

—TOWN OF—
MIDDLETON
Wisconsin

Sent Via Email

November 12, 2020

Mayor@cityofmiddleton.us

Mayor Gurdip Brar
City of Middleton
7426 Hubbard Avenue
Middleton, WI 53562

Alder and Morey Airport Master Plan Advisory Committee Chair, Robert Burck;
district2@cityofmiddleton.us

Dear Mayor Brar and Alder and Morey Airport Master Plan Advisory Committee Chair, Robert Burck:

According to the Federal Aviation Administration, the purpose of an airport Runway Protection Zone (“RPZ”) is to protect people and property on the ground.

On December 15, 1998, the City of Middleton Common Council (“Common Council”) stated that “it is in the interest of all City and area residents to know how city officials view the future of Morey Airport”. The Common Council further stated “its commitment” to 1) “restricting the runway length to 4,000 feet”; 2) to “not support the construction of a crosswind runway” and, 3) “to urge pilots to follow flight patterns over commercial and industrial areas and away from residential areas”.

The Common Council has not kept its Morey Airport commitment to Middleton and area residents. According to Mead & Hunt, the Common Council’s Morey Airport consultant, in its October 22, 2020, Ch. 3 Facilities Requirements Report, pages 3-9, 3-33, and 3-41:

- Table 3-20 specifically indicates Runway 01 does not meet FAA standards as 79% of the RPZ extends off Airport property into roadways and other incompatible land uses;
- The RPZ off the approach end of Runway 01 (crosswind runway to the south) is the least controlled, and the majority of this RPZ (79 percent) extends off airport property to the south into and over Airport Road and other roadways and commercial lots (both developed and undeveloped);
- Airport Road is a busy, minor arterial roadway with annual average daily traffic volumes of roughly 10,000 vehicles per day;

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- Runway 01 RPZ also extends over two unsignalized intersections with Deming Way (at Airport Road and Forsythia Street) where slowing, stopping, and periodic queuing of roadway traffic occurs;
- Runway 01 RPZ to the south also extends over four commercial business lots of which two lots remain undeveloped (e.g., 8330 Forsythia Street);
- Runway 01 RPZ opportunities for improvement should be considered under the Chapter 4 Alternatives Analysis; and
- For the Runway 01 RPZ to be located on Morey Airport property and not to the south of Airport Road, Deming Way, and Forsythia Street, crosswind Runway 01/19 would need to either be shortened by approximately 750 feet to the north, or the runway closed entirely.

Please see also the Attached Town of Middleton airport consultant's report dated November 3, 2020. The Town of Middleton airport consultant's report further documents the unsafe conditions for the pedestrians, bicyclists, and approximately 10,000 vehicles per day driving up and down Airport Road by Morey Airport where currently 79% of the Runway 01 Runway Protection Zone extends *over* Airport Road to the south. In addition, Airport Road is the only main road in this area, so there are no other available roadway options when traveling from neighborhoods located to the west of C29.

The significant safety issues with north/south Runway 01/19 are likely the primary reason the Common Council in its 1998 Resolution committed to not constructing a crosswind runway. It is also important to note the current construction was apparently completed without any compatible land use analysis, without significant input from the public, and without any formal Federal Aviation Administration approval. The City of Middleton Common Council authorized the creation of a dangerous condition. That dangerous condition has been highlighted by Mead & Hunt and is clearly known by the Common Council, which allows it to continue to exist. Any airplane connected accident occurring in this general area would certainly result in a negligence liability assessment directly against the City of Middleton. In addition, the City of Middleton Common Council is potentially in violation of multiple federal grant assurances pursuant to which it has received and continues to receive significant federal funding.

The Airport Master Plan Advisory Committee Meeting on November 19, 2020, and any related meetings thereafter, that consider Chapter 4 Alternatives Analysis must include Mead & Hunt's option of closing Runway 01/19 along with the option of shortening it by 750 feet to the north. Shortening the Runway may move the RPZ onto Airport property, but it will still leave all C29 airplanes taking off and landing on that Runway proceeding directly over 10,000 vehicles a day, two busy road intersections, commercial buildings, and a new 72-bed inpatient psychiatric facility.


With respect to the November 19, 2020 AMPAC Meeting, and any related meetings thereafter, "land acquisition" alternatives by Condemnation/Eminent Domain by the City of Middleton Common Council should be clearly described as to the specific municipality within which the property is located with the parcel number(s), and specific amount of acreage proposed to be taken. Such descriptive information should also apply to the 12-acres for Morey Airport expansion identified by Mead & Hunt in the interview given to the Middleton Times Tribune for its November 5, 2020 Airport article.

Sincerely,

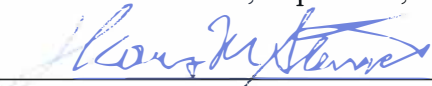
The Town of Middleton Board of Supervisors

By: 
Cynthia Richson, Chair

By: 
Richard Oberle, Supervisor, Seat #1

By: 
Brent Renteria, Supervisor, Seat #2

By: 
Denise Schmidt, Supervisor, Seat #3

By: 
Tom Stemrich, Supervisor, Seat #4

cc: Governor Tony Evers; EversInfo@wisconsin.gov
Maggie Gau, Governor Evers Chief of Staff; Maggie.gau@wisconsin.gov

Craig Thompson, secretary-designee, Wisconsin Dept. of Transportation;
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David Greene, Director, Wisconsin Dept. of Transportation, Bureau of Aeronautics;
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Rebecca B. MacPherson, Regional Administrator, Federal Aviation Administration,
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Jim Pulvermacher, Town of Springfield, WI, Town Board Chair;
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Alder Luke Fuszard; district5@cityofmiddleton.us

Alder Susan West; district6@cityofmiddleton.us

Alder Mark Sullivan; district 8@cityofmiddleton.us

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Mike Davis, City of Middleton, WI Administrator

MEMORANDUM

TO: Town Board of Supervisors, Town of Middleton, WI

FROM: Daniel P. Bartholomew, AICP, ACE, A.A.E., Airport Solutions, LLC

CC: Attorney Michael J. Lawton, Boardman Clark, LLP

DATE: November 3, 2020

SUBJECT: Middleton Municipal Airport (C29) Runway 01 RPZ Mitigation

The primary mission of the Federal Aviation Administration (FAA) is to ensure the safe and efficient use of airports and the aviation system. One method used by the FAA to enhance the safety of aeronautical activity around an airport is to establish protection areas in locations where aviation accidents are statistically most likely to occur. These areas, referred to as Runway Protection Zones (RPZ), are located off runway ends with the purpose to reduce the number of persons and/or property located within these areas, therefore, reducing the potential severity of an accident. Currently, the majority of the Middleton Municipal Airport (C29) Runway 01 RPZ is traversed by several roadways and encompasses areas of developed and developable private property. These conditions create hazards for which RPZs were designed to mitigate.

As a means to protect persons and property on the ground, the FAA Airport Improvement Program (AIP) Sponsor Guide states that *“The airport owner must have sufficient interest in the Runway Protection Zones to protect the Runway Protection Zones from both obstructions and incompatible land use. Finally, the airport owner must strive to attain compatible zoning around the airport in order to prevent incompatible land uses.”* As a means to acquire “sufficient interest” in the RPZ, the FAA provides the airport sponsor with three options:

- “(1) The first and the preferred method is for the airport to purchase the approach areas in fee. Ownership in fee is preferred because it provides maximum control for the airport.*
- (2) The second is through purchase of an easement (or a combination of easement and zoning).*
- (3) The third alternative is to rely upon adequate zoning which should be enacted even if fee or easement ownership is in place.”*

Unfortunately, within the Runway 01 RPZ, neither one of these conditions are met. Only a small portion of the RPZ is located on airport property. The remaining property within the RPZ is own by private entities, and no easement has been acquired to protect the integrity of the RPZ. The current zoning on the property (PDD-S, Planned Development District SIP), does little if anything, to limit incompatible uses on the property.

Since City of Middleton land use controls fail to protect the integrity of the RPZ, and the acquisition of restrictive easements would be overly prohibitive on private property, a fee simple purchase of the properties, at fair market value, is the most viable control option. Property acquisitions are eligible for retroactive funding, allowing the City to purchase the properties and later apply for reimbursement through AIP grant funding. It is important to note that currently, the private parcels contained within the

RPZ have presumptive restrictions on their development potential, and likely have diminished values, without the owners receiving just compensation.

The FAA makes decisions regarding the presence of roadways within RPZs on a case by case basis. Three public use roads (Airport Road, Deming Way, and Forsythia Street) are located within the RPZ. Not only is the number of vehicles crossing the RPZ concerning (Volume in excess of 10,000 daily vehicles), but also numerous light poles, which have been lowered due to overlying airspace, exist along these roadways inside the RPZ.

The most practical mitigation solution, from both an economic and safety standpoint, is to relocate the RPZ so that it is fully contained within the existing airport property. To do this, Runway 01/19 could be shortened (or displaced) or closed. Closing the runway would likely impact the airport's ability to provide adequate cross wind coverage for small aircraft. Shortening, to be effective, the runway would need to be reduced by approximately 800 feet in length from the south. This would leave approximately 1,000 feet of usable runway, which should accommodate most aircraft currently using the runway. Actions to shorten the runway to remove incompatible land uses located with RPZs has been applied to a number of airports, most recently at Santa Monica Municipal Airport, where it's original 5,000-foot runway was shortened by 1,500 feet.

The City of Middleton, as the airport sponsor (owner) of a federally obligated public use airport, is bound by a contract between the airport sponsor (owner) and the FAA, referred to as Grant Assurances. These grant assurances tie federal funding for airports, in the form of AIP funds, to specific requirements to be followed by the airport sponsor. AIP funds are used by sponsors for the development, safe operation, and environmental purposes associated with airports. Of the 39 grant assurances, two are pertinent to the issues associated with the Runway 01 RPZ:

“Grant Assurance 20 - Hazard Removal and Mitigation. It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

Grant Assurance 21 - Compatible Land Use. It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with Airport Sponsor Assurances 2/2020 Page 10 of 18 respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.”

One additional grant assurance is important to note here. The FAA requires that airport sponsors keep the Airport Layout Plan (ALP) up to date at all times and that all changes to the airport facility must be approved by the FAA and depicted on the ALP.

“Grant Assurance 29 - Airport Layout Plan

- a. *It will keep up to date at all times an airport layout plan of the airport showing boundaries of the airport and all proposed additions thereto...*

Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor."

According to notes accompanying the most recent version of the C29 ALP, the latest "Approved" as-built ALP for the Middleton Municipal Airport was signed (approved) by the FAA prior to the redevelopment of the airport in the early 2000's. This is particularly concerning in that the RPZ associated with Runway 01 did not exist until the airport was redeveloped, and would therefore, not be captured on the "Approved" as-built Airport Layout Plan (ALP).

The notes read as follows:

"The official, FAA-signed version of the ALP is the one URS completed in 2002, right before the airport was redeveloped. At some point after the Airport's redevelopment (post-2004), an ALP was developed to depict the "as-built" conditions following construction. It does not seem that this ALP was ever submitted for FAA approval or signature. Josh Holbrook at the Bureau of Aeronautics has confirmed that his office has an ALP prepared in 2008 but it is unsigned. Since 2004, Mead & Hunt used the as-built ALP to depict concepts of future development and adjacent land use, but this work was not supported by formal planning and was not submitted to the FAA for approval. They used this ALP to depict the snow removal equipment (SRE) building for FAA airspace review; in 2012 they submitted an ALP insert sheet for the proposed southeast hangar area development; in 2018 they submitted an ALP insert sheet, Points of Interest, and Updated Land Use drawing for the proposed solar array."

Since the C29 as-built ALP was not submitted to the FAA for signature (approval) following the airport's redevelopment, the FAA may be unaware of comprehensive changes made to the airport as a result of the redevelopment. They may have also been removed from the process of evaluating the safety of uses within the Runway 01 RPZ, since the development of Runway 01/19 occurred after FAA approval of the most current, signed, ALP. In addition, due to the lack of an as-built ALP as part of FAA records, it is likely that the FAA may not consider any proposed development within the RPZ, should it occur, as being a potential safety hazard.

The failure to supply the FAA with an as-built ALP, especially after using Airport Improvement Program funding (AIP), may constitute a significant Federal Grant Assurance violation. This potentially puts not only past and future AIP funding at risk, but in order for an airport to be eligible for AIP grant funding for property acquisition within the RPZ, at a minimum, the area to be acquired must be shown on an approved ALP.

Although Wisconsin is one of ten states who participate in the FAA Aviation State Block Grant Program (Title 49, United States Code, section 47128, and Title 14, Code of Federal Regulations, Part 156), it is bound by the same grant assurance provisions that all other airports receiving federal AIP grant funds. Several concerning issues related not only to safety and the use of private property for public use without compensation exist, but also potentially significant FAA Grant Assurance Violations. While Grant Assurance issues will need to be worked through between the airport sponsor, the State and the FAA, the issue of safety is paramount. Since the use of AIP funds to acquire property will require an approved ALP, along with real-estate transactions involving and environmental review, the most viable option to address safety issues, without impacting the facility's cross wind operational capabilities, is to reduce the Runway 01 length to accommodate the RPZ on existing airport property.