

MARQUETTE COUNTY ORDINANCE NO. 1-00

SAWYER INTERNATIONAL AIRPORT ZONING ORDINANCE

(Adopted 6/20/00)

An Ordinance enacted pursuant to MCL 259.431 et seq, "The Airport Zoning Act," for the purpose of establishing airport zoning regulations restricting the height of structures and objects of natural growth, and otherwise regulating the use of land in the vicinity of the **Sawyer International Airport**; providing for the allowance of variances from such regulations; designating the Administrative Agency charged with the administration and enforcement of such regulations; establishing an Airport Zoning Board of Appeals; providing for enforcement, and imposing penalties for violation, of this Ordinance, all thereby promoting the health, safety and general welfare of the inhabitants of the County of Marquette by preventing the establishment and maintenance of Airport Hazards.

THE MARQUETTE COUNTY BOARD OF COMMISSIONERS DOES HEREBY ORDAIN:

ARTICLE I

Title and Availability

1.01 Title

This Ordinance shall be known and may be cited as the **Sawyer International Airport Zoning Ordinance**.

1.02 Availability of Ordinance

Copies of this Ordinance shall be made available at the offices of the Zoning Administrator and at the Michigan Bureau of Aeronautics, Capital City Airport, Lansing, MI 48906. A copy of this Ordinance shall also be maintained and available at the office of the Marquette County Clerk.

ARTICLE II

Definitions

2.01 Whenever used in this Ordinance, the following words and phrases shall have

the following meanings:

Above Mean Sea Level, when used in this Ordinance or on the accompanying maps, shall mean elevations above sea level, as based upon and determined by reference to United States Coast and Geodetic Survey data.

Airport shall mean the Sawyer International Airport and all appurtenances used or acquired for airport buildings or other airport facilities, and all other appurtenant rights-of-way or other interests either heretofore or hereafter established.

Airport Hazard shall mean any structure or tree or use of land or of appurtenances thereof which obstructs the air space required for safe flight of aircraft in landing or taking off at the Airport, or is otherwise hazardous or creates hazards to such safe landing or taking off of aircraft. Airport Hazard includes, but is not necessarily limited to, any structure or tree within the Airport Hazard Area which exceeds the height limitations established by this Ordinance.

Airport Hazard Area shall mean any area of land or water, or both, lying within a ten (10) mile radius of the established center of the Airport, all as shown on Sheets 1, 2, and 3 of the Airport Zoning Maps which are a part of this Ordinance.

Airport Protection Zone shall mean an area or zone wherein certain types of land uses are not recommended due to noise, vibrations, fumes, dust, fuel particles, and other effects that may be caused by the operations of aircraft landing at, taking off from, or operating within, the Airport.

Airport Zoning Act shall mean Act No. 23 of the Public Acts of the State of Michigan 1950, as amended, being MCL 259.431 et seq.

Board of Appeals shall mean the Sawyer International Airport Zoning Board of Appeals as appointed by the Marquette County Board of Commissioners pursuant to Section 28 of the Airport Zoning Act, being MCL 259.458.

Established Elevation shall mean the elevation of the Airport as certified by the United States Federal Aviation Administration at 1220.59 feet Above Mean Sea Level.

Lawful Non-conforming Use or Structure shall mean any structure, tree, or use which does not comply with the regulations and requirements of this Ordinance or any amendment thereto, but was lawfully established and in existence prior to the effective date of this Ordinance, or any such amendment relating thereto.

Non-conforming Use or Structure shall mean any structure, tree, or use of land

which does not conform to the regulations and requirements of this Ordinance or any amendment thereto.

Person shall mean any individual, firm, partnership, corporation, company, association, joint stock association, municipal corporation or other body politic, and including any trustee, receiver, assignee, or other similar representative thereof.

Structure shall mean any object constructed or installed by any person, including but without limitation, buildings, towers, smokestacks, overhead transmission lines, radio, television, and telecommunications aerials and antennae, but not including highways and their appurtenances.

Tree shall mean any object of natural growth.

Zoning Administrator shall mean the Marquette County Resource Management/Development Department, which is designated and charged with the responsibility for the administration and enforcement of this Ordinance.

ARTICLE III

Establishment of Zones And Regulations

3.01 Height Regulation

- a. There are hereby imposed upon all structures and trees upon the lands within the Airport Hazard Area the height limitations shown on Sheets 1 and 2 of the Airport Zoning Maps, said limitations being based upon the elevations Above Mean Sea Level at the ends of the Airport runways, the Established Elevation of the Airport, and the Airport Reference Point (ARP).
- b. From and after the effective date of this Ordinance, it shall be unlawful for any person to establish or allow any use, erect or allow the erection of any structure, or allow any tree to grow, to a height in excess of the height limitations shown on Sheets 1 and 2 of the Airport Zoning Maps which are a part of this Ordinance.

3.02 Unlawful Land Uses

Notwithstanding any other provisions of this Ordinance, from and after the effective date of this Ordinance it shall be unlawful to establish or allow any use

of lands within the Airport Hazard Area which would:

- a. Create electrical interference with radio communications between the Airport and aircraft, or create interference with navigational aids employed by aircraft;
- b. Interfere with the ability of flyers to distinguish between Airport lights and other lights, or result in glare in the eyes of flyers using the Airport;
- c. Create air pollution in such amounts as to impair the visibility of flyers using the Airport;
- d. Violate the provisions of the Natural Resources and Environmental Protection Act, being Act No. 451 of 1994 (Part 115 Solid Waste Management) with regard to the location of solid waste facilities;
- e. Attract birds that would pose a risk or hazard to aircraft;
- f. Otherwise endanger the landing, taking off, or maneuvering of aircraft using the Airport;
- g. Raise the descent minimums of any instrument approach procedure to the Airport, or otherwise limit or interfere with the normal operations of the Airport, as determined by any airspace studies conducted by the United States Federal Aviation Administration;
- h. Constitute an obstruction to air navigation according to the criteria or standards prescribed in Part 77 of the Federal Aviation Administration Regulations or Title 14 of the Code of Federal Regulations ("CFR") Part 77, as applicable.

3.03 Declaration of Nuisance

Any structures, trees, or land uses which violate the provisions of Subsections 3.01 or 3.02 of this Ordinance shall be conclusively presumed to be Airport Hazards which endanger the lives and property of the general public, users of the Airport, and occupants of land in its vicinity, and also, if of the obstruction type, in effect reduce 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:

1. That the creation or establishment or maintenance of an Airport Hazard is a public nuisance and an injury to the community served

by the Airport; and,

2. That 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.

3.04 Land Uses In Airport Protection Zones

- a. Within the four (4) Airport Protection Zones, certain uses of land, while not unlawful under this Ordinance, are not recommended because of undesirable effects that may result from the operation of aircraft within those zones.
- b. The land uses which are not recommended in each of the four (4) Airport Protection Zones are as shown in the charts which are a part of Sheet 3 of the Airport Zoning Maps.
- c. Any person who elects to establish or allow any non-recommended land use on land within one of the Airport Protection Zones shall do so at his/her own risk, and shall have no claim or cause of action against the County of Marquette for alleged damages arising out of normal Airport operations within those Airport Protection Zones.

ARTICLE IV

Non-Conforming Uses and Structures

4.01 Applicability of Ordinance Regulations

A Lawful Non-Conforming Use or Structure shall not be deemed to be in violation of this Ordinance, but only to the extent and degree that such use or structure did not comply with this Ordinance or any amendment thereto as of the effective date of this Ordinance such amendment thereto.

4.02 Modification of Lawful Non-Conforming Uses or Structures

- a. No Lawful Non-Conforming Use or Structure shall be expanded,

extended, enlarged, or moved to another location within the Airport Hazard Area, without first securing the approval of the Board of Appeals.

- b. As a condition of securing such approval from the Board of Appeals, an applicant must establish to the satisfaction of the Board of Appeals that the proposed expansion, extension, enlargement, or move:
 - 1. will not increase the existing non-conformity;
 - 2. will not result in any new non-conformity which did not exist prior to the proposed change;
 - 3. will not materially increase any hazard to aviation activities; and,
 - 4. will meet all reasonable conditions which might be placed upon such approval by the Board of Appeals.
- c. A Lawful Non-Conforming Use or Structure shall be deemed to have been abandoned, and shall not be resumed, if it has been discontinued for a period of twelve (12) consecutive months.
- d. A Lawful Non-Conforming Structure which has been damaged, deteriorated, or destroyed to the extent that repair or reconstruction costs will exceed fifty (50%) per cent of the appraised value of such structure prior to such damage, deterioration, or destruction, shall not be repaired, restored, or reconstructed.

4.03 Non-Conforming Uses or Structures

Any Non-Conforming Use or Structure which was not lawfully established and in existence prior to the effective date of this Ordinance or any amendment thereto shall be deemed to be in violation of this Ordinance or such amendment thereto, and subject to the penalties and sanctions provided for in this Ordinance.

ARTICLE V

Permits

5.01 Permit Required

Except as otherwise herein provided, no person shall establish or allow any new land use; or, erect or allow the erection of any new structure; or, substantially change, alter, rebuild, or repair any existing use or structure; or, replace, substantially alter or substantially repair, rebuild, allow to grow higher, or replant any Non-conforming Structure or Tree, within the Airport Hazard Area without first securing an Airport Zoning Compliance Permit from the Zoning Administrator. The Airport Zoning Compliance Permit shall be in addition to, and not a substitute for, any local zoning compliance permits required pursuant to the zoning ordinance of the municipality in which the proposed use, structure, or tree is to be located.

5.02 Permit Application Process

- a. Applications for Airport Zoning Compliance Permits shall be made upon forms to be furnished by the Zoning Administrator.
- b. The Zoning Administrator shall either grant or deny the requested permit within ten business (10) days of receiving from the applicant the completed application form and all other documentation and information which may reasonably be required to act upon said application. The failure of the Zoning Administrator to specifically grant or deny the requested permit within said ten (10) business day period shall be deemed to be a denial of such application. In any appeal from such a denial by reason of failure to specifically grant or deny a requested permit, the appeal fee prescribed in the Schedule of Fees shall be waived.
- c. At any time following the receipt of an application, the Zoning Administrator may request from the applicant such additional documentation or information as may reasonably be required to evaluate the application. The failure or refusal of the applicant to provide such additional requested documentation or information within a reasonable period of time shall be sufficient cause for the Zoning Administrator to deny the requested permit.
- d. In evaluating an application for an Airport Zoning Compliance Permit, the Zoning Administrator shall review the Airport Zoning Maps to determine if the proposed use, structure, or tree will comply with the applicable height and land use limitations. In determining the exact height limitations applicable to a specific location, the Zoning Administrator shall interpolate between the contours shown on the Zoning Maps.

- e. Upon finding that the proposed use, structure, or tree complies in all respects with this Ordinance, the Zoning Administrator shall issue an Airport Zoning Compliance Permit. Upon finding that the proposed use, structure, or tree does not comply in all respects with this Ordinance, the Zoning Administrator shall deny the requested Airport Zoning Compliance Permit. Such a denial shall be in writing, which shall be provided to the Applicant, and which shall specify all reasons upon which the denial is based.
- f. Any person aggrieved, or the governing body of any political subdivision affected, by any decision of the Zoning Administrator made in the administration of this Ordinance, including a decision to grant or to deny a requested Airport Zoning Compliance Permit, may appeal such decision to the Board of Appeals in accordance with Article VI of this Ordinance.

5.03 Permit Not Required

Notwithstanding anything to the contrary herein contained in this Ordinance, no Airport Zoning Compliance Permit shall be required for the emergency repair or replacement of non-conforming public utility structures, other than buildings, when the height of such structures will not be increased by such emergency repairs or replacement. In the application of this provision, any combination of circumstances requiring immediate action or remedy in the repair or replacement of such non-conforming public utility structures shall be deemed an emergency.

ARTICLE VI

Ordinance Administration

6.01 Zoning Administrator

- a. The Marquette County Resource Management and Development Department shall be the Zoning Administrator, charged with the duty and responsibility of administering and enforcing this Ordinance, including but not limited to the issuance and/or denial of Airport Zoning Compliance Permits, the interpretation of this Ordinance, and all other duties and powers granted either by this Ordinance or the Airport Zoning Act.

- b. The Zoning Administrator may adopt such administrative procedures as may be necessary in the administration and enforcement of this Ordinance.

6.02 Board of Appeals

- a. There is hereby created the Sawyer International Airport Zoning Board of Appeals, (herein referred to as the "Board of Appeals"), to consist of five (5) members appointed by the Marquette County Board of Commissioners for terms of three (3) years each, or until their respective successors have been appointed and qualified. One of the members shall be designated by the County Board of Commissioners as the Chair of the Board of Appeals, and one shall be designated as the Vice-Chair.
- b. The members of the Board of Appeals may be removed from office by the Marquette County Board of Commissioners for cause shown, upon written charges and after notice and the opportunity to be publicly heard.
- c. The Board of Appeals shall officially be known as "The Sawyer International Airport Zoning Board of Appeals," and shall exercise such powers and responsibilities as are conferred upon it by the provisions of this Ordinance and by the provisions of the Airport Zoning Act, which include the responsibility to:
 - 1. Hear and decide appeals from any order, requirement, decision, or determination made by the Zoning Administrator in the interpretation, application, and enforcement of the Zoning Ordinance; and,
 - 2. Hear and decide any special exceptions to the terms of this Ordinance, upon which the Board of Appeals may be required to pass under such this Ordinance; and,
 - 3. Hear and decide requests for variances from the strict application of the terms and provisions of this Ordinance.
- d. The members of the Board of Appeals shall receive such compensation and expense reimbursement for attendance at meetings and hearings, as may be provided for by Resolution of the Marquette County Board of Commissioners.
- e. The Board of Appeals shall adopt rules concerning its organization and

procedure, appeal forms, and other authorized matters, consistent with the provisions of this Ordinance and the Airport Zoning Act. Such rules shall include, but not be limited to, the establishment of a reasonable period of time within which an appeal must be initiated following an action by the Administrator. Meetings of the Board of Appeals shall be held at the call of the Chair, and at such other times as the Board of Appeals may from time to time determine. All meetings shall be consistent and comply with the provisions of the Michigan Open Meetings Act.

- f. The Chair, or in his/her absence the Vice Chair, may administer oaths or affirmations and issue subpoenas to compel the attendance of witnesses.
- g. All meetings of the Board of Appeals shall be public, and it 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. All such records of its examinations and other official actions shall be public records, and shall be immediately filed in the office of the Board of Appeals.
- h. The concurring vote of a majority of the members of the Board of Appeals shall be sufficient for all purposes, including the reversal of any order, requirement, decision or determination of the Administrator, or a decision in favor of an applicant on any matter upon which it is required to pass under this Ordinance, or to grant any variance request.

6.03 Appeal Procedure

- a. Any person aggrieved, or the governing body of any political subdivision affected by any decision of the Zoning Administrator made in the administration of this Ordinance, may appeal to the Board of Appeals.
- b. All appeals taken from actions of the Zoning Administrator shall be taken within the time and in the manner provided by the rules of the Board of Appeals, by filing with the Zoning Administrator and with the Board of Appeals a Notice of Appeal specifying the grounds therefore.
- c. Upon receipt of the Notice of Appeal, the Zoning Administrator shall transmit to the Board of Appeals all documents, exhibits, and other materials constituting the record upon which the action appealed from was based.

- d. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Appeals, after receipt of the Notice of Appeal, that by reason of the facts stated in the certification, a stay would, in the opinion of the Zoning Administrator, cause imminent peril to life or irreparable damage to property. In such case, proceedings shall not be stayed otherwise than by order of the Board of Appeals, on good cause shown.
- e. Upon receipt of a Notice of Appeal, the Board of Appeals shall fix a time for the hearing of the Appeal, which shall be not more than thirty (30) days from the receipt of such Notice. Written notice of the hearing shall be provided to the appealing party either by personal delivery, or by certified mail, return receipt requested, to be personally delivered or mailed not less than ten (10) days prior to the scheduled hearing date.
- f. The hearing of an appeal by the Board of Appeals shall be de novo. The Board of Appeals shall consider the documentation and information available to the Zoning Administrator when its decision was made, and may also consider such additional information as either the Zoning Administrator and the appealing party may wish to present.
- g. Upon completion of the hearing on the appeal, the Board of Appeals may reverse or affirm, in whole or in part, or otherwise modify, the order, requirement, decision, or determination appealed from as it deems advisable, subject to the provisions of this Ordinance and all applicable laws and regulations, and to that end shall have all of the powers of the Zoning Administrator. In taking action on any such appeal, the Board of Appeals shall prepare a comprehensive summary of the record of its hearing, including an exact record of motions, votes, and other official actions, and shall set forth in writing the specific findings of fact upon which its decision and action were based.
- h. The Board of Appeals shall, not more than five (5) days following taking final action on an appeal, send to the appealing party, by certified mail, return receipt requested, a written notice of its decision on the appeal, and the written findings of fact upon which its decision and action was based.
- i. All meetings and actions of the Board of Appeals shall be subject to and governed by the Michigan Open Meetings Act, being MCL 15.261, et seq, as amended.

6.04

Variances

- a. Any person desiring to erect any Structure, or increase the height of any Structure, or permit the growth of any Tree, or otherwise use property or the appurtenances thereof, in violation of this Ordinance may apply to the Board of Appeals for a variance from the regulations imposed by this Ordinance. Such applications shall be submitted to the Zoning Administrator upon forms to be provided for by the rules of the Board of Appeals.
- b. A variance shall be allowed where the literal application or enforcement of this Ordinance would result in practical difficulty or unnecessary hardship, and the relief granted would not be contrary to the public interest, but would do substantial justice and be in accordance with the spirit of the regulations of this Ordinance and of the Airport Zoning Act.
- c. Upon receipt of an application for a variance, the Zoning Administrator shall transmit said application, and all related documentation, to the Board of Appeals, which shall schedule a hearing thereon not less than fifteen (15) nor more than thirty (30) days from the date of receipt by the Zoning Administrator of the variance application. Written notice of the hearing shall be provided to the applicant by personal delivery, or by certified mail, return receipt requested, to be personally delivered or mailed not less than ten (10) days prior to the scheduled hearing.
- d. At the hearing on the variance application, the Board of Appeals shall permit interested parties, including but not limited to representatives of the Airport and representatives of affected local units of government, to present and rebut information either supporting or opposing the requested variance.
- e. Upon completion of the hearing, the Board of Appeals shall make a determination as to whether the requested variance meets the criteria set forth in Article 6.04 b. of this Ordinance. In so doing, the Board of Appeals shall prepare a comprehensive summary of the record of its hearing, including an exact record of the motions, votes, and other official actions, and shall set forth in writing the specific findings of fact upon which its decision and action were based.
- f. The Board of Appeals shall, not more than five (5) days following taking final action on a variance application, send to the applicant, by certified mail, return receipt requested, a written notice of its decision on the

application, and the written findings of fact upon which its decision and action was based.

- g. Any variance granted by the Board of Appeals may be subject to any reasonable conditions or conditions subsequent that the Board of Appeals may deem necessary to effectuate the purposes of this Ordinance and of the Airport Zoning Act, including but not limited to requiring the owner of a structure or tree in question to permit the State or the political subdivision, as the case may be, 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.
- h. No variance granted pursuant to this Ordinance or the Airport Zoning Act shall allow any variance which will conflict with any general zoning ordinance or regulation of any political subdivision, except such as is adopted exclusively for airport zoning purposes.
- i. No variance granted pursuant to this Ordinance or the Airport Zoning Act shall become effective for a period of thirty (30) days following its date of issuance. Immediately upon such issuance a copy of the variance granted shall be filed by the Zoning Administrator with the Michigan Aeronautics Commission and with the political subdivision affected by the granting of said variance.

6.05 Judicial Review

Any person, including the Michigan Aeronautics Commission on behalf of and in the name of the State of Michigan, aggrieved by any decision of the Board of Appeals may appeal to the Circuit Court as provided in Sections 30 and 31 of P.A. 1950, No.23, being MCL 259.460 and 259.461, as amended.

ARTICLE VII

Penalties and Remedies

7.01 Penalties

- a. Any person who shall remain in violation of this Ordinance or any regulations, orders or rulings promulgated or made pursuant to this Ordinance, after receiving notice of such violation as required by

Subsection 7.01 b. hereof, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than Five Hundred (\$500.00) Dollars and/or incarceration for a term of not to exceed ninety (90) days for each offense.

- b. Upon discovery of a violation, the Zoning Administrator shall give to the owner and/or occupant of the property upon which such violation is occurring a written notice of the violation, which shall be delivered personally or by certified mail, return receipt requested. For purposes of this Ordinance, the term "owner" shall mean the person shown to be the owner of property on the tax rolls of the County of Marquette. Notice given to any one owner shall be deemed notice to all owners.
- c. The written notice provided for in Subsection b. hereof shall specify the nature of the violation, and shall provide the owner or occupant a reasonable period of time, not to exceed ten (10) days, to remove the offending structure or tree, or to terminate any offending land use, or to otherwise comply with the Ordinance.
- d. Failure of the owner or occupant to take the measures necessary to achieve compliance with this Ordinance within the time limit allowed by the written notice shall constitute a violation of this Ordinance as described in Subsection 7.01 a. hereof, and each day that such violation continues shall be a separate offense.

7.02 Remedies

- a. In addition to the penalties provided for in Subsection 7.01 of this Ordinance, the Zoning Administrator, on behalf of the County of Marquette, may institute in the Circuit Court an action to prevent, restrain, correct or abate any violation of this Ordinance or of the Airport Zoning Act, or any violation of any order or ruling made in connection with their administration or enforcement, and the Court shall grant to the Plaintiff such relief, by way of injunction or otherwise, as may be proper under all of the facts and circumstances of the case, in order to fully effectuate the purposes of this Ordinance and of the Airport Zoning Act, and all regulations adopted and orders and rulings made pursuant thereto.

ARTICLE VIII

Federal Regulation

8.01 Federal Regulation (FAR Part 77)

This Ordinance is not intended to conflict with the existing Federal Aviation Regulations relating to airspace protection. The Federal Aviation Administration requires that the FAA be given notice of any construction or alteration:

- a. that will be more than two hundred (200) feet above ground level at its site.
- b. that would be above an imaginary surface extending outward and upward at a one hundred (100) to one (1) slope within twenty thousand (20,000) feet of the nearest point of a runway more than three thousand two hundred (3,200) feet in length.
- c. that would be above an imaginary surface extending outward and upward at a fifty (50) to one (1) slope within ten thousand (10,000) feet of the nearest point of a runway less than three thousand two hundred (3,200) feet in length.

ARTICLE IX

Fees

9.01 Establishment of Fees

The Marquette County Board of Commissioners shall, by Resolution, establish a schedule of fees to be charged for the administration, permitting, variance, and appeal processes provided for under this Ordinance.

ARTICLE X

Severability of Provisions

10.01 Severability of Provisions

If any of the provisions of this Ordinance or the application thereof to any person, property, or circumstances is held invalid, such invalidity shall not affect

the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications of the Ordinance, and to this end the provisions of this Ordinance are declared to be severable.

ARTICLE XI

Amendments

11.01 Amendments

This ordinance and the regulations prescribed herein may be amended by the County Board of Commissioners in the same manner as originally enacted.

ARTICLE XII

Repealer and Effective Date

12.01 Repealer

The Airport Zoning Ordinance previously adopted, effective as of July 1, 1966, and all subsequent amendments thereto, are hereby repealed, said repealer to be effective as of the effective date of this Ordinance.

12.02 Effective Date

This Ordinance shall become effective on the day following publication of the notice of its adoption, pursuant to MCL 46.11(m).

Commissioners voting "Aye:" _____

Commissioners voting "Nay:" _____

This Ordinance is adopted this 20th day of June, 2000.

MARQUETTE COUNTY BOARD OF COMMISSIONERS

by: _____
Gerald O. Corkin, Chair

ATTEST: _____
David J. Roberts,
Clerk

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