



# **AIRPORT LAND USE COMMISSION**

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**FOR ORANGE COUNTY**

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## **MINUTES OF REGULAR MEETING**

**January 18, 2024**

- PLACE:** John Wayne Airport Administration Building  
Airport Commission Hearing Room  
3160 Airway Avenue  
Costa Mesa, California 92626
- TIME:** Regular Meeting called to order at 4:00 p.m. by Chairman  
Bresnahan
- COMMISSIONERS PRESENT:** Gerald Bresnahan, Mark Monin, Alan Murphy, Stephen  
Beverburg, Schelly Sustarsic, Mike Carroll  
Alternate Commissioners Present: Vern King
- COMMISSIONERS ABSENT:** None
- STAFF PRESENT:** Julie Fitch, Staff Planner  
Jeff Stock, County Counsel
- PLEDGE OF ALLEGIANCE:** Chairman Bresnahan led all present in the Pledge of  
Allegiance

Ms. Fitch introduced new Commissioner, Irvine City Council Member, Mike Carroll, and Interim Assistant Airport Director Komal Kumar.

### **APPROVAL OF MINUTES:**

On Commissioner Murphy's motion and Commissioner Monin's second, the Commission voted 4-0 (Murphy, Monin, Sustarsic, King) to approve the September 21, 2023, meeting minutes.

### **NEW BUSINESS:**

1. The Residences at 1401 Quail Street. The City of Newport Beach submitted a proposal to amend the Land Use Element of the General Plan and the Newport Place Planned Community to allow for The Residences at 1401 Quail Street.

Staff Planner Julie Fitch stated that the two projects on the agenda were similar and adjacent to each other. She presented the staff report and recommended that the Commission find the proposed project inconsistent with the AELUP for JWA per Section 2.1.1, 2.1.2, and 3.2.1.

Commissioner Murphy asked if any parcels shown in Attachment 6 are residential. Ms. Fitch indicated that the tallest building shown on the exhibit is an office building.

Jaime Murillo, City of Newport Beach Acting Deputy Community Development Director, introduced himself and stated that Senior Planners David Lee and Elizabeth Westmoreland are available for questions. Mr. Murillo stated that he understands the Commission's concern with adding more residential to the Airport Area, and that there are concerns with noise and safety, but that the two projects on the agenda help the City further its goal of providing 5,000 housing units as required by the RHNA, and that the City is focusing on other areas as well. He stated that Safety Zone 6 does allow residential, and that most buildings in Attachment 6 are commercial. He indicated that the completed project Uptown Newport at Jamboree and Bristol is mitigated for noise and very successful, and that the Planning Commission added conditions regarding noise to the two new projects.

Chairman Bresnahan asked if there were any other public comments. Ms. Fitch mentioned that there were written comments received and handed out to Commissioners. Commissioner Murphy moved the staff recommendation and Commissioner Carroll seconded.

There was discussion among the Commissioners. Chairman Bresnahan stated that the primary goal of the Commission is to protect the people from the airport and the airport from the people, and to help local agencies utilize land use planning that accomplishes those goals. He stated that he believes this is the worst case of planning as it is a terrible place for residential. He referred to the overflight exhibits and stated that the plots are not two-dimensional, that they are three dimensional because of the color-coding, and that the colors represent heights AMSL (Above Mean Sea Level). The project location is where low altitude planes will be at full power and in a lot of cases making a turn. This area is at the highest noise level, visually close, and there will be noise complaints. He stated that it is a terrible place to put people.

Commissioner Murphy agreed and stated that the Commission is familiar with the issues that the cities are facing, but this project is bad planning. He hopes that the City is aware of the letter from JWA to the City, that the City is taking on liability related to these projects if there is an accident, and if the City overrules. He stated that there was an accident not far from the site, farther to the west, where there was a low-level turn. The City is responsible if there are issues and the City's adoption of noise contours from a different EIR is inappropriate. He stated that this is a piecemeal approach, and the airport's letter to the City addresses that.

Commissioner Carroll asked a question about what happens next, and said that 23,610 units were assigned to Irvine so he knows what the cities are going through and what the State is requiring.

Ms. Fitch said the Cities are able to overrule with 2/3 City Council vote after providing a 45-day notice where ALUC and Caltrans can provide comments.

ALUC Counsel Jeff Stock stated that five of seven City Council members would be required to overrule. When asked about liability Mr. Stock responded that the PUC states if the ALUC inconsistency finding is overridden, then airport operator is immune from liability, and there is not much case law.

Commissioner Beverburg mentioned that safety and noise are concerns, but residential exposure is different than commercial in the 65 CNEL. Continually noise will result in hearing damage and issues will arise in the future.

Commissioner Sustarsic pointed out that the project has lots of outdoor uses. Commissioner Carrol asked if there is residential closer to the runway.

Ms. Fitch stated that over the years the City of Newport Beach has submitted quite a few residential projects which have been found inconsistent and then overruled. Also, some residential projects are in the Overlay which does go further in toward the airport.

On a motion by Commissioner Murphy and a second by Commissioner Carroll the Commission approved the staff recommendation with a 6-0 vote.

2. 1400 Bristol Street Residences. The City of Newport Beach submitted a proposal to amend the Land Use Element of the General Plan and the Newport Place Planned Community to allow for 1400 Bristol Street Residences.

Ms. Fitch presented the staff report and recommended that the Commission find the proposed project inconsistent with the AELUP for JWA per Section 2.1.1, 2.1.2, and 3.2.1.

Commissioner Murphy referred to written comments from Mr. Mosher stating that another residential project had been approved and asked if it been submitted to ALUC.

Ms. Fitch said she does not believe so, but if it was part of the Housing Overlay that was previously approved, then it would not be required to come back.

Mr. Mosher referred to his written comments and wanted to emphasize that liability issues are very important. The Newport Beach City Attorney points to the PUC which does not state that whether or not the City would be liable. He asked if there is any case law. If you remove the liability then common sense would indicate that the one who removes liability would take on the liability, and if that is the case, the City Council might be reluctant to overrule.

Commissioner Carroll asked if ALUC points this out in the comment letters. Ms. Fitch stated that ALUC uses standard language quoted from the law (PUC) that is included in the letter. It states that the airport operator is not liable, but it stops there. The law does not say that the City would be liable, but it also does not say that the City would not be liable, so the letter doesn't go beyond what it says in the law. Commissioner Carroll asked if we are able to indicate who

would be liable. Mr. Stock responded that it is not our position to say and that the City Attorney can advise the City.

Chairman Bresnahan clarified that the “we” referred to is ALUC and that we are not affiliated with the airport. It is a State mandated commission and while we meet in a JWA building, use JWA staff and County legal advice, ALUC is an independent body.

Commissioner Beverburg asked who would be responsible if something happened. Mr. Stock responded that the County/JWA would not be liable. Alternate King asked who looks out for the people. Chairman Bresnahan said that it would have to be tested in the courts. He also stated that he has been involved in this Commission for a very long time, and that cities putting residential uses in these areas is sad.

On a motion by Commissioner Beverburg and a second by Commissioner Murphy the Commission approved the staff recommendation with a 6-0 vote.

3. Administrative Status Report:

Ms. Fitch referred to the 2024 meeting dates and many items of correspondence between ALUC and the cities. She also mentioned the letter that JWA sent to the City of Newport Beach which Commissioner Murphy referred to earlier in the meeting.

Chairman Bresnahan asked if the document showing the City Newport Beach findings on the overrule was included in the agenda and asked who determines if findings are valid. Mr. Stock replied that he determines if findings are sufficient.

Mr. Bresnahan stated that some comments in the overrule letters are not correct and referred to overflight. Mr. Stock stated he hopes that accurate information is provided, and that he has not found any legal insufficiencies with findings thus far.

Ms. Fitch replied to the earlier question about Newport Beach findings and stated that the sixth attachment is ALUC’s response to Newport Beach, but the findings were not included in the agenda packet. They were issued the previous month, so were probably included in the previous agenda.

Commissioner Murphy referred to Minutes from a Los Alamitos City Council meeting that stated that the City overruled, and clarified that the City of Los Alamitos has overruled, so previous discussions regarding items to submit to ALUC, is now off. Mr. Stock agreed. Commissioner Carroll asked if the City of Los Alamitos had another vote. The discussion was carried over to Item #4.

4. Status of Determinations of Inconsistency:

Ms. Fitch referred to the ALUC letter sent to the City of Los Alamitos, when the City did not have four votes to overrule. The City held another public hearing December 11th and overruled with 4-1 vote.

Chairman Bresnahan asked Mr. Stock if he found the findings to be legally sufficient. Mr. Stock replied that if he found that findings were insufficient, he would notify the Commission, and that the City needs to make findings that it complies with PUC.

Commissioner Carroll asked what items would be required to be submitted to ALUC if the City did not overrule. Mr. Stock replied that PUC allows ALUC to put requirements on the City to submit all land use decisions, but that the Commission narrowed it to Housing Element areas.

5. Items of Interest to the Commissioners:

No items of interest were mentioned.

6. Items of Interest to the Public:

Mr. Mosher mentioned that a couple months ago there was a Newport Beach proposal to adopt its own set of noise contours and he understands that it was to remove these projects from the 65 CNEL. In a couple months there will be a bigger package of land use changes, zoning changes, general plan changes and houses at the golf course and at the end of the runway. For decades, the County tried to remove housing. He mentioned that the pre-annexation agreement promised that the Specific Plan would be carried forward, unless there was approval and consent of the Board of Supervisors, specifically in the Business Park area.

Commissioner Murphy indicated that the City should be aware of that, because of the letter JWA sent to the City in October. He was involved in the negotiation of the Spheres Agreement and the intent was to make sure changes would not be made.

**ADJOURNMENT:**

There being no further business before the Commission, the meeting was adjourned at 5:30 p.m. The next meeting is scheduled for February 15, 2023.