

X. Typical Approaches to Mitigation of Existing Incompatible Land Uses Around Airports

Before proceeding to look at recommendations for mitigation of apparent incompatible land uses in Prince George's County, it might be useful to consider what other jurisdictions have done in those situations in which incompatible uses are found to exist as the status quo and where retroactive actions are rarely sustained legally.

Since zoning or re-zoning does not provide relief from incompatible uses in the "short run," there are other, more immediate steps that have been used. Some are financially impractical, perhaps, but that depends on the seriousness of the incompatible situation, and how committed the local government is to solving actual problems.

A. Noise Studies and Sound Proofing

The noise problem is the biggest objection voiced by people in areas near an airport. The responsibility for developing land uses around the airport so as to minimize the impact of noise and other environmental problems lies with local governmental bodies. The more political entities involved, the more complicated the coordination problem becomes.

By conducting sound studies, a local government agency can determine whether the levels of noise are beyond acceptable range, whether citizen complaints are compelling, and the precise decibel count involved, day and night. This information may lead to some actions by the local government authority.

Sound-proofing can be suggested to local residents, and tax relief or other forms of support from local government can be used to encourage residents in bearing the cost of retro-fitting sound inhibitors in existing structures or in those to be built.

B. Buy-outs by Agreement or by Condemnation

Finally, another alternative in controlling land use around an airport is the relocation of residences and other incompatible land uses either by buy-out or by condemnation under eminent domain. Sometimes, urban renewal funds are used for this purpose, or state or local funds are available for this purpose. If an airport fits certain requirements under the federal Airport Improvement Act, funds may be available as part of an airport expansion grant. With the possible exception of Washington Executive/Hyde Field, none of the airports studied meet these requirements.

In any event, segregating airports and residences is an expensive process. Presumably, the cost of either buy-outs or condemnation is roughly the same. For example, outright purchase of homes on Featherstone Drive, near the Potomac Airfield, was one of the alternative solutions recommended in the Potomac Airfield Report - June 1999, and the estimate for buying the homes affected was, on the high side, almost \$6 million. Purchase of the airport itself and closing it was estimated to cost over \$2 million, although no "credit" was given against that figure for resale of the land for other purposes—a mechanism that has been used by local governments to reduce the overall cost of mitigation in extreme situations. Generally, the longer the delay in mitigation of incompatible uses, the higher the ultimate costs are likely to be.

C. Changes in Airport Configurations

One of the more sophisticated responses to noise, obstruction or safety issues might be to suggest to the airport owner/operator a change in the configuration of the airport, namely, which direction the runway(s) (is/are) constructed. In most cases, this alternative is very expensive, assuming the owner-operator would even consider it, and moderate realignment accomplishes very little in terms of Accident Potential risks. One major issue is the positioning of the runway relative to the prevailing wind, so that runways are located so that they "point" directly into the wind because of the flight characteristics and aerodynamics of airplanes. Relocation of a runway to, say, five to ten degrees one direction or another is theoretically possible. Generally, such an idea is extremely costly, and provides little real benefit. When the Michael Baker Jr. Inc. Potomac Airfield Runway Realignment Study was done in 1998, the estimated cost of realigning the Potomac runway ranged from \$3.4 to \$3.8 million dollars.

D. Changes in Airport Operating Procedures by "Friendly Persuasion" or by Ordinance

Either by "friendly persuasion" or by other more intrusive means, if a local government can assist in modifying certain operating situations at airports, the result could be: 1) less obtrusive noise, and 2) a safer flying environment. Hours of operation, the type of aircraft which can be flown, the number of aircraft that can be based at a facility, the specific uses such as flight schools (or prohibition of such), and the prohibition of structures in certain identified zones are examples of positive influence which the local government can exert for the general public good.

It appears possible in Maryland to require certain airport operating conditions *even in a privately-owned airport*. Presumably, because of a U.S. District Court case, *Faux-Burhans v. County Commissioners of Frederick County*, 674 F.Supp. 1172 (D.Md.1987), a local government can pass a restrictive ordinance governing the use and operation of an airport.

This Study does not constitute a legal opinion as such, but the case and its legal ramifications need to be addressed by Commission counsel, because the words of the case seem pertinent to a number of issues in this Study. The Frederick County Council had passed a zoning ordinance concerning certain restrictions on a local airport. The plaintiff, a private-airport owner, challenged the County's action and brought suit in federal district court. After reviewing several important cases concerning federal preemption, mostly dealing with noise and overflight issues, and finding that the plaintiff could not point to any federal statute or regulation which explicitly or implicitly pre-empted the broad areas of regulation of the size, scope and manner of operations at a private airport, the court found against him.

In the holding of the case, the court, at page 1174 said:

The ordinance in question does not regulate noise emissions or the actual conduct of flight operations within navigable airspace. Rather, the Frederick County zoning law regulates intensity of use (by number of aircraft), the type of aircraft that can use the facility (by take-off distance required), the clear zone at the runway ends (by prohibiting building thereon), the locale of operation (by set-back requirements),

and the type of aircraft operations (by prohibiting instructional flights). *Certainly, these are all areas of valid local regulatory concern, none of which is federally pre-empted, and none of which inhibits in a proscribed fashion, the free transit of navigable airspace. And, just as certainly, no federal law gives a citizen the right to operate an airport free of local zoning control.* {Emphasis added.}

XI. Typical Approaches to Prevention or Discouragement of Incompatible Airport Land Uses

Listed here are some of the approaches taken by local authorities to prevent or discourage airport-incompatible land uses *BEFORE* they happen, together with some discussion of the points.

- Overlay or “conventional” zoning and control of planned unit developments (commercial or residential) with certain density or clear zone requirements attached;
- Subdivision regulations requiring open space, restrictions on development in stipulated zones, and other constraints;
- Building code restrictions or conditions, insuring sound-proofing;
- Avigation easements required from landowners granting overflight rights and releasing the local government authorities from and against any nuisance, damage or other claim arising from operation of the nearby airport, even if such avigation easements carry a price tag;
- Real property notice requirements pursuant to state law which alert the buyer to the location of the airport and possible nuisance and damage which might follow;
- Airport runway and clear zone requirements over and above what any regulatory agency, such as FAA, might otherwise mandate.
- Buy-out by the local government of real property in certain identified zones, either by agreement or by condemnation under “police powers.”

A. Comprehensive Land Use Plans

Most jurisdictions today are involved in preparing and approving comprehensive land use plans which undertake to establish long-range land use. Many of these plans, however, do not have much to say about airports, their existence or expansion, and the impact of those things on the local community. This may be because many planners are not experienced in aviation matters, and simply don't address some of the issues, except where a major airport exists or is planned, and there much planning attention is brought to bear.