



STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL

INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
302 WEST WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770

STEVE CARTER
ATTORNEY GENERAL

TELEPHONE (317) 232-6201

February 9, 2005
Originally issued June 23, 2003

OFFICIAL OPINION 2004-6

State Senator Jeff Drozda
200 West Washington
Indianapolis, Indiana 46204

RE: Existing and Planned Runways

Dear Senator Drozda:

This letter is in response to your request for an opinion on the following question:

1. Does Indiana Code section 8-21-10-3(b) apply to both existing and planned runways?

BRIEF ANSWER

It is the opinion of this office that the permit requirements set out at Indiana Code section 8-21-10-3(b) apply to the construction of buildings used for noise sensitive purposes when the building is to be constructed within the specified area of either an existing runway or a planned runway which has not yet been constructed, but has been included in the approved airport site plan. Interpreting "runways" to include both existing and planned runways advances the goal of the legislature to preserve unobstructed conditions for the safe flight of aircraft and to promote the comfort and safety of the citizens of the state. In addition, the broad interpretation of the term corresponds with existing statutory language regarding runways in the same chapter.

ANALYSIS

State law regarding aeronautics may be found at Indiana Code chapter 8-21-1 and Indiana Code chapter 8-21-10 sets out regulations for tall structures in the state in order to ensure that unobstructed conditions exist for the safe flight of aircraft. The state regulates the location and height of structures and the use of land related to those structures. By law, those who build

structures of certain heights and in certain locations must obtain a permit from the Indiana Department of Transportation (INDOT). Ind. Code §§ 8-21-10-1 to 3. State permit requirements also apply to the construction of buildings around airports if the buildings are used for "noise sensitive purposes." Ind. Code §§ 8-21-10-2, -3(b), -3(c). "Noise sensitive purpose" is defined as the use of a building as a residence, school, church, childcare facility, medical facility, retirement home, or nursing home. Ind. Code § 8-21-10-2. Your question concerns the section of the statute at Indiana Code section 8-21-10-3 dealing with permit requirements for construction in a noise sensitive area:

8-21-10-3 Permit requirements

Sec. 3.

...

(b) Unless:

(1) a permit for construction in a noise sensitive area has been approved by the department;

(2) the holder of a permit for construction in a noise sensitive area has filed a copy of the permit for construction in a noise sensitive area with the county recorder of the county in which the structure is located, as provided in subsection (d); and

(3) a certified copy of the recorded permit for construction in a noise sensitive area, with the recording data from the county recorder on the copy of the permit, has been received by the department; *a person may not erect a building used for a noise sensitive purpose within an area lying one thousand five hundred (1,500) feet on either side of the centerline and the extended centerline of a runway for a distance of one (1) nautical mile from the boundaries of any public use airport.*

...

(d) A person applying for a permit for construction in a noise sensitive area under subsection (b) must provide notice, at the time of the filing of the application for a permit, to the owner of a public use airport if the public use airport is located within a distance of one (1) nautical mile from the boundary of the property that contains the building used for a noise sensitive purpose.

(e) Notice under subsections . . . (d) must be sent by certified or registered mail, with return receipt requested, and must include the:

(1) name, telephone number, and a contact person for the:

(A) applicant;

(B) department; and

(C) plan commission that has jurisdiction over the site of the structure;

(2) location of the structure, including a legal description;

(3) height of the structure; and

(4) Federal Aviation Administration aeronautical study number assigned to the application, if applicable to the type of permit for which notice is required.

(f) The applicant for a permit under subsection (b) shall record each permit issued by the department in the office of the county recorder for the county where the structure is located, not later than five (5) business days after the department issues the permit. If a structure is located in more than one (1) county, the county that contains the majority of the structure is the county in which the permit must be filed.

(g) A permit issued under subsection (b) is valid only after the department receives a certified copy of the recorded permit with the recording data from the county recorder of the county in which the structure is located.

(h) A permit issued under subsection (b) must contain the following statement:

"The permittee acknowledges for itself, its heirs, its successors, and its assigns, that the real estate described in this permit experiences or may experience significant levels of aircraft operations, and that the permittee is erecting a building designed for noise sensitive use upon the real estate, with the full knowledge and acceptance of the aircraft operations as well as any effects resulting from the aircraft operations."

(emphasis added).

In summary, the statute requires a person to obtain a "noise sensitive permit" from INDOT if he or she plans to construct a building used as a residence, school, church, medical facility, retirement home, or nursing home within the "noise sensitive area" of a public use airport. By statute, the "noise sensitive area" is the "area lying one thousand five hundred (1,500) feet on either side of the centerline and the extended centerline of a runway for a distance of one (1) nautical mile from the boundaries of any public use airport." Ind. Code § 8-21-10-3(b). The person seeking the permit from INDOT must, at the time the application for a permit is filed, provide notice to the owner of the public use airport. Ind. Code § 8-21-10-3(d). Notice must be sent by registered mail and contain certain information such as the name and telephone number of the applicant and plan commission having jurisdiction over the site, as well as the location of the building. Ind. Code § 8-21-10-3(e). Once issued, the permit holder must record the permit in the office of the county recorder in the county where the building is being constructed. Ind. Code § 8-21-10-3(f). The noise sensitive permit issued by INDOT contains a brief statement indicating that the permittee acknowledges that the building being constructed will be used for a noise sensitive purpose and that the permit holder fully recognizes and accepts the aircraft operations within the vicinity. Ind. Code § 8-21-10-3(h).

You asked whether the noise sensitive permit requirements apply only to the construction of a building in a noise sensitive area near an existing runway, or whether permit requirements also apply to an area where a runway does not actually exist, but is planned.

When the meaning of a statute is at issue, the rules of statutory construction are useful. First and foremost, one should determine the intent of the legislature. *MDM Inv. v. City of Carmel*, 740 N.E.2d 929, 934 (Ind. Ct. App. 2000). The words of a statute are to be given their plain and ordinary meaning. Ind. Code § 1-1-4-1(1); *Town of Merrillville v. Merrillville Conservancy Dist.*, 649 N.E.2d 645, 649 (Ind. Ct. App. 1995). One must presume that the legislature is aware of existing statutes in the same area when it enacts a statute. *Id.* Differing statutes should be construed together to produce a harmonious result. *Id.* The "goals of the statute and the reasons and policy underlying the statute's enactment" should be considered. *Id.*

Aircraft noise has an adverse impact on land used for residential and other noise sensitive uses. Reducing aircraft noise and promoting compatible land use around airport areas is a continuing concern of the Federal Aviation Administration (FAA). Noise Abatement Policy, 65 Fed. Reg. 43803 (July 14, 2000). In its Noise Abatement Policy 2000, the FAA noted that the adverse impact of noise threatens the construction, development, and expansion of airports. *Id.* The FAA encourages local government to reduce the impact of aircraft noise through effective land use control measures, such as planning and zoning. *Id.* at 43810. If noise sensitive land uses cannot be precluded entirely through these measures, the FAA recommends local government implement policies for the formal disclosure of noise exposure levels as part of real estate transactions for properties near airports. *Id.* at 43811. Such local policies are not required by federal law, but are strongly recommended by the FAA.

The General Assembly has indicated that Indiana's aviation laws and regulations shall be implemented in coordination with and in conformity with federal laws. Ind. Code § 8-21-1-8(b); - 8(c). In 1983, the legislature included a statement of purpose when enacting Indiana Code chapter 8-21-10 indicating that the law was intended to regulate the use of land near public-use airports in order to preserve unobstructed conditions for the safe flight of aircraft and to promote the comfort and safety of the citizens of the state. Ind. Code § 8-21-10-1. Given the level of influence of the FAA, along with the statement of purpose included in chapter 10, it is likely that the General Assembly included formal disclosure requirements for the construction of noise sensitive buildings in direct response to FAA concerns or to concerns of a similar nature. Presumably, it was the legislature's intent to promote long-term compatible land use around airport areas by enacting the permit requirements for noise sensitive areas. A broad interpretation of the statute to include both existing and planned runways would advance the legislative goal of long-term compatibility in land use.

In addition, in enacting the permit requirements at Indiana Code section 8-21-10-3, one must presume that the legislature was aware of existing language contained in other sections of chapter 10. The permit requirements for noise sensitive areas apply to the building of structures near public use airports. Ind. Code § 8-21-10-1. At Indiana Code section 8-21-10-2, "public use airport" is defined as any area "utilized or to be utilized" for the landing and taking off of aircraft. Proposed public use airport sites must be pre-approved by INDOT and must be granted an INDOT certificate of site approval. Ind. Code § 8-21-1-10. Applications for certificates of site approval include detailed drawings of the proposed public use airport indicating the "initial and ultimate stages of airport development." 105 Ind. Admin. Code 3-3-8(a)(2). INDOT approves airport site plans with the understanding that the airport may not be fully developed for a period of time. Thus, the inclusion of the language "to be utilized" in the statute regarding permit requirements would appear to be a reference to those areas included in the public use airport's master plan or layout plan which have yet to be put into operation, but which have been approved by INDOT.¹ Such a reference would suggest the legislature intended the noise sensitive permit requirements be followed whether the building is located within the stated boundaries of a planned or an existing runway. In addition, other sections within chapter 10 establishing imaginary surface guidelines for tall structure permits make direct references to runways that have been "approved or planned" or indicated on a planning document. Ind. Code § 8-21-10-8(b).

¹ INDOT issues certificates of approval to proposed airport sites in accordance with regulations established at 105 Indiana Administrative Code 3.

CONCLUSION

It is my opinion that the reference to "runway" at Indiana Code section 8-21-10-3(b), regarding permit requirements for the construction of buildings for noise sensitive purposes, should be interpreted as a reference to existing runways, as well as runways indicated on an airport site approval plan which are approved, but not yet put into operation.

Sincerely,

A handwritten signature in black ink that reads "Stephen Carter". The signature is written in a cursive style with a large, prominent "S" at the beginning.

Stephen Carter
Attorney General

Rebecca Walker
Deputy Attorney General