Journal of Air Law and Commerce

Volume 12 | Issue 2 Article 4

1941

Model Airport Zoning Act

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EDITORIALS

MODEL AIRPORT ZONING ACT

Air travel and air defense require not alone trained personnel and sound ships of constantly more modern design, but also properly placed airports fully developed and adequately protected.

The proposed Model Airport Zoning Act now being promulgated by the Civil Aeronautics Administration of the Department of Commerce for consideration of the various State Legislatures is devoted to the last of these considerations, namely, the protection of the airports and, correlatively, the adequate protection of the airplanes making use of them.

The development of the use of the air has been so rapid that legislation has lagged behind necessary provisions and regulations. A greater cooperation between those in authority, however, and the various interests represented, oftentimes would have tended toward a quicker solution of the problems. Perhaps a good example of this is the obstructionist attitude of the Committee on Aeronautical Law of the American Bar Association in its cooperation with the National Conference of Commissioners on Uniform State Laws and its Committees on this subject, as well as with the American Law Institute.

A good example of the contrary approach has been the recent handling of the matter by General Donald H. Connolly, the Administrator of Civil Aeronautics, under whose auspices the present Model Airport Zoning Acts are being promulgated.

The need of regulations or zoning with reference to airports was recognized by the various interests concerned, but the original preliminary drafts of the Act of August 26th and November 12th, 1940, apparently proceeded on the theory that the property owners who were to be regulated had few, if any, rights and the expense of providing and maintaining proper zoning would have fallen wholly on them, rather than on the various business interests which had made it necessary and the public which it served. It has seemed that any necessary development of aviation would be promoted rather than hindered by proceeding in an orderly fashion for the acquirement of the necessary rights with due regard to the rights of the

property owners and the public, and without violating what has heretofore been regarded as the constitutional and property rights of the land owners in the vicinity of existing or proposed zoned airports. An Act drawn and taking into consideration these rights would meet the necessities of aviation and secure the cooperation rather than the opposition of the land owners concerned. Furthermore, under the well-established law with reference to zoning such Acts have been sustained without compensation on the theory that it limited the future and not the present use.

The proposed Act went on the theory that administrative orders could not only prevent any natural development without compensation but actually compel the change in existing rights, building, etc., and compel the maintenance of lights, etc., by the property owners, defects in which might lead to tort liability — all at the expense of the land owner without compensation. It also undertook to abrogate the rights of the owner to have the matter decided by the courts, except administrative findings of facts which were to be conclusively binding upon the Courts.

After preparing several preliminary drafts the Administrator of Civil Aeronautics arranged for a conference of representatives of various interests concerned, including the National Conference of Commissioners on Uniform State Laws, property owners, air organizations, public officials, etc. As a result substantial modifications, meeting most of the objections to the original drafts, were prepared.

Another Act was then sent out under date of January 6th, 1941, by the Civil Aeronautics Administration covering the general subject matter. While this Act met most of the objections to the original drafts, it was not satisfactory to the National Institute of Municipal Law Officers which had participated in the prior discussions, inasmuch as it empowered a state agency or commission to plan the airport approach required for publicly owned airports rather than the municipal authorities. Accordingly, the National Institute of Municipal Law Officers prepared another draft under date of February 15, 1941, which differs principally from the Act dated January 6, 1941, in the matter of state and local control. This subsequent Act has likewise been promulgated by General Connolly, of the Civil Aeronautics Administration, under date of March 3rd, 1941, in which he states that the ultimate legislation will also accomplish the purposes in which the Civil Aeronautics Administration is interested.

It will not be possible in the space available to analyze and compare these different drafts, but there are certain Sections to which attention should be directed.

Section 5 of the Act of January 6th, and Section 4 of the Act of February 15th, deal with the question of Permits and Variances. The power is given by these Sections to compel owners of non-conforming structures to reconstruct. Apparently this Section, which requires this to be done at the expense of the owners, is intended to apply only where the obstruction occurs after the zoning has taken place. The language, however, is not entirely clear and possibly might be considered to be in conflict with the provisions of Section 9 of the Act of January 6th and Section 8 of the Act of February 15th, which clearly contemplate the proper rule; namely, that where there is an acquisition of air rights in connection with the airports it should be acquired by purchase, grant, or condemnation in the manner provided by law. If there is any doubt that these Sections on Permits and Variances are limited to obstructions occurring after the passage of the Zoning Act, the language should be clarified to make it clear that it is only intended to apply to such obstructions.

Section 5, Subsection 3 of the Act of January 6th, and Section 4, Subsection 3 of the Act of February 15th, deal with the question of Obstruction Marking and Lighting. The original drafts provided that this should be done at the expense of the owners of the property involved. Both of the new drafts give the right to require the owners of any such obstructions to permit the political subdivision, at its own expense, to install, operate, and maintain suitable obstruction markers and obstruction lights thereon. This not only secures the advantage of having the markings exactly what the public authorities desire, but also places the expense of and the liability in tort for failure to maintain the markings upon the public authorities maintaining them.

Section 7 of the Act of January 6th and Section 6 of the Act of February 15th deal with the question of Judicial Review—which Section meets one of the objections to the original draft.

Section 9 of the Act of January 6th and Section 8 of the Act of February 15th deal with the question of Acquisition of Air Rights. Whereas the original draft failed to protect the property and Constitutional rights of the owners and the public in this matter, these Sections are believed to be fair in this respect.

Upon the differences between the Acts of January 6th and February 15th it is believed that the latter Act, in placing the control

in a local body, is preferable to the enlarged power under the state agency or commission as in the former Act.

The thing we wish to emphasize, however, is that the legislation in both drafts is a good example of progress in good feeling and sound solutions which may be made as a result of a conference between the various interests concerned. General Connolly, the Administrator of Civil Aeronautics, Mr. John M. Hunter, Jr., the Attorney for the Airport Section, Mr. Robert T. Barton, Jr., of the National Conference of Commissioners on Uniform State Laws Committee on this subject, and the others concerned, are to be congratulated upon the sound approach, cooperative spirit, and constructive attitude which has characterized the conferences. It is believed that similar cooperation between other bodies concerned in these questions would produce greater progress and constructive results than heretofore have characterized some of the discussions.

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