

Centennial Airport / Runway and Taxiway Stormwater Fees

1. Whatever the Board did in 2006 can be changed by them to expressly include or exclude airport runways and taxiways.
2. Most ordinances or other legislation that address this issue contain a section with specific exemptions from the fee. In cases where airports are included, the exemptions read generally as follows: "Airport runways and active taxiways are exempt."
3. Two surveys of stormwater fees in regard to runways and taxiways show: a) in the Florida survey that 19 of 72 respondents excluded runways and b) in the Southeast survey that 4 of 32 respondents excluded runways. Obviously, all of the respondents do not have runways so we cannot ascertain from the survey what percentage of respondents with runways excluded them.
4. The two slides that were presented to the Board when stormwater fees were adopted exclude "public right-of-way including public streets, alleys, and sidewalks". It certainly can be argued that if runways were intended to be excluded they would have been mentioned in the slide.
5. There is some legal authority to conclude that in order to be a "public-right-of-way" in this instance, the same has to be legally "dedicated" to, in this case, the county. My recollection is that this was not done in regard to the runways at Centennial Airport.
6. I can easily distinguish a public road from a runway since although both may be used by the public only a very few of the public use a runway whereas the majority of the population have motor vehicles and therefore use public roads.
7. Since Centennial Airport is at the top of the drainage basin, it utilizes the drainage system below it.
8. If stormwater fees are not assessed against Centennial's runways and taxiways it could be argued that the public is subsidizing Centennial Airport in regard to its runoff.
9. Finally, the case cited by the Airport's attorney is interesting but not dispositive of the question since it is up to the Board to determine whether a fee is to be applied to runways or not. In the *Hale* case, the court was interpreting a statute passed by the Colorado Legislature whereas here; there is no statute or other law other than what the SEMSWA Board has adopted. The Board's interpretation of what it meant would be viewed by the courts as almost determinative of the issue since courts give deference to an agency's interpretation of its own regulations.

ejk