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May 21, 1981

FILE NO. 81-014

ZONING;
Airport Zoning Act

Honorable William P. Strange
State's Attorney
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Courthouse
Lawrenceville, Illinois 62439

Dear Mr. Strange:

I have your letter in which you ask whether extensive land use and height restriction zoning is authorized by "AN ACT relating to airport zoning". (Ill. Rev. Stat. 1979, ch. 15 1/2, par. 48.1 et seq.) For the reasons hereinafter stated, it is my opinion that land use and height restriction zoning is authorized by the Act, but only to the extent that it is necessary to prevent an airport hazard.

Section 11 of the Act (Ill. Rev. Stat. 1979, ch. 15 1/2, par. 48.11) sets forth the following legislative findings and declarations:

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"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: (a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question;
* * *

"Airport hazard" is defined in section 3 of the Act (Ill. Rev. Stat. 1979, ch. 15 1/2, par. 48.3):

"'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 an airport or is otherwise hazardous to such landing or taking-off of aircraft."

"Airport hazard area" is defined in section 4 of the Act (Ill. Rev. Stat. 1979, ch. 15 1/2, par. 48.4):

"'Airport hazard area' means any area of land or water, or both, upon which an airport hazard might be established if not prevented as provided in this Act, including any such area which has been declared to be an 'airport hazard area' by the Department in connection with any airport approach plan adopted by the Department."

Section 13 of the Act (Ill. Rev. Stat. 1979, ch. 15 1/2, par. 48.13) authorizes every political subdivision having an airport hazard area within its limits, to adopt and enforce airport zoning regulations:

"In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area wholly or

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partly within its territorial limits may adopt, administer and enforce, * * * airport zoning regulations for that part of such airport hazard area which is within its territorial limits * * * .

* * *

Such 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."

The Division of Aeronautics of the Department of Transportation is given similar authority by section 17 of the Act (Ill. Rev. Stat. 1979, ch. 15 1/2, par. 48.17).

Since section 3 of the Act defines "airport hazard" as any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or in taking-off, or which is otherwise hazardous to such landing or taking-off, land use and height restriction zoning are both explicitly authorized under the Act.

You have inquired whether extensive height and land use zoning restrictions are authorized. The restrictions can be only as extensive as the airport hazard or hazards they are designed to forbid, eliminate or remove. Section 13 of the Act authorizes airport zoning restrictions to prevent the creation or establishment of airport hazards. An "airport hazard" is defined in section 3 of the Act as:

"'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 an airport or is otherwise hazardous to such landing or taking-off of aircraft."
(Emphasis added.)

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Airport zoning regulations under section 13 can therefore (1) divide an airport hazard area into zones and can specify the land uses permitted therein; and (2) regulate and restrict the height to which structures may be erected and trees allowed to grow, but each height restriction and each land use restriction will need to be supported by evidence that the structure or tree or use restricted does or would obstruct the airspace, or is or was otherwise hazardous to the landing or taking-off of aircraft.

Although the Act gives express authority to restrict height and land use, that authority is only for narrow zoning, not general. Such restriction can be imposed only on the condition that it eliminates or reduces an airport hazard. For example, the question whether restrictions on residential uses in an airport hazard area are permissible under an airport hazard zoning Act, is discussed in Kantor, The Legal and Institutional Framework For An Airport Noise Compatibility Land Use Program, 10 U. Mich. J.L. Ref. 447, 462-63 (1977):

Alternatively, it may be possible to zone for noise-compatible development under the authority of an airport hazard zoning act. Authority granted to local governments under airport hazard zoning acts is limited to regulation for the purpose of preventing 'the creation or establishment of airport hazards.' Zoning for the purpose of promoting noise-compatible development may be within the mandate of the statute if incompatible development is considered an 'airport hazard.' The FAA has defined 'airport

hazard' to include 'any structure or object of natural growth located on or in the vicinity of a public airport' which is 'hazardous to such landing or taking off of aircraft.' Many states have similar definitions. To find that noise-compatibility controls are within the authority of an airport hazard zoning act requires proof that incompatible development is hazardous to aircraft landing or taking off at public airports. Since the operational procedures that are used to minimize noise impact result in a higher level of risk to aircraft, noise-incompatible development may represent a hazard to aircraft. * * *

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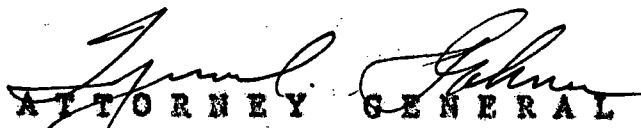
There is support for the approach suggested in Kantor's concluding sentence in the finding in section 11 of the Act that an airport hazard which is an obstruction "in effect reduces the size of the area available for the landing, taking-off, and maneuvering of aircraft". Reducing the size of the area tends to impair the utility of the airport, according to the findings in section 11. Since a use of land may be an obstruction and therefore an airport hazard, and since express power to specify levels of use is conferred, land use restrictions for an airport hazard area would appear to be warranted.

On the basis of the above discussion, it is my opinion that the Act permits both height restriction and land use zoning within the airport hazard area on the development of single-family and commercial multi-family dwellings, if such development would result in an airport hazard as defined

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in section 3 of the Act.

Very truly yours,


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