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FAA Finds Town of Norwood and its Airport Commission in Violation of Federal Law

The Director's Determination concludes that the Airport Commission unreasonably denied Boston Executive Helicopters access to the Airport in violation of Federal Grant Assurance 22 prohibiting economic discrimination, and improperly granted the existing fixed based operator exclusive rights in violation of Federal Grant Assurance 23

In 2008, the FAA determined that the Norwood Airport Commission, under the direction of Chairman Mark Ryan and Airport Manager Russ Maguire, engaged in economic discrimination by granting the fixed based operator ("FBO") exclusive rights in violation of Title 49 of the United States Code (USC) §§ 47107(a), 40103(e) and Federal Grant Assurances 22 and 23. The FAA then issued a Corrective Action Plan directing the Airport Commission to, among other things, end the practice of awarding long-term leases of federally funded ramps which had the effect of granting the existing FBO control over a majority of Airport ramp space.

FlightLevel Norwood, LLC ("FlightLevel") purchased the FBO at the Airport in 2009. Boston Executive Helicopters ("BEH") has provided helicopter charter services at the Airport, and has requested permission and additional ramp space to expand its operations to include providing FBO services, since 2010.

In response to BEH's requests for space and permitting approvals, the Commission resisted and resorted to a pattern of obfuscation and disparate treatment. It demanded financial information, personal guarantees, and insurance coverage not required by the Airport's minimum standards, or requested of other Airport tenants including FlightLevel. BEH filed a Part 16 Complaint to the FAA in 2015, and yesterday the Administration issued a Determination, finding that the

Commission's "delaying tactics, restrictions and excessive financial information requests" constituted a "continued pattern of delay to prevent BEH from completing the FBO permitting process." The FAA concluded that the Town and the Commission's actions constitute an unreasonable denial of access [to BEH] and unjust economic discrimination [against BEH]."

While holding the BEH at bay, the FAA also found that the Commission continued to bestow greater control of airport ramp space to FlightLevel by offering it new leases on a variety of federally funded ramps. Specifically, the Commission offered FlightLevel new lease terms for Lots A, B, and C, notwithstanding BEH's pending request for more area on the Airport for its FBO. The FAA concluded that the "Commission chose to ignore the letter, spirit and tenets of the previously ordered 2008 FAA Corrective Action Plan." The FAA rejected the Commission's excuse that the leases to FlightLevel were justified because it controlled abutting property. Such rationale ". . . is not justified, nor does it give first rights. . . It is camouflaging an exclusive right."

The FAA went on to find that the Commission's unfair treatment of BEH, and favorable treatment of FlightLevel violates Title 49 USC § 47107(a)(1) and related Federal Grant Assurance 23 (Exclusive Rights). The Commission's subtle imposition of unreasonable restrictions on BEH, when combined with the favorable leasing practices toward FlightLevel, had the overall effect of solidifying FlightLevel's position at the Airport to the detriment of BEH, and others. "The facts show that FlightLevel has a significant portion of the available property useful for FBO services, approximately 80%, and rather than curtailing FlightLevel's grasp, the Airport expanded it." This, in the judgment of the FAA, violates Federal Law and Grant Assurances prohibiting the grant of Exclusive Rights to a single operator.

The Director's Order requires the Town and the Commission to take immediate steps to promptly complete the FBO permitting process with BEH, discontinue leasing practices that provide exclusive rights to a single FBO, and rectify the unauthorized lease of Airport land to Verizon for non-aeronautical use. The Town and the Commission have 30 days to appeal.

The full text of the FAA Director's Determination can be found at: <https://documentcloud.adobe.com/link/track?url=urn%3Aaaid%3Aacds%3AUS%3A55b7899f-8356-465a-abca-45b05c2de79c>

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