

INCIDENT REPORT

20210904-00011

GENERAL INFORMATION

Report Number: 20210904-00011

Incident Type: Operational

Status: Ongoing

Filer of Report: Joshua Bauer

Filed on Behalf of: Josh Bauer (Personal)

Date Filed: 10/03/2021

Date of Incident: 09/04/2021

Location of Incident: Roseland Waterpark, Canandaigua, NY; 42.88138525725735, -77.2618056227759

Persons Involved in Incident: Joshua Bauer (operator), Unidentified Employee of Roseland Waterpark, Ryan Fuller (Manager of Roseland Waterpark), Officer Dobies (Canandaigua Police Department)

Devices Involved in Incident: DJI Mini 2 Drone, ID#DR008g; InMotion v11 Electric Unicycle, ID#EUC001b

Factors Contributing to Incident: Failure of operator to accurately gauge the distance between the drone and the treeline, inability of operator to access the area below the flight in the case of an unpredicted event

Damages: Loss of drone (ID#DR008g), ongoing legal costs of litigation from such loss

INCIDENT DETAILS:

Description of Incident:

The operator (Joshua Bauer) was flying a drone over Roseland Waterpark on Saturday, 9/4/2021 for the purpose of obtaining footage to be used in an aerial montage of attractions in and near Canandaigua, NY. The flight took place from 6:45:30 PM to 6:51:50 PM, after the park was closed and no occupants were in the park. At approximately 6:50:13 PM, the operator began piloting the drone toward a playground within the waterpark, where upon arrival, the drone began revolving the playground in a counterclockwise direction at a speed of approximately 7.8 miles per hour and at a height of approximately 26 feet.

After a full orbit, the operator proceeded to repeat the process a second time, however, at approximately 67.5 degrees through the second orbit, at the coordinates 42.88138525725735, -77.2618056227759, and at a height of approximately 26.5 feet, the drone collided with an extended tree branch that inhabited its path. While the operator maintained a visual line of sight with the drone from the parking lots of Arby's and Abbott's across the body of water, he did not see this tree branch either from his physical location or from the first-person view of the drone. Upon contact, the drone ceased operation and remained in the branch where it had landed for a known time of at least about 10 minutes after the collision, during which the operator still had connection to the live camera on the drone, but likely longer.

As soon as this occurred, the operator immediately rode to the entrance of the water park (same entity as the waterpark) and approached an employee (name unknown) informing him of the situation and asking what the operator's options would be for obtaining the drone. The

employee went inside presumably to make a phone call. After coming out, the employee informed the operator that the operator was not allowed to reacquire his property due to a strict "no drone" policy of the waterpark. After an unsuccessful attempt of the operator to explain to the employee that it was not within the rights of the waterpark to deny him retrieval of his property, and suggesting to the employee that the police were going to be involved, the employee suggested that the operator leave the property.

Accordingly, the operator left the property and went out to the entrance, where at 7:06 PM, he called the police and detailed the situation. When an officer arrived on scene, the officer made contact with the same employee to whom the operator spoke earlier, and the employee indicated cooperation via request to the operator for further information regarding the location of the drone. After this information was provided to the employee, the employee left presumably with intention to retrieve the drone for the operator. After an approximate 15 minute wait, a new individual, later identified as the park manager, Ryan Fuller, rode up to the operator in a golf cart and reiterated the initial message provided by the employee, saying that the park had a strict no drone policy, and accordingly, that the drone would be confiscated.

Throughout the conversation, the manager incorrectly suggested that the operator both needed to be "certified with the FAA" and have prior permission from the waterpark in order to fly in the airspace above. The operator gave his best attempt in explaining to the manager that he was a recreational pilot, and therefore was not required to have any certification other than passing the TRUST (The Recreational UAS Safety Test), which he did, and that prior authorization from landowners is not necessary since landowners do not own the airspace above their land. The operator further tried to explain that the creation of a parkwide policy to confiscate other's property does not make that confiscation legal, especially in the absence of a contract. The conversation eventually ended with statements from the manager such as "hard lesson to learn" and "Sorry bud, you're either gonna have to find a new drone or a new hobby", and the threat to arrest the operator for trespassing if he did not leave the property.

At 7:39 PM, the police were called by the operator a second time. At the time, the operator was under the impression that it was his legal right to immediate retrieval of his property, hence the reason for calling the police a second time. Upon arrival of the same officer, he spoke with the manager and the operator but to no different result. The manager on multiple occasions implied that the operator's intent was to "film people in bathing suits". In this accusation, the manager was consistently ignorant of the fact that there were no people in the waterpark at the time of the operation, which took place outside of the waterpark's hours. The conversation soon ended, and the officer informed the operator that retrieval of the drone could not be done with an escort, but rather would have to be done through litigation.

The next day, on Sunday, 9/5/2021, the operator sent an email to Roseland Waterpark, asking again formally for cooperation in retrieving his drone (email attached at the end of this report). There has been no response from the waterpark to date (10/3/2021).

On Tuesday, 9/7/2021, the operator filed a small claims lawsuit at the Canandaigua courthouse (document attached) for the amount of \$600.00, which is the cost of the drone.

Later on Tuesday, 9/7/2021, the officer who had previously responded called the operator by phone and informed him that the owner of the park, Dan Fuller, and the manager, Ryan Fuller, had collectively agreed to return the drone to the operator. The officer asked for details on the last known location of the drone, which the operator provided via email soon after.

On Friday, 9/10/2021, the officer called the operator again by phone, informing him that he

and the manager of the waterpark searched for the drone using the provided coordinates, but were unable to locate it, citing the recent storms that had occurred in the days before as a possible cause for the drone's relocation from the spot it had landed. In light of the newfound, alleged cooperation of Roseland Waterpark in returning the drone if found, the operator is continuing the lawsuit on the basis that, had the waterpark responded favorably on the same day of the incident, or even within the next couple of days that preceded the rainstorms, the drone would have remained in tact both in location and condition, and would have therefore been retrievable and in working condition. The inability for the drone to be located, as understood by the operator, is a direct result of the waterpark's prolonging of the situation past the time that the drone could reasonably be expected to have both withstood weather damage and remained in the same location that it was confirmed both by 23 satellites and by live video footage to have landed.

Determined Causes of Incident:

1. Operator did not accurately gauge the distance between the drone and the treeline, and therefore drifted father out in his orbit than would have been done had that distance been accurately gauged.
2. Operator was flying in a in airspace of which the ground was legally inaccessible to him in an unpredicted event, which caused the operator's immediate retrieval of the drone to be contingent on the property owner's approval.

Imposed Regulations Resulting from Incident:

1. In a scenario where the operator is not willing to lose control of or forfeit possession of his drone, the operator is to, in future circumstances of similar nature, either ensure that the ground below the proposed flight path is accessible to the operator, or have written, recorded, or otherwise documented permission from the an authorized associate of the land to fly in that area and enter to retrieve the drone if necessary. This does not apply to flying over bodies of water, which in many cases cannot meet either of those two criteria.

Imposed Recommendations Resulting from Incident:

1. Operator is recommended to establish an improved sense of self-awareness as it relates to the position of the drone relative to other nearby objects

ADDITIONAL RESOURCES:

Reporter Comments:

None at this time

Points of Contact:

Josh Bauer (www.joshbauer.com/contact)

Roseland Waterpark (www.roselandwaterpark.com/contact-us)

Canandaigua Police Department (www.canandaiguanewyork.gov)

Attachments:

None