Meeting Agenda

- Chair Opening/Remarks
- Approval of Minutes from April 5, 2018 JAZB Meeting
- Review of Statutory Process for Airport Zoning Submittals
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Review of Statutory Process

• Minnesota Statutes Section 360.065, subd. 2:

If objections are made by the commissioner of MnDOT on the ground that the regulations do not conform to MnDOT’s model standards, the JAZB shall make amendments to meet the objections unless it demonstrates that the social and economic costs of applying MnDOT’s model standards outweigh the benefits of their strict application.
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Office of Aeronautics
320 E. Plato Blvd.
St. Paul, MN 55102

June 11, 2018

Brad Aho
Chairman
Flying Cloud Airport Joint Airport Zoning Board
600 30th Ave. S.
Minneapolis, MN 55403

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

Dear Chairman Aho,

The Minnesota Department of Transportation (MnDOT) has reviewed the proposal for the Flying Cloud Airport Zoning Ordinance dated January 18, 2016. We acknowledge and appreciate the effort the Flying Cloud Airport Joint Airport Zoning Board (JAZB) has put forth to prepare this zoning proposal.

Minnesota Statutes 360-055 Subdivision 2 requires the Commissioner of Transportation to determine whether the proposed zoning ordinance conforms to the minimum state standards as defined in the Minnesota Rules Part 8000.2020. Prohibited for the purpose of preventing airport safety hazards, state zoning standards are intended to protect incompatible land uses in runway safety zones to protect the lives and property of users of the airport and of occupants of land in the airport vicinity. MnDOT has determined that the proposed ordinance for the Flying Cloud Airport fails to meet the zoning standards for safety zone areas.

MnDOT objects to the proposed zoning ordinance for the following departures from state standards:

- Safety Zone A is reduced in size from the state standard.
- Safety Zone B does not restrict the density of populations or the ratio of site area to building plot area as described in state standards.
- 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, 1979.

To continue the airport zoning process, state statutes direct the JAZB to revise and resubmit the ordinance in response to this objection, or provide information that demonstrates that the social and economic costs of zoning to the standards outweigh the safety benefits of a strict application of the standards.

It is the goal of MnDOT to ultimately zone all airports in the state system that receive public funding as required by state statute. To that end, prior to the JAZB’s next submittal I welcome the opportunity to in person dialogue with the JAZB on an appointed subset of the JAZB.

Sincerely,

Catherine Tellein
MnDOT Aeronautics Director

CC: Tim Horkel, Assistant Commissioner, Modal Planning and Program Management
Ryan Gang, Aeronautics Director Planning and Finance, MnDOT Aeronautics
Bridge Riab, Vice President, Planning and Development, Metropolitan Airports Commission

Cloud Opportunity Employer

• June 11, 2018 letter objecting to the proposed zoning ordinance
MnDOT Response to First Submittal

August 1, 2018 memo with items to consider before re-submitting the draft zoning ordinance

- MnDOT Response to First Submittal
  - MnDOT
  - Response to First Submittal
  - August 1, 2018
  - Memo with items to consider before re-submitting the draft zoning ordinance

Date: 8/1/2018

To: Flying Cloud Airport Joint Airport Zoning Board

From: Cassandra Jackman, Aeronautics Director

RE: Draft Flying Cloud Airport Zoning Ordinance

Please review and consider the following items in advance of the JAZB’s next draft ordinance submittal for Flying Cloud Airport:

1. The stated statutory purpose of airport zoning is to prevent the creation or establishment of airport hazards. The statutes are intended to protect the lives and property of users of the airport and occupants of land in the vicinity of the airport.

2. The goal of any JAZB should be to adopt the Commissioner’s standards and, where necessary, justify deviations from the standards for those areas where they cannot be met. The Minnesota Statutes do not allow for an alternate standard of reasonableness or a custom-designed ordinance. The JAZB must begin with the Commissioner’s standards and only where they cannot be met, and after its first submittal, demonstrate how the social and economic costs outweigh the benefits of a deviation from the standards.

3. If it is possible for MnDOT to approve an ordinance that does not meet the Commissioner’s standards, however, if no deviations are made to address the departures from the standards prior to the next submittal, MnDOT will not approve the draft ordinance.

4. Zoning the airport to the Commissioner’s standards does not require the removal or alteration of any existing land uses. The statutes explicitly state that “no airport zoning regulations shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended.” The ordinance serves to ensure that all structures, heights, and trees on airport properties are in compliance with the requirements of the ordinance. The ordinance also recognizes the need for development around airports and their ability to maintain or increase property values.

5. The JAZB should carefully consider the following for its second submission:
   a. The airport sponsor owns a majority of the land in state safety zone A and B. Therefore, these areas can and should be zoned to the Commissioner’s standards. There is no social and economic cost to zoning airport-owned land as that land has already been obligated to an aeronautical purpose.
   b. Undevelopable natural features such as lakes and wetlands should be zoned to the Commissioner’s standards, as there is no cost to doing so.
   c. The ordinance contains provisions previously understood to be in violation of current state statute. (See section 645.74 regarding FAA’s 7400 Obstruction Evaluation). The variance process does not comply with the process detailed in Minn. Stat. § 360.001, subd. 2. Finally, MnDOT notes that the FAA, in its obstruction determinations, does not consider land use issues, which is the concern of the local board of adjustment in a variance determination.
   d. An amendment addressing the factors above could bring the ordinance into, or near, compliance with the Commissioner’s standards with little or no impact to the public.
   e. Although not required for the first submittal, MnDOT has conducted a initial review of the technical information used to create the submitted ordinance to gain a greater understanding of the choices the JAZB is making. The JAZB should consider the following:
      i. The methodology used to perform the analysis has led the JAZB to create a “custom ordinance.” As stated above, the JAZB should make a bona fide attempt to adopt the Commissioner’s standards and justify departures from the standards.
      ii. The Safety Risk Study Update is not compelling.
      iii. The development of the JAZB’s ordinance is ongoing, and the final product may differ from the current draft. The ordinance may ultimately be more or less stringent than the current draft.
      iv. The ordinance includes provisions that require the property owner to remove existing structures or trees that are not in compliance with the ordinance. This provision is not necessary and may lead to legal challenges.
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Supplemental Safety/Risk Study Analysis

- **Purpose** – to test the technical conclusions supporting the Draft FCM Airport Zoning Ordinance
  - The 2017 Safety/Risk Study Update concluded that the risk probability of an aircraft accident in an existing or future **Occupant Area** is below the targeted risk standard of one aircraft accident per 10,000,000 flight operations.
    - **Occupant Areas** = land that is or could likely be developed to accommodate congregations of people in designated safety zones (denoted as hatched areas)
  - 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.
Supplemental Safety/Risk Study Analysis

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  • The 2017 Safety/Risk Study Update concluded that the risk probability of an aircraft accident in an existing or future Occupant Area is below the targeted risk standard of one aircraft accident per 10,000,000 flight operations.
    • Occupant Areas = land that is or could likely be developed to accommodate congregations of people in designated safety zones (denoted as hatched areas)
  • 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.
Supplemental Safety/Risk Study Analysis

• The supplemental analysis seeks to define aircraft accident probability in multiple areas surrounding the runways at FCM
  • Occupant Areas (yellow shade)
Supplemental Safety/Risk Study Analysis

• The supplemental analysis seeks to define aircraft accident probability in multiple areas surrounding the runways at FCM
  • Occupant Areas (yellow shade)
  • Occupant Areas Buffer – adjacent land parcels with similar uses that are located just outside (within 300 feet) of the boundary of the State Safety Zones (blue shade)
Supplemental Safety/Risk Study Analysis

• Used the California Study General Aviation Accident Location Data
  • No change from 2017 Safety/Risk Study Update

• “Spread” accident locations over a grid system
  • 300 x 300-foot grid system
  • Calculated accident probability per grid region
  • Avoids an implication of precision

• Normalized accident location data
  • Accounts for FCM specific runway use patterns
Supplemental Safety/Risk Study Analysis

- Calculated Accident Probability per Grid Region
- Calculated Accident Probability for:
  - Occupant Areas
  - Occupant Areas Buffer
- Applied statistical factors to develop a 95% confidence interval probability range
Supplemental Safety/Risk Study Analysis

- **No evidence** that the probability of an aircraft accident within the designated Occupant Areas is greater than in the adjacent parcels located in the Occupant Areas Buffer.
- **No safety benefit** to restrict land uses within the designated Occupant Areas when compared to adjacent parcels in the Occupant Areas Buffer.
Supplemental Safety/Risk Study Analysis

- Comparison of Occupant Areas and Occupant Areas Buffer Accident Probability Range to RPZ Range
- In this case, there is evidence that the probability of an aircraft accident within the RPZs is greater than in the Occupant Areas and Occupant Areas Buffer.
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Economic Impact Study Update

Economic impact of strictly implementing State vs. JAZB scenario:

• Residential
  ▪ Reduction in total residential development of $6-15 million
  ▪ Reduction in annual residential real estate taxes of $20-50 thousand

• Commercial
  ▪ Reduction in total commercial development of $38-58 million
  ▪ Reduction in annual commercial real estate taxes of $89-237 thousand

• Combined Residential & Commercial
  ▪ Reduction in total combined development of $53-64 million
  ▪ Reduction in annual combined real estate taxes of $139-257 thousand
  ▪ 20-year long-term economic impact value of $56-69m

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Economic Impact Study Update

**CASE 1**

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Revisions to FCM Draft Zoning Ordinance Language

Changes proposed for 2nd Submittal:

- JAZB Zone A
  - Expanded to include land within MnDOT Model Zone A, and is modified to exclude the Occupant Areas.
  - Safety Zone A land use controls are modified to be consistent with those prescribed in MnDOT’s Model Standards.
  - Where Safety Zone A overlies the FAA RPZ, however, land uses within the FAA RPZ will be governed by applicable FAA Advisory Circulars, Orders, or other guidance.
Revisions to FCM Draft Zoning Ordinance Language

Changes proposed for 2nd Submittal:

• JAZB Zone B
  • Modified to include land within MnDOT’s Model Zone B, and is modified to exclude the Occupant Areas.
  • Safety Zone B land use controls are modified to be consistent with those prescribed in MnDOT’s Model Standards.
  • Additional restrictions placed on ponds or other uses that might attract waterfowl or other birds.
Revisions to FCM Draft Zoning Ordinance Language

Changes proposed for 2\textsuperscript{nd} Submittal:

- References to “Permitted Residential Areas” are removed
  - These residential parcels are part of the Occupant Areas that have been excluded from Safety Zones A and B.
  - These areas are still subject to Safety Zone C airspace and general land use controls.
- Clarified that a hazard determination under an FAA 7460 Obstruction Evaluation is a general restriction applicable to all zones.
- Removed provision allowing the results of an FAA 7460 Obstruction Evaluation to stand in lieu of a variance for proposed structures that exceed the height limitations
- Updated exhibits and grid maps
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The FLYING CLOUD AIRPORT JOINT AIRPORT ZONING BOARD

In the Matter of Adopting a Flying Cloud Airport Zoning Ordinance

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

The Flying Cloud Airport JOINT AIRPORT ZONING BOARD (the "FCM JAZB") convened to consider adoption of a Flying Cloud Airport Zoning Ordinance ("FCM Zoning Ordinance"), which will regulate the use of property and the height of structures and objects of natural growth in the vicinity of the Flying Cloud Airport ("FCM" or "Airport").

The FCM JAZB, having reviewed and considered the public record before it, intends to adopt the FCM Zoning Ordinance. In support of its action, the FCM JAZB hereby summarizes its legal authority in the Final Statement of Legal Authority Findings of Fact, Conclusions of Law, and Order, 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 §§ 260.0161 – 260.074 ("Airport Zoning Statutes").
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 ability of an airport. See Minn. Stat. § 260.0161.
3. The Legislature also found that the social and financial costs of disrupting existing land uses around airports in built-up urban areas often outweigh the safety benefits of a relocation to airport hazards. See Minn. Stat. § 260.0161.
4. The Legislature then declared that the creation of airport hazards in 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. § 260.0161.
5. The Legislature also declared that the diminution or removal of existing land uses is not in the public interest and should be avoided wherever possible consistent with reasonable standards of safety. See Minn. Stat. § 260.0161.
6. Zoning authority within the Airport approach zone extends two miles from the Airport boundaries for land uses and uses of "buildings and for population density. Zoning authority outside the Airport approach zone extends one and one-half miles for height restrictions and one mile for land use. See Minn. Stat. § 260.0161, subd. 1(d).
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Draft FCM Airport Zoning Ordinance 2\textsuperscript{nd} Submittal

\textbf{2\textsuperscript{nd} Submittal Package Contents}

- Submittal Letter (dated September 20 +/-)
- FCM JAZB Meeting Record
  - Includes material from 2017-2018 JAZB meetings
- Draft FCM JAZB Statement of Legal Authority, Findings of Fact, Conclusions of Law, and Order
- Second Submittal Draft FCM Airport Zoning Ordinance
  - Redlined version denoting changes from 1st submittal
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JAZB Meeting Plan

Meeting 1 (Kickoff):
- Board Member Introductions
- Selection of Chairperson
- Review of FCM JAZB Historical Timeline & Accomplishments
- Summary of 2010 Draft FCM Airport Zoning Ordinance
- Goals for Re-Convened FCM JAZB
- Overview of Meeting Plan and Establish Meeting Dates
- Organizational Logistics

Meeting 2:
- Presentation about efforts to update airport safety zoning laws
- Outline of proposed updates/refinements to 2010 Draft FCM Airport Zoning Ordinance
- Board member input on items to be updated/refined

Meeting 3:
- Presentation of Updated Draft FCM Airport Zoning Ordinance
- Approval of Updated Draft FCM Airport Zoning Ordinance for Public Hearing #1

Meeting 4:
- Review of First Public Hearing comments and responses
- Approval to submit Updated Draft FCM Airport Zoning Ordinance to MnDOT Commissioner of Transportation

Meeting 5:
- Review MnDOT Commissioner of Transportation’s comments
- Discuss changes in response to MnDOT comments
- Approval to submit response to MnDOT

Meeting 6:
- Review MnDOT final approval
- Approval of Second Public Hearing for Final Draft FCM Airport Zoning Ordinance

Public Hearing #2

Meeting 7:
- Review of Second Public Hearing comments and responses
- Final adoption by JAZB of FCM Airport Zoning Ordinance
Flying Cloud Airport
Joint Airport Zoning Board

Thank you for your participation!