

Law Suits Stack Up Over Aurora Airport

Two cities, two land-use advocacy groups are suing to challenge Aurora Airport runway expansion

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Opponents of the extension of the runway at the Aurora State Airport thought they scored a victory when the state said in 2019 the plan had never been approved.

Then the State Aviation Board decided the missing approval was essentially a clerical mistake. Now a cascade of appeals and lawsuits have divided cities, counties, land use groups, businesses and individuals over whether the board and the Department of Aviation skirted state law by approving the extension.

“In our world, important decisions of tens of millions of dollars are not made by a voice vote for something that’s not on the agenda and there’s not a written decision,” Aurora planning commission chair Joseph Schaefer, one of four parties to file suit, said to the Aurora city council.

Used as an airport for training pilots during World War II in unincorporated Marion County just north of Aurora, the Aurora State Airport is one of 28 owned and managed by the state. With a thriving group of businesses around the airport, it has grown to become the third busiest airport in the state – it has nearly 95,000 operations per year – behind Portland International Airport and Hillsboro Airport.

Its runway is 5,000 feet, which Oregon Department of Aviation staff and groups involved with the airport have argued is too short, saying it is a safety concern and forces larger aircraft to take off with reduced fuel loads.

For decades, proponents of the airport sought to extend the runway by 1,000 feet to the south. The ODA has argued the extension would occur on land already owned by the airport and zoned airport overlay, but would need to acquire 55 acres more currently zoned exclusive farm use as additional pavement and a buffer on land that isn’t currently being farmed.

“There’s 30 runways longer than this in the state,” Bruce Bennett, president of Aurora Aviation, said at an Aurora City Council meeting.

The Oregon Department of Aviation applied for \$37 million in grant funds from the Federal Aviation Administration in 2018 for the expansion, stating the airport’s current master plan included the improvement.

Then in April 2019, in response to the request of attorney Jeffrey Kleinman, Oregon Department of Aviation director Betty Stansbury sent a letter stating the most recent master plan for the airport was completed in December 2012 – the previous master plans didn’t indicate the expansion was necessary – but never adopted by the Oregon Aviation Board.

And her letter said the master plan was on hold until the Department of Land Conservation and Development approved the ODA’s state agency coordination program, which regulates the processes it must undertake to make such a change.

Retraction and Oregon Aviation Board decision

After proponents of the airport expansion reached out to Stansbury, she sent another letter to Kleinman in August 2019, retracting her prior position and stating Aurora State Airport’s most recent master plan had been completed and adopted by the Oregon Aviation Board Oct. 27, 2011.

“She got bad information from her staff and we found the correct information,” said Tony Helbling of the Aurora Airport Improvement Association.

In the letter, Stansbury stated the current Oregon Aviation Board would address the discrepancy at its Oct. 31, 2019 meeting. During that meeting, Department of Justice attorney Lucinda Jackson, which represents the ODA, said there had been confusion because the minutes from the 2011 meeting were not clear.

The only proof offered the board had adopted the master plan – which subsequently was sent to the FAA for review – was an audio recording of the meeting. “But from a legal standpoint, the actual action of the board on October 27, 2011 is the controlling thing,” Jackson said at the meeting. The State Aviation Board voted to affirm the 2011 adoption of the updated master plan in October.

Oregon’s complex land use system governing master plans requires a sequence of benchmarks, significant involvement with impacted governments and the public and documentation of findings.

Critics say a written copy of the 2011 decision has never been placed in any record, a violation of state rules governing adoption of master plans. The only written documentation the ODA made public that the master plan was adopted before the 2019 meeting was a series of communications with Marion County that resulted in a county

resolution acknowledging of the 2012 update which encouraged it to apply for land use approvals, sign-in sheets from meetings about the plan and a 2019 public notice about an aviation board meeting.

And the written adoption from 2011 has not been submitted in court. "There was never a decision, meaning a piece of paper like that on the part of the aviation board that approved and adopted the Master Plan in 2011," said Ben Williams, President of Friends of French Prairie.

Flurry of appeals and lawsuits

The Oregon Aviation Board's decision set off a rash of legal action. Appeals were filed by Schaefer, the cities of Wilsonville and Aurora and land use advocacy groups 1000 Friends of Oregon and Friends of French Prairie to the Oregon Land Use Board of Appeals in November alleging that the master plan adoption circumvented the state's land use process.

And all four parties filed suit in Marion County in December alleging the Department of Aviation did not comply with state law in how it adopted the master plan.

"There's the master plan process for Oregon and land use requirements, and it doesn't comply," Aurora city councilor Mercedes Rhoden-Feely said at a city council meeting. "For me the rub is not the city and the airport, for me the rub is the city and Marion County."

After the four cases before LUBA were combined in December, a slew of other interested parties, including Marion and Clackamas counties, businesses and individuals involved with the airport and the Wilsonville Chamber of Commerce joined the case.

The ODA argued the master plan was not a land use decision, and that process will take place later on by Marion County.

However, the Oregon Supreme Court previously ruled a land use decision is one that "has a significant impact on present or future land uses."

At the most recent State of the County address in February, Marion County Commissioner Kevin Cameron addressed Aurora Mayor Brian Asher about economic development money the county will give the city. "And you can't spend it to sue us to stop the airport expansion," Cameron said. "Let them sue. Let them waste their money."

The state has yet to file a response to the lawsuit or the appeals.

"I think it is problematic to circumvent that legal process, and I do not believe that the legal process should only apply if someone opposes a certain outcome," Wilsonville Mayor Tim Knapp said at a city council meeting. "If you favor a certain outcome, that should not release someone from following the process to get there."