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Giving up rights? Easements for Bowman Field neighbors protect agency from lawsuits

When buying air easements over homes near Bowman Field in the past, the Louisville Regional Airport Authority has secured more than the right to keep glide paths clear of obstructions for pilots.

It also bought protection from lawsuits that may stem from planes flying over the homes.

Airport authority officials stress that those legal protections extend only to repercussions from normal operations, such as the impact of typical amounts of noise and fuel exhaust particles dropping to the ground. But some lawyers say the releases, as written, extend far more protections than that.

"It is one thing to assume you are purchasing or acquiring an easement that you have normal use of it, but this goes beyond that," said Tom FitzGerald, an attorney working with airport neighbors. "They are immunizing themselves from liability."

Some residents who bought homes without

knowing about the easements have said they worry about losing rights to address such concerns as falling airplane parts, dumped fuel, or airport changes that might bring in a lot more noisy jets.

The airport authority bought at least 51 air easements between 1991 and 2007 covering at least some of the homes within former airspace safety zones, paying a total of roughly \$425,000, according to an authority database made available to The Courier-Journal under a Kentucky open-records request. The typical residential easement averaged \$7,323 in one-time payments.

The authority is now gearing up to buy more easements and renegotiate some of its existing easements as part of a new and bigger Bowman Field Airport Area Safety Program.

The authority's board of directors has approved a \$5 million, five-year program to identify and remove or trim all trees that may be in expanded airspace safety zones

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that extend about a mile from the ends of each of the airport's two runways.

As part of the effort, the authority also will look for buildings, utility poles, billboards or other man-made structures that may be too tall. Officials have said they, too, will have to be "mitigated," but have offered conflicting statements about what that means.

The Federal Aviation Administration, which paid for part of the previous easements and would cover about half of the new program's costs, has expanded the safety zones by lengthening, widening and lowering them to accommodate more precise navigation equipment.

FAA spokeswoman Kathleen Bergen said the expanded airspace will allow pilots to "fly at lower altitudes as they approach the runway, thus making more effective use of the runway available for landing."

Airport officials said they are not ready to purchase the new easements and cannot say yet what kind of liability release language may be contained in them or how much compensation they may offer. Officials have said offers may go to property owners who already have sold an easement, as well as those who have not.

Easements acquired as recently as 2006 release the airport from lawsuits involving complaints about noise, vibrations, dust, fuel particles and "all other effects that may be caused or may have been caused by the operation of aircraft." One dating to

1991 even protects the airport authority from accidents or damage caused by airplanes that are flying outside an easement over a home.

Charles T. "Skip" Miller, the airport authority's executive director, said there's been no intent for the agency to seek protection from lawsuits for anything other than "normal" aircraft operations.

"This allows the right to have aircraft overfly through the airspace area on a normal basis for arrival and departure," Miller said. "If you drop a piece of your airplane in the person's back yard and damage the person's swimming pool, there is a legal recourse, and that is not a normal operation."

Expansive wording

But two lawyers who have looked at some of the past easement agreements say the wording extends lawsuit protection for the airport authority beyond normal flight

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operations.

FitzGerald, an environmental attorney with the Kentucky Resources Council, pointed to release language that did not include the word “normal,” and said the broader wording gives too much protection to the airport authority. He is working with some of the neighbors who have organized around protecting their trees and property rights.

University of Louisville law professor Tony Arnold, a property and land-use expert who is not involved in the Bowman matter, agreed the immunity that the airport authority bought in the easements he reviewed covered more than merely normal operations, possibly even including plane crashes.

But Arnold described that as standard practice for so-called “aviation easements” in the United States. And he said that reflects a public airport’s ability to claim airspace through its powers of eminent domain, as well as an airport owner’s and the FAA’s desire to promote public safety.

Airports don’t have to negotiate easements that give them only those rights that are strictly or even reasonably necessary to air traffic safety, Arnold said. That’s because “the courts don’t want to force airports to cut it close with their aviation easement rights, and find out that they had not asked for enough rights only when there is an accident and the misjudgment is discovered in post-casualty hindsight.”

“As long as the rights are convenient and beneficial to protection of air traffic safety, they will be accepted as legally reasonable,” Arnold said.

But that doesn’t mean airport neighbors surrender all rights to legal recourse, he said. People can likely still sue aircraft operators, manufacturers and even the mechanics should their property be damaged by an airplane, he said.

And he said homeowners have to be careful to make sure they are fairly compensated for what they give up in rights.

Some Bowman-area homeowners said they only recently found out that their homes involved easements that had been sold by previous homeowners. Some indicated that they have concerns about the one-sided nature of the release language.

Angela Burton, for example, bought her Drayton Drive home in 2009 and said she didn’t learn of the easement on her

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property until she began digging into public records after the authority announced in December that it needed to clear obstructions from a bigger airspace and began meeting with Bowman neighbors. A previous owner had sold the easement to the authority in 1992 for \$9,000.

“It took a lot of my homeowner’s rights away,” Burton said, adding that she is now worried that she won’t be able to sell her house because of the easement. “I feel in a quagmire about this.”

She said she has been trying to figure out why the easement wasn’t disclosed.

Arnold said that while a buyer might have a claim against a seller or real estate agent who failed to disclose an aviation easement, the law typically puts the burden on the buyer for knowing about it.

“If you are buying near an airport ... the law presumes the buyer should be able to educate themselves on that,” he said.

Timon Groves, who purchased his house on Drayton Drive in the same year, said he was unaware of a similar easement on his property until this year. The authority purchased it in 1991 from a previous owner for \$12,000.

“I am assuming the legal language is stating that anything occurring above (my house) which may cause damage to my property is not the fault of the (authority), and they cannot be held accountable,” he said. “So if a wheel falls off a plane and lands on my

house it is not the fault” of the authority, he said.

Some not worried

Other homeowners who sold the airport easements, however, said they weren’t concerned about the broadly worded liability releases.

Landor Avenue resident Joe Kopacz sold an easement for \$5,500 in 2003. In an email exchange with a reporter, he called any concern about liability language “much to do about nothing,” offering a wisecrack: “Oh, the one and the most important thing they left out of their contract with all of us is: If the sky falls we can hold them liable.”

He said he applied the money to the purchase of a sports car. “My daughter looked just grand tooling around town for about a year in the blue Jaguar,” he said.

Wendell S. Eddings, who lives on Seneca Boulevard, sold an easement above his

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home in 2006 for \$6,250, according to the terms of the document. Authority officials “told me they were buying the airspace above our house, for clearance,” he said. “They took a big tree down and the person who took it down said it was old and sick.”

Eddings said he was glad he didn’t have to pay for the tree removal. “I didn’t get the idea they were trying to pull anything, and I thought I got a fair price,” Eddings said.

Going forward, Miller said, authority staff would work with the FAA on the language of any new easements. The authority has used its eminent domain powers in the past for the airspace easements and Miller said it is prepared to do that again if voluntary agreements cannot be reached.

FitzGerald said homeowners who may be approached by the authority seeking to buy an easement should make sure they fully understand the rights they are giving up. He said they don’t need to provide “broad and almost blanket immunity for past, present and future situations that may arise.”

“We will certainly be trying to provide basic information to residents, if and when it becomes appropriate for the authority to request easements,” FitzGerald said.

AIRSPACE EASEMENTS

Addresses near Bowman Field where the Louisville Airport Authority has acquired airspace easements. The easements are meant to ensure that homeowners don't allow trees or other obstructions to get into protected airspace on runway approaches.



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BOWMAN

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