

**MINUTES OF THE AIRPORT
BOARD OF ADJUSTMENT MEETING**

June 25, 2015
Meeting held in
City of Houston Council Chambers
City Hall Annex, 900 Bagby
6:00 p.m.

CALL TO ORDER

John Martinec, Board Chair, called the meeting to order at 6:34 p.m. with a quorum present.

John Martinec
Wally Huerta
Christy Smidt
Thomas Seymour

HOUSTON AIRPORT SYSTEM STAFF

Jeffrey Brown
Bill Zrioka
Rudy Lopez

ATTORNEYS

Kim Mickelson
Robert Collins

I. SECRETARY'S REPORT

Presenter: Carlos Ortiz, Board Secretary. The Board Secretary introduced the item being considered at the meeting including the possible action on the Board of Adjustment Meeting Minutes from May 28, 2015 and to hear consider and possibly act on Airport Compatible Land Use Ordinance Variance Request HAS 2015-LV5 submitted by Thomas DeLancy of TJD Texas Enterprises, LLC to construct Phase III of the Villas of Foxbrick, a multifamily residential development on HCAD Parcel 042-189-000-0192 on Foxbrick Lane near George Bush Intercontinental Airport and in Tier One as designated by the ordinance..

1

II. CONSIDERATION AND POSSIBLE ACTION ON MINUTES FROM MAY 28, 2015 AIRPORT BOARD OF ADJUSTMENT MEETING

Board Action: Board members approved minutes from the May 28, 2015 meeting.

Motion: **Thomas Seymour** Second: **Wally Huerta** Vote: **Unanimous** Abstaining: **None**

III. PRESENTATION AND PUBLIC HEARING ON VARIANCE REQUEST HAS 2015-LV5

Presenter: Bill Zrioka, HAS Division Manager. Presentation of Variance Request HAS 2015-LV5 submitted by Thomas DeLancy of TJD Texas Enterprises, LLC to construct Phase III of the Villas of

Foxbrick, a three-story multifamily residential development on HCAD Parcel 042-189-000-0192 on Foxbrick Lane near George Bush Intercontinental Airport and in Tier One as designated by the ordinance.

Mr. Zrioka stated that the proposed multifamily residential would be in violation of Section 9-403, Subsection 9 of the Airport Compatible Land Use Ordinance. Mr. Zrioka said HAS staff recognized the developer has built two exiting multifamily developments on adjoining parcels before the ordinance passage and had attempted unsuccessfully to secure financing for developing the subject parcel in similar fashion. However, HAS staff also recognized that the applicant did not own the subject property, had not platted the property and had not finalized utility permit applications before the passage of the ordinance. Therefore, HAS staff recommended that variance request be not be approved.

Board Chairman John Martinec opened the public hearing to the applicant at 6:40 p.m. Applicant Thomas DeLancy requested a variance from the Airport Compatible Land Use Ordinance in order to build a new multifamily residential development on HCAD Parcel 042-189-000-0192 on Foxbrick Lane in the near George Bush Intercontinental Airport. Mr. DeLancy stated that planning for this development started in 2005 prior to the passage of the land use ordinance and the establishment of the Board of Adjustment. He said that the sound attenuation measures included in the ordinance have already been applied to the existing developments not only to mitigate aircraft noise but to mitigate noise generated by individual tenants. He added that the existing developments are under a 265-foot avigation easement and that 80 to 90 percent of the tenants work at the airport. He offered that the 65 DNL noise contour only partially impacts the subject property and makes possible building the development on the part of the property outside the 65 DNL noise contour. He said that he considers this third phase of the Villas of Foxbrick development as an addition to the existing phases and a continuing use of what is already in the vicinity. Mr. DeLancy said that in his discussions with United Airlines personnel he understood that it is \$2000 of extra cost for aircraft to taxi from IAH's Runway 8L-26R to the gate and that dispatchers try to keep aircraft away from the runway whenever possible. He stated that, typically, weeks go by that not a single aircraft uses the runway and when they do, they rarely fly over the vicinity of the existing development and, therefore, create negligible noise impacts. Mr. DeLancy said that property is very impractical for anything other than apartments or possibly a warehouse or mini-storage development. He mentioned that the property owner was hoping the variance would be granted so he can get rid of the property. He said that the existing development is safe and has very few crime problems. He said that potential tenants are required to sign a piece of paper acknowledging they will be living near an airport zone but added that three or four tenants decided they could not tolerate the noise and let them out of their lease anyway. He added that he has had no problem finding tenants and has a waiting list extending into October proving that there is a need for this type of housing in the area. Mr. DeLancy said that aircraft noise isn't as much of a problem as aircraft vibration and is mitigated with spray-foam insulation which serves as a glue to bond the construction more solidly. He ended his comments by asking what it would take to convince the board members that construction will make sure that noise is not an issue for the tenants.

Board Chairman John Martinec opened the hearing to public comment.

Board Chairman John Martinec called Charlotte Stephenson forward to speak at 6:50 p.m.

Charlotte Stephenson said that she has been living at the Villas of Foxbrick for some time and does not hear the noise of the aircraft from Intercontinental Airport-Houston. She said that the apartment

complex is very safe and very well maintained and she is supportive of building Phase III of the Villas of Foxbrick. Her comments ended at 6:54 p.m.

Board Chairman John Martinec called Edward Gonzalez forward to speak at 6:54 p.m.

Edward Gonzalez said that he has lived in at Villas of Foxbrick since 2004 and loves his apartment. He stated that airport noise does not bother him and is supportive of building Phase III of the Villas of Foxbrick. His comments ended at 6:55 p.m.

Board Chairman John Martinec called Vana Post forward to speak at 6:55 p.m.

Vana Post said that she has lived at the Villas of Foxbrick for a long time and is not bothered by the aircraft noise. She said that the apartment complex is clean and secure and that people ask her if there are apartments available. She said she advises them to put their name on a waiting list. She added that her apartment's proximity to the airport is convenient since she travels regularly and is supportive of building Phase III of the Villas of Foxbrick. Her comment ended at 6:57 p.m.

Board Chairman John Martinec called Sylvia Gonzalez forward to speak at 6:58 p.m.

Sylvia Gonzalez said that she has lived at the Villas of Foxbrick for 11 years and is the property manager. She said that she loves living there and the apartment complex is very quiet and secure. She added that many of the tenants work at the airport and that the complex is 100 percent full. She said she is supportive of building Phase III of the Villas of Foxbrick. Her comments ended at 6:59 p.m.

Board Chairman John Martinec called Steve Baxter forward to speak at 7:01 p.m.

Steve Baxter said that he is an architect and has known Thomas DeLancy for 15 years and said Mr. DeLancy keeps his developments instead of selling them unlike other developers. He said that he was the architect on Villas of Foxbrick Phase I and Phase II. He added that he began the schematic design development on the Villas of Foxbrick III in 2005 and were doing a site plan for platting in 2008 and has e-mail documentation with the civil engineer for substantiation. He said that he is willing to meet the sound attenuation requirements. He mentioned that the 65 decibel cone is on the southern portion of the property and considers the other part of the parcel as Tier Two. He said the noise is not overwhelming when he has been at the property while working and was hopeful the variance request would be granted with restrictions. He said he is supportive of building Phase III of Villas of Foxbrick. His comments ended at 7:05 p.m.

There were no other public speakers. Board Chairman John Martinec closed the public hearing at 7:06 p.m.

Motion: **Christy Smidt** Second: **Wally Huerta** Vote: **Unanimous** Abstaining: **None**

IV. CONSIDERATION AND POSSIBLE ACTION ON VARIANCE REQUEST NO. HAS 2015-LV5

Board Chairman John Martinec called Houston Airport System Chief Infrastructure Officer Jeffrey Brown to speak at 7:06 p.m.

Jeffrey Brown said he was surprised at the applicant's assumption that there was no aircraft traffic on Runway 26R, the nearest runway to the applicant's parcel for weeks because that runway along with Runways 26L and 27 were arrival runways and used 70 percent of the time from the east although he

said that he does not know how the air traffic is distributed between the three runways. He said that 90 percent of the Group Six, the larger aircraft, use Runway 26R and fly over the applicant's parcel. He added that the expected increase in international air traffic will cause the increased use of the runway and add to the air traffic over the applicant's parcel. He also said that legal staff was researching to confirm if the applicant's parcel was within the City of Houston city limits.

Board Member Christy Smidt asked HAS staff to show on a map which runway was being discussed.

Mr. Brown showed Ms. Smidt which runway was Runway 26R and said that it was mainly used for arrivals.

Ms. Smidt said the information helps and understands that Runway 26R is for arrivals.

Ms. Smidt asked about the comment that referred to the parcel being in Tier One and in Tier Two.

Mr. Zrioka said that a parcel cannot be split into two tiers. If the 65 DNL noise contour touches a parcel, the entire parcel is considered in Tier One.

Kim Mickelson, outside legal counsel for the Houston Airport System, added that the designation of tiers on parcels was done the city and permitted by state law within a 3x5 mile box. She added that for purposes of the variance, whether the parcel is in or out of the city limits or in the county, it does not matter. State law in the ordinance gives the Board of Adjustment the authority to issue variances based on the standards in the ordinance for properties either in the city or the county as long as it is in the 3x5 mile box.

Board Chairman John Martinec asked if what she was saying was that state law gave both the ordinance and the Board of Adjustment the jurisdiction.

Ms. Mickelson said it does.

Board Member Wally Huerta asked, based on earlier comments, if staff was aware of any options.

Mr. Zrioka replied there were no options to the ordinance.

Mr. Huerta references one of the comments referring to options allowing the variance.

Mr. Zrioka said that he believed the speaker was referring to sound attenuation measures.

Board Chairman John Martinec said he interpreted that if the board approved the variance, sound attenuation would be one of the conditions for approval.

Senior Assistant City Attorney Robert Collins said the applicant's parcel has been in limited purpose jurisdiction of the City of Houston since December 5, 2007 through a strategic partnership with Hunters Glen Municipal Utility District.

Board Member Wally Huerta said that although he empathized with the comments offered supporting the variance request but the board's job was to enforce the ordinance.

Board Chairman John Martinec agreed with Mr. Huerta's comments and said that he did not believe enforcement of the ordinance would cause significant hardship. He said he wished the applicant had developed a strategy within the public hearing regarding the ordinance creation in 2008 to protest but heard no testimony to the fact and he can only assume there was no participation from the applicant.

There was no additional discussion by the Board.

Board Action: Board members denied the variance request for HAS 2015-LV5

Motion: **Wally Huerta** Second: **Thomas Seymour** Vote: **Unanimous** Abstaining: **None**

V. ADJOURN

There being no further business before the Board, Board Chairman John Martinec adjourned the meeting at 7:20 p.m.

Motion: **Thomas Seymour** Second: **Christy Smidt** Vote: **Unanimous** Abstaining: **None**

MINUTES APPROVED ON FEBRUARY 3, 2017



Jack Rose, Board Chair

Carlos Ortiz, Board Secretary