



**City of Phoenix**  
AVIATION DEPARTMENT

2 November 2021

Nicolas J. Wood  
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One Arizona Center  
400 East Van Buren, Suite 1900  
Phoenix, Arizona 85004-2202

Re: Coyotes and Bluebird's Proposal for Tempe Entertainment District

Dear Nick,

I write in response to your October 25, 2021 letter.

Your letter addresses the Phoenix Aviation Advisory Board's (PAAB) October 21, 2021 meeting, during which the Board considered staff's information-only agenda item on the proposed Tempe Entertainment District (TED). The presentation was based on information received from the Coyotes and Bluebird Development on September 16, 2021, coupled with staff's incipient investigation of the aeronautical issues posed by TED. When we met on September 16, we told you that Phoenix Sky Harbor International Airport lacked basic information about the Coyotes and Bluebird's TED proposal and that Sky Harbor first became aware of the proposal through media reports. We learned on September 16 that TED constitutes a busy venue of buildings and other improvements, including significant residential development off the east end of the two busiest runways at Sky Harbor. During the meeting, the Coyotes and Bluebird showed us preliminary TED renderings and told us about the venue and its proposed benefits to the Coyotes. This was not a comprehensive presentation intended to resolve all concerns that Sky Harbor had about TED's many aeronautical effects on the airport.

But during the meeting, it became clear that the Coyotes, Bluebird, and a team of consultants had spent countless hours over many months planning TED. Yet the September 16 meeting was the *first* time the team and the developer (or their consultants) met with Sky Harbor to discuss TED's impact on the airport. Nevertheless, the basic information communicated in the meeting helped us understand the development better, and we expressed our appreciation. But we told you that we needed much more technical data to evaluate the development and how it would impact Sky Harbor's operations. Our airline and other business partners had already begun asking fair but difficult questions about how the development would affect them—questions that we could not answer. After



your clients' presentation in the meeting, we then proceeded to discuss ten major issues with which we were most concerned.

We did not propose ways to resolve our concerns (except one) during the meeting. Instead, we asked for more information and data to address the concerns and for a continuing dialog once we received the additional information. The one exception involved TED events and activities that would require FAA to implement temporary flight restrictions (TFR) affecting Sky Harbor's two south runways. Specifically, you orally agreed that the Coyotes and Bluebird would prohibit events and activities that would or could cause FAA to impose TFR. There were no other agreements. At the conclusion of our discussion, we told you we would follow up with a letter addressing Sky Harbor's continuing concerns and requesting more information.

Chad Makovsky's September 20, 2021 letter did just that. Your October 25 letter (at p. 2) says that "except for item number 4" of Makovsky's list of 10 concerns, "we agreed in principle to *every one of them*." (Emphasis added.) We did not understand that the parties had reached an agreement on *any* issue except the TFR problem. For example, to name a few, the Coyotes did *not* agree to execute and record avigation easements on the development land in Sky Harbor's favor. (That would have been hard to do because neither the Coyotes nor Bluebird owns the land; Tempe does.) The Coyotes also did not agree that, at all TED venues, the Coyotes would "prohibit all use of lasers, fireworks, promotional spotlights, or similar activities" that would affect air navigation by "brilliant light, glare, smoke, dust, or electromagnetic disturbance," as Sky Harbor requested. And the Coyotes did not agree to prohibit drone usage. If the Coyotes had agreed to everything Sky Harbor requested, we would have expected a prompt response to Makovsky's letter (to date, there has been no point-by-point response) and to my follow-up emails.

Specifically, on September 23, 2021, I wrote you and asked for the additional information and documents that Sky Harbor needed to analyze the 10 concerns in Makovsky's letter:

- The digital file of the full site plans shared with us in part (as difficult-to-read paper documents) at the meeting.
- The schedule for completing the final design of the arena's footprint and elevations, which you said are not designed at this time
- The final (or near-final) latitudes and longitudes for each structure to be constructed in TED.
- The existing and proposed final elevations of the ground throughout TED and the final (or near-final) elevations of each proposed TED structure when substantially complete.

- The final (or near-final) latitudes and longitudes for each construction crane that will be used during each improvement project's enabling work and construction.
- The existing and proposed final elevations of the ground throughout TED and the final (or near-final) elevations of each proposed crane. Also, please indicate whether the crane and other vertical-construction-equipment elevations will include the actual top of cranes/structures—i.e., the highest point of the equipment/assembly, including antennae/mechanicals/signage/flag poles/obstruction lighting, etc.
- The airlines' specific OEI procedures that TED has considered (specifically, Dibble has analyzed) that will (or may) be affected by the TED development.
- The FAA's flight arrival and departure procedures protected-airspace surfaces that TED has considered (specifically, Dibble has analyzed) and that will (or may) be affected by the TED development.
- The site noise contours that Dibble considered (or developed) to comply with RFP requirements and federal law.
- The conceptual lighting plan and related photometric study for the development and the details of how TED will address the impact of project light and glare on air navigation.
- The approximate construction schedule's start and substantial-completion dates for each TED improvement.
- The draft 7460s for each improvement project. Of course, if the 7460s have actually been filed for one or more projects, may we have the final document filed in each case?
- The details on a qualified biologist's investigation and study of TED development plans for wildlife hazard potential and possible mitigations (when will the investigation occur, who has your client retained and what are his/her qualifications, and how will the biologist proceed).

You responded to our requests for the data this way: "We are working on assembling the information that you have described below." That was well over a month ago, and to date we have not received any of the information requested. I wrote you to follow up on these data requests on October 7, 18, and 22. On October 22, you indicated: "We will have a response for you on Monday," October 25. We did not receive any of the data requested on October 25, and we still have not received this information from you, the Coyotes, or Bluebird. If there had been unanimous agreement between the parties at the September 16 meeting, we would have expected you *to memorialize the agreement promptly* after the meeting or promptly after Makovsky's letter. Yet to date, we have not received a draft memorializing the "agreements" you claim exist. Even without a draft, we would have expected to receive the data we requested promptly after my original September 23 email.

Shortly after Makovsky's September 20 letter to you, he sent similar correspondence to the Tempe procurement officer assigned to the TED solicitation (which invited the Coyotes and Bluebird's development proposal). In that correspondence, Sky Harbor and the City of Phoenix communicated to Tempe the same 10 concerns expressed to the Coyotes and Bluebird at the September 16 meeting and in Makovsky's letter to you. Sky Harbor's purpose was to convince Tempe that these and other concerns that develop as we analyze TED *must be addressed by Tempe*, as well as the Coyotes and Bluebird. This imperative arises under Phoenix and Tempe's September 2, 1994 Intergovernmental Agreement (IGA) concerning Sky Harbor. Consistent with the parties' IGA obligations, the peer cities possess a compelling interest in (1) the airport's \$39 billion economic impact on both communities, and (2) a harmonious working relationship concerning the airport.

Phoenix's relationship with Tempe regarding Sky Harbor *preexists this solicitation*, and the relationship requires the cities to communicate promptly and directly all concerns that either peer may have about the other's airport-related plans and activities. Neither city hesitates to communicate important airport-related communications to the other, and the existence of an on-going procurement creates no exception to that rule. Makovsky communicated Sky Harbor's concerns to the procurement officer trusting that she would ensure the issues were fully investigated and resolved during the solicitation—as part of Tempe's evaluation of the Coyotes and Bluebird's proposal—*before* recommending any award. *We fully intend to continue our dialog with Tempe*. At appropriate times, the dialog may involve the Coyotes and Bluebird. Contrary to the implication in your letter, neither Sky Harbor nor Tempe is prohibited by law from initiating or continuing this dialog during the procurement. We note that you sent a blind copy of your October 25 letter to Tempe, and we have sent a copy of this response to her.

Any implied legal prohibition would contravene the 1994 IGA, which specifically regulates Sky Harbor's operations and Tempe's development of incompatible uses on the east side of the airport. The IGA requires Sky Harbor and FAA to maintain and enforce noise-abatement procedures and flight-track monitoring systems for Tempe's benefit. Phoenix abides by these limitations in exchange for certain development regulations that Tempe self-imposes to prevent incompatible land uses. Specifically, the IGA requires Tempe to prevent incompatible development in the TED project area, *particularly residential development in the prohibited noise contour*. The proposed development on its face violates the IGA because it locates high-density residential within the 65 DNL noise contour.

By my count, we have communicated substantively with the Coyotes and Bluebird six times since the September 16 meeting (September 16, 20, 23; October 7, 18, 22). As of October 21 (when PAAB last met), our data and information requests had been outstanding

to the Coyotes and Bluebird for at least 35 days. During that time, PAAB members requested an update on the Coyotes and Bluebird's TED proposal to Tempe. The meeting was publicly posted, and the Coyotes and Bluebird were welcome to participate. Of course, the better approach would have been for the Coyotes and Bluebird to have proactively asked PAAB—much earlier than October 21—to present the TED development to the board and to describe its aeronautical impacts on Sky Harbor. PAAB has never made the decision to exclude your clients. (Please give Sky Harbor the benefit of the doubt; after all Sky Harbor did so for the Coyotes and Bluebird, who worked for months on the TED proposal *before* they first communicated with Sky Harbor about the proposal on September 16.) The PAAB chair has offered to agendize the Coyotes and Bluebird's TED proposal for the next board meeting on November 18.

We do not believe that Sky Harbor's presentation to PAAB was inaccurate. The following points reiterate Sky Harbor's concerns and respond further to your letter.

1. The maps presented by Mr. Feld to PAAB were accurate. They depicted building heights and proposed uses as you represented them in the September 16 meeting. The Coyotes and Bluebird must submit each building's height to FAA for investigation under 14 CFR Part 77 (requiring notice to FAA of proposed construction at or near an airport). Although we expect the Coyotes and Bluebird to fully comply with Part 77, we also believe that the heights of the TED buildings (as we understand those heights based on incomplete information supplied by the Coyotes and Bluebird) will not likely penetrate the federally protected air-navigation surfaces. Hence, the FAA will likely not declare that the buildings *themselves* constitute a *permanent* air-navigation hazard. By contrast, TED construction cranes may penetrate the surfaces and constitute a *temporary* air-navigation hazard.

In any event, the FAA is not the only stakeholder, and the TED development poses other hazards that require the developer's affirmative action to eliminate or mitigate:

- FAA does not review for one-engine-out (OEI) procedures in general nor airline-specific OEI procedures. (The Coyotes and Bluebird's TED proposal likewise has not addressed airline-specific one-engine-out procedures, and TED buildings could penetrate the airlines' specific OEI surfaces.)
- The Part 77 review does not include building materials or lighting; consequently, FAA cannot review reflectivity or electromagnetic issues. A proper review would include a reflectivity analysis based on near-final architectural plans that depict building skin and surface materials. This review would also necessarily focus on structure-, landscaping-, site-, and venue-lighting plans, as well as detailed operational plans for TED activities and events.

- FAA does not review for wildlife attractant and hazard issues (discussed in more detail in no. 3 below).
- FAA does not review noise sensitivity and related public-health issues.
- FAA does not perform a pilot-centric risk analysis for density of building occupancy or intensity of a venue's use (*i.e.*, large concentrations of people under a wide-body jet's final approach).
- FAA does not review site operational issues (use of lighting, lasers, strobes, fireworks, and drones).

2. Based on the limited information provided, Sky Harbor believes that the Coyotes and Bluebird's proposal does not address the incompatibility of residential development within the 65 DNL noise contour. FAA has determined that residential development within this noise contour poses *unacceptable noise* to residents and *a concomitant risk to public health*. Significantly, the Coyotes and Bluebird's proposal envisions high-density residential uses within the 65 DNL, which triggers Sky Harbor's legal obligation to vigorously resist that plan. After our September 16 meeting, the Coyotes and Bluebird's consultants contacted staff to ask whether TED was within the 65 DNL noise contour. When our staff confirmed that it was, the consultants did not offer additional analysis to address the noise and public-health effects of this ill-advised development decision. You contend that aircraft noise over these residential units can be reduced by Bluebird selecting certain noise-attenuating building materials. And yet, you have not provided detailed architectural plans and specifications that would show that the noise *inside*—much less *outside*—these homes could be eliminated for residents. You also contend that previous development in the area is within the 65 DNL noise contour. To be clear, the previous residential development east and south of the site are not within the current 65 DNL.

3. Based on the limited information provided and the statements in your October 25 letter, Sky Harbor believes that the Coyotes and Bluebird do not understand the wildlife hazard posed by the TED development. Importantly, the developer's digital site renderings, video clip, PR materials, and Phoenix Business Journal interviews all depict (or describe) and emphasize that your clients intend to extend Tempe Town Lake *west* to Priest Drive and toward Sky Harbor's two south runways. Whether the lake is extended west or not, the anticipated crowds of people and pets attracted to the development would in turn attract birds and wildlife. Significantly, the site is within the 10,000' buffer that the FAA's wildlife-hazard advisory circular calls out as a critical area for mitigation and avoidance of wildlife attractants. Increased wildlife activity in this vicinity creates a risk to air navigation at Sky Harbor. As well-publicized bird-strike aircraft incidents attest, the risk can be perilous. To date, although the Coyotes and Bluebird have said they would address this issue, they have not. And it's fair to say that the TED project poses a wildlife risk to Sky Harbor until the Coyotes and Bluebird demonstrate to the contrary.

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In closing, *to begin our detailed analysis* of the Coyotes and Bluebird's TED proposal, I look forward to receiving the data and other information Sky Harbor has requested and the further information your October 25 letter offers to provide. We have been asking for these data since September 16, over 45 days ago. Your clients' failure during the last 45 days to live up to their commitment to provide Sky Harbor with the requested data is troubling and seems to indicate an unwillingness to timely address the real issues that Sky Harbor has raised. When can Sky Harbor expect to receive the data? Sky Harbor cannot support your proposal until we receive the necessary data, conduct a complete analysis of the 10 issues we raised at the very beginning, and determine whether the expected impacts to Sky Harbor can be eliminated.

Respectfully,

*Brad Holm*

Brad Holm  
Assistant Aviation Director/General Counsel