

PDK Watch Newsletter, March, 2002

- (1) Avigation Easements And DeKalb County
- (2) CEO's Proposal Could Cost Homeowners \$150 Million
- (3) And Lay Foundation For Massive Airport Expansion

Chief Executive Officer (CEO) Vernon Jones' proposed Airport Compatible Use Overlay District (ACOD) would require property owners to sign an avigation (air rights) easement in order to make material changes to their property. Under an avigation easement one gives up the right to sue for damages resulting from aviation. The very need for a noise related avigation easement is an admission that quality of life is being diminished by PDK operations. It appears to PDK Watch that the adoption of an ACOD is laying the foundation for expansion – larger jets, more operators, greater runway capacity, etc.

In many cases across the nation, governmental avigation easements are purchased. The Fulton County (Georgia) Commission Chairman has prepared a plan seeking money to compensate residents near Hartsfield Airport (where there is no ACOD) for lower property values and noise mitigation. CEO Jones' ACOD demands our rights just be given to the County. It appears he does not care for the rights of citizens nor the value we add to the County.

If our county commissioners adopt the ACOD, a property owner would be required to give a permanent easement, recorded with his/her deed, to obtain the required building permit for property improvement or repair. Some in DeKalb County regard this as blackmail! As one California airport watcher remarked, "Some might call this theft."

Meacham Field in Fort Worth, Texas, has an FAA-approved noise compatibility measure to soundproof existing homes. The city will attempt to obtain an avigation easement as part of a soundproofing agreement. It is not a specific requirement as it is in the proposed DeKalb County ACOD. In conjunction with the avigation easement discussion at the El Toro (California) airport, a spokesman for the FAA indicated that the only situation where avigation easements are recommended is when soundproofing has been funded by the federal government.

All of this relates to the diminution of our property values without compensation and at the same time polluting the air above our homes with noise, vibrations and fumes. A study performed under FAA contract around the Los Angeles airport compared the value for similar and moderately priced homes in a quiet neighborhood and in the noise area and found "an average 18.6 percent higher property value in the quiet neighborhood." A study funded by the Washington State Legislature concerning the Seattle airport found that nearby cities would lose \$500 million in property values. It found that the same house in the immediate vicinity of the airport would sell for 10.1 percent more if located

elsewhere. A certified real estate appraiser found communities near major Southern California airports have a diminution in value of 27.4 percent.

It is clear that property owners and DeKalb would lose property value unless the ACOD is defeated. How much value would be lost? Assuming there were 3000 homes at an average home value of \$250,000 included in the ACOD initially, then a diminishment of 20% yields an average loss of \$50,000 per home or a total loss in real estate value of \$150,000,000 for homeowners in DeKalb. Since the airport establishes the map of the overlay district and there are no defined procedures for establishing, changing, or contesting the impacted area, property owners could suddenly find their property value diminished by its inclusion in the district.

RIGHT NOW - It is most important that citizens personally speak to each commissioner and request his or her assurance of opposition to any version of the ACOD.

F.O.R. DeKalb, Inc. -- A Legal Fund For Our Rights in DeKalb

Contributions to F.O.R. DeKalb, Inc., may be sent to: F.O.R. DeKalb, Inc.

c/o Gary W. Diamond, Esq.

Hollowell, Foster & Gepp, PC

1200 Harris Tower

233 Peachtree Street, NE

Atlanta, Georgia 30303-2507

Following are answers to the questions concerning the potential legal actions asked at the Community Meeting about the Airport Compatible Use Overlay District (ACOD) on February 21, 2002. Please contact pdkwatch@yahoo.com if you have further questions.

Q: WHY MUST WE "SUE" FOR INFORMATION AND DOCUMENTATION THAT SHOULD BE "PUBLIC RECORDS"?

A: The Georgia Open Records Act (GORA) is the Georgia state law version of the U.S. Freedom of Information Act (FOIA). It ensures citizens the right to obtain copies of most types of public documents and records. It is subject to only certain specific exceptions. It provides for a 3-day response time. It is mandatory. However, the law does not provide serious penalties for failure to comply. GORA requests can be mischaracterized, misrouted or simply ignored. Frequently, officials are evasive, obstructive, and even antagonistic. Ultimately, the law provides for legal action as the way to enforce the appropriate disclosure of documents. (facts)

Q: WHO WILL CONTROL USE OF FUNDS DONATED?

A: The Board of Directors of F.O.R. DeKalb, Inc., with Evelyn Brethour (404-728-0772) as treasurer, will be established.

F.O.R. DeKalb, Inc. (FOR OUR RIGHTS!) was formed primarily to fund legal action to fight the Airport Compatible Use Overlay District concept. The ACOD forces citizens to surrender the right to claim damages caused by any future airport activity, including any flight related practice or incident. We are continuing to press for the release of public records related to airport noise event data and safety issues. We will continue to fight to preserve our quality of life, to protect our property rights, and to promote open and honest government with citizen involvement.

Remember, donations to F.O.R. DeKalb, Inc. are not tax deductible. This enables us to keep donor lists confidential, and also permits us to continue to lobby for political change.

Q: WILL FILING A LAWSUIT AFFECT WHETHER OR NOT ACOD WILL COME BEFORE THE COMMISSIONERS?

A: If you mean a direct suit against the ACOD concept itself, the ACOD ordinance would probably need to be passed into law in order for a lawsuit to challenge it directly. (opinion)

The authority and decision to place the ACOD ordinance on the Commissioners' meeting agenda rests with the CEO. The Commissioners consider and vote on agenda items. (facts) However, an organized group of citizens who are committed to litigating can exert a real political influence and have an impact on policy formation. (opinion) For example, our first lawsuit is expected to be to enforce ongoing disclosure of flight traffic and flight noise levels so that actual damages can be assessed and established. This is a necessary foundation for any lawsuit that would seek to prove diminution of property values or environmental harm.

Q: WHAT IS THE CONSTITUTIONALITY OF THIS PROPOSAL? CIVIL RIGHTS?

A: For several reasons, serious questions of constitutionality exist for the ACOD proposal in its presently worded form: the proposal is vague and ambiguous, the ACOD districts are only theoretically defined, the ordinance removes zoning decisions from lawfully elected commissioners to mere department heads with no accountability, the ordinance eliminates the zoning appeals process currently in place, it unfairly takes property rights from individuals without adequate compensation, and it usurps an individual's constitutional rights of due process and equal protection. (opinions).

Q: WOULD A CLASS ACTION SUIT FORCE THEIR HAND?

WHY DON'T WE BAND TOGETHER AND FILE A "CLASS ACTION SUIT" AS TO NOISE, POLLUTION, QUALITY OF LIFE, PROPERTY RIGHTS, ETC., ETC.? I WOULD CERTAINLY SUPPORT SUCH AN ACTION - FILE A SUIT NOW! A PRESUMPTIVE STRIKE!!! WHO WILL BE THE KEY LAW FIRM?

WHAT IS THE POSSIBILITY OF SEEKING CLASS ACTION STATUS ON ANY SUIT BROUGHT ABOUT BECAUSE OF THIS? IF POSSIBLE, HOW DO WE GO ABOUT GETTING THIS DONE?

A: A “class action” litigation is a lawsuit brought in the name of one or more “named” plaintiffs and others who are similarly situated. Like any lawsuit for damages, plaintiffs must prove actual damages as a result of a defendant’s actions. In a class action lawsuit, several factors initially must be shown in order for a judge to “certify” the class. These factors include numerosity (the existence of many similarly affected plaintiffs) and commonality of damages issues, such that allowing a class of plaintiffs to sue as a group makes sense to the court in order to prevent multiple trials to decide the same issues with common damages. If the Court certifies the class, the lawsuit proceeds in the name of the named parties, but for the benefit of all potential plaintiffs who later choose to “opt in” to the suit. Individuals who would “opt out” would be able to file their own, separate lawsuits if they wish. (facts)

A class action lawsuit would be a useful vehicle to sue for money damages and for diminution of property values, on behalf of all similarly situated individuals who are adversely affected by an actual, imposed ACOD system. It would not be necessary to sue as a class merely to challenge the constitutionality of an ordinance, or to sue to enforce GORA disclosures of noise levels and flight activity. Suing to obtain the noise and flight activity data is a necessary foundation to effectively challenge the ACOD proposal specifically, and excessive airport expansion generally. (opinions) This will be our first legal action, and lawyers are being consulted.

Q: WHEN WILL A LAWSUIT BE FILED AND WHAT IS THE COST?

A: Costs for legal actions to challenge ACOD, to sue under GORA to obtain the noise and flight activity data, and ultimately to sue for diminution of our property rights could be substantial. Our goal is to raise \$1,000,000. While we build the legal defense fund for our major legal action, we will proceed with litigation to obtain the noise and flight activity data. This will be the first legal action. This information is a necessary foundation to effectively challenge the ACOD proposal specifically, and excessive airport expansion generally.

We need your ongoing help in terms of both money contributions and volunteerism. Please contact PDK Watch at pdkwatch@yahoo.com to find out how you can help!

PDK Watch makes every effort to verify the information. We welcome corrections.

Visit the PDK Watch website at www.pdkwatch.org for more information. Contact pdkwatch@yahoo.com to join the e-mail list for up-to-date notices.

Support PDK Watch Efforts

PDK Watch is grateful to those of you who contribute toward the maintenance of the website, the cost of printing and mailing the newsletter. To support our continuing efforts, please make a check payable to Sven O. Lovegren and note on the check that it is for PDK Watch. Please mail to: PDK Watch, P.O. Box 49325, Atlanta GA 30359.