

# LAKE ELMO AIRPORT JOINT AIRPORT ZONING BOARD

**In the Matter of Adopting a  
Lake Elmo Airport  
Zoning Ordinance**

**FINAL STATEMENT OF LEGAL  
AUTHORITY, FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER**

The Lake Elmo Airport Joint Airport Zoning Board (the “**Lake Elmo JAZB**”) convened to consider adoption of a Lake Elmo Airport Zoning Ordinance (“**Airport Zoning Ordinance**”), which will regulate the use of property and the height of structures and objects of natural growth in the vicinity of the Lake Elmo Airport (“**21D**” or “**Airport**”).

The Lake Elmo JAZB, having reviewed and considered the public record before it, intends to adopt the Airport Zoning Ordinance. In support of its action, the Lake Elmo JAZB hereby summarizes its legal authority; and finds, concludes and orders as follows.

## **I. LEGAL AUTHORITY**

### ***A. State Law: Authority and Purpose of Airport Zoning***

1. The general authority to zone around the Airport is established in Minnesota Statutes §§ 360.061 – 360.074 (“**Airport Zoning Statute**”).
2. The Minnesota Legislature (“**Legislature**”) found that airport hazards endanger lives and property of users of an airport and of occupants of land in its vicinity and may reduce the size of the area available for the landing, taking-off, and maneuvering of aircraft, thereby impairing the utility of an airport. See Minn. Stat. § 360.062.
3. The Legislature also found that the social and financial costs of disrupting existing land uses around airports often outweigh the benefits of a reduction in airport hazards. See Minn. Stat. § 360.062.
4. The Legislature then declared that the creation of airport hazards is a public nuisance and an injury to the community served by the airport, and that the creation of airport hazards should be prevented. See Minn. Stat. § 360.062.
5. The Legislature also declared that the elimination or removal of existing land uses is not in the public interest and should be avoided whenever possible consistent with reasonable standards of safety. See Minn. Stat. § 360.062.
6. The Legislature allows airport zoning regulations to regulate in airport hazard areas: (1) land use; (2) height restrictions; (3) the location, size, and use of buildings; and (4) the density of population. See Minn. Stat. § 360.063.

### ***B. State Law: Joint Airport Zoning Boards***

7. Joint airport zoning boards (“**JAZB**”) are authorized where “an airport is owned or controlled by a municipality and an airport hazard area appertaining to the airport is located within the territorial limits of another county or municipality.” Minn. Stat. § 360.063, subd. 3.
8. JAZBs have the authority to adopt, administer, and enforce airport zoning regulations. See Minn. Stat. § 360.063, subd. 3.
9. The Metropolitan Airports Commission (“**MAC**”) is recognized as an “owning or controlling municipality” for purposes of the Airport Zoning Statute, and is required to request creation of a JAZB for the Airport. See Minn. Stat. § 360.063, subd. 3.
10. If an invited county or municipality fails to join in creating a JAZB, MAC or a JAZB created without participation by the entity that failed to join, may itself adopt, administer, and enforce airport zoning regulations. See Minn. Stat. § 360.063, subd. 3.
11. If a JAZB fails to adopt airport zoning regulations in accordance with the Airport Zoning Statute, the Minnesota Commissioner of Transportation (“**Commissioner**”) may adopt airport zoning regulations for the airport. See Minn. Stat. § 360.063, subd. 6.

### ***C. State Law: Requirements and Considerations for Airport Zoning Regulations***

12. A JAZB may base airport zoning regulations on standards promulgated by the Commissioner, or may develop custom airport zoning regulations after providing notice to the Commissioner. See Minn. Stat. § 360.0655, subd. 1.
13. When developing custom airport zoning regulations, a JAZB must include in the record a detailed analysis explaining how the proposed regulations address the factors set forth in Minn. Stat. § 360.0656, subd. 1(c) to ensure a reasonable level of safety.
14. Airport zoning regulations must be reasonable, and none can impose a requirement or restriction that is not reasonably necessary to effectuate the purposes of the Airport Zoning Statute. See Minn. Stat. § 360.066, subd. 1.
15. The JAZB’s zoning regulations cannot require that any structure or tree that does not conform to the regulations when adopted be removed, lowered, altered, or interfered with except as provided in Minn. Stat § 360.067. See Minn. Stat § 360.066, subd. 2.

### ***D. State Law: Process for Adopting Airport Zoning Regulations***

16. The JAZB must hold a public hearing on its proposed zoning regulations. Notice of the public hearing must be provided as described in the Airport Zoning Statute. See Minn. Stat. § 360.065, subd. 1.
17. After the public hearing, the JAZB must submit its proposed zoning regulations to the Commissioner for review. For custom airport zoning regulations, the Commissioner must determine whether the proposed custom regulations and supporting record (1) evaluate the criteria in Minn. Stat. § 360.0656, subd. 1, and (2) provide a reasonable level of safety. See Minn. Stat. § 360.0656, subd. 2.

18. The Commissioner must examine the proposed regulations within 90 days of receipt and report to the JAZB the Commissioner's approval or objection. The Commissioner may request additional information from the JAZB within the 90-day review period. See Minn. Stat. § 360.0656, subd. 2.
19. The JAZB cannot adopt the proposed custom airport zoning regulations until they are approved by the Commissioner. See Minn. Stat. § 360.0656, subd. 2.
20. If changes are made to the proposed zoning regulations, after the initial public hearing, that alter the regulations placed on a parcel of land, the JAZB must hold a second public hearing before final adoption of the proposed zoning regulations. See Minn. Stat. § 360.065, subd. 1.

***E. State Law: Incorporation into Local Zoning***

21. Airport zoning regulations adopted by a JAZB must be incorporated, administered, and enforced in connection with local comprehensive zoning ordinances applicable to the same area. See Minn. Stat. § 360.064.

***F. Federal Standards***

22. The Federal Aviation Administration (“FAA”) has established airspace safety standards in Federal Aviation Regulation Part 77.
23. FAA has also established standards for the establishment of runway protection zones (“FAA RPZ”). See FAA Advisory Circular 150/5300-13A.
24. There are no federal airport safety land use zoning standards beyond the FAA RPZs.

**II. FINDINGS OF FACT**

***A. Lake Elmo JAZB***

25. Pursuant to Minn. Stat. §360.063, subd. 3, MAC requested formation of the Lake Elmo JAZB in 2018.
26. The Lake Elmo JAZB consists of two members each from Baytown Township, the City of Lake Elmo, the City of Oak Park Heights, and West Lakeland Township, as well as two members from MAC. In addition, a chair was elected and appointed by the Lake Elmo JAZB members.
27. The Lake Elmo JAZB conducted its first meeting on June 25, 2019, and met six times between June 2019 and September 2020 (including once for the public hearing). All meetings of the Lake Elmo JAZB were open to the public.
28. At its August 29, 2019, meeting, the JAZB considered the Airport Zoning Statute, the standards promulgated by the Commissioner, the option to develop custom airport zoning regulations, a case study of airport safety zones implemented at another airport, and features of the Lake Elmo Airport and vicinity land uses. The JAZB also considered information regarding airport zoning liability. At this meeting, the JAZB elected to pursue custom zoning for the Lake Elmo Airport.

29. On September 30, 2019, the JAZB sent notice to the Commissioner that the JAZB elected to establish and adopt custom airport zoning regulations.
30. At its October 17, 2019, meeting, the JAZB considered the custom zoning factors set forth in the Airport Zoning Statute as they apply to the Lake Elmo Airport, including a detailed safety/risk analysis. The JAZB also considered information regarding airspace zoning and land use zoning, including an analysis of accident probabilities in areas surrounding the Airport and the costs and burdens of imposing land use restrictions. At this meeting, the JAZB directed MAC to create a formal proposal for a custom airport zoning ordinance based on the information presented at the meeting.
31. At its December 5, 2019, meeting, the JAZB considered a draft Airport Zoning Ordinance establishing proposed height and land use regulations (including appropriate airspace and land use safety zones), providing for nonconforming uses, zoning permits, and variances, and addressing administration, enforcement, and appeals. The JAZB considered the provisions of the Airport Zoning Ordinance that are required by the Airport Zoning Statute. The JAZB considered whether the proposed ordinance provided a reasonable level of safety. At this meeting, the JAZB decided to advance the draft Airport Zoning Ordinance to a public hearing as required by Minn. Stat. § 360.065, subd. 1.

### ***B. Public Hearing***

32. The public comment period for the draft Airport Zoning Ordinance was open from January 9, 2020, to February 7, 2020. A public hearing was held on January 23, 2020.
33. Notice of the public hearing was provided as required by Minn. Stat. § 360.065, subd. 1.
34. Forty-seven people signed in on the attendance sheets. All persons in attendance and wishing to do so were given an opportunity to testify or provide written comments.
35. The proceedings of the public hearing were transcribed by a qualified court reporter.
36. A full record of the public hearing process is set forth in the Draft Lake Elmo Airport Zoning Ordinance Public Hearing Report, including responses to public comments.

### ***C. Submittal to the Commissioner***

37. Prior to adopting custom airport zoning regulations, a JAZB must submit the proposed regulations and supporting record to the Commissioner. The Commissioner must determine whether the proposed regulations and supporting record (1) evaluate the applicable criteria in Minn. Stat. § 360.0656, subd. 1, and (2) provide a reasonable level of safety. Minn. Stat. § 360.0656, subd. 2.
38. At its September 23, 2020, meeting, the Lake Elmo JAZB accepted a report on the public hearing and considered revisions to the draft Airport Zoning Ordinance made in response to comments received during the public hearing process. The JAZB also considered the Analysis of Custom Airport Zoning Factors, which contains a record of the JAZB's evaluation and analysis of how the proposed regulations address the

statutory requirements to ensure a reasonable level of safety. The JAZB approved submission of the following materials to the Commissioner:

- a. Public Hearing Report;
  - b. Post-Hearing draft of the Airport Zoning Ordinance, dated March 10, 2020 (“**First Submittal Airport Zoning Ordinance**”);
  - c. Analysis of Custom Airport Zoning Factors; and
  - d. Lake Elmo JAZB meeting record.
39. On September 30, 2020, the Lake Elmo JAZB chair, Richard Weyrauch, transmitted the above-listed materials to the Commissioner.
40. On December 8, 2020, MnDOT responded by letter to the Lake Elmo JAZB and requested additional information regarding how the Airport Zoning Ordinance addresses certain custom zoning statutory factors, how the boundaries of JAZB Safety Zone 1 were determined, whether the JAZB considered incorporating existing local land use regulations, and how feedback on local conditional use decisions in areas outside JAZB Safety Zone 1 will be provided.
41. On December 22, 2020, the Lake Elmo JAZB chair, Richard Weyrauch, responded by letter to MnDOT with the requested information.

#### ***D. Commissioner’s Order and Approval***

42. On December 28, 2020, the Commissioner issued Order No. 631 (“**Commissioner’s Order**”).
43. The Commissioner concluded the following:
- e. Adoption of the proposed Lake Elmo Airport Zoning Ordinance is necessary for both the operation of the Airport and the safety of both the public frequenting that Airport and the occupants of land in its vicinity.
  - f. The proposed Lake Elmo Airport Zoning Ordinance and supporting record evaluate the criteria under 360.0656, Subd. 1 and provide a reasonable level of safety.
  - g. A bona fide effort to comply with the requirements of Minnesota Statutes, Section 360.065, Subd. 1, was made prior to the approval of the proposed Lake Elmo Airport Zoning Ordinance.
44. The Commissioner approved the Lake Elmo Airport Zoning Ordinance.

#### ***E. Adoption by the Lake Elmo JAZB***

45. On February 10, 2021, the Lake Elmo JAZB met and considered the Commissioner’s Order; the First Submittal Airport Zoning Ordinance approved by the Commissioner; and this Final Statement of Legal Authority, Findings of Fact, Conclusions of Law, and Order.
46. No changes were made to the First Submittal Airport Zoning Ordinance approved by the Commissioner.

47. The Lake Elmo JAZB approved this Final Statement of Legal Authority, Findings of Fact, Conclusions of Law, and Order; and adopted the First Submittal Airport Zoning Ordinance as the final Lake Elmo Airport Zoning Ordinance.

### III. CONCLUSIONS OF LAW

48. The Lake Elmo JAZB was properly constituted as required by Minn. Stat. § 360.063.
49. The Lake Elmo JAZB complied with the procedural requirements for approval and adoption of airport zoning regulations, as required by Minn. Stat. § 360.065 and 360.0656.
50. The Lake Elmo JAZB complied with the statutory requirements in developing and adopting custom airport zoning regulations, as required by Minn. Stat. § 360.0656.
51. The Lake Elmo Airport Zoning Ordinance complies with the requirements of the Airport Zoning Statute.
52. The Lake Elmo Airport Zoning Ordinance provides a reasonable level of safety.
53. The Lake Elmo Airport Zoning Ordinance meets or exceeds federal standards for the establishment of airspace and land use safety zones.
54. The Lake Elmo JAZB and MAC have made a good-faith showing that they are in the process of and will complete with due diligence an airport zoning ordinance in accordance with the Airport Zoning Statute, as required by Minn. Stat. § 360.021.
55. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

### IV. ORDER

Based upon the foregoing findings and conclusions, the substantial evidence contained in the record, and the applicable law, the Lake Elmo JAZB concludes that the Lake Elmo Airport Zoning Ordinance should be adopted.

Approved on February 10, 2021.

I hereby certify that this is a complete, true, and correct copy of the Final Statement of Legal Authority, Findings of Fact, Conclusions of Law, and Order as approved by the Lake Elmo JAZB on February 10, 2021.

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Richard D. Weyrauch, Chair

Lake Elmo Joint Airport Zoning Board

Date: February 10, 2021

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Kristin Berwald, Secretary

Lake Elmo Joint Airport Zoning Board

Date: February 10, 2021

