

PA House Local Government Committee  
Hearing March 26, 2008  
Chanceford Township  
Brogue, PA

“Airport Zoning Regulations”

John Rinehart, A.A.E.  
Board Member  
Aviation Council of Pennsylvania

Good morning Chairman Freeman and members of the House Local Government Committee. It is a pleasure to come before you today to discuss the proposed HB 2159.

I am John Rinehart, a recently retired Airport Director, a Board member and past President of the Aviation Council of Pennsylvania and a licensed pilot with pilot-in-command experience in a wide variety of aircraft. The Aviation Council is a 260 member association representing airports, pilots, and aviation related commercial activities. Sixty-two (62) of our member airports are privately owned, public-use airports.

The Aviation Council's Mission is to represent the Pennsylvania aviation community in matters involving government and private sector interests; to improve aviation in partnership with the Commonwealth and the Federal government; and to increase public awareness of aviation in the Commonwealth.

The Commonwealth of Pennsylvania has 133 public-use airports that are utilized daily by a variety of business, industry, medical, flight training, personal and recreation users. To reiterate, 62 of these airports, 47 % of the total number of airports, are privately owned, public-use airports. All strengthen their community's ability to attract and maintain a wide variety of businesses and industries.

The Aviation Council of Pennsylvania does not support HB 2159. In our view it might be better titled the **“Pennsylvania Privately Owned, Public-Use Airport Closure Act of 2008”**. Our principle concerns are:

1. The need for uniform safety
2. The continued operation of privately owned, public-use airports
3. Funding
4. Support for present law

### **The need for uniform safety**

Safety is the principle concern of all engaged in aviation. We pilots are continually drilled in all matters of safety for our own health and welfare and for all those on the ground. Ours is a common goal: to depart from, proceed to and arrive safely at our destination.

We airport administrators keep continual watch over our airports to maintain and operate them in a manner that ensures the safe operation of aircraft on the airport and in the regulated airspace surrounding the airport.

The Federal Aviation Administration (FAA) has established uniform safety regulations for all public-use airports, the aviation equivalent of a “BOCA Code”. These pre-empt all other aviation regulations in the United States. States are free to enhance these regulations but not to enfeeble them.

Airport Hazard Zoning a key element for maximizing the safety at our public-use airports and their environs. The Pennsylvania Code reinforces that element of the FAA regulations in support of aviation safety. Municipality adopted Airport Hazard Zoning regulations, pursuant to the Pennsylvania Airport Hazard Zoning Act (Act 164), ensure and enhance the highest level of safety for both the aircraft operator and the general public.

It is critical that safety requirements comply with FAA standards and that they be uniform at all of Pennsylvania's public-use airports, whether publicly or privately owned. The citizens of Pennsylvania are entitled to a single and consistent standard for safety. Dividing airports by ownership would compromise the application of uniform safety standards.

**The continued operation of privately owned, public-use airports**

The Aviation Council is concerned that HB 2159 could effectively and systematically close most if not all of the 62 privately owned, public use airports over time.

Publicly owned airports have the right of eminent domain and the ability to secure public funds to support the enactment and enforcement Airport Hazard Zoning. Privately owned, public-use airports have neither.

Consequently, privately owned, public-use airports not protected by Airport Hazard Zoning may be forced to close by the intrusion of hazards permitted by the municipality. Strangely, an unintended consequence of HB 2159 may be the potential for reverse condemnation proceedings by private airport owners against municipalities for failing to protect their permitted right to use their property as an airport.

The assessment possibility proposed in HB 2159 could ruin most of the 63 privately owned, public-use airports and could be easily used as a tool by a municipality and airport neighbors to force the closure of airports within the municipality.

### **Funding**

One of the issues at hand is the matter of which party will bear whatever costs may be incurred in the endeavor to ensure hazard zoning protection for privately owned, public-use airports. Municipalities may argue that the requirement to impose hazard zoning constitutes an “unfunded mandate”. If required to bear the costs, privately owned, public-use airport owners could argue in like manner.

The Aviation Council contends that expenses should be borne by the municipality in conjunction with the Commonwealth because the zoning is necessary for the health, safety and welfare of all its citizens. Further, since many municipalities have failed to take action since the

statute was enacted in 1984 they should bear the increased costs resulting from their delay.

The Aviation Council believes that HB 2159 should be referred to the House Finance Committee as it has real potential financial implications for the state and local governments; appropriations may need to be made to address litigation and to pay for damages that may be awarded by the Court.

### **Support for present law**

In closing, the Aviation Council supports the Pennsylvania Airport Hazard Zoning Act (Act 164), enacted in 1984 and subsequently resolved in the courts of Pennsylvania. We are concerned that HB 2159 is intended to circumnavigate the will of the people of Pennsylvania as expressed by the General Assembly and the courts. The present law should not be weakened to advance the interests of the very few over largely local disputes at the expense of safety. Any such weakening might encourage other communities to take restrictive actions against any and all airports.

We appreciate the opportunity to come before you today on this very critical matter. Thank you for your time and attention.