

April 5, 2023

Mr. David L. Recor, ICMA-CM
Development Services Director
City of Pompano Beach
100W. Atlantic Blvd.
Pompano Beach, FL 33060

**RE: Air Park Obstruction Permit Application Review
1508 North Ocean Blvd, Pompano Beach, FL**

Dear Mr. Recor:

Kimley-Horn is in receipt of an Air Park Observation Permit Application submitted by Keith & Associates, Inc. on behalf of Mount Vernon Property Holdings, LLC (the Proponent, 1508 North Ocean Blvd, Ocean Park Beach Residence) dated February 16, 2023. To support this submittal the following documents, which were prepared by the Proponent's team, were provided to Kimley-Horn by City staff for review:

- 002-Air Park Narrative-Ocean Prk.pdf
- 004-FAA Determination - Ocean Park letter.pdf [sic]
- 101-S1-Survey.pdf
- 280-A2-1.01-BLDG Elevation-East.pdf
- 281-A2-1.02-BLDG Elevation-North.pdf
- 282-A2-1.03-BLDG Elevation-West.pdf
- 283-A2-1.04-BLDG Elevation-South.pdf
- 286 - Section Plan - A-19.pdf
- 301-SP-101-Site Plan.pdf

We have reviewed this submission in accordance with the City of Pompano Beach Zoning Code Sections 155.2422 Air Park Obstruction Permit and 155.3707 Air Park Overlay (APO) District and determined that the proposed project does not appear to meet their requirements.

Our observations and recommendations are as follows:

1. The Proponent's Narrative for an Air Park Obstruction Permit (the Narrative) requests an Airpark Obstruction Permit for two proposed buildings at a height of 242 feet above mean sea level (AMSL) or 234 feet above ground level (AGL). This infers a site elevation 8 feet AMSL which matches the structure information annotated in the referenced FAA Aeronautical Study Number 2022-ASO-23980-OE. However, these values are inconsistent with the supporting plans. The architectural building section and elevations note a site elevation of 10 feet 6 inches NGVD (National Geodetic Vertical Datum) and a maximum building height of 218 feet above ground level (AGL)/228 feet (NGVD). The survey shows the existing site grades to vary roughly between 7 and 9.5 feet NAVD (North American Vertical Datum). The site plan shows the finished floor elevation to be 10.3 feet with no datum identified. No conversion has been provided between any of the datums and AMSL.

Recommendation(s): 1) The proposed site elevation cannot be determined due to inconsistencies between

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each discipline's documents (IE each discipline has a different datum and site elevation). Kimley-Horn also could not independently verify the conversion between AMSL, NAVD and NGVD. Kimley-Horn recommends that the City require the Proponent to coordinate one datum across all the documents and provided a conversion between that datum and AMSL. This information should be determined by a Florida registered surveyor. Alternatively, it can be provided by the civil engineer on the site plan. Kimley-Horn also recommends that the Proponent revise their documents to have a consistent site elevation amongst the disciplines 2) The Narrative requests an elevation that is inconsistent with the plans. We recommend the City require the Proponent to revise their documents to be consistent with each other (IE 242' vs 228'). If there are components, cladding, or ancillary structures anticipated those need to be shown on the supporting documents. Furthermore, the study submitted to the FAA needs to match the proposed actual horizontal and vertical elements of the structure's envelop. Otherwise they will be rejected during the FAA's supplemental review as required by the determination letter. If these supplemental filings are rejected the FAA will require the proponent to refile studies and they will be reviewed at the then current federal guidelines which may not match the criteria reviewed when the building was proposed. Given that the 7460-2, Part 2 filing is an asbuilt filing this could yield a situation where the asbuilt structure is non-conforming.

RESPONSE: A site elevation of 9.0 NAVD was submitted as the average grade of the existing site from the topographic survey (a finished floor was not provided). Per the NOAA Datums for Hillsboro Inlet Ocean, FL (Station: 8722862) the Mean Sea Level conversion to NAVD88 is +1.01 feet.

2. The elevations on the Architectural drawings are inconsistent. The upper elevation on all Architectural Elevations shows that the T.O. Elevator is 218'-0" AGL/228'-0" NGVD (inferring that the site elevation is 10 feet) but Level One's elevation is 0'-0" AGL/10'-6" NGVD. Recommendation(s): Kimley-Horn recommends that the Proponent be required by the City to revise their plans to address this matter.

RESPONSE: We filed higher than the actual building and the FAA has determined that there is no hazard.

3. The narrative references that an aeronautical study was completed by the Federal Aviation Administration (FAA) which the proponent appended to the submittal – FAA Aeronautical Study 2022-ASO-23980-OE. Upon reviewing this determination letter Kimley-Horn noted the following:

- a. The FAA has issued a Determination of no Hazard to Air Navigation, contingent on the following:
- i. "As a condition to this Determination, the structure is to be marked/lighted in accordance with FAA Advisory Circular 70/7460-1 M, Obstruction Marking and Lighting, red lights-Chapters 4,5(Red), &15." Kimley-Horn has noted no document which acknowledges this requirement nor a document which shows the location of Obstruction Marking and Lighting. Accordingly, Kimley-Horn cannot determine if the proposed structure will be compliant with the requirements of the FAA's letter. These documents must also address the FAA's requirements for addressing failed or non-functioning lighting. **Recommendation(s):** Kimley-Horn recommends that the Proponent be required to revise the Narrative to address these requirements and submit an architectural roof plan identifying the general locations of the proposed obstruction lights.

RESPONSE: In response number 3 of the Air Park Narrative, the applicant acknowledges that the structure will be marked/lighted in accordance with FAA standards.

- ii. The FAA's letter also requires the Proponent to file two sets of supplemental notices: 1) 10 days prior to the start of construction (7460-2, Part 1), and 2) within 5 days after the construction reaches its greatest height (7460-2, Part 2). The Narrative does not acknowledge these requirements nor

state that they will be addressed. **Recommendation(s):** Kimley-Horn recommends that the Proponent be required to revise their Narrative to acknowledge and address these requirements.

RESPONSE: Comment Acknowledged.

- iii. The submitted Determination Letter was not final. The FAA permitted the general public to file petitions for review. If petitions are filed the Determination will not be finalized, pending disposition of the petition. The Narrative did not identify if any petitions were received and if in fact the Determination became final. Per the FAA's letter, the petition period will remain open until March 28, 2023.

Recommendation(s): The Determination does not become final until March 28, 2023. After this date, the Proponent should be required by the City to show documentation that they have contacted the FAA and verified that no active petitions are being reviewed and that the Determination has in fact become final.

RESPONSE: We have not received any updates from the FAA and since the 30 days are over, we can assume that this FAA determination has been finalized.

- iv. The FAA's aeronautical study determined that the submitted study point is an obstruction (but not a hazard) to air navigation as the proposal would exceed the Obstruction Standards of Title 14, Code of Federal Regulations (14 CFR), Part 77 as follows:

1. Section 77.17 (a) (2) PMP: A height that is 200 feet AGL, or above the established airport elevation, whichever is higher, within 3 nautical miles of the established reference point of an airport, excluding heliports, with its longest runway more than 3,200 feet in actual length, and that height increases in the proportion of 100 feet for each additional nautical mile from the airport up to a maximum of 499 feet. The proposals exceed by 23 feet.
2. Section 77.19 (a) PMP: A Horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of a specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The proposals exceed the Horizontal Surface by 73 feet.
3. **Observation(s):** 1) Per Florida Statute F.S. Ch. 333.025(4) aeronautically determined obstructions to air navigation must be submitted to the FDOT Aviation Office for review. The Aviation Office will have 15 days to independently review the application. Per Section 155.2422.C of the City's Zoning Code, the City is required to submit obstructions to the state Aviation Office. The City has submitted the documents as required and provided Kimley-Horn with a copy of the state's comments. Kimley-Horn has reviewed this document and provides the following summary:
 - a. FDOT finds the airport obstruction zoning permit application is technically consistent with s. 333.025(4), Florida Statutes.
 - b. FDOT provided a general overview of review requirements, review standards, and the evaluation process
 - c. FDOT concluded that the City of Pompano Beach complies with the state statutes and appears to be the authorized entity to review and permit this application.
- 2) To mitigate the obstruction the FAA is requiring the Proponent to mark/light the proposed structure. See previous comment on this subject.

The determination letter references three additional studies (ASNs 2022-ASO-23978-OE through 23981). However, the Proponent did not identify where the submitted study points lie in relation to the proposed

structures. Accordingly, Kimley-Horn was unable to verify the location of the filed aeronautical study in relation to the proposed structure. We were able to verify that the submitted study was in fact located on the subject site however that is irrelevant as the study must be tied to the actual proposed structure vertically and horizontally. **Recommendation(s):** Kimley-Horn recommends that the Proponent verify that the aeronautical studies submitted to the FAA match the actual envelop of the proposed structure both in the horizontal and vertical direction. Furthermore, we recommend that the City require the Proponent to prepare a plan which identifies the location of the submitted studies in relation to the proposed structures and the subject site.

RESPONSE: A site plan with coordinates and elevations was submitted to the FAA for the determination and are attached herein.

4. The subject site appears to be located in the Horizontal Zone as defined by Section 155.3707 of the City's Zoning Codes. The FAA Aeronautical Study states that the study point is located approximately 1.37 to 1.41 NM east of the PMP Airport. Per Table 155.3707.B structures within the Horizontal Zone would be limited to 150 feet AGL. The proposed structure will penetrate this height limit. However, since the FAA determination is contingent on the Proponent acknowledging and addressing various requirements and the fact that the determination is not be final, Kimley-Horn cannot determine if the proposed development will be an Airpark Hazard as defined by 155.3707 of the City's Zoning Code. **Recommendation(s):** 1) As previously noted, the Proponent should be required to state that they acknowledge and will address the contingent comments noted in the FAA's determination letter. 2) The Determination needs to become final, and the Proponent should verify that no petitions have been filed.

RESPONSE: We have received no information from the FAA that any objections have been made and since March 28, 2023, has now passed the FAA determination is final.

Given the previous discussion, the proposed project does not appear to meet the requirements for Airpark Obstruction Approval, as discussed in Section 155.2422 D Air Park Obstruction Permit Approval Review Standards of the City's Ordinances. A summary of our review is provided below:

1. Any comments received from the Florida Department of Transportation regarding the technical consistency with F.S. 333.025, as amended.

Review of Item 1: This requirement has been fulfilled.

2. The safety of persons on the ground and in the air.
3. The safe and efficient use of navigable airspace and any other aeronautical impacts.
4. The nature of the terrain and height of existing structures.
5. Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the Federal Aviation Administration.
6. The cumulative effects on navigable airspace of all existing structures and all other known proposed structures in the area.
7. The development order for Air Park Obstruction, if issued, would not permit a nonconforming obstruction to become a greater hazard to air navigation than it was when the applicable airport protection zoning regulation was adopted which allowed the establishment or creation of the obstruction, or than it is when the application for a permit is made.
8. Approval of a permit is not to be based solely on the determination by the Federal Aviation Administration that the proposed structure is not an airport hazard.
9. The following impacts to the Pompano Air Park:

- i. The potential to destroy or impair the utility of the Pompano Air Park and the public investment therein.
 - ii. The character of existing and planned flight operations and developments at the Pompano Air Park.
 - iii. The effect of the obstruction on the state licensing standards for a public-use airport contained in chapter 330 and rules adopted thereunder.
 - iv. The effect of the construction or alteration of the proposed obstruction on the minimum descent altitude or the decision height at the Pompano Air Park.
10. The marking and lighting is in conformance with the specific standards established by the FAA.

Review of items 2 – 10: These elements cannot be reviewed by Kimley-Horn given the following: The proposed structure penetrates the Horizontal Zone height limits as defined in 155.3707 of the City Zoning Code. The conversion factor between AMSL and NAVD and NGVD data has not been provided. The FAA's determination letter has conditions which have not been acknowledged nor addressed by the Proponent. The FAA Determination is not final given that the FAA allowed the public to provide petitions on the study. The Proponent has not provided documentation that the Determination is final. The Proponent may not have filed a sufficient number of aeronautical studies with the FAA to review the envelop of the proposed structure at the actual proposed horizontal and vertical locations.

RESPONSE: Comment Acknowledged