

To: Marion County Board of County Commissioners

From: T. Truett Gardner, Esq.
Addie K. Clark, P.E.

Date: February 9, 2024

Re: Jumbolair Land Use and Rezoning Applications (23-L03 and 231111ZP)

On behalf of our client and longtime resident of Jumbolair Aviation Estates, John Travolta, and the Co-Trustees Ronald Zupancic and Michael J. McDermott, Esq. of the Hawker Investment Trust, dated March 1, 1998, Gardner Brewer Hudson (GBH) is providing the following reasons why the future land use map amendment and rezoning applications filed by Robert Bull for Jumbolair Aviation Estates (the “Property”) should be summarily denied.

Facts

Robert A. Bull (“Bull”) has filed two applications (the “proposal”) with Marion County. One is a Large-Scale Future Land Use Map Series (“FLUMS”) amendment for 358.62 acres which would increase the current maximum entitlements by 376 dwelling units and up to 1,318,996 square feet of commercial or industrial uses. The other application is a Planned Development Rezoning to rezone 449.66 acres to construct up to 240 residential dwelling units and up to 461,649 square feet of commercial or industrial uses.

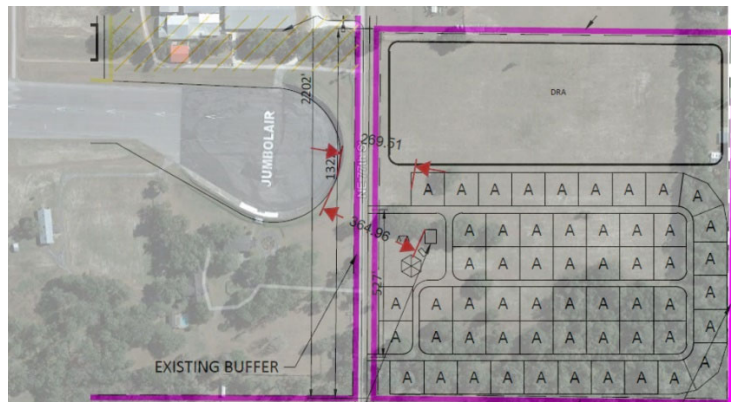
Legal Summary

The United States Supreme Court decision of *Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926) laid the foundation of modern zoning principles with the determination that zoning regulations are a valid exercise of local government’s authority to uphold a substantial relation to public health, safety, and welfare. The decision allows local governments to regulate zoning in order to balance property rights against the interests of the community in order to protect the public’s health, safety, and welfare.

Robert Bull’s proposed comprehensive plan amendment and rezoning demonstrate the antithesis of the protections established by the Supreme Court which have permeated throughout the Country, throughout Florida, and are recognized in Marion County. Bull’s proposals instead serve to threaten the public’s health, safety, and welfare by densifying property in a rural area close to a large private runway and by endangering the safety of residents that live in proximity to his property.

If approved, the development would pose significant harm to our client and the residents of Marion County for the following reasons:

- **Safety Risks** due to increased development in close proximity to an active runway.
 - The proposed development increases residential density and activities within the immediate vicinity of a large private runway. In fact, and as shown to the side, the development proposes a residential community center and homesites less than 400 feet from an existing active, private runway. The increased air traffic resulting from an



additional 198 hangars and potential flight school escalates the chance of a collision and poses a blatant and inherent risk to the public's health and safety.

- **Noise and air pollution** due to additional private air traffic.
 - Additional airplanes and airplane trips as the result of a potential flight school will generate significant noise and air pollution.
- **Property value decreases** due to proximity to additional air traffic.
 - The homeowners in the existing Jumbolair Aviation Estates purchased their homes with the knowledge that they are in close proximity to a private runway; however, the saturation of the private runway with the potential of at least 198 additional planes and a possible flight school will increase any perceived inconvenience of living near a runway, therefore potentially leading to financial loss for homeowners in the future.
- **Environmental and natural habitat impact** due to increased air and vehicular traffic.
 - As the official "Horse Capital of the World," Marion County is proud of the natural, peaceful environment that lends it to being home to more horses than anywhere else in the Country. The general project area is home to many of these horses. Bull's insensitivity to the increase in air traffic has shown a complete disregard towards the equestrian community and the County's reputation as a sanctuary for these creatures. A significant increase in low-flying planes would severely disrupt the otherwise placid environment that these horses thrive in.

Compared to the existing low-density neighborhoods surrounding the area, Bull's proposals would irrevocably alter the complexion of north central Marion County from a quiet, rural farmland community to a bustling airfield surrounded by dense residential development and commercial development. Bull's applications promote the creation of a disproportionate island of increased density and air traffic that is disconnected and isolated from the true urban fabric of Marion County located to the south of the subject Property.

In light of the protections established by *Euclid v. Ambler* and subsequent cases establishing the jurisprudence of zoning and land use laws, the State of Florida has established Comprehensive Plans that guide future development in local jurisdictions across the State. In addition, local governments have zoning laws providing development regulations and determining where various uses are appropriate within their jurisdiction. Bull proposes to alter Marion County's Comprehensive Plan and zoning regulations in order to align with his personal and financial desires for the future of his property. However, his personal desires must be consistent with Marion County's Comprehensive Plan and zoning regulations, which are further discussed below.

According to *Florida Statutes 163.3177*, the Comprehensive Plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented.

Amending the FLUM Series is a legislative decision that must be based upon the review of embedded policies to ensure overall consistency and compatibility with the Comprehensive Plan and with the long-range vision of Marion County.

For the following reasons, the proposed FLUMS amendment is inconsistent with Marion County's Comprehensive Plan and should be denied.



Statement of Opposition

- 1. The proposed FLUMS amendment is not compatible with the Marion County Comprehensive Plan and 2045 Planning Horizon.**

Supporting Policies

Policy 1.1.2 of the Marion County Comprehensive Plan (the “Plan”): *The FLUM Series embodies strategies designed to build long-term community value, discourage urban sprawl and ensure that public facilities and services are provided in the most cost-effective, efficient and timely manner, and protect natural, cultural, and environmental resources that are unique to the County.*

Policy 2.1.7 of the Plan: *Applications for conversion of agricultural properties designated as Rural Land on the Future Land Use Map to a mixed use, industrial, commercial or residential future land use category shall demonstrate the following:*

The amendment will not result in urban sprawl as defined in Chapter 163, Part II, Florida Statutes;

- Availability of public infrastructure, including public water and sewer and transportation facilities to serve a more dense or intense use is available at the time of application; or will be available at concurrently with development.*
- The relationship of the proposed amendment site to the UGB boundary and other more densely or intensely designated or developed lands.*

Discussion

According to *Florida Statutes 163.3177.9.a(II)*, one of the primary indicators that a plan amendment does not discourage the proliferation of urban sprawl is if the proposal designates urban development to occur in rural areas at substantial distances from existing urban areas while not using undeveloped lands that are available and suitable for development. The FLUMS amendment proposes density increases for a total of 358.62 acres of land located within a less than one mile radius from the Farmland Preservation Area and from an active, private airport. Though the Property is within the Urban Growth Boundary, it is located at the very northernmost boundary which is a substantial distance from existing urban areas to the south. Therefore, this is not an appropriate location for densifying residential development.

Jumbolair Aviation Estates is intentionally located a significant distance away from urban development in order to continue protecting the natural and cultural environment in and surrounding the Estates. The proposal is a prime example of proliferating urban sprawl in a location that is far from existing urban areas.

Statement of Opposition

- 2. The proposed FLUMS amendment does not satisfy the original intent of the Urban Growth Boundary.**

Supporting Policies

Objective 3.1 of the Plan: *To establish one or more boundaries that clearly identifies Urban Areas where long-term capital improvements shall be directed to create compact and efficient development patterns and allow for sufficient growth opportunities to maintain the County’s long-term viability.*

Policy 3.1.1 of the Plan: *The County FLUM Series, Map #1, Marion County 2045 Future Land Use Map, designates an UGB that reinforces the preferred land use patterns of Marion County through policies that are designed to effectively discourage the proliferation of urban sprawl.*



Discussion

Objective 3.1. and its supporting policies further caution against urban sprawl especially where capital improvements are neither planned nor funded. It is the County's obligation to ensure the balance of compatible land uses, growth patterns, and proper infrastructure when reviewing applications for long-term land use changes. The FLUMS amendment would densify 358.62 acres of Rural-designated land located in close proximity to a private airport, in an area where no other similar future development plans or roadway capacity improvement plans are in effect.

According to the Jumbolair Land Use and Operational Analysis Memorandum prepared by Kittelson and Associates, Inc. in October 2023, the applicant was not required to incorporate any future development trips into the future background analysis scenario. This lack of existing and future development pattern in close proximity to the area is further proven in Kittelson's Memorandum as the applicant's representative states that "there are not any planned, programmed, and/or committed roadway capacity improvements within the study area." This further identifies the proposal as an isolated, inappropriately located means of urban sprawl in an area where long-term capital improvement plans do not currently exist.

Statement of Opposition

3. The proposed FLUMS amendment is an inherent danger to Rural Neighborhoods.

Supporting Policies

Policy 2.1.13 of the Plan: *Marion County shall recognize "rural neighborhoods" that occur within or outside of the UGB deserve special protection from the intrusion of urban uses, densities and intensities where new development occurs within the immediate vicinity.*

Goal 1 of the Plan: *Protect and enhance the public health, safety, and welfare.*

Discussion

By amending the FLUMS for 358.62 acres, an additional 376 dwelling units and up to 1,318,996 square feet of commercial and industrial uses could immediately be contemplated in an area that is surrounded by rural land, single-family estates, and acres of farms housing horses, cattle, and other animals. Though the applicant's PUD Concept Plan, dated January 5, 2024, proposes less than the maximum entitlements, the underlying future land use will allow the maximum entitlements to be considered at a later date if the owner seeks to rezone at any point in the future. The potential to develop a 300% increase over the 92 dwelling units allowed today in addition to over 1.3 million square feet of commercial and industrial uses is a complete intrusion of urban uses, densities, and intensities in a historically rural neighborhood.

A significant increase in residential and commercial development should not be approved near an airport due to the heightened safety risks involved with increased private air traffic. The applicant's PUD Concept Plan dated January 5, 2024, boasts an additional 198 airport hangars, resulting in a significant increase of flight operations for at least 300 aircraft. The lack of concern for potential collisions between aircraft, residential buildings, and neighboring residents is apparent as the Community Center for 55 residential units is proposed to be located less than 400 feet from the south end of the existing runway.

In addition to the inherent safety risks, noise pollution, environmental impacts, and property values are significantly affected by this proposal. The proximity of the existing and proposed residential development to increased aircraft operations is dangerous, intrusive, and incompatible with the goals and policies that protect rural neighborhoods within the UGB.



Non-compliance with the Land Development Code

The Planned Unit Development rezoning not only does little in the way of enforcing the rural nature and identity of the surrounding area, it fails to comply with the Land Development Code's intent of Planned Unit Developments as described in Section 4.2.31.A:

1. *Plan land as a whole to be developed as a single operation or as defined in a series of phases; Though the land is to be developed as a single phase, the layout and orientation of the project area is not whole. The sharp, piecemeal orientation of the plan intrudes into existing rural neighborhoods and ultimately engulfs the existing runway and Jumbolair Aviation Estates from the north, west, and south.*
2. *Simplify the procedure for obtaining approval of proposed development through the simultaneous review by the county of proposed land use, special uses, accessory uses, and structures that are related to and complement the area within and surrounding the PUD, lot and setback consideration, public needs and requirements, and health and safety factors; The lack of significant buffering between the runway and the proposed residential structures is a major health and safety risk. The proposed increase in density and intensity will only constrain public infrastructure in an area where there are no planned or funded capital improvements for the long-term future.*
3. *Provide flexibility in design to take the greatest advantage of natural and protected resources, land, trees, living species, historical and other features; Substantially increasing the air traffic in and around the rural farmland is not promoting or protecting the living species in the area.*
4. *Allow a variety of housing types and compatible neighborhood arrangements that promote residential diversity and a larger selection of living environments and living units; As previously mentioned, single-family residential housing is proposed within less than 400 feet of the active, private runway. The proposal does not promote residential diversity in a compatible, safe arrangement given the location of the runway.*
5. *Provide the developer sufficient freedom to take a creative approach to the use of land and related physical development, as well as utilizing innovative techniques to enhance the visual character of the community; and The developer is shoehorning density and airport hangars in locations without sufficient external access, internal connectivity, or thoughtful design.*
6. *Design the environment in a multi-modal manner that enhances pedestrian, bicycle, and transit connectivity within the development and in connecting to the surrounding community. The project of almost 450 acres proposes only three (3) access connections to arterial or collector roadways with the remaining three (3) access connections along a local, two-lane road that prohibits trucks. None of the access roadways are equipped with pedestrian, bicycle, or transit infrastructure and the lack of complete connections within the site contributes to the overall multi-modal deficiency. The plan proposes multiple dead-end cul-de-sacs and only considers sidewalks on one side of internal roads and along one side of major roads. This is not sufficient multi-modal connectivity for a project that is proposing a significant density increase.*

Conclusion

The Large-Scale Future Land Use Map Series amendment for 358.62 acres is socially and fundamentally incompatible with the Marion County Comprehensive Plan as it fails to discourage the proliferation of urban sprawl, does not satisfy the original intent of the Urban Growth Boundary, and is an inherent danger to Rural Neighborhoods. The proposal fails to adhere to the goals, strategies and policies promulgated under the Comprehensive Plan. Marion County's Comprehensive Plan provides its roadmap to balance appropriate development with existing patterns, availability of infrastructure, and overall compatibility. Bull's proposals are not consistent with existing development patterns, as



necessary infrastructure is not even contemplated and, most glaringly, the proposals could not be more incompatible with the fabric of the surrounding area.

In keeping with the well-founded precedent established by the U.S. Supreme Court in *Euclid v. Ambler Realty Company*, amendments to valid Comprehensive Plans and zoning regulations should be rejected when they jeopardize the public's health, safety, and welfare.

The above-referenced failures in Bull's proposals demonstrate a blatant lack of interest in preserving the rural nature of the area and Jumbolair's unique history. Accordingly, and as a consequence of the proposals' inconsistencies with the Comprehensive Plan, Bull's FLUMS amendment and companion rezoning should be rejected and denied.

