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February 21, 2008

The Honorable Sally McKay  
City of New Smyrna Beach  
210 Sams Avenue  
New Smyrna Beach, FL 32168

Dear Mayor McKay:

On behalf of the 33,000 members of the Aircraft Owners and Pilots Association (AOPA) who reside in Florida and the 415,000 members nationwide, I would like to share our concerns with the proposed Village at Hidden Lakes development. It is our strong belief that allowing new residential development within 2,000 feet of the end of Runway 20 at the New Smyrna Beach Municipal Airport (EVB) is a bad application of public policy.

On January 8, 2007, the City of New Smyrna Beach Planning and Zoning Board voted to recommend that the City Commission approve the voluntary annexation and Comprehensive Plan amendment regarding the Village at Hidden Lakes. The amendment would change the subject property from County Future Land Use (FLU) designations of Rural and Environmental Systems Corridor to City FLU designations of Mixed Uses and Low-Density Residential with a limitation of 132 units.

On February 21, 2007, the City Commission on first reading of the annexation and Comprehensive Plan Amendment Ordinances voted unanimously to approve Ordinance Number 27-07 annexing the property and Ordinance Number 28-07 amending the land used designations.

Subsequent to that vote, the proposed amendments were to sent to the Florida Department of Community Affairs (DCA) who reviewed them and returned an Objections, Recommendations and Comments Report on July 27, 2007. In that report the DCA made three recommendations. AOPA is significantly interested in the third recommendation regarding land use compatibility.

The DCA raised concerns about increasing the residential density on the site by 90 units noting that the site is within 3,000 feet of the approach end of Runway 2 at EVB. They noted as well that the property is under the departure and arrival tracks to that runway and that overflights will occur, usually at full power. Based on these overflights and the fact that the proposed amendment is not consistent with several state requirements and State of Florida requirements regarding protecting airports from incompatible land use encroachment, the DCA recommended not adopting the proposed amendment.

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On December 21, 2007, AOPA wrote a letter to Mr. Mike McDaniel of the DCA and sent copies to you and your City Commissioners. In our letter we stated our support for the DCA's recommendations and pointed out one of the Federal obligations made under the Federal Aviation Administration's Airport Improvement Program that the airport is covenant to with respect to compatible land use. We have not yet received a response to that letter.

However, in site of the DCA's recommendations and objections to the development in question, on January 14, 2008, the City resubmitted its proposed plan amendment to the DCA and addressed the three areas that the DCA commented on in the July report. In the resubmitted amendment the City Chief Planner, Mr. Chad Lingenfelter, insists that the residential development component is a necessary part of the project and will provide a secure funding source for the existing Hidden Lakes Golf Course. He also acknowledges the fact that the project extends existing residential development towards the airport. There is discussion of the numerous meetings that took place to refine the project and gain acceptance and approval, including at least one meeting with the Airport Manager.

In Mr. Lingenfelter's development of his case for the project he addresses the requirements brought up by the DCA and introduces specific arguments using Florida Statutes Chapter 333, Airport Zoning and Title 14 Code of Federal Regulations Part 150, Airport Noise Compatibility Planning. These are all well and good and he has done his homework. Under strict interpretation of these regulations standing alone outside of common sense, he asserts that the project is compatible. We strongly disagree and have over 69 years of experience in such issues on which to base our position. Residential developments adjacent to airports are incompatible use of land. Such uses will lead to an onslaught of complaints about the airport from these new residents.

Currently there is a swelling concern within the New Smyrna Beach community that normal airport operations are intruding on the airport's neighbors. There is a Web site specifically dedicated to the noise concerns of your citizens – <http://www.nsbairportnoise.com>. On that site is a map showing locations of neighborhoods that experience noise in varying degrees related to the airport. Aircraft, like many other machines, create a noise signature. Airports as direct result of being the place where most aircraft must land, takeoff and be maintained are seen as noise magnets. Prior land use planning decisions have put today's residents under the paths of these normal and necessary airport operations. We now know that these decisions were poorly made and did not possess the foresight necessary to understand future aviation growth.

The airport has grown significantly since its birth in the late 1930's and specifically with the development by the U.S. Government during World War II. After the war, the Government gave the City of New Smyrna Beach this fully developed airport to maintain as an airport in perpetuity by virtue of a quitclaim deed executed on April 10, 1947. In that deed and agreed to by the City is a restriction that states:

- (1) That insofar as is within its power to reasonable possible, the party of the second part (City of New Smyrna Beach) and all subsequent transferees shall prevent any use of land either within or outside the boundaries of the airport, including the construction, erection, alteration, or growth of any structure or other object thereon, which use would be a hazard to the landing, taking-off, or maneuvering of aircraft at the airport, or otherwise limit its usefulness as an airport.

The penalty for not complying with that restriction is spelled out further in the deed and states in part:

BY ACCEPTANCE of this instrument or any rights hereunder, the party of the second part further agrees with the party of the first part (United States of America) as follows:

- (1) That upon a branch (sic) of any of the aforesaid reservations or restrictions by the party of the second part or any subsequent transferee, whether caused by the legal inability of said party of the second part or subsequent transferee to perform any of the obligations herein set out or otherwise, the title, right of possession and all other rights transferred to the party of the second part, or any portion thereof, shall at the option of the party of the first part revert to the party of the first part upon demand made in writing by the War Assets Administration or its successor Government agency at least sixty (60) days prior to the date fixed for the reversion of such title, right of possession and other rights transferred, or any portion thereof; provided, that, as to installations or structures which have been added to the premises without Federal Aid, the Government shall have the option to acquire title to or use of the same at the then fair market value of the rights therein to be acquired by the Government.

While it is next to impossible to go back and correct the prior poor land use decisions made by the City, it is imperative that these current proposals not proceed. AOPA respectfully requests that the City reconsider the proposed residential development and come up with a better and more compatible land use for this property without residential development. Upon annexation, the property in question becomes part of the City and is subject to your land use controls. The FAA expects the airport sponsor to protect its valuable asset from encroachment. They do not expect the City to encourage and advocate for incompatible land uses and they have the power to compel the City to cease doing so. Please withdraw this proposal or be prepared to lose your airport.

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Thank you for consideration of our views on this issue. We trust that you will take the right action. Should you have any questions we are happy to assist you, please contact our staff at 301-695-2200.

Sincerely,



Bill Dunn  
Vice President  
Airports

cc: Randy Richenburg, Vice Mayor, City of New Smyrna Beach  
Jack Stevenson Grasty, Commissioner, City of New Smyrna Beach  
James Hathaway, Commissioner, City of New Smyrna Beach  
Lynne Plaskett, Commissioner, City of New Smyrna Beach  
John Hagood, Manager, City of New Smyrna Beach  
Robert Perry, Chairman, City of New Smyrna Beach Airport Advisory Board  
Rhonda Walker, Manager, New Smyrna Beach Airport  
Mike McDaniel, Chief, State of Florida Department of Community Affairs  
William J. Ashbaker, PE, State Aviation Manager, Florida DOT  
James R. Wikstrom, Supervisor, Aviation & Seaport Programs, Florida DOT  
Bart Vernace, Assistant Manager, FAA Orlando Airports District Office  
Gerald Brandon, Chairman, Volusia Growth Management Commission  
Steven Kintner, Director of Growth & Resources, Volusia County Planning & Development Services  
Nelson Rhodes, AOPA Florida Regional Representative  
Paul S. Rooy, AOPA Airport Support Network Volunteer EVB