

APPENDIX B

AIRPORT ZONING*

AN ORDINANCE REGULATING AND GOVERNING THE HEIGHT OF STRUCTURES AND TREES AND THE USE OF PROPERTY IN THE VICINITY OF THE WILLISTON MUNICIPAL (SLOULIN) AIRPORT, WILLISTON, NORTH DAKOTA

In pursuance of the authority conferred by North Dakota Code (1943, Volume 4; Chapter 40-47 and 40-48 and 1947 Supplement of the North Dakota Revised Code of 1943, Chapter 2-04) Airport Zoning [N.D.C.C. §§ 2-04-01 et seq., 40-47-01 et seq.;] and 40-48-01 et seq.] and for the purpose of promoting the public health, safety, order, convenience and general welfare of the inhabitants of the City of Williston, North Dakota and vicinity, by preventing the creation or establishment of airport hazards, thereby protecting the lives and property of the users of the Williston Municipal Airport and of the owners and occupants of land in its vicinity and preventing destruction or impairment of the utility of the airport and the public investment therein:

The Joint Airport Zoning Board of Williston, North Dakota, do ordain as follows:

*Editor's note—Appendix B sets forth the airport zoning regulations of the City of Williston, enacted on October 24, 1950. The nature of a zoning ordinance and the requirements of state law as to the procedures for enactment, amendment, appeals and the like preclude its physical incorporation as an integral part of the Code; therefore, it has been included in the appendix as enacted, for the information and convenience of the user.

Unless otherwise indicated by a history note following a particular section, the ordinance is set out as originally enacted, the section headings and numbers having been retained. Any material in brackets [] has been added by the editor for purposes of clarity.

Cross reference—Effect of building code, § 5-25.

State law references—Airport zoning, N.D.C.C. § 2-04-01 et seq.; city zoning generally, N.D.C.C. § 40-47-01 et seq.; municipal master plans and planning commissions, § 40-48-01 et seq.

Sec. 1. Title.

This regulation shall be known and may be cited as the Williston Airport Zoning Regulation.

Sec. 2. Definitions.

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

Airport means the Williston Municipal (Sloulin) Airport.

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 the airport or is otherwise hazardous to such landing or take [taking] off of aircraft.

Landing area means the area of the airport used for the landing, take [taking] off or taxiing of aircraft.

Nonconforming use means any structure or tree or use of land which does not conform to the requirements prescribed in this regulation or an amendment thereto, as of the effective date of such regulations.

Person means any individual, firm, copartnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.

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

Tree means any object of natural growth.

State law reference—Similar provisions, N.D.C.C. §§ 2-04-01, 2-04-06.

Sec. 3. Zones established; map.

(a) For the purpose of this regulation, the following zones are established:

1. "L"—Landing Zones.
2. "IAZ"—Instrument Approach Zones.

3. "NIAZ"—Noninstrument Approach Zones.
4. "TS"—Transition Slope.
5. "TZ"—Turning Zones.
6. "CS"—Conical Surface.

(b) The boundaries of these zones are hereby established as shown on a map entitled "Williston Municipal Airport Zoning Map," dated December 2, 1949, which accompanies and is hereby made a part of this regulation and as the same may be amended and supplemented.

Editor's note—The map referred to in the above section is on file in the office of the city engineer.

State law reference—Power of city to divide airport hazard area into zones, N.D.C.C. § 2-04-03.

Sec. 4. Height limits.

(a) Except as otherwise provided in this regulation, no structure or tree shall be erected, altered, allowed to grow, or maintained in any zone created by this regulation to a height in excess of the height limit hereby established for such zone.

(b) The height limit for each type of zone is hereby established as follows:

1. "L" (*Landing Zone*)—Nothing above the ground surface except as required and as necessary and incidental to airport operations or recommended by or in accord with the rules of the Civil Aeronautics Administration.
2. "IAZ" (*Instrument Approach Zone*)—One foot of height above the center line of the end of the nearest runway extended horizontally two hundred (200) feet for every fifty (50) feet of the shortest distance of the structure or tree is from the inner boundary of the approach zone or the line of such boundary extended.
3. "NIAZ" (*Non Instrument Approach Zone*)—One foot of height above the center line of the nearest runway extended horizontally two hundred (200) feet for every

forty (40) feet of the shortest distance the structure or tree is from the inner boundary of the approach zone or the line of such boundary extended.

4. "TS" (*Transition Slope*)—One foot of height for every seven (7) feet of the shortest distance the structure or tree is from the boundary of the nearest approach zone.
5. "TZ" (*Turning Zone*)—Elevation two thousand and ninety-two (2,092) feet.
6. "CS" (*Conical Surface*)—One foot of height above the elevation permitted in the turning zone for each twenty (20) feet of the shortest distance the tree or structure is from the outer boundary of the turning zone for a longitude distance of five thousand (5,000) feet.

State law reference—Power of city to restrict the height to which structures and trees may be erected or allowed to grow, N.D.C.C. § 2-04-03.

Sec. 5. Use restrictions.

Except as otherwise provided in this regulation, it shall be unlawful to put any land located within any zone hereby created to any of the following prohibited uses:

1. Transformer stations.
2. High power transmission lines.
3. Manufacturing establishments or other uses which produce smoke interfering with the safe use of the airport.
4. All plants and businesses of every kind which omit [emit] or discharge gases and odors that would interfere with the health and safety of the public in the use of the airport.
5. Businesses or structures of any kind that may be detrimental or injurious to the health, safety and general welfare of the public in the use of the airport.
6. Any other use which would create electrical interference with radio communications, between the air-

port and aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes of the flyers using the airport, impair visibility in the vicinity of the airport, or otherwise endanger the landing, taking off or maneuvering of aircraft.

State law reference—Power of city to specify the land uses permitted in airport hazard area zones, N.D.C.C. § 2-04-03.

Sec. 6. Establishment of airports greater than Class 1.

(a) *Permit required.* Within a radius of eight (8) miles from the center of the Williston Municipal (Sloulin) Airport, no airport of Class 1 or greater, as hereinafter defined, shall be established unless permit therefor shall have been applied for and granted, in accordance with the provisions of this regulation.

(b) *Schedule of minimum distance between municipal airport and any other airport.* Except as otherwise provided, the minimum distance between the Williston Municipal (Sloulin) Airport and any other airport hereafter established, measured from center to center, shall be not less than provided in the following schedule:

<i>Class of Airport</i>	<i>Distance from Williston Airport</i>
1 _____	5 miles
2 _____	6 miles
3 _____	7 miles
4 _____	8 miles

(c) *Airport classifications.* Airport classifications for the purpose of this regulation shall be in accord with the following schedule:

<i>Length of Longest Runway</i>	<i>Class</i>
Under 3,400 feet _____	1
3,401 feet to 4,450 feet _____	2
4,451 feet to 5,200 feet _____	3
Over 5,200 feet _____	4

(d) *Exceptions; board of adjustment.* Exceptions to the spacing requirements hereinbefore provided in this section may be granted by the board of adjustment, which is hereby authorized to allow lesser distances between the Williston Municipal (Sloulin) Airport and any other airport proposed to be established, but only after public hearing duly held in accord with the provisions of this regulation, and where, owing to special conditions, the board of adjustment duly finds that a literal enforcement of these provisions would result in unnecessary hardship and such variance would not be contrary to the public interest.

Prior to granting any such exception or variance, the board of adjustment shall, for the purpose of study and recommendation, refer the matter to the Civil Aeronautics Administration and to any aviation commission, airport zoning commission, and any local planning body having jurisdiction within the area affected.

If any of the aforementioned bodies, to whom the matter shall have been referred, does not within forty-five (45) days transmit a report to the board of adjustment, then it shall be deemed to have approved the proposal; provided, however, that upon request of any said body, the board of adjustment shall grant a reasonable extension of such time.

In granting such exception or variance the board of adjustment shall impose special conditions which will insure that the public interest is maintained.

State law reference—Board of adjustment, N.D.C.C. § 2-04-10.

Sec. 7. Nonconforming uses.

The regulations prescribed herein shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date hereof, or otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the ef-

fective date of this regulation, and is diligently prosecuted and completed within two (2) years thereof, except as provided in section 10.

State law reference—Similar provisions, N.D.C.C. § 2-04-06.

Sec. 8. City engineer; administrator; duties.

It shall be the duty of the city engineer to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the city engineer upon a form furnished by him. Applications which are by this regulation to be decided by the city engineer shall be promptly considered and granted or denied by him. Applications for action by the board of adjustment shall be forthwith transmitted by the city engineer to the board for hearing and decision.

State law reference—Administration of regulations, N.D.C.C. § 2-04-09.

Sec. 9. Permits to materially change airport, etc.

(a) *Future uses.* No material change shall be made in the use of land, and no structure or tree shall be erected, altered, planted or otherwise established, in any airport approach zone or airport turning zone, unless a permit therefor shall have been applied for and granted. Each such application shall indicate the purpose for which the permit is desired with sufficient particularity to permit it to be determined whether the resulting use, structure or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit applied for shall be granted.

(b) *Existing uses.* Before any existing use, structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher or replanted, within any airport approach zone or airport turning zone, a permit must be secured authorizing such replacement, change or repair. No such permit shall be granted that would allow the establishment or creation of an airport hazard or permit a non-conforming use, structure or tree to be made or become higher, or become a greater hazard to air navigation, than

it was on the effective date of this regulation [October 24, 1950] or than it is when the application for a permit is made. Except as indicated, all applications for a permit for replacement, change or repair of existing use, structure or tree shall be granted.

(c) *Variances.* Any person desiring to erect any structure or increase the height of any structure, or permit the growth of any tree, or use his property, not in accordance with the requirements prescribed in this regulation, may apply to the board of adjustment for variance therefrom. Such variance 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 this regulation.

(d) *Hazard marking and lighting.* Any permit or variance granted may, if such action is deemed advisable to effectuate the purposes of this regulation and reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit, the City of Williston, North Dakota, 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.

State law reference—Permits and variances, N.D.C.C. § 2-04-07.

Sec. 10. Appeals.

(a) Any person aggrieved, or taxpayer affected, by any decision of the city engineer, made in his administration of this regulation, if of the opinion that a decision of the city engineer is improper application of this regulation, may appeal to the board of adjustment.

(b) All appeals hereunder must be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the city engineer and with the board, a notice of appeal specifying the grounds thereof. The city engineer shall forthwith transmit to the board all the papers

constituting the record upon which the action appealed from was taken.

(c) An appeal shall stay all proceedings in furtherance of the action appealed from unless the city engineer 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 [stay] would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by order of the board on due cause shown.

(d) 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.

(e) The board may, in conformity with the provision[s] of this regulation, 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 powers of the city engineer.

State law reference—Appeals, when proceedings not stayed except by order of board, N.D.C.C. § 2-4-08.

Sec. 11. Board of adjustment.

(a) There is hereby created a board of adjustment to have and exercise the following powers:

1. To hear and decide appeals from any order, requirement, decision or determination made by the city engineer in the enforcement of this regulation.
2. To hear and decide special exceptions to the terms of this regulation upon which such board may be required to pass under such regulations.
3. To hear and decide specific variances under section 9.

(b) The board of adjustment shall consist of five (5) members, each to be appointed by the joint airport zoning board for a term of three (3) years and to be removable for cause

by the joint airport zoning board upon written charges and after public hearing.

(c) The board shall adopt rules for its governance and procedure in harmony with the provisions of this regulation. 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 hearings 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 each fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the city auditor and shall be a public record.

(d) The board shall make written findings of fact and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, or affirming, or modifying any order, requirements, decision or determination which comes before it under the provisions of this regulation.

(e) 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 city engineer, or to decide in favor of the applicant on any matter upon which it is required to pass under this regulation, or to affect [effect] any variation in this regulation.

Cross reference—Administration, Ch. 2.

State law reference—Board of adjustment, N.D.C.C. § 2-04-10.

Sec. 12. Judicial review.

Any person aggrieved, or taxpayer affected, by any decision of the board of adjustment may appeal to the district court as provided in section 11 of Chapter 40 of the Session Laws of 1945 [N.D.C.C. § 2-04-11].

State law reference—Judicial review, N.D.C.C. § 2-04-11.

Sec. 13. Penalties.

Each violation of this regulation, or any order, or ruling promulgated hereunder shall constitute a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than ninety (90) days, or by both such fine and imprisonment, and each day of violation continues to exist shall constitute a separate offense. In addition the joint airport zoning board may institute in any court of competent jurisdiction, an action to prevent, restrain [restrain], correct or abate any violation of this regulation, pursuant to Chapter 2—or (Airport Zoning) 1947 Supplement of the North Dakota Revised Code of 1943 [N.D.C.C. § 2-04-12].

Editor's note—N.D.C.C. § 2-04-12 provides that a violation of regulations, orders or rulings constitutes a class B misdemeanor. See N.D.C.C. § 12.1-32-01.

State law reference—Enforcement and remedies, N.D.C.C. § 2-04-12.

Sec. 14. Conflicting regulations.

Where this regulation imposes a greater or more stringent restriction upon the use of land than is imposed or required by any other ordinance or regulation, the provisions of this regulation shall govern.

State law reference—Conflict, N.D.C.C. § 2-04-04.

Sec. 15. Severability.

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

Sec. 16. Effective date.

This regulation shall be in full force and effect from and after its adoption.

This Ordinance duly passed its first reading on the seventeenth day of October, 1950, and thereafter on the twenty-

fourth day of October, 1950, passed its second reading and was duly adopted. The following Commissioners voted "aye" thereon: Webster, Lee and Ditsworth thereon and the following voted "nay" thereon: None. Absent and not voting: Anderson and Rawitscher.

Signed and approved this twenty-fourth day of October, 1950.

W. N. Ditsworth,
President of the Board of City Commissioners.

Attest:

H. L. Grimstedt,
City Auditor.

[The next page is 1613]