



## Aviation Division

15000 N. Airport Drive, Suite 200  
Scottsdale, AZ 85260

Phone: 480-312-2321  
Fax: 480-312-8480  
Web: [www.scottsdaleairport.com](http://www.scottsdaleairport.com)

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Date October 12, 2011

The Honorable Jim Lane, Mayor  
3939 Drinkwater Blvd  
Scottsdale, AZ 85251

Subject: Scottsdale AAC (Airport Advisory Commission) recommendation relative to zoning and general plan land use change requests for: 6-GP-2011 Zocallo Residential, 10-ZN-2011 Zocallo Residential, 7-GP-2011 Scottsdale Airpark Community, 11-ZN-2011 Scottsdale Airpark Community, and 8-GP-2011 Crackerjax

Dear Mayor Lane and members of the Scottsdale City Council:

This letter is to explain in context a bit of history, the issues of timing and the airport commission's recommendation on subject issues. For the purposes of this document they will be referred to as land use changes.

### Context/History

There are 3 parcels of land in the Scottsdale Airpark that are seeking to change designation from a land use of AMU (Airpark Mixed Use) to an AMU-R (Airpark Mixed Use with Residential). Please note their location on FIGURE 1 attached.

These (3) three parcels are within the city council adopted FAA Part 150 noise study airport influence area. Each of these land use change requests create direct conflict with the FAA Part 150 noise study and as such Chapter 5 of the Scottsdale revised code requires AAC review and to provide a recommendation to city council.

History: All of these parcels and their land use were reviewed by the AAC as part of the Scottsdale Greater Airpark Character Plan. This was completed in July 14<sup>th</sup>, 2010.

For reference we have included APPENDIX A, Letter to City Council from Airport Advisory Commission dtd, 15 October, 2010 regarding the commissions previous recommendation on this topic.

At that time it was the recommendation of the AAC (5-1) that the designation be changed from AMU-R to AMU. Figure 2 attached is a copy of that letter. These decisions were broadly based on the need to not increase close-in residential housing to the airport, thereby increasing the number of effected residents by airport noise and thus increasing the amount of disharmony with neighbors and citizens.

The Scottsdale planning commission then voted (5-1) to have the R (Residential component) added to the parcels. The city council then voted (6-1) to have the R (Residential component) removed on 26 October, 2010 as the city council approved the Scottsdale Greater Airpark Character plan.

It is important to note that the Scottsdale Quarter (SQ) development, located at Scottsdale Rd and Greenway/Butherus, does have a residential component. However, the developer has not started work on that portion of the Quarter.

When the city planning department changed the SQ land use to include residential (approx. 7 years ago), it was not brought before the AAC for review. This was an error within the cities' processes and procedures for land use changes in the FAA Part 150 area of concern and has since been corrected. I cannot speak to the recommendation that any previous AAC would have relative to this action. However, it is good to note that city planning and aviation staffs have worked to rectify the issue over the years.

SQ is not a residential reality yet. But it has all the rights and conveyances to do so. It is our hope as a commission that this does not become a noise complaint problem for the airport in the future.

#### **Timing/Acceleration:**

Having worked diligently through this past summer on issues relative to airport's rules/regulations, the commission made a motion and duly voted in August 2011 to not have a commission meeting in September of 2011. All other commission business was up to date.

In the late August time frame I received a call from the Aviation Director regarding the possibility of adding the previously cancelled September 2011 meeting so that the AAC could review 1 (one) parcel of the 3 subject parcels. The Aviation Director's phone call to me was precipitated by a request from city staff and planning staff. I told the Aviation Director, "No, the AAC would not reconvene/re-schedule the September 2011 meeting so that we can review 1 parcel of land."

After another request from the planning staff I spoke with the Aviation Director and suggested that we could hold the October 2011 meeting 1 week earlier. After discussion with the city/planning staff that was acceptable. A quorum was polled, the AAC meeting changed and was subsequently held on 5 October, 2011.

I told the aviation director we would make this change, "as long as I have a request from city or planning staff to do so." City Planning did eventually call me to make that request.

Why would I spend time on this detail? It is my opinion and that of other airport commission members that city staff and planning staff are "fast tracking" or "jamming" multiple zoning and non-Major General Plan changes through the city and requesting that the AAC change their schedules to accommodate. Furthermore, I mentioned that only one (1) parcel was requested for review in late August/early September. By the time I spoke to city planning staff the 1 parcel had become 3 parcels. I found this rather odd so I dug a little deeper.

Why is timing important to the applicants and city/planning staff? The applicants must get the land use changed as fast as possible to make it on the agenda for review by the City Council in

October 2011. An October 2011 city council review will only require a majority vote to make a Non-Major General Plan change. Even the date of the originally scheduled airport commission meeting of 12 October, 2011 would have been too late to put on the city council agenda for its 25 October, 2011 meeting. At this meeting the city council will vote on the 2011 General Plan.

If this issue is not changed now and the Scottsdale General Plan goes forward, the applicants, city and planning staff will have to re-submit for a "Major" General Plan change in the future. A Major change will require a "super majority" of the city council. On a sensitive issue such as this I would hope you can see why pressure was being applied by city and planning staff to "bundle" up and get as many parcels through as fast as possible.

As the chair of the airport advisory commission I could have elected to not listen to the request of city and planning staffs. I could have elected to not change our meeting date and allow this issue to die a death of "ill timing." It is my opinion that an action of that type is counter-productive to the city and not in keeping with a good spirit of well and faithfully conducting the city's business.

My personal note: As one of your advisory chairs, these actions and pressure by city and planning staff vexes me and I do not appreciate it. I would hope that we have been accommodating as a commission and I believe there is plenty of evidence to prove this. However, there was/is undue pressure coming from city and planning staff on the aviation staff to do what they want and to fast track these changes to meet their schedule. Forget the right/wrong aspects of the 3 land use issues. The process is being "rigged up" to accommodate the city/planning staff and applicants.

Our synopsis as to why this all is happening now. The applicants, city staff and planning staff all (or one) dropped the ball on their timing. In the course of someone's review of airport/airpark area zoning and general plan land use they realized that one, then two, then three parcels of value did not have the full range of land use options. Now they want to apply for that full use and get it done fast. When there was a glimmer of hope on the timing, the process then became "how many parcels" can be grouped up and sent up for review.

It is fair to say that all the applicants have been professional and courteous in their approach to educating and informing the airport commission on their respective plans, concepts and reasons for requesting the land use zoning and general plan changes. We do appreciate their communications.

Each applicant/parcel is in a different stage of planning/development. Some more mature than others. The 3 parcels/projects are known as:

1. Zocallo (The old Barcelona facility on Greenway-Hayden)
2. Scottsdale Community (the former Cardinale auto dealership lot next to Costco on Hayden)
3. Crackerjax (the current Crackerjax entertainment venue on Scottsdale Rd)

**Airport Commission's Recommendation on the 3 zoning/general plan change requests:**

At our 5 October 2011 meeting, The AAC voted 4-2 to recommend that the AMU-R (with residential) request be denied. 1 member was not in attendance. I can speak in depth to the

majority opinion. We cannot speak for the dissent but we can have their views known if the council requires. Furthermore, this is not an easy topic to deal with.

Your AAC is a rather pro-growth, business, development minded unit. As the guardian of the Scottsdale Airport Enterprise Fund this should be a major consideration in all of our recommendations. It is our opinion that these land use changes (all three) have a future impact of harming, or at least not improving the airport's long term ability to function as an enterprise fund.

Can we put R (Residential) on these parcels? Yes, if we as a city want to run counter to our city council adopted Airport FAA Part 150 NCP (Noise Compatibility Plan) and the city council adopted Greater Airpark Character Area Plan approved on October 26, 2010, less than 1 year ago.

Should we put R on these parcels? Emphatically, No.

### **Noise and Compatible Land Use**

The Scottsdale city council has adopted the Part 150 FAA Study relative to the airport. The study contains chapter 7 known as the NCP (Noise Compatibility Program). These are the adopted policies, measure and elements that the city uses to implement a friendly and functional growth plan relative to the Scottsdale airport. This plan also takes into consideration the need for development and redevelopment over the coming years.

The 3 parcels in question all run counter to the measures outlined in the existing NCP. We are now being asked to make changes to zoning and the General Plan that are not in keeping with our approved plan.

The applicants are correct. Two of the three parcels (#1 and #2 in Figure 1) lie outside of the FAA and City of Scottsdale 65 and 55 DBL noise contour lines. These 2 parcels lie in a zone known as AC-1 which does allow for residential ***"if the right of that type of land use is already in existence"*** and as long as there are Fair Disclosure Notices and Avigation Easements in place for each dwelling.

One applicant representative (land use attorney) is claiming that the right for residential exists based on the 2001 General Plan and it's definition of commercial land use. This occurred during our AAC meeting on 5 October, 2011. After further research we have found this to be not accurate.

The land use of all 3 parcels is currently governed by the city council approved Scottsdale Greater Airpark Character Area Plan from October, 2010. The Airpark Character Area Plan designates the area of all 3 parcels as mixed-use neighborhood, which does allow for high density residential.

However, within the area of mixed-use neighborhood, these 3 parcels are designated as AMU (Airpark Mixed Use) with no residential component. The pre-existing right to have residential on these 3 parcels does not exist today.

One parcel (#3 in figure 1) actually has the 55 DBL noise line running through it. Our city of Scottsdale NCP (Noise Compatibility Program) Chapter 7, Land Use Management Element #1 states: *"...jurisdictions (city of Scottsdale) should strongly discourage rezoning for residential*

*and other noise sensitive land uses that are not consistent with the respective city's general plan. The compatible land use should be maintained to ensure compatible development in the future."* Land Use Management Element #1 speaks directly to parcel #2 (Figure 1) that is in the 55 DBL noise contour line. To be clear, the 55 DBL noise contour runs through parcel #2. Part of the parcel#2 is inside the 55 DBL noise contour and part of it is not.

The zoning and/or general plan change requested by all 3 applicants runs counter and in direct conflict with NCP, Chapter 7 Land Use Management Element #3 which states: *"The City of Scottsdale should retain and encourage the city of Phoenix to retain current commercial and industrial zoning designations within the study area. In addition, both cities should strongly discourage rezoning for residential and other noise sensitive land uses that are not consistent with their general plans. This will ensue compatible development within the airport environs.*

Adding the AMU-R (residential) conflicts with our own city guidelines on this topic as well as our Greater Airpark Character Plan.

Airports and residential land uses are incompatible. Even if one thinks that statement is too strong it is clear that residential development near airports is not in the best interest of the airport nor its citizens.

### **Noise Complaints**

Yes, the Scottsdale aviation department staff and members of the AAC deal with noise complaints and the complainants themselves. A cursory review of quarterly and annual noise complaint data for the airport will reveal:

1. The airport gets many complaints in a given month
2. The actual complainants (citizens) tend to be repeat calls...but not always.
3. Complaints seem to cycle with the season (i.e. increase in aviation activity)
4. Most complainants tend to be homeowners. Not renters. Although this can't be proven it probably stands to reason
5. Complaints come from all directions around the airport
6. Many of the complainants are dwellings that have signed fair disclosure notices and aviation easements. i.e. signing a piece of paper does not constitute good will.

Will more apartments near the airport bring more complaints? We cannot prove that one way or the other. It does stand to reason that as you bring more citizens in close to the airport, an environment for increased complaints is being built.

What we do know is that the Zocallo project and Crackerjax are in the flight path of helicopter activity that departs and arrives at the airport. This is low level, 500' AGL (Above Ground Level) activity. Usually with helicopters that are at or near full power for taking off and climb out.

Furthermore, 90% of Scottsdale airport's operations use a "right-hand" VFR (Visual Flight Rules) flight pattern. This pattern drives the greatest majority of aircraft over parcel #1 and #3 (Zocallo and Crackerjax).

### **FAA Grant Assurances. What is best for the airport?**

In order to receive FAA funding for various airport projects there exist many Grant Assurances that an airport must follow in order to receive its FAA grants.

The FAA does address compatible land use as it relates to the airport. They (the FAA) have a vested interest in the public use airport and provides significant funding to maintain the facility for a long period of time.

The FAA grant assurance on this topic does not prohibit residential land use near an airport. However, the grant assurance is clear that the sponsor (city) must have the best interests of the airport in mind when making land use decisions. FAA Grant Assurance #21 states:

*Compatible Land Use. It (the sponsor/city) will 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.*

A change to this zoning/General Plan land use is a reduction of compatibility.

### **Noise Studies/Monitoring**

Two applicants have commissioned noise studies. These results will be presented for your review. The AAC does not dispute the data of these noise studies outside of the following comments:

- o Each study was conducted for only a 24 hour period from a Friday at 1200 to a Saturday at 1200. A period of one week would have been more representative of the airport's activity. The consultant, Stantec did explain the logic for using that specific 24-hour period to capture times when people are most likely to be out doors and not otherwise working or committed to other activities.
- o The study does not capture the busiest periods for the airport. Thursday afternoon and Sunday/Monday (arrivals/departure for the weekends.)

### **Summary**

The city council charges the airport advisory commission to provide sound, logical, cogent and forward thinking recommendations on issues relevant to the airport. This forces us to look at topics such as land use near the airport a bit differently than city staff, developers and planners.

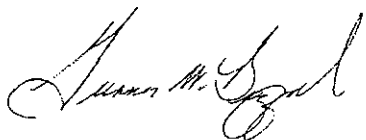
This is not a personal decision but one based on the long term, best interests of our city's airport. This comes after careful thought, discussion and consideration.

Residential encroachment has been and is now the death (see city of Santa Monica, CA) of many municipal airports in this country. The best of good intentions in the short term have to be weighed against the long- term ramifications.

During the course of this next city council meeting I ask that at least one member of the council ask the Aviation Director to discuss and explain to council the purpose of the NCP and specifically Chapter 7 Land Use Management Elements #1 and #3.

We hope this provides you, the City Council, with our thought process, logic and reason for such a recommendation. Ultimately this is your decision. Your Airport Advisory Commission is a forward thinking body chartered to advise you on all issues good and bad as they relate to the Scottsdale Airport. We all share an opportunity to think ahead and act responsibly today, to make a better Scottsdale tomorrow.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Gunnar W. Buzzard".

Gunnar W. Buzzard, Chairman  
Scottsdale Airport Advisory Commission

Cc: Airport Advisory Commission  
City of Scottsdale Aviation Director  
Scottsdale City Council

Figure 1



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APPENDIX A

Letter from Airport Advisory Commission to City Council, dtd 15 October, 2010

15 October 2010

Mayor Jim Lane  
City of Scottsdale  
3939 Drinkwater Blvd  
Scottsdale, AZ 85251

SUBJECT: Position Paper, Scottsdale Airport Advisory Commission (AAC) recommendation as it relates to City Council Item: Greater Scottsdale Airpark Character Area Plan.

Mayor Lane and members of City Council,

My name is Gunnar Buzzard, Chairman of the Scottsdale Airport Advisory Commission. On behalf of the AAC, the purpose of this letter is to provide you and the City Council the genesis, thought process, logic and reason relative to the recommendation on two minor changes to the Greater Scottsdale Airpark Character area plan.

On the 26<sup>th</sup> of October, 2010, the City Council will consider possible adoption of the subject area plan.

First, allow us to say that the AAC fully supports the Greater Airpark Character Area Plan and the vast changes and developments that are included therein. In total, the AAC supports the area plan with the recommendation that (2) land parcels change their land use from the current classification of AMU-R (Airpark Mixed Use with Residential component) to the classification of AMU (Airpark Mixed Use). This has the effect of removing residential use on (2) parcels located in close proximity to helicopter and fixed-wing (aircraft) operations at the Scottsdale Airport. Please see Figure 1 attached. The "Circled" zones will denote the two parcels in question.

Why would the AAC get involved in this issue? First, the AAC has responsibilities pursuant to Scottsdale Airport CFR 14 Part 150 Noise Compatibility program. In short, this type of development is within the "Airport Influence" area and as such the commission needs to consider such development as it relates to the Airport and the City's future. Both of these issues fall into this category.

More, importantly the City Council charges the AAC via Section 5-109 of the Scottsdale Revised Code to advise the City Council on "Land use policies at and surrounding the airport in conflict with 14 CFR Part 150 or other aviation planning documents or ordinances. In addition to advising the city council, the airport advisory commission may take action to inform the planning commission of such conflicts." The Federal Aviation Administration (FAA) also requires sponsors (the Airport) to control and maintain land use capability and prevent encroachment of noise sensitive development at airports.

Personally, I greatly appreciated the opportunity to have a conference call with the Planning Commission Chairman, Michael D'Andrea to discuss this topic. We also welcomed the ability to have our Aviation Director, Gary Mascaro, address the Planning Commission at its September 2010 meeting.

It is important to be clear that the AAC is not a land planning, land zoning or land use deliberative body. Our commission fully understands its responsibilities, purview and limits as stated in the Scottsdale Revised Code. However, it is our responsibility to advise the City Council on land use issues that have a negative effect upon the Airport.

Encroachment, residential conflict, perceived vs. factual noise issues are some of the major contributors that lead to discord between various municipal airports and their surrounding cities, communities and neighborhoods. Scottsdale Airport is not immune to these issues and continuously strives to improve community communications, community relations, procedures and policies to minimize the impact of airport operations on the surrounding residences in the North Scottsdale and City of Phoenix areas.

We cannot affect previous city of Phoenix and city of Scottsdale developments or the "entitled residential" element of current parcels in the airport area. As an example, The Kierland development located at the Northwest corner of Scottsdale Rd and Greenway Blvd has loft/apartment type residences. However, that is a city of Phoenix project and not within our scope of concern. Within City of Scottsdale is the Scottsdale Quarter development, located at the Northeast corner of Scottsdale Rd and Greenway Blvd. This project received residential approval without having been submitted for review by the AAC.

The AAC has a responsibility to consider the growth of Scottsdale Airport/Airpark both today and in the coming 10-15 years. Maintaining the AMU-R designation on these parcels appears to be innocuous today. However, it sets the foundation for future problems as increased residences close to the airport will inevitably lead to an increased number of citizens who find aircraft/helicopter noise and operational issues not to their taste.

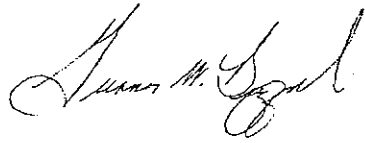
History shows us that no matter what administrative or cautionary tool we use to advise residents of the Scottsdale Airport it does not stop some citizens from developing an adverse association to the airport. The use of "Avigation" easements, disclosure notices or disclaimers are all good tools. However, they do not have any effect upon a citizen who feels they are somehow damaged or inconvenienced by the airport and its operations.

Changing these (2) parcels to an AMU will have a positive effect on airport operations, future AAC's and our future citizens in the out years. More residences located close to the airport traffic pattern, close to congested helicopter operations, set the stage for more discontent in the future.

During a September 2010 meeting, the Scottsdale Planning Commission voted to accept or reject this recommendation from the AAC to remove the residential component from the plan. The vote was 5-2 to not accept the recommendation and to leave the residential component in the plan. Our recommendation to the City Council is that you accept the Greater Airpark Character Area Plan with designation of AMU (Aviation Mixed Use) for the 2 parcels as noted on Figure 1 attached.

We hope this provides you, the City Council, with our thought process, logic and reason for such a recommendation. Ultimately this is your decision. Your Airport Advisory Commission is a forward thinking body chartered to advise you on all issues good and bad as they relate to the Scottsdale Airport. We all share an opportunity to think ahead and act responsibly today, to make a better Scottsdale tomorrow.

Respectfully Submitted,



Gunnar W. Buzzard  
Chairman, Scottsdale Airport Advisory Commission

Cc: Jim Lane, Mayor  
City Council, City of Scottsdale  
David Richert, City Manager  
David Ellison, Assistant City Manager  
Gary Mascaro, Scottsdale Airport Aviation Director  
Scottsdale Airport Advisory Commission members