

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION**

**Docket No. 190
Order No. 622**

IN THE MATTER OF:

The approval of zoning regulations for
the Flying Cloud Airport

**FINDINGS, CONCLUSIONS AND
INTERIM ORDER**

INTRODUCTION

Pursuant to Minnesota Statutes section 360.061 et seq., this matter is before the Commissioner of Transportation (“Commissioner”) on the application of the Flying Cloud Joint Airport Zoning Board (“JAZB”) for approval of its Flying Cloud Airport Zoning Ordinance.

Based on a review of the entire file and of all submissions, the Commissioner hereby Finds, Concludes, and Orders as follows:

FINDINGS OF FACT

1. The JAZB is a duly organized legal body operating pursuant to Minn. Stat. § 360.063. It represents the Metropolitan Airports Commission and the communities with interest in zoning the Flying Cloud Airport.
2. Pursuant to Minn. Stat. § 360.065, the JAZB submitted the proposed Flying Cloud Airport Zoning Ordinance dated September 13, 2018, to the Commissioner.
3. The JAZB provided information showing that it held a public hearing for the proposed Flying Cloud Airport Zoning Ordinance on February 27, 2018, at which parties in interest and citizens had an opportunity to be heard. Notice of this hearing was provided as required by Minn. Stat. § 360.065, subd. 1.
4. Notice of the hearing was sent by mail to each political subdivision in which property affected by the regulations is located.
5. Notice of the hearing was sent by mail at least 15 days before the hearing to persons owning land proposed to be included in Safety Zone A or B as provided in the rules of the Department of Transportation and to persons or municipalities that had previously requested such notice.
6. A copy of the notice and a list of the owners and addresses to which the notice was sent was attested to by the responsible person and made a part of the records of the proceedings.

7. The proposed Flying Cloud Airport Zoning Ordinance was made available for public comment from February 12, 2018, to March 14, 2018.
8. On June 11, 2018, the Commissioner notified the JAZB that he objected to the proposed airport zoning ordinance because it departed from the Commissioner's Standards in the following ways:
 - a. "Safety Zone A is reduced in size from the state standard."
 - b. "Safety Zone B does not restrict the density of populations or the ratio of site area to building plot areas described in state standards."
 - c. "Areas identified as "Permitted Residential Areas" in the ordinance are exempted from Zone A and B restrictions. This is a departure from standards. The analogous term within state standards is an 'established residential neighborhood' that must have existed on January 1, 1978."
9. The Commissioner informed the JAZB that it could either revise and resubmit the ordinance in response to the objection, or pursuant to Minn. Stat. § 360.065, Subd. 2, provide information to demonstrate that the social and economic costs of restricting land uses in accordance with the standards outweigh the benefits of a strict application of the standards.
10. The JAZB has provided an amended ordinance for approval that meets 78% of the Commissioner's Standards for Zones A and B for all runways. The ordinance meets 94% by area of the Commissioner's Standards for Zone A for all runways and 55% by area of the Commissioner's Standards for Zone B.
11. Much of the area within Standard Safety Zones A and B omitted from the proposed ordinance is land that is fully developed into residential or commercial development. This land is not further "guidable" by zoning and the additional safety benefit of zoning these areas to Commissioner's Standards is minimal. When these areas are added to those meeting Standards, the area not zoned to Standards is approximately 15% of Zones A and B for all runways.
12. Minnesota Statutes direct the Commissioner, when evaluating the reasonableness of a proposed ordinance, to consider, among other things, "the existing land uses and the character of the neighborhood around the airport, the uses to which the property to be zoned are planned and adaptable, and the social and economic costs of restricting land uses versus the benefits derived from a strict application of the standards of the commissioner."
13. A portion of the land comprising the 15% Standards deficit includes a number of MAC owned parcels identified below:
 - a. Parcel 2: is a parcel in Standard Zone A identified by the MAC as planned and adaptable to office space for revenue generation to help sustain the airport. This use includes additional safety mitigation when compared with other uses such as

residential due to the use of fire suppression systems and more robust construction materials.

- b. Parcel 5: is less than a half acre. It is separated from the rest of Zone A by Pioneer drive and is more similar to the adjacent commercial uses. It is most likely to be used as additional parking for the existing gas station (parking is expressly allowed by statute in Zone A) or storm water infiltration.
 - c. Parcel 6: is east of the airport and identified to be planned and adaptable to low density office space. Only a portion of this parcel is to be omitted from standards.
 - d. Parcel 7: is approximately an acre in size, located at the periphery of Zone A across Pioneer Drive. Pioneer Drive acts as a natural barrier making this parcel more adaptable to the adjacent commercial land uses than to Zone A.
 - e. Parcels X and Y: encompass just over 11 acres to the west of the airport. There are no current plans to develop these parcels. They could be commercial or residential in nature.
14. MnDOT does not generally support developing parcels that have been acquired and dedicated to aeronautical use located in Zones A and B.

CONCLUSIONS

1. Adoption of the proposed Flying Cloud Airport Zoning Ordinance is necessary for the future operations of the airport. The JAZB demonstrated it made a bona fide effort to comply with the procedural requirements of Minn. Stat. § 360.065, subd. 1, prior to the submittal of the proposed Flying Cloud Airport Zoning Ordinance.
2. There exists no specific and definitive statutory or rule direction on the method by which to quantitatively analyze the balancing of “social and economic costs” and strict application of the prescribed standards, thus the Commissioner must consider each non-standard proposed zoning ordinance on a case-by-case basis.
3. Absent such direction, the Commissioner and the Department sought to exercise reasonable and prudent judgment on the matter, considering the prescribed standards and requiring the JAZB to demonstrate that the social and economic costs of restricting land uses outweigh the benefits of strict application of the standards.
4. When considering the character of the neighborhood surrounding the airport, the uses to which the property to be zoned are planned and adaptable, and the benefits derived by strict application of the Standards of the Commissioner, a departure from strict application of the standards is reasonable for this airport.
5. Based on these findings, I conclude that the Flying Cloud Joint Airport Zoning Board has demonstrated that the social and economic costs of restricting land use in accordance with the standards outweigh the benefits of a strict application of the standards for non-MAC owned parcels and for MAC-owned Parcels 2, 5, 6, and 7.
6. The JAZB failed to demonstrate that the social and economic costs of restricting land use in

accordance with the standards outweigh the benefits of a strict application of the standards for Parcels X and Y. It is most expedient for the JAZB to amend the proposal to meet state standards on these parcels.

Based upon the foregoing Findings and Conclusions, the evidence contained in the record, and the applicable law, the Commissioner of the Department of Transportation issues the following:

INTERIM ORDER

The proposed Flying Cloud Airport Zoning Ordinance is hereby approved subject to further JAZB action as indicated in Conclusion Number 6 above. Once this action is taken, this order will be finalized. This interim order is valid for 90 days.

**BY ORDER OF THE COMMISSIONER
OF TRANSPORTATION**



Charles A. Zelle
Commissioner
Minnesota Department of Transportation

DATE: 1-3-19