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Tami L. Fay
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Ann M. O'Neill, Sr. Counsel

Please respond to Quincy

February 12, 2014

VIA HAND DELIVERY
AND EMAIL (rmaguire@norwoodma.gov)

Russ Maguire, A.A.E., ACE
Airport Manager
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

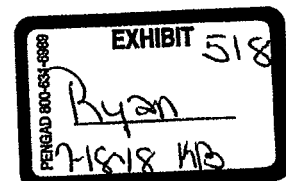
Re: *Boston Executive Helicopters, LLC*

Dear Mr. Maguire:

You requested legal review of correspondence from Boston Executive Helicopters, LLC ("BEH"), which seeks to conduct a fixed base operator ("FBO") business at Norwood Memorial Airport ("Airport"). Specifically, BEH seeks additional ramp space at the Airport in connection with its proposed FBO business.

A. Facts

I understand that BEH is currently constructing a hangar and has separately stated its intent to operate a fuel farm on its leasehold. The fuel farm requires a final inspection by the Norwood Fire Department, which will occur at a future, appropriate time. BEH has requested ramp areas to accommodate transient pilots seeking to park and receive servicing by BEH, including fuel and services.



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Airport Manager
Norwood Memorial Airport
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BEH has raised the specter of Grant Assurance 23 ("Exclusive Rights") in support of its request for ramp space, by identifying existing leases for: Revised Lots 6 and 7 (leased to FlightLevel Norwood LLC); Lots W, X and Y (leased to FlightLevel Norwood LLC); Lot Z (leased to FlightLevel Norwood LLC); Ramps A, B & C (leased to FlightLevel Norwood LLC); the West Apron (operated by the NAC); and the DC-3 Ramp (leased to Papa Whiskey 1, LLC, in joint ownership with FlightLevel Norwood LLC). BEH did not submit a response to the request for proposals that the Norwood Airport Commission ("NAC") issued for the DC-3 Ramp, which was restricted in use to aircraft tie-downs.

In its correspondence, BEH has specifically requested the north ramp areas of the Airport, unspecified other areas, and/or the West Apron, the latter of which is operated by the NAC. BEH has requested the West Apron for a "preferential lease," consisting of the entire ramp for aircraft parking and for ramp services and fueling. BEH separately requested a preferential, but not exclusive, use of an area for transient pilots to whom it seeks to sell fuel and service. BEH also separately requested use of common areas for aircraft fueling operations, specifically the two (2) helipad areas and the tie-down area adjacent to Taxiway B.

Alternatively, it appears that BEH seeks a reallocation or sharing of space used by FlightLevel Norwood LLC, by citing provisions in certain existing leases. In that regard, BEH cites: Paragraph 32 from the lease for Lots 6 and 7, which addresses exclusive rights; Paragraph XXX from the lease for Lots A, B & C, which addresses compliance with federal and state requirements; and Paragraph XXXI from the lease for Lots A, B & C, which addresses reserved rights by the NAC.

BEH has not currently obtained all of the required approvals for a full-service FBO commercial permit for the Airport. During the January 15, 2014 NAC meeting, it was noted that the business plan accompanying BEH's initial commercial permit application did not address all considerations attendant to permitting of a full-service FBO. Accordingly, consistent with the Airport's Minimum Standards, the NAC requested that BEH provide: financial statements; trade references; copies of professional licenses or certificates specific to personnel training for fuel storage/dispensing; an inventory of auxiliary equipment to support the servicing of aircraft; proposed fueling location(s) on the Airport, including the prospect of fueling on the Airport's West Apron; and insurance.

BEH was also reminded about the outstanding issues for a full-service FBO commercial permit in an email dated January 22, 2014. To date, I understand that BEH has not provided all of the information that the NAC requested.

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B. Analysis

Federal statutes and Federal Aviation Administration ("FAA") Grant Assurance 23 address exclusive rights. See 49 U.S.C. § 40103(e); 49 U.S.C. § 47107(a)(4). An "exclusive right" is defined as "[a] power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right." FAA Advisory Circular 150/5190-6 at Appendix 1.1.f. (January 4, 2007). "An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means." Id.

Grant Assurance 23 provides that the sponsor of a federally-obligated airport "will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public It further agrees that it will not either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities." An airport sponsor may prohibit an on-airport aeronautical activity on the basis of safety and efficiency. See FAA Advisory Circular 150/5190-6 at 1.3.a.1 (January 4, 2007). Additionally, there is no exclusive right if: (1) "[i]t would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and" (2) "[i]f allowing more than one fixed-base operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-base operator and such airport." Grant Assurance 23.

"The fact that a single business or enterprise may provide most or all of the on-airport aeronautical services is not, in itself, evidence of an exclusive rights violation." See FAA Advisory Circular 150/5190-6 at 2 (January 4, 2007); FAA Airport Compliance Manual Order 5190.6B at 8.6, 8.9.b (September 30, 2009). Thus, the mere fact that FlightLevel Norwood LLC operates an FBO on the Airport is not dispositive of the exclusive rights analysis. The fact that current leases with FlightLevel Norwood LLC reference compliance with federal and state obligations and disclaim conferring exclusive rights is significant in considering that no exclusive rights exist. See JetAway Aviation, LLC v. Board of County Commissioners, Montrose County, Colorado, FAA Docket No. 16-06-01 (November 6, 2006) (Director's Determination).

"What is an exclusive rights violation is the denial by the airport sponsor to afford other qualified parties an opportunity to be an on-airport aeronautical service provider." FAA Advisory Circular 150/5190-6 at 2 (January 4, 2007) (emphasis added); FAA Airport Compliance Manual Order 5190.6B at 8.9.b (September 30, 2009). "However, the airport sponsor cannot as a matter of convenience choose to have only one FBO provide services at the airport regardless of the circumstances at the airport." FAA Advisory Circular 150/5190-6 at 2

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(January 4, 2007); FAA Airport Compliance Manual Order 5190.6B at 8.9.b (September 30, 2009).

The FAA also contemplates that a single enterprise may expand as necessary, even as it potentially occupies all available space on an airport. FAA Advisory Circular 150/5190-6 at 3 (January 4, 2007); FAA Airport Compliance Manual Order 5190.6B at 8.9.d (September 30, 2009). This potential for expansion by the single enterprise does not allow an airport sponsor to "unreasonably exclude[] a qualified applicant from engaging in an on-airport aeronautical activity without just cause or fail[] to provide an opportunity for qualified applicants to be an aeronautical service provider." FAA Advisory Circular 150/5190-6 at 3 (January 4, 2007); FAA Airport Compliance Manual Order 5190.6B at 8.9.d (September 30, 2009).

Accordingly, compliance with an airport's minimum standards is part of the exclusive rights analysis. See Tulloch v. City of Harlingen, Texas, FAA Docket No. 16-05-07 (August 21, 2006) (Director's Determination) (recognizing that another FBO would be accepted if it satisfied the applicable minimum standards); Ricks v. Millington Municipal Airport Authority, FAA Docket No. 16-98-19 (July 1, 1999) (Director's Determination) (recognizing complainant's failure to submit required financial information for evaluation of FBO leasehold application and therefore no exclusive right was conferred); U.S. Aerospace, Inc. v. Millington Municipal Airport Authority Millington, Tennessee, FAA Docket No. 16-98-06 (October 20, 1998) (Director's Determination). Indeed, as noted in FAA Advisory Circular 150/5190-6, which is quoted above, the exclusive rights analysis focuses on the impact on "other qualified parties" and also considers whether just cause exists for an airport sponsor's action.

For example, in U.S. Aerospace, the complainant contested delays in the processing of its request for a leasehold expansion and change to general FBO status as a violation of Grant Assurance 23 and the federal prohibitions on exclusive rights. FAA Docket No. 16-98-06 (October 20, 1998) (Director's Determination). However, the FAA rejected the exclusive rights argument in U.S. Aerospace, because the applicant did not provide requested and required financial information, such as a recent audited financial statement. As the FAA recognized, "[i]t is prudent for an airport operator to seek more information when a tenant is proposing to substantially alter the nature of its operations than when it is proposing only an increase in the size of its leasehold." Because the airport sponsor had the right and responsibility to assess the proposed tenancy and the requisite information was not provided, there was no exclusive rights violation in U.S. Aerospace.

Here, the status of BEH's full-service FBO commercial permit is unresolved, because BEH has not submitted information required to determine compliance with the Airport's Minimum Standards. This issue of compliance with Minimum Standards is significant given the

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Airport Manager
Norwood Memorial Airport
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scale of BEH's proposed FBO business. Accordingly, BEH's attempt to raise an exclusive rights argument is premature.

Even if BEH were to be a qualified party for a full-scale FBO, the exclusive rights analysis considers whether the NAC is willing to render the Airport available for its proposed FBO business. See FAA Airport Compliance Manual Order 5190.6B at 8.6 (September 30, 2009). The NAC is not required to accept BEH's "most convenient or 'preferred' or 'logical' parcel on the airport for" its proposed uses. See JetAway Aviation, Inc. v. Montrose County, Colorado, FAA Docket No. 16-08-01 (July 2, 2009) (Director's Determination). "[I]dentification of parcels for FBO-use is not necessarily relevant to an allegation of the granting of an exclusive right." Id.

Nor is an airport sponsor required to render a parcel available to a potential aeronautical business at any cost. See Wilson Air Center, LLC v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10 (August 2, 2000) (Director's Determination) (noting a lack of information from the complainant about whether a parcel was best used for FBO purposes, as opposed to an existing valid aeronautical support purpose). This consideration is relevant given BEH's suggestion that the NAC should interrupt existing lease rights with FlightLevel Norwood LLC.

Rather, the most appropriate use of airport space is relevant to determining the accommodation for a potential aeronautical business, such as an FBO. See id. Such considerations include the efficient operation of an airport and safety. See id. (considering efficiency in light of reconfiguration of airport layout for a more efficient operation with contiguous uses); Platinum Aviation and Platinum Jet Center BMI v. Bloomington-Normal Airport Authority, FAA Docket No. 16-06-09 (November 28, 2007) (Final Decision and Order) (denying exclusive rights claim where complainants would compromise safety and undermine utility of airport through operation on priority use area).

A sponsor offering an area on the airport premises, even if not the preferred alternative for a proposed business, may defeat an exclusive rights claim. See Wilson Air Center, LLC v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10 (August 30, 2001) (Final Agency Decision and Order); Wilson Air Center, LLC v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10 (August 2, 2000) (Director's Determination). Accordingly, if and when BEH demonstrates compliance with the Airport's Minimum Standards, the NAC may consider revisiting an appropriate accommodation for space at the Airport, consistent with BEH's proposed use.

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Absent demonstration that no other available and suitable site for an FBO exists at the Airport, BEH cannot demonstrate an exclusive right was conferred. See JetAway Aviation, Inc. v. Montrose County, Colorado, FAA Docket No. 16-08-01 (July 2, 2009) (Director's Determination). BEH also has not demonstrated that the NAC will preclude all available sites for development of its full-scale FBO. See Tulloch v. City of Harlingen, Texas, FAA Docket No. 16-05-07 (August 21, 2006) (Director's Determination) (considering availability of sites in rejection of Grant Assurance 23 claim). If the NAC provides BEH with an opportunity for space on the Airport for its proposed full-scale FBO at a future time, BEH should be unable to demonstrate an exclusive right was conferred upon the existing FBO at the Airport.

I hope this information is useful. Please let us know if we can be of any further assistance.

Very truly yours,



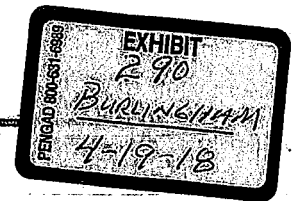
Brandon H. Moss

/bhm

cc: Norwood Airport Commission (via hand delivery and email)
John P. Flynn, Esquire

773001v1

Nicholas W. Burlingham



From: Nicholas W. Burlingham
Sent: Monday, February 17, 2014 2:36 PM
To: bmoos@mhtl.com
Subject: RE: Norwood Memorial Airport

Dear Attorney Moss,

Thank you again for taking the time to speak with me on Friday. As full-time in-house counsel for a group of beleaguered narrow-margin FBOs that seem constantly under siege, I've grown keenly aware of the narrow exceptions under which airport sponsors may host solitary FBOs without violating the exclusive rights prohibition. When we spoke on Friday, you demonstrated what was clearly a superior knowledge and understanding of the law and issues, so please forgive me if this comes across as "mastery of the obvious," but if it helps in any way, here's one of the most concise statements I've come across on point:

The Exclusive Right Exclusion is contained in the three statutory sections:

- (1) 49 U.S.C. § 40103(e), No exclusive Rights at Certain Facilities;
- (2) 49 U.S.C. § 47107(a), General Written Assurances;
- (3) 49 U.S.C. § 47152, Terms of Conveyances

The Single FBO exception can be found in the following places;

- 49 U.S.C. § 47107(a)(4)(A and B)

(4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if—

(A) the right would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and

(B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;

- 49 U.S.C. § 40103

(e) "A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed operator is not an exclusive right if—

(1) it is unreasonably costly, burdensome, or impractical for more than one fixed operator to provide the services; and,

(2) allowing more than one fixed base operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

In the very near future, the NAC will decide whether (and to what extent) it will succumb to Mr. Donovan's demands, and effectively "bail-out" BEH's questionably-conceived fuel farm investment (a burden that should not be the NAC's to bear), by providing BEH with additional proprietary fueling locations. I'm passing this along to reiterate that at 500,000 gallons per year, the airport cannot support two FBOs (a fact proven by the merger of Wiggins Airways and Eastern Air Center at the height of market), and to suggest that an intervening independent study be ordered to verify this prior to proceeding. Also, to offer the foregoing compressed statement of the Single FBO Exception, should it be helpful in some capacity to you or your client. Lastly, to request your assistance in reminding the NAC, prior to its decision, that if it chooses further to enfranchise BEH (with significantly less than half of the invested capital of FlightLevel), it will at the same time be destabilizing both fueling concessions, and determining the fate of FlightLevel, including its current \$6M+ investment in the airport, and its seven-year plan to inject an additional \$6M.

Nick

Nicholas W. Burlingham

General Counsel

FlightLevel Aviation

175 Tower Avenue

Groton, CT 06340

P: 860-235-5786

F: 860-449-9924

From: Nicholas W. Burlingham

Sent: Friday, February 14, 2014 4:40 PM

To: 'bmoss@mhtl.com'

Subject: Norwood Memorial Airport

Dear Attorney Moss,

This follows my voice message of earlier today. As mentioned, I represent FlightLevel Aviation in connection with its operations at Norwood Municipal Airport, and would like an opportunity to introduce myself, and speak very briefly with you about current developments at the airport. Is there a time next week when you could be available for a call? 10 to 15 minutes should suffice.

Please let me know.

Thanks and best,

Nick

Nicholas W. Burlingham

General Counsel

FlightLevel Aviation

175 Tower Avenue

Groton, CT 06340

P: 860-235-5786

F: 860-449-9924

2193C

From: Nicholas W. Burlingham

Sent: Thursday, February 12, 2015 6:35 PM

To: kgrasso@norwoodma.gov; rdoucette@norwoodma.gov; wfundora@norwoodma.gov

Cc: bmoss@mhtl.com; owdmep@aol.com

Subject: Prior Notice of Possible Breach of Peace and Request For Police Detail at the Norwood Memorial Airport
My apologies to those of you who have received duplicate copies. This contains corrected email addresses for NPD.

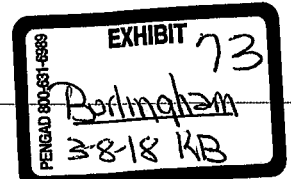
To: kgrasso@norwoodma.gov

or in the alternative

CC: rdoucette@norwoodma.gov

CC: wfundora@norwoodma.gov

Dear Officer Grasso,



INTRODUCTION

Thank you again for responding to my voice message on Wednesday, January 21. As discussed, I am General Counsel for FlightLevel Aviation, ("FlightLevel") which operates several airport businesses along the East Coast. FlightLevel is headquartered at the Norwood Memorial Airport where it owns 120,000 sq.' of hangar and office buildings, employs just under 30 people, and has over \$8,000,000 in invested capital. With combined rents and flowage fees averaging around \$250,000 per year, FlightLevel is the airport's largest contributor to the Town of Norwood.

THE PRESENT MATTER

The matter I spoke with you about on January 21 involves a trespass by Boston Executive Helicopters (Mr. Christopher Donovan, Principal), a tenant that occupies "Lot F" at the Airport shown on the attached Site Plan. Specifically, in July of 2014, BEH or its agents, without prior FlightLevel or Airport authorization, entered FlightLevel's Lot G at the airport, and physically ripped-up and repaved a significant portion of it. FlightLevel believed this was done for purposes of claiming the right to use its Lot G in connection with its BEH's competing Lot F business. The trespass prompted a letter from me to BEH's attorney which stated in part:

FLIGHTLEVEL'S ATTEMPT TO RESOLVE THIS PEACEFULLY

"If BEH damaged my client's apron during the construction of its hangar facility, and undertook to repair the same without thinking to discuss the incident with my client prior to the repair, then kindly provide me with a written explanation of the same, to include a description of the materials removed from Lot G, how the site was prepared for asphalt, the kind quantity and volume of materials including asphalt applied, copies of all permits issued in connection with the work on Lot G, and the names and addresses of all participating contractors. Please also include a clear and concise disclaimer of interest in the freshly paved portion of Lot G, so that my client can be assured that BEH harbors no intent to use its re-paving on Lot G to acquire rights of use in connection with its activities on Lot F. Failure to provide a prompt disclaimer of interest satisfactory to my client will be deemed an admission that BEH seeks to acquire by adverse possession or other means, the recently re-paved portion of my client's Lot G for use in connection with its operations on Lot F. My client hereby disavows any such claimed right or use, and should this be the case, it will aggressively seek to protect its interests."

BEH'S RESPONSE

Neither BEH nor its attorney ever responded to my letter, confirming FlightLevel's suspicions. Then, on January 27, 2015, and again on February 2 and 3, as FlightLevel was fully mobilized clearing its Airport leaseholds of nearly 50 inches of snowfall, Mr. Donovan/BEH combined the snow from BEH's Lot F with the snowfall on FlightLevel's Lot G, to create a virtually impenetrable barrier of snow and ice, 6+ feet high, 15+ feet deep, and 70+ feet long across nearly the entire

length of my client's Lot H, blocking access to my client's fueling system. Not only was this an unauthorized trespass, but an act of sabotage, as the resulting barricade rendered it impossible for FlightLevel (currently the sole fuel provider at the airport) to receive fuel deliveries from its supplier.

FLIGHTLEVEL'S REPLY

I responded with the attached Cease and Desist Letter, which I copied to Airport Manager, Russ Maguire. Copies found their way to the Norwood Airport Commission, and Mr. Donovan was asked about it at the Commission's public meeting this past Wednesday. Mr. Donovan first denied his involvement, but then admitted it, also stated that he personally did the plowing, and further that he also he deliberately plowed Lot G again that morning (after receiving the C&D Letter).

WHAT FLIGHTLEVEL MUST NOW DO

FlightLevel must now take some significant contrary action to protect its business and Lot G property interests. Since this is leased airport property, FlightLevel could not dig a trench along the property line (which would have been the prototypical response), but chose instead to erect Jersey Barriers (designed specifically for Aviation use) on Lot G, a short distance back from the property line, for the entire length of the portion repaved by BEH.

In anticipation of this, FlightLevel had the Lot F/Lot G property line re-surveyed and marked with pins. The Barriers, themselves, arrived about a week ago, but before setting them in place, we want to ensure that you (NPD), and all other folks with a need to know, are fully briefed and prepared for what might conceivably be a hostile response from BEH. We have already briefed the Airport Manager, Russ Maguire; Town Attorney, Brandon Moss; and the Master Sublessor, Boston Metropolitan Airport (represented by Mr. Michael Pendergast).

WHEN

At this point we are looking to place the barriers either tomorrow, Friday, February 13, 2015 in the afternoon, or Saturday, February 14, 2015 before the next forecast snowfall.

FLIGHTLEVEL'S LEASEHOLD TITLE TO LOT G –

The chain of title for Lot G is a bit complex, but it (FlightLevel's superior right to it vis-à-vis BEH) is properly memorialized in the following documents. I've made pdf copies, and I am prepared to forward them to you upon request, but they occupy 15MB of memory, and I wanted to make sure this explanatory email didn't get kicked back because the attachments were too large.

The chain of title is as follows:

- 1.01 Town of Norwood ("Owner") to Boston Metropolitan Airport ("BMA" "Master Sub-Lessor") 12-13-67
- 1.02 - Lot G – BMA to HNT – Initial Sublease 11-09-77
- 1.03 – Lot G – BMA to HNT – Amendment 1 05-??-81
- 1.04 – Lot G – BMA to HNT – Amendment 2 01-01-87
- 1.05 – Lot G – Draft Assignment – HNT to EAC (Unsigned) ??-??-89 *****This is not actually relevant but I included it because it fills the "1.05" slot in my electronic filing system).
- 1.06 – Lot G – Assignment – HNT to EAC (a/k/a EAC Realty Trust II) 01-26-96
- 1.07 – Lot G – Estoppel Certificate & Clarification Agreement – HNT to EAC (a/k/a EAC Realty Trust II) 01-24-96
- 1.08 – Lot G – Assignment, Appointment, Trustee Cert – EAC (a/k/a EAC Realty Trust II) to FlightLevel

WHAT BEH WILL ARGUE

BEH will argue in court that it inherited an easement given to Swift Aviation (the maintenance business that operated on Lot F prior to folding), when it took assignment of the Swift lease. That easement, however, was expressly limited to Swift's "own business," and was extinguished when Swift folded. But no easement permits the blockading of a fuel farm, and FlightLevel's position on that is that if it comes up in connection with the placement of the jersey barriers, BEH should be advised that it will have the opportunity to make its argument in court.

REQUEST FOR POLICE DETAIL TO KEEP THE PEACE DURING THE PLACEMENT OF BARRIERS

To ensure the safety of all, we would like to have a police detail on site should FlightLevel encounter a hostile situation during the placement of the barriers.

I hope all of this helps. Please call or email me to advise me of any particular requests or requirements, and so I can address any questions or concerns you may have.

Thank you,

Nick

Nick Burlingham
General Counsel
FlightLevel Aviation
860-235-5786

Also Copied:

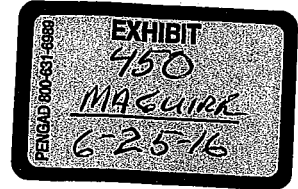
Brandon Moss, Esq., Town Attorney - 617-479-5000
Airport Manager, Russ Maguire - 781-603-5373
BMA President, Michael Pendergast - 508-566-7665

--
Russ Maguire, Manager
Norwood Memorial Airport

APPROVED

9/21/17

**AIRPORT COMMISSION MEETING
REGULAR BUSINESS MEETING
September 30, 2015**



In Attendance:

Commissioners: Mark Ryan, Chairman; Kevin Shaughnessy, Martin Odstrchel, Paul Shaughnessy, Hylie Hutchens, Michael Sheehan, Leslie LeBlanc, Airport Manager, Russ Maguire.

Meeting Called to Order: 12:00 PM

OLD BUSINESS

- **Boston Executive Helicopters (BEH): Consideration of letter of credit/personal guaranty**
Discussion surrounding consideration of BEH's letter of credit/personal guaranty.

On a motion by Mr. Sheehan and seconded by Mr. K. Shaughnessy, the Commission voted 5/2 to withdraw the lease offer of February 12th.

In favor: Mark Ryan, Kevin Shaughnessy, Martin Odstrchel, Michael Sheehan and Leslie LeBlanc.
Opposed: Paul Shaughnessy and Hylie Hutchens

- **BEH: Third party consultant review regarding financial information**
Because the board members did not have the opportunity to go over the information, it was decided to take this up at the next meeting of the NAC.

- **Update, Flight Level Norwood/Lot G Environmental Spill:**
Potential Executive Session - Purpose 5 (M.G.L. c. 30A, S.21(a)(5)) - "To investigate charges of criminal misconduct or to consider the filing of criminal complaints"
Discussion surrounding the Lot G Environmental spill.

On a motion by Mr. K. Shaughnessy and seconded by Odstrchel, the Commission voted 7/0 to have Attorney Moss write a memorandum and also schedule a hearing regarding the Lot G Environmental spill that occurred on February 13, 2015.

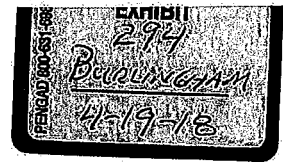
CORRESPONDENCE

- 9/21/15 email from MassDOT's J. DeCarlo to state airport managers
- Ltr. From BEH to NAC re: security, letter of credit

On a motion by Mr. K. Shaughnessy and seconded by Mr. Hutchens, the Commission voted 7/0 to adjourn the meeting.

The minutes of the NAC will be published on the Town Website.

MEETING ADJOURNED: 1:25 PM



Commonwealth of Massachusetts

POLICE DEPARTMENT
WILLIAM G. BROOKS III
Chief of Police

DATE: 7/14/15

CASE# 15-225-AU

DEFENDANT: Christopher Donovan, Robert Silva

VICTIM: Michael Melara
Flight Level Aviation

We are contacting you because you are a victim in the above named matter. This letter is to advise you that the matter is scheduled for a Show Cause Hearing at the Dedham District Court on 7/24/15. Your presence is not required at this hearing; in fact some clerks prohibit the victim from attending the hearing as this is a probable cause hearing directed toward the defendant. The Norwood Police Department is merely advising you of this hearing to keep you informed of the process.

If probable cause is found to forward the case for arraignment, you will be contacted at some time by the Norfolk County District Attorney's Office. If no probable cause is found to continue the matter, or if the case is kept open at a hearing level, you will be contacted by the Norwood Police Department as follow up.

Should you have any questions regarding this case, please contact the Norwood Police court prosecutor. Detective Thomas Stapleton can be reached by email at tstapleton@norwoodma.gov or by telephone at 781-440-5192.

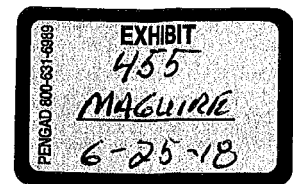
Respectfully yours,

Det Thomas Stapleton

Community Committed

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Please respond to Quincy

MEMORANDUM
CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

To: Norwood Airport Commission

Cc: Russ Maguire, Airport Manager

From: Brandon H. Moss, Esquire
Lena-Kate Ahern, Esquire

Re: Impact of Conduct upon Commercial Permit and Commercial Permit Applications

Date: October __, 2015

I. FACTS

At its September 30, 2015 meeting, the Norwood Airport Commission ("NAC") requested guidance as to the standards for addressing alleged misconduct attributable to an applicant or permit holder. By way of background, Boston Executive Helicopters, LLC ("BEH") currently holds a commercial permit for Fiscal Year 2014 (which has been extended by the NAC) to operate a Part 135 charter operation and has applied for commercial permits for Fiscal Years 2015 and 2016 to operate a fixed base operator ("FBO") business. See Tab A.

On February 13, 2015, the NAC was notified by FlightLevel Norwood ("FlightLevel") that BEH had allegedly knocked over FlightLevel's fluid-fill jersey barriers, resulting in the spill of approximately three hundred thirty (330) gallons of glycol onto the Norwood Memorial

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Airport ("Airport") premises.¹ The glycol was apparently part of a glycol/water mix used as ballast and weight for the plastic jersey barriers, which FlightLevel installed on the Airport's Lot G, a lease lot under Boston Metropolitan Airport, Inc.'s ("BMA") master lease. Both FlightLevel and BEH have disputed access rights over Lot G; BEH is the sublessee from BMA for adjacent Lot F.

The security video confirms that two (2) individuals with access to BEH's hangar facility entered and exited the Lot F/Lot G property while in the process of dumping the pollutants. Because the Airport sits in federally protected wetlands, this spill required an environmental response; FlightLevel subsequently notified the Massachusetts Department of Environmental Protection. FlightLevel also incurred costs for environmental clean-up professionals to address the spill, even though FlightLevel alleges that BEH caused the environmental spill.

II. ANALYSIS

A. Airport General Regulations and Minimum Standards – Issuance of Commercial Permit and Conduct

The NAC is established under the authority of state law to "have the custody, care and management of" the Norwood Memorial Airport and is required to adopt rules and regulations "for the use of municipal airports or for the safety of the public." M.G.L. c. 90, §§ 51E and 51J. These general regulations must be approved by the Massachusetts Department of Transportation-Aeronautics Division (successor to the Massachusetts Aeronautics Commission). See M.G.L. c. 90, § 51.

The Airport General Regulations require any person, firm, corporation or entity seeking to use the Airport or any portion of the Airport as an FBO or specialized aviation service organization, or for revenue-producing commercial, business or aeronautical activities, to first apply for and receive consent and a written permit for such activities from the NAC. See Tab B §§ III.A, VIII. These permits are issued by the NAC on an annual basis. See id. §§ III.C, VIII.

¹ In January 2015, there was an allegation by FlightLevel that BEH plowed snow in such a manner as to block access to FlightLevel's fuel farm, on Lot H, thereby precluding deliveries to the fuel farm. This activity At the February 11, 2015 NAC meeting, BEH Manager Christopher Donovan acknowledged that he personally plowed the snow in such a manner.

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A commercial operator must satisfy all of the Norwood Airport Minimum Standards ("Minimum Standards"). See id. § III.B. The Minimum Standards specifically reference the NAC's "responsibility to the Airport's users as well as to the general public, to conduct and to operate the Airport with prudence and sound judgment, for the social and economic well being of the Town of Norwood," and "[f]or the safe and efficient operation of Norwood Memorial Airport." See Tab C § I.

Under the Minimum Standards, the NAC "requires commercial operators to comply with all appropriate local, state and federal laws and regulations regarding the commercial operation in question." Id. Similarly, under the Minimum Standard, commercial operators must adhere to current Federal Aviation Administration ("FAA"), National Transportation Safety Board ("NTSB"), local, NAC and Massachusetts aeronautical regulations and any other applicable requirements. See Tab B §§ V.A, XVII.1.

The following provisions of the General Regulations are relevant to the misconduct alleged here:

- Section VIII (Unauthorized Operations) states that "[n]o person, firm or corporation shall operate any business or concern at or on any part of the Airport premises in a manner that conflicts or is inconsistent with, in whole or in part, the Airport Security Plan (*Attachment E*), the Airport's Storm Water Pollution Prevention Plan (*Attachment F*), and/or the Airport's best management practices."
- Section XV.1 (Conduct) states that "[n]o person shall, at or upon the Airport, do or omit to do any act if the doing or omission thereof endangers or is likely to endanger persons or property."
- Section XV.3 (Conduct) states that "[n]o person shall commit a disorderly, obscene, indecent or unlawful act; commit any nuisance"
- Section XV.4 (Preservation of Property) states that "[n]o person shall destroy, injure, deface or disturb, tamper with, or attempt to destroy, injure, deface or disturb any building, sign, equipment, fixture, marker, paved surface, other structure or property at or on the Airport."

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See Tab B.

B. Authority to Deny Commercial Permit and/or Take Disciplinary Action Relative to Commercial Permit

As noted above, the General Regulations and Minimum Standards require a commercial operator to obtain consent and an annual permit to conduct activities at the Airport. A commercial operator must also comply with applicable regulations and requirements, including local and NAC regulations and requirements.

"The holder of a license cannot complain of limitations attaching to the privilege which, with full knowledge, he sought and accepted The holder takes it . . . subject to the rules and regulations and to the express conditions made a part of the license." Morley v. Police Comm'r. of Boston, 261 Mass. 269 (1927).

The NAC's standard commercial permit application specifically states, in part, as follows: "*All applicants must comply with the Norwood Airport Regulations/Minimum Standards*" See Tab A (emphasis in original). Such language was included on the commercial permit applications completed by EBH. See id. The NAC commercial permit states that an issued "permit remains valid until the end of the fiscal year in which the permit was issued, unless otherwise revoked by the Norwood Airport Commission." See id.

"[T]he right of the licensee to enjoy the privileges conferred by the license is subordinate to the power inherent in the licensing authorities to terminate the privileges whenever there is cause, sufficient in law, for the revocation of the license." Fallon v. St. Comm'rs of Boston, 309 Mass. 244, 245 (1941). Indeed, the NAC has clear authority to grant and revoke commercial permits. See Boston Air Charter, LLC v. Town of Norwood, Memorandum of Decision on Cross Motions for Judgment on the Pleadings, No. 10-00668 (Mass. Super. Ct. July 10, 2012) (Brady, J.) (Tab D).

In Boston Air Charter, the plaintiff, a commercial permit holder challenged the decision by the NAC to suspend a commercial permit for Fiscal Year 2010 and to suspend the plaintiff from applying for a commercial permit until October 1, 2010. See Tab D. Such action was taken after the permit holder operated two (2) airplanes without clearance from air traffic control and when the Airport was closed to fixed wing aircraft. See id. The Massachusetts Superior Court recognized that the Airport General Regulations "not surprisingly, prohibit actions that

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endanger or are likely to endanger persons or property. The rules provide that the airport manager may prohibit aircraft from operating under circumstances which he deems likely to endanger persons or property." See id.

The Massachusetts Superior Court (Brady, J.) held that the NAC "had the authority to revoke/suspend plaintiff's commercial permit, and to take such other action which it did." See id. In so holding, the Massachusetts Superior Court recognized that the "commercial permit was expressly subject to revocation prior to termination." See id.

C. FAA Cases

The FAA has held that airports can deny rights to an entity and otherwise engage in differential treatment based upon that entity's prior misconduct without violating grant assurance requirements. Accordingly, an airport sponsor may consider financial and/or litigation risk in dealing with airport users, and it can consider a history of problems with an airport user. See Jack H. Cox v. City of Dallas, TX, FAA Docket No. 16-97-2, 1997 WL 1120744 (Record of Determination, October 24, 1997); Flightline Aviation, Inc. v. City of Shreveport, FAA Docket No. 16-07-05, 2008 WL 5955355 (Director's Determination, March 7, 2008); Jacquelin R. Ashton and Kent Ashton v. City of Concord, NC, FAA Docket No. 16-02-01, 2003 WL 22257715 (Director's Determination, August 22, 2003; Final Agency Decision, February 27, 2004) (upholding airport sponsor action based on applicant behavior).

For example, the FAA found it reasonable for an airport sponsor to deny access to an airport tenant's president and his direct employees based upon evidence of prior misconduct. See Sea Sands Air Transport, Inc., Complainant, FAA Docket No. 16-05-17, 2006 WL 4393154 (FAA), at *1 (Director's Determination, Aug. 28, 2006) (Director's Determination) (Tab E). "[M]ultiple incident reports from Airport users, sworn-duty officers and the Authority's Director of Public Safety reflected] the unacceptable behavior and potential security threat" of the airport tenant's president. See id. This included evidence that the president left a threatening voicemail message with an employee of another airport tenant, had been arrested for driving under the influence, and had engaged in profane, abusive and apparently intoxicated behavior" at the airport. See id. at *3, *4,

The FAA recognized that "[a]n airport sponsor acts as a proprietor with regard to managing its airport to certain reasonable levels of service, personal decorum, business professionalism and financial responsibility; in addition to safety, security and efficiency." See

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id. at *21. Further, an airport sponsor "chooses with whom it does business and what parties gain access to the secure areas of its airport and under which terms. . . . A sponsor may apply reasonable standards of security and personal behavior, and reasonable rules of tenancy." See id. at *13, *21. "Federal obligations, including grant assurance 22[,] do not require [an airport sponsor] to continue a business relationship with any corporation that fails to exercise management controls or sufficient corporate governance to prevent and correct highly unprofessional behavior by its principals or employees." Id. at *21.

In SeaSands Air Transport, the tenant president's misconduct was found sufficient to deny access to the president and his direct employees to secure areas of the airport without committing a grant assurance violation. See id. Because the tenant president was "a universal agent," his "actions and behavior are attributable to the tenant." See id. at *19.

Notably, the FAA rejected the suggestion that a heightened level of proof should apply to the airport sponsor in its response to the tenant president. See id. Rather, the FAA held that "grant assurance 22 does not impose a heightened standard of proof upon a sponsor with regard to a sponsor's determining that specific behavior is so highly unprofessional as to be unacceptable, even if such determination leads the sponsor to restrict a user's access or to decline to continue a business relationship." Id. at *21 (emphasis added).

Similarly, in U.S. Aerospace Inc. v. Millington Municipal Airport Authority, Millington, Tennessee, the FAA also upheld actions taken by an airport sponsor in response to the conduct of the president of the complainant airport business. See FAA Docket No. 96-98-06 (1998 WL 683384 (Director's Determination, Oct. 20, 1998) (Tab F). In U.S. Aerospace, there was evidence of conduct by the president to damage an incumbent FBO's property and to assault an employee of that incumbent FBO; as a result, the airport sponsor commenced an eviction action against the complainant and denied the complainant's application for general FBO status. See id. at *15. As the FAA held, "[u]nder the circumstances, the [airport sponsor's] most recent actions were reasonable and consistent with grant obligations." Id.

III. CONCLUSION

The NAC has the authority to consider denying a commercial permit application and/or taking disciplinary action (*i.e.*, modify, suspend or revoke) relative to an issued commercial permit, on the basis of misconduct attributable to a permit applicant/holder. Specifically,

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compliance with the Airport General Regulations is an express condition to the application for a commercial permit, and to holding a commercial permit. Prior to taking such adverse action, the NAC should provide notice and an opportunity to be heard, and should consider such conduct in light of the Airport General Regulations and Minimum Standards.

DRAFT

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List of Exhibits

- Tab A BEH Fiscal Year 2014 Commercial Permit and Applications for Commercial Permits for Fiscal Years 2015 and 2016
- Tab B Norwood Memorial Airport General Regulations (Revised October 2008)
- Tab C Norwood Airport Minimum Standards
- Tab D Boston Air Charter, LLC v. Town of Norwood, Memorandum of Decision on Cross Motions for Judgment on the Pleadings, No. 10-00668 (Mass. Super. Ct. July 10, 2012)
- Tab E SeaSands Air Transp., Inc., Complainant v. FAA Docket No. 16-0827, 2006 WL 4393154 (Aug. 28, 2006)
- Tab F U.S. Aerospace, Inc. v. Millington Municipal Airport Authority Millington, Tennessee, FAA Docket No. 16-98-06, 1998 WL 1683384 (Director's Determination, Oct. 20, 1998)



Brandon H. Moss

From: Brandon H. Moss
Sent: Friday, October 16, 2015 3:55 PM
To: Russ Maguire (rmaguire@norwoodma.gov); Mark Ryan
Cc: Lena-Kate Ahern
Subject: Misconduct Memo
Attachments: Memo re Misconduct and Impact on Commercial Permit_Application.DOCX

Russ and Mark –

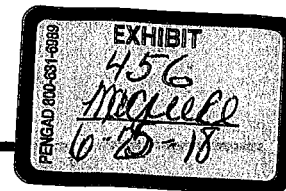
I attached a "draft" of the misconduct memo; please review and advise if you have any questions, comments or concerns. Otherwise, I can finalize and have 10 copies (with the attachments) delivered to you on Monday, for the Commission in advance of the Wednesday meeting.

Thanks!

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Brandon H. Moss

From: Brandon H. Moss
Sent: Tuesday, October 20, 2015 2:32 PM
To: Mark Ryan
Cc: Russ Maguire (rmaguire@norwoodma.gov); Lena-Kate Ahern
Subject: Potential Motion for Upcoming Show Cause Hearing

Mark –

Following up on our recent meeting, if the Commission is inclined to take disciplinary action at tomorrow's meeting relative to BEH, the following motion can be considered:

"I move, based on the evidence and testimony discussed at today's meeting, which demonstrates a violation of Sections VIII, XV.1, XV.3 and XVI.1 of the Norwood Airport General Regulations: (1) to revoke the Fiscal Year 2014 commercial permit held by Boston Executive Helicopters, LLC; (2) to deny the applications by Boston Executive Helicopters, LLC for commercial permits for Fiscal Years 2015 and 2016; (3) to suspend Boston Executive Helicopters, LLC from applying for a new commercial permit until _____ [fill in date]; and (4) to suspend the security badges for Christopher Donovan and Robert Silva from _____ [fill in date] until _____ [fill in date], at which time new security badges can be applied for."

I left in a blank for the dates for suspending the security badges as it may be worthwhile to give Donovan and Silva some time to prepare for the security badge deactivation. Also, in terms of the deliberation, it can be noted on the record that similar actions were taken in the Boston Air Charter matter – there was a 6 month suspension for future applications, which the Norfolk Superior Court upheld as reasonable and within the Airport Commission's authority.

I hope this is useful. Otherwise, I will plan to attend tonight's Board of Selectmen meeting.

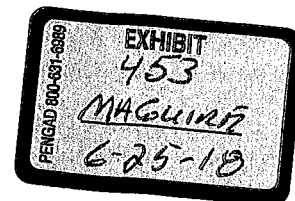
Thanks!

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Brandon H. Moss

From: Mark Ryan <mryan@norwoodma.gov>
Sent: Tuesday, September 29, 2015 10:22 PM
To: Brandon H. Moss
Cc: Russ Maguire (rmaguire@norwoodma.gov); Kevin Shaughnessy
Subject: Re: Script/Outline

Thanks Brandon

Sent from my iPhone

On Sep 29, 2015, at 9:39 PM, Brandon H. Moss <bross@mhtl.com> wrote:

Here is a proposed script for the Wednesday, September 30 Airport Commission meeting:

1. Open public meeting
2. Consideration of Letter of Credit/Personal Guaranty
 - a. Status
 - i. Discussion of BEH's Obligations – Liabilities and reason for security instrument (e.g. guaranty)
 1. West Ramp Parcel A Lease Payments
 2. Fuel Flowage Fee Payments
 3. Property Damage/Personal Injury Coverage
 - ii. MassDOT Administrator Email regarding liabilities from a commercial operator
 - iii. No contact from BEH's lawyers regarding security instruments – guaranty or otherwise – despite NAC direction and letter from Attorney Moss on September 15, 2015
3. BEH Third Party Consultant Review
 - a. Note: Third Party Consultant Review only provided at 6:38pm on Tuesday, September 29
 - b. Discussion of Third Party Consultant Review
 - c. The review does not address items requested of BEH previously, which were not provided: (1) pollution liability/spill coverage and evidence on an insurance certificate, with the Town of Norwood/Airport Commission listed as additional insureds; (2) schematic layout of revised fuel plan in light of pending BEH litigation with FlightLevel Norwood; and (3) guaranty/security instrument.
4. Update FlightLevel Norwood/Lot G Spill:
 - a. Discussion of background of incident
 - b. Note that Airport Commission discussed this at a prior meeting, and indicated that it would await conclusion of criminal proceedings. Note that there was a police report from the Norwood Police Department and a video.
 - c. Note that Airport Commission was previously notified that an application for a criminal complaint was filed at Dedham District Court, and that a hearing was conducted before the Dedham Clerk Magistrate in late August 2015.
 - d. The Airport Commission can ask Christopher Donovan/Eric Loeffler whether they would prefer to have discussion of the application for a criminal complaint conducted in open session or executive session. The agenda that was posted include a discussion of this item in executive session, and a disclaimer on the agenda noted that executive session items could be discussed in either executive or open session.

- i. The basis for executive session is Purpose 5, which includes investigating charges of criminal conduct.
- ii. If Mr. Donovan or Attorney Loeffler want the discussion in executive session, the NAC should take a roll call vote as follows: "To enter executive session under Purpose 5 for executive session under the Open Meeting Law, to investigate charges of criminal misconduct arising out of a February 13, 2015 incident involving an environmental spill on Lot G, which is FlightLevel Norwood's leasehold."
- iii. If a vote is taken to enter executive session, BEH and FlightLevel can be present, along with their counsel. The NAC can also have a separate discussion in executive session without BEH or FlightLevel present
- e. Either in executive session or open session – depending on how this is handled – Mr. Donovan can be asked as to what happened at the August 2015 hearing on the application for a criminal complaint, depending on the response the NAC could also ask Peter Eichleay.
 - i. Note: there is no public record docket available for the criminal complaint hearing. It is understood that there was a concession of sufficient facts from the incident, but that no application would be granted provided that Mr. Donovan (and possibly Mr. Silva) did not offend for three months—at which time the application would be dismissed. There are no records supporting this because of the confidentiality of the criminal complaint process, and this is only based on what was provided by FlightLevel through its attorney.
- f. The NAC can point out that there was an existing police report and video, and based on these items, there is a concern about the compliance of BEH with the Norwood Memorial Airport General Regulations. In particular, the Manager of BEH, Christopher Donovan, was identified in the existing police report and video as being a responsible party for the fuel spill.
 - i. I recommend not stating that it is anyone's opinion or belief that there was a willful engagement in property damage. I recommend just referring to the police report and video. I also recommend, if Mr. Donovan provides information about the criminal complaint hearing, to also cite that as a separate basis.
- g. The NAC can point to the existing General Regulations.
 - i. Section VIII (Unauthorized Operations) prohibits any person, firm or corporation from operating any business or concern at or on any part of the Airport premises in a manner that conflicts or is inconsistent with, in whole or in part, with the Airport's Storm Water Pollution prevention Plan and/or the Airport's best management practices.
 - ii. Section XV.1 (Conduct) – no person shall, at or upon the Airport, do or omit to do any act if the doing or omission thereof endangers or is likely to endanger persons or property.
 - iii. Section XV.3 (Conduct) – no person shall commit a disorderly, obscene indecent or unlawful act; commit any nuisance
 - iv. Section XVI.1 (Preservation of Property) – no person shall destroy, injure, deface or disturb, tamper with, or attempt to destroy, injure, deface or disturb any building, sign, equipment, fixture, marker, paved surface, other structure or property at or on the Airport.
- h. The NAC should indicate that it will conduct a hearing at its next meeting to determine whether and to what extent the Lot G fuel spill could impact BEH's pending application for a commercial permit, and to invite BEH, including Mr. Donovan, to be heard concerning this.
 - i. The NAC could ask Town Counsel for a written legal opinion concerning whether and to extent it could take the Lot G fuel spill into consideration.

I hope this script/outline is helpful for tomorrow's meeting – please let me know if I can be of further help on this in the interim.

Regards,

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