



MEMORANDUM

TO: Board of County Commissioners

FROM: Audrey Stuart, Associate Planner

DATE: November 20, 2023

RE: Consideration of whether to initiate review of a Text Amendment request; Land use file no. 247-23-000470-TA.

On November 29, 2023, the Board of County Commissioners (“Board”) will consider whether to initiate review of a Hearings Officer’s recommendation to approve a Text Amendment to the Airport Development (AD) Zone and Airport Safety (AS) Combining Zone. The proposed amendments will add an air traffic control tower as an allowed use and allow an air traffic control tower to be up to 115 feet in height.

I. IMPACTED PROPERTIES

The AD Zone applies to one airport in Deschutes County—the Bend Municipal Airport. The AD Zone encompasses 340 acres and consists of three zoning districts. The Bend Municipal Airport includes the following tax lots, though staff notes there may be multiple addresses assigned to each tax lot.

- 1713200000200 – 63155 Gibson Air Rd
- 1713200000201 – 63110 Powell Butte Hwy
- 171317C000100 – 63205 Gibson Air Rd
- 1713170000200 – 63482 Powell Butte Hwy
- 1713200000202 – 22550 Nelson Pl
- 1713200000300 – 63144 Powell Butte Hwy

The City of Bend operates the Bend Municipal Airport and is the only property owner impacted by the proposed amendments.

II. PROPOSAL

The Applicant requests amendments to the AD Zone (DCC 18.76) and the AS Combining Zone (DCC 18.80). The proposed Code changes are included in this packet as an attachment to the Hearings Officer's recommendation. The proposed Text Amendment is summarized as follows:

- The Applicant proposes to add a definition for Airport Traffic Control Tower.
- The Applicant proposes to add an Air Traffic Control Tower as a new use permitted outright in the AD Zone.
- The Applicant proposes to allow Air Traffic Control Towers up to 115 feet in height.

A staff report was mailed on September 25, 2023, and staff found the proposal complied with all applicable provisions of Deschutes County Code, Deschutes County Comprehensive Plan policies, and applicable State laws. A public hearing was held before a Hearings Officer on October 2, 2023, and a Hearing's Officer recommendation approving the application was mailed on November 21, 2023. As described below, the Board may decide to either adopt the Hearings Officer's findings or initiate review of the decision.

The application materials state that an air traffic control tower is needed for safe airport operations. The Federal Aviation Authority (FAA) has accepted the Bend Municipal Airport as a candidate into the Federal Contract Tower Program, and the City of Bend completed a siting study and Environmental Assessment as required by FAA. The City of Bend has until October 14, 2025, to finish constructing the control tower approved by this program.

III. PUBLIC COMMENTS

One member of the public submitted written comments in opposition to the proposal, and this member of the public also provided oral testimony at the October 2, 2023, hearing. The issues raised include health and safety concerns about airport operations, impacts on surrounding property owners, and concerns with the Bend Municipal Airport's current flight pattern.

The public agencies that submitted written comments were Deschutes County Transportation Planning, Deschutes County Building Division, Central Oregon Irrigation District, and the Oregon Department of Aviation. The applicant also submitted materials from FAA demonstrating their coordination on the proposed air traffic control tower.

IV. BOARD OPTIONS

The Hearings Officer finds, and staff concurs, that the proposed Text Amendment meets the definition of a quasi-judicial amendment but also has qualities of a legislative amendment. Pursuant to DCC 22.28.030(A) and DCC 22.12.050, the Board must take final action on amendments to Deschutes County Code. The subject application was processed as a quasi-judicial application and the Hearings Officer issued a recommendation, as only the Board has the authority to take final action on any Text Amendment. The Board may choose to adopt the Hearings Officer's recommendation or the Board may choose to initiate review and conduct a new public hearing.

Reasons not to hear

Members of the public were notified of the subject application through a mailed Notice of Application, posted land use sign, mailed Notice of Public Hearing, project webpage, and posting in the Bend Bulletin. Public testimony was taken at the Hearings Officer hearing, and the Hearings Officer responded in length to issues raised in opposition. One member of the public testified in opposition and that was the only member of the public to provide comments.

The proposed language for DCC 18.76 and DCC 18.80 has been through multiple rounds of edits and is acceptable to Planning Division staff. At the hearing on October 2, 2023, the Hearings Officer also suggested edits and these were incorporated into the final version. Staff also notes that airport uses are regulated by the FAA and the Oregon Department of Aviation. Compared to other zones regulated by DCC, uses in the AD Zone are substantially limited by state and federal regulations. The proposed amendments were reviewed by the Oregon Department of Aviation, who generally support the amendments.

Staff and the Applicant are satisfied with the proposed Code language and the Hearings Officer's recommendation. The Hearings Officer's findings provided a thorough analysis and could be supported, as the record exists today, on appeal to the Land Use Board of Appeals.

Reasons to hear

The Board may want to take testimony and make interpretations relating to the Hearings Officer's recommendation. The Board may also want to reinforce or refute some or all of the recommended findings/interpretations prior to Land Use Board of Appeals review. The member of the public who testified in opposition submitted a number of different arguments, which the Board may choose to review further. The Board may also choose to hold their own public hearing in order to provide more opportunities for public input.

If the Board decides to adopt the Hearings Officer's findings, a draft Ordinance will be prepared that incorporates the Hearings Officer recommendation as findings. Staff would then return to the Board for a first and second reading of that draft Ordinance approving the proposed Text Amendment.

V. STAFF RECOMMENDATION

Staff agrees with the Hearing's Officer decision and therefore recommends the Board decline to initiate review. The proposed edits to the DCC have been reviewed by the Planning Division, the airport sponsor, and applicable agencies and were found to be acceptable. As described by the Hearings Officer, many of the issues raised in opposition were not connected to applicable approval criteria and were outside the scope of this review. Therefore, the Board may be limited in its ability to address these issues if raised again during a public hearing before the Board.

VI. 150-DAY LAND USE CLOCK

Pursuant to DCC 22.20.040(D)(1), the subject application is exempt from the 150-day land use clock.

VII. RECORD

The record for File No. 247-23-000470-TA is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-23-000470-ta-%E2%80%93-air-traffic-control-tower-text-amendment>

Attachments:

1. Hearing's Officer recommendation for file no. 247-23-000470-TA
2. Staff report for file no. 247-23-000470-TA