

April 13, 2018

Mr. Charles A. Zelle
Commissioner of Transportation
Minnesota Department of Transportation
395 John Ireland Boulevard
Mailstop 100
St. Paul, MN 55155-1899

RE: FIRST SUBMITTAL OF UPDATED DRAFT FLYING CLOUD AIRPORT ZONING ORDINANCE

Dear Commissioner Zelle:

Pursuant to Minn. Stat. §360.063, subd. 3 the Metropolitan Airports Commission (MAC) requested formation of the Flying Cloud Airport (FCM) Joint Airport Zoning Board (JAZB) in 2009. The original JAZB consisted of two members each from the cities of Eden Prairie, Chanhassen, Shakopee, and Bloomington, as well as two members from the MAC.

The FCM JAZB made its first submittal of the Draft FCM Airport Zoning Ordinance for MnDOT review on December 27, 2010.

Shortly thereafter the Metropolitan Airports Commission (MAC) made a request, on behalf of the JAZB, for MnDOT to temporarily suspend review of the Draft FCM Ordinance due to legal uncertainties surrounding airport-zoning related litigation that was pending at the time.

Given the resolution of these court cases, coupled with off-airport development pressures in the vicinity of FCM and the MAC's desire to pursue reasonable safety zoning, the FCM JAZB was re-seated in September 2017 to update and re-submit the Draft FCM Airport Zoning Ordinance for MnDOT review and approval. The re-seated FCM JAZB conducted its first meeting on September 21, 2017, at which time I was appointed Chairman by unanimous decision of the Board.

In compliance with Minn. Stat. §360.065, subd. 2 the FCM JAZB is making its first submittal of the updated Draft FCM Zoning Ordinance for your review. This submittal includes the following documents:

1. FCM JAZB Meeting Record: Includes all agendas, presentations, and meeting minutes for JAZB meetings occurring between September 2017 and April 2018. This documentation provides all of the background and analyses that resulted in the recommendations of the FCM JAZB contained in the updated Draft FCM Zoning Ordinance. To provide continuity, the meeting record from the original JAZB proceedings between July 2009 and December 2010 is also included.
2. Public Hearing Report: Includes all public comments received during the public comment period and the public hearing conducted by the FCM JAZB, a transcript of the public hearing, a list of exhibits entered into the public record at the hearing, and a matrix detailing all of the Board's responses to the comments.
3. FCM Airport Zoning Ordinance Technical Report: Provides the basis and methodology used to update the relevant sections of the original Draft Airport Zoning Ordinance to reflect current conditions and trends. The Technical Report includes updates to the Safety/Risk Study and Economic Impact Analysis that are foundational to the JAZB's zoning recommendations.

4. Updated Draft FCM Airport Zoning Ordinance: Provides a complete copy of the updated Draft FCM Zoning Ordinance recommended by the FCM JAZB. This updated Draft Ordinance is a product of the documentation provided in items 1 - 3 listed above.

Summary of 2009-2010 (Original) JAZB Recommendations

The original JAZB's focus was on identifying land use controls necessary to ensure a reasonable level of safety while considering the social and economic costs associated with implementing the proposed land use controls. The guiding concept employed throughout the process was that of reasonableness. Using the list of reasonableness considerations currently provided in state statute, the original JAZB set out to strike a balance between safety and economic cost considerations.

The first step was to conduct an airport-specific Safety/Risk Study to evaluate the probability of aircraft accidents occurring adjacent to FCM. This assessment used the same target risk standard and overall methodology that had previously been developed for the Minneapolis/St. Paul International Airport (MSP) zoning process – one accident per 10,000,000 flight operations. The study concluded that the accident probability in existing or planned Occupant Areas – land that is or could likely be developed to accommodate congregations of people in designated safety zones – in the vicinity of the FCM was less than the targeted risk standard.

Another key step in the process was to estimate the economic impact to the surrounding community of strictly implementing the State's Model Zoning Ordinance. For this task, Eden Prairie's planning and economic development team identified the impacts related to lost private property development potential, property taxes, and employment. The study concluded that implementation of the State Model Zoning Ordinance would result in an estimated loss of \$150,000,000 in commercial development, \$12,000,000 in residential development, and \$600,000 in annual property taxes.

With all these factors considered, the original JAZB recommended that Safety Zone A be co-located with the FAA-defined Runway Protection Zone (RPZ). However, to address the potential for variability in aircraft accident locations beyond the RPZ, the recommendation included a provision for contiguous open space in Zone B that would allow a pilot to set down a disabled aircraft. It also removed site acre and structure limitations in Zone B and identified permitted residential areas that would be treated as conforming land uses.

Safety/Risk Study Update

The purpose of the Safety/Risk Study is to evaluate the reasonableness of potential land use restrictions pertaining to areas off the runway ends at FCM based upon the probability of an accident occurring in MnDOT Safety Zone A beyond the FAA-defined RPZ and MnDOT Safety Zone B, the character of flying operations expected to be conducted at the airport, and features of the airport vicinity.

The 2017 Safety/Risk Study confirms that the conclusions of the original 2009 Study remain valid in terms of the risk of an aircraft accident in the vicinity of FCM. Specifically, the risk probability of an aircraft accident in an existing or future occupant area is below the targeted risk standard of one accident per 10,000,000 flight operations. This suggests that a strict application of the land use controls prescribed in the MnDOT Model Zoning Ordinance exceeds what is necessary to provide a reasonable level of safety at FCM.

However, the findings also continue to support the original JAZB's recommendation that distinct open spaces in proximity to the extended runway centerline beyond the RPZ and adjacent to occupant areas should be preserved.

This study confirms that the following elements of the Draft FCM Zoning Ordinance are appropriate from a safety/risk perspective:

- JAZB Safety Zone A is co-terminus with the FAA Runway Protection Zone (RPZ); and
- JAZB Safety Zone B is comprised of the portion of Model State Safety Zone A beyond the RPZ plus Model State Safety Zone B. Safety Zone B does not include site acre/structure limitations, site area to building plot area ratios, or population criteria for designated occupant areas. Occupant Areas guided for residential use will allow for the improvement, expansion, and development of new residential uses that will be treated as conforming uses in the zoning ordinance.

To provide for an extra margin of safety, JAZB Zone B will contain a provision that a minimum of 20 percent of the total Zone B acreage or 20 acres, whichever is greater, will be preserved as contiguous open space.

Economic Impact Analysis Update

The 2017 Economic Impact Analysis concludes that strict implementation of the State Model Zoning Ordinance would result in an estimated loss of approximately \$38,000,000 to \$58,000,000 in commercial development, approximately \$6,000,000 to \$15,000,000 in residential development, and approximately \$139,000 to \$257,000 in annual property taxes. While these values are somewhat more conservative than those reported in the 2010 study, they still indicate that a strict implementation of the State Model Zoning Ordinance would have a significant adverse long-term economic impact on the surrounding community in the magnitude of \$56,000,000 to \$69,000,000 over a 20-year period, not including the loss of employment generating potential.

Changes from the 2010 Draft FCM Airport Zoning Ordinance

The updated Draft FCM Airport Zoning Ordinance has been reviewed and updated to reflect current conditions and trends as outlined in the Technical Report. Other changes from the version submitted in 2010 include the following:

- Section I, Purpose and Authority: Removed the City of Bloomington from the list of JAZB participants as the proposed zoning surfaces do not extend into the municipal boundaries of Bloomington (page 1)
- Section IV, Airspace Obstruction Zoning, Subsection B, Height Restrictions: Added clarifying language to items 1 and 2 about use of an FAA 7460 Obstruction Evaluation and determination by FAA (pages 9 and 10)
- Section XIV, Judicial Review: Clarified language to better align with state statute (page 22)

The exhibits and grid maps supporting and attached to the updated Draft Zoning Ordinance have also been updated to reflect updated elements described in the Technical Report. The updated items include:

- Zoning Ordinance Exhibits A through F
- FCM Airspace Zones Within Zoning Limits Grid Maps
- FCM Safety Zones Within Zoning Limits Grid Maps
- FCM Maximum Construction Heights Without Permit Grid Maps

Public Hearing, Comment Period, and FCM JAZB Response Documentation

The public comment period for the updated Draft FCM Zoning Ordinance began on February 12, 2018 and was open through the close of business on March 14, 2018. The process included a public hearing on February 27, 2018 at the Eden Prairie City Hall, Council Chambers. An open house was held before the public hearing from 5:00 pm - 6:00 pm, an informational presentation by MAC staff was provided at 6:00 pm, and the public hearing began at 6:30 pm.

A total of 12 people attended the public hearing, with no public testimony given.

A total of four written comments were received during the comment period.

In general, the comments that were received focused on questions related to the effect the proposed airport zoning ordinance would have on specific properties located around FCM. The attached Public Hearing Report includes all of the correspondence received during the public comment period, a transcript of the public hearing and a matrix detailing all of the Board's responses to the comments.

Draft Flying Cloud Airport (FCM) Zoning Ordinance

Based on the information reviewed and analyzed as part of both the original and re-seated FCM JAZB meeting processes, the FCM JAZB validated its previous findings that a strict application of the land use controls prescribed in the MnDOT Model Zoning Ordinance exceeds what is necessary to provide a reasonable level of safety at FCM, and that the social and economic costs of restricting land uses in accordance with the MnDOT Model Zoning Ordinance outweigh the marginal benefits of their strict application. As such the FCM JAZB recommends submittal of an updated Draft FCM Airport Zoning Ordinance with the following features that deviate from the strict provisions of the State Model Airport Zoning Ordinance:

- JAZB Safety Zone A is co-terminus with the FAA Runway Protection Zone (RPZ).
- JAZB Safety Zone B modified use restrictions: (1) do not include site acre/structure limitations and site area to building plot area ratios and population criteria, (2) allow ponding below an elevation of eight hundred sixty-five (865) feet above mean sea level along any bluff of the Minnesota River, and (3) add continuous open acreage requirements such that a minimum of 20% of the total JAZB Safety Zone B acreage or 20 acres, whichever is greater, is contiguous open space as an added margin of safety.
- Leveraging the FAA's 7460 Review Process as the initial screening process for the approval of structures in the vicinity of the airport that meet the FAA's 7460 review criteria, with a separate process for addressing tree heights.
- Based on the safety and economic analyses, allow for the improvement, expansion and development of new residential uses in existing and planned residential land use areas in JAZB Safety Zone B Permitted Residential Areas. These residential uses would be treated as conforming uses in the airport zoning ordinance.

At the April 5, 2018 FCM JAZB meeting the Board took action to both accept the public hearing report and to submit this documentation to you for your prompt review and approval.

Sincerely,



Brad Aho
Chairman
Flying Cloud Airport Joint Airport Zoning Board