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December 13, 2012

Chair & Members of Champaign County Zoning Board of Appeals

c/o John Hall
jhall@co.champaign.il.us

Andy Kass
akass@co.champaign.il.us

Re: CASES 687-AM-11 and 688-S-11 Petitioners Phillip and Sarabeth Jones

Dear Chair and Members of the Board:

We received the Planning and Zoning Staff Supplemental Memorandum dated December 6, 2012 on December 10, 2012 and would like to make the following remarks:

1. The following materials, copies of which are attached, seem to have been inadvertently omitted from the documents on record:

- Letter from JC Crawford dated November 11, 2011 withdrawing his support from the petition in opposition of the proposed RLA and questioning the petition's validity; and
- Letter from Jongin Kim Craggs of Craggs Appraisal Services, Ltd. dated November 15, 2011 expressing the professional opinion that, given the current nature of the neighborhood, allowing an RLA would not cause the value of the properties in the area to decrease and might actually cause them to increase, given the greater community safety provided in the form of assistance to law enforcement officials.

We request that they be added to the record and considered by the board.

2. **The imposition of an additional setback from the RLA to a residence over and above what is required by IDOT and the FAA is not permitted by Illinois law**

The Section "Amended Application and Revised Site Plan" of the Department of Planning and Zoning staff memorandum contains a proposal for additional ordinance safety requirements. Please note that imposing such additional technical safety requirement by zoning authorities on an RLA ***is not in compliance with Illinois law***. In their February 24, 2012 letter IDOT mentions that the department requires 85 feet side transition and "beyond this distance there is no obstruction clearance requirement." Thus, the proposed RLA is either fully complying with or even surpassing IDOT and FAA technical specifications.

More importantly, the highest courts in the State of Illinois have indicated that "technical issues remain within the purview of the Division of Aeronautics". In *Wright v. Winnebago County*, the appellate court found that the county substituted its judgment for that of the Division of Aeronautics by concerning itself with the "technical" safety issues which were satisfactorily met per the Division of Aeronautics. The court found that, even though the neighborhood was "rapidly developing" into residential property and the neighbors have testified that the value of their properties would go down due to safety and noise concerns, there was no sufficient reason to deny the landowners requesting the RLA the freedom to use their land as they saw fit.

In the case currently in front of the Zoning Board of Appeals, the facts supporting petitioners' request for a special use permit and rezoning are even more robust, including the following: 1) the character of the surrounding area is rural; 2) proximity of regular agriculture use; 3) the property is located along Route 130 which creates far more noise than the Dr. Jones' aircraft or helicopter use ever will; 4) owners in the area discharging their guns and a dog training facility nearby cause significant noise; 5) a letter by an appraiser that the value of the surrounding properties would not decrease and might actually increase in the event the RLA is allowed; and 6) support for the proposed RLA from the local law enforcement agencies. As a result, there is insufficient evidence supporting the notion that the proposed RLA bears any substantial relation to the public health, safety or welfare and petitioners' request should, therefore, be granted.

Zoning staff reports that it has conducted research and has been able to locate only one zoning ordinance which attempts to impose additional requirements beyond what is required by IDOT. IDOT and FAA rules in relation to restricted landing areas technical and safety requirements have been developed over time based upon engineering and safety standards and input from engineering professionals with knowledge of aircraft safety. Zoning staff suggesting the imposition of additional safety requirements over and above what professionals with specialized knowledge have developed does not seem to be good public policy and is based more on a "concern about those things less familiar" than actual safety concerns. As a matter of public policy, we should look at IDOT and FAA guidance on this issue. In view of that, the apparent dearth of zoning ordinances imposing additional safety requirements is not accidental. It is based on the relevant authorities' expertise for which both courts and zoning authorities have deferred to IDOT and FAA. Moreover, the mentioned Kane county ordinance is likely in violation of Illinois law and therefore, should not be used as a reference.

Furthermore, please note that, in each case, IDOT and the court measure the distance to any neighbors' establishments from the edge of the runway (also called the landing strip), rather than from the edge of any side transition or runway safety area. *Lake County v. First Nat. Bank of Lake Forest.* Please note that, according to the latest site plan, the distance from the proposed runway to the closest dwelling is about 200 feet.

In summary, adopting zoning staff proposal for additional safety requirements would run afoul not only established practices and common sense, but also established Illinois law and public policy.

3. Special Conditions

In the supplemental memorandum, staff makes a suggestion as to proposed conditions on the frequency and nature of use. Petitioners are mindful of the neighbors' concerns and have given some thought on how to address those concerns based on their specific knowledge on how to operate aircraft. To mitigate any potentially negative effect on the neighbors' properties, petitioners are proposing additional special conditions, specifically:

- Traffic patterns exclusively south of the RLA and no tight northbound departures below 1,000 feet;
- An increased traffic pattern altitude of 1,500 feet above ground level (AGL) as opposed to the standard 1,000 feet AGL altitude;
- All pre-operation run-up procedures will be conducted at the furthest practicable location away from neighboring properties, provided that any pre-operation run-up procedure that is conducted at least as far west as the location of the proposed hanger will be deemed to meet this restriction;
- Aircraft stored at the RLA will be limited to owner's aircraft and/or those of parents, children or siblings of owner, which in no case will exceed eight aircraft at any given time; and
- A liability insurance policy with a minimum coverage of five million dollars shall be maintained at any and all times a take-off or landing is to occur.

As well, petitioners request that any special condition as to the number of take-offs and landings be counted on an annual, rather than 28 day interval basis as suggested by staff. We have fully summarized our proposal in the attached "Special Conditions" document.

4. List and maps of RLA's in and around Champaign County

Attached please find a list and map of some of the RLA's in the vicinity, all of them operating with no apparent problem for the neighborhoods and their residents.

5. Article dated August 31, 2011from the News Gazette entitled "Hurricane Irene: Cutoff towns get help by helicopter" is submitted at this time and petitioners request that it be added to the record.

6. Location and exposure to risk of the closest dwelling

Rout 130 Traffic and comparative vehicle weights

The closest dwelling to the proposed RLA is about 170 feet from Route 130, which is a state highway with intensive traffic, including fully loaded semi-trucks. According to the Illinois Secretary of State:

> The maximum weight limits on both designated and non-designated state and local streets and highways are:
>
> - 20,000 pounds on a single axle
> - 34,000 pounds on a tandem, and
> - up to 80,000 pounds on a 5-axle combination, depending upon axle spacings.
>
> Source: http://www.cyberdriveillinois.com/publications/pdf_publications/dsd_cdl10.pdf

The weight of a fully-loaded 18-wheeler on Route 130 could reach 80,000 pounds, while the heaviest of petitioners' flying equipment – the helicopter – weighs less than 5,000 pounds fully loaded. The Cessna and the Waco weigh a maximum of 4,016 pounds and 2,650 pounds, respectively, fully loaded. Based on the aforesaid and the frequency of use (Route 130 is a heavily traveled highway), the closest dwelling is exposed to far less risk and noise from the proposed infrequent use of a nearby RLA than from the daily traffic on Route 130.

A newspaper article, a copy of which is attached, from the Champaign News Gazette dated October 26, 2011 is enclosed for illustration purposes. It describes a motor vehicle accident in which the car crashed into the Mary Miller Junior High School in Georgetown, Illinois. While luckily no occupants of the building were injured, the vehicle is reported to have veered off the street, crashed through the glass doors, and went through the cafeteria before crashing into a concrete wall between the cafeteria and the gymnasium.

For comparison, Ford Motor Company reports the gross vehicle weight of its Ford F150 (one of the better selling pickup trucks in recent years) ranging from 6,450 pounds to 8,200 pounds, depending on cab type and other features. Source: http://www.ford.com/trucks/f150/specifications/view-all/

Dog Training

Dogs bark, especially when they are engaged in dog sports such as agility as conducted on the neighboring Fisher property. A picture of the dog training equipment on the Fisher property was submitted earlier to the board.

Discharge of Guns

There was earlier testimony regarding the discharge of firearms in the neighborhood. Firearms, when discharged can be loud. There is also risk of discharge mistakenly hitting an unintended target.

The above are mentioned merely to illustrate that the proposed special use by petitioners is not out of character with the nature of the neighborhood.

Please let us know if you have any questions.

With best regards.

Sincerely,

SINGLETON LAW FIRM, P.C.

By Alan
Alan R. Singleton

Enclosures

To: Mr. Jones and the Champaign County Zoning Board,

I was approached by Larry Hall at my home about the zoning case involving Mr. and Mrs. Jones. He made a very convincing arguement and told me what a terrible thing the new "airport" would be for our county. I signed the petition he gave me and he left.

After thinking back on all he said, I began to research the case. I found that most of what he said was grossly untrue and exaggerated. I also felt that his approach was very intimidating and forceful.

I would therefor like to have my name removed from the petition and feel that if the other neighbors were approached in the same way, the petition should not be accepted by the zoning board.

Thank you,

JC Crawford
1545 CR 200 N
Tolono, IL 61880

J. C. Crawford

Craggs Appraisal Services, Ltd.
2715 Salisbury Street
Champaign, IL 61821
e-mail: jongin@craggs-appraisal.com
web: www.craggsappraisalservices.com

Zoning Board of Appeals
c/o John Hall
Brookens Administrative Center
1776 E. Washington Avenue
Urbana, IL 61802

Re: Effect on Value of the Properties Surrounding the Requested RLA

Dear Mesdames & Sirs;

This letter supports Phillip and Sarabeth Jones' request for a special use permit in order to maintain a Restricted Landing Area (RLA) for airplanes and helicopters on their property. It is written based upon my many years of professional experience as an owner of a residential appraisal company and being a residential appraiser in and around Champaign County.

I visited the area in question, Section 27 in Crittenden Township, and observed a variety of uses and activities typical of rural Central Illinois neighborhoods, including residential dwellings, row crop farming, horses and sheep and even a dog training facility.

Given the current nature of the neighborhood as described above, I do not believe the proposed RLA for airplanes and helicopters which would be situated along the south side of the. Jones' property would cause any decrease in value to the residential properties that front on State Route 130. The RLA is "restricted" as opposed to a public aviation airport, and would experience limited use only. The current character of the area, including the local property values, would therefore not be negatively affected by the activities of the RLA. In addition, and given my understanding that Dr. Jones sometimes assists local law enforcement agencies, the property values might, in fact, increase given the greater community safety.

Thank you for the opportunity to express my opinion on this matter.

Yours very truly,

Jongin Kim Craggs

Illinois Department of Transportation
Division of Aeronautics
1 Langhorne Bond Drive / Springfield, Illinois / 62707-8415

February 24, 2012

John Hall
Zoning Administrator
Champaign County Dept of Zoning
Brookens Administrative Center
1776 E. Washington Street
Urbana, IL 61802

Dear Mr. Hall:

I am responding to your letter dated December 19, 2011 regarding a proposed RLA and RLA Heliport for Dr. Philip Jones. I apologize for the lengthy delay in replying.

The following are my responses to your specific questions:

1. Do you think it feasible to establish an RLA in this location if there is no maintenance of the woodland vegetation along the East Branch of the Embarras River?

   The Illinois Aviation Safety Rules require a minimum runway length of 1600' and width of 100'. In addition, there must be a 15:1 obstruction clearance from the end of the runway for 3000'. The drawings attached to your letter do not show the distance from the end of the runway to the trees so I cannot tell if the runway would be feasible.

   The sketch you provided shows a 240' runway safety area (RSA). Although not required by the State of Illinois, the Federal Aviation Administration (FAA) requires a 250' RSA.

2. Is it feasible for the RLA to be only 240 feet from a state highway?

   The Illinois Aviation Safety Rules require a 15' clearance over all public highways. This means the east end of the runway must be at least 150' from the highway. The drawings attached to your letter show a 240' RSA, so this will meet our requirements.

   However, as mentioned previously, the FAA has different requirements. They require a 300' displacement from a public

highway. Although the sketch shows the runway will meet the State requirements, it will not meet the Federal requirements.

3. Is this proximity to an adjacent dwelling under different ownership considered good practice? Would this comply with the recommendations or guidelines for residential airports or would it have been allowed under the old IDOT residential airport guidelines?

   The Illinois Aviation Safety Rules require a 4:1 side transition for RLAs starting at the edge of the runway and extending for 85'. Beyond this distance there is no obstruction clearance requirement. You noted the neighbor's house is 128' from the edge of the runway. This meets our requirement for a side transition.

   We currently do not have a separate set of requirements for a residential airport. They currently fall under the requirements for a private-use airport. A private-use airport has a 7:1 side transition which starts 50' beyond the edge of the runway and extends for 5000' from the runway centerline. In addition, no obstacles over 150' above the height of the runway are allowed in the side transition area. Using these requirements, the neighbor's house could be no more than 12' above the height of the runway.

4. Is it feasible to have two RLA facilities on the same property and within the proximities shown on the site plan received 12/16/11?

   Although it is uncommon, it is definitely feasible to have two RLA facilities on the same property. In most cases, an operator would use the runway for landing their helicopter instead of establishing a separate landing area.

5. Is it feasible to have the heliport RLA overlap the runway of the RLA as indicated on the site plan received 12/16/11?

   There is no problem with the overlap as depicted on the diagram.

6. May the approach surfaces for the adjacent RLA and Heliport RLA overlap as shown on the attached illustration? (Note: The attached illustration of imaginary surfaces is based on an earlier proposed location of the heliport clear area.)

   Again, there is no problem with the overlap as depicted on the diagram.

7. May the approach and takeoff paths of the proposed Heliport RLA be at a 90 degree angle so as to not direct helicopter traffic over the dwelling to the east?

The Illinois Aviation Safety Rules require two approaches that are a minimum of 90° apart.

8. Can you comment on whether you think it likely that both the proposed RLA and Heliport RLA will receive certification by IDOT based on what you see here?

   I have not visited the location, so I cannot say for certain either facility would be approved. However, based on the sketch dated 12/16/11 the RLA Heliport looks like it would meet our requirements.

   I cannot tell the distance or height of the trees on the west end of the runway to determine if this would meet our obstacle clearance requirements. We do not have a requirement for runway safety areas in our Illinois Safety Rules, so it looks like the runway could be shifted to the east, if necessary, to meet our required clearances. However, this will not meet FAA requirements.

9. Based on the above information can you comment on whether the proposed special use permit meets the safety requirements of the Illinois Department of Transportation?

   For the same reasons mentioned in the Question #8, it looks like the RLA Heliport may meet our requirements, and I cannot be certain the RLA runway would meet our requirements.

Please call me at 217-785-4215 or e-mail me at linda.schumm@illinois.gov with any questions or if we can provide further assistance.

Sincerely,

Linda K Schumm

Linda K. Schumm
Bureau Chief Aviation Safety

Applicable Illinois Case Law

There are two Illinois cases involving facts quite similar to those in the Jones' case. They are *Wright v. Winnebago County*, 73 Ill.App.3d337 (1979) and *Lake County v. First National Bank of Lake Forest*, 79 Ill.2d 221 (1980). In both cases the landowners requested special use permits from their local zoning authorities for the purposes of establishing a restricted landing area (RLA) on their property. In both cases the local zoning authorities denied their requests, and both landowners appealed. In *Wright* the landowners appealed to the appellate level, while in *Lake County* the landowner appealed to the Illinois Supreme Court. Both the appellate and supreme courts found in favor of the landowners' reversing the zoning authorities' denial of the special use permits and allowing the landowners to operate RLAs on their property.

***Wright v. Winnebago County*, 73 Ill.App.3d337 (1979)**

In *Wright v. Winnebago County* the landowners owned property in Winnebago County zoned for agricultural use. Their property measured approximately 20 acres in size and was roughly rectangular in shape, running 333 feet from east to west by 2600 feet from north to south. The property was improved with a house, garage and a storage building and was surrounded by agricultural land with a few scattered home.

Property owner Ronald Wright was a licensed pilot and an aircraft owner. He worked as an airline mechanic in Belvidere and wanted to fly his plane to and from work in appropriate weather. He estimated an average of one to two takeoffs and landings per day, three to four days per week during the summer months. The neighborhood, while rural, was "rapidly developing" into residential property. He applied to the local zoning authorities for a special use permit for the purposes of building an RLA on his property.

The local zoning board denied the request for the special use permit. The property owners filed suit for injunctive and declaratory relief in circuit court, and the court found the county's denial of the special use permit reasonable. The land owners filed a post-trial motion claiming the basis for denying the permit was preempted by the Illinois Aeronautics Act (Ill. Rev. Stat. 1975, ch. 15 'A, par. 22.1 *et seg.)* and the Federal Aviation Act of 1958 (49 U.S.C.) §§ 1301 *et seq.* (1976). The court, again, found the in the county's favor. The property owners appealed to the appellant court which reversed the lower court's decision finding in favor of the landowners.

In reaching its decision, the lower court considered evidence for and against the establishment of a restricted landing area. Those testifying in support of the RLA included: (1) a flight safety coordinator from the Illinois Department of Transportation, the Division of Aeronautics, who explained that he made two "initial" inspections of the property and with the removal of certain objects and proper grading, the property would be suitable for an RLA; (2) a principal planner of the County Planning Commission who stated his office recommended approval of the RLA as it was not inconsistent with the general plan for the area; (3) a real estate broker who testified that he sold ten homes in a subdivision near a RLA both before and after the RLA began operations and that the existence of the RLA had no effect on home prices; (4) a developer who, too, testified that he sold homes near RLAs and that the landing areas did not reduce nearby home values; and (5) a real estate broker and licensed appraiser who testified that the existence of four other RLAs in the area "had not affected the development of the residential areas adjacent thereto" and that that the proposed RLA would have no

negative impact on the property values around it.

Testifying against the establishment of the proposed RLA were: (1) a county zoning official & building officer who stated that the property was located in a township that was developing "fairly rapidly" into a residential area; (2) three neighbors who testified that they believed their property values would decline as a result of the RLA; (3) a gentleman testified that he lived near another RLA in Winnebago County and that he and his wife were significantly disturbed by the noise of the RLA; (4) a land surveyor who testified as to the dimensions, grade and other characteristics of the property and who believed that the RLA would not be in compliance with the technical safety standards set by the Division; and (5) a county zoning official who, too, testified that he believed the proposed RLA would not be in compliance with the Division's technical safety standards. The court pointed out, however, that the latter two witnesses' testimony was based upon the land "as is" and without the proposed changes recommended by the Department of Aeronautics.

Following a detailed review of the evidence and the application of the relevant law in question, the appellate court found that the county failed to demonstrate that the denial of the special use permit bore any substantial relation to the public health, safety or welfare. The Court divided safety into two categories: the technical safety of the field itself (runway dimensions, etc) and the broader public safety questions potentially present in even the most technically safe airfield. Technical issues remain within the purview of the Division of Aeronautics, it said, while the public safety questions remain the concern of the local zoning authorities. In this case, the court found the County substituted its judgment for that of the Division of Aeronautics by concerning itself with the "technical" safety issues which were satisfactorily met per the Division of Aeronautics.

Regarding noise, the court found the County may zone on the basis of aircraft noise, but had done so improperly in this case. No standards for noise were set out in the ordinance itself; there was no objective determination as to exactly how much noise the landowners' plane would make or of the direct physically deleterious effect it would have upon the neighbors; nor was any evidence presented suggesting that the proposed RLA would be particularly badly placed due to noise hazards — ie., near a hospital. Rather, three neighbors complained that they personally would find the noise highly undesirable. While the court sympathized with the neighbors, it did not find sufficient reason to deny the landowners the freedom to use their land as they saw fit given expert testimony established surrounding property values would not be negatively affected. As a result, the court reversed the lower court's decision and found in favor of the landowners.

***Lake County v First Nat. Bank of Lake Forest*, 79 Ill. 2d 221, 402 N.E.2d 591 (1980)**

In *Lake County v First Nat. Bank of Lake Forest* the landowner, beneficiary of a land trust for which the First National Bank of Lake Forest was trustee, acquired the 45-acre parcel in question in 1952. In 1960 the landowner applied to the Illinois Department of Transportation, the Department of Aeronautics, for permission to operate a "restricted landing area" on the property. The County and surrounding property owners received notice and an opportunity to object to the RLA, but none did so. The County did notify the landowner by letter that same year, however, that the site of the proposed landing strip was located in an "F" (farming) zone and that the landowner would be required to secure a special use permit from the county board before proceeding. The landowner failed to do so, however, and in 1961 the Department of

Aeronautics certified the landing strip as a restricted landing area. The landowner used the property as a RLA from that time forward until being enjoined from doing so by the circuit court in 1979.

Lake County revised its zoning ordinance in 1966. The record does not contain the ordinance in force prior to that time, but an exhibit indicates that the designation of the zoning classification applicable to landowner's property was changed from F (farming) to AG (agricultural). The ordinance as revised required a "conditional use permit" for the operation of an "airport" or "heliport" in an agricultural zone. The ordinance does not contain a definition of either term, however.

The County filed an action in the circuit court seeking to enjoin the landowner from violating the county's zoning ordinance. The landowner filed a counterclaim for a declaratory judgment arguing that the ordinance was void insofar as it purported to prohibit the use of the landowner's property for a restricted landing area. Following a hearing, the circuit court entered an order enjoining the landowner from operating a private aircraft landing strip, and landowner appealed. The appellate court reversed the order except as to an issue unrelated to the RLA. The county appealed the decision and the Supreme Court affirmed the appellate court's decision.

The Supreme Court held that in relation to the restricted landing area the zoning ordinance was ambiguous and therefore did not apply. That is, the landowner was not required to obtain a conditional use permit for the purpose of operating a restricted landing area on his property. In making its decision the court heard and effectively dismissed testimony concerning the impact of the RLA on neighbors and neighboring property values. Specifically Joseph Lenzen, whose property abuts the landing strip at the strip's north end, testified that planes frequently fly over his property while taking off and landing on the airstrip. On one occasion a plane brushed a tree which grew near his house, he said. On direct examination Lenzen testified that the total takeoffs and landings ranged from "close to 300" in 1973 to approximately 25 in 1977. On cross-examination, however, he acknowledged that some of the flights over his house were attributable to another airport. A film taken by Lenzen depicting takeoffs and landings at defendant's landing strip and over-flights of Lenzen's house were received into evidence.

There was additional testimony stating that use of the landing strip did not interfere with the use or enjoyment of parcels of land located 155 feet from the landowner's property or to homes located 300 feet away. The landowner presented evidence that his use of the land was compatible with surrounding uses and that the landing strip met the safety requirements of the State of Illinois. A real estate appraiser called by plaintiff testified that defendant's property was best suited for "farmette" or "estate" uses and that the landing strip had "a depreciatory effect on the values of property surrounding it." The court ultimately found in the landowner's favor and made no further mentioned of the RLA's adverse effect on the public health, safety or welfare.

Conclusion:

Both of the above cases demonstrate the high bar local zoning authorities must meet when seeking to enjoin a property owner from enjoying and using his/her property and he/she she chooses. While it is understandable neighbors will not necessarily embrace the construction of an RLA in their neighborhoods or near their homes, their opposition to the propose RLA alone is insufficient to enjoin its construction. In this case, the Division of Aeronautics cleared Dr. Jones' property as technically safe and therefore suitable for operating an RLA. A realtor presented a letter indicating the property values will not decreased as a result of the RLA, and a number of individuals submitted letters in support of the proposed RLA including the Douglas and Champaign County Sheriff's Departments. Regarding the noise concerns presented by the neighbors, the property is located along Route 130 which creates far more noise than the Dr. Jones' aircraft ever will. As a result, there is insufficient

evidence supporting the notion that the proposed RLA bares any substantial relation to the public health, safety or welfare and it should, therefore, be granted.

C

Appellate Court of Illinois, Second District.
Ronald G. WRIGHT and Patricia Rose Wright, Plaintiffs-Appellants,
v.
COUNTY OF WINNEBAGO, a body politic and corporate, Defendant-Appellee.

No. 77-359.
June 22, 1979.

Property owners filed suit for injunctive and declaratory relief, claiming a denial of due process by reason of the denial of their petition for a special use permit to allow use of their property as a restricted landing area. The Winnebago County Circuit Court, William R. Nash, J., denied relief, and plaintiffs appealed. The Appellate Court, Guild, J., held that: (1) the questions raised by plaintiffs in their posttrial motion, viz., a local government's power to regulate aircraft noise and safety, were properly before the Appellate Court, since the trial court was given an opportunity to rule on those questions, and since the county was given an opportunity to argue them to the trial court while arguing the merits of the posttrial motion; (2) Federal Aviation Act does not preempt local power to decide whether to allow new private restricted landing areas on the basis of potential noise problems; (3) while a county may zone on the basis of aircraft noise, the county had not done so properly in the instant case; and (4) the county failed to demonstrate that the denial of the petition bore any substantial relation to the public health, safety or welfare.

Reversed.

Rechenmacher, J., filed a dissenting opinion.

West Headnotes

[1] Zoning and Planning 414 ⚿1016

414 Zoning and Planning
414I In General
414k1016 k. Factors considered. Most Cited Cases
(Formerly 414k12)

Factors which trial court should consider in weighing the validity of a zoning ordinance are the existing uses and zoning of nearby property, the extent to which surrounding property would be depreciated by the proposed use, the suitability of the subject property for the zoned purposes, the extent to which reduction in the value of the property promotes the health, safety, morals or general welfare of the public, and the relative gain to the public as compared to the hardship imposed on the property owner.

[2] Zoning and Planning 414 ⚿1725

414 Zoning and Planning
414X Judicial Review or Relief
414X(D) Determination
414k1725 k. Findings and statement of decision. Most Cited Cases
(Formerly 414k723)

In property owners' suit for injunctive and declaratory relief, claiming a denial of due process by reason of the denial of plaintiffs' petition for a special use permit to allow use of their property as a restricted landing area, the finding that the county had drawn a "line" to limit proliferation of restricted landing areas was erroneous; such a "line" was not used as a basis for denying the special use permit application and, hence, could not be used to justify that denial. U.S.C.A.Const. Amend. 14.

[3] Appeal and Error 30 ⚿169

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(A) Issues and Questions in Lower Court
30k169 k. Necessity of presentation in general. Most Cited Cases

Appeal and Error 30 ⚿171(1)

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(A) Issues and Questions in Lower Court
30k171 Nature and Theory of Cause
30k171(1) k. In general; adhering to theory pursued below. Most Cited Cases

An appellate court should not consider different theories or new questions if proof might have been offered to refute or overcome them had they been presented at trial.

[4] Appeal and Error 30 ⚿302(1)

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(D) Motions for New Trial
30k302 Sufficiency and Scope of Statement of Grounds
30k302(1) k. In general. Most Cited Cases

In property owners' suit for injunctive and declaratory relief, claiming a denial of due process by reason of the denial of their petition for a special use permit to allow use of their property as a restricted landing area, the questions raised by plaintiffs in their posttrial motion, viz., a local government's power to regulate aircraft noise and safety, were properly before the Appellate Court, since the trial court was given an opportunity to rule on those questions, and since defendant county was given an opportunity to argue them to the trial court while arguing the merits of the posttrial motion. U.S.C.A.Const. Amend. 14.

[5] Commerce 83 ⚿82.45

83 Commerce
83II Application to Particular Subjects and Methods of Regulation
83II(K) Miscellaneous Subjects and Regulations
83k82.45 k. Aviation. Most Cited Cases

Federal Aviation Act does not preempt local power to decide whether to allow new private restricted landing areas on the basis of potential noise problems. Federal Aviation Act of 1958, § 101 et seq. as amended 49 U.S.C.A. § 1301 et seq.

[6] Zoning and Planning 414 ⚿1368

414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(A) In General
414k1368 k. Aviation and airports. Most Cited Cases
(Formerly 414k384.1, 414k384)

While a county may zone on the basis of aircraft noise, county had not done so properly in the instant case, involving the denial of a special use permit to allow use of property as a restricted landing area.

[7] Aviation 48B ⚿9

48B Aviation
48BI Control and Regulation in General
48BI(A) In General
48Bk9 k. Local regulations. Most Cited Cases

County would not be permitted to substitute its judgment for that of the State Division of Aeronautics on a question of whether plaintiffs' proposed restricted landing area had met the Division's technical standards.

[8] Zoning and Planning 414 ⚿1368

414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(A) In General
414k1368 k. Aviation and airports. Most Cited Cases
(Formerly 414k435)

To justifiably deny the use of a restricted landing area on the basis of safety despite provisional approval by the State Division of Aeronautics, a local zoning authority must bring forward some objective evidence of a particular safety problem or

hazard peculiar to this RLA rather than speculative fears of local residents which might exist for any restricted landing area.

[9] Zoning and Planning 414 ⚿1368

414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(A) In General
414k1368 k. Aviation and airports. Most Cited Cases
(Formerly 414k435)

County, which denied petition for a special use permit to allow use of plaintiffs' property as a restricted landing area, failed to demonstrate that the denial of the petition bore any substantial relation to the public health, safety or welfare.

***339 **774 ***349** Thomas & Thomas, James W. Keeling, Rockford, for plaintiffs-appellants.

Daniel D. Doyle, State's Atty., James M. Hess, Asst. State's Atty., Rockford, for defendant-appellee.

GUILD, Justice:

Plaintiffs, Ronald and Patricia Wright, are owners of property in Winnebago County presently zoned for agricultural use. In May, 1976 Ronald Wright petitioned the county for a special use permit to allow use of the property as a Restricted Landing Area (hereinafter RLA). A public hearing was held before the Zoning Board on June 22, 1976, at which a representative of the City-County Planning Commission testified in favor of the petition. The Zoning Board, however, recommended denial of the petition and the County Board did subsequently deny the petition. Ronald Wright then filed suit for injunctive relief and declaratory judgment, claiming denial of the special use permit to be a violation of the due process clause of the constitutions of the United States and Illinois. Patricia Wright was added as a party plaintiff without objection. The circuit court denied plaintiffs' request for relief, finding the denial to be reasonable. A post-trial motion, contending that the basis for denying the special use permit had been preempted by the Illinois Aeronautics Act (Ill.Rev.Stat.1975, ch. 151/2, P 22.1 Et seq.) and the Federal Aviation Act of 1958 (72 Stat. 731, 49 U.S.C. ss 1301 Et seq.), was denied on March 31, 1977. Plaintiffs appeal.

Plaintiffs' property is about 20 acres in size and roughly rectangular, approximately 333 feet from east to west by 2600 feet from north to south. It is improved with a house, garage and a storage building. It is surrounded by agricultural land with a few scattered homes. Rockton Road runs east and west along the northern boundary of the property. The proposed runway would run from south to north with takeoffs probably being to the north.

Plaintiff Ronald Wright testified that he worked as an airline mechanic in Belvidere. He is a licensed pilot and owns one airplane, which he would like to use to fly to and from work in appropriate weather. He estimated an average of one or two takeoffs and landings per day from the field on three or four days a week during the summer months. He admitted that failure to receive the special use permit for the RLA would not reduce the market value of his property.

Mr. Burrille Coppernoll, a flight safety coordinator with the Illinois Department of Transportation, Division of Aeronautics, testified about ***340** the general procedures of that division and as to his inspections of plaintiffs' property. Mr. Coppernoll indicated that upon receipt of an application the Division conducted an initial inspection to see if the proposed property could meet the State safety requirements for an RLA. If a safe RLA were possible, the Division would notify the neighbors and local government that an RLA was under consideration. If, and only if, the property already had or then receives appropriate zoning from local authorities and already has met or is altered to meet the safety requirements, the Division would issue a certificate for the RLA. Regular inspections are carried out by the Division's representatives to insure main-

tenance of property safety standards. A certificate can be revoked if the property becomes unsafe for any reason.**775 ***350 The Division does not consider the nature of the surrounding area except as it would affect the safety of the landing strip itself.

Mr. Coppernoll made two "initial" inspections of plaintiffs' property and indicated that, with removal of certain obstacles at its northern end and with proper grading, seeding and moating of the runway, the property would be suitable for an RLA. A field engineer for Commonwealth Edison testified with regard to the possibility of burying the power lines on plaintiffs' property.

David Atkins, the principal planner of the County Planning Commission, testified that his office had recommended approval of the RLA because it was not inconsistent with the general plan for the area.

Warren Johnson, a real estate broker, testified that he had sold 20 homes in a subdivision near the nearby Honnejah RLA both before and after that RLA began operations and that the existence of the RLA had had no effect on prices of the homes there. He also stated that a house 400 feet from a landing field that had fewer than 10 landings and takeoffs per day would not be reduced in value by the existence of that field. Paul Fridley, a developer, also had sold homes near RLAs and testified that the landing areas had not reduced values of the homes sold. Noriss Leviss, a real estate broker and licensed appraiser, testified that the existence of four other RLAs in the area had not "affected the development of the residential areas adjacent thereto" and that an RLA on plaintiffs' property would have no affect on the value of the property around it.

Arnold Moen, a county zoning official and building officer, testified for the defendant that plaintiffs' property was in a township that was developing into a residential area in a "fairly rapid" manner.

Three of plaintiffs' neighbors testified that they believed that the proposed RLA would reduce the value of their property. Mr. C. Hulbert testified that he lived near another RLA in Winnebago County, and that he and his wife had been significantly disturbed by noise from the RLA.

***341** Thomas Eddie, a land surveyor, testified as to the dimensions, grade and other characteristics of the Wright's property in connection with whether the proposed RLA would be technically safe as a landing field. Albert Ruhmann, a county zoning official and commercial airline pilot, explained in detail the Illinois Division of Aeronautics glide slope regulations and their potential application to plaintiffs' property. Messrs. Eddie and Ruhmann both indicated that, in their opinions, the proposed RLA would not be in compliance with the technical safety standards set by the Illinois Division of Aeronautics. Their testimony, however, was based on the property as it was when they examined it, not on any of the potential alterations suggested by Mr. Coppernoll of the State Aeronautics Division.

[1] Plaintiffs claim that the denial of the special use permit was an unconstitutional deprivation of property in violation of the due process clauses of the federal and Illinois constitutions. The Illinois Supreme Court set forth the test for determining the constitutional validity of a zoning ordinance in Tomasek v. City of Des Plaines (1976), 64 Ill.2d 172, 179-80, 354 N.E.2d 899, 903, as follows:

"An ordinance will be presumed to be valid, and the one attacking an ordinance bears the burden of demonstrating its invalidity. The challenging party must establish by clear and convincing evidence that the ordinance, as applied, is arbitrary and unreasonable and bears no substantial relation to the public health, safety or welfare."

The factors which a trial court should properly consider in weighing the validity of a zoning ordinance are: (1) the existing uses and zoning of nearby property; (2) the extent to which surrounding property would be depreciated by the proposed use; (3)

the suitability of the subject property for the zoned purposes; (4) the extent to which the reduction in the value of the property promotes the health, safety, morals or general welfare of the public; and (5) the relative ****776 ***351** gain to the public as compared to the hardship imposed on the property owner. American National Bank & Trust Co. of Rockford v. City of Rockford (1977), 55 Ill.App.3d 806, 13 Ill.Dec. 620, 371 N.E.2d 337.

In applying these factors to the instant case, the trial court found the denial of the special use permit to be reasonable, stating:

"I have considered all the evidence produced and believe plaintiff's exhibit 26, delineating the present landing strips in defendant county, best demonstrates defendant's basis for denial of the permit in this instance. Almost all of the existing landing areas are to the north and northeast of Rockford in territory now basically zoned agricultural, but rapidly changing to residential. ***342** The defendant has drawn its line for this use and has done so reasonably. It must balance the interest of the few who wish to make this use of their property against the interest of the many who would be required To see, hear and possibly fear such use over and near their property, on property they may otherwise consider purchasing and building homes upon.

The defendant has determined the saturation point for this use in this area and its judgment may not be overturned on the evidence presented in this case. " (Emphasis added.)

Plaintiffs contend the trial court's finding that "defendant has drawn its line" and "determined the saturation point" to be against the manifest weight of the evidence. Plaintiffs agree that the county has the right to limit the number of RLAs but, rather, allege that no such limiting "line" was in fact drawn. This allegation is supported by the record; defendant has not shown that the denial of plaintiffs' special use permit was due to the number of RLAs already operating. Neither the administrative denial of the permit nor defendant's answer mentioned any such "line" basis for denying the special use permit. The exhibit expressly relied on by the trial court was introduced by plaintiffs and not defendant.

More significantly, three county officials testified at the trial and none alleged that the county had drawn any "line" or indicated that any "saturation point" had been determined. None stated that the county would not continue to allow new RLAs in plaintiffs' part of the county. David Atkins, the principal planner of the county, testified that he had recommended the granting of plaintiffs' petition for an RLA. Arnold Moen did testify that the area in question was undergoing a rapid transition from agricultural to residential but said nothing about that development being the basis of the denial of the petition. Albert Ruhmann also mentioned nothing about any "line" or "saturation point" but did admit that the county had approved other applications involving RLAs subsequent to plaintiffs' application. Although defendant correctly points out that these other applications can be distinguished from plaintiffs' this distinction goes only to plaintiffs' allegation that the subsequent approvals were inconsistent with some hypothetical "line", it does not indicate that such a "line" actually existed.

[2] We conclude, therefore, that the finding that the county had drawn a "line" to limit proliferation of RLAs was erroneous. Such a "line" was not used as a basis for denying the special use permit herein and, hence, cannot be used to justify that denial.

Plaintiffs did not raise the issues of a local government's power to regulate aircraft noise and safety until their post-trial motion. Thus, we must first deal with whether these issues are properly before us. ***343** Defendant cites the rule that objections to evidentiary matters must be made when the evidence is introduced at trial, and argues that by failing to object to the evidence pertaining to noise and safety plaintiffs have waived any argument on its relevance. Plaintiffs' arguments, however, go to a developing area of the law and are not appropri-

ately characterized solely as evidence questions.

777 [3][4] ***352 It is true that an appellate court should not consider different theories or new questions if proof might have been offered to refute or overcome them had they been presented at trial. (Hux v. Raben (1967), 38 Ill.2d 223, 225, 230 N.E.2d 831, 832.) In the instant case, however, plaintiffs did not wait until the appeal but raised the issues on a post-trial motion before the trial court. The trial court was given an opportunity to rule on the question. Defendant was given an opportunity to argue the questions to the trial court while arguing the merits of the post-trial motion, and in fact did so. We fail to see how defendant has been prejudiced by plaintiffs' failure to raise the issues at an earlier state. Therefore, the questions raised by the plaintiffs in the post-trial motion are properly before this court.

Plaintiffs argue that the question of aircraft noise has been preempted by federal regulation and that, therefore, local governments cannot attempt to regulate this noise by the use of zoning ordinances. Recent case law at least appears to support this contention. In Village of Bensenville v. City of Chicago (1973), 16 Ill.App.3d 733, 306 N.E.2d 562, the First District appellate court held municipalities surrounding O'Hare Field powerless to declare a proposed extension of O'Hare a public nuisance based on expected air and noise pollution. The court held that:

" * * * the United States * * * has, through the Federal Aviation Act, as now supplemented by the Noise Control Act of 1972 and the regulations issued thereunder, so occupied the regulation of aircraft noise and air pollution as to pre-empt any state or local action in that field." 16 Ill.App.3d at 738, 306 N.E.2d at 566.

In reaching the above conclusion, the court relied heavily on City of Burbank v. Lockheed Air Terminal, Inc. (1973), 411 U.S. 624, 93 S.Ct. 1854, 36 L.Ed.2d 547. In that case Burbank passed an ordinance limiting jet takeoff to daytime hours to lessen the noise problem at night. The United States Supreme Court held the ordinance to be unconstitutional on the ground that federal regulation of airport noise was so pervasive so as to preempt state and local control of that area. The court relied on the need for uniformity in the area and noted that similar regulation by numerous local municipalities would seriously interfere with the FAA's control of air traffic flow.

Defendant urges us to limit the language in Burbank and Bensenville to the facts of those cases. It contends that the instant case should be ***344** distinguished from both because it involves a privately owned, personally used airstrip that is not yet operating. No commercial use would be allowed. It is unlikely that the FAA would ever regulate the air traffic flow in and out of plaintiffs' property. No need for uniformity is evident. Furthermore, Winnebago County is not attempting to regulate an already existing airfield but is determining whether to allow the use at all. Defendant contends that this decision is particularly local in that it involves consideration of the appropriate use of land rather than regulation of already existing uses. Once an airport is operating, defendant argues, it may be that only the FAA can regulate the resulting noise problem, the right not to choose not to have an airport in the first place should be local, especially where the airport is one where service to the public is not a consideration.

[5] We find defendant's arguments convincing. There is no express provision of preemption in the Federal Aviation Act of 1958 as amended by the Noise Control Act of 1972 (86 Stat. 1234). The test for whether federal preemption exists in the absence of such an express provision was set forth in Rice v. Santa Fe Elevator Corp. (1946), 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed. 1447, as follows:

"So we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress. * * * Such

a purpose may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make it reasonable**778 ***353 the inference that Congress left no room for the States to supplement it. * * * Likewise, the object sought to be obtained by the federal law and the character and obligations imposed by it may reveal the same purpose. * * * Or the state policy may produce a result inconsistent with the objective of the federal statute."

In the absence of any evidence of pervasive federal regulation of the placement of RLAs, or that the denial of this special use permit would interfere with federal policies, we conclude that the Federal Aviation Act does not preempt local power to decide whether to allow new private RLAs on the basis of potential noise problems.

[6] Having determined that a county could theoretically zone on the basis of aircraft noise, we turn to whether it has done so properly in this case. We find that it has not. No standards for noise are set out in the ordinance itself; there has been no objective determination as to exactly how much noise plaintiffs' aircraft makes or of direct physical deleterious effect upon their neighbors; there has been no evidence that plaintiffs' proposed airfield would be particularly badly placed because of a noise hazard, i. e. near a hospital. All there has been are complaints from three neighbors to the effect that they personally find the noise from aircraft *345 highly undesirable. While we can sympathize with their feelings, this simply is not enough reason to deny plaintiffs the right to use their land as they please when there has been expert testimony indicating that the RLA would not negatively affect the neighbors' property values.

The question of safety and the relation of local zoning to the powers of the Division of Aeronautics is confusing because there are two different types of airfield safety: the technical safety of the field itself, i. e. runway length, and the broader public safety questions potentially present in even the most technically safe airfield.

[7] In County of DuPage v. Harris (1967), 89 Ill.App.2d 101, 231 N.E.2d 195, we indicated that the Aeronautics Act did not repeal any local zoning powers, commenting that:

"* * * the Aeronautics Act is designed to promote the public interest and aeronautical progress primarily by promoting safety in aeronautics. The County Zoning Act is designed to promote the general welfare and to conserve the values of property throughout the county by regulating and restricting the location and use of buildings, structures and land. Neither is so repugnant to the other that the two Acts may not exist Or be applicable concurrently." 89 Ill.App.2d at 109, 231 N.E.2d at 199. (Emphasis added.)

Thus, broader public safety questions are properly the concern of local zoning authorities. Indeed, since the Division does not concern itself with non-technical aspects of airports and the public welfare, it is the county's duty to make an independent evaluation of these factors. However, after reviewing the evidence, we must conclude that the decision of the trial court was based upon technical safety aspects of the proposed RLA. Messrs. Eddie and Ruhmann both were called by defendant to testify with regard to alleged technical safety problems of the Wright's property. No comparable evidence was introduced by defendant on non-technical aspects of safety except for the observation that one neighbor's house was near the end of the proposed runway. Rather, the county has attempted to substitute its judgment for that of the State Division of Aeronautics on the question of whether plaintiffs' RLA has met the Division's technical standards. This the county cannot be permitted to do. The Division has established clear technical safety standards and a comprehensive inspection scheme to enforce them and has more expertise in the enforcement of its own standards than the county. Moreover, in this particular case the county's witnesses attached the safety of the property for use as a RLA "as is" and did not consider its suitability if the changes suggested by Mr. Coppernoll and required for certifica-

tion were made.

[8] The non-technical safety aspects of this case are comparable to those in **779***354American National Bank & Trust Co. of Rockford v. City of Rockford (1977), 55 Ill.App.3d 806, 13 Ill.Dec. 620, 371 N.E.2d 337, which involved the denial by Rockford of *346 the special use permit for an RLA. At trial a Rockford alderman testified against the proposed special use alleging potential safety problems and a detrimental effect on the people in the surrounding area. We concluded that these

"* * * objections to the safety of this proposed restricted landing area are not reasonable and justifiable based on this record, in light of the preliminary safety determination made by the Aeronautics Division of the Illinois Department of Transportation, and the further safety studies that will be conducted by that department prior to the issuance of a certificate for a restricted landing area." 55 Ill.App.3d at 810, 13 Ill.Dec. at 624, 371 N.E.2d at 341.

In other words, to justifiably deny the use of an RLA on the basis of safety despite provisional approval by the Division, a local zoning authority must bring forward some objective evidence of a particular safety problem or hazard peculiar to this RLA rather than speculative fears of local residents which might exist for any restricted landing area.

[9] For the foregoing reasons we find that Winnebago County has failed to demonstrate that the denial of plaintiffs' petition bears any substantial relation to the public health, safety or welfare. Therefore, we must reverse.

REVERSED.

SEIDENFELD, P. J., concurs.

RECHENMACHER, Justice, dissenting:

I respectfully dissent. The plaintiffs here are challenging a zoning regulation which has been upheld by the trial court. In my opinion, the plaintiffs have failed to show by clear and convincing evidence that the denial bore no substantial relation to health, safety and/or welfare. The trial court felt that the planning for future residential development was a reasonable basis for drawing the line on zoning for additional Restricted Landing Areas.

In this the trial court was apparently influenced by the plaintiffs' exhibit showing that the majority of the 22 already existing R.L.A.'s in Winnebago County were located to the north and northeast of Rockford, as was the petitioner's land. Apparently the decision of the county authorities to turn down the petition for a new R.L.A. in the same area was reasonably taken by the trial court as an indication that the county authorities had drawn the line as to expansion of R.L.A.'s in that area which is developing rapidly as a residential area.

This appears to be a rational conclusion and to be reasonably related to the health, safety, comfort and convenience of the public.

The trial court's decision, in my opinion, should be affirmed.

Ill.App. 2 Dist., 1979.
Wright v. Winnebago County
73 Ill.App.3d 337, 391 N.E.2d 772, 29 Ill.Dec. 347

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C Wright v. Winnebago County, 73 Ill.App.3d 337, 391 N.E.2d 772, 29 Ill.Dec. 347 (Ill.App. 2 Dist., Jun 22, 1979) (NO. 77-359)

History

Direct History

=> 1 **Wright v. Winnebago County,** 73 Ill.App.3d 337, 391 N.E.2d 772, 29 Ill.Dec. 347 (Ill.App. 2 Dist. Jun 22, 1979) (NO. 77-359)

H

Supreme Court of Illinois.
The COUNTY OF LAKE, Appellant,
v.
The FIRST NATIONAL BANK OF LAKE FOREST et al., Appellees.

No. 51934.
March 21, 1980.

County sought to enjoin beneficiary of land trust for which bank was trustee from violating county's zoning ordinance by using land for restricted landing area and air museum. The Circuit Court, Lake County, Fred H. Geiger, J., enjoined beneficiary and bank from operating private aircraft landing strip and air museum and they appealed. The Appellate Court, 68 Ill.App.3d 693, 386 N.E.2d 394, 25 Ill.Dec. 123, reversed that portion of the order, and county appealed. The Supreme Court, Goldenhersh, C. J., held that: (1) zoning ordinance which expressly provides for conditional use permits for airports and heliports is ambiguous and therefore did not apply to require landowner to seek such conditional use permit for operating restricted landing area, and (2) where the only evidence which would indicate adverse effect on public health, safety, or welfare by landowner's operation of air museum on the property in area zoned agricultural was that on three or four occasions during year visitors to museum had parked automobiles on shoulders of road and in some instances had used neighboring property to turn around, and there was no evidence to indicate that these occasional occurrences in any way disrupted flow of traffic or hindered motorists in use of roadway, zoning ordinance prohibiting such use, insofar as it related to landowners' property, was void and enforceable by county, which itself maintained and operated museum in area zoned agricultural.

Judgment affirmed.

West Headnotes

[1] Zoning and Planning 414 ⚿1035

414 Zoning and Planning
414II Validity of Zoning Regulations
414II(A) In General
414k1035 k. Validity of regulations in general. Most Cited Cases
(Formerly 414k21)

Rule that ordinance is void if it is indefinite and uncertain and its precise meaning cannot be ascertained applies to zoning ordinances.

[2] Zoning and Planning 414 ⚿1368

414 Zoning and Planning
414VIII Permits, Certificates, and Approvals
414VIII(A) In General
414k1368 k. Aviation and airports. Most Cited Cases
(Formerly 414k384.1, 414k384)

Zoning ordinance which expressly provided for conditional use permits for airports and heliports in agricultural zone was ambiguous and therefore did not apply to require landowner to seek such conditional use permit for operating restricted landing area on his property zoned agricultural.

[3] Zoning and Planning 414 ⚿1050

414 Zoning and Planning
414II Validity of Zoning Regulations
414II(A) In General
414k1050 k. Aesthetic considerations. Most Cited Cases
(Formerly 414k36)

Aesthetic considerations, although not disregarded, are not controlling in zoning cases and are often matter of personal taste.

[4] Zoning and Planning 414 ⚿1091

414 Zoning and Planning
414II Validity of Zoning Regulations

414II(B) Particular Matters
414k1091 k. Entertainment and recreation; theaters. Most Cited Cases
(Formerly 414k76)

Where only evidence which would indicate adverse effect on public health, safety, or welfare by landowner's operation of air museum on the property in area zoned agricultural was that on three or four occasions during year visitors to museum had parked automobiles on shoulders of road and in some instances had used neighboring property to turn around, and there was no evidence to indicate that these occasional occurrences disrupted flow of traffic or hindered motorists in use of roadway, zoning ordinance prohibiting such use, insofar as it related to landowners' property, was void and unenforceable by county, which itself maintained and operated museum in area zoned agricultural.

***221 **592 ***590** Dennis P. Ryan, State's Atty., Waukegan (James ***222** C. Bakk, Libertyville and Gary Neddenriep, Asst. State's Attys., Waukegan, of counsel), for appellant.

Erwin W. Jentsch, Elgin, for appellees.

GOLDENHERSH, Chief Justice:

Plaintiff, the County of Lake, filed this action in the circuit court of Lake County seeking to enjoin defendants, the First National Bank of Lake Forest and Amalio N. Polidori, from violating the county's zoning ordinance. Defendants filed a counterclaim for a declaratory judgment that the ordinance was void insofar as it purported to prohibit the use of defendants' land for a restricted landing area and a museum. Following a hearing, the circuit court entered an order enjoining defendants from operating, inter alia, a private aircraft landing strip and an "air museum," and defendants appealed. The appellate court reversed the order except as to the portion which enjoined the operation of an interior-decorating business and a warehouse-antique business (68 Ill.App.3d 693, 25 Ill.Dec. 123, 386 N.E.2d 394), and we allowed plaintiff's petition for leave to appeal.

The record shows that defendant Polidori, who is the beneficiary of a land trust for which the First National Bank of Lake Forest is trustee (hereinafter reference will be made only to defendant Polidori), acquired the 45-acre parcel here involved in 1952. In 1960 defendant applied to the Department of Aeronautics for permission to operate a "restricted landing area" on the property. Although the county and surrounding property owners were given notice and an opportunity to object, none did so. Notwithstanding its failure to object before the Department of Aeronautics, the county, in 1960, by letter, notified defendant that the site of his proposed landing strip was located in an "F" (farming) zone and that he would be required a secure a special use permit from the county board before proceeding. Defendant did not do so. In 1961 the Department of Aeronautics certified defendant's***223** landing strip as a restricted landing area, and it was so used until enjoined by the circuit court.

The Lake County zoning ordinance was revised in 1966. The record does not contain the ordinance in force prior to that time, but an exhibit indicates that the designation of the zoning classification applicable to defendant's property was changed from F (farming) to AG (agricultural). The ordinance as revised required a "conditional use permit" for the operation of an "airport" or "heliport" in an agricultural zone. The ordinance does not contain a definition of either term. Museums are not enumerated among the conditional uses for which standards are provided in the ordinance.

****593 ***591** It is not clear from the record when defendant began operating his air museum. Defendant assembled a collection of World War II aircraft, parts and related items of interest and began soliciting "donations" from visitors. This enterprise was known as the "Victory Air Museum." Called under section 60 of the Civil Practice Act (Ill.Rev.Stat.1977, ch. 110, par. 60), defendant testified that 2,500 to 3,000 persons visited the museum in 1976 and approximately 2,000 did so in 1977. In 1977 the museum generated a gross in-

come of approximately $2,900. Robert Streicher, the director of building and zoning for Lake County, testified on cross-examination that defendant's was not the only museum operating in an agricultural zone. Lake County itself maintains a museum in an area zoned AG.

Other witnesses testified concerning the effects of the landing strip and the museum on surrounding uses and as to the highest and best use of the property. Joseph Lenzen, whose property abuts the defendant's landing strip at the strip's north end, testified that planes frequently fly over his property in taking off and landing at defendant's airstrip. On one occasion a plane brushed a tree which grew near his house. Lenzen testified on direct examination that total takeoffs and landings ranged from "close to 300" in 1973 to approximately 25 in 1977. ***224** However, on cross-examination he acknowledged that some of the flights over his house were attributable to Campbell Airport at Grayslake. A film taken by Lenzen depicting takeoffs and landings at defendant's landing strip and overflights of Lenzen's house was received in evidence.

There was testimony that use of the landing strip did not interfere with the use or enjoyment of a parcel of land located 155 feet from the defendant's land or a house located 300 feet away. Witnesses testified concerning the unsuitability of defendant's land for agricultural purposes and that only approximately 25% to 35% of the parcel was "farmable." Defendant adduced testimony that his use of the land was compatible with surrounding uses and that the landing strip met the safety requirements of the State of Illinois. There was testimony that the museum was of historical value and contained "rare" and "very rare" aircraft. There was conflicting testimony concerning whether the presence of persons attracted to the museum interfered with the use or enjoyment of surrounding parcels of land. A real estate appraiser called by plaintiff testified that defendant's property was best suited for "farmette" or "estate" uses and that the landing strip and museum had "a depreciatory effect on the values of property surrounding it."

We consider first the question whether the plaintiff's ordinance is applicable to a restricted landing area. The circuit court found "That the desired use of the property as a private landing strip requires a special permit from the County Board" and enjoined the use of "the property which is the subject matter of this lawsuit as a landing strip for aircraft." In reversing that portion of the order, the appellate court held that although the zoning ordinance required airports and heliports to possess conditional use permits, it failed to define either term. It concluded that the definitions of "airport" and "restricted landing area" contained in the Illinois Aeronautics Act (Ill.Rev.Stat.1975, ch. 151/2, pars. 22.6, 22.8) were mutually exclusive. After reviewing the definitions contained***225** in the municipal airport authorities act (Ill.Rev.Stat.1975, ch. 151/2, par. 68.1), the County Airports Act (Ill.Rev.Stat.1975, ch. 151/2, par. 110), and the St. Louis Metropolitan Area Airport Authority Act (Ill.Rev.Stat.1975, ch. 151/2, par. 302(f)), and the rule that zoning ordinances, being in derogation of the common law rights to the use of real property, must be strictly construed in favor of the right of a property owner to the unrestricted use of his property, the appellate court held "that the Lake County Zoning Ordinance is ambiguous and therefore is not applicable to a restricted landing area. Thus, a conditional use permit need not be obtained by this defendant. Accordingly the trial court's injunction entered on Count I of the plaintiff's complaint was improper." 68 Ill.App.3d 693, 698, 25 Ill.Dec. 123, 126, 386 N.E.2d 394, 397.

****594 ***592** Plaintiff's ordinance provides for 20 zones and contains a table of the principal uses permitted in each of them. A footnote to the permitted-principal-uses table provides:

> "The above uses in Table 1 are permitted in the zones designated. However, the Zoning Officer shall have the right to allow any other use which is similar to and compatible with those uses permitted in the zone in question, and which is con-

sistent with the purposes of this Ordinance."

The ordinance also provides:

"B. Variations-It is the intent of this Ordinance to use the variation only to modify the application of this Ordinance to achieve a parity among properties similarly located and classified. Specifically it is to be used to overcome some exceptional physical condition which poses practical difficulty or unnecessary hardship in such a way as to prevent an owner from using his property as intended by the Zoning Ordinance.

3. Standards for Variations-The Zoning Board may grant a variation whenever it shall have determined, and placed in its records, that all of the following conditions have been met:

a. That the variation does not permit a use otherwise***226** excluded from the particular zone in which requested."

In urging that the judgment of the appellate court was erroneously entered and must be reversed, plaintiff contends first that the zoning ordinance which expressly provides for conditional use permits for "airports and heliports" should be construed to include restricted landing areas. It argues that "this provision clearly indicates an intent on the part of the drafters that the permitted principal uses are to be broadly construed." It argues further that proper application of the rule that the ordinance is to be strictly construed in favor of the property owner required that this ordinance be broadly construed to permit restricted landing strips under the designation "airports and heliports." Thus construed, plaintiff argues, the ordinance required that defendant apply for a conditional use permit.

Alternatively, citing City of Chicago v. Sachs (1953), 1 Ill.2d 342, 115 N.E.2d 762, plaintiff argues that where an ordinance lists the permitted uses to which property in an area may be devoted, those uses which are not listed are prohibited. Thus construed, use of defendant's property as a restricted landing area was prohibited and the judgment of the circuit court must be affirmed.

[1][2] The rule that an ordinance is void if it is indefinite and uncertain and its precise meaning cannot be ascertained (Consumers Co. v. City of Chicago (1921), 298 Ill. 339, 131 N.E. 628) applies to zoning ordinances. From our examination of the ordinance here, we conclude that the appellate court correctly held that it is ambiguous and therefore does not apply to a restricted landing area.

Plaintiff contends that the appellate court erred in placing upon it the burden of proving that the aircraft museum was unlawful under a prior existing ordinance and that the question was neither raised by defendant nor argued in his brief on appeal. Defendant concedes that the issue decided by the appellate court was not raised in his brief, but argues that the judgment should be ***227** affirmed for the reason that the judgment of the circuit court should have been reversed on grounds which were properly preserved for review.

The table of permitted principal uses contained in the ordinance shows that "museum or art gallery, public," is a principal use permitted in zones SR (suburban residential), UR-1, UR-2, UR-3 (urban residential), RR (resort residential), and CB (community business). The ordinance provides that in addition to the principal uses permitted in the designated zones, "the zoning officer shall have the right to allow any other use which is similar to and compatible with those permitted in the zone in question and which is consistent with the purposes of this ordinance." The portion of the ordinance which provides "standards for conditional***595 ***593** uses" makes no provision for museums, and clearly the procedure provided for obtaining a variation is inapplicable. It would appear, therefore, that the only method of obtaining a permit for use of defendant's property as a museum would be to seek to rezone it into one of the classifications in which museums are permitted.

[3] There is no contention that defendant's inability to use the property as a museum would have

any substantial effect on its value or that his inability to do so would in any manner affect its sale or development. The area in the vicinity of the property is sparsely populated and generally open space, and apparently has existed in that status for a period of approximately 60 years. The only evidence which would indicate an adverse effect on the public health, safety or welfare was that on three or four occasions during the year visitors to the museum had parked their automobiles on the shoulders of the road and in some instances had used neighboring property to turn around. There was no evidence to indicate that these occasional occurrences in any way disrupted the flow of traffic or hindered motorists in the use of the roadway, and nothing in the record indicates in what manner the problems allegedly resulting would be less difficult if the ***228** property were rezoned. A neighbor testified that the airplanes were "junk" and unsightly. Aesthetic considerations, although not disregarded, are not controlling (La Salle National Bank v. City of Evanston (1974), 57 Ill.2d 415, 432, 312 N.E.2d 625) and are often a matter of personal taste. Further reason to question the validity of the ordinance is that the record shows that the plaintiff county itself maintains and operates a museum in an area zoned AG (agricultural).

[4] On this record it is difficult to perceive in what manner the proscription of the use of the defendant's property as an air museum would bear any real or substantial relation to the public safety, morals, comfort or general welfare. Absent some such relationship the ordinance, insofar as it relates to this property, is void. (La Salle National Bank v. County of Cook (1957), 12 Ill.2d 40, 46, 145 N.E.2d 65.) Because of the conclusions reached we need not consider the remaining contentions briefed and argued by the parties. For the reasons stated the judgment of the appellate court is affirmed.

Judgment affirmed.

Ill., 1980.
Lake County v. First Nat. Bank of Lake Forest
79 Ill.2d 221, 402 N.E.2d 591, 37 Ill.Dec. 589

END OF DOCUMENT

Date of Printing: Dec 12, 2012

KEYCITE

H Lake County v. First Nat. Bank of Lake Forest, 79 Ill.2d 221, 402 N.E.2d 591, 37 Ill.Dec. 589 (Ill., Mar 21, 1980) (NO. 51934)

History

Direct History

1 Lake County v. First Nat. Bank of Lake Forest, 68 Ill.App.3d 693, 386 N.E.2d 394, 25 Ill.Dec. 123 (Ill.App. 2 Dist. Jan 18, 1979) (NO. 78-256)

Judgment Affirmed by

=> 2 **Lake County v. First Nat. Bank of Lake Forest,** 79 Ill.2d 221, 402 N.E.2d 591, 37 Ill.Dec. 589 (Ill. Mar 21, 1980) (NO. 51934)

CASE 688-S-11 Petitioners Phillip and Sarabeth Jones

Jones' Restricted Landing Area
Special Conditions

Owners agree to voluntarily comply with the following procedures in the use and operation of airplanes and helicopters ("Aircraft") on the proposed Restricted Landing Area (RLA):

1. Traffic Patterns. (a) All landing traffic patterns will be flown exclusively south of the RLA, thus maximizing the distance between the Aircraft and neighboring residential properties to the north.

(b) There will be no tight northbound departures below 1000 feet.

2. Altitude Restrictions. There will be an increased traffic pattern altitude of 1500 ft AGL (above ground level) as opposed to the standard 1000ft AGL altitude.

3. Pre-Operation Procedures. All pre-operation run-up procedures will be conducted at the furthest practicable location away from neighboring properties, provided that any pre-operation run-up procedure that is conducted at least as far west as the location of the proposed hanger will be deemed to meet this restriction.

4. Aircraft Storage. Aircraft stored at the RLA will be limited to owner's Aircraft and/or those of parents, children or siblings of owner, which in no case will exceed eight aircraft at any given time.

5. Limitations of Helicopter Use. Except in case of assistance for public safety, owners will limit use of any helicopter to no more than twenty-five (25) take-offs and twenty-five (25) landings in any 12-month period.

6. Limitations of Fixed-Wing Aircraft. Except in case of assistance for public safety, owners will limit the use of any fixed-wing aircraft to no more than thirty-eight (38) take-offs and thirty-eight (38) landings in any 12-month period.

7. Insurance. At any time when take-offs or landings occur, a minimum of five million dollars of liability insurance coverage shall be maintained.

Restricted Landing Areas In and Around Champaign County
(as reflected on the attached Sectional Charts)

---

1. Day Aero-Place – Champaign County
2. Busboom – Champaign County
3. Justus – Champaign County
4. Wilson – Vermilion County
5. Schmidt/Rash – Champaign County
6. McCully – Champaign County
7. Lictchfield – Champaign County
8. Clapper – Champaign County
9. Van Gorder – Piatt County
10. Tripple Creek – Piatt County
11. Cooch – Douglas County
12. Mayhall – Vermilion County
13. Trisler – Vermilion County
14. Hildreth – Vermilion County
15. Cast – Vermilion County
16. Routh – Champaign County

SOUTH

CHICAGO SECTIONAL

SECTIONAL AERONAUTICAL CHART SCALE 1:500,000

NORTH

Federal Aviation Administration

82ND EDITION EFFECTIVE 0901Z **5 MAY 2011**

TO 0901Z **20 OCT 2011**

Includes airspace amendments effective **5 MAY 2011**
and all other aeronautical data received by **10 MAR 2011**

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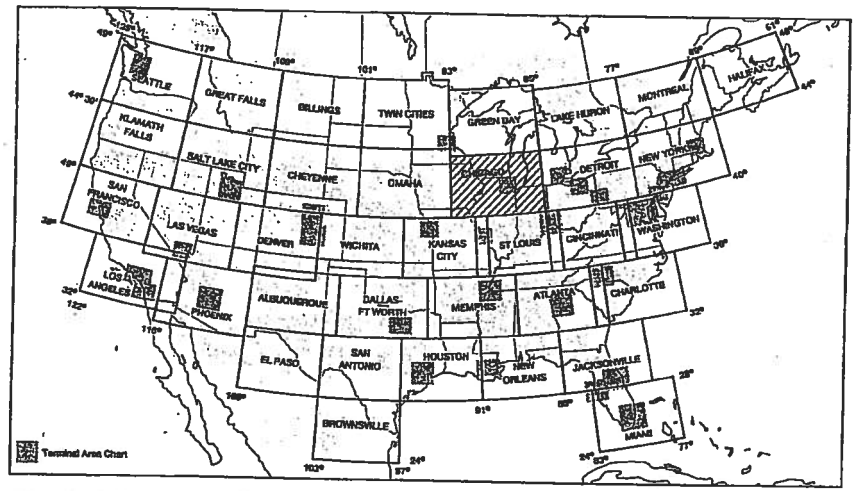

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SECTIONAL AERONAUTICAL CHART SCALE 1:500,000

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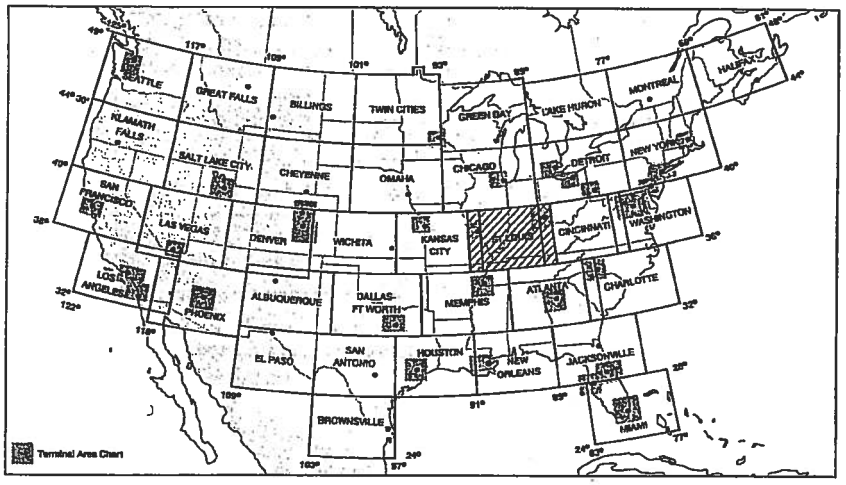

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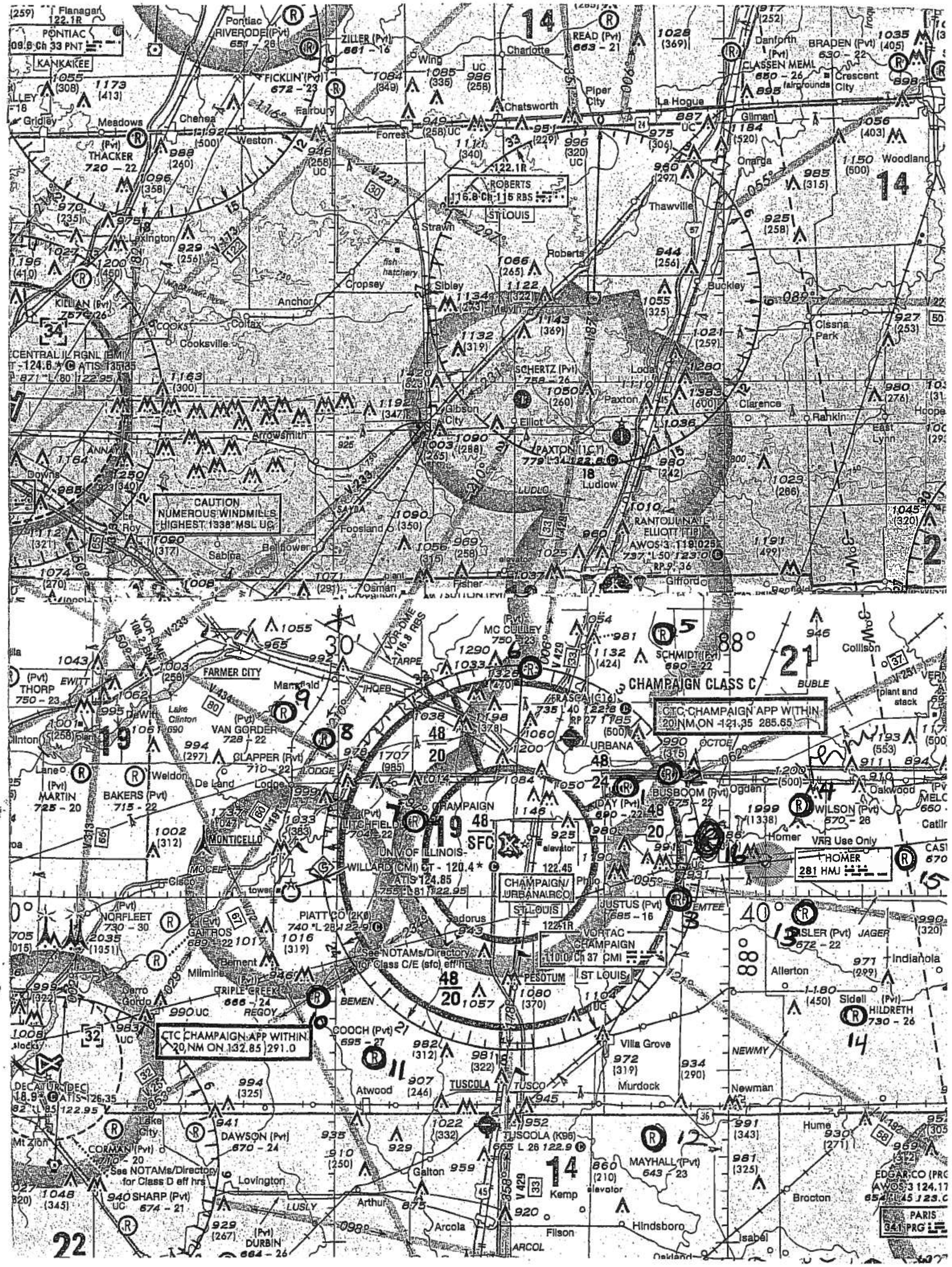
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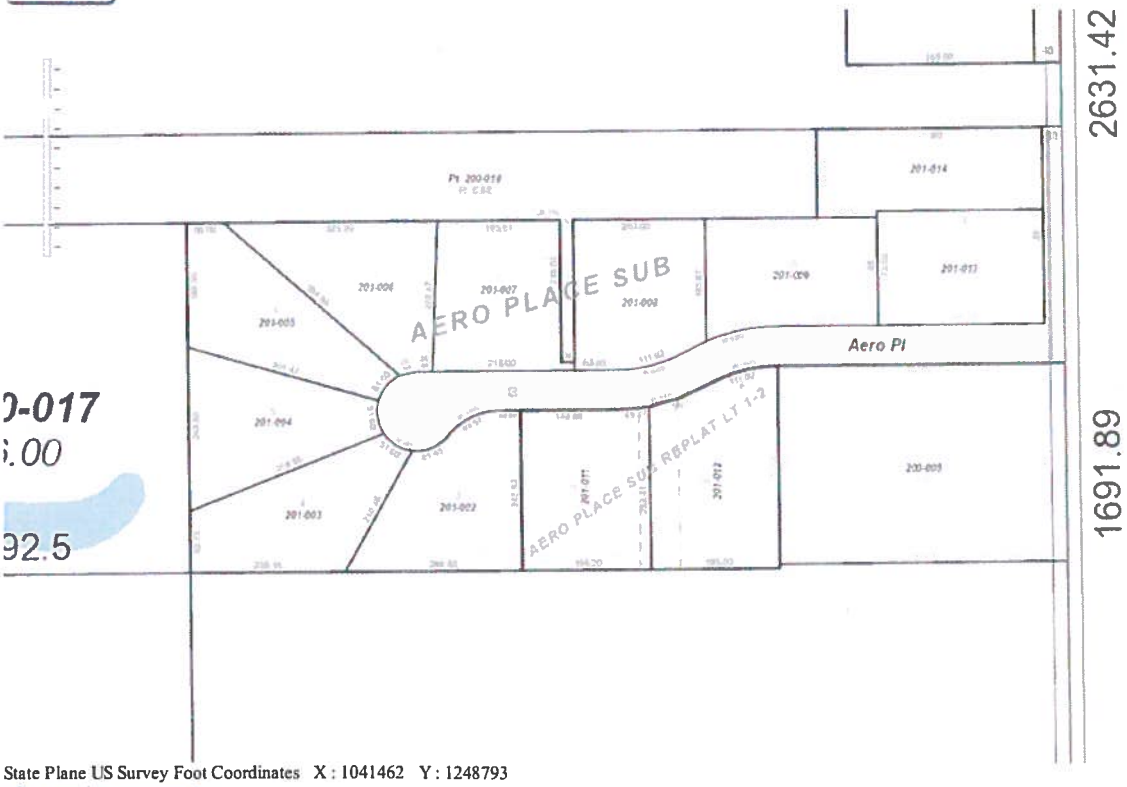

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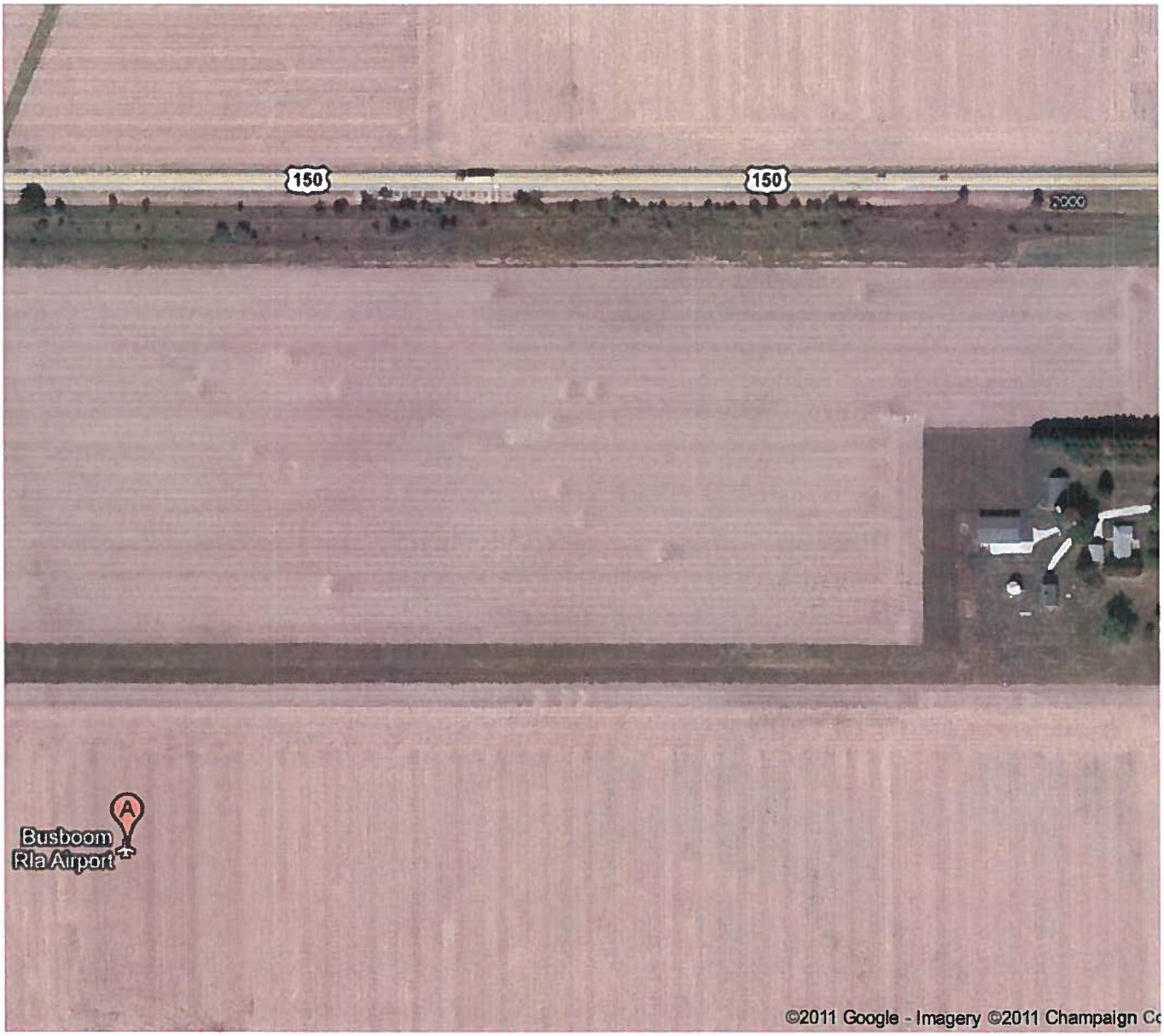

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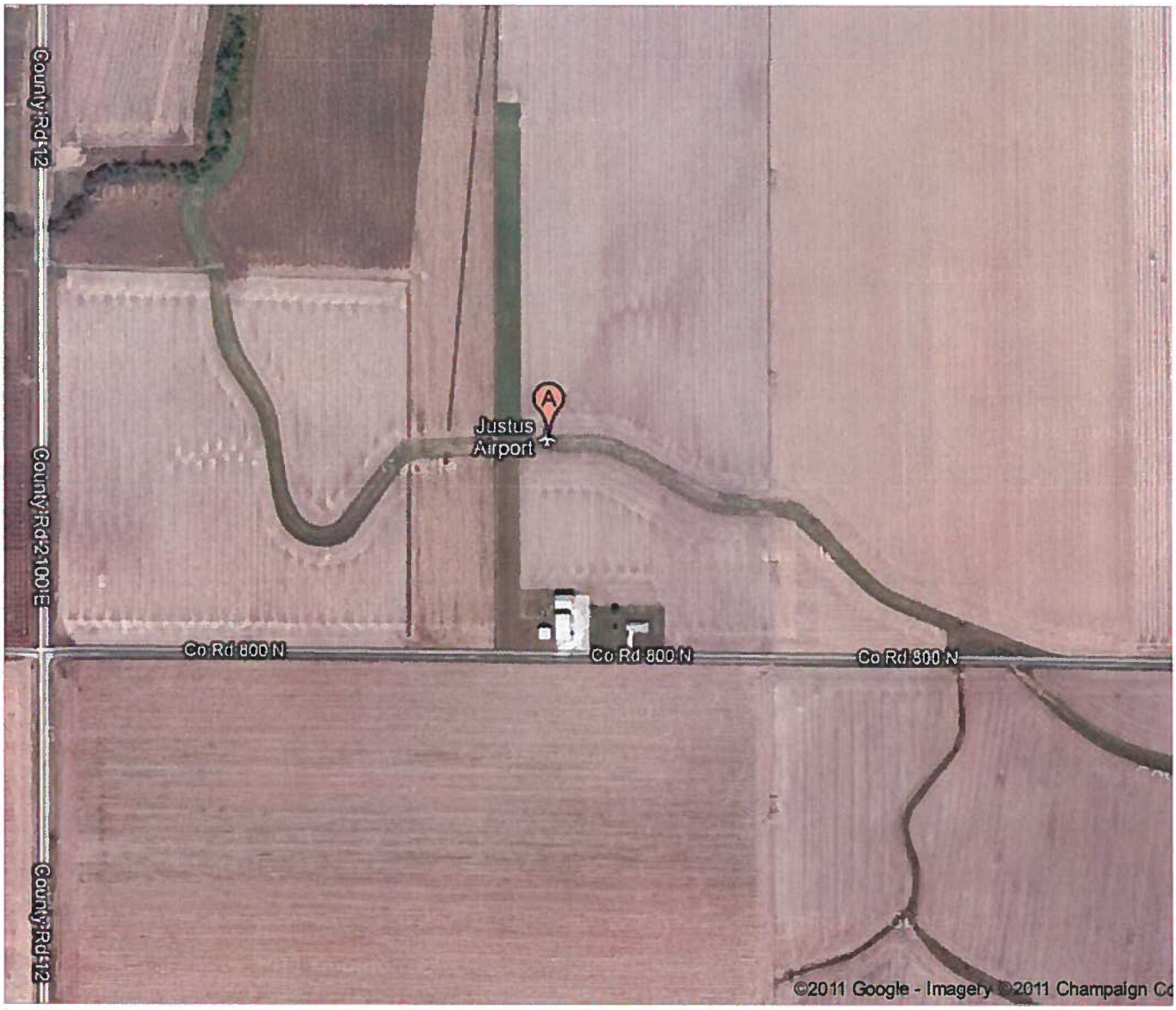

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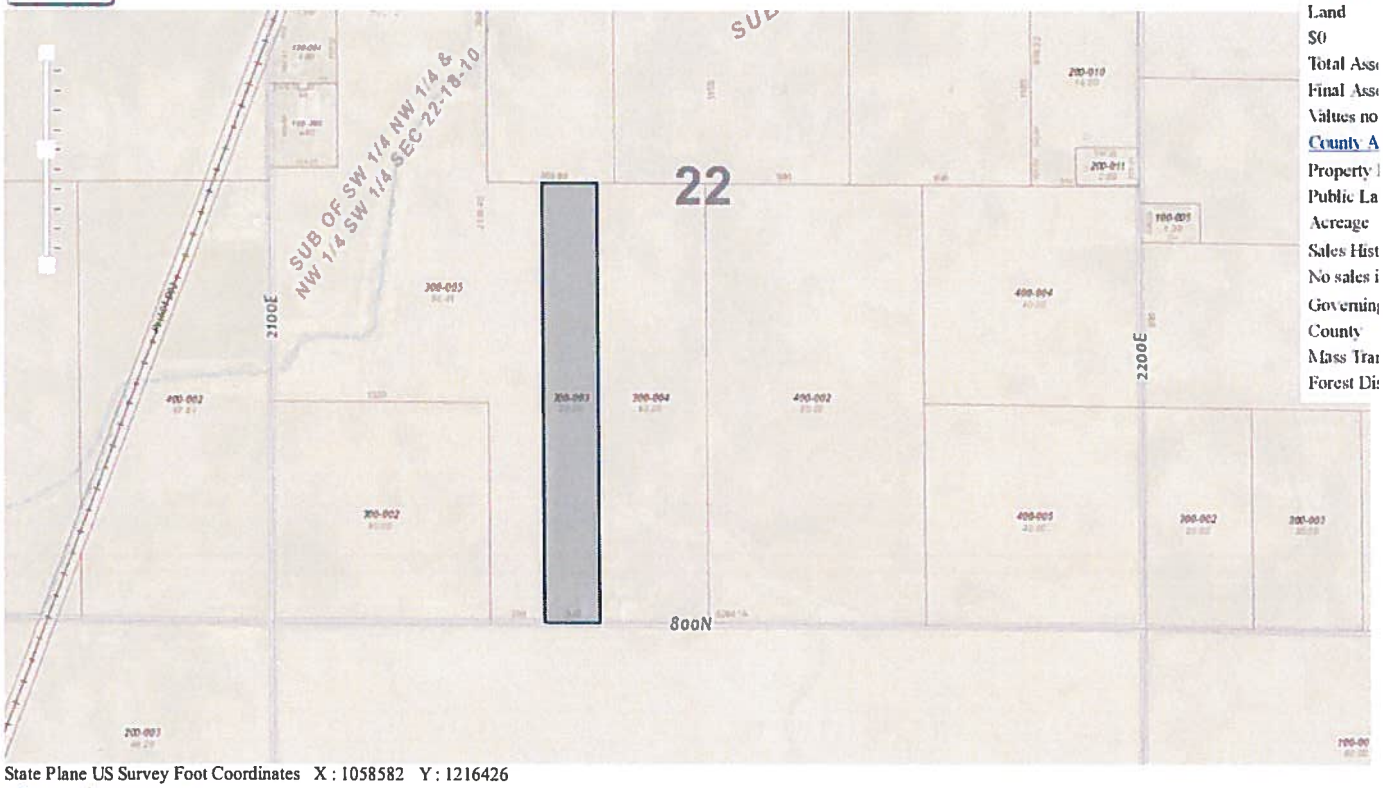

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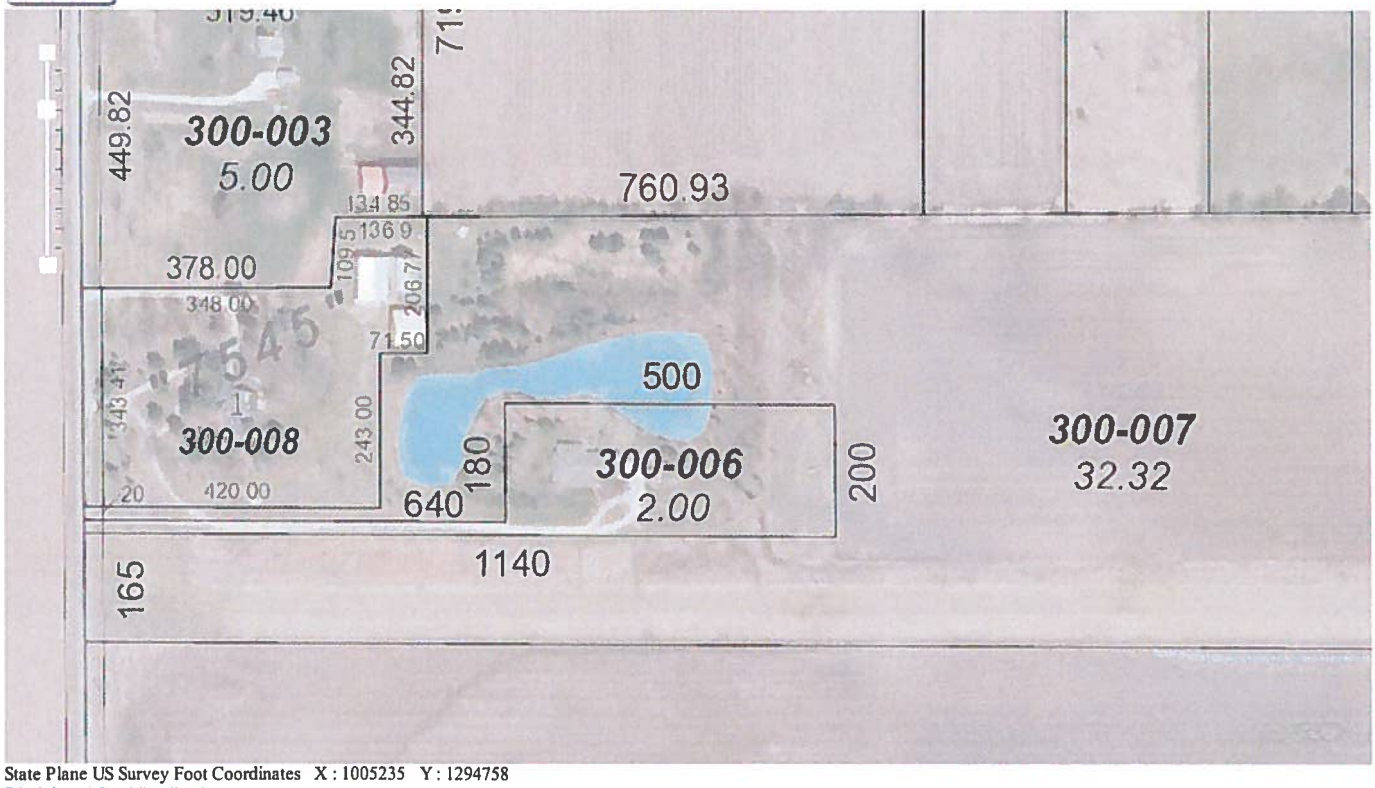

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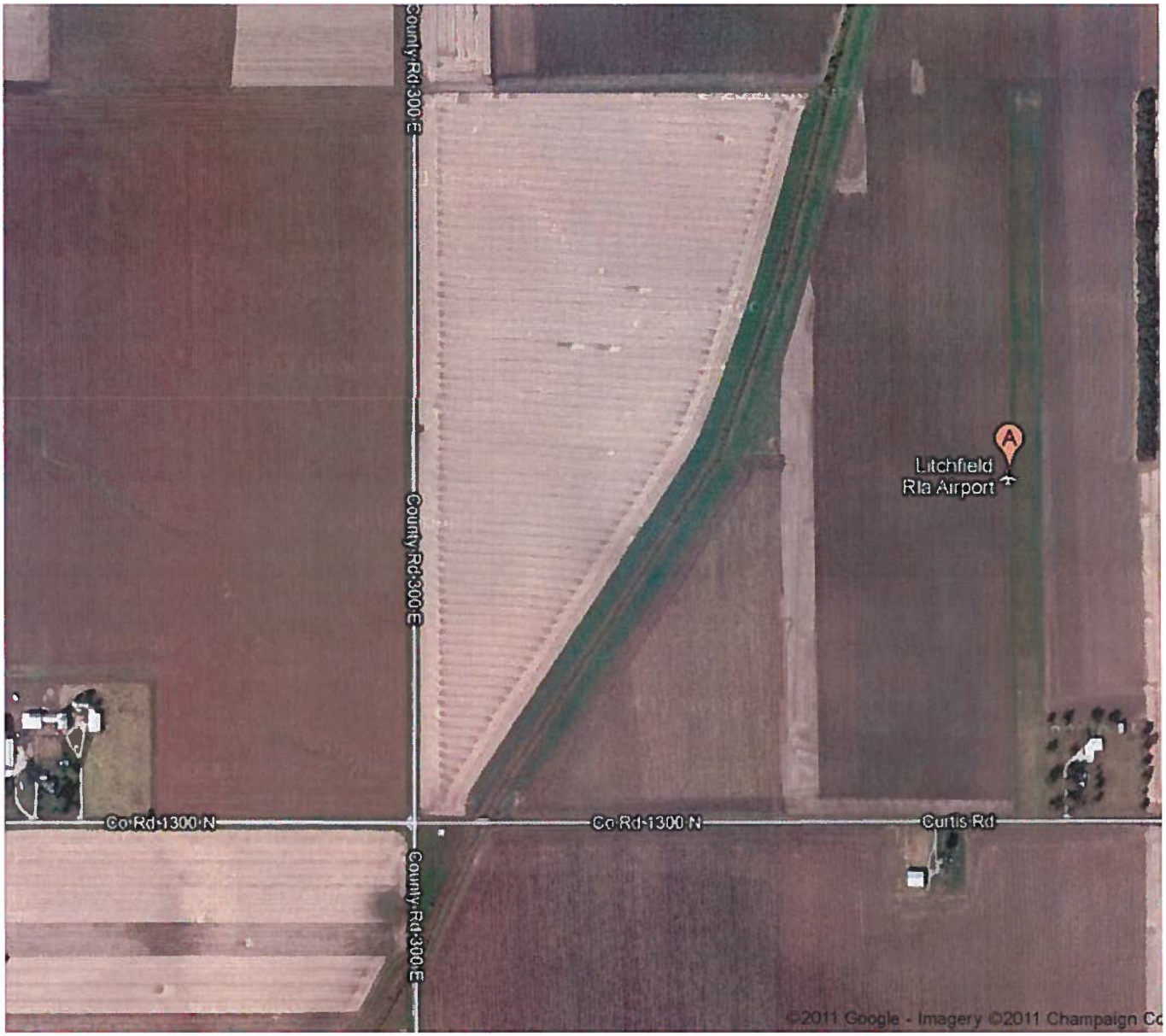

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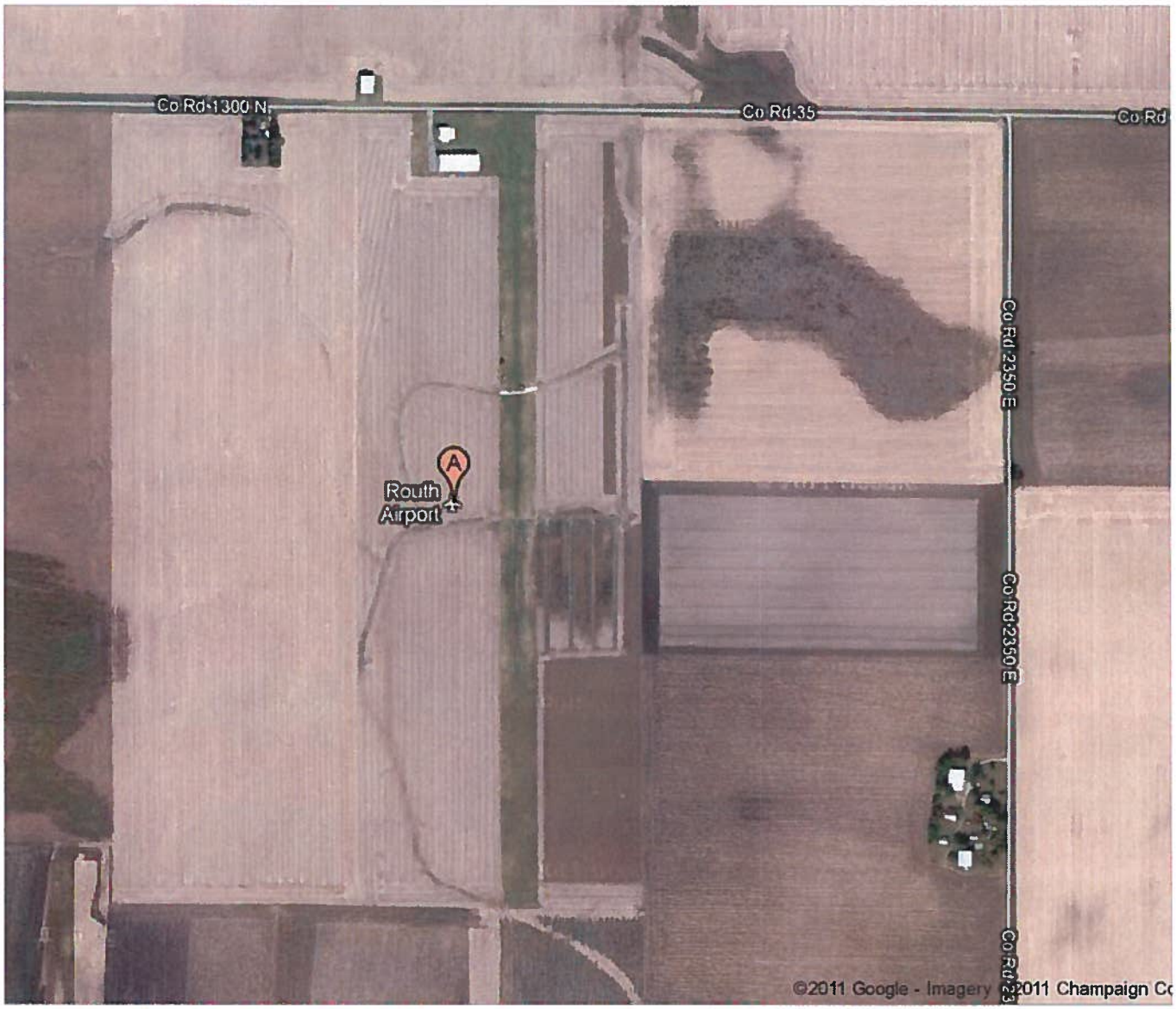

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WEDNESDAY, AUGUST 31, 2011

The News-Gazette

www.news-gazette.com

Year 160, No. 34

Champaign-Urbana, Danville and East Central Illinois

HURRICANE IRENE

Cut-off towns get help by helicopter

Communities say they can't complain about how authorities handled things

NEWFANE, Vt. (AP) — National Guard helicopters rushed food and water Tuesday to a dozen cut-off Vermont towns after the rainy remnants of Hurricane Irene washed out roads and bridges in a deluge that took many people in the landlocked New England state by surprise.

"As soon as we can get help, we need help," Liam McKinley said by cellphone from a mountain above flood-stricken Rochester, Vt.

Up to 11 inches of rain from the weekend storm turned placid streams into churning, brown torrents that knocked homes off their foundations, flattened trees and took giant bites out of the asphalt across the countryside. At least three people died in Vermont.

"I think that people are still a little shell-shocked right now. There's just a lot of disbelief on people's faces. It came through so quickly, and there's so much damage," Gail Devine, director of the Woodstock Recreation Center, said as volunteers moved furniture out of the flooded basement and shoveled out thick mud that filled the center's two swimming pools.

As crews raced to repair the roads, the National Guard began flying in supplies to the towns of Cavendish, Granville, Hancock, Killington-Mendon, Marlboro, Pittsfield, Plymouth, Rochester, Stockbridge, Strafford, Stratton and Wardsboro. The Guard also used heavy-duty vehicles to bring relief to flood-stricken communities still reachable by road.

The cut-off towns ranged in population from under 200 (Stratton) to nearly 1,400 (Cavendish).

"If it's a life-and-death situation, where someone needs to be Medevac-ed or taken to a hospital, we would get a helicopter there to airlift them out, if we could get close to them. A lot of these areas are mountainous areas where there may not be a place to land," said Mark Bosma, a spokesman for Vermont Emergency Management.

Please see IRENE, A-6

IRENE

Continued from A-1

There were no immediate reports of anyone in dire condition being rescued by helicopter.

But it took a relay operation involving two ambulances and an all-terrain vehicle to take a Killington woman in respiratory distress to a hospital in Rutland, about 13 miles away, after floodwaters severed the road between the two Vermont communities, Rutland Regional Medical Center President Tom Hubner said. The patient, whose name was not released, was doing fine, he said.

In Rochester, Vt., where telephones were out and damage was severe, people could be seen from helicopters standing in line outside a grocery store. McKinley said the town's restaurants and a supermarket were giving food away rather than let it spoil, and townspeople were helping each other.

"We've been fine so far. The worst part is not being able to communicate with the rest of the state and know when people are coming in," he said.

He said government agencies did a good job of warning people about the storm. "But here in Vermont, I think we just didn't expect it and didn't prepare for it," he said. "I thought, how could it happen here?"

Wendy Pratt, another of the few townspeople able to communicate with the outside world, posted an update on Facebook using a generator and a satellite Internet connection. She sketched a picture of both devastation and New England neighborliness.

"People have lost their homes, their belongings, businesses ... the cemetery was flooded and caskets were lost down the river. So many areas of complete devastation," Pratt wrote. "In town, there is no cell service or Internet service — all phones in town are out. We had a big town meeting at the church at 4 this afternoon to get any updates."

"Mac's opened up at 5 and gave perishables away to anyone who came," she added. "The Huntington House put on a big, free community dinner tonight."

Access to Rochester and Stratton by road was restored later in the day, officials said.

All together, the storm has been blamed for at least 44 deaths in 13 states. More than 2.5 million people from North Carolina to Maine were still without electricity Tuesday, three days after the hurricane churned up the Eastern Seaboard.

While all eyes were on the coast as Irene swirled northward, some of the worst destruction took place well inland, away from the storm's most punishing winds. In Vermont, Gov. Peter Shumlin called it the worst flooding in a century. Small towns in upstate New York — especially in the Catskills and the Adirondacks — were also besieged by floodwaters.

In Pittsfield, Vt., newlyweds Marc Leibowitz and Janina Stegmeyer of New York City were stranded Sunday along with members of the wedding party and dozens of their guests after floodwaters swamped the couple's honeymoon cottage. The honeymooners narrowly escaped in a four-wheel-drive rental car just before a bridge behind them collapsed.

More than a dozen of the 60 or so guests were airlifted out by private helicopters on Tuesday.

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MARY MILLER JUNIOR HIGH SCHOOL

Classes to resume in spite of crash damage

No one hurt when car ran through entrance; structural engineers to be on site today

By NOELLE McGEE
nmcgee@news-gazette.com

GEORGETOWN — Mary Miller Junior High School students won't be able to enter the school through the front doors this morning following Tuesday's car crash.

An elderly woman crashed her car through the school's plate-glass front doors and into the cafeteria shortly before noon Tuesday. No students or staff were injured.

Principal Lisa Gocken canceled Tuesday evening's activities but said the school would be in session today. She said students will have to enter and leave through the east door.

Structural engineers were scheduled to be at the school today to inspect the area for any possible damage.

The accident occurred around 11:35 a.m. at the school at 414 W. West St., Georgetown.

Georgetown Police Chief Whitney Renaker said a white Buick sedan, driven by an elderly woman, veered off West West Street, crashed through the glass doors and went through the cafeteria before crashing into the concrete wall between the cafeteria and the gymnasium.

Renaker said the woman, whose name wasn't available, was taken to a hospital by Georgetown Ambulance. Her condition was unavailable.

"We still don't know what happened yet," Renaker said, adding authorities are still investigating and looking into whether the accident may have been health-related.

The crash came in between the school's sixth- and seventh-grade lunch hours, Gocken said.

"By the grace of God, the sixth-graders had just finished up and left the cafeteria, and we were getting ready for our seventh-graders to come in," she said. However, several cafeteria employees were setting up lunch for the next group of students, and some special-education students had just entered the cafeteria to eat.

"Thank goodness, they were not in the direct path," Gocken said, adding the car smashed into three tables, each of which seated 16 people. "We thank God it wasn't a few minutes before or after. Otherwise we would have had a cafeteria full of students."

Please see CRASH, B-2

Rick Danzl/The News-Gazette

The front entrance of Mary Miller Junior High was boarded up Tuesday after an elderly woman crashed into the school in Georgetown.

CRASH

Continued from B-1

Gocken was talking to a teacher in a classroom next door to the cafeteria when she heard a loud boom.

"We thought we might have had an earthquake. We could tell the ceiling was collapsing," Gocken said. Then she heard glass shattering and feared someone might be shooting.

Gocken ran into the cafeteria and saw the wreck and a debris trail of broken glass and mangled tables. School officials called 911, and Georgetown and Westville police and Georgetown fire and ambulance personnel arrived to help the driver, whom Gocken said was conscious but appeared dazed.

The principal also notified parents and guardians via phone and email through the school's Alert Now emergency-messaging system, letting them know that students and staff were OK. She said custodial staff covered the broken glass doors with plywood and cleaned up the mess.

The accident caused glass from the front entrance to fly everywhere, even into some of the food. Gocken said cafeteria employees had to remake food, and then served it to the rest of the students in their classrooms.

Gocken said officials still will be able to serve meals in the cafeteria today, but they will tape off the section where the accident occurred.