

FLYING CLOUD AIRPORT JOINT AIRPORT ZONING BOARD

Thursday, September 13, 2018
Eden Prairie City Center – Heritage Rooms 3 & 4
8080 Mitchell Road, Eden Prairie, MN

MEETING MINUTES

Brad Aho, Chair, convened the Flying Cloud Airport Joint Airport Zoning Board meeting at 3:06 p.m. The following were in attendance:

Members: Brad Aho, Chair
Kate Aanenson, City of Chanhassen, Board Member
Jerry McDonald, City of Chanhassen, Board Member
Julie Klima, City of Eden Prairie, Board Member
Robert Barker, Flying Cloud Airport Advisory Commission, Alternate (voting)
Rick King, Metropolitan Airports Commission, Board Member
Gary Schmidt, Metropolitan Airports Commission, Alternate (voting)
Eric Weiss, City of Shakopee, Board Member

Others: Kyle Fisher, Ryan Gaug, Rylan Juran, MnDOT; Bridget Rief, Evan Wilson, Neil Ralston, Roy Fuhrmann, Brad Juffer, Andrew Hanson, Jenn Felger, Kristin Berwald, MAC Staff

1. CHAIR OPENING REMARKS

Chair Aho opened the meeting by stating appreciation of the board's ongoing efforts and noted that the board is moving ahead as planned.

2. APPROVAL OF 04-05-18 FCM JAZB MEETING MINUTES

Chair Aho then requested a motion to approve the meeting minutes from the Flying Cloud Airport Joint Airport Zoning Board meeting held on 04-05-18.

IT WAS MOVED BY COMMISSIONER KING, SECONDED BY KATE AANENSON, TO APPROVE THE MINUTES OF THE APRIL 05, 2018 FLYING CLOUD AIRPORT JOINT AIRPORT ZONING BOARD MEETING, AS PRESENTED. THE MOTION CARRIED BY UNANIMOUS VOTE.

3. REVIEW OF THE STATUTORY PROCESS FOR AIRPORT ZONING SUBMITTALS

Chair Aho turned the meeting over to Evan Wilson, MAC Staff, who stated that airport zoning statute sets out the process and requirements that need to be conducted in order to adopt a zoning ordinance. Mr. Wilson then noted that the board has been following said process, with the most recent step being at the 04-05-18 meeting when the first submission of the draft zoning ordinance to MnDOT was approved. Mr. Wilson further explained that MnDOT, under state law, was required to examine the proposal and inform the JAZB of any objections for departures from the state standard, and that the board has

received the objection. The statute states that if there are objections by MnDOT, the JAZB must make amendments to meet those objections, unless it demonstrates that the social and economic costs outweigh the benefits of strictly applying MnDOT standards. Mr. Wilson stated that the goal for this meeting is to discuss the objections from MnDOT, the supplemental analysis that was done in response, and then to discuss action to proceed to the second submittal.

Chair Aho asked for any questions or comments on the statutory process. There were none.

4. REVIEW OF MNDOT RESPONSE TO 1ST SUBMITTAL MATERIALS

Neil Ralston from MAC Staff then provided an overview of the response received from MnDOT. Mr. Ralston stated the board submitted the Draft Flying Cloud Airport Zoning Ordinance to MnDOT in mid-April for review. On June 11 MnDOT responded with a letter to the JAZB objecting to the First Submittal Draft Zoning Ordinance. In the letter, MnDOT objected due to the following departures from their Model Zoning Standards:

1. Safety Zone A was reduced in size from the state standard.
2. Safety Zone B does not restrict the density of populations or the ratio of site area to building plot areas described in state standards.
3. Areas identified as "Permitted Residential Areas" in the ordinance are exempted from Zone A and B restrictions, which is a departure from standards.

This objection did not come as a surprise, as the board had concluded that a strict application of MnDOT's model zoning standards exceeds what is necessary to provide a reasonable level of safety at Flying Cloud Airport. In their letter, MnDOT did offer to meet for dialogue about the next submittal of the Draft ordinance. On August 1, Chair Aho, MAC Commissioner King, and several MAC staff members met with representatives from MnDOT to discuss next steps. At that meeting, MnDOT provided a memo with items for the JAZB to consider prior to its second submission of the zoning ordinance.

MnDOT's position was that the JAZB must begin with the Commissioner's zoning standards and only where they cannot be met, demonstrate how social and economic costs outweigh the benefits of a strict application of their standards in the second submittal. MnDOT indicated that if no amendments were made to address the noted departures from the state standards before the next submittal, they would not approve it. In addition, based on an initial review, MnDOT concluded that the Safety/Risk Study used to support the Draft Ordinance findings was not compelling. Mr. Ralston added that overall it was a productive meeting with MnDOT and helped the board to pinpoint specific items to improve the likelihood of the Draft Zoning Ordinance being approved during its second submittal process.

Mr. Ralston then asked Chair Aho and Commissioner King if they had any observations from the meeting to add. Chair Aho stated that he found the feedback from MnDOT to be productive and the board has more information to proceed forward with. Chair Aho then asked Commissioner King for feedback. Commissioner King also found the data that was

received to be helpful. Chair Aho then added that the JAZB has come back with some compromise and a new method of analysis, and is hopeful that these adjustments will be sufficient.

5. SUMMARY OF SUPPLEMENTAL SAFETY/RISK STUDY ANALYSIS

Mr. Ralston stated that the JAZB does not agree with MnDOT's assessment that the Safety/Risk Study supporting the Draft Ordinance is not compelling. Nevertheless, the board did want to carefully consider and address MnDOT's feedback before the next submittal. The previous Safety/Risk Study confirmed that the accident probability in existing or planned Occupant Areas was less than the targeted risk standard of one aircraft accident per 10,000,000 flight operations. Mr. Ralston defined the Occupant Areas with a visual representation, stating that they represent land that is or could likely be developed to accommodate congregations of people within designated safety zones. The original analysis concluded that a strict application of MnDOT's Model Standard land use controls to the Occupant Areas, in the form of site population and building density limitations, exceeds what is necessary to provide a reasonable level of safety.

The JAZB developed a Supplemental Safety/Risk Analysis to again ask if there is empirical data to support the application of MnDOT's model standards to the Occupant Areas. Mr. Ralston thanked Brad Juffer, Asst. Manager of the MAC Noise Office, for his assistance in preparing this analysis.

Mr. Ralston then provided a short overview of the Supplemental Analysis. In the Supplemental Analysis, the JAZB defined the probability of an aircraft accident in two specific geographic areas near the airport. The first task was defining aircraft accident probability in the designated Occupant Areas assessed in the original study. The second task was defining aircraft accident probability in areas immediately adjacent to Occupant Areas that are located just outside MnDOT's Model Zones A and B, which are called the Occupant Areas Buffer. The Occupant Areas are compared to the Occupant Areas Buffer because MnDOT's Model Standards do not prescribe site population or building density limitations for areas outside of Model Safety Zones A and B. In other words, MnDOT's Model Standards do not prevent the land uses in the Occupant Areas Buffer that are existing or planned in the designated Occupant Areas.

Chair Aho added that MnDOT agreed that the JAZB used the best data set possible when completing the analysis. Mr. Ralston agreed and stated that MnDOT's concerns were more about how the data was being used in the original safety/risk study.

Mr. Ralston provided further detail on the analysis, in which the JAZB spread the accident data locations over a system of 300x300 foot grids around the airport, and then calculated accident probability within each individual grid. This spreading avoids an implication of precision that each accident location in the data set is defined with pinpoint accuracy – a factor of concern expressed by MnDOT. The JAZB also normalized the data set to account for specific runway use patterns at the airport and for differences in the number of accident data set locations off each runway end. This normalizing helps to ensure that the accident locations in the data set are considered equally when calculating probabilities.

The next step was to calculate the accident probabilities using geo-spatial analysis for both the Occupant Areas and the Occupant Areas Buffer. For each of these areas, the average accident probability was calculated based on the proportion of the grid regions encompassed within the specific area.

Then, statistical factors were applied to develop a 95% confidence interval range both above and below the average accident probability. With these steps complete, the aircraft accident probability range at a 95% confidence level interval for the Occupant Areas could be compared to the corresponding range for the Occupant Areas Buffer. There is near complete overlap in the 95% confidence interval range between the accident probability in the Occupant Areas and the Occupant Areas Buffer. This means there is no statistical evidence that the probability of an aircraft accident within the Occupant Areas is greater than in the adjacent parcels located in the Occupant Areas Buffer. Or, in other words, there is no safety benefit to restricting land uses within the Occupant Areas when compared to adjacent parcels in the Occupant Areas Buffer.

For context, Mr. Ralston showed a case with contrasting results. He compared the aircraft accident probability range in the Runway Protection Zones with the range for the Occupant Areas and Buffer. This time, the graph shows that there is a significant gap between the 95% confidence interval ranges for aircraft accident probability in the Runway Protection Zone versus the Occupant Areas or Buffer. In this case, there is statistical evidence that the probability of an aircraft accident within the Runway Protection Zones is greater than in the Occupant Areas or Buffer. The proposal, therefore, is to exclude the designated Occupant Area parcels from the JAZB Safety Zones A and B – but more on that in a few minutes.

Mr. Ralston asked for any questions regarding the Supplemental Analysis. Chair Aho commented that, in summary, MnDOT questioned the statistical methodology that was used. Chair Aho thinks that the new analysis addresses what MnDOT is requesting. Mr. Ralston concluded that the JAZB set out to again ask if there is empirical data to support the application of MnDOT's model standards to the Occupant Areas. Based on both the original Safety Risk Study, and now this Supplemental Analysis, the answer continues to be no.

6. REVIEW OF SOCIAL AND ECONOMIC IMPACT ANALYSIS

Mr. Ralston described the findings from the other side of the equation that looked at the social and economic costs of strictly implementing the State's model zoning standards in the designated Occupant Areas. As a review of the JAZB's work from earlier this year, the combined total commercial and residential development and 20-year aggregated property tax impact of implementing MnDOT's Model Standards versus the Draft Zoning Ordinance is approximately \$56,000,000 to \$69,000,000. The social and economic costs resulting from a strict application of MnDOT's Model Standards in the designated Occupant Areas are substantial and would have a sizeable negative impact on the communities surrounding the Airport.

7. SUMMARY OF PROPOSED REVISIONS

Based on MnDOT's feedback, the Supplemental Safety/Risk Analysis, and the requirements of the Airport Zoning Statute, several amendments are being proposed to the Draft Zoning Ordinance for its 2nd submittal to MnDOT.

First, the JAZB is proposing a few changes to JAZB Safety Zone A. In response to MnDOT feedback, it is proposed to expand JAZB Zone A to include all property within the State Model Zone A, with the exception of the Occupant Area parcels, which are specifically excluded from the JAZB Safety Zones.

Also, land use controls in JAZB Zone A are modified to be consistent with those prescribed in MnDOT's Model Standard, which generally disallows buildings and assemblies of people.

In the first submittal of the Draft Zoning Ordinance, JAZB Zone A was concurrent in size to the Runway Protection Zones. So, JAZB Zone A in this proposal covers more area. However, these larger areas were proposed to be preserved as contiguous open space in the first submittal, so the difference in allowable land uses is not considered to be significant. Finally, land uses within the Runway Protection Zones will continue to be governed by applicable FAA guidance.

JAZB Safety Zone B is modified to include all land within MnDOT's Model Zone B, again with the exception of any Occupant Area parcels. Land use controls in JAZB Zone B are now proposed to be consistent with those prescribed in MnDOT's Model Standard, including site population and building density limitations.

Chair Aho inquired about the restrictions retained from the first submittal of the draft ordinance for bodies of water to prevent the attraction of waterfowl. Mr. Ralston explained that it is in reference to restricting large holding ponds other than the natural water bodies that already exist, such as use restrictions on waste disposal operations, water treatment facilities, settling ponds, and dredge spoil containment areas.

Mr. Ralston explained that based on these changes, references to "Permitted Residential Areas" are removed from the Draft Zoning Ordinance, as these residential parcels are part of the Occupant Areas that have been excluded from JAZB Safety Zones A and B. These areas are still subject to Safety Zone C airspace and general land use controls, just like all other parcels in the vicinity of the airport not within Zones A and B.

Next, based on feedback from MnDOT, the provision allowing the results of an FAA Obstruction Evaluation Study to stand in lieu of a variance for proposed structures that exceed airspace height limitations has been removed. Along these lines, a clarification was added that a hazard determination under an FAA Obstruction Evaluation Study is a general restriction applicable to all Safety Zones. Finally, there was some general cleanup to remove definitions no longer needed, and updated exhibits and grid maps in the documents as needed. Mr. Ralston then asked for questions and comment.

Chair Aho commented that the board made conciliatory moves to give MnDOT reason to approve the submittal by changing the nature of the evaluation and changing the size and definitions of the safety zones. Robert Barker of Flying Cloud Airport Advisory Commission asked if the board has addressed each of MnDOT's objections. Mr. Ralston stated that an attempt was made to address MnDOT's objections to the extent deemed practical. Commissioner King noted that the JAZB has addressed the evidentiary pieces in MnDOT's response. Chair Aho stated that he hopes for favorable views from MnDOT.

8. REVIEW OF DRAFT STATEMENT OF LEGAL AUTHORITY, FINDINGS OF FACT, AND CONCLUSIONS OF LAW AND ORDER

Mr. Ralston then stated that Mr. Wilson would review the Draft Statement of Legal Authority, Findings of Fact, and Conclusions of Law. Mr. Wilson explained that the purpose of the document is to support the Second Submittal Draft of the ordinance, and the entire development of the ordinance. The document serves as a summary of the entire record that is behind development of the ordinance. Mr. Wilson provided an overview of each section of the document: the summary of the legal authority, the summary of facts supported by evidence, and the conclusion of law. Mr. Wilson stated that it is important to show a draft of this document to demonstrate to MnDOT the legal authority, the process, and the consideration that the JAZB has taken. Mr. Wilson noted that the draft will need updates in the future with information from the second public hearing.

Chair Aho asked if the JAZB doesn't come to a favorable resolution with MnDOT, does the JAZB have a legal precedence to take action. Mr. Wilson responded that the facts and potential legal action would need to be evaluated after MnDOT's decision. He was unaware of legal challenges against MnDOT in the past.

9. REVIEW OF DRAFT FCM ZONING ORDINANCE 2ND SUBMITTAL MATERIALS

Mr. Ralston then moved on to discuss preparing the 2nd submittal of the Draft Zoning Ordinance to MnDOT for formal review. He recommended that the 2nd submittal package to MnDOT contain the following materials:

- A re-submittal cover letter. A copy of the Supplemental Safety/Risk Study memo will be included as an attachment to the cover letter.
- The JAZB meeting record, which will include all agendas, presentations, and meeting minutes since the JAZB re-convened last September.
- The Draft Statement of Legal Authority, Findings of Fact, Conclusions of Law and Order document
- The 2nd Submittal Draft Zoning Ordinance that contains the changes that the JAZB reviewed during the meeting. The JAZB will include two versions of the ordinance language – one redlined to show changes from the 1st submittal, and a "clean" version with no tracked changes.

10. MOTION TO APPROVE DRAFT FCM ZONING ORDINANCE 2ND SUBMITTAL MATERIALS FOR SUBMISSION TO MNDOT COMMISSIONER OF TRANSPORTATION

The following item was a motion to approve the draft materials for submittal to MnDOT.

IT WAS MOVED BY COMMISSIONER KING, SECONDED BY JERRY MCDONALD, TO APPROVE THE DRAFT MATERIALS FOR 2ND SUBMISSION TO THE MNDOT COMMISSIONER OF TRANSPORTATION.

CHAIR AHO THEN ASKED FOR FURTHER COMMENTS. COMMISSIONER KING THEN STATED THAT THE JAZB RECEIVED ACTIONABLE FEEDBACK AND THAT THE JAZB'S RESPONSE IS SUPPORTED BY THE FACTS. COMMISSIONER KING FEELS THAT THE JAZB HAS A GOOD SUBMITTAL. CHAIR AHO THEN ASKED FOR FURTHER COMMENTS; THERE WERE NONE.

THE MOTION CARRIED BY UNANIMOUS VOTE.

11. NEXT MEETING DATE

Mr. Ralston stated that the focus of the next meeting is to review MnDOT's action on the 2nd Submittal of the Draft Zoning Ordinance. While MnDOT does not have a specific deadline to provide their comments, he believes it would be reasonable to expect a response within an approximately 45 to 60-day timeframe. If MnDOT approves the Zoning Ordinance after this submittal, the JAZB's next step will be to prepare for a 2nd public hearing to present the final version to interested stakeholders. Chair Aho suggested that getting the next meeting date scheduled illustrates to MnDOT that the JAZB is moving forward in the process and provides them at least a target date by which to return their comments. Mr. Ralston suggested Thursday, November 8th at 3pm as a possible next meeting day and time (8 weeks). Members tentatively affirmed the recommended date and time.

WITH NO FURTHER BUSINESS TO DISCUSS, CHAIR AHO ADJOURNED THE MEETING.

The meeting was adjourned at 3:49 p.m.