CHAPTER 2-04
AIRPORT ZONING

2-04-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Airport" means any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interests of the public for such purposes.
2. "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at any airport or is otherwise hazardous to such landing or taking off of aircraft.
3. "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.
4. "Person" means any individual, firm, copartnership, corporation, limited liability company, company, association, joint-stock association, the state of North Dakota or any political subdivision thereof, and includes any trustee, receiver, assignee, or other similar representative thereof.
5. "Political subdivision" means any county, city, park district, or township.
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.

2-04-02. Airport hazards contrary to public interest.

It is hereby found 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. Accordingly, it is hereby declared that:

1. The creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question;
2. It is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and
3. This should be accomplished, to the extent legally possible, by exercise of the police power, without compensation.

It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein.

2-04-03. Power to adopt airport zoning regulations.

1. In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area 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.
2. Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board has the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection 1 in the political subdivision within which such area is located. Each such joint board shall have as

members two representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed.

3. If in the judgment of a political subdivision owning or controlling an airport, the political subdivision within which is located an airport hazard area appertaining to that airport, has failed to adopt or enforce reasonably adequate airport zoning regulations for such area under subsection 1 and if that political subdivision has refused to join in creating a joint airport zoning board as authorized in subsection 2, the political subdivision owning or controlling the airport may itself adopt, administer, and enforce airport zoning regulations for the airport hazard area in question. In the event of conflict between such regulations and any airport zoning regulations adopted by the political subdivision within which the airport hazard area is located, the regulations of the political subdivision owning or controlling the airport govern and prevail.

2-04-04. Relation to comprehensive zoning regulations.

1. Incorporation. In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.
2. Conflict. In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement governs and prevails.

2-04-05. Procedure for adoption of zoning regulations.

1. No airport zoning regulations shall be adopted, amended, or changed under this chapter except by action of the legislative body of the political subdivision in question, or the joint board provided for in subsection 2 of section 2-04-03 after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the hearing shall be published in an official newspaper, or a newspaper of general circulation, in the political subdivision or subdivisions in which is located the airport hazard area to be zoned.
2. Prior to the initial zoning of any airport hazard area under this chapter, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. The commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. If a city planning commission or zoning commission already exists, it may be appointed as the airport zoning commission.

2-04-06. Airport zoning requirements.

1. Reasonableness. All airport zoning regulations adopted under this chapter must be reasonable and none may impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

2. Nonconforming uses. No airport zoning regulations adopted under this chapter may 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 nonconforming use, except as provided in subsection 3 of section 2-04-07.

2-04-07. Permits and variances.

1. Permits. Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations must provide that before any nonconforming 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 permit may be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when applicable regulation was adopted or than it is when the application for a permit is made. Except as provided herein, all applications for permits must 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 that person's property in violation of airport zoning regulations adopted under this chapter may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances must 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 chapter; provided, that any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.
3. Hazard marking and lighting. In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of this chapter 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 thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

2-04-08. Appeals.

1. Any person aggrieved, or taxpayer affected, by any decision of an administrative agency made in its administration of airport zoning regulations adopted under this chapter, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision of such administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.
2. All appeals taken under this section must be taken within a reasonable time, as provided by the rules of 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.
3. An appeal stays 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 cases, proceedings may not be stayed otherwise than by order of the board on notice to the agency from which the appeal is taken and on due cause shown.

4. The board shall fix a reasonable time for the hearing of appeals, 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 attorney.
5. The board may, in conformity with the provisions of this chapter, 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 has all the powers of the administrative agency from which the appeal is taken.

2-04-09. Administration of airport zoning regulations.

All airport zoning regulations adopted under this chapter must provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case may such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter include that of hearing and deciding all permits under subsection 1 of section 2-04-07, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment.

2-04-10. Board of adjustment.

1. All airport zoning regulations adopted under this chapter must provide for a board of adjustment 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 the airport zoning regulations, as provided in section 2-04-08.
   b. To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.
   c. To hear and decide specific variances under subsection 2 of section 2-04-07.
2. If a zoning board of appeals or adjustment already exists, it may be appointed as the board of adjustment. Otherwise, the board of adjustment shall consist of five members, each to be appointed for a term of three years by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and after public hearing.
3. The concurring vote of a majority of the members of the board of adjustment is 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 the airport zoning regulations, or to effect any variation in such regulations.
4. The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. 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 the chairman's absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board must 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 must immediately be filed in the office of the board and shall be a public record.

2-04-11. Judicial review.

1. Any person aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a political subdivision or any joint airport zoning board which is of the opinion that a decision of a board of adjustment is illegal, may present to the

district 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 must be presented to the court within fifteen 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 adjustment to review such a decision of the board. The allowance of the writ does 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 adjustment is not required to return the original papers acted upon by it, but it is sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return must concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.
4. The court has 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 adjustment. The findings of fact of the board, if supported by substantial evidence, must be accepted by the court as conclusive, and no objection to a decision of the board may be considered by the court unless such objection has been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.
5. Costs may not be allowed against the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.
6. In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the Constitution of North Dakota or the Constitution of the United States, such holding does not affect the application of such regulations to other structures and parcels of land.

2-04-12. Enforcement and remedies.

Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter, constitutes a class B misdemeanor. In addition, the political subdivision or agency adopting zoning regulations under this chapter may institute in any court of competent jurisdiction, an action to prevent, restrain, correct, or abate any violation of this chapter, or of airport zoning regulations adopted under this chapter, 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 chapter and of the regulations adopted and orders and rulings made pursuant thereto.

2-04-13. Acquisition of air rights.

In any case in which:

1. It is desired to remove, lower, or otherwise terminate a nonconforming structure or use;
2. The approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; 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 nonconforming 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, such air right, navigation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this chapter.

2-04-14. Short title.
This chapter must be known and may be cited as the "Airport Zoning Act".