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State - Department of Commerce Civil Aeronautics Administration

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STATE
DEPARTMENT OF COMMERCE
CIVIL AERONAUTICS ADMINISTRATION
WASHINGTON

MODEL AIRPORT ZONING ACT*

(January 6, 1941)

*(An Act to empower and direct the _____
to prepare airport approach plans for publicly-owned airports; to empower and
direct municipalities and other political subdivisions to promulgate, administer,
and enforce airport zoning regulations limiting the height of structures and
objects of natural growth, and otherwise regulating the use of property, in
the vicinity of such airports; to authorize the acquisition, by purchase, grant,
or condemnation, of air rights and other interests in land; and to provide*

*DEPARTMENT OF COMMERCE
Civil Aeronautics Administration
Washington

February 5, 1941

The Journal of Air Law and Commerce,
357 East Chicago Avenue,
Chicago, Illinois.

Gentlemen:

In view of your interest in the problem of protecting the aerial approaches of airports against obstruction, I am sending you herewith a draft of a model airport zoning act, dated January 6, 1941, which has been prepared in response to requests of many State aviation officials and others interested in the welfare of aviation.

This draft represents the cooperative effort of many legal and aeronautical experts, including Robert T. Barton, Jr., Member of the Executive Committee of the National Conference of Commissioners on Uniform State Laws and Chairman of the Special Committee on Uniform Aeronautical Code of that Conference, and Nathan William MacChesney, Member of the Executive Committee of that Conference and General Counsel for the National Association of Real Estate Boards, both of whom have personally aided in its preparation. In addition, assistance was received from the National Institute of Municipal Law Officers, this draft being a revision of the Model Airport Zoning Act drafted originally by that Institute, and from the American Society of Planning Officials, the National Association of State Aviation Officials, the Air Transport Association, and the Civil Aeronautics Board.

While this draft represents the considered views of all those concerned in its preparation, it should be noted that it may need to be adapted in form, and perhaps to some extent in substance, to meet the practical and legislative usages and requirements of each State in which enactment of such an airport zoning act may be considered. For example, while the measure of State participation in airport zoning contemplated by this proposed act is believed to be desirable in view of the importance to civil aeronautics and national defense of adequate and uniform airport approach protection throughout the State and Nation, it is recognized that such participation may be out of the question in some States, whether due to lack of a qualified agency of the State Government or for some other reason.

It is hoped that this proposed draft will be helpful to you in your efforts to bring about better protection of airport approaches. If the Civil Aeronautics Administration can be of any further assistance in this connection, you may be sure that we shall be glad to be of service.

Sincerely,

Signed: Donald H. Connolly,
Administrator of Civil Aeronautics.

Enclosure

*penalties and remedies for violations of this Act or of any ordinance or regulation made under the authority conferred thereby.)*¹

(BE IT ENACTED _____)

Section 1. Definitions. As used in this Act, unless the context otherwise requires:

(1) "Airport" means any area of land or water designed for the landing and taking-off of aircraft and utilized or to be utilized by the public as a point of arrival or departure by air.

(2) "Airport hazard" means any overhead power line which intereferes with radio communication between a publicly-owned airport and aircraft approaching or leaving same, or any structure or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking-off.

(3) An airport is "publicly-owned" if the portion thereof used for the landing and taking-off of aircraft is owned by a governmental body, political subdivision, public agency, or other public corporation.

(4) "Commission" means the _____²

(5) "Person" means any individual, firm, co-partnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(6) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(7) "Tree" means any object of natural growth.

Section 2. Airport Hazards Not in Public Interest. It is hereby found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety, or general welfare.

Section 3. Preparation of Airport Approach Plans. The Commission is hereby empowered and directed to formulate and adopt, and from time to time as may be necessary revise, an airport approach plan for each publicly-owned airport in the State.³ Each such plan shall indicate the circumstances in which structures and trees are or would be airport hazards, the area within which measures for the protection of the airport's aerial approaches should be taken, and what the height limits and other objectives of such measures should be. In adopting or revising any such plan, the Commission shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing sructures and trees above the level of the airport, and the possibility of lowering or

1. As used throughout this draft, parentheses indicate that the matter within parentheses should be adapted to the usages or requirements of the particular State.

2. Insert name of the areonautics, planning, or other agency or official of the State Government to which it is desired that the powers set forth in Section 3 of this Act be delegated.

3. If the Commission is without funds sufficient to finance the performance of this function, provision should be made therefor.

removing existing obstructions, and the Commission may obtain and consider the views of the agency of the Federal Government charged with the fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the airport.

Section 4. Adoption of Airport Zoning Regulations.

(1) Every municipality and county or other political subdivision having within its territorial limits an area within which, according to an airport approach plan adopted by the Commission, measures should be taken for the protection of airport approaches, shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations applicable to such area, which regulations shall divide the area into zones, and, within such zones, specify the land uses permitted, regulate and restrict the height to which structures and trees may be erected or allowed to grow, and impose such other restrictions and requirements as may be necessary to effectuate the Commission's approach plan for the airport.

(2) In the event that a political subdivision has adopted, or hereafter adopts, a general zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations adopted for the same area or portion thereof under this Act, may be incorporated in and made a part of such general zoning regulations, and be administered and enforced in connection therewith, but such general zoning regulations shall not limit the effectiveness or scope of the regulations adopted under this Act.

(3) Any zoning or other regulations applicable to any area within which, according to an airport approach plan adopted by the Commission, measures should be taken for the protection of airport approaches, including not only any airport zoning regulations adopted under this Act but any zoning or other regulations dealing with the same or similar matters, that have been or may be adopted under authority other than that conferred by this Act, shall be consistent with, and conform to, the Commission's approach plan for such area, and shall be amended from time to time as may be necessary to conform to any revision of the plan that may be made by the Commission.

(4) All airport zoning regulations adopted under this Act shall be reasonable, and none shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any non-conforming use, except as provided in Section 5 (1).

Section 5. Permits and Variances.

(1) *Permits.* Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to this Act, a system may be established for granting permits to establish or construct new structures and other uses and to replace existing structures and other uses or make substantial changes therein or substantial repairs thereof. In any event, before any non-conforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No such permit shall be granted that would allow the structure or tree in question to be made higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted;

and whenever the administrative agency determines that a non-conforming structure or tree has been abandoned or more than 80 percent torn down, destroyed, deteriorated, or decayed: (a) no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations; and (b) whether application is made for a permit under this paragraph or not, the said agency may by appropriate action compel the owner of the non-conforming structure or tree, at his own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations or, if the owner of the non-conforming structure or tree shall neglect or refuse to comply with such order for 10 days after notice thereof, the said agency may proceed to have the object so lowered, removed, reconstructed, or equipped and assess the cost and expense thereof upon the object or the land whereon it is or was located. Unless such an assessment is paid within 90 days from the service of notice thereof on the agent or owner of such object or land, the sum shall bear interest at the rate of 10 percent per annum until paid, and shall be collected in the same manner as are general taxes. Except as indicated, all applications for permits for replacement, change or repair of non-conforming uses shall be granted.

(2) *Variances.* Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property, in violation of airport zoning regulations adopted under this Act, may apply to the Board of Appeals, as provided in Section 6 (3), for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations.

(3) *Obstruction Marking and Lighting.* In granting any permit or variance under this Section, the administrative agency or Board of Appeals may, if it deems such action advisable to effectuate the purposes of this Act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain suitable obstruction markers and obstruction lights thereon.

Section 6. Procedure.

(1) *Adoption of Zoning Regulations.* No airport zoning regulations shall be adopted, amended, or changed under this Act except by action of the legislative body of the political subdivision in question, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision.

(2) *Administration of Zoning Regulations—Administrative Agency.* The legislative body of any political subdivision adopting airport zoning regulations under this Act may delegate the duty of administering and enforcing such regulations to any administrative agency under its jurisdiction, but such administrative agency shall not be or include any member of the Board of Appeals. The duties of such administrative agency shall include that of hearing and deciding all permits under Section 5 (1), but such agency shall not have or exercise any of the powers delegated to the Board of Appeals.

(3) *Administration of Airport Zoning Regulations—Board of Appeals.* Airport zoning regulations adopted under this Act shall provide for appointment of a Board of Appeals to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of this Act or of any ordinance adopted pursuant thereto;

(b) To hear and decide special exceptions to the terms of the ordinance upon which such Board may be required to pass under such ordinance;

(c) To hear and decide specific variances under Section 5 (2).

Where a zoning board of appeals or adjustment already exists, it may be appointed as the Board of Appeals. Otherwise, the Board of Appeals shall consist of five members, each to be appointed for a term of three years⁴ and to be removable for cause by the appointing authority upon written charges and after public hearing.

The Board shall adopt rules in accordance with the provisions of any ordinance adopted under this Act. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the Board and shall be a public record.

Appeals to the Board may be taken by an person aggrieved, or by any officer, department, board, or bureau of the political subdivision affected, by any decision of the administrative agency. An appeal must be taken within a reasonable time, as provided by the rules of the Board, by filing with the agency from which the appeal is taken and with the Board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the Board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application on notice to the agency from which the appeal is taken and on due cause shown.

The Board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

The Board may, in conformity with the provisions of this Act, reverse or affirm, wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or de-

4. If it is desired that the terms of the members of the Board overlap, provision should be made therefor.

termination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

The concurring vote of a majority of the members of the Board shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

*Section 7. Judicial Review.*⁵

(1) Any person aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision, may present to the _____ court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the Board.

(2) Upon presentation of such petition the court may allow a writ of certiorari directed to the Board of Appeals to review such decision of the Board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board and on due cause shown, grant a restraining order.

(3) The Board of Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the Board of Appeals. The findings of fact by the Board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the Board shall be considered by the court unless such objection shall have been urged before the Board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(5) Costs shall not be allowed against the Board of Appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

Section 8. Enforcement and Remedies. Each violation of this Act or of any regulations, order, or ruling promulgated or made pursuant to this Act, shall constitute a misdemeanor and shall be punishable by a fine of not more than \$_____ or imprisonment for not more than _____ days or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition, either the political subdivision within which the property is located or the Commission may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this Act, or of airport zoning regulations adopted under this Act, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way

5. If there is already in effect an act providing for appeals from the decisions of zoning boards of appeals, consideration should be given the desirability of revising this Section to conform thereto.

of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this Act and of the regulations adopted and orders and rulings made pursuant thereto.

Section 9. Acquisition of Air Rights. In any case in which: (1) it is desired to remove, lower, or otherwise terminate a non-conforming use; or (2) the approach protection necessary according to the Commission's airport approach plan cannot, because of constitutional limitations, be provided by airport zoning regulations under this Act; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or non-conforming use is located, the political subdivision owning the airport or served by it, or the Commission, may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes,⁶ such an air right, easement, or other estate or interest in the property or non-conforming use in question as may be necessary to effectuate the purposes of this Act.

Section 10. Severability. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the valid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 11. Short Title. This Act shall be known and may be cited as the "Model Airport Zoning Act."

(Section 12. Repeal. All acts or parts of acts which are inconsistent with the provisions of this Act are hereby repealed.)⁷

(Section 13. Time of Taking Effect. This Act shall take effect _____
_____.)

MODEL AIRPORT ZONING ACT*

Prepared by National Institute of Municipal Law Officers
730 Jackson Place
Washington, D. C.

February 15, 1941

An Act to empower and direct municipalities and other political subdivisions to promulgate, administer, and enforce airport zoning regulations limiting the

6. In States where the right of condemnation is not provided by general statute, provisions should be added to this Act authorizing such condemnation to remove or mitigate airport hazards, in accordance with the practice of the State in respect to other condemnation proceedings.

7. Consideration should be given the question whether the repeal should refer to specific acts.

*DEPARTMENT OF COMMERCE
Civil Aeronautics Administration
Washington

March 3, 1941

The Journal of Air Law and Commerce,
359 East Chicago Avenue,
Chicago, Illinois.

Gentlemen:

In view of your interest in the problem of protecting the aerial approaches to airports against obstructions, the Civil Aeronautics Administration furnished

height of structures and objects of natural growth, and otherwise regulating the use of property, in the vicinity of airports; to authorize the acquisition, by purchase, grant, or condemnation, of air rights and other interests in land; and to provide penalties and remedies for violations of this Act or of any ordinance or regulation made under the authority conferred herein.¹

(BE IT ENACTED _____)

Section 1. Definitions. As used in this Act, unless the context otherwise requires:

(1) "Airport" means any publicly-owned area of land or water designed for the landing and taking-off of aircraft and utilized or to be utilized by the public as a point of arrival or departure by air.

(2) "Airport hazard" means any overhead power line which interferes with radio communication between a publicly-owned airport and aircraft approaching or leaving same, or any structure or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking-off.

(3) "Political subdivision" means any municipality, city, county, village, borough or town.

(4) "Person" means any individual, firm, co-partnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(5) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smoke-stacks, and overhead transmission lines.

(6) "Tree" means any object of natural growth.

Section 2. Airport Hazards Not in Public Interest. It is hereby found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety, or general welfare.

you with a draft of a model airport zoning act, dated January 6, 1941. In the letter accompanying this draft, you were advised that assistance had been received in its preparation from certain organizations, including the National Institute of Municipal Law Officers. This office has received a letter from the National Institute of Municipal Law Officers stating that the draft as finally prepared did not accord with the views of that Institute, particularly the proposed empowering of a state agency or commission to plan the airport approach protection required for publicly-owned airports.

The Civil Aeronautics Administration is interested in securing adequate protection for the approaches to publicly-owned airports and is convinced that a legal method to provide such protection must be developed where Federal funds are to be expended in the development of an airport. However, it is concerned with the principle of protection, rather than the specific terms of any legislation which would provide such protection.

The National Institute of Municipal Law Officers has prepared an airport zoning act which it believes would accomplish this purpose more satisfactorily than the proposed draft previously furnished by the Civil Aeronautics Administration. A copy of this act is enclosed herewith for your information. It would appear that alternate legislation of this type will also accomplish the purposes in which the Civil Aeronautics Administration is interested.

Sincerely,

Signed: Donald H. Connolly,
Administrator of Civil Aeronautics.

Enclosure

1. The title to the Act must be amended to meet the usages or legal requirements of each State.

Section 3. Adoption of Airport Zoning Regulations.

(1) Every political subdivision may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for any airport within its jurisdiction, which regulations shall divide the area surrounding the airport into zones, and, within such zones, specify the land uses permitted, and regulate and restrict the height to which structures and trees may be erected or allowed to grow. In adopting or revising any such zoning regulations, the political subdivision shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, the possibility of lowering or removing existing obstructions, and the views of the agency of the Federal government charged with the fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the airport.

(2) In the event that a political subdivision has adopted, or hereafter adopts, a general zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations adopted for the same area or portion thereof under this Act, may be incorporated in and made a part of such general zoning regulations, and be administered and enforced in connection therewith, but such general zoning regulations shall not limit the effectiveness or scope of the regulations adopted under this Act.

(3) Any two or more political subdivisions may agree, by ordinance duly adopted, to create a joint board and delegate to said board the powers herein conferred to promulgate, administer and enforce airport zoning regulations to protect the aerial approaches of any airport located within the corporate limits of any one or more of said political subdivisions. Such joint boards shall have as members two representatives appointed by the chief executive officer of each political subdivision participating in the creation of said board and a Chairman elected by a majority of the members so appointed.

(4) The jurisdiction of each political subdivision is hereby extended to the promulgation, administering and enforcement of airport zoning regulations to protect the approaches of any airport which is owned by said political subdivision but located wholly or partially outside the corporate limits of said political subdivision. In case of conflict with any airport zoning or other regulations promulgated by any other political subdivision, the regulations adopted pursuant to this subsection shall prevail.

(5) All airport zoning regulations adopted under this Act shall be reasonable, and none shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any non-conforming use, except as provided in Section 4 (1).

Section 4. Permits and Variances.

(1) *Permits.* Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to this Act, a system may be established by any political subdivision for the granting of permits to establish or construct new structures and other uses and to replace existing structures and other uses or make substantial changes therein or substantial repairs thereof. In any event, before any non-conforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce

the regulations, authorizing such replacement, change or repair. No such permit shall be granted that would allow the structure or tree in question to be made higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted; and whenever the administrative agency determines that a non-conforming structure or tree has been abandoned or more than 80 percent torn down, destroyed, deteriorated, or decayed: (a) no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations; and (b) whether application is made for a permit under this paragraph or not, the said agency may by appropriate action compel the owner of the non-conforming structure or tree, at his own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations or, if the owner of the non-conforming structure or tree shall neglect or refuse to comply with such order for 10 days after notice thereof, the said agency may proceed to have the object so lowered, removed, reconstructed, or equipped and assess the cost and expense thereof upon the object or the land whereon it is or was located. Unless such an assessment is paid within 90 days from the service of notice thereof on the agent or owner of such object or land, the sum shall bear interest at the rate of 10 percent per annum until paid, and shall be collected in the same manner as are general taxes. Except as indicated, all applications for permits for replacement, change or repair of non-conforming uses shall be granted.

(2) *Variances.* Any person desiring to erect any structures, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property, in violation of airport zoning regulations adopted under this Act, may apply to the Board of Appeals, as provided in Section 5 (3), for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this Act.

(3) *Obstruction Marking and Lighting.* In granting any permit or variance under this Section, the administrative agency or Board of Appeals may, if it deems such action advisable to effectuate the purposes of this Act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain suitable obstruction markers and obstruction lights thereon.

Section 5. Procedure.

(1) *Adoption of Zoning Regulations.* No airport zoning regulations shall be adopted, amended, or changed under this Act except by action of the legislative body of the political subdivision in question, or the joint board provided for in Section 3 (3), after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which the airport is located.

(2) *Administration of Zoning Regulations—Administrative Agency.* The legislative body of any political subdivision adopting airport zoning regulations under this Act may delegate the duty of administering and enforcing such

regulations to any administrative agency under its jurisdiction, or may create a new administrative agency to perform such duty, but such administrative agency shall not be or include any member of the Board of Appeals. The duties of such administrative agency shall include that of hearing and deciding all permits under Section 4 (1), but such agency shall not have or exercise any of the powers delegated to the Board of Appeals.

(3) *Administration of Airport Zoning Regulations—Board of Appeals.* Airport zoning regulations adopted under this Act shall provide for a Board of Appeals to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of this Act or of any ordinance adopted pursuant thereto;

(b) To hear and decide special exceptions to the terms of the ordinance upon which such Board may be required to pass under such ordinance;

(c) To hear and decide specific variances under Section 4 (2). Where a zoning board of appeals or adjustment already exists, it may be appointed as the Board of Appeals. Otherwise, the Board of Appeals shall consist of five members, each to be appointed for a term of three years² and to be removable for cause by the appointing authority upon written charges and after public hearing.

The Board shall adopt rules in accordance with the provisions of any ordinance adopted under this Act. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the Board and shall be a public record.

Appeals to the Board may be taken by any person aggrieved, or by any officer, department, board, or bureau of the political subdivision affected, by any decision of the administrative agency. An appeal must be taken within a reasonable time, as provided by the rules of the Board, by filing with the agency from which the appeal is taken and with the Board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the Board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application on notice to the agency from which the appeal is taken and on due cause shown.

The Board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person

2. If it is desired that the terms of the members of the Board overlap, provision should be made therefor.

or by agent or by attorney.

The Board may, in conformity with the provisions of this Act, reverse or affirm, wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

The concurring vote of a majority of the members of the Board shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

*Section 6. Judicial Review.*³

(1) Any person aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision, may present to the _____ court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the Board.

(2) Upon presentation of such petition the court may allow a writ of certiorari directed to the Board of Appeals to review such decision of the Board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board and on due cause shown, grant a restraining order.

(3) The Board of Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the Board of Appeals. The findings of fact by the Board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the Board shall be considered by the court unless such objection shall have been urged before the Board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(5) Costs shall not be allowed against the Board of Appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

Section 7. Enforcement and Remedies. Each violation of this Act or of any regulations, order, or ruling promulgated or made pursuant to this Act, shall constitute a misdemeanor and shall be punishable by a fine of not more than \$_____ or imprisonment for not more than _____ days or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under this Act may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any

³ If there is already in effect an act providing for appeals from the decisions of zoning boards of appeals, consideration should be given the desirability of revising this Section to conform thereto.

violation of this Act, or of airport zoning regulations adopted under this Act, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this Act and of the regulations adopted and orders and rulings made pursuant thereto.

Section 8. Acquisition of Air Rights. In any case in which: (1) it is desired to remove, lower, or otherwise terminate a non-conforming use; or (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this Act; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or non-conforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes,⁴ such an air right, easement, or other estate or interest in the property or non-conforming use in question as may be necessary to effectuate the purposes of this Act.

Section 9. Severability. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 10. Short Title. This Act shall be known and may be cited as the "Model Airport Zoning Act."

Section 11. Repeal. All acts or parts of acts which are inconsistent with the provisions of this Act are hereby repealed.⁵

Section 12. Time of Taking Effect. This Act shall take effect _____

4. In States where the right of condemnation is not provided by general statute, provisions should be added to this Act authorizing such condemnation to remove or mitigate airport hazards, in accordance with the practice of the State in respect to other condemnation proceedings.

5. Consideration should be given the question whether the repeal should refer to specific acts.