

# MEMO

**Date:** February 5, 2010  
**To:** Town Planning Commission Members  
**From:** Community Development Department Staff  
**RE:** New Business Item 3 – Discuss Proposed Outagamie County Airport Overlay Extension

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## Overview

Two meetings of the Outagamie County Airport Overlay Adhoc Committee subcommittee have been held. Town staff has attended both meetings. Information on these two meetings is attached. No decisions have been made about extending the airport overlay into Winnebago County, but we anticipate that will occur. The discussions so far about extending the overlay into Winnebago County have centered on the method of implementation. Staff has encouraged flexibility in the overlay and we anticipate that discussions on this issue will occur at the next meeting.

This adhoc committee has no authority to create an overlay district, but it is charged to make a recommendation on the overlay and other changes to airport land use regulations. We believe that since we have become involved very early in the process that the Town can directly influence the final ordinance in a positive way.

It is important to note that the airport does have the authority for extraterritorial restrictions on land use for unincorporated areas within its sphere of influence. Staff wants to specifically note that cities and villages cannot be regulated by the airport.

## Staff Recommendation

Staff recommends that we continue to be involved in this committee and staff will attend meetings when they are held. Staff will also encourage a full input and review process when an overlay ordinance is proposed for adoption. Staff will also keep the Commission informed as the process proceeds and encourage the Commission's involvement when a proposal is presented to the Town.

**MINUTES  
AIRPORT OVERLAY ORDINANCE ADHOC COMMITTEE  
WEDNESDAY, JANUARY 6, 2010**

**Members Present:** A. Schmidt, A. Gitter, R. Leiker, A. Davis, T. Roach, M. Lenss

**Members Excused:**

**Others Present:**

- \*J. Guidote, Corporation Counsel
- \*C. Wilcox, Interim Law Clerk, Corporation Counsel
- \*T. Paltzer, County Executive
- \*J. Julius, Citizen
- \*D. Culbertson, Supervisor
- \*C. Anthony, Supervisor
- \*M. Hendrick, County Planner
- \*J. Janssen, Legislative Services Manager
- \*E. Lowe, Post Crescent
- K. Ciske, Legislative Services
- \*Attended a portion of the meeting

Chairman Schmidt called the meeting to order at 9:00 A.M.

Chairman Schmidt informed the committee that he is in a partnership with someone who owns a business within the airport overlay district. Corporation Counsel Guidote informed the committee that he spoke with Supervisor Schmidt regarding any conflict issues if he is allowed to chair this AdHoc committee and found none as the property is currently zoned commercial which is allowed in the airport overlay district and the property is not being considered for re-zoning. Supervisor Schmidt asked if anyone had concerns regarding his chairmanship and there were none.

### **INTRODUCTIONS**

The committee members introduced themselves.

### **COMMITTEE PURPOSE**

Chairman Schmidt informed the committee that the airport overlay district ordinance has not been addressed or revised since 1981. Schmidt feels that this committee was formed to review the ordinance, research how communities and committee members feel about the ordinance language, and report those findings to the Property, Airport, Recreation & Economic Development Committee and the Zoning Committee. It is Schmidt's hope that the two committees will jointly support the findings of this AdHoc Committee and bring new ordinance language forward to the County Board.

### **COMMITTEE MEMBER COMMENTS/DISCUSSION**

Town of Grand Chute Community Development Director Allen Davis informed the committee that commercial and industrial zoning in the Town of Grand Chute is consistent with that of Outagamie County. Davis expressed concern regarding buffers between single family zoned property and commercial zoned property. Davis pointed out that the overlay district code requires one acre per unit for a two family unit. Davis informed the committee that the Town of Grand Chute has also adopted the county's storm water management code and questioned keeping water foul out of the airport overlay district due to the possibility of bird strikes. Davis discussed a pond on CTH CB and having the pond protected with netting. Outagamie County Zoning Administrator Tim Roach informed the committee that the County follows FAA guidelines with regard to ponds and suggested that it would be a good idea to include that in the Outagamie County Airport Overlay District code.

Town of Greenville Chairman Randy Leiker spoke to the committee regarding the property to the west of the airport which in the Town of Greenville's comprehensive plan and long-range planning is meant to stay agricultural. Leiker suggested that if the airport wants to protect that property as not being developed he felt there could be some type of agreement made so the airport purchases that land and leases it back to the farmers so it's not developed. Supervisor Schmidt pointed out that the Town of Greenville's plan is to keep the land in question as agricultural land and the airport overlay district ordinance allows agriculture. Schmidt questioned Leiker as to the conflict. Leiker suggested that if the land were sold, it was questionable as to what might happen. Leiker suggested that the whole west side should be studied for future protection. Leiker felt that the ordinance is very hard to interpret and has found that most airport overlays throughout the country include a matrix situation where no interpretation is needed as their ordinances show specifics. Leiker informed the committee that the Town of Greenville cannot give developers an answer and have to refer the developers to the County's Zoning Administrator. Leiker informed the committee that he has seen samples of other airport overlay district ordinances from other airports that are more easily interpreted. Supervisor Schmidt asked that Leiker provide the committee with this information.

Outagamie County Airport Director Lenss informed the committee that the existing ordinance doesn't extend south of the airport. Corporation Counsel Guidote informed the committee that the existing ordinance ends at the Outagamie County line and that the courts have a written decision that county ordinances have authority across county boundaries. Supervisor Schmidt voiced his concern that Outagamie County's Airport Overlay Ordinance has not extended across county boundaries and there could be a possibility of family units being built across CTH BB. Corporation Counsel Guidote felt that it was important for the ordinance to extend into Winnebago County. Supervisor Schmidt agreed and suggested inviting representatives from the various towns in Winnebago County that could be affected by extending the ordinance into Winnebago County. Zoning Administrator Roach informed the committee that previous meetings with the Winnebago County staff showed their support of extending the ordinance into Winnebago County. The committee discussed enforcement of the ordinance if it extended to another county. Corporation Counsel Guidote and Zoning Administrator Roach agreed that enforcement would remain with Outagamie County. Supervisor Culbertson voiced his concern that all affected parties be given the opportunity for their input. It was Culbertson's suggestion that the committee be allotted sufficient time to make decisions on updating the ordinance as it is his hope that the ordinance will be one of the best in the country. Culbertson also addressed the issue regarding the western part of the Town of Greenville. It was his suggestion that the Town of Greenville do an exclusive Agricultural district in that area.

Zoning Administrator Roach spoke to Leiker's concern regarding interpretation of the ordinance. Roach informed the committee that the County's Planning and Zoning Department met with the Town of Greenville and the developer that was interested in developing in the Town of Greenville. Roach explained that when the meeting was over, the developer seemed happy with the interpretation. Roach felt that it is his job to make these interpretations with the help of other departments such as legal, airport, planning and sometimes highway.

John Julius spoke to the committee regarding land his family owns that is immediately west of the airport. He informed the committee that all water drains into the swamp which doesn't connect to the Rat River and destroys the habitat in that area. Julius questioned what is being allowed to happen on the west side of the airport. Julius also addressed sustaining the west side of the airport as being zoned agricultural; as it is his feeling that this would have a good economic impact for the county.

Airport Director Lenss informed the committee that runway extensions have not been included in the ordinance. Lenss suggested that a representative from the State Bureau of Aeronautics be asked to participate in a future meeting as they have developed a land use guide. Lenss felt that the Bureau of Aeronautics could provide a perspective on what other counties have done.

#### **OUTAGAMIE COUNTY CORPORATION COUNSEL INPUT**

Corporation Counsel Guidote addressed Mr. Davis's comment regarding overlay district code requirements for two-family residential. Guidote pointed out a 1998 decision by the Court of Appeals of Wisconsin regarding a case between Northwest Properties and Outagamie County regarding this issue. The Court of Appeals reversed

the decision by the Circuit Court of Outagamie County and declared the one acre per unit density requirement for residential housing contained in Zone 3 of the Outagamie County Airport Zoning ordinance to be constitutional. Guidote pointed out that Austin Strauble Airport in Green Bay had to reroute flights from one runway to another because of residential encroachment, and the airport in LaCrosse, Wisconsin could no longer extend runways due to residential encroachment. Guidote also referred to noise and safety issues with regard to residential zoning within the airport overlay district. Guidote informed the committee that noise mitigation is very expensive and it is his opinion that residential encroachment on airports is a bad idea. Supervisor Schmidt questioned if Northwest Properties had ever requested to come before the Zoning Board of Adjustments. Guidote felt that by granting variances and doing spot zoning within the airport overlay district that it would be hard to protect the remainder of the overlay.

#### **FUTURE MEETING AGENDA ITEMS/OTHER INVITES**

As suggested above, the committee discussed inviting representatives from all municipalities that could be affected by the Airport Overlay District ordinance. Airport Director Lenss suggested inviting a representative for the Bureau of Aeronautics.

#### **REPORT OUT TIME LINE TO PROPERTY/AIRPORT, RECREATION & ECONOMIC DEVELOPMENT COMMITTEE: 04/01/2010**

The committee did not discuss this item.

#### **MEETING SCHEDULE AND TIME**

The committee discussed that their next meeting would be Wednesday, January 20<sup>th</sup> and Wednesday, February 3<sup>rd</sup>. Supervisor Schmidt asked that the Airport Director contact the Bureau of Aeronautics and that Zoning Administrator Roach contact municipalities to extend an invitation to the January 20<sup>th</sup> meeting. Schmidt also suggested that committee members research "Best Practices."

#### **CORRESPONDENCE**

The committee received and filed the following correspondence:

- Current Airport Overlay Ordinances
- Resolution 86-2009-10 – Authorizing the formation of the Airport Overlay Ordinance Ad Hoc Committee

#### **ADJOURNMENT**

MOTION: COMMITTEE MEMBERS GITTER/LENS S MOVED TO ADJOURN AT 10:21 A.M. UNTIL JANUARY 20, 2010 AT 9:00 A.M. MOTION CARRIED.

Respectfully submitted,

*Kathy Ciske*

Kathy Ciske  
Legislative Services  
January 11, 2010

Date Approved: \_\_\_\_\_

**MINUTES**  
**AIRPORT OVERLAY ORDINANCE ADHOC COMMITTEE**  
**WEDNESDAY, JANUARY 20, 2010**

**Members Present:** A. Schmidt, A. Gitter, R. Leiker, A. Davis, T. Roach, M. Lenss

**Members Excused:**

**Others Present:**

- \*T. Paltzer, County Executive
- \*J. Guidote, Corporation Counsel
- \*D. Culbertson, Supervisor
- \*C. Anthony, Supervisor
- \*W. Defferding, Supervisor
- \*M. Hendrick, County Planner
- M. Luebke, Town of Clayton Board Chairman
- R. Johnston, Town of Clayton Administrator
- R. Hull, Town of Menasha Associate Planner
- \*J. Julius, Citizen, Town of Greenville
- \*C. Rowe, Zoning Administrator, Winnebago County
- \*J. Bougie, Planning Department, Winnebago County
- \*J. Janssen, Legislative Services Manager
- K. Ciske, Legislative Services
- \*Attended a portion of the meeting

Chairman Schmidt called the meeting to order at 9:04 A.M.

**MINUTES**

MOTION: COMMITTEE MEMBERS LENS/GITTER MOVED APPROVAL OF THE JANUARY 6, 2010 MINUTES AS PRINTED. MOTION CARRIED.

**INTRODUCTIONS**

The committee members and guests from other municipalities introduced themselves.

**-EXTENSION OF AIRPORT OVERLAY INTO WINNEBAGO COUNTY**

Chairman Schmidt spoke to the committee regarding Outagamie County's discussions in 1999 regarding extending the Airport Overlay District into Winnebago County. Mark Luebke, Town of Clayton Board Chairman informed the committee that the Town of Clayton sees the potential need for extending the Airport Overlay District into Winnebago County and the need for cooperation. The Town of Clayton has updated their land use maps. Chairman Schmidt informed the committee that currently the ordinance ends at the Outagamie County line and there is a need to amend the ordinance. Corporation Counsel has advised that the Outagamie County Board can approve changes to the ordinance. Jerry Bougie, Winnebago County Planning Department spoke to the committee regarding his recollection of discussions between the counties that started in the mid 1990's. Bougie explained that Winnebago County was in the process of updating their Airport Overlay District in Oshkosh and at that time the two county Planning Directors had discussions and concluded that in reviewing the statutes, Outagamie County had the right to extend their Airport Overlay District into Winnebago County and were trying to work together to come up with a solution to administer the ordinance. Bougie further explained that discussions continued and standards and ordinance language were developed, however, were never implemented. Bougie informed the committee that the Winnebago County committees will have to be updated with the discussions of this committee and felt that there might be issues with Winnebago County residents affected by this ordinance. Cary Rowe, Winnebago County Zoning Administrator informed the committee that it is their duty to alert people interested in the areas affected by the

ordinance. Regarding the Airport Overlay District in Oshkosh, Winnebago County has an agreement with the City of Oshkosh to administer the ordinance. Rowe felt that in past discussions regarding the Outagamie County Airport Overlay District ordinance, it was more of an issue with the Towns. The committee discussed various means of administering the ordinance without making residents visit numerous locations for permits. Corporation Counsel Guidote informed the committee that he will check his files and report back to the committee. The committee discussed the extension of Runway 3 at the Outagamie County Regional Airport. Lenss informed the committee that three miles is the general standard regarding the overlay district boundaries, which is an FAA regulation. Any extension of a runway in the future would require updating the maps. Lenss spoke about the Airport Master Plan which includes plans to extend runways in the future, however, Lenss felt this would be in the distant future. Committee member Davis questioned if the county has the authority to officially map everything. The committee discussed that counties do not have authority to map, it would be up to the Towns to do official mapping. John Julius informed the committee that he attended meetings in the 1990's at the Town of Clayton school where a past airport director wanted to pose regulations that were met with objections from the people attending the meeting. Julius suggested that the biggest objection was about the loss of income from land that would be zoned within the overlay district. Chairman Schmidt questioned how fires and/or catastrophes would be dealt with if the overlay district were extended and if the Town of Clayton school could be included in the district. Outagamie County Zoning Administrator Roach informed the committee that currently schools are not permitted in any airport overlay districts. Committee member Leiker suggested that subcommittees be considered as he felt more could be accomplished in smaller sub groups that could report back to this committee. Leiker informed the committee that at this point, he is not concerned if the airport overlay district is extended into Winnebago County as it does not impact the Town of Greenville. Chairman Schmidt, committee members Davis and Gitter spoke against having subcommittees. Chairman Schmidt requested that Committee member Leiker inform him regarding topics he would like on the agenda and he would be happy to address them with the entire committee.

#### **-BUREAU OF AERONAUTICS – INITIAL RECOMMENDATIONS/COMMENTS**

The representative from the Bureau of Aeronautics was not able to attend.

#### **-RECOMMENDATIONS**

- a. Runway 3 Update

The committee addressed this topic above.

- b. Storm water management code – inclusion

Chairman Schmidt addressed the storm water management code that was included in the committee's packet. Davis informed the committee that the Town of Grand Chute has adopted the county's code. Schmidt questioned if the storm water management code should be included in the overlay ordinance. Leiker reported that he felt it was the wish of the airport to have no ponds within the overlay district. Leiker informed the committee that one of the Town of Greenville plans includes six ponds that would be located within the airport overlay and that the Town of Greenville has always supported ponds as long as they were protected by netting or balls. Leiker felt that it should be stated in the ordinance that there should be no ponds within the overlay district with the possibility of a plan (b) stating ponds could be included if they are protected by netting or balls. Davis asked what the FAA regulations regarding ponds are. Lenss informed the committee that the USDA website provides information on Wildlife Hazards for airports. Corporation Counsel Guidote suggested that within the overlay ordinance it should

state “in the event a municipality wishes to issue a permit for a pond, it should be done according to FAA guidelines.” Roach suggested including an airport section in the storm water ordinance. Guidote informed the committee that he would meet with the Zoning Administrator and Airport Director to get the mechanics of the storm water issue worked out. Davis requested seeing the Winnebago County storm water ordinance.

### **REPORT OUT TIMETABLE**

Chairman Schmidt informed the committee that the Property/Airport committee is in the process of discussing extending the time-table beyond the April 1, 2010 report out date.

### **COMMITTEE MEMBER COMMENTS/DISCUSSION**

Davis requested discussions at the next meeting regarding the draft ordinances that were sent to the committee and listed under correspondence on the agenda. Davis felt some of the examples received were much easier to read. Chairman Schmidt suggested that committee members review these ordinances and bring suggestions back to the committee for inclusion of a concept or idea in the Outagamie County Airport Overlay ordinance. Leiker felt that the way the Outagamie County Airport Overlay District ordinance is currently written is very subjective. Zoning Administrator Roach suggested the following topics for the next agenda: (1) Extending the Airport Overlay District (AOD) into Winnebago County; (2) Extending the AOD and Height Limitation Zoning Ordinance (HLZO) for Runway 3; (3) Storm Water facility design standards within the AOD (design standards outside of the AOD but within 5 miles would require amendment of other ordinances); (4) Residential density requirements for Zone 3; (5) Designate areas for possible PDR program and implement a PDR program; (6) More examples of compatible and non-compatible uses within the specific AOD Zones; (7) Noise mitigation program. Roach suggested having these items on a flip chart and reviewing them in order. Chairman Schmidt suggested also reviewing the sample ordinances from other airport overlay districts.

### **FUTURE MEETING DATE/AGENDA ITEMS/OTHER INVITES**

Bureau of Aeronautics involvement and input at that meeting.  
More history from Winnebago County.  
Committee member Leiker suggested Farmland preservation

### **CORRESPONDENCE**

The committee received and filed the following correspondence:

- E-Mail from Dave Tebo – Town of Greenville Administrator
- History
- Outagamie County Stormwater Management Ordinance
- Chapter 69 – L.O. Simenstad Airport
- Ordinance No. 6-2009 – Amery Municipal Airport
- Draft Airport Overlay Zoning & Height Limitations Map
- Greenville-Spartanburg Airport Environs Area Zoning Ordinance
- Iowa County Airport Zoning Ordinance

### **ADJOURNMENT**

MOTION: COMMITTEE MEMBERS LENS/DAVIS MOVED TO ADJOURN AT 10:35 A.M. UNTIL FEBRUARY 3, 2010. MOTION CARRIED.

**Airport Overlay Ordinance AdHoc Committee**  
**Wednesday, January 20, 2010**  
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Respectfully submitted,

*Kathy Ciske*

Kathy Ciske  
Legislative Services  
January 20, 2010

Date Approved: \_\_\_\_\_