
Planning Commission / HAIR Joint Work Session

**Airport Zoning Revisions
March 9, 2011**

Tonight's Agenda

- Welcome, Roll Call and Introductions
- Opening remarks by President Coulter
- Summary of Airport Zoning history
- Proposed Zoning Ordinance amendments:
analysis and recommendations
- Planning Commission discussion with HAIR
- Next steps
- Adjournment

Review of Airport Zoning history

- 2005: Hillsboro Airport Compatibility Study Update recommends establishing a City Airport Use zone and City Airport Safety and Compatibility Overlay zones in compliance with OAR 660-13 the “Airport Planning Rule”

- 2007-2008: HAIR Land Use Sub-Committee, Port and City staff draft language for proposed AU Airport Use zone and ASCO zones
 - 18-month process
 - 12 Sub-Committee meetings + updates to the HAIR
 - Presentations to CPOs
 - Discussions with HSD, Chamber and major industrial uses
 - 2 Open Houses

Review of Airport Zoning history, cont.

- January '09: HAIR makes its recommendation to the City on proposed language
- February '09: City initiates Comprehensive Plan and Zoning Ordinance text amendments
- April–July '09: City holds an Open House and public hearings on proposed amendments: over 6700 affected property owners notified by mail
- October '09: City adopts Comp Plan and Zoning Ordinance text amendments
- November '09: No appeals are received; adopted amendments are acknowledged by DLCD.

Review of Airport Zoning history, cont.

- Nov-Dec '09: City holds two public hearings on the application of the new zones: over 6700 property owners again notified
- January 2010: City adopts Ord. 5935 applying the new AU Airport Use zone to 189 properties and the ASCO zones to approximately 5982 properties
- February '10: Michelle Barnes appeals approval of Ord. 5935 to LUBA
- June '10: LUBA reverses Ord. 5935; City and Port appeal to Court of Appeals
- November '10: Court of Appeals upholds LUBA. Zone change is revoked, but Sections 135A and 135B remain in the Zoning Ordinance

City Council Direction on Airport Zoning

- Do not pursue further appeals after Court of Appeals ruling
- Prepare Transportation Planning Rule findings as required by LUBA
- Revise HZO Section 135A and 135B only as necessary to correct deficiencies identified by LUBA

LUBA's Three "Assignments of Error"

- *First: certain provisions of Section 135A and Section 135B are prohibited delegations of the City's legislative authority.*
- *Second: requiring certain portions of the aviation easement is facially unconstitutional.*
- *Third: the City did not comply with the Transportation Planning Rule because there were no traffic analysis findings in the original zone change approval.*

“Prohibited Delegations of Authority”

- *Applicable Language: HZO Section 135A D 6 (AU zone):*

Environmental Laws: Any and all federal, state and local statutes, regulations, rules, permit terms and ordinances now or hereafter in effect, as the same may be amended from time to time, which in any way govern materials, substances, regulated substances and wastes, emissions, pollutants, animals or plants, noise, or products and/or relate to the protection of health, safety or the environment.

“Prohibited Delegations of Authority”

- *HZO Section 135A D 6 (AU zone) Analysis:*

- *The Oregon Constitution prohibits “rolling amendments” which would bind a jurisdiction or agency to requirements not yet created.*

Also, the term “Environmental Laws” is defined but not used. This provision would apply only on Port-owned property. Compliance with federal, state, and local environmental laws is mandatory: this language is redundant with those other statutory requirements.

- *Recommendation:* *Delete Section 135 A D 6 entirely.*

“Prohibited Delegations of Authority”

- *Applicable Language: HZO Section 135A E 2 (AU Zone):*

Air passenger and air freight services and facilities that are consistent with levels identified in the most current, adopted Master Plan for the Hillsboro Airport.

“Prohibited Delegations of Authority”

- *HZO Section 135A E 2 (AU Zone) Analysis:*

Relevant laws are ORS 836.616 and OAR 660-13-0100:

- ORS 836.616 Rules for airport uses and activities.

(2) Within airport boundaries established pursuant to commission rules, local government land use regulations shall authorize the following uses and activities:

(g) Air passenger and air freight services and facilities consistent with the classification and needs identified in the State Aviation System Plan;

- OAR 660-13- 0050 Implementation of Local Airport Planning:

A local government with planning responsibility for one or more airports or areas within safety zones or compatibility zones described in this division or subject to requirements identified in ORS 836.608 shall adopt land use regulations to carry out the requirements of this division, or applicable requirements of ORS 836.608, consistent with the applicable elements of the adopted state Aviation System Plan and applicable statewide planning requirements.

“Prohibited Delegations of Authority”

- *HZO Section 135A E 2 (AU Zone) Analysis, continued:*
 - *The State ASP classifies HIO as a “Category II - Urban General Aviation Airport” which by definition doesn’t have passenger service. The only additional facility identified in the ASP as needed to meet the minimum criteria for this category was a “designated cargo apron.”*
 - **Recommendation:** *Revise Section 135A E 2 to read as follows: Air passenger and air freight services and facilities that are consistent with levels identified in the ~~most current adopted Master Plan for the Hillsboro Airport~~ **2007 Oregon Aviation Plan.***

“Prohibited Delegations of Authority”

- *Applicable language: HZO Section 135A K (AU Zone):*

All uses and activities permitted outright within the AU Airport Use Zone shall be reviewed for compliance with, and shall comply with currently applicable Port of Portland standards as follows:

- 1. Hillsboro Airport Standards for Development;
- 2. General Aviation Minimum Standards for the Hillsboro Airport;
and
- 3. Wildlife Hazard Management Plan for the Hillsboro Airport

“Prohibited Delegations of Authority”

- *HZO Section 135A K (AU Zone) Analysis:*
 - *All property within the AU zone belongs to the Port. The Port will therefore oversee compliance with its own regulations. It is redundant for the City to condition a development to comply with the property owner’s requirements.*
 - *Recommendation:* *Delete Section 135A K entirely.*

“Facially Unconstitutional”

- Applicable Language: *HZO 135B subsection C 6 (ASCO zones):*

Avigation Easement. A type of easement which conveys the following rights:

- A right-of-way for free and unobstructed passage of aircraft through the airspace over the property at any altitude above a surface specified in the easement (set in accordance with Federal Aviation Regulations Part 77 criteria).
- A right to subject the property to noise, vibrations, fumes, dust, and fuel particle emissions associated with normal airport activity.
- A right to prohibit the erection or growth of any structure, tree, or other object that would penetrate the imaginary surfaces as defined in this ordinance.
- A right-of-entry onto the property, with proper advance notice, for the purpose of marking or lighting any structure or other object that penetrates the imaginary surfaces as defined in this ordinance.
- A right to prohibit electrical interference, glare, misleading lights, visual impairments, and other hazards to aircraft flight as defined in this ordinance from being created on the property.

“Facially Unconstitutional”

- Applicable language: *HZO 135B Subsection G 2 e (ASCO zones):*
[identical language repeated in Subsections G 3 e, G 4 e and G 5 e]:

(e) Land use or limited land use approvals by the City *[in ASCO 2, 3, 4, or 5]* shall be conditioned to provide an avigation easement and an Airport Activity Disclosure Statement to the Port of Portland prior to recordation of land division plats or Certificates of Occupancy, as applicable.

“Facially Unconstitutional”

- Applicable language: *HZO 135B Subsection G 6 c (ASCO zones)*:

(c) Applications for increased densities of residential development *[in ASCO 6]* may be approved if implementation of such increased densities can be conditioned to be constructed consistent with the safety and compatibility standards in this Ordinance regarding building height and noise management. Approvals by the City of increased residential densities shall be conditioned to provide an aviation easement and an Airport Activity Disclosure Statement to the Port of Portland prior to recordation of land division plats or Certificates of Occupancy, as applicable.

“Facially Unconstitutional”

- Applicable language: *HZO 135B Subsection J 3 (ASCO zones)*:
 - 3. Within Compatibility Zones 2, 3, 4, or 5, land divisions such as partitions, subdivisions, or condominiums, and Development Review approvals for multi-family residential development of any size, or non-residential structures exceeding 10,000 gsf, shall be conditioned to require provision to the Port of Portland of an Avigation Easement and an Airport Activity Disclosure Statement. Documentation of the recordation of the Avigation Easement and Airport Activity Disclosure Statement shall be provided prior to issuance of Certificates of Occupancy.

“Facially Unconstitutional”

- “Avigation Easement Requirements” Analysis:

- *LUBA stated that the first two elements of the avigation easement were effectively a “taking” of property rights without compensation; and the remaining three elements “might survive a facial challenge and could be challenged only on an as-applied basis.”*

As the jurisdiction requiring the easement, the City would therefore be potentially and unacceptably vulnerable to constitutional challenges each time the easement was required.

“Facially Unconstitutional”

- “Avigation Easement Requirements” Analysis, continued
 - *The goals of the avigation easement can be accomplished by two other means:*
 - 1) *close coordination with the Port on code enforcement; and*
 - 2) *inclusion of a “contact verification requirement” that some level of contact has occurred between the applicant and the Port during the land use approval process.*
 - *Recommendation:* *Delete the definition and all references to the avigation easement requirement. Substitute a reference in the applicable subsections to a “contact verification requirement” in some form.*

“Contact Verification Requirement”

- *Intent: To “open the door” for possible negotiations between the Port and a land use approval applicant during the approval process*
- *City would advise a potential applicant of the requirement*
- *Port will be notified when City received any development application above a certain intensity threshold (current practice)*
- *Either the Port or the applicant could make initial contact*

“Contact Verification Requirement”

- *Process questions:*

- *How can the requirement be implemented without increasing application processing time?*
- *How could / would the requirement be enforced?*
- *How could / would it be appealed?*
- *When in the process should an affidavit or other verification be required?*
- *What level of “good faith effort” is necessary to meet the intent?*

“Transportation Planning Rule ”

- Applicable Language: None in HZO
- Analysis:

The relevant statute is OAR 660-012-0060:

1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures... to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility.

To meet the requirements of the TPR, a City must find that either:

- A) the proposed land use action would have no significant effect on the transportation facility; or
- B) amend the Transportation System Plan or limit the intensity of the land use if approved.

“Transportation Planning Rule ”

- Analysis, continued

TPR analysis must be done for the AU zone. Since the AU zone will allow only aviation-related commercial and industrial uses, as opposed to the wider range of uses allowed in the existing M-2 Industrial and M-P Industrial Park zones, the City strongly believes that the finding will be “no significant impact” due to the “downzoning” nature of the AU zone.

- Recommendation: *The City will prepare an in-house Traffic Impact Analysis similar to the TIA done for PDX in March 2010.*

Next Steps

- Receive comments and revisions on the LUBA-related changes from the Planning Commission
- Prepare draft Orders for review by the City Attorney;
- Forward draft Orders to Planning Commission for initiation on April 13th
- Upon initiation, prepare notices to DLCD and to affected property owners in the AU zone and ASCO Zones 1-6 (approximately 6700 owners)
- Schedule open house in May for owners to discuss changes
- Schedule public hearings beginning June 8th

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Final questions or comments?

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Thanks for your participation!

