

ZONING ORDINANCE FOR CUSTER COUNTY AIRPORT
CUSTER, SOUTH DAKOTA

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CUSTER COUNTY AIRPORT
ZONING ORDINANCE CREATED
BY THE
CUSTER COUNTY AIRPORT ZONING BOARD

AN ORDINANCE REGULATING AND RESTRICTING THE HEIGHT OF STRUCTURES AND OBJECTS OF NATURAL GROWTH, AND OTHERWISE REGULATING THE USE OF PROPERTY, IN THE VICINITY OF THE CUSTER COUNTY AIRPORT BY CREATING THE APPROPRIATE ZONES AND ESTABLISHING THE BOUNDARIES THEREOF: PROVIDING FOR CHANGES IN THE RESTRICTIONS AND BOUNDARIES OF SUCH ZONES: DEFINING CERTAIN TERMS USED HEREIN: REFERRING TO THE CUSTER COUNTY AIRPORT ZONING MAP WHICH IS INCORPORATED IN AND MADE A PART OF THIS ORDINANCE: PROVIDING FOR ENFORCEMENT: ESTABLISHING A BOARD OF ADJUSTMENT: AND IMPOSING PENALTIES.

IT IS HEREBY ORDAINED BY THE CUSTER COUNTY AIRPORT ZONING BOARD PURSUANT TO THE AUTHORITY CONFERRED BY SDCL 50-10 AIRPORT ZONING.

SECTION I: PURPOSE AND AUTHORITY

The Custer County Airport Zoning Board, created and established by action of the Board of County Commissioners of Custer County pursuant to the provisions and authority of SDCL 50-10 Airport Zoning.

- A. An airport hazard endangers the lives and property of users of the Custer County Airport, and property or occupants of land in its vicinity, and also if the obstructible type, in effect reduces the size of the area available for landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the Custer County Airport and the public investment therein.
- B. The creation or establishment of an airport hazard is a public nuisance and an injury to the region served by the Custer County Airport.
- C. For the protection of the public health, safety, order, convenience, prosperity and general welfare, and for the promotion of the most appropriate use of land, it is necessary to prevent the creation or establishment of airport hazards.

SECTION II: TITLE

This ordinance shall be known as "Custer County Airport Zoning Ordinance". Those sections of land affected by this Ordinance are indicated in "EXHIBIT A" which is attached to this Ordinance.

SECTION III: DEFINITIONS

As used in this Ordinance, unless the context otherwise requires: "AIRPORT" means the Custer County Airport located in the County of Custer, South Dakota.

"AIRPORT ELEVATION"

Means the established elevation of the highest point on the useable landing area which elevation is established to be 5620' feet above mean sea level.

"AIRPORT HAZARD"

Means any structure or tree or use of land which obstructs the airspace required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport; and any use of land which is hazardous to persons or property because of its proximity to the airport.

"DWELLING"

Means any building or portion thereof designed or used as a residence or sleeping place for one or more persons.

"HEIGHT"

For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

"INSTRUMENT RUNWAY"

Means a runway equipped or to be equipped with a precision or non-precisions electronic navigation aid or landing aid or other air navigation facilities suitable to permit the landing of aircraft by an instrument approach under restricted visibility conditions.

"LANDING AREA"

Means the area of the airport used for landing, taking off, or taxiing of aircraft.

"LANDING STRIP"

Means any grass or turf covered area of the airport, specifically

designated and used for the landing and/or takeoff of aircraft. This term shall have the same meaning throughout this Ordinance as does the term "runway".

"NONCONFORMING USE"

Means any pre-existing structure, tree, natural growth, or use of land which is inconsistent with the provisions of this Ordinance and/or amendment hereto.

"NON-INSTRUMENT RUNWAY"

Means a runway other than an instrument runway.

"PERSON"

Means an individual, firm, partnership, corporation, company, association, joint stock association, governmental entity, and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

"RUNWAY"

Means any surface of the airport which is specifically designated and used for the landing and/or take-off of aircraft.

"SLOPE"

Means an incline from the horizontal expressed in an arithmetic ratio of horizontal magnitude to vertical magnitude.

"STRUCTURE"

Means an object constructed or installed by man, including but without limitations, building, towers, smokestacks, and overhead transmission lines.

"TREE"

Means any object of natural growth.

"WATER SURFACES"

For the purpose of this Ordinance shall have the same meaning as land for the establishment of protected zones.

SECTION IV: AIRSPACE OBSTRUCTION ZONING

A. AIRSPACE ZONES:

In order to carry out the purposes of this Ordinance, the following airspace zones are hereby established; Primary Zone, Horizontal Zone, Conical Zone, Instrument Approach Zone, Non-instrument Approach Zone, and Transitional Zone and whose locations and dimensions are as follows:

1. PRIMARY ZONE:

All that land which lies directly under an imaginary primary surface longitudinally centered on a runway and extending 200 feet beyond each end of a runway. The elevation of any point on the primary surface is the same as the elevations of the nearest point on the runway centerline. The width of the primary surface is:

- a. 500 feet for Non-Precision Instrument Runways and for visual runways larger than utility.
- B. 250 feet for visual utility runways.

2. HORIZONTAL ZONE:

All that land which lies directly under an imaginary horizontal surface of 150 feet above the established airport elevation, or a height of 5770' feet above mean sea level, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

- a. 10,000 feet for instrument runway. Larger than utility runways.
- b. 5,000 feet from all visual runways and non-precision instrument utility runways.

When a 5,000 foot arc is encompassed by tangents connecting two adjacent 10,000 foot arcs, the 5,000 foot arc shall be disregarded in the construction of the perimeter of the horizontal surface.

3. CONICAL ZONE:

All that land which lies directly under an imaginary conical surface extending upward and outward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

4. NON-PRECISION INSTRUMENT APPROACH ZONE:

All that land which lies directly under an imaginary non-precision instrument approach surface longitudinally centered on the extended centerline at each end of the runway. The inner edge of the non-precision instrument approach surface is at the same width and elevation as, and coincides with, the end of the primary surface. The non-precision instrument approach surface for (a larger than utility runway inclines upward and outward at a slope of 31:1, expanding uniformly to a width of 3,000 feet wider than the primary surface width at a horizontal distance of 10,000 feet) (a utility runway inclines upward and outward at a slope of 20:1, expanding uniformly to a width of 2,000 feet at a horizontal distance of 5,000 feet,) and then continuing at the same rate of divergence to the periphery of the conical surface.

5. NON-INSTRUMENT APPROACH ZONE:

All that land which lies directly under an imaginary non-instrument visual approach surface longitudinally centered on the extended centerline at each end of any runway. The inner edge of the non-instrument approach surface is at the same width and elevation as, and coincides with, the primary surface.

The non-instrument approach surface for (a larger than utility runway inclines upward and outward at a slope of 20:1 expanding uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet,) (a utility runway inclines upward and outward at a slope of 20:1, expanding uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet,) and then continuing at the same rate of divergence to

the periphery of the conical surface.

6. TRANSITIONAL ZONE:

All that land which lies directly under an imaginary transitional surface extending upward and outward at right angles to the runway centerline and the runway centerline extended at a slope of 7 to 1 from the sides of the primary surfaces and from the sides of the approach surfaces until they intersect the horizontal surface or the conical surface.

B. HEIGHT RESTRICTIONS:

Except as otherwise provided in this Ordinance and except as necessary and incidental to airport operations, no structure or tree shall be constructed, altered maintained, or allowed to grow in any airspace zone created in Sub Section IVA so as to project above any of the imaginary airspace surfaces described in said Sub Section IVA hereof. Where an area is covered by more than one height limitation, the more restrictive limitations shall prevail.

SECTION V: LAND USE SAFETY ZONING

A. SAFETY ZONE BOUNDARIES:

In order to carry out the purpose of this Ordinance, there are hereby created and established the following safety zone boundaries:

1. SAFETY ZONE 1.

All that land in the approach zones of a runway which is located within a horizontal distance of 1,000 feet from each end of the primary zone and in the 7:1 transitional zones to the 50 foot contour.

2. SAFETY ZONE 2.

All that land in the approach zones of a runway which is located within a horizontal distance of 3,000 feet from each end of the primary zone and in the 7:1 transitional zones to the 150 foot contour, excluding Zone 1.

3. SAFETY ZONE 3:

All that land which is enclosed within the perimeter of the horizontal zone and which is not included in Zone 1 or Zone 2.

4. SAFETY ZONE 4:

All that land which is enclosed within the perimeter of the conical surface and which is not included in Zone 1 or Zone 2 or Zone 3.

B. USE RESTRICTIONS

1. GENERAL:

Subject at all times to the height restrictions set forth in Sub Section IVB, no use shall be made of any land in any of the safety zones defined in Sub Section VA which creates or causes interference with the operations or radio or electronic facilities on the airport or with radio or electronic communications between the airport and aircraft, makes it difficult for pilots to distinguish between airport lights and other lights, results in glare in the eyes of the pilots using the airport, impairs visibility in the vicinity of the airport, or otherwise endangers the landing, taking off, or maneuvering of aircraft.

✓ 2. ZONE 1:

Subject at all times to the height restrictions set forth in Sub Section IVB and to the general restrictions. No residential uses are permitted in Zone 1.

✓ ZONE 2:

Subject at all times to the height restrictions set forth in Sub Section IVB and to the general restrictions. Minimum lot area for single-family dwellings shall be 5 acres. No multiple dwellings are permitted in Zone 2.

ZONE 3:

Subject at all times to the height restrictions set forth in

Sub Section IVB and to the general restrictions.

ZONE 4:

Subject at all times to the height restrictions set forth in

Sub Section IVB and to the general restrictions.

SECTION VI: AIRPORT ZONING MAP

The several zones herein established are shown on the Custer County Airport Approach and Clear Zone Plan consisting of 1 sheet, prepared by S.D. Division of Aero and dated 7-22-81, attached hereto and made a part hereof, which map, together with such amendments thereto as may from time to time be made, and all notations, references, elevations, data, zone boundaries, and other information thereon, shall be and the same is hereby adopted as part of this Ordinance.

SECTION VII: NONCONFORMING USES

Regulations not retroactive. The regulations prescribed by this Ordinance shall not be construed to require the removal, lowering, or other changes or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, 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 effective date of this Ordinance, and is diligently prosecuted and completed within two years there of.

SECTION VIII: PERMITS

A. FUTURE USES:

Except as specifically provided in Paragraphs 1 and 2 hereunder, 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 zone hereby created unless a permit therefore shall have been applied for and granted by the Zoning Administrator, hereinafter provided for. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient detail as to proposed use to permit it to conform to the regulations herein prescribed.

If such determination in the affirmative, the permit shall be granted.

1. However, a permit for a tree or structure of less than 75 feet of vertical height above the ground shall not be required in the horizontal and conical zones or in any approach and transitional zones beyond a horizontal distance of 4,200 feet from each end of the runway except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for the respective zone.
2. Nothing contained in this foregoing exception shall be construed as permitting or intending to permit any construction, alteration or growth of any structure or tree in excess of any of the height limitations established by this Ordinance as set forth in Section IV.

B. EXISTING USES:

Before any existing use and structure may be replaced substantially altered or repaired, or rebuilt within any zone established herein, a permit must be secured authorizing such replacement, change or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure, or tree to BECOME A GREATER HAZARD TO AIR NAVIGATION THAN IT WAS ON THE EFFECTIVE Date of this Ordinance or any amendments thereto, or than it is when the APPLICATION FOR A PERMIT IS MADE. Except as indicated, all applications for such a permit shall be granted.

C. NONCONFORMING USES ABANDONED OR DESTROYED:

Whenever the Zoning Administrator determines that a nonconforming structure or tree has been abandoned or more than 80% torn down, physically deteriorated, or decayed no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviated from the zoning regulations.

Whether application is made for a permit under this paragraph or not, the Zoning Administrator may order the owner of the abandoned or partially destroyed nonconforming structure, at his own expense, to lower, remove, reconstruct, or equip the same in the manner necessary to conform to the provisions of this Ordinance. In the event the owner of the nonconforming structure shall neglect or refuse to comply with such order for ten days after receipt of written notice of such order, the Zoning Administrator may, by appropriate legal action, proceed to have the abandoned or partially destroyed nonconforming structure lowered, removed, reconstructed, or equipped and assess the cost and expense thereof against the land on which the structure is or was located. Unless such an assessment is paid within ninety days from the service of notice thereof on the owner of the land, the sum shall bear interest at the rate of Legal County rate charged on delinquent taxes per annum from the date the cost and expense is incurred until paid, and shall be collected in the same manner as are general taxes.

SECTION IX: VARIANCES

Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use his property, not in accordance with the regulations prescribed in this Ordinance, may apply to the Board of Adjustment, hereinafter provided for, for a variance for such regulations. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of this Ordinance; provided any variance so allowed may be subject to any reasonable conditions that the

Board of Adjustment may deem necessary to effectuate the purpose of this Ordinance.

SECTION X: HAZARD MARKING AND LIGHTENING

A. NONCONFORMING USES:

The owner of any nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Zoning Administrator to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazards. Such markers and lights shall be installed, operated, and maintained at the expense of the County of Custer.

B. PERMITS AND VARIANCES:

Any permit or variance granted by the Zoning Administrator of Board of Adjustment as the case may be, may, if such action is deemed advisable to effectuate the purpose of this Ordinance and be reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question at his own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to pilots the presence of an airport hazard.

SECTION XI: AIRPORT ZONING ADMINISTRATOR

It shall be the duty of the Custer County Planning Commission to appoint an administrator; to administer and enforce the regulations prescribed herein. Applications for permits and variances shall be made to the Planning Commission upon a form furnished by the Planning Commission. Permit applications shall be promptly considered and granted or denied by the Planning Commission. Variance applications shall be forthwith transmitted by the County Planning Commission for action by the Board of Adjustment hereinafter provided for.

SECTION XII: BOARD OF ADJUSTMENT

A. ESTABLISHMENT:

The Board of Adjustment shall consist of five members, and shall be appointed by the Custer County Board of Commissioners. The first member shall be appointed for a term of one year, the second member for a term of two years, the third for a term of three years, the fourth for a term of four years, and the fifth for a term of five years. Members shall be removeable by the appointing authority for cause, upon written charges, after a public hearing.

B. POWERS:

The Board of Adjustment shall have and exercise the following powers:

1. To hear and decide appeals from any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of this Ordinance.
2. To hear and decide special exceptions to the terms of this Ordinance upon which such Board of Adjustment under such regulations may be required to pass.
3. To hear and decide specific variances.

C. PROCEDURES:

1. The Board of Adjustment shall adopt rules for its governance and procedure in harmony with the provisions of this Ordinance. Meetings of the Board of Adjustment shall be held at the call of the Chairman and at such other times as the Board of Adjustment 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 of Adjustment shall be public. The Board of Adjustment 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 Zoning Administrator and shall be a public record.

2. The Board of Adjustment 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, affirming, or modifying any order, requirement, decisions or determination which comes before it under the provisions of this Ordinance.
3. The concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to reverse any order, requirements decisions or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in this Ordinance.

SECTION XIII: APPEALS

- A. Any person aggrieved, or any taxpayer affected by any decisions of the Zoning Administrator made in his administration of this Ordinance may appeal to the Board of Adjustment. Such appeals may also be made by any governing body of the municipality, county, or airport zoning board, which is of the opinion that a decision of the Zoning Administrator is an improper application of this Ordinance as it concerns such governing body or board.
- 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 Zoning Administrator a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Adjustment 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 Zoning Administrator certifies to the Board of Adjustment after the notice of appeal has been filed with it, that by reason of the

facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the Board of Adjustment on notice to the Zoning Administrator and on due cause shown.

- D. The Board of Adjustment shall fix a reasonable time for hearing 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 agent or by attorney.
- E. The Board of Adjustment may, in conformity with the provisions of this Ordinance, reverse or affirm as in whole or in part, or modify the order, requirement, decisions or determination appealed from and may make such order requirement, decisions, or determination, as may be appropriate under the circumstances, and to that end shall have all the powers of the Zoning Administrator.

SECTION XIV: PENALTIES

Every person who shall construct, establish, substantially change, alter or repair any existing structure or use, or permit the growth of any tree without having complied with the provisions of this Ordinance or who, having been granted a permit or variance under the provisions of this Ordinance, shall construct, establish, substantially change or substantially alter or repair any existing growth or structure or permit the growth of any tree, except as permitted by such permit or variance, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$300.00 or imprisonment for not more than 90 days or by both. Each day a violation continues to exist shall constitute a separate offense.

SECTION XV: JUDICIAL REVIEW

Any person aggrieved, or any taxpayer affected by any decision of the Board of Adjustment, or any governing body of a municipality, county, or airport Zoning Board, which is of the opinion that a decision of the Board of Adjustment is illegal may present to the Circuit Court of Custer County,

verified petition setting for the decisions or action is legal 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 decisions is filed in the office of the Board of Adjustment. The petitioner must exhaust the remedies provided in this Ordinance, before availing himself to the right to petition a court as provided in this section.

SECTION XVI: CONFLICTS

Where there exists a conflict between any of the regulations or limitations prescribed in this Ordinance 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, the more stringent limitation or regulation shall govern and prevail.

SECTION XVII: SEVERABILITY

In any case in which the provisions of this Ordinance, 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 such constitution of this state or the constitution of the United States, such holding shall not affect the application of this Ordinance as to other structures and parcels of land, and to this end the provisions of this Ordinance are declared to be severable.

SECTION XVIII: EFFECTIVE DATE

This Ordinance shall be published on 10-15-81 and 10-22-81 in the Custer County Chronicle an official newspaper in Custer, South Dakota, and shall take effect on the 29th day of October, 1981. Copies thereof shall be filed with the Register of Deeds, Custer County.

Passed and adopted after public hearing by the Custer County Commissioners
and the Joint Airport Zoning Board of Custer County this 29th
day of OCTOBER, 1981.

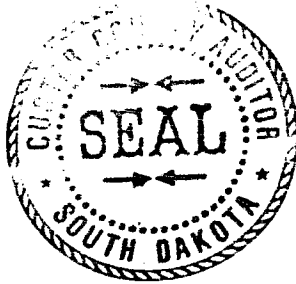
William E. Sager
Chairman, Custer Co. Commissioners

John W. [unclear]
Member

[Signature]
Member

Attest:

Francis [unclear]



Dan Kelly
Chairman, Board of Adjustment

Walter B. Thomas
Member

Joseph [unclear]
Member

[Signature]
Member

[Signature]
Member

Charles C. Hathaway
Chairman, Airport Zoning Board

Florence Schmidt
Member

Robert [unclear]
Member

W. C. Krueger
Member

Member

Diagram illustrating the layout of a runway and its relationship to a highway (Hwy 385).

The diagram shows a runway section with a center line labeled "N 87° 01' E (R)". The runway is flanked by "CLEAR ZONE" areas. The left side of the runway is labeled "N 72° 58' 50" E" and "1030.78'". The right side is labeled "S 78° 56' 50" E" and "1030.78'". The top and bottom edges are labeled "N 2° 59' W" and "450.00'".

A dashed line represents the "CENTER LINE OF HWY. 385" and is labeled "N 87° 01' E (R)". A note states: "NOTE: CENTER LINE OF HWY. 385 IS 420.0' ON A BEARING OF N 87° 01' E FROM EAST END OF RUNWAY".

The diagram also shows "TO DUNSTON" and "HWY 385" with bearings and distances.

NOTE
CENTER LINE OF HWY.
385 IS 420.0' ON A
BEARING OF N87°01'E
FROM EAST END OF
RUNWAY

● DENOTES CORNER SET
THIS SURVEY, REBAR
WITH ALUMINUM CAP
MARKED BRYANT R.L.S. 2196

(R) RECORDED INFORMATION

SCALE 1" = 600'

THIS SURVEY MADE AT THE REQUEST OF THE CLUSTER COUNTY BOARD OF COMMISSIONERS TO DETERMINE ADEQUACY OF EACH ONE OF PLACES IN THE COUNTY. COUNTY AIRPORT, AS QUICK PASS, THE BETHANY CHURCH, CLUSTER OF BERNARDINO, STATE OF TEXAS. COMMISSIONER.

COMMISSIONER

18184

Alfred

8 Plate 92