

**NORTH TEXAS REGIONAL AIRPORT
JOINT AIRPORT ZONING BOARD
AUGUST 5, 2014**

MEMBERS' PRESENT:

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

MEMBERS' ABSENT:

OTHERS' PRESENT:

Mike Shahan, Airport Director
Wm. B. (Ben) Munson, Esquire

Michael Hutchins, Herald Democrat
Bill Magers

I.

Call to Order.

Mr. Roether called the meeting to order at 8:00 a.m.

II.

Approval of the minutes of the June 25, 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. Thompson seconded the motion. All members voted aye.

III.

Approval of the minutes of the July 28, 2014, Joint Airport Zoning Board Public Meeting.

Mr. Roether asked if the Board had the opportunity to review the minutes of the public hearing. Mr. Olmstead made the motion to approve the minutes. Ms. Gott seconded the motion. All members voted aye.

IV.

Workshop to review Airport Zoning Committee recommendations and comments from the July 28, 2014, Public Meeting and take action as necessary.

Mr. Roether updated the Board on the Public Hearing that was held on July 28, 2014. Mr. Roether asked the Board if they had any comments about any of the comments made at the public hearing. He then asked if there was anything in the comments that would modify anything in the work that had been done on the ordinance.

Mr. Hensarling asked what would happen if a buyer of property refused to sign the disclosure statement. Mr. Munson stated that it was planned to record the regulation and that would give the public

notice regarding all of the effected property. He further stated that he did not think that not signing the disclosure statement was fundamental to enforceability or the ability for the buying public to be aware.

Mr. Johnson stated that his comment was about who would pay for litigation should someone sue as a result of the ordinance. He stated that it was his understanding that the County would pay for that. He stated that he had emailed Judge Bynum and was told that in Judge Bynum's opinion should a suit result from property inside the cities ETJ or city limits the city should kick in to help defend this. He stated that he had discussed that with his Mayor and some other colleagues and that caused some concern. Mr. Roether stated that the Denison City Attorney had done a study on the possibility of litigation. He stated that in her opinion it was slim that someone could win the suit but he said that there are costs to defending the case. He stated that she said that there is one special situation in which a plaintiff could be successful and that was by showing damages. He stated that those damages could not be in the future. Mr. Munson asked if when talking about litigation if he was talking about the global legality of the regulation which is pursuant to statute. Mr. Munson stated that all steps have been followed. He stated that if Mr. Jonson was talking about any appeal process within the jurisdiction of any particular city that would be on a case by case basis. Mr. Munson further stated that each jurisdiction would control the appeal process and if there was something that was inappropriately done by the governing jurisdiction then that would be the responsibility of the jurisdiction. Mr. Johnson stated that his concern was with a challenge to the ordinance as a whole. He stated that Commissioners Court was asking for a recommendation from this Board although he said that he did not know if that was proper. Mr. Johnson stated that he felt that it needed to be determined who would pay for any cost of litigation and what that cost may be. Mr. Thompson asked what the risk would be in not passing this regulation. Mr. Roether advised that TxDOT had funded the plans that recommended that this should be done. Mr. Munson stated that this was also included in the grant assurances. Mr. Munson asked Mr. Johnson if his concern was with the validity of the State Statute and Mr. Johnson stated no. Mr. Munson then asked if his concern was with the regulation that might be adopted pursuant to the statute and Mr. Johnson replied no. He stated his concern was the cost to the city should any part of this regulation be challenged. Mr. Hensarling asked if the county could indemnify the cities and Mr. Roether stated that they could but that he felt that it would have to be very specific as the county would not indemnify the city if the suit pertained to a decision made by the city. After much discussion, Mr. Roether asked that Mr. Olmsted and Mr. Hensarling talk to members of Commissioners Court in order to get their opinion. He asked that Mr. Johnson join them if he would like. Mr. Roether then polled the members of the Board about their concerns in reference to this. Mr. Thompson stated he had no concerns. Mr. Sofey stated that there needs to be some type clarification on who is responsible. Mr. Olmstead stated that Grayson County is the governing body of the zoning ordinance and he has no concerns. Mr. Johnson had no further statements at this time. Mr. Hensarling stated that he had no concern other than the Airport is a county asset and the county should incur the cost to protect it. Ms. Gott stated she had no concerns and felt that the Denison attorney would have raised this issue if she thought it were a concern. Mr. Farley stated that as staff personnel he had presented this to the City Council and they had moved forward with the assumption that this was a county asset and if anything were to happen this would fall under the County umbrella but that having a definitive answer would be nice. Mr. Brawley stated that this was a county asset and he had no issue because it could be relaxed if needed. Mr. Roether suggested that Mr. Johnson and the county representatives, and Mr. Sofey if he were available, have discussions with members of Commissioners Court.

Mr. Roether stated that he wanted to briefly go through the document. He explained the process to date. He stated that there was a document that showed the procedure that must be followed. Mr. Roether stated that there were fifteen steps and all through Step 12 had been done. He stated that Step 13 was the adoption of the regulation. He stated that Step 14 was an attorney's certification that the process has been followed precisely and that Step 15 is the filing of the document with the County Clerk and at that time it becomes law and would be put into effect.

Mr. Roether stated that he had made some additional edits with legal counsel advice to change the word "ordinance" to "regulation" throughout the document per Statute 241. He stated that the cities can convert this to a City Ordinance.

Mr. Roether stated that on advice of counsel, there has been some slight rewording with no change in meaning throughout the document. Mr. Roether then went through the changes.

After going through all changes, Mr. Roether stated that he had received a letter from the Shankles' family who is opposed to the zoning regulation.

Mr. Roether stated that the Board was at a point that it needed to decide how it wanted to proceed. At this time, Mr. Hensarling stated that he was ready to make the motion to adopt. Mr. Hensarling made the motion to adopt the regulation in its final and corrected form. Mr. Thompson seconded the motion. Mr. Sofey stated that one question had arisen. He stated that he was 99% to 99.9% in favor of moving forward but if there is a vote needed today he needed some clarification on the financial responsibility issue. He stated that he would not vote against the ordinance itself but that he could not vote until clarification was received. Mr. Johnson stated that he was in favor of the ordinance but could not vote until his questions were answered about the financial responsibility. Mr. Brawley asked if Commissioners Court could answer the concerns expressed by Mr. Johnson and Mr. Sofey. Mr. Roether stated that he did not think this would be something that Commissioners Court would address due to it being a hypothetical situation. Mr. Brawley then asked how you would ever be able to answer their questions. Mr. Sofey said there may not be an answer but if that was the answer that is something that needs to be shared with their City Council. Mr. Sofey stated that since there was a motion and a second a vote could be taken but he did not want any negative connotation should they vote no because they are in favor of the ordinance. Mr. Magers advised the Board that he felt this was about moving Grayson County forward. He stated that it was his supposition that there will not be a concrete answer to Mr. Johnson's question. He stated that as a county judge he would have a difficult time giving full indemnification. He stated that this was a thankless job and he appreciated the work that had been done. Mr. Johnson stated that he could not make a decision on behalf of his representative and body when full disclosure has not been given. Mr. Farley stated that he thought the Board was where it needed to be but that if a vote was taken this morning he would have to abstain. Mr. Roether stated that he thought that there was no absolute answer to the question before them. He stated that they could move forward or continue to delay. He stated that the longer the delay the longer things fester, but he said that he was okay with moving either way. Mr. Roether stated that they would take a vote unless either the person that made the motion or the person that seconded the motion rescinds their position. Mr. Roether asked if the person that seconded the motion wanted to rescind that motion. Mr. Thompson stated no. Mr. Roether then asked the person that made the motion if he wanted to rescind the motion. Mr. Hensarling stated no. Mr. Roether asked if there were any last comments. Mr. Brawley asked if Mr. Johnson or Mr. Sofey had an issue with voting if there was no definitive answer to their question. He stated that he felt that it was important for all to have the same face for the public as a team. Mr. Brawley asked Mr. Johnson and Mr. Sofey if they have an issue if a decision is made today in defending their decision, be it whether they abstain, vote for or vote against it. Mr. Sofey stated that if the answer is there is no answer, then that is the answer but he thinks he needs to get more clarification. Mr. Roether stated that he would be on travel until after the 20th so any action would be after that date. Mr. Roether stated that he heard Mr. Sofey say that he supports the ordinance. Mr. Sofey stated that his only question has to do with financial liability. Ms. Brawley stated that he would love to see a unanimous vote if it is possible. Mr. Olmstead stated that perhaps they should let Mr. Munson and Brandon talk to get the clarification on the legalities so that Mr. Johnson and Mr. Sofey could get on board. Mr. Sofey stated that he felt they were unanimous on the work that had been done. After further discussion, Mr. Roether stated that he would appreciate the 2nd being removed so that the motion would die until this issue can be resolved. He stated that he felt that the

Board was unanimous in its support of the document. He stated that he felt that there were several members that needed to go back to their constituency and clarify the financial responsibility issue. At this time, Mr. Thompson stated that he reluctantly withdrew his second but stated that he felt that you were seeing political pressure at its best. He stated that he did not believe that the questions came up for the sake of this board. He stated that he thinks that it came up to kill this decision because this had never been a concern that had been raised until there was a possible vote. He stated that it had always been the County because it is county property and the county ordinance. Mr. Sofey asked if there was some indemnification in the document. Mr. Roether stated there was not. Mr. Roether stated that the second had been withdrawn so the motion died for the lack of a second. He stated the next board meeting would be on August 27 at 12:00pm. Mr. Brawley asked if Mr. Roether had to be at the meeting. Mr. Roether stated that the Board could elect a vice-chair and could proceed without him being there. Ms. Gott stated that it was his passion that had moved this and she felt that he should be present.

V.
Public Comments.

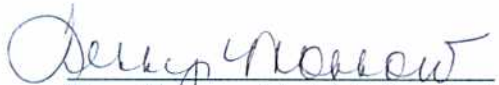
There were no public comments.

VI.
Adjourn.

The meeting was adjourned at 9:30 a.m.



Phil Roether, Chairman



Terry Morrow, Administrative Asst.