

**NORTH TEXAS REGIONAL AIRPORT
JOINT AIRPORT ZONING BOARD
APRIL 30, 2014**

MEMBERS' PRESENT:

Phil Roether, Chairman
Ken Brawley
Kevin Farley
Janet Gott
Randy Hensarling
Ryan Johnson
Todd Thompson

MEMBERS' ABSENT:

Lee Olmstead
Jason Sofey

OTHERS' PRESENT:

Mike Shahan, Airport Director
Bart Lawrence, Commission, Pct. #4
Scott Shadden, City of Sherman
Ryan Hindman, TxDOT

Michael Hutchins, Herald Democrat
Wm. B. (Ben) Munson, Esquire
Daniel Benson, TxDOT
Dave Fitz, Coffman Associates

I.

Call to Order.

Mr. Roether called the meeting to order at 12:04 p.m.

II.

Approval of the minutes of the March 30, 2014, Joint Airport Zoning Board Meeting.

Mr. Roether asked if the Board had the opportunity to review the minutes of the previous meeting. Ms. Gott made the motion to approve the minutes. Mr. Brawley seconded the motion. All members voted aye.

Mr. Roether stated that he was changing the order of the agenda and would discuss Item III after Item IV.

III.

Update from Chairman Roether on the Landowner meetings held April 12, 2014.

Mr. Roether advised the Board that he had met with landowners on April 12. He stated that letters were sent to every landowner within the proposed area and 89 landowners attended the meetings. He stated that as a result of these meetings he wanted to appoint a committee that would spend the next 30 days making a recommendation to the Board about Zone A and B and if they could be shrunk and still maintain the viability of the airport. He also stated that he wanted them to review Table A and make recommendations on it. Mr. Roether stated that Mr. Hensarling had stated that he would chair the committee and work with Mr. Sofey, Mr. Thompson and Mr. Brawley to make any recommendations that the committee saw fit at the next Board meeting. He stated that he would like to have a landowner representative from the north and south ends of Zone A on the committee.

Mr. Johnson stated that he had met with several landowners and he stated that he had gotten the same reaction as Mr. Roether, as Zone A does not appear to be an issue but that Zone B is an issue. Mr. Johnson stated that perhaps Zone A could be established at this time and Zone B at a later date.

IV.
Workshop to review Airport Zoning commission recommendations for the Airport Zoning Ordinance.

Mr. Roether stated that he wanted to go through the document and review changes that were made and not covered at the last meeting. He stated that TxDOT was running late but should be in attendance to answer some questions.

Mr. Roether began with Section 8.2. He stated that this would be discussed when the TxDOT representative got to the meeting.

Section 8.3 – Mr. Roether stated that this had to do with an appeal stay. Mr. Johnson asked if an appeal from each jurisdiction would go to the RMA. Mr. Shahan stated that if the property were in the county it would go the RMA but if it were inside city limits, it would go to the appropriate city. Mr. Shahan went through the changes that were made in Exhibit B. Mr. Johnson asked Mr. Shadden about the appeal process in the City of Sherman. Mr. Shadden stated that all matter went before the P&Z and then to judicial review if the variance was denied. Mr. Shadden stated that this should be spelled out in the city's zoning ordinance procedure.

Section 8.4 – Mr. Roether stated this was a continuation of 8.3. Mr. Shahan stated that the mayor's of each city has requested that appeals be handled through their normal procedure. Mr. Hensarling asked if there was a mechanism in place to assure that each jurisdiction would enforce this in the same manner. Mr. Roether stated that should a city approve an appeal that was a blatant violation he would assume that the RMA could bring suit against the appeal although that is not specifically detailed in the document. Mr. Johnson agreed that there was a grey area in Section 9 as to whether that was allowed. After further review, Mr. Johnson stated that Section 10 deals with that issue. Mr. Roether asked Mr. Fitz if the verbiage in Section 8, 9, and 10 was standard verbiage. Mr. Fitz stated that it was. Mr. Thompson asked if other airports had adopted this verbiage. Mr. Fitz stated that he didn't know if it had been altered in final documents. After some discussion, Mr. Roether asked the Board if they felt that there needed to be any changes to the existing verbiage or should more research be done. Mr. Johnson stated that he had concerns with Section 10. Mr. Thompson stated that the appeal process should be clearly defined so that all interested parties understand the process. After further discussion, Mr. Roether asked Mr. Johnson to review Section 10 and perhaps work with the city attorney on the wording for the section. Mr. Thompson asked if other airport zoning documents that had been approved could be obtained. Mr. Fitz stated that he did not have them but TxDOT might have them. Mr. Roether stated that some of the adopted ordinances would be obtained and forwarded to Mr. Johnson for his review.

Section 11 Penalties – Mr. Shahan stated that this change was made by the City of Denison. Mr. Johnson felt that the level of misdemeanor needed to be spelled out. Mr. Thompson stated that it should follow state law.

Section 12 Conflicting Regulations – Mr. Shahan stated that this was highlighted by Mr. Benson. Mr. Shahan stated that under the existing aviation easements the airport has the right to remove any structure or growth that penetrates into the area protected by the height zoning ordinance. Mr. Benson stated that he may have highlighted this because this document works with land use compatibility but this is related to the airport height hazard. He said he saw no problem with having this in the document.

Section 13 Severability – Mr. Roether stated that he thought this was standard language.

Section 14. Effective Date - Mr. Roether stated that this says that the ordinance becomes effective the date it is approved.

Table A – Mr. Johnson stated that the shopping centers, meeting halls, multi-story office buildings, and labor intensive manufacturing plants had been added. He asked the reasoning behind adding those. Mr. Shahan stated that this was added to be consistent with the wording in the ordinance in Section 5 Compatibility Criteria Zone A. Mr. Roether stated that once this is placed in Table A it becomes restricted where it would not be if it is used as an example in Section 5. After further discussion, it was decided that this should be removed from Table A.

Mr. Roether asked Mr. Benson about the issue of the 45dB in Zone A and who would enforce it and what would be the problem with removing this. Mr. Benson stated that you would include some type of design standard requirement for new construction so that this goal could be met by the use of specific building materials. He stated that in absence of the design standards he was not sure how this would be regulated. Mr. Roether stated that cities usually have design standards but the county does not. He stated that this would require the County to adopt design standards. After further discussion it was decided that this would be taken under advisement.

Mr. Shahan stated that one item was the addition of the exclusion of flood control or detention ponds under waterways that create a bird hazard. He asked if small stock tanks should be included in the exclusion. Mr. Johnson suggested replacing waterways with wetlands. Mr. Fitz stated that an exception could be added for ponds for cattle. He stated that you could put a footnote or exception for cattle ponds. Commissioner Lawrence advised Mr. Roether that there is a TxDOT designed, engineered and built wetlands in Zone B on the west side of SH 289. He stated that it was built as a mitigation pond when they constructed the highway. Mr. Hensarling asked if “bird hazard” could be defined. Mr. Johnson stated that he would consider adding stock tanks as an exception and should be added to both Zone A and Zone B.

Mr. Shahan stated that another question was about the FAA airspace review. Mr. Shahan stated that originally it had to be done for any objects taller than 35 feet. Mr. Shahan stated that this had been changed to “required for all new construction” which would require a Form 7460 for any new construction as currently written. Mr. Benson asked if there was an accepted height limitation in the hazard zoning. Mr. Shahan stated that 150 feet above the runway plus your approaches. Mr. Benson asked if there was a clause stating that without exception nothing needed to be done as long as the structure is less than 50 feet or 35 feet, that it is accepted to be built that high, in the existing hazard zoning. Mr. Shahan stated that he was not sure. Mr. Benson stated that the Notice of Proposed Construction is required by the FAA regardless if it is in the ordinance or not, if someone is within a certain distance of the airport. Mr. Shahan stated that his thought was to include it here so it would be done. Mr. Johnson suggested being specific for each end of the runway. Mr. Shahan stated that he would add 19 feet or higher on the south end and would research the requirement for the north end.

Section 8.2 – Mr. Shahan stated that the question on this was about “A No Hazard Determination letter from the FAA must accompany the appeal before it can be considered by the responsible jurisdiction”. Mr. Benson stated that this is standard language that appears in TxDOT’s guidelines and other states guidelines. He stated that it was in there so that before the Board of Adjustments would hear a variance they would have some indication that the proponent seeking the variance has gone through the process of notifying the FAA of the proposed construction, the FAA is aware of the proposed construction and the FAA has weighed in on it. He stated that typically anything above 200 feet will be a hazard to air navigation automatically and anything under that typically gets a determination of no hazard. Mr. Benson suggested that this be required by someone who is seeking a variance so that it is known that they have gone to the FAA and it has been cleared. He stated that the Board of Adjustment will know this

has been done before issuing a variance. Mr. Johnson asked if the determination of no hazard is not received does this mean the appeal cannot go forward. Mr. Benson stated that the no hazard determination letter does not mean that construction cannot proceed. He stated that the FAA cannot tell someone that they cannot build. He stated that this allows them to partner with other agencies, particularly in the case of tall towers. He stated that the letter states that they cannot prevent construction. Mr. Shahan stated that should the construction occur, the airport and users of the airport are penalized due to changes in systems such as the ILS. Mr. Johnson asked the process for obtaining this determination. Mr. Benson stated that the FAA is required by written policy to review the request within 60 days. He stated that there is no cost and it is done electronically. Mr. Johnson stated that this needed to be revised in the wording to state that an appeal can move forward without that letter. Mr. Roether suggested changing it to read as "Determination of No Hazard" or changing it to read that the letter must be received before the appeal process can be completed. Mr. Roether stated that the Board wanted to drop the word "No" and is going to amend the end of the document to take away the appeal process starting before the letter is received to the appeal process cannot be completed until the letter is received. Ms. Gott stated that the "No" should be taken out and the remainder left alone. Mr. Brawley agreed with Ms. Gott. Mr. Benson stated that the letter is actually called a "Determination of No Hazard" but that there are several determinations that can be issued. Mr. Johnson stated that he would like to table this to get the exact wording of the letter that is sent out. Mr. Benson stated that he would look into this issue. Mr. Farley asked if there would ever be an appeal that the FAA would not be involved in. Mr. Johnson asked if there was a list of issues that this letter covered. Mr. Shahan stated that the determinations usually covered height issues. Mr. Benson stated that the only thing that they would weigh in on would be the efficiency of navigable air space. After further discussion, Mr. Roether stated that this would be reviewed and become more specific in regard to the hazard determination.


V.
Public Comments.

There were no comments from the audience.

VI.
Adjourn.

The meeting was adjourned at 1:39pm.


Phil Roether, Chairman


Terry Morrow, Administrative Asst.