

## CHAPTER 333

## AIRPORT ZONING

- 333.01 Definitions.
- 333.02 Airport hazards and uses of land in airport vicinities contrary to public interest.
- 333.025 Permit required for structures exceeding federal obstruction standards.
- 333.03 Power to adopt airport zoning regulations.
- 333.04 Comprehensive zoning regulations; most stringent to prevail where conflicts occur.
- 333.05 Procedure for adoption of zoning regulations.
- 333.06 Airport zoning requirements.
- 333.065 Guidelines regarding land use near airports.
- 333.07 Permits and variances.
- 333.08 Appeals.
- 333.09 Administration of airport zoning regulations.
- 333.10 Board of adjustment.
- 333.11 Judicial review.
- 333.12 Acquisition of air rights.
- 333.13 Enforcement and remedies.
- 333.14 Short title.

**333.01 Definitions.**—For the purpose of this chapter, the following words, terms, and phrases shall have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

(1) "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction.

(2) "Airport" means any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purpose.

(3) "Airport hazard" means any structure or tree or use of land which would exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29 and which obstructs the airspace required for the flight of aircraft in taking off, maneuvering, or landing or is otherwise hazardous to such taking off, maneuvering, or landing of aircraft and for which no person has previously obtained a permit or variance pursuant to s. 333.025 or s. 333.07.

(4) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.

(5) "Airport land use compatibility zoning" means airport zoning regulations restricting the use of land adjacent to or in the immediate vicinity of airports in the manner enumerated in s. 333.03(2) to activities and purposes compatible with the continuation of normal airport operations including landing and takeoff of aircraft in order to promote public health, safety, and general welfare.

(6) "Airport layout plan" means a detailed, scale engineering drawing, including pertinent dimensions, of

an airport's current and planned facilities, their locations, and runway usage.

(7) "Obstruction" means any existing or proposed manmade object or object of natural growth or terrain that violates the standards contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29.

(8) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(9) "Political subdivision" means any county, city, town, village, or other subdivision or agency thereof, or any district, port commission, port authority, or other such agency authorized to establish or operate airports in the state.

(10) "Runway clear zone" means a runway clear zone as defined in 14 C.F.R. part 151.9(b).

(11) "Structure" means any object, constructed or installed by humans, including, but without limitation thereof, buildings, towers, smokestacks, utility poles, and overhead transmission lines.

(12) "Tree" includes any plant of the vegetable kingdom.

**History.**—s. 1, ch. 23079, 1945; s. 2, ch. 75-16; s. 1, ch. 88-356; s. 70, ch. 90-136; s. 84, ch. 91-221; s. 482, ch. 95-148.

**333.02 Airport hazards and uses of land in airport vicinities contrary to public interest.—**

(1) It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the taking off, maneuvering, or landing of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein. It is further found that certain activities and uses of land in the immediate vicinity of airports as enumerated in s. 333.03(2) are not compatible with normal airport operations, and may, if not regulated, also endanger the lives of the participants, adversely affect their health, or otherwise limit the accomplishment of normal activities. Accordingly, it is hereby declared:

(a) That the creation or establishment of an airport hazard and the incompatible use of land in airport vicinities are public nuisances and injure the community served by the airport in question;

(b) That it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards and incompatible land uses be prevented; and

(c) That this should be accomplished, to the extent legally possible, by the exercise of the police power, without compensation.

(2) It is further declared that the limitation of land uses incompatible with normal airport operations, the prevention of the creation or establishment of airport hazards, and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may

raise and expend public funds and acquire land or property interests therein, or air rights thereover.

**History.**—s. 2, ch. 23079, 1945; s. 2, ch. 88-356; s. 71, ch. 90-136.

### **333.025 Permit required for structures exceeding federal obstruction standards.—**

(1) In order to prevent the erection of structures dangerous to air navigation, subject to the provisions of subsections (2), (3), and (4), each person shall secure from the Department of Transportation a permit for the erection, alteration, or modification of any structure the result of which would exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29. However, permits from the Department of Transportation will be required only within an airport hazard area where federal standards are exceeded and if the proposed construction is within a 10-nautical-mile radius of the geographical center of a publicly owned or operated airport, a military airport, or an airport licensed by the state for public use.

(2) Affected airports will be considered as having those facilities which are shown on the airport master plan, or an airport layout plan submitted to the Federal Aviation Administration Airport District Office or comparable military documents, and will be so protected. Planned or proposed public-use airports which are the subject of a notice or proposal submitted to the Federal Aviation Administration or to the Department of Transportation shall also be protected.

(3) Permit requirements of subsection (1) shall not apply to projects which received construction permits from the Federal Communications Commission for structures exceeding federal obstruction standards prior to May 20, 1975, provided such structures now exist; nor shall it apply to previously approved structures now existing, or any necessary replacement or repairs to such existing structures, so long as the height and location is unchanged.

(4) When political subdivisions have adopted adequate airspace protection in compliance with s. 333.03, and such regulations are on file with the Department of Transportation, a permit for such structure shall not be required from the Department of Transportation.

(5) The Department of Transportation shall, within 30 days of the receipt of an application for a permit, issue or deny a permit for the erection, alteration, or modification of any structure the result of which would exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29.

(6) In determining whether to issue or deny a permit, the department shall consider:

(a) The nature of the terrain and height of existing structures.

(b) Public and private interests and investments.

(c) The character of flying operations and planned developments of airports.

(d) Federal airways as designated by the Federal Aviation Administration.

(e) Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport.

(f) Technological advances.

(g) The safety of persons on the ground and in the air.

(h) Land use density.

(i) The safe and efficient use of navigable airspace.

(j) The cumulative effects on navigable airspace of all existing structures, proposed structures identified in the applicable jurisdictions' comprehensive plans, and all other known proposed structures in the area.

(7) When issuing a permit under this section, the Department of Transportation shall, as a specific condition of such permit, require the obstruction marking and lighting of the permitted structure as provided in s. 333.07(3)(b).

(8) The Department of Transportation shall not approve a permit for the erection of a structure unless the applicant submits both documentation showing compliance with the federal requirement for notification of proposed construction and a valid aeronautical evaluation, and no permit shall be approved solely on the basis that such proposed structure will not exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, or 77.29, or any other federal aviation regulation.

**History.**—s. 3, ch. 75-16; s. 3, ch. 88-356; s. 7, ch. 92-152.

### **333.03 Power to adopt airport zoning regulations.**

(1)(a) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits shall, by October 1, 1977, adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area.

(b) Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located wholly or partly outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located, shall either:

1. By interlocal agreement, in accordance with the provisions of chapter 163, adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question; or

2. By ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question as that vested in paragraph (a) in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chair elected by a majority of the members so appointed. However, the airport manager or managers of the affected political subdivisions shall serve on the board in a nonvoting capacity.

(c) Airport zoning regulations adopted under paragraph (a) shall, as a minimum, require:

1. A variance for the erection, alteration, or modification of any structure which would cause the structure to exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29;

2. Obstruction marking and lighting for structures as specified in s. 333.07(3);

3. Documentation showing compliance with the federal requirement for notification of proposed construction and a valid aeronautical evaluation submitted by each person applying for a variance;

4. Consideration of the criteria in s. 333.025(6), when determining whether to issue or deny a variance; and

5. That no variance shall be approved solely on the basis that such proposed structure will not exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, or 77.29, or any other federal aviation regulation.

(d) The department shall issue copies of the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29 to each political subdivision having airport hazard areas and, in cooperation with political subdivisions, shall issue appropriate airport zoning maps depicting within each county the maximum allowable height of any structure or tree. Material distributed pursuant to this subsection shall be at no cost to authorized recipients.

(2) In the manner provided in subsection (1), interim airport land use compatibility zoning regulations shall be adopted. When political subdivisions have adopted land development regulations in accordance with the provisions of chapter 163 which address the use of land in the manner consistent with the provisions herein, adoption of airport land use compatibility regulations pursuant to this subsection shall not be required. Interim airport land use compatibility zoning regulations shall consider the following:

(a) Whether sanitary landfills are located within the following areas:

1. Within 10,000 feet from the nearest point of any runway used or planned to be used by turbojet or turbo-prop aircraft.

2. Within 5,000 feet from the nearest point of any runway used only by piston-type aircraft.

3. Outside the perimeters defined in subparagraphs 1. and 2., but still within the lateral limits of the civil airport imaginary surfaces defined in 14 C.F.R. part 77.25. Case-by-case review of such landfills is advised.

(b) Whether any landfill is located and constructed so that it attracts or sustains hazardous bird movements from feeding, water, or roosting areas into, or across, the runways or approach and departure patterns of aircraft. The political subdivision shall request from the airport authority or other governing body operating the airport a report on such bird feeding or roosting areas that at the time of the request are known to the airport. In preparing its report, the authority, or other governing body, shall consider whether the landfill will incorporate bird management techniques or other practices to minimize bird hazards to airborne aircraft. The airport authority or other governing body shall respond to the political subdivision no later than 30 days after receipt of such request.

(c) Where an airport authority or other governing body operating a publicly owned, public-use airport has conducted a noise study in accordance with the provisions of 14 C.F.R. part 150, neither residential construction nor any educational facility as defined in chapter

235, with the exception of aviation school facilities, shall be permitted within the area contiguous to the airport defined by an outer noise contour that is considered incompatible with that type of construction by 14 C.F.R. part 150, Appendix A or an equivalent noise level as established by other types of noise studies.

(d) Where an airport authority or other governing body operating a publicly owned, public-use airport has not conducted a noise study, neither residential construction nor any educational facility as defined in chapter 235, with the exception of aviation school facilities, shall be permitted within an area contiguous to the airport measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.

(3) In the manner provided in subsection (1), airport zoning regulations shall be adopted which restrict new incompatible uses, activities, or construction within runway clear zones, including uses, activities, or construction in runway clear zones which are incompatible with normal airport operations or endanger public health, safety, and welfare by resulting in congregations of people, emissions of light or smoke, or attraction of birds. Such regulations shall prohibit the construction of an educational facility of a public or private school at either end of a runway of a publicly owned, public-use airport within an area which extends 5 miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway. Exceptions approving construction of an educational facility within the delineated area shall only be granted when the political subdivision administering the zoning regulations makes specific findings detailing how the public policy reasons for allowing the construction outweigh health and safety concerns prohibiting such a location.

(4) The procedures outlined in subsections (1), (2), and (3) for the adoption of such regulations are supplemental to any existing procedures utilized by political subdivisions in the adoption of such regulations.

(5) The Department of Transportation shall provide technical assistance to any political subdivision requesting assistance in the preparation of an airport zoning code. A copy of all local airport zoning codes, rules, and regulations, and amendments and proposed and granted variances thereto, shall be filed with the department.

(6) Nothing in subsection (2) or subsection (3) shall be construed to require the removal, alteration, sound conditioning, or other change, or to interfere with the continued use or adjacent expansion of any educational structure or site in existence on July 1, 1993, or be construed to prohibit the construction of any new structure for which a site has been determined as provided in s. 235.19, as of July 1, 1993.

**History.**—s. 3, ch. 23079, 1945; s. 4, ch. 75-16; s. 4, ch. 88-356; s. 72, ch. 90-136; s. 8, ch. 92-152; s. 10, ch. 93-164; s. 1, ch. 94-201; s. 958, ch. 95-148.

### **333.04 Comprehensive zoning regulations; most stringent to prevail where conflicts occur.—**

(1) INCORPORATION.—In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other

things, the height of buildings, structures, and natural objects, and uses of property, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

(2) CONFLICT.—In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

**History.**—s. 4, ch. 23079, 1945.

### **333.05 Procedure for adoption of zoning regulations.—**

(1) NOTICE AND HEARING.—No airport zoning regulations shall be adopted, amended, or changed under this chapter except by action of the legislative body of the political subdivision in question, or the joint board provided in s. 333.03(1)(b) by the bodies therein provided and set forth, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the hearing shall be published at least once a week for 2 consecutive weeks in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which are located the airport areas to be zoned.

(2) AIRPORT ZONING COMMISSION.—Prior to the initial zoning of any airport area under this chapter the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take any action until it has received the final report of such commission, and at least 15 days shall elapse between the receipt of the final report of the commission and the hearing to be held by the latter board. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

**History.**—s. 5, ch. 23079, 1945; s. 74, ch. 90-136; s. 23, ch. 90-279; s. 39, ch. 95-143.

### **333.06 Airport zoning requirements.—**

(1) REASONABLENESS.—All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area and runway clear zones, the charac-

ter of the neighborhood, the uses to which the property to be zoned is put and adaptable, and the impact of any new use, activity, or construction on the airport's operating capability and capacity.

(2) INDEPENDENT JUSTIFICATION.—The purpose of all airport zoning regulations adopted under this chapter is to provide both airspace protection and land use compatible with airport operations. Each aspect of this purpose requires independent justification in order to promote the public interest in safety, health, and general welfare. Specifically, construction in a runway clear zone which does not exceed airspace height restrictions is not evidence per se that such use, activity, or construction is compatible with airport operations.

(3) NONCONFORMING USES.—No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in s. 333.07(1) and (3).

**History.**—s. 6, ch. 23079, 1945; s. 75, ch. 90-136.

**333.065 Guidelines regarding land use near airports.—**The Department of Transportation, after consultation with the Department of Community Affairs, local governments, and other interested persons, shall adopt by rule recommended guidelines regarding compatible land uses in the vicinity of airports. These guidelines shall utilize acceptable and established quantitative measures, such as the Air Installation Compatible Use Zone standards, the Florida Statutes, and applicable Federal Aviation Administration documents.

**History.**—s. 49, ch. 93-206.

### **333.07 Permits and variances.—**

(1) PERMITS.—

(a) Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change, or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or would permit a nonconforming structure or tree or nonconforming use to be made or become higher or to become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made.

(b) Whenever the administrative agency determines that a nonconforming use or nonconforming structure or tree has been abandoned or is more than 80 percent torn down, destroyed, deteriorated, or decayed, no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations; and, whether application is made for a permit under this subsection or not,

the said agency may by appropriate action, compel the owner of the nonconforming structure or tree, at his or her own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations. If the owner of the nonconforming structure or tree shall neglect or refuse to comply with such order for 10 days after notice thereof, the said agency may report the violation to the political subdivision involved therein, which subdivision, through its appropriate agency, may proceed to have the object so lowered, removed, reconstructed, or equipped, and assess the cost and expense thereof upon the object or the land whereon it is or was located, and, unless such an assessment is paid within 90 days from the service of notice thereof on the owner or the owner's agent, of such object or land, the sum shall be a lien on said land, and shall bear interest thereafter at the rate of 6 percent per annum until paid, and shall be collected in the same manner as taxes on real property are collected by said political subdivision, or, at the option of said political subdivision, said lien may be enforced in the manner provided for enforcement of liens by chapter 85.

(c) Except as provided herein, applications for permits shall be granted, provided the matter applied for meets the provisions of this chapter and the regulations adopted and in force hereunder.

#### (2) VARIANCES.—

(a) Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in violation of the airport zoning regulations adopted under this chapter or any land development regulation adopted pursuant to the provisions of chapter 163 pertaining to airport land use compatibility, may apply to the board of adjustment for a variance from the zoning regulations in question. At the time of filing the application, the applicant shall forward to the department by certified mail, return receipt requested, a copy of the application. The department shall have 45 days from receipt of the application to comment and to provide its comments or waiver of that right to the applicant and the board of adjustment. The department shall include its explanation for any objections stated in its comments. If the department fails to provide its comments within 45 days of receipt of the application, its right to comment is waived. The board of adjustment may proceed with its consideration of the application only upon the receipt of the department's comments or waiver of that right as demonstrated by the filing of a copy of the return receipt with the board. Noncompliance with this section shall be grounds to appeal pursuant to s. 333.08 and to apply for judicial relief pursuant to s. 333.11. Such variances may only be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and where the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of the regulations and this chapter. However, any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

(b) The Department of Transportation shall have the authority to appeal any variance granted under this

chapter pursuant to s. 333.08, and to apply for judicial relief pursuant to s. 333.11.

#### (3) OBSTRUCTION MARKING AND LIGHTING.—

(a) In granting any permit or variance under this section, the administrative agency or board of adjustment shall require the owner of the structure or tree in question to install, operate, and maintain thereon, at his or her own expense, such marking and lighting as may be necessary to indicate to aircraft pilots the presence of an obstruction.

(b) Such marking and lighting shall conform to the specific standards established by rule by the Department of Transportation.

(c) Existing structures not in compliance on October 1, 1988, shall be required to comply whenever the existing marking requires refurbishment, whenever the existing lighting requires replacement, or within 5 years of October 1, 1988, whichever occurs first.

**History.**—s. 7, ch. 23079, 1945; s. 5, ch. 88-356; s. 76, ch. 90-136; s. 483, ch. 95-148.

#### 333.08 Appeals.—

(1) Any person aggrieved, or taxpayer affected, by any decision of an administrative agency made in its administration of airport zoning regulations adopted under this chapter; or any governing body of a political subdivision, or the Department of Transportation, or any joint airport zoning board, which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken, or properly certified copies thereof in lieu of originals, as the agency involved may elect.

(3) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by an order of the board on notice to the agency from which the appeal is taken and on due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

(5) The board may, in conformity with the provisions of this chapter, reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to

that end shall have all the powers of the administrative agency from which the appeal is taken.

**History.**—s. 8, ch. 23079, 1945; s. 6, ch. 88-356.

**333.09 Administration of airport zoning regulations.**—All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall include that of hearing and deciding all permits under s. 333.07(1), deciding all matters under s. 333.07(3), as they pertain to such agency, and all other matters under this chapter applying to said agency, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment.

**History.**—s. 9, ch. 23079, 1945.

**333.10 Board of adjustment.**—

(1) All airport zoning regulations adopted under this chapter shall provide for a board of adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations, as provided in s. 333.08.

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.

(c) To hear and decide specific variances under s. 333.07(2).

(2) Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of adjustment. Otherwise, the board of adjustment shall consist of five members, each to be appointed for a term of 3 years by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and due notice and after public hearing.

(3) The concurring vote of a majority of the members of the board of adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

(4) The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at the call of the chair and at such other times as the board may determine. The chair, or in the chair's absence the acting chair, may administer oaths and compel the attendance of witnesses. All hearings of the said board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such

fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

**History.**—s. 10, ch. 23079, 1945; s. 484, ch. 95-148.

**333.11 Judicial review.**—

(1) Any person aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a political subdivision or the Department of Transportation or any joint airport zoning board, or of any administrative agency hereunder, may apply for judicial relief to the circuit court in the judicial circuit where the board of adjustment is located within 30 days after rendition of the decision by the board of adjustment. Review shall be by petition for writ of certiorari, which shall be governed by the Florida Rules of Appellate Procedure.

(2) Upon presentation of such petition to the court, it may allow a writ of certiorari, directed to the board of adjustment, to review such decision of the board. The allowance of the writ shall not stay the proceedings upon the decision appealed from, but the court may, on application, on notice to the board, on due hearing and due cause shown, grant a restraining order.

(3) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of adjustment. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(5) In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use and enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the State Constitution or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land, or such regulations as are not involved in the particular decision.

(6) No appeal shall be or is permitted under this section, to any courts, as herein provided, save and except an appeal from a decision of the board of adjustment, the appeal herein provided being from such final decision of such board only, the appellant being hereby required to exhaust his or her remedies hereunder of application for permits, exceptions and variances, and appeal to the board of adjustment, and gaining a deter-

mination by said board, before being permitted to appeal to the court hereunder.

**History.**—s. 11, ch. 23079, 1945; s. 43, ch. 63-512; s. 7, ch. 88-356; s. 485, ch. 95-148.

**333.12 Acquisition of air rights.**—In any case which: it is desired to remove, lower or otherwise terminate a nonconforming structure or use; or the approach protection necessary cannot, because of constitutional limitations, be provided by airport regulations under this chapter; or it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located, or the political subdivision owning or operating the airport or being served by it, may acquire, by purchase, grant, or condemnation in the manner provided by chapter 73, such air right, navigation easement, or other estate, portion or interest in the property or nonconforming structure or use or such interest in the air above such property, tree, structure, or use, in question, as may be necessary to effectuate the purposes of this chapter, and in so doing, if by condemnation, to have the right to take immediate possession of the property, interest in property, air right, or other right sought to be condemned, at the time, and in the manner and form, and as authorized by chapter 74. In the case of the purchase of any property or any easement or estate or interest therein or the acquisition of the same by the power of eminent domain the political subdivision making such purchase or exercising such power shall in addition to the damages for the taking, injury or

destruction of property also pay the cost of the removal and relocation of any structure or any public utility which is required to be moved to a new location.

**History.**—s. 12, ch. 23079, 1945.

**333.13 Enforcement and remedies.**—

(1) Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and each day a violation continues to exist shall constitute a separate offense.

(2) In addition, the political subdivision or agency adopting the airport zoning regulations under this chapter may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this chapter or of airport zoning regulations adopted under this chapter or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case in order to fully effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

(3) The Department of Transportation may institute a civil action for injunctive relief in the appropriate circuit court to prevent violation of any provision of this chapter.

**History.**—s. 13, ch. 23079, 1945; s. 232, ch. 71-136; s. 5, ch. 75-16.

**333.14 Short title.**—This chapter shall be known and may be cited as the "Airport Zoning Law of 1945."

**History.**—s. 15, ch. 23079, 1945.