.”** Off-airport residential airparks are privately owned and maintained residential facilities. They are not considered aeronautical facilities eligible for reasonable access to a federally obligated airport. The airport sponsor is under no federal obligation to allow “through-the-fence” access for these privately



*In several instances, the FAA has received requests from airport sponsors and developers interested in developing residential airparks adjacent to federally obligated airports. These types of development generally include residential hangar sites and a “through-the-fence” access to the airport. While these types of development have taken place at some private use airports, it does not provide the basis to justify FAA approval of such developments on federally obligated airports. Seen here is Spruce Creek in Florida. (Photo: CAP)*

owned residential airparks. Allowing such access in most cases could be an encumbrance on the airport in conflict with Grant Assurance 5, *Preserving Rights and Powers*. In addition, residential hangars with “through-the-fence” access are considered an incompatible land use at federally obligated public use airports. (For additional information on “through-the-fence” agreements, see paragraph 12.7, “Agreements Granting ‘Through-the-Fence’ Access” in chapter 12 of this Order, *Review of Aeronautical Lease Agreements*.)

**d. Releases.** The FAA will not release airport property from its federal obligations so that it can be used for residential development. Also, the FAA will not release airport land for off-airport use with “through-the-fence” access to the airfield. Obligated airport land may not be released unless the FAA finds that it is no longer needed for airport purposes. Since the requested off-airport use would involve basic airport functions such as aircraft parking and taxiing, the FAA could not find that the property was no longer needed for an airport use. A request to release airport land for a residential airpark will be denied as inconsistent with both policies.

## **20.5. Residential Development on Federally Obligated Airports.**

**a. General.** This guidance sets forth FAA policy regarding residential development on federally obligated airports, including developments known within the industry as residential hangars and airpark developments. FAA airports district offices (ADOs) and regional airports divisions are responsible for ensuring that residential developments are not approved when reviewing a proposed ALP or any other information related to the airports subject to FAA review. There is no justification for the introduction of residential development inside a federally obligated airport. It is the sponsor’s federal obligation not to make or permit any changes or alterations in the airport or any of its facilities that are not in conformity with the ALP, as approved by the FAA, and that might, in the opinion of the FAA, adversely affect the safety, utility, or efficiency of the airport.

**b. Background.** The FAA differentiates between a typical pilot resting facility or crew quarters and a hangar residence or hangar home. The FAA recognizes that certain aeronautical uses – such as commercial air taxi, charter, and medical evacuation services – may have a need for limited and short-term flight crew quarters for temporary use, including overnight and on-duty times. There may be a need for aircraft rescue and fire fighting (ARFF) quarters if there is a 24-hour coverage requirement. Moreover, an airport manager or a fixed-base operator (FBO)<sup>45</sup> duty manager may have living quarters assigned as part of his or her official duties. Living quarters in these cases would be airport-compatible if an airport management or FBO job requires an official presence at the airport at off-duty times, and if the specific circumstances at the airport reasonably justify that requirement.

However, other than the performance of official duties in running an airport or FBO, the FAA does not consider permanent or long-term living quarters to be an acceptable use of airport property at federally obligated airports. This includes developments known as airparks or fly-in

---

<sup>45</sup> A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

communities, and any other full-time, part-time, or secondary residences on airport property – even when co-located with an aviation hangar or aeronautical facility. While flight crew or caretaker quarters may include some amenities, such as beds, showers, televisions, and refrigerators, these facilities are designed to be used for overnights and resting periods, not as permanent or even temporary residences for flight crews, aircraft owners or operators, guests, customers, or the families or relatives of same.

The definition of flight crew is limited to those individuals necessary for the operation of an aircraft, such as pilot-in-command (PIC), second in command, flight engineer, flight attendants, loadmasters, search and rescue (SAR) flight personnel, medical technicians, and flight mechanics. It does not include the families, relatives, or guests of flight crewmembers not meeting the preceding definition.

An effort to obtain residential status for the development under zoning laws may indicate intent to build for residential use. Airport standards, rules, and regulations should prevent the introduction of residential development on federally obligated airports. The FAA expects the airport sponsor to have rules and regulations to control or prevent such uses, as well as to oppose residential zoning that would permit such uses since these uses may create hazards or safety risks between airport operations and nonaeronautical tenant activities. If doubts exist regarding the nature of a proposed facility, the airport sponsor may ask FAA to evaluate the proposed development. Also, the FAA may conduct a land use inspection to determine the true nature of the development; the FAA would then make a determination on whether the facility is compatible with the guidance provided herein.

**c. Authority and Compliance Requirements.** Allowing residential development, including airport hangars that incorporate living quarters for permanent or long-term use, on federally obligated airports is incompatible with airport operations. It conflicts with several grant assurance requirements.

Under Grant Assurance 5, *Preserving Rights and Powers*, an airport sponsor should not take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances. The private interests of residents establishing private living can conflict with the interests of the airport sponsor to preserve its rights and powers to operate the airport in compliance with its federal obligations. It should not be assumed that the interests of the sponsor and that of a homeowner located on the airport will be the same or that because the homeowner owns an aircraft, he or she will automatically support the airport on all aviation activities. In addition, local laws relating to residences could restrict the airport operator's ability to control use of airport land and to apply standard airport regulations.

Under Grant Assurance 19, *Operation and Maintenance*, airport sponsors will not cause or permit any activity or action that would interfere with the intended use of the airport for airport purposes. Permanent living facilities should not be permitted at public airports because the needs of airport operations may be incompatible with residential occupancy from a safety standpoint.



Under Grant Assurance 21, *Compatible Land Use*, airport sponsors, to the extent possible, must ensure compatible land use both on and off the airport. Residential development in the vicinity of airports may result in complaints from residents concerned about personal safety, aircraft noise, pollution, and other quality-of-life issues. Bringing residential development onto the airport, even in the form of residential hangars, increases the likelihood that quality-of-life issues may lead to conflicts with the airport sponsor and appeals for restrictions on aircraft operations. Moreover, an airport sponsor permitting on-airport residential living quarters will have greater difficulty convincing local zoning authorities to restrict residential development off-airport. Therefore, airport sponsors are encouraged to:

- (1). Explicitly prohibit the development of residential living quarters on the airport in all tenant leases and subleases.
- (2). Develop minimum standards that require the explicit advanced approval of all tenant subleases by the airport sponsor.
- (3). Include clauses in all tenant leases stating that unauthorized development of residential living quarters may be declared an event of default under the lease and that the airport sponsor may declare any noncomplying subleases null and void.
- (4). Convert any existing living quarters into nonresidential use at the earliest opportunity, especially if the airport sponsor holds title to the living quarters.

**d. Conclusion.** Permitting certain on-airport development, including residential development, conflicts with several federal grant assurances and federal surplus property obligations. Such residential development may have some or all of the following undesirable consequences:

- (1). Aircraft noise complaints.
- (2). Proposed restrictions or limitations on aircraft and/or airport operations brought by the residential tenants.
- (3). The execution of easements, leases, and subleases that encumber airport property for nonaeronautical uses at the expense of aeronautical uses.
- (4). Increased likelihood of vehicle/pedestrian deviations (V/PDs) due to residents, guests, and unsupervised children unfamiliar with an operating airfield environment; unleashed pets roaming the airfield; and the interaction between private vehicles and aircraft that compromise safe airfield operations.
- (5). Increased public safety and legal liability risks, including fire hazards, if codes have been compromised by the co-location of residential living quarters within hangars and other aeronautical facilities.
- (6). Line-of-sight obstructions and operational limitations due to the greater height of two-story hangars.

**e. Summary.** Residential development, either standing alone or collocated as part of a hangar or other aeronautical facility, is not an acceptable use of airport property under the federal grant assurances or surplus and nonsurplus property federal obligations. The ADOs and regional airports divisions have the responsibility for ensuring that residential development is not approved as part of a review of a proposed ALP and that airport property is not released for residential development.

**20.6. through 20.10. reserved.**

**Sample Easement and Right-of-Way Grant**

The easement and right of way hereby granted includes the continuing right in the Grantee to prevent the erection or growth upon Grantors' property of any building, structure, tree, or other object, extending into the air space above the aforesaid imaginary plane,

(OR USE THE FOLLOWING)

extending into the air space above the said Mean Sea level of (i.e., 150) feet,<sup>1</sup>

(OR USE THE FOLLOWING)

extending into the air space above the surface of Grantors' property;<sup>1</sup>

and to remove from said air space, or at the sole option of the Grantee, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree or other objects now upon, or which in the future may be upon Grantors' property, together with the right of ingress to, egress from, and passage over Grantors' property for the above purposes.

TO HAVE AND TO HOLD said easement and right of way, and all rights appertaining thereto unto the Grantee, its successors, and assigns, until said (full name of airport) shall be abandoned and shall cease to be used for public airport purposes.

AND for the consideration hereinabove set forth, the Grantors, for themselves, their heirs, administrators, executors, successors, and assigns, do hereby agree that for and during the life of said easement and right of way, they will not hereafter erect, permit the erection or growth of, or permit or suffer to remain upon Grantors' property any building, structure, tree, or other object extending into the aforesaid prohibited air space, and that they shall not hereafter use or permit or suffer the use of Grantors' property in such a manner as to create electrical interference with radio communication between any installation upon said airport and aircraft, or as to make it difficult for flyers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the airport or as otherwise to endanger the landing, taking off, or maneuvering of aircraft, it being understood and agreed that the aforesaid covenants and agreements shall run with the land.

In consideration of the premises and to assure Grantee of the continued benefits accorded it under this Easement, (name of mortgagee), owner and holder of a mortgage dated \_\_\_\_\_ and recorded \_\_\_\_\_ covering the premises above described, does hereby covenant and agree that said mortgage shall be subject to and subordinate to this Easement and the recording of this Easement shall have preference and precedence and shall be superior and prior in lien to said mortgage irrespective of the date of the making or recording of said mortgage instrument.<sup>2</sup>

<sup>2</sup> Local recordation and subordination practices must also be met. If subordination is necessary, in which case the mortgagee must join in the agreement, the above language is suggested.



### FAIR DISCLOSURE STATEMENT

A disclosure statement, adhering to the form of the statement below, shall be provided to and signed by each potential purchaser of property within the Airport Influence Area as shown on the approved Airport Land Use Drawing. The signed statement will then be affixed by the Seller to the agreement of the sale.

The tract of land situated at

in \_\_\_\_\_ (County and State), consisting of approximately \_\_\_\_\_ acres which is being conveyed from \_\_\_\_\_ to \_\_\_\_\_ lies within \_\_\_\_\_ miles of \_\_\_\_\_ (airport name) may be subjected to varying noise levels, as the same is shown and depicted on the official Zoning Maps.

### CERTIFICATION

The undersigned purchaser(s) of said tract of land certify(ies) that (he) (they) (has) (have) read the above disclosure statement and acknowledge(s) the pre-existence of the airport named above and the noise exposure due to the operation of said airport.

### SUGGESTED DISCLOSURE TO REAL ESTATE BUYERS

Customarily, someone will request a letter from the municipality about outstanding charges and assessments against a property. Something similar to this language, adapted for your airport, can be incorporated into a letter sent to buyers and title companies in preparation for closing.

"Please be advised that the subject property is located within the height restriction zone of the (blank) airport, or is located within a similar distance from the airport. It is conceivable that standard flight patterns would result in aircraft passing over (or nearly so) the property at altitudes of less than (blank) feet. Current airport use patterns suggest that the average number of takeoffs/touchdowns exceeds (blank) annually. A property buyer should be aware that use patterns vary greatly, with the possibility of increased traffic on (blank). The airport presently serves primarily recreational aircraft, and there are no current initiatives to extend any runway beyond the current (blank) length. Airport plans allow for runway extension in the future, which might impact the number and size of both pleasure and non-pleasure aircraft. Generally, it is not practical to redirect or severely limit airport usage and/or planned-for expansion, and residential development proximate to the airport ought to assume, at some indefinite date, an impact from air traffic."

## Sample FAA Position Letter on Residential Airparks - Page 1



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Office of Associate Administrator  
for Airports

800 Independence Ave. SW  
Washington, DC 20591

September 2, 2009

Mr. Hal Shevers  
Chairman  
Clermont County-Sporty's Airport  
Batavia, OH 45103

Dear Mr. Shevers:

Thank you for your letter of July 18. In your letter, you suggested the Federal Aviation Administration promote developing residential airparks as a means to improve airport security and reduce the closure rate of general aviation airports. Residential airparks developed next to an airport usually rely on "through-the-fence" agreements to gain access to the airfield.

First, I would like to make clear that the FAA does not oppose residential airparks at private use airports. Private use airports are operated for the benefit of the private owners, and the owners are free to make any use of airport land they like. A public airport receiving Federal financial support is different, however, because it is operated for the benefit of the general public. Also, it is obligated to meet certain requirements under FAA grant agreements and Federal law. Allowing residential development on or next to the airport conflicts with several of those requirements.

An airpark is a residential use and is therefore an incompatible use of land on or immediately adjacent to a public airport. The fact there is aircraft parking collocated with the house does not change the fact that this is a residential use. Since 1982, the FAA has emphasized the importance of avoiding the encroachment of residential development on public airports, and the Agency has spent more than \$300 million in Airport Improvement Program (AIP) funds to address land use incompatibility issues. A substantial part of that amount was used to buy land and houses and to relocate the residents. Encouraging residential airparks on or near a federally obligated airport, as you suggest, would be inconsistent with this effort and commitment of resources.

Allowing an incompatible land use such as residential development on or next to a federally obligated airport is inconsistent with 49 USC §47104(a) (10) and associated FAA Grant Assurance 21, *Compatible Land Use*. This is because a federally obligated airport must ensure, to the best of its ability, compatible land use both off and on an airport. We would ask how an airport could be successful in preventing incompatible residential development before local zoning authorities if the airport operator promotes residential airparks on or next to the airport.

Additionally, residential airparks, if not located on airport property itself, require through-the-fence access. While not prohibited, the FAA discourages through-the-fence operation because

**Sample FAA Position Letter on Residential Airparks - Page 2**

they make it more difficult for an airport operator to maintain control of airport operations and allocate airport costs to all users.

A through-the-fence access to the airfield from private property also may be inconsistent with security guidance issued by the Transportation Security Administration (TSA). TSA created guidelines for general aviation airports. Information Publication (IP) A-001, *Security Guidelines for General Aviation Airports*. The TSA guidelines, drafted in cooperation with several user organizations including the Aircraft Owners and Pilots Association (AOPA), recommend better control of the airport perimeter with fencing and tighter access controls. Accordingly, we do not agree with your view that a residential airpark and the associated through-the-fence access points can be said to improve airport security. In fact, multiple through-the-fence access points to the airfield could hinder rather than help an airport operator maintain perimeter security.

Finally, we find your statement that general aviation airports have been closing at an alarming rate to be misleading, because it is simply untrue with respect to *federally obligated airports*. In fact, the FAA has consistently denied airport closure requests. Of approximately 3,300 airports in the United States with Federal obligations, the number of closures approved by the FAA in the last 20 years has been minimal. The closures that have occurred generally relate to replacement by a new airport or the expiration of Federal obligations. AOPA has recognized our efforts. In its latest correspondence to the FAA on the *Revised Flight Plan 2006-2010*, AOPA stated, "the FAA is doing an excellent job of protecting airports across the country by holding communities accountable for keeping the airport open and available to all users."

For the above reasons, we are not able to support your proposal to promote the development of residential airparks at federally obligated airports.

I trust that this information is helpful.

Sincerely,

**Original signed by:  
Woodie Woodward**

Woodie Woodward  
Associate Administrator  
for Airports



**THIS PAGE INTENTIONALLY LEFT BLANK**