



U.S. Department
of Transportation
Federal Aviation
Administration

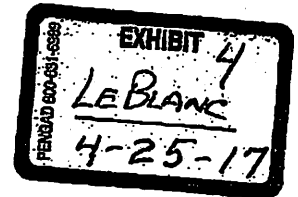
Office of Airport Safety and
Standards

800 Independence Ave., S.W.
Washington, D.C. 20591

APR 14 2008

APR 11 2008

Mr. Matthew Watsky, Esquire
Attorney at Law
East Brook Executive Park
30 Eastbrook Road, Suite 301
Dedham, MA 02026



Michael C. Lehane, Esquire
Murphy, Hesse, Toomey & Lehane, L.L.P.
300 Crown Colony Drive
Quincy, MA 02269

Dear Messrs. Watsky and Lehane:

FAA Docket Number 16-07-03

Enclosed is a copy of the Director's Determination in the above-captioned formal complaint under 14 C.F.R Part 16.

We find that the Town of Norwood, Massachusetts, is in violation of Title 49 United States Code §§ 40103(e) and 47107(a)(1) and *General Written Assurances on Exclusive Rights, Economic Nondiscrimination, and Preserving Rights and Powers.*

The Town has 30 days to submit a corrective action plan that (1) provides access for BAC to conduct self-fueling operations consistent with state and local regulations; (2) ends the practice of awarding long-term leases of the federally-funded ramps that had the effect of granting one party control over the majority of the ramps on the Airport; (3) puts in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally-funded ramps and (4) regain the Airport's rights and powers to access the "1100 Foot Strip" to provide power to the Airport ramps for Airport tenants.

Failure to submit a corrective action plan acceptable to the FAA within the time provided, unless extended by the FAA, will lead to suspension of future grant applications for AIP discretionary grants.

Sincerely,

J.R. White for
Kelvin Solco
Acting Director, Office of Airport
Safety and Standards

Enclosure

CERTIFICATE OF SERVICE

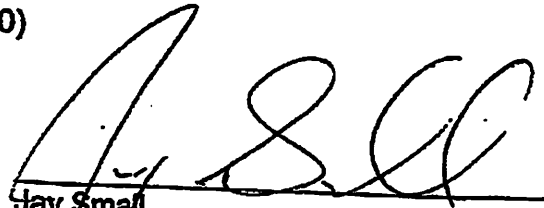
I HEREBY CERTIFY that on, April 11, 2008, I placed in the United States mail (first class, postage paid) a true copy of the foregoing document addressed to:

Norwood Airport Commission
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

Michael C. Lehane, Esquire
Murphy, Hesse, Toomey & Lehane, L.L.P.
300 Crown Colony Drive
Quincy, MA 02269

Matthew Watsky, Esquire
Eastbrook Executive Park
30 Eastbrook Road
Suite 301
Dedham, MA 02026

FAA Part 16 Airport Proceedings Docket
Federal Aviation Administration (AGC-610)
800 Independence Avenue, S.W.
Washington, D.C. 20591


Jay Small
FAA, Airports Division

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

BOSTON AIR CHARTER	COMPLAINANT
V.	
NORWOOD AIRPORT COMMISSION NORWOOD, MASSACHUSETTS	RESPONDENT

Docket No. 16-07-03

DIRECTOR'S DETERMINATION

I INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the formal complaint filed in accordance with the FAA Rules of Practice for Federally Assisted Airport Proceedings (FAA Rules of Practice), Title 14 Code of Federal Regulations (CFR) Part 16.

Boston Air Charter (Complainant/BAC) has filed a formal complaint pursuant to Title 14 CFR Part 16 against the Town of Norwood (Respondent/Town) owner, sponsor and operator of Norwood Memorial Airport (Airport), Norwood, Massachusetts. Complainant alleges that the Respondent is engaged in economic discrimination and has granted a fixed-base operator¹ an exclusive right in violation of Title 49 United States Code (U.S.C.) §§47107(a) and 40103(e) and the respective FAA Grant Assurances, 22 *Economic Nondiscrimination* and 23, *Exclusive Rights*.

Complainant, a Part 135 operator² on the Airport, identifies the issues to be resolved as:

- Whether the Town of Norwood, as the property owner, discriminated against the Complainant by failing to provide access to permit the installation of electric utilities for the Complainant to operate a fueling facility for its personal use at Norwood Memorial Airport. Complainant alleges such an action constitutes unreasonable denial of access and unjust discrimination in violation of Title 49 U.S.C. § 47107(a)(1), and related Federal Grant Assurance 22, *Economic Nondiscrimination*.

¹ A fixed-base operator (FBO) is a commercial entity, providing aeronautical services, such as maintenance, storage, ground and flight instruction, etc. to the public. [FAA Order 5190.6A, Appendix 5]

² A Part 135 operator holds an Air Carrier Certificate and provides passenger service as a commuter or on-demand service

- Whether the Town of Norwood granted an exclusive right to Eastern Air Center to operate a fueling facility and sell general aviation and jet fuel to the public and in the process, ceding control of the only power source to operate a fueling facility on the Airport ramps to Eastern Air Center and Boston Metropolitan Airport, Incorporated. Complainant alleges that the Town of Norwood granted an exclusive right by failing to provide access to electrical utilities required to operate a fueling facility, in violation of Title 49 U.S.C. § 40103(e), and related Federal Grant Assurance 23, *Exclusive Rights*.

Summary of Issues and Findings

The Complainant alleges that the Town of Norwood violated Federal law and policy when the Town failed to provide the Complainant access for the installation of electric service underground conduits to support its aviation fuel facility. This underground conduit must go through the leasehold of Eastern Air Center, the existing fixed base operator, who opposes the Complainant providing aircraft fueling services. The Complainant contends the Town of Norwood engaged in discriminatory practices and granted an exclusive right by not requiring Eastern Air Center to provide access for the underground conduit to obtain power for its fueling facility. Furthermore Complainant believes that it was prohibited from performing self-service fueling.

The Town argues that it can not be expected to take sides in a private dispute between two tenants over rights of access, despite its desire to encourage competition. The Town of Norwood says it does not have the right to force Eastern Air Center to provide access for utilities through its leasehold, it does not have an exclusive agreement with Eastern Air Center to provide fixed base operator services including fueling, and the existence of one fixed base operator does not constitute an exclusive right. Furthermore, since the Complainant does not have a lease, this issue is moot and the complaint should be dismissed. The Town contends it is under no obligation to enter into a lease with the Complainant.

Under the particular circumstances existing at the Airport and the evidence of record, as discussed below, the FAA concludes that:

- The Town is in violation of Grant Assurance 5, *Preserving Rights and Powers*, when it signed a Lease agreement with Boston Metropolitan Airport, Incorporated, a tenant, depriving the Town of certain rights and powers necessary to comply with its Federal obligations under the FAA grant assurances.
- The Town is in violation of Title 49 U.S.C. §47107(a)(1), and related Federal Grant Assurance 22, *Economic Nondiscrimination*, as it has denied the Complainant reasonable use and access to the Airport on reasonable terms for the purpose of conducting a commercial aeronautical activity, and the Town's actions in this regard constitute an unreasonable denial of access and unjust economic discrimination.
- The Town is in violation of Title 49 U.S.C. § 40103(e), and the related Federal Grant Assurance 23, *Exclusive Rights*, as it has granted an exclusive right, to Eastern Air Center, constructively or directly, to operate a fueling facility on the Airport by entering into leases with Eastern Air Center and Boston Metropolitan Airport,

Incorporated, enabling Eastern Air Center to control the only source of power to the Airport ramps to operate a fueling facility. By denying Complainant access to power to install a fueling facility, the Town has granted Eastern Air Center the exclusive right to operate a fueling facility on the Airport.

The FAA's decision in this matter is based on applicable Federal law and FAA policy, review of the pleadings and supporting documentation submitted by the parties, reviewed by the FAA, which comprises the Administrative Record reflected in the attached FAA Exhibit 1.

II. THE AIRPORT

The planning and development of the Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq.*

Norwood Memorial Airport is a general aviation airport. The Town of Norwood is the Airport owner and sponsor responsible for compliance with all the FAA Grant Assurances. The Town has delegated daily operation of the Airport to the Norwood Airport Commission.

During the last reported twelve-month period ending in March 2007, there were 240-based aircraft and 100,000 annual operations at the Airport.³ Since 1982, the Town of Norwood, the airport sponsor, has received 27 grants totaling \$11,577,569 in Federal financial assistance for airfield improvements. The Airport received an \$844,715 grant for apron rehabilitation in FY 2006.⁴

III. BACKGROUND

In March 2004, Boston Air Charter (BAC), a Part 135 operator serving Norwood Municipal Airport, proposed to construct a commercial aircraft fueling facility on the Airport's 19,072 square foot DC-3 Ramp. BAC planned to fuel its aircraft conducting a Part 135 charter operation and eventually wanted to become a fixed base operator offering aircraft fueling service to the public. The Record indicates the DC-3 Ramp was the only ramp the Town offered BAC.

The aircraft fueling facility would consist of two above ground aviation fuel storage tanks with a capacity of 12,000 gallons each, and a spill containment system. The fueling facility requires electric service and the DC-3 Ramp does not have access to an electric utility power source. The available power source is a transformer located on the Gate 3 taxiway side of a building in the leasehold known as the "1100 Foot Strip".⁵ An underground conduit between the "1100 Foot Strip" and the DC3-Ramp must be installed to provide electrical service for the operation of BAC's proposed fueling facility. The underground conduit would run from the DC-3 Ramp across the backside of the West Apron ramp adjacent to and into the Gate 3 taxiway and penetrate the "1100 Foot Strip" leasehold by ten feet to connect to the transformer. [See map on pages 9 and 10]

³ FAA Exhibit 1, Item 1 provides a copy of the most recent FAA Form 5010 for the Airport.

⁴ FAA Exhibit 1, Item 2 provides the Airport Sponsor's AIP Grant History listing the federal airport improvement assistance provided by the FAA to the Airport Sponsor from 1982 to the date of this decision.

⁵ The building is depicted as an orange strip on the *Compiled Lease Area Plan* dated December 17, 2007, page 9.

NORWOOD AIRPORT LEASE PLAN⁶⁷

<u>LOT</u>	<u>LESSEE</u>	<u>LEASE EXTENSION PERIOD</u>	<u>DIMENSIONS</u>
ABC	EASTERN AIR CENTER	1 NOVEMBER 2004 to 31 OCTOBER 2009	85,860 SQFT
WXY	EASTERN AIR CENTER	16 NOVEMBER 1988 to 30 NOVEMBER 2008 1 DECEMBER 2008 to 30 NOVEMBER 2028	111,292 SQFT
LOT 6	EASTERN AIR CENTER	1 JANUARY 2001 to 31 DECEMBER 2020 30 SEPTEMBER 2006 to 31 OCTOBER 2026	210,180 SQFT
LOT 7	EASTERN AIR CENTER	1 JANUARY 2001 to 31 DECEMBER 2020 30 SEPTEMBER 2006 to 31 OCTOBER 2026	135,360 SQFT
WEST APRON	TOWN CONTROLLED	N/A	95,381 SQFT
DC-3 APRON	BOSTON AIR CENTER (Tenant at will)	N/A	19,072 SQFT
THE 1100 FOOT STRIP	BOSTON METROPOLITAN AIRPORT, INC (EASTERN AIR CENTER, sublessee)	1967 to 2047	330,000 sqft

The Town owns the "1100 Foot Strip" and has leased it to Boston Metropolitan Airport, Incorporated (BMA) for a term of up to 80 years. BMA, in turn, subleases the "1100 Foot Strip" to Eastern Air Center (EAC), the Airport's only fixed base operator. EAC controls most of the ramp space on Norwood Memorial Airport under long term leases. EAC is also an opponent of BAC's plan to self-fuel. EAC believes BAC's self fueling operation would be detrimental to its business.

EAC leased the DC-3 Ramp until August 2003, when the Town reclaimed it over EAC's objections, and leased six tie-down positions to BAC.⁸ BAC leases the six tie-down spaces on the DC-3 Ramp on a month to month basis. [FAA Exhibit 1, Item 11, exhibit 3].

The Town and BAC attempted to negotiate a long term lease agreement for the DC-3 Ramp of three terms of ten years each. The agreement would give BAC control over the entire 19,072 square foot DC-3 Ramp. The lease would permit BAC to construct an above ground fuel storage facility for the purpose of dispensing aviation fuels. [FAA Exhibit 1, Item 3, exhibit C]

⁶ See map on page 9.

⁷ AIP Project 3-25-0037-26-2005 authorized the expenditure of \$589,004 for the rehabilitation of airport aprons including two aprons (Lots 6 and 7) leased to EAC. Over the past twenty years, the FAA has provided \$3,108,914 in Federal financial assistance for rehabilitation and construction of all the aprons and ramps excluding the "1100 Foot Strip".

⁸ Eastern Air Center requested the Town to convert its lease for the DC-3 Ramp to a long term lease; the Town rejected this request and leased the DC-3 Ramp tiedowns to BAC. [Exhibit 1, Item 11, exhibit 1]

Summary of BAC's Permit and Construction Sequence⁹

The Town and BAC entered negotiations to lease the DC-3 Ramp and erect a fueling facility in 2004. By the close of 2004, BAC had received approval or tentative approval for most of the permits required to construct the aircraft fuel facility.

1. On May 5, 2004, the Town of Norwood Board of Selectman tentatively approved the Volatile Inflammable Fluids (VIF) License pending approved by the State Fire Marshal. This license was needed for the storage of flammables. [FAA Exhibit 1, Item 11, exhibit 119]
2. On May 5, 2004, Norwood Conservation Commission –approved and issued its *Order of Conditions* required for the operation of the fuel facility. [FAA Exhibit 1, Item 11, exhibit 11]
3. On June 11, 2004, the State Fire Marshal approved the type of storage tanks and equipment BAC proposed to use. [FAA Exhibit 1, Item 11, exhibit 9]
4. On June 15, 2004, Norwood Airport Commission issued a temporary 30 day fueling permit authorizing BAC to self-fuel its aircraft; the permit is renewed monthly until December 2005. [FAA Exhibit 1, Item 11, exhibit 120]
5. On November 2, 2004, FAA issued Form 7460 –Aeronautical Study for the proposed fuel facility. [FAA Exhibit 1, Item 11, item 123]
6. On November 30, 2004 Commonwealth of Massachusetts, State Department of Environmental Protection issued its *Superseding Order of Conditions*. [FAA Exhibit 1, Item 11, exhibit 11]
7. On April 8, 2005, Commonwealth of Massachusetts, Department of Environmental Protection issued its decision on the Appeal of Superseding Order of Conditions. [FAA Exhibit 1, Item 11, exhibit 18]
8. During the summer 2005, an AIP apron rehabilitation project begins and BAC fails to participate financially in the project, to have the underground conduit and trench drains installed because the Town's quoted price was too high. [See footnote 12]
9. During late 2005 and early 2006, Norwood Airport Commission reviews construction plans for the fuel facility; there is no indication that the plans were approved
10. During late 2005, BAC inquiries about the status of Norwood Airport Commission's development and approval of BAC's lease agreement. [FAA Exhibit 1, Item 11, exhibit 39]
11. During February 2006, Norwood Fire Department requires an approved lease before it can issue a permit; this step was not completed. [FAA Exhibit 1, Item 11, exhibit 62]

Issue of Leasehold Encroachment

On January 11, 2006, The Town of Norwood, Board of Selectmen, gave BAC a 90-day extension to complete the necessary permits for the installation of the fuel facility or face revocation of the Town-issued Volatile Inflammable Fluids (VIF) license. [FAA Exhibit 1, item 11, exhibit 50]. The Town of Norwood had issued BAC, a VIF license to operate an above ground fuel facility pending approval of the State Fire Marshal.¹⁰

⁹ This is an approximation of the steps, BAC must pursue to begin operation; it does not include the time limit on some of the permits and approvals. Some permits are valid for one year, BAC must reapply or resubmit its application.

During a Norwood Airport Commission (NAC) meeting on BAC's proposal, EAC raised objections to the construction of an aircraft fueling operation on the DC-3 Ramp. EAC stated:

Neither NAC nor BAC has the right to dig, construct or otherwise utilize the so-called Gate 3 access to the Airport, which is situated on land we control, in any manner other than to allow a vehicle, aircraft and/or a pedestrian to pass through for the lawful purpose of gaining access to the Airport.

[FAA Exhibit 1, Item 11, exhibit 51]

In a January 30, 2006, letter to the Town, EAC indicated that it will not grant permission for anyone to dig, install or construct utility lines through the "1100 Foot Strip" without its prior written consent. BMA, the Town's lessee, indicated it would join with EAC in seeking to bar BAC from installing underground conduit for electrical service through "1100 Foot Strip" leasehold. [FAA Exhibit 1, Item 3, exhibit C, exhibit 1.]. EAC indicates that it informed BAC and its Counsel as early as 2004 that BAC did not have the authority to install conduit on land controlled by EAC. [FAA Exhibit 1, Item 11, exhibit 65].

EAC opposes BAC's request to self-fuel and refuses to grant its consent for an underground conduit to access its leasehold. EAC believes that another fixed base operator providing fuel would result in additional competition.¹¹

BAC requested the Town of Norwood to install, either at its own cost or at cost to BAC, underground conduit for electric service to its proposed fueling facility. [FAA Exhibit 1, Item 3, exhibit B]. BAC contends that the Town has the responsibility as the airport operator and owner to undertake the installation. The Town informed BAC that it does not have a right to grant an easement or enter into the leasehold under its 1967 Lease with BMA, and it will not "take sides" in a dispute between two tenants. The Town encouraged both parties to reach a mutually acceptable agreement regarding access across the "1100 Foot Strip". [FAA Exhibit 1, Item 3].

The Town says that BAC was given the opportunity to install electrical service and trench drains during a federally funded project to reconstruct a runway and rehabilitate two public aircraft parking aprons leased by EAC. BAC chose not to act.¹² However, the Town has not made clear how BAC could have gained power to the DC-3 Ramp by installing underground conduit through Lots 6 and 7.

¹⁰ State Fire Marshal approved plans for the aircraft fuel facility on June 11, 2004 [FAA Exhibit 1, Item 11, exhibit 9]

¹¹ Eastern Air Center, the only aircraft fueling service on the Airport, believes that an FBO competitor would threaten its investment at the Airport. [FAA Exhibit 1, Item 11, exhibits 1, 2, 5, 6, 7, 16, 18, 51, and 55].

¹² The fueling facility requires electrical service and a spill containment system that includes concrete pads, trench drains and catch basins to capture fuel spills. The work had to be coordinated with the federally funded apron construction project since both projects were being done on the same site. The Town's contractor working on the apron reconstruction project, offered to construct the spill containment system for \$55,800. Another contractor selected by BAC submitted an offer for \$29,185.00. BAC believed that the Town contractor's price was too high, BAC decided to wait until the apron reconstruction project was completed. But once the apron project was completed, the Town engineer refused to allow BAC's work to proceed because he didn't want the newly paved surface of the ramp to be cut. The Administrative Record indicates that BAC's concern about the Town contractor's pricing of the work was conveyed to the Town engineer. [FAA Exhibit 1, Item 9 and Item 11, exhibit 57]

On February 21, 2006, the Town imposed an additional requirement for BAC to receive its VIF License and operating permit for the aircraft fuel facility. BAC must have an approved lease from the Town for the use of the property.

As a non-owner applicant of the property you shall provide authorization from the owners that storage of each inflammable fluid is permitted under the terms of the lease. This authorization is required before any operation of the tank farm can occur.

[FAA Exhibit 1, Item 11, exhibit 62]

Two days later, the Town advised BAC that it was unable to approve the lease agreement for the DC-3 Ramp because: (1) the VIF license would expire in less than 90 days; and (2) the proposed route of the underground conduit for electrical service through the BMA/EAC leasehold no longer made the project viable. The Town indicated:

BAC's electrical schematic, in its current draft, does not address what appears to be leasehold encroachment proposed by, but not effectively resolved by, the current plan.... This conflict is further underscored and amplified by correspondence recently sent to the NAC by Eastern Air Center, indicating that BAC will not be issued a right of way onto said leasehold. Subsequent conversations with the EAC official who stated in writing his company's position only appear to reaffirm EAC's expected intransigence on this matter. It is therefore incumbent upon BAC to explain how your company will reconcile this right-of-way matter.

In short, BAC must demonstrate that it possesses the legal right, and ability, to bring this project to completion by providing electrical power to the proposed fuel farm- without encroaching on the aforementioned leasehold.

[FAA Exhibit 1, Item 11, exhibit 63].

In a separate letter to the Town Selectman, EAC indicated that it had told BAC as early as 2004 that it would not authorize access to its leasehold for the purpose of installing underground conduit. EAC further indicated:

The undersigned (EAC) further confirmed that neither BAC; nor the Town of Norwood; or even Norwood Light-Electric, for that matter, had any right to arbitrarily encroach on land controlled by EAC and/or its affiliates.

[FAA Exhibit 1, Item 11, exhibit 65]

On May 4, 2006, the Town suspended all lease negotiations with BAC. The Town suspended negotiations because BAC had failed to submit documentation regarding BAC's claim that trench drains were not required and evidence that BAC had obtained all required permits and licenses to operate the proposed above ground aircraft fuel storage facility, including a plan to bring power to the DC-3 Ramp.¹³ [FAA Exhibit 1, Item 11, exhibit 75].

¹³ The timing and need for construction of the trench drains was an issue due to the Town Engineer's desire to postpone cutting the new pavement for at least three years. Toomey-Munson, consulting engineer (for BAC), contended the drains were redundant due to existing catch basins. This issue wasn't clarified until January 17, 2007, when the State Department of Environmental Protection indicated that trench drain installation could be delayed 18 months or BAC could seek an Amended Final Order permitting permanent substitution of the catch

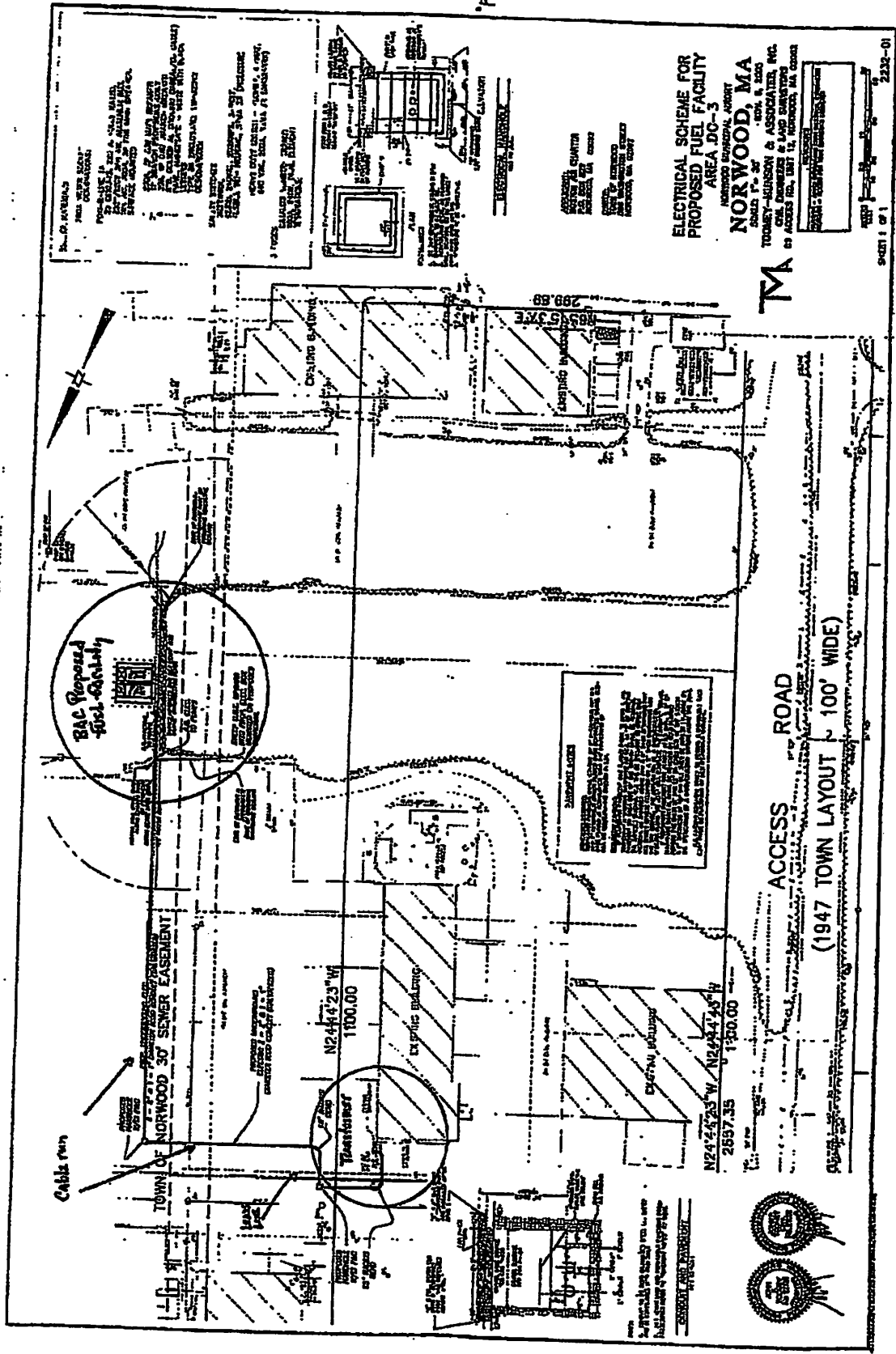
The Town states that BAC's complaint should be dismissed because there is no lease or local approvals for the aircraft fuel storage facility. The Town argues that the issue of BAC's need to construct utility access to the proposed aircraft fuel storage facility is moot because lease negotiations with BAC have been terminated. Furthermore, BAC withdrew its application for a license to operate an aircraft fuel storage facility and has failed to secure the necessary local and state approvals.¹⁴ The Town states that BAC was an "at will" tenant with a month to month aircraft tie-down contract and no lease agreement for the DC-3 Ramp ever existed. BAC could not get electrical service because EAC, the fixed base operator refused to grant it the right to install underground conduit on its leasehold to gain access to power (transformer).

The Town states that its actions do not violate Grant Assurances 22 and 23 and BAC's allegations are without merit and are merely a dispute amongst tenants at the Airport. The Town argues that it cannot be expected to take sides in a dispute between tenants over rights of access, despite its desire to encourage competition. In its defense, the Town cites FAA Airport Compliance Requirements, FAA Order 5190.6A, para. 3-9(a) says:

The presence on an airport of only one enterprise engaged in any aeronautical activity will not be considered a violation of this policy if there is no understanding, commitment, express agreement, or apparent intent to exclude other reasonably qualified enterprises.

basin for the trench drains. [FAA Exhibit 1, Item 11, exhibit 114]. The Airport's Counsel indicates "...NAC (Airport) is more than willing to allow Mr. Bishop (BAC) to install the trench drains as required by the SOC (Department of Environmental Protection's Superseding Order of Conditions), however if BAC undertakes construction on the airport parking apron, it will be incumbent upon BAC to restore the ramp to the current condition. [FAA Exhibit 1, Item 11, exhibit 112]. This is not a cost the Airport has to incur. FAA expects that BAC would pay for the construction and repair and restore the ramp to its current condition.

¹⁴ According to BAC's Counsel, it withdrew its VIF license application rather than have the Board of Selectman vote on revocation. If BAC can resolve the electric service issue, it can resubmit its application to the Board.



ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE 1947 TOWN LAYOUT AND THE 1947 TOWN LAYOUT ~ 100' WIDE. THE 1947 TOWN LAYOUT IS THE BASIS FOR THE ELECTRICAL SCHEME. THE 1947 TOWN LAYOUT IS THE BASIS FOR THE ELECTRICAL SCHEME. THE 1947 TOWN LAYOUT IS THE BASIS FOR THE ELECTRICAL SCHEME.

ELECTRICAL SCHEME FOR PROPOSED FUEL FACILITY
 AREA DC-3
 NORWOOD, MA
 NORWOOD NATIONAL BANK
 SHEET 1 OF 1
 2133-01

The Town contends that it has no exclusive agreement with any tenant on Airport to provide fueling. It will allow the Complainant to operate an aircraft fuel storage facility as soon as it demonstrates compliance with the applicable state laws and obtains permission from EAC to construct an underground conduit for access to electrical service. The Town also contends that the complaint filed by the Complainant is moot.

Temporary Self Fueling Permit

On April 13, 2004, BAC requested the Town's approval to self-fuel its aircraft using a 5,100 gallon Jet A fuel truck until completion of its proposed aircraft fuel storage facility. On June 15, 2004, the Town gave BAC permission to self-fuel for a 30-day period as long as they complied with local, state and federal rules and regulations regarding the transportation of aviation fuel. The Record shows BAC conducted aircraft fueling operations with the Town's consent and knowledge. The Town extended the permit on a monthly basis until October 5, 2005, when it threatened to terminate the permit due to BAC's housekeeping practices.¹⁵ The permit was extended until the November 1, 2005 airport commission meeting after BAC took action to correct the deficiencies.

The Town originally consented to the temporary fueling arrangement because they believed that construction and operation of the fuel facility was imminent. Eighteen months of temporary fueling operations combined with concerns about the Town's liability were major factors in terminating BAC's self-fueling operation. At the November 1, 2005 commission meeting, the Town terminated BAC's temporary self-fueling operation upon 30 day notice, effective immediately.

After BAC continued to fuel its aircraft, the Town issued a violation notice ordering BAC to terminate its temporary fueling operation. The Town found the operation to be a violation of state fire prevention regulations and inconsistent with BAC's VIF license which permitted the operation of an above ground aircraft fuel storage facility. BAC stopped fueling operations after the Town issued a second order with a threat of legal action.

On August 4, 2006, BAC informed the Town of its intention to re-commence self-fueling of its aircraft on or about September 1, 2006. The Town advised BAC that it could not conduct self-fueling operations without a VIF License and permit issued by the Town.

BAC contends that by the Town denying it the right to self-fuel its aircraft and denying it the right to install underground conduit to gain electrical power from the "1100 Foot Strip" to its proposed aircraft fuel storage facility, the Town has granted EAC an exclusive right to operate a fueling facility and a monopoly on fuel sales on Norwood Municipal Airport. Furthermore, BAC believes that EAC has refused permission to install underground conduit for electric service through its leasehold to prevent the BAC from servicing its aircraft and offering fueling services to the public.

¹⁵ Airport staff found drip pans full of aviation fuel underneath the BAC fuel truck; the contents of the pans should have been properly disposed of. Staff also found residual fuel stains on the pavement from BAC's parked Citation Jet. [FAA Exhibit 1, Item 11, exhibit 122]

The Town contends that BAC has failed to comply with state licensing requirements regarding the use of fuel trucks at the Airport, has repeatedly refused to provide information requested by the Town and has been cited for fueling violations.¹⁶ The Town contends it is under no obligation to enter into a lease with the Complainant.

The 1100 Foot Strip

Eastern Air Center subleases an area called the "1100 Foot Strip" from Boston Metropolitan Airport, Incorporated (BMA) who once owned the land and is now a lessee of the Town of Norwood. The "1100 Foot Strip" consists of 330,000 square feet.

In 1967, the FAA directed the Town of Norwood to acquire this 1100 foot strip. The FAA imposed this requirement as part of Amendment Number One to Federal Grant Agreement for Federal Aid Airport Program (FAAP) 9-19-019-0803 dated August 15, 1967. This requirement is outlined in Special Condition 17 which states:

It is understood and agreed that the sponsor will acquire the following property interests: Parcel 2 as shown on Exhibit A—Fee simple title, free and clear of all liens and encumbrances determined objectionable by the FAA...

[FAA Exhibit 1, Item 10.]

The Town of Norwood acquired Parcel 2 (1100 Foot Strip) and Parcel 4 (avigation easement) from Boston Metropolitan Airport, Inc.¹⁷ On December 28, 1967, the Town Counsel signed a certificate affirming that the Town of Norwood holds interest in Parcel 2 (1100 foot strip) and 4 (avigation easement) shown on the Exhibit A property plan attached to Federal Grant Agreement for Federal Aid Airport Program (FAAP) 9-19-019-0803. The certificate indicated that the Town holds fee simple title, free and clear of all liens, encumbrances and adverse interests, subject to a reversionary interest held by Boston Metropolitan Airport that would revert the property to Boston Metropolitan Airport, if the property is no longer needed for airport purposes. (FAA Exhibit 1, Item 10)

BMA transferred title to the "1100 Foot Strip" to the Town of Norwood in return for a leaseback arrangement that gave BMA an executed lease with a twenty year term and three

¹⁶ Fueling violations are for drip pans and fuel stains on the pavement.

¹⁷ Title 49 U.S.C. Section 47106(b)(1) states that no project grant application for airport development may be approved by the Secretary until the Secretary is satisfied that the sponsor, a public agency, or the United States Government holds good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft, or gives assurance to the Secretary that good title will be acquired. The AIP Handbook, Order 5100.38C further clarifies Title for landing and building areas, "Title with respect to lands to be used for landing area or building area purposes can be either fee simple title (free and clear of any and all encumbrances), or title with certain rights excepted or reserved. Any encumbered title must not deprive the sponsor of possession or control necessary to carry out all obligations under the grant. A deed containing a reversionary clause, for "so long as the property is being used for airport purposes", does not negate good title provided the other conditions are satisfied. Where rights excepted or reserved would prevent the sponsor from carrying out its obligations under the grant, such rights must be extinguished or subordinated prior to approval of the project."

20 year options to renew and a reversionary interest in the property should the Airport cease to exist.¹⁸ BMA has exercised the first renewal option. [FAA Exhibit 1, Item 7.]

According to the Town, this leaseback arrangement allowed the Town of Norwood to acquire the "1100 Foot Strip" without actually purchasing the land.¹⁹ The 1967 Lease does not contain any provisions for utility easements and is silent on the Town's right of entry to maintain or install utilities. [FAA Exhibit 1, Item 7.]

FAA Investigation

On July 14, 2006, BAC filed an informal complaint with the FAA New England Regional Headquarters. The result of FAA's investigation determined that the Town had not violated its Federal obligations. According to the Regional Headquarters:

The review indicates that the Town of Norwood intended to allow BAC to install and operate a fuel farm at Norwood Memorial Airport, if BAC could negotiate with EAC to run electrical service across EAC's leasehold. The Town's ability to force EAC to permit the electrical line is outside FAA's purview.

[FAA Exhibit 1, Item 11, exhibit 91]

However, the FAA did direct the Town to ensure that any future Airport leases must provide the right to install utility lines across leased premises.

On April 2, 2007, BAC filed a formal complaint under Title 14 Part 16 with the Federal Aviation Administration.

BAC requests the FAA direct the Town and EAC to provide access to permit the installation of electric utilities for BAC's operation and grant a long term lease on fair terms to operate its fueling facility. BAC requests the FAA to issue a finding that the Town is obligated to:

- Enter into a lease on reasonable terms, as agreed;
- Either grant BAC the right to install the necessary electrical conduits or for the Town to install those conduits itself; and
- To take any other action necessary to enable BAC to immediately be able to exercise its rights under the Grant Assurances to fuel its aircraft, either from its own truck on a temporary basis, or through installation of the fueling facility.

IV. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances, summarized above, the FAA has determined that the following issues require analysis in order to provide a complete review of the Town's compliance with applicable Federal law and policy:

¹⁸ The renewal options are at the sole discretion of BMA.

¹⁹ FAA did not approve the lease back arrangement. FAA accepted the Town Counsel's representation that the Town had acquired Good Title to the property.

- Whether the Town is in violation of Grant Assurance 5, *Preserving Rights and Powers*, when it signed a Lease agreement with Boston Metropolitan Airport, Incorporated, a tenant, depriving the Town of certain rights and powers necessary to comply with its Federal obligations under the FAA grant assurances.
- Whether the Town is in violation of Title 49 U.S.C. §47107(a)(1), and related Federal Grant Assurance 22, *Economic Nondiscrimination*, as it has denied the Complainant reasonable use and access to the Airport on reasonable terms for the purpose of conducting a commercial aeronautical activity, and whether the Town's actions in this regard constitute an unreasonable denial of access and or unjust economic discrimination.
- Whether the Town is in violation of Title 49 U.S.C. § 40103(e), and the related Federal Grant Assurance 23, *Exclusive Rights*. Whether it has granted an exclusive right, to Eastern Air Center, constructively or directly, to operate a fueling facility on the Airport by entering into leases with Eastern Air Center and Boston Metropolitan Airport, Incorporated, enabling Eastern Air Center to control the only source of power to the Airport ramp to operate a fueling facility. Whether by denying Complainant access to power to install a fueling facility, the Town has granted Eastern Air Center the exclusive right to operate a fueling facility on the Airport.

FAA's decision in this matter is based on the applicable Federal law and FAA policy, review of the arguments and supporting documentation submitted by the parties reviewed by the FAA, which comprises the Administrative Record reflected in the attached FAA Exhibit 1.

V. APPLICABLE FEDERAL LAW AND FAA POLICY

The Federal role in civil aviation has been augmented by various legislative actions that authorize programs for providing Federal funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public fair and reasonable access to the airport.

The following is a discussion pertaining to the Airport Improvement Program, Airport Sponsor Assurances, the FAA Airport Compliance Program, and enforcement of Airport Sponsor Assurances.

A. The Airport Improvement Program

Title 49 U.S.C. § 47101, *et seq.*, provides for Federal airport financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act of 1982, as amended. Title 49 U.S.C. § 47107, *et seq.*, sets forth assurances to which an airport sponsor agrees as a condition of receiving Federal financial assistance. Upon acceptance of an AIP grant, the

assurances become a binding contractual obligation between the airport sponsor and the Federal government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system.

B. Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the Airport Improvement Program, 49 U.S.C. § 47107, *et seq.*, the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth the statutory sponsorship requirements to which an airport sponsor receiving Federal financial assistance must agree.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.²⁰ FAA Order 5190.6A, *Airport Compliance Requirements* (Order), issued on October 2, 1989, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to compliance with Federal obligations of airport sponsors. The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

Three Federal grant assurances apply to the circumstances set forth in this Complaint: (1) Grant Assurance 5, *Preserving Rights and Powers*, (2) Grant Assurance 22, *Economic Nondiscrimination*; (3) Grant Assurance 23, *Exclusive Rights*.

1. Preserving Rights and Powers

Grant Assurance 5, *Preserving Rights and Powers*, implements the provisions of Title 49 U.S.C 47107, and requires, in pertinent part, that the sponsor of a federally obligated airport

"...will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor.

A sponsor cannot take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances. Of particular concern to the FAA is granting a property interest to tenants on the airport. These property interests may restrict the sponsor's ability to preserve its rights and powers to operate the airport in compliance with its federal obligations

2. Economic Nondiscrimination

The owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and

²⁰ *See, e.g.*, the Federal Aviation Act of 1958, as amended and recodified, Title 49 U.S.C. §§40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110; and the Airport and Airway Improvement Act of 1982, as amended and recodified, Title 49 U.S.C. §§ 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122.

classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. Federal Grant Assurance 22, *Economic Nondiscrimination*, deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. Grant Assurance 22 of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally-obligated airport

...will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. [Assurance 22(a)].

...may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. [Assurance 22(h)].

...may...limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public. [Assurance 22(i)].

Subsection (h) qualifies subsection (a) and subsection (i) represents an exception to subsection (a) to permit the sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions that would be detrimental to the civil aviation needs of the public.

In all cases involving restrictions on airport use imposed by airport owners for safety and efficiency reasons, the FAA will make the final determination on the reasonableness of such restrictions when those restrictions deny or limit access to, or use of, the airport. [See FAA Order 5190.6A, para. 4-8].

The owner of an airport developed with Federal assistance is responsible for operating the aeronautical facilities for the benefit of the public. [See FAA Order 5190.6A, Sec. 4-7(a).] This means, for example, that the owner should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure the safe and efficient operation of the airport. [See Order, Secs. 4-7 and 4-8].

Federal Grant Assurance 22, *Economic Nondiscrimination*, also satisfies the requirements of Title 49 U.S.C. § 47107 (a)(5), which requires that fixed-base operators similarly using the airport must be subject to the same charges. Assurance 22 provides, in pertinent part, that the sponsor of a federally obligated airport will ensure that:

"...each fixed-base operator at any airport owned by the sponsor shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and utilizing the same or similar facilities."
[Assurance 22(c)].

FAA Order 5190.6A describes the responsibilities under Grant Assurance 22 assumed by the owners of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on fair and reasonable terms without unjust discrimination. [See Order, Secs. 4-14(a)(2) and 3-1].

The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities. [See Order, Sec. 3-8(a)].

3. Restrictions on Air Carrier Self-servicing of Aircraft

Grant Assurance 22(d) provides, in pertinent part, that "each air carrier using such airport shall have the right to service itself..." 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally-obligated airport

...will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform. [Assurance 22(f)].

The FAA considers the right to self-service as prohibiting the establishment of any unreasonable restriction on the owners or operators of aircraft regarding the servicing of their own aircraft and equipment. See Order, Sec 3-9(e)(1)

Aircraft owners must be permitted to fuel, wash, repair and otherwise take care of their own aircraft with their own personnel, equipment and supplies. The sponsor, however, is obligated to operate the airport in a safe and efficient manner. The establishment of fair and reasonable rules, applied in a not unjustly discriminatory manner, governing the introduction of equipment, personnel or practices which would be unsafe, unsightly, detrimental to the public welfare, or which would affect the efficient use of airport facilities by others, would not be unreasonable. See Order, Sec. 3-9(d)(2).

4. Exclusive Rights

Title 49 U.S.C. § 40103(e), provides, in relevant part, that "there shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended."

Title 49 U.S.C. § 47107(a)(4), similarly provides, in pertinent part, that "there will be no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public."

Grant Assurance 23, *Exclusive Rights*, of the prescribed sponsor assurances implements both statutory provisions requiring, in pertinent part, 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...and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Improvement Act of 1982."

FAA policy on exclusive rights broadly identifies aeronautical activities as subject to the statutory prohibition against exclusive rights. While public use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, we have taken the position that the application of any unreasonable requirement or standard that is applied in an unjustly discriminatory manner may constitute a constructive grant of an exclusive right. Courts have found the grant of an exclusive right where a significant burden has been placed on one competitor that is not placed on another. [*See e.g. Pompano Beach v FAA*, 774 F.2d 1529 (11th Cir, 1985)].

FAA Order 5190.6A (Order) provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports. [*See* Order, Ch. 3].

5. Leasing General Aviation Apron Constructed with Federal Assistance

FAA Order 5190.6A, Para. 4-17(k) in pertinent part, states:

The airport owner has responsibility for the management and operation of the airport and ultimately must assure that it is operated in accordance with all aspects of the grant assurances. ...Therefore, the airport owner should not enter into unconditional leasing of apron areas constructed with Federal airport grant assistance because this could result in reducing the airport owners ability to carry out their obligations under their agreements with the Federal Government.

The airport owner may in reality only want an FBO to manage tie-down spaces, maintain the apron area, remove snow, and similar functions. Para. 4-17(k)(1)

Tie-downs or spaces on the apron can be leased by the airport owner to individual aircraft owners and/or to the FBO for space necessary to serve the needs of their aircraft in their business. Also, the apron area in the immediate vicinity of an FBO can be leased to the FBO to permit the exercise of a proprietorship over the public-use ramp area. Apron areas can be leased provided the terms of the lease will not restrict the airport owner from carrying out their grant obligations. ...A demonstrated immediate need for the space to be leased shall be documented by the FBO to preclude attempts to limit competition or create an exclusive right. Para. 4-17(k)(2).

C. The FAA Airport Compliance Program

The FAA discharges its responsibilities for ensuring airport owners' compliance with their Federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the contractual obligations an airport owner accepts when receiving Federal grant funds or the transfer of Federal property for airport purposes. These obligations

are incorporated in grant agreements and instruments of conveyance in order to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The FAA Airport Compliance Program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' Federal obligations and the public's investment in civil aviation.

The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that the public interest is being served. FAA Order 5190.6A sets forth policies and procedures for the FAA Airport Compliance Program. The Order establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition of receiving a grant of Federal funds or the conveyance of Federal property for airport purposes. The Order analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of those assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

The FAA Compliance program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations. [See e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10, (8/30/01) Wilson Air Center, LLC v FAA, 372 F.3d 807 (6th Cir. 2004).

D. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended (FAA Act), 49 U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport owner or sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their federal grant assurances.

VI. ANALYSIS AND DISCUSSION

The Complainant alleges the Town of Norwood violated Title 49 U.S.C. §47107, and Federal Grant Assurance 22, *Economic Nondiscrimination* and Title 49 U.S.C. § 40103(e), and Federal Grant Assurance 23, *Exclusive Rights* by denying the Complainant access to install an underground conduit for electric service for its proposed aircraft fueling facility.

The Town of Norwood argues that it cannot be held responsible for Boston Metropolitan Airport, Incorporated's (BMA) decision not to grant BAC access through its leasehold for the purpose of installing an underground conduit to provide electrical service to BAC's proposed aircraft fueling facility. The Town argues it does not have express authority under its lease with BMA to permit BAC to install underground conduit through its leasehold.

The Town has terminated negotiations with BAC regarding the long-term leasing of the DC-3 Ramp and the construction of a fueling facility because of BAC's failure to obtain the required permits and approvals and its past performance during a temporary truck fueling operation that the Town terminated. The Town states that it is under no obligation to enter into a long-term lease agreement with BAC for the DC-3 Ramp.

The Town indicates that BAC has no lease, it is a tenant at will on a month-to-month basis and the issues raised in the complaint are moot and should be dismissed.

FAA has construed the complaint to involve an examination of Grant Assurance 5, *Preserving Rights and Powers*, in addition to the alleged violations of Title 49 U.S.C. §47107, Grant Assurance 22, *Economic Nondiscrimination*; Title 49 U.S.C. § 40103(e), Grant Assurance 23, *Exclusive Rights*. These issues are analyzed and discussed separately below.

A. Property Interest

Rights and Powers

Issue: Whether the Town has surrendered its rights and powers to develop and manage the Airport by permitting a tenant lease to subordinate the Town's Federal obligations in violation of Federal Grant Assurance 5, *Preserving Rights and Powers*.

Grant Assurance 5, *Preserving Rights and Powers*, prohibits the airport sponsor from entering into an agreement that would deprive it of any of its rights and powers that are necessary to perform all of the conditions of its grant agreements and other Federal obligations. The grant assurance specifically states:

The airport sponsor will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

The Town of Norwood argues that it doesn't have the authority to enter Boston Metropolitan Airport, Incorporated (BMA) "1100 Foot Strip" leasehold for the purpose of installing an underground conduit on behalf of Complainant.²¹ To address this issue, we must first determine if the Town ever had a right of access through the BMA leasehold under the 1967 Lease with BMA.

It appears that prior to 1967, the Town of Norwood and BMA jointly and separately owned land that was considered Norwood Municipal Airport. FAA believes that dual property ownership interests on a public airport may restrict or conflict with the airport sponsor's ability to preserve its rights and powers to operate the airport in compliance with its federal obligations.

As a result, and in order for the FAA to fund airport improvements, the FAA required the Town of Norwood to acquire and control all Airport property, in fee. The FAA directed the Town of Norwood to acquire the "1100 Foot Strip" owned by BMA or future Federal financial assistance would not be provided. The FAA imposed this requirement as part of Amendment Number One to FAA Grant Agreement for Federal Aid Airport Program (FAAP) 9-19-019-0803. This requirement is outlined in the Grant Agreement FAAP9-19-019-0803 Special Condition 17 which states:

It is understood and agreed that the sponsor will acquire the following property interests: Parcel 2 as shown on Exhibit A—Fee simple title, free and clear of all liens and encumbrances determined objectionable by the FAA...

The Town of Norwood acquired Parcel 2 ("1100 Foot Strip") and Parcel 4 (avigation easement) from BMA.

On December 28, 1967, the Town Counsel signed a certificate affirming that the Town of Norwood holds interest in Parcel 2 ("1100 Foot Strip") and 4 (avigation easement) shown on the Exhibit A property plan attached to Federal Grant Agreement for Federal Aid Airport Program (FAAP) 9-19-019-0803. The certificate indicated that the Town holds fee simple title, free and clear of all liens, encumbrances and adverse interests, subject to a reversionary interest held by BMA that would revert the property to BMA, if the property is no longer needed for airport purposes. [FAA Exhibit 1, Item 10]

Fee simple ownership represents absolute ownership of real property. Upon acquiring the title to the property, the Town became the property owner and had all rights associated with the property with the exception of the reversionary interest. The Town Counsel's certificate indicated that the Town of Norwood had fee simple title, free and clear of all liens, encumbrances and adverse interests with the exception of the reversionary interest of BMA. The Town had the right to access the property, the right to lease the property, the right to develop the property, and the right to grant easements. The Town had all rights associated with fee simple ownership subject to the reversionary interest.

In December 1967, BMA transferred title to the "1100 Foot Strip" to Norwood Airport Commission in return for a lease arrangement that gave BMA a lease with a twenty year term

²¹ The Town of Norwood is the property owner of the "1100 Foot Strip"; it leases the ramp to BMA who in turn subleases to EAC, a fixed base operator.

and three 20 year renewal options for a total of 80 years. FAA did not require the Town to enter into a leaseback arrangement with BMA, FAA required the Town to acquire the property. The Administrative Record does not provide any evidence to indicate that the land was appraised or a market value was identified for the property other than to indicate that the length of term of 80 years was needed to realize the fair market value of the property. BMA has exercised the first renewal option. [FAA Exhibit 1, Item 7.]

According to the Town, this leaseback arrangement allowed the Town of Norwood to acquire the "1100 Foot Strip" without actually purchasing the land. The 1967 Lease does not contain provisions for utility easements and is silent on the Airport's right of entry to the property, or a right to maintain and install utilities on the property. [FAA Exhibit 1, Item 7.]

The Town opines that since the 1967 Lease is silent on the Town's right of access to the property and is silent on any right for utility easements or maintenance and installation of utilities, the Town has therefore transferred those rights to the BMA.

The right of access and the right to grant utility easements and maintain and install utilities by an airport sponsor on an airport leasehold are essential rights integral to the operation and development of any public use airport. A sponsor must have control of its land in order to support development and growth of the airport. Specifically, in the case of the Town of Norwood, these were rights to be retained by the Town as a result of the Town Counsel's affirmation of the Town's fee simple ownership of the land and its compliance with Special Condition 17 of FAAP 9-19-019-0803. FAA required the Town to acquire the land; it did not require the Town to enter into a lease agreement with BMA that was inconsistent with its Federal obligations and contradictory to the purpose of Special Condition 17. The terms of the 1967 Lease appear to undermine Special Condition 17 as the 1967 Lease relinquishes certain rights and powers gained by the Town when it assumed fee interest in the property.

The Administrative Record indicates that EAC opposes BAC's plan to construct an aircraft fuel facility. EAC believes that another fixed base operator providing fuel would threaten its investment at the Airport and result in additional competition. The Record also indicates that EAC monitored BAC's progress through the permitting process and in some instances took an active and vocal position to stop the completion of the aircraft fuel facility.

However, the owner of an airport developed with Federal financial assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds and classes of aeronautical activity on reasonable terms without unjust discrimination. Specifically, in the case of air carriers, those using the Airport shall have the right to self-service their aircraft or to use any fixed base operator authorized by the Airport. The investigation reveals that the Town of Norwood attempted to comply with this obligation by permitting BAC to install and operate a fuel farm at Norwood Memorial Airport and that it took steps to support BAC's proposal such as authorizing temporary mobile fueling.

The Town's Federal obligation to provide BAC access came in direct conflict with EAC's desire to limit competition on the Airport when EAC refused to grant both the Town and BAC access to the power transformer located on the "1100 Foot Strip". BMA and EAC employed the 1967 Lease between the Town and BMA to prohibit access by the Town for the purpose of installing utilities. EAC stated:

Neither NAC nor BAC has the right to dig, construct or otherwise utilize the so-called Gate 3 access to the Airport, which is situated on land we control, in any manner other than to allow a vehicle, aircraft and/or a pedestrian to pass through for the lawful purpose of gaining access to the Airport.

[FAA Exhibit 1, Item 11, exhibit 65]

EAC further indicated:

The undersigned (EAC) further confirmed that neither BAC; nor the Town of Norwood; or even Norwood Light-Electric, for that matter, had any right to arbitrarily encroach on land controlled by EAC and/or its affiliates.

[FAA Exhibit 1, Item 11, exhibit 65]

Apparently, EAC was not interested in permitting potential competition on the Airport, and the Town's right to grant BAC access for the purpose of receiving electric service to the DC-3 Ramp was effectively blocked by the Town's 1967 Lease agreement with BMA. The Town put BAC on notice it was unable to approve the long-term lease agreement for the DC-3 Ramp and that it must find another way get electric service without encroaching on the EAC leasehold. The Record provides no evidence that the Town offered BAC an alternative course of action. The Town argues that BAC had the option of installing the electrical service during the AIP-funded project. BAC claims that it didn't do the work because of the cost. [See page 7, footnote 11]. EAC states that BAC didn't have the right to access its property. Consequently, BAC installing a electrical service conduit through EAC's leasehold was not an option.

FAA finds that the 1967 Lease does not excuse the Town from complying with its Federal obligations. FAA also finds that terms contained in the 1967 Lease including the reversionary interest, the 80 year total term, the lack of the Town's right of access to the property, the lack of the right to grant utility easements, and maintain and install utilities, and the lack of the right to approve or disapprove the assignment of the Lease are a sufficient indication that the Town, as airport sponsor, has taken actions that deprive it of its rights and powers to direct and control a significant portion of the aeronautical infrastructure on the Airport and to comply with the FAA grant assurances. Of particular concern to the FAA is the granting of a superior property interest to BMA for Airport property that restricts the Town's ability to preserve its rights and powers to operate the Airport in compliance with its Federal obligations

The airport sponsor must take the actions necessary to regain its rights and powers including extinguishing rights of other parties that prevent the sponsor from complying with its Federal obligations. Sponsors should place a subordination clause in all of its tenant leases and agreements that subordinate the terms of the leases and agreements to the grant assurances and surplus property obligations of the sponsor. A subordination clause may assist the sponsor in amending a tenant lease or agreement that otherwise deprives the sponsor of its rights and powers. A typical subordination clause will state that if there is a conflict between the terms of a lease and the FAA grant assurances, the grant assurances shall take precedence and govern.

FAA finds that the Town of Norwood is in violation of Grant Assurance 5, *Preserving Rights and Powers*, for surrendering significant rights and powers to BMA in the lease of the "1100 Foot Strip". FAA also finds that the 1967 Lease with BMA effectively violates (FAAP) 9-19-019-0803, Special Condition 17 that required the Town to gain control of all Airport property.

B. Discriminatory Practices

Reasonable Access and Not Unjustly Discriminatory Terms

Issue: Whether the Town has discriminated against the Complainant, by denying the Complainant reasonable use and access to the Airport on reasonable terms and conditions in violation of Title 49 U.S.C. § 47107(a)(1), and related Federal Grant Assurance 22, *Economic Nondiscrimination* for the purpose of conducting a commercial aeronautical activity.

Title 49 U.S.C. § 47107(a)(1) and Grant Assurance 22, *Economic Nondiscrimination* provides in pertinent part, that the sponsor of a federally obligated airport will ensure that

...the airport will be available for public use on reasonable conditions and without unjust discrimination. [Assurance 22(a)].

The Director believes that the Town of Norwood intended to allow BAC to install and operate an aircraft fuel facility at Norwood Municipal Airport. The Town took steps toward that end such as: immediately leasing the aircraft tie-downs on the DC-3 Ramp to BAC over EAC's objections, authorizing BAC to conduct temporary truck self-fueling operations, and entering into initial negotiations with BAC for construction of the aircraft fuel facility and a long-term lease of the DC-3 Ramp. [FAA Exhibit 1, Item 11, exhibit 1]

The Administrative Record indicates that at the time BAC submitted its proposal for an aircraft fuel facility, the Airport suffered from high fuel prices. A fact that even EAC, the Airport's only fuel provider, admitted. [FAA Exhibit 1, Item 11, exhibit 4] In a letter to the Chairman of the Town's Airport Commission, the BAC stated:

...fuel pricing at the Norwood Airport has been such that many owners and operators are fueling elsewhere where fuel prices are more competitive.

While BAC initially wanted to self-service its aircraft involved in its Part 135 operation, eventually it wants to become a fixed base operator selling fuel to the public. BAC believed that a second fixed base operator would recapture traffic volume that left the Airport due to fuel pricing and that competition would increase fuel volume.

In addition to being the Airport's only fuel provider, EAC controlled a majority (88%) of the ramp space on the Airport with the exception of the Town controlled West Apron and the DC-3 Ramp. EAC acknowledged that it would adjust pricing to recapture business lost to high fuel prices. However, EAC was opposed to the Complainant's fueling proposal. In the Airport Commission meeting, EAC indicated:

With two FBO's, it will jeopardize Eastern's (EAC) investment. If BAC comes on the field, it won't gain new business. Eastern is trying to regain old business. Space is short at the Airport and ramp space being taken up for a fuel farm will create a bigger space problem. EAC will have a new fuel price that will be as competitive...EAC reiterates that they have always been open to doing business with BAC. ...BAC refused.

[FAA Exhibit 1, Item 11, exhibit 5]

The Town's position regarding BAC changed when EAC indicated that the Town and BAC did not have the right to access BMA/EAC leasehold without prior permission and that neither BMA nor EAC would approve the installation of underground conduits through its leasehold to provide electric service to BAC's aircraft fuel facility.

The Town informed BAC that its 1967 Lease with BMA doesn't provide for a right of access or the authority to grant an easement through the property.

The Town argues that it can not be expected to take sides in a private dispute between two tenants over access. Furthermore, the Town expects both parties to resolve their differences. BAC must get permission from BMA and EAC to access the "1100 Foot Strip" for power.

FAA disagrees with the Town's perception of its role as an airport sponsor. An owner of an airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. See Order, Sec. 4-13(a).

The Record clearly indicates that EAC was opposed to the BAC's plan to construct an aircraft fuel facility and become a fixed base operator. EAC has voiced its concerns and objections at Airport Commission meetings and in correspondence to the Town and State agencies at various stages throughout BAC's permit process. BAC made it very clear that it considers a second fixed base operator as a threat to its investment on the Airport. BAC had planned to become a competitor of EAC. EAC was also selling fuel to BAC, business that EAC would lose if BAC opened its own fuel facility. EAC has a vested interest to ensure BAC not be granted the right to install a fuel farm.

Over the past twenty years, FAA has provided Federal financial assistance to the Airport in the amount of \$3,108,914 for the rehabilitation, construction and expansion of the Airport's ramps and aprons. [FAA Exhibit 1, Item 2]. Most of these ramps and aprons are either under lease to BMA, subleased by EAC, or directly leased to EAC. [See Page 4]

The Town indicates that BAC had an opportunity to install the conduits during a federally funded apron construction project, but chose not to do so. The Record indicates that BAC didn't proceed with the installation due to the quoted costs provided by the Airport's contractor. It should be noted the installation of underground conduits as part of a federally

construct hangars and terminal facilities, it has an obligation to make available suitable areas and space on reasonable terms to those who are willing and otherwise qualified to offer flight services to the public (i.e air carrier, air taxi, fixed base operator). Para. 4-15.

A willingness by the tenant to lease space and invest in the facilities required by reasonable standards shall be construed as establishing the need of the public for the services proposed to be offered. Para. 4-15(c).

Conclusion on Discriminatory Practices

FAA finds the Town's actions to be unreasonable and unjustly discriminatory. The Town has an obligation to make available suitable areas and space on reasonable terms. Access to utilities including electrical service is a requirement of any commercial aeronautical operator operating an aircraft fuel facility. The Town granted utility access to EAC through its sublease with BMA. The Town's expectation that BAC must negotiate with EAC, a potential competitor, for access to electrical service is unreasonable. While the Town is not required to provide electrical service to BAC, the Town is required to provide suitable area and space on the Airport where BAC can obtain access to utilities. The Record indicates the Town failed to offer an alternative location or an alternative source of power. It is also unreasonable for the Town to expect BAC to obtain all required permits and approvals, when local permits are contingent upon a lease that the Town's refuses to approve. The Town has an obligation to find suitable areas and space with reasonable access to utilities and on reasonable terms. It is also unreasonable for the Town to enable an airport tenant to override its ability to respond to new business opportunities and comply with its Federal obligations.

C. Exclusive Rights

Issue: Whether the Town has granted an exclusive right, to Eastern Air Center, to operate a fueling facility on the Airport by entering into leases with Eastern Air Center and Boston Metropolitan Airport, Incorporated, enabling Eastern Air Center to control the only source of power to the Airport ramps to operate a fueling facility and whether by denying Complainant access to power to install a fueling facility, the Town has granted Eastern Air Center an exclusive right to operate a fueling facility on the Airport in violation of Title 49 U.S.C. § 40103(e), and related Federal Grant Assurance 23, Exclusive Rights.

Normally, the existence of one fixed base operator operating a fueling facility on an airport is not sufficient justification to support a violation of the exclusive rights prohibition.

However, in this case, EAC actively pursued a program of preventing the Complainant, a Part 135 operator, from constructing an aircraft fueling facility on the Airport and the Town through its actions of relinquishing its rights and powers to BMA and EAC has resulted in a denial of BAC's right to self fuel and gain access to power to operate a fueling facility. The Town's failure to offer BAC an aircraft ramp with access to power has the effect of granting an exclusive right to EAC to operate a fueling facility on the Airport.

The Record indicates that EAC actively opposed and monitored the progress of BAC's efforts to self-fuel its aircraft and any attempt on BAC's part to expand into a competitive commercial activity. EAC opposed the Town giving BAC six tie-down spaces on the DC-3

Ramp when EAC controlled 88 percent of the ramp space on the airport, mostly through long-term leases. (See page 4) EAC requested that its lease for the DC-3 Ramp be amended to a long term lease to maintain its majority control of aircraft parking. (FAA Exhibit 1, Item 11, exhibit 1). EAC demanded the Airport revoke BAC's self-fueling permit and the removal of its fueling truck from the Airport. (FAA, Exhibit 1, Item 11, exhibit 1).

Before a November 2004 Airport Commission meeting, EAC stated that "two FBOs [on the Airport] will jeopardize Eastern's investment. (FAA Exhibit 1, Item 11, exhibit 5). EAC contacted the Massachusetts Aeronautics Commission to express safety and environmental concerns about BAC's proposed aboveground fuel facility. (FAA Exhibit 1, Item 11, exhibit 7). EAC and BMA opposed granting the Town or BAC access, without explanation, to its leasehold for the purpose of installing underground conduit for electrical service. (FAA Exhibit 1, Item 11, exhibits 18, 40, 48, 51, 55, 55, 65, 107).

VI. FINDINGS AND CONCLUSIONS

Upon consideration of the submissions and responses by the parties, and the entire record herein, and the applicable law and policy and for the reasons stated above, the Director, Office of Airport Safety and Standards, finds and concludes as follows:

- The Town is in violation of Grant Assurance 5, *Preserving Rights and Powers*, for surrendering significant rights and powers to BMA in the lease of the "1100 Foot Strip". FAA also finds that the 1967 Lease with BMA effectively violates (FAAP) 9-19-019-0803, Special Condition 17 that required the Town to gain control of all Airport property in fee simple, free and clear of liens and encumbrances by depriving the Town of certain rights and powers necessary to comply with its Federal obligations under the FAA grant assurances.
- The Town is in violation of Title 49 U.S.C. §47107(a)(1), and related Federal Grant Assurance 22, *Economic Nondiscrimination*, as it has denied the Complainant reasonable use and access to the Airport on reasonable terms for the purpose of conducting a commercial aeronautical activity, and the Town's actions in this regard constitute an unreasonable denial of access and unjust economic discrimination.
- The Town is in violation of Title 49 U.S.C. § 40103(e), and the related Federal Grant Assurance 23, *Exclusive Rights*, as it has granted an exclusive right, to Eastern Air Center, constructively or directly, to operate a fueling facility on the Airport by entering into leases with Eastern Air Center and Boston Metropolitan Airport, Incorporated, enabling Eastern Air Center to control the only source of power to the Airport ramps to operate a fueling facility and by denying the Complainant access to power to install a competing fueling facility, the Town has granted Eastern Air Center the exclusive right to operate a fueling facility on the Airport.

ORDER

ACCORDINGLY, the Director finds the Town of Norwood is in violation of Federal law and the Federal grant obligations. The Town has 30 days to submit a corrective action plan that (1) provides access for BAC to conduct self-fueling operations consistent with state and local regulations; (2) ends the practice of awarding long-term leases of the federally-funded ramps that had the effect of granting one party control over the majority of the ramps on the Airport; (3) puts in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally-funded ramps and (4) regain the Airport's rights and powers to access the "1100 Foot Strip" to provide power to the Airport ramps for Airport tenants.

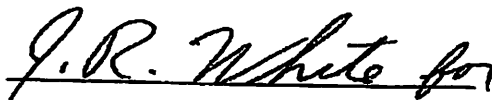
Failure to submit a corrective action plan acceptable to the FAA within the time provided, unless extended by the FAA for good cause, will lead to suspension of future grant applications for AIP discretionary grants.

All Motions not expressly granted in this Determination are denied.

These Determinations are made under 49 U.S.C. § 40103(e), and 49 U.S.C. § 47107(a)(1)(4)(5) and the instruments of surplus property conveyance pursuant to Title 49 U.S.C. § 47152 and related Federal Grant Assurance 22, *Economic Nondiscrimination*.

RIGHT OF APPEAL

This Director's Determination is an initial agency determination and does not constitute a final agency action and order subject to judicial review. [14 CFR 16.247(b)(2)]. A party to this Complaint adversely affected by the Director's Determination may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR 16.33(b) within thirty (30) days after service of the Director's Determination.



Kelvin Solco
Acting Director,
Office of Airport Safety and Standards

Date: APR 11 2008

Director's Determination
INDEX OF ADMINISTRATIVE RECORD
Docket No. 16-07-03

Boston Air Charter	Complainant
▼	
Norwood Airport Commission	Respondent

The following documents (items) constitute the administrative record in this proceeding:

Item 1. FAA Form 5010 for the Airport last inspected March 14, 2007.

Item 2. Airport Sponsor AIP Grant History listing the federal airport improvement assistance provided by the FAA to the Airport Sponsor since fiscal year 1982, report date July 25, 2007.

Item 3. Formal Complaint and cover letter docketed 10 April 2007. List of Exhibits includes:

- A. Letter from Manager, FAA New England Region, Airports Division to Complainant's Attorney, dated February 28, 2007. (Complainant's Exhibit 1)
- B. Letter from Complainant's attorney to Respondent's attorney with Sponsor's Assurances attached dated April 5, 2006. (Complainant's Exhibit 2)
- C. Letter from Complainant's attorney to Airport Compliance Officer, FAA New England Region dated July 14, 2006. (Complainant's Exhibit 3)
 1. Letter from Manager of Eastern Air Center to Manager of Norwood Airport regarding construction of underground utilities dated January 30, 2006.
 2. *Scott M. Niswonger, etc., Plaintiff v. American Aviation, Inc.* 411F.Supp.769; 1975 U.S. Dist. LEXIS 11722; 14 Av. Cas.
 3. Apron Reconstruction AIP 3-25-0037-26-2005 meeting notes and sign-in sheet dated July 14, 2005.
 4. Boston Air Charter Spill Containment System proposal and contract dated August 18, 2005.
 5. Letter from the president of RLR Excavation, Inc. to Boston Air Charter regarding proposed fuel facility dated January 13, 2005.
 6. Electronic mail between Complainant's attorney and Massachusetts Department of Environmental Protection dated November 18 and 21, 2005.

7. Letter of Transmittal from Civil Engineering Firm to Complainant and four attachments regarding trench drain capacity dated February 1, 2006.
8. Draft lease agreement between Norwood Airport Commission and Boston Air Charter

D. Letter and attached diagram from Complainant's attorney to Airport Compliance Officer, FAA New England Region dated October 13, 2006. (Complainant's Exhibit 4)

Item 4. Docket Notice dated April 17, 2007.

Item 5. Letter from Respondent's attorney to FAA Chief Counsel dated April 17, 2007.

Item 6. (A) Letter from FAA Counsel to Respondent's Counsel granting an extension of time to file an Answer, Certificate of Service both dated May 4, 2007. (B) Letter from FAA Counsel to Complainant's Counsel granting an extension of time to file a Reply, Certificate of Service both dated May 29, 2007.

Item 7. Respondent's Answer dated May 17, 2007. List of Exhibits includes:

- A. Letter from Respondent's Attorney to FAA New England Region Airports Division Manager dated June 5, 2006, includes attachment of two letters dated December 16, 2005, and January 30, 2006, from Manager of Eastern Air Center to the Manager, Norwood Memorial Airport. (Answer Exhibit 1)
- B. Letter from Respondent's attorney to Airport Compliance Officer, FAA New England Region dated June 19, 2006. (Answer Exhibit 2)
- C. Letter from Respondent's attorney to Airport Compliance Officer, FAA New England Region dated September 27, 2006. (Answer Exhibit 3)
- D. Letter from Respondent's attorney to Airport Compliance Officer, FAA New England Region dated November 2, 2006. (Answer Exhibit 4) includes exhibits:
 1. Massachusetts Department of Environmental Protection, *Superseding Order of Conditions* dated November 30, 2004. Massachusetts Department of Environmental Protection, Recommended Final Decision dated April 8, 2005. (Answer Exhibit 4-A)
 2. Norwood Airport Commission Agenda and minutes for December 6, 2005. (Answer Exhibit 4-B)
 3. Electronic mail between Complainant's attorney and Massachusetts Department of Environmental Protection dated November 18 and 21, 2005. (Answer Exhibit 4-C)

4. Letter to the Norwood Airport Commission from Toomey-Munson & Associates, Inc. dated January 24, 2006. (Answer Exhibit 4-D)
 5. Norwood Airport Commission Meeting, January 10, 2006 minutes (Answer Exhibit 4-E)
 6. Letter from Town of Norwood Conservation Agent to FAA Airport Compliance Officer, New England Region Headquarters, dated November 2, 2006. (Answer Exhibit 4-F)
 7. Notes of telephone conversation between Boston Air Charter and Edwards and Kelcey dated February 1, 2006. (Answer Exhibit 4-G)
 8. Letter from the Town of Norwood to Boston Air Charter dated May 10, 2006. (Answer Exhibit 4-H)
 9. Letter from Eastern Air Charter to Town of Norwood Memorial Airport dated January 30, 2006. (Answer Exhibit 4-I)
- E. Lease Agreement between the Town of Norwood and the Boston Metropolitan Airport, Inc. (Answer Exhibit 5)
- F. BLANK ON FILING (Answer Exhibit 6)
- G. Letter to Complainant's Counsel from the Town of Norwood Fire Department dated August 24, 2006. (Answer Exhibit 7)
- H. Norwood Memorial Airport Apron Reconstruction Project. (Answer Exhibit 8)
1. FAA pre-construction conference dated July 14, 2005.
 2. Edwards and Kelcey preconstruction meeting notes for July 14, 2005.
 3. Edwards and Kelcey preconstruction meeting notes for August 25, 2005.
 4. Duplicate-Notes of telephone conversation between Boston Air Charter and Edwards and Kelcey dated February 1, 2006.
 5. Edwards and Kelcey preconstruction meeting notes for September 1, 2005 and schedule of construction events during September 2005.
 6. Transmittal cover letter from Airport Manager to Boston Air Charter dated September 8, 2005.
 7. Edwards and Kelcey preconstruction meeting notes for September 8, 2005 and schedule of construction events during September 2005.
 8. Edwards and Kelcey preconstruction meeting notes for September 22, 2005 and schedule of construction events during September and October 2005.
 9. Edwards and Kelcey preconstruction meeting notes for September 29, 2005 and schedule of construction events during September and October 2005.

10. Edwards and Kelcey preconstruction meeting notes for October 6, 2005 and schedule of construction events during October 2005.
 11. Edwards and Kelcey preconstruction meeting notes for October 13, 2005 and schedule of construction events during October 2005.
 12. Edwards and Kelcey preconstruction meeting notes for October 20, 2005 and schedule of construction events during October 2005.
 13. Edwards and Kelcey preconstruction meeting notes for October 27, 2005 and schedule of construction events during October and November 2005.
 14. Edwards and Kelcey preconstruction meeting notes for November 3, 2005.
 15. Edwards and Kelcey preconstruction meeting notes for November 10, 2005.
- I. Norwood Memorial Airport Accident/Incident Report of March 31, 2007. (Answer Exhibit 9)
 - J. Letter from Commonwealth of Massachusetts Department of Environmental Protection to Complainant's Counsel dated January 17, 2007. (Answer Exhibit 10)
 - K. Letter from Complainant's Counsel to Norwood Airport Commission dated August 4, 2006. (Answer Exhibit 11)
 - L. Letter from Norwood Airport Commission to Boston Air Charter dated May 7, 2007. (Answer Exhibit 12)

Item 8. Respondent's Motion to Dismiss docketed May 17, 2007. List of Exhibits includes:

- A. Letter from Respondent's Attorney to FAA New England Region Airports Division Manager dated June 5, 2006, includes attachment of two letters dated December 16, 2005, and January 30, 2006, from Manager of Eastern Air Center to the Manager, Norwood Memorial Airport. (Answer Exhibit 1)
 - B. Letter from Respondent's attorney to Airport Compliance Officer, FAA New England Region dated June 19, 2006. (Answer Exhibit 2)
 - C. Letter from Respondent's attorney to Airport Compliance Officer, FAA New England Region dated September 27, 2006. (Answer Exhibit 3)
 - D. Letter from Respondent's attorney to Airport Compliance Officer, FAA New England Region dated November 2, 2006. (Answer Exhibit 4)
1. Massachusetts Department of Environmental Protection, *Superseding Order of Conditions* dated November 30, 2004. Massachusetts Department of Environmental Protection, Recommended Final Decision dated April 8, 2005. (Answer Exhibit 4-A)

2. Norwood Airport Commission Agenda and minutes for December 6, 2005. (Answer Exhibit 4-B)
 3. Electronic mail between Complainant's attorney and Massachusetts Department of Environmental Protection dated November 18 and 21, 2005. (Answer Exhibit 4-C)
 4. Letter to the Norwood Airport Commission from Toomey-Munson & Associates, Inc. dated January 24, 2006. (Answer Exhibit 4-D)
 5. Norwood Airport Commission Meeting, January 10, 2006 minutes (Answer Exhibit 4-E)
 6. Letter from Town of Norwood Conservation Agent to FAA Airport Compliance Officer, New England Region Headquarters, dated November 2, 2006. (Answer Exhibit 4-F)
 7. Notes of telephone conversation between Boston Air Charter and Edwards and Kelcey dated February 1, 2006. (Answer Exhibit 4-G)
 8. Letter from the Town of Norwood to Boston Air Charter dated May 10, 2006. (Answer Exhibit 4-H)
 9. Letter from Eastern Air Charter to Town of Norwood Memorial Airport dated January 30, 2006. (Answer Exhibit 4-I)
- E. Lease Agreement between the Town of Norwood and the Boston Metropolitan Airport, Inc. (Answer Exhibit 5)
- F. BLANK ON FILING (Answer Exhibit 6)
- G. Letter to Complainant's Counsel from the Town of Norwood Fire Department dated August 24, 2006. (Answer Exhibit 7)
- H. Norwood Memorial Airport Apron Reconstruction Project. (Answer Exhibit 8)
1. FAA pre-construction conference dated July 14, 2005.
 2. Edwards and Kelcey preconstruction meeting notes for July 14, 2005.
 3. Edwards and Kelcey preconstruction meeting notes for August 25, 2005.
 4. Duplicate-Notes of telephone conversation between Boston Air Charter and Edwards and Kelcey dated February 1, 2006.
 5. Edwards and Kelcey preconstruction meeting notes for September 1, 2005 and schedule of construction events during September 2005.
 6. Transmittal cover letter from Airport Manager to Boston Air Charter dated September 8, 2005.

7. Edwards and Kelcey preconstruction meeting notes for September 8, 2005 and schedule of construction events during September 2005.
 8. Edwards and Kelcey preconstruction meeting notes for September 22, 2005 and schedule of construction events during September and October 2005.
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 13. Edwards and Kelcey preconstruction meeting notes for October 27, 2005 and schedule of construction events during October and November 2005.
 14. Edwards and Kelcey preconstruction meeting notes for November 3, 2005.
 15. Edwards and Kelcey preconstruction meeting notes for November 10, 2005
-
- I. Norwood Memorial Airport Accident/Incident Report of March 31, 2007. (Answer Exhibit 9)
 - J. Letter from Commonwealth of Massachusetts Department of Environmental Protection to Complainant's Counsel dated January 17, 2007. (Answer Exhibit 10)
 - K. Letter from Complainant's Counsel to Norwood Airport Commission dated August 4, 2006. (Answer Exhibit 11)
 - L. Letter from Norwood Airport Commission to Boston Air Charter dated May 7, 2007. (Answer Exhibit 12)

Item 9. Complainant's Reply and Opposition to Motion to Dismiss docketed June 12, 2007.

Item 10. Federal Aviation Agency Grant Agreement dated June 29, 1967 and Amendment One dated August 15, 1967 for Project 9-10-019-0803. Town Counsel's Certificate of Affirmation of Ownership of Property dated December 28, 1967.

Item 11. File records of FAA New England Regional Airport Compliance Officer regarding Boston Air Charter's Informal Complaint against the Norwood Airport Commission

- (1.) Letters from Easter Air Center to Chairman, Norwood Airport Commission (A) opposing BAC leasing DC ramp, dated June 17, 2003 (B) opposing BAC self-fueling dated June 23, 2004.
- (2.) Letter from Easter Air Center to Chairman, Norwood Airport Commission opposing BAC leasing DC ramp, dated July 3, 2003.
- (3.) Norwood Airport Aircraft Tie-down Contract for the DC Ramp – dated August 1, 2003.
- (4.) Letter from Boston Air Charter to Chairman, Norwood Airport Commission requesting permission to install a fuel farm dated October 29, 2003.
- (5.) Norwood Airport Commission minutes on Boston Air Charter's proposal to install a fuel farm dated November 4, 2003.
- (6.) Letter from Boston Air Charter to Chairman, Norwood Airport Commission regarding status of fuel farm project dated April 13, 2004.
- (7.) Letter from Massachusetts Aeronautics Commission to Eastern Air Center regarding concerns about BAC's proposed fuel farm dated May 5, 2004.
- (8.) Letter from the Town of Norwood to Boston Air Charter approving the issuance of a license for the storage of flammables dated May 10, 2004.
- (9.) Massachusetts Department of Fire Service to Boston Air Charter regarding approval of plans for installation of a fuel farm dated June 11, 2004.
- (10.) Certificate of the Commonwealth of Massachusetts Secretary of Environmental Affairs on the Environmental Notification Form, October 8, 2004.
- (11.) Massachusetts Department of Environmental Protection – *Superseding Order of Conditions* issued November 30, 2004.
- (12.) Norwood Airport Commission Agenda, January 4, 2005
- (13.) RLR Excavation proposal for Boston Air Charter Fuel facility dated January 13, 2005.
- (14.) Norwood Airport Commission Agenda, February 1, 2005
- (15.) Norwood Airport Commission Agenda, March 1, 2005.

- (16.) Letter from Boston Air Charter to Chairman, Norwood Airport Commission regarding delay in fuel farm installation due to numerous environmental appeals filed by Eastern Air Charter dated March 10, 2005.
- (17.) Norwood Airport Commission Agenda, April 4, 2005
- (18.) Massachusetts Department of Environmental Protection Recommended Final Decision dated April 8, 2005.
- (19.) Norwood Airport Commission Agenda, June 7, 2005
- (20.) Norwood Airport Commission Agenda, July 12, 2005
- (21.) Norwood Airport Commission Agenda, August 2, 2005
- (22.) Letter from Airport Manager to Boston Air Charter dated August 3, 2005
- (23.) Letter from Edwards and Kelcey to Northeast Reclamation Corporation dated August 3, 2005
- (24.) Letter from Edwards and Kelcey to Northeast Reclamation Corporation dated August 8, 2005
- (25.) ANDO PAULL Contractor's proposal for Boston Air Charter's Spill Containment System dated August 18, 2005.
- (26.) Edwards and Kelcey meeting notes on Apron Reconstruction project dated August 25, 2005
- (27.) Edwards and Kelcey meeting notes on Apron Reconstruction project dated September 1, 2005
- (28.) Norwood Airport Commission Agenda, September 6, 2005
- (29.) Edwards and Kelcey meeting notes on Apron Reconstruction project dated September 8, 2005
- (30.) Edwards and Kelcey meeting notes on Apron Reconstruction project dated September 22, 2005
- (31.) Edwards and Kelcey meeting notes on Apron Reconstruction project dated September 29, 2005
- (32.) Norwood Airport Commission Agenda, October 4, 2005
- (33.) Edwards and Kelcey meeting notes on Apron Reconstruction project dated October 6, 2005
- (34.) Letter from Airport Manager to Boston Air Charter terminating 30 day fueling permit on October 15, 2005 dated October 5, 2005 with attachments: October 3 Memorandum regarding overfilled drip pans and October 5 Letter from Eastern Air Center regarding availability of fuel.
- (35.) Memorandum from Chairman, Norwood Airport Commission to Airport Manager extending Boston Air Charter's self-fueling permit to November 1, 2005 dated October 15, 2005.

- (36.) Norwood Airport Commission Agenda and Minutes for November 1, 2005.
- (37.) Electronic mail from Department of Environmental Protection to Complainant's attorney dated November 23, 2005.
- (38.) Norwood Airport Commission Agenda, December 6, 2005
- (39.) Norwood Airport Commission minutes, December 6, 2005
- (40.) Letter from Eastern Air Charter to Airport Manager dated December 16, 2005.
- (41.) Memorandum from Airport Manager to Norwood Airport Commission regarding BAC Electrical Plan/West Apron dated December 29, 2005.
- (42.) Norwood Airport Commission Agenda, January 3, 2006.
- (43.) Town of Norwood Fire Department Violation Notice to Boston Air Charter dated January 4, 2006
- (44.) Letter from Airport Manager to Boston Air Charter dated January 4, 2006.
- (45.) Boston Air Charter's response to the Town of Norwood Fire Department Violation Notice dated January 6, 2006
- (46.) Avfuel Corporation notice regarding Boston Air Charter's fuel storage system dated January 9, 2006.
- (47.) Internal Memorandum of the Town of Norwood Fire Department regarding construction of Boston Air Charter proposed fuel facility dated January 9, 2006.
- (48.) Norwood Airport Commission minutes, January 10, 2006.
- (49.) Letter from the Town of Norwood Fire Chief to the Chairman of the Town Board of Selectman dated January 10, 2006.
- (50.) Letter from the Town Board of Selectman to Boston Air Charter dated January 11, 2006.
- (51.) Letter from Eastern Air Charter to Airport Manager dated January 12, 2006.
- (52.) Letter from Town of Norwood Fire Department to Boston Air Charter dated January 19, 2006.
- (53.) Letter from Town of Norwood Fire Department to Norwood Airport Commission dated January 23, 2006.
- (54.) Letter from Toomey-Munson & Associates to Norwood Airport Commission dated January 24, 2006.
- (55.) Letter from Eastern Air Charter to Norwood Airport Commission dated January 30, 2006
- (56.) Norwood Memorial Airport Memorandum regarding February Commission meeting dated January 31, 2006.
- (57.) Edwards and Kelcey telephone memorandum dated February 1, 2006.

- (58.) Toomey-Munson Electrical Scheme for proposed fuel farm and capacity calculation sheets dated February 3, 2006.
- (59.) Draft Lease Agreement for Boston Air Charter at Norwood Memorial Airport undated and not executed.
- (60.) Norwood Airport Commission agenda and minutes dated February 7, 2006.
- (61.) Letter from Norwood conservation Commission to Norwood Airport Commission dated February 14, 2006.
- (62.) Letter from Town of Norwood Fire Department to Boston Air Charter dated February 21, 2006.
- (63.) Letter from Norwood Airport Commission to Boston Air Charter dated February 23, 2006.
- (64.) Letter from Norwood Airport Commission to Eastern Air Charter dated February 23, 2006.
- (65.) Letter from Eastern Air Charter to numerous parties regarding Boston Air Charter's Electrical Scheme dated February 23, 2006.
- (66.) Letter from Counsel for Boston Air Charter to Town Counsel dated February 27, 2006.
- (67.) Letter from Complainant's Counsel to Town Counsel dated April 5, 2006.
- (68.) Letter from the Town of Norwood Board of Selectman to Boston Air Charter dated April 26, 2006
- (69.) Letter from Boston Air Charter's Counsel to Town Counsel dated April 26, 2006.
- (70.) Letter from Boston Air Charter's Counsel to Norwood Airport Commission dated April 26, 2006.
- (71.) Letter from Town Counsel to Boston Air Charter's Counsel dated April 27, 2006
- (72.) Letter from Town of Norwood Fire Department to Board of Selectman dated April 27, 2006.
- (73.) Letter from Boston Air Charter's Counsel to Town Counsel dated May 1, 2006
- (74.) Norwood Airport Commission Agenda dated May 3, 2006
- (75.) Letter from Town Counsel to Boston Air Charter's Counsel dated May 4, 2006.
- (76.) Letter from Manager, Airports Division, FAA New England Region Headquarters to Chairman, Norwood Airport Commission dated May 5, 2006.

- (77.) Letter from Boston Air Charter's Counsel to Town Counsel dated May 9, 2006.
- (78.) Letter from Town of Norwood Board of Selectman to Boston Air Charter dated May 10, 2006.
- (79.) Daily Transcript, *Boston Air Withdraws its bid for fuel tank farm at Norwood Airport*, dated May 10, 2006.
- (80.) Letter from Town Counsel to Manager, Airports Division, FAA New England Region Headquarters dated May 16, 2006.
- (81.) Letter from Town Counsel to Airport Compliance Officer, Airports Division, FAA New England Region Headquarters dated May 25, 2006.
- (82.) Letter from Town Counsel to Manager, Airports Division, FAA New England Region Headquarters dated June 5, 2006.
- (83.) Norwood Airport Commission Agenda dated June 6, 2006.
- (84.) Lease Agreement between Town of Norwood and Boston Metropolitan Airport, Inc dated December 1967.
- (85.) Electronic mail string between Airport Compliance Officer, Airports Division, FAA New England Region Headquarters and Boston Air Charter's Counsel dated June 9 and 13, 2006.
- (86.) Letter from Town Counsel to Airport Compliance Officer, Airports Division, FAA New England Region Headquarters dated June 19, 2006.
- (87.) Letter from Airport Manager to Boston Air Charter dated July 7, 2006.
- (88.) Letter from Airport Manager to Bryant Simpson dated July 7, 2006.
- (89.) Letter from Airport Manager to Harold Averbuck dated July 7, 2006.
- (90.) Norwood Airport Commission Agenda dated July 11, 2006.
- (91.) Letter from Boston Air Charter's Counsel to Airport Compliance Officer, Airports Division, FAA New England Region Headquarters dated July 14, 2006.
- (92.) Letter from Boston Air Charter's Counsel to Airport Manager dated July 17, 2006.
- (93.) Norwood Airport Aircraft Tie-down Contract-2006 dated January 1, 2006.
- (94.) Norwood Memorial Airport Minimum Standards as of July 31, 2006.

- (95.) Norwood Airport Commission General Rules and Regulations for Norwood Memorial Airport effective April 1, 1983 as of July 31, 2006.
- (96.) Letter from Boston Air Charter's Counsel to Norwood Airport Commission dated August 4, 2006.
- (97.) Letter from Town of Norwood Fire Department to Chairman, Norwood Airport Commission dated August 9, 2006.
- (98.) Norwood Airport Commission Agenda dated August 23, 2006.
- (99.) Norwood Airport Commission Special Meeting minutes dated August 23, 2006.
- (100.) Letter from Counsel for Boston Air Charter to Airport Manager dated August 24, 2006.
- (101.) Letter from Airport Manager to Boston Air Charter dated August 24, 2006.
- (102.) Letter from Town of Norwood Fire Department to Counsel for Boston Air Charter dated August 24, 2006.
- (103.) Letter from Norwood Airport Commission to Boston Air Charter regarding termination of aircraft tie-down contract dated August 25, 2006.
- (104.) Letter from Norwood Airport Commission to Boston Air Charter dated August 25, 2006.
- (105.) Electronic mail from Counsel for Boston Air Charter to FAA Airport Compliance Officer dated August 28, 2006.
- (106.) Norwood Airport Commission Agenda dated September 11, 2006.
- (107.) Letter from Easter Air Charter to Norwood Airport Commission et al dated September 19, 2006.
- (108.) Letter from Counsel for Boston Air Charter to FAA Airport Compliance Officer dated September 21, 2006.
- (109.) Letter from Town Counsel to to FAA Airport Compliance Officer dated September 27, 2006.
- (110.) Letter from Airport Manager to FAA Airport Compliance Officer dated October 6, 2006.
- (111.) Letter from Counsel for Boston Air Charter to FAA Airport Compliance Officer dated October 13, 2006.
- (112.) Letter from Town Counsel to FAA Airport Compliance Officer dated November 2, 2006, and attachments.

- (113.) Electronic mail between Counsel for Boston Air Charter and FAA Airport Compliance Officer dated December 20, 2006.
- (114.) Letter from Massachusetts Department of Environmental Protection to Boston Air Charters dated January 17, 2007
- (115.) Norwood Airport Commission Agenda and Minutes for March, May (Agenda only), July, September, October (Agenda only), November (Agenda only), December (Agenda only) 2004.
- (116.) Letter from Town of Norwood Acting Deputy Chief, Fire Department to Assistant Airport Manager dated March 12, 2004.
- (117.) Letter from Town of Norwood Acting Deputy Chief, Fire Department to President, Boston Air Charter dated March 30, 2004
- (118.) Letter from Town of Norwood Acting Deputy Chief, Fire Department to Board of Selectman dated April 19, 2004
- (119.) Aboveground Fuel Tank license for Boston Air Charter approved May 5, 2004.
- (120.) Town of Norwood Airport Commission self service/self fuel permit for 30 days dated June 15, 2004.
- (121.) A 30-day extension of Self-fueling Permit until September 15, 2004 dated August 10, 2004.
- (122.) Correspondence regarding Boston Air Charter's housekeeping practices dated (A) October 13, 2005 -drip pans, (B) October 17, 2005 - fuel safety concerns, (C) November 23, 2005 - vehicle parking.
- (123.) FAA Aeronautical Study Case # 2004-ANE-31-NRA - Aboveground Fuel Farm on Norwood Municipal Airport dated November 2, 2004.

Item 12. Letter from Airport Manager, Norwood Memorial Airport to FAA New England Regional Airport Compliance Officer dated January 18, 2008, and attached map of Compiled Lease Area Plan for Norwood Memorial Airport, dated December 17, 2007.

Item 13. Notice of Extension of Time. FAA, Director of Office of Airport Safety and Standards, extended to February 4, 2008.

Item 14. Notice of Extension of Time. FAA, Director of Office of Airport Safety and Standards, extended to April 15, 2008.

Item 15: FAA AIP Grant Agreement 3-25-0037-26-2005, date June 28, 2005. Apron reconstruction (approximately 520ft x 150ft)

Item 16: FAA AIP Grant Agreement 3-25-0037-27-2006, date June 22, 2006. Gate 3 Apron reconstruction (approximately 325ft x 260ft) and taxiway reconstruction (approximately 600ft x 35ft)

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.


4-23-08

BOSTON AIR CHARTER)
)
 Complainant)
 v.)
)
 NORWOOD AIRPORT COMMISSION)
 NORWOOD MASSACHUSETTS)
 Respondent.)
 _____)

Docket No. 16-07-03

ERRATA TO THE DIRECTOR'S DETERMINATION

Due to clerical error, it is necessary to issue an errata to the Order Section of the Director's Determination issued on April 11, 2008. Accordingly, substitute the attached corrected page 30 to the Director's Determination for the above-captioned matter. The Town has 30 days to submit a corrective action plan or an appeal from the date of this errata.



Kelvin Solco
Acting Director, Office of Airport Safety
and Standards

ORDER

ACCORDINGLY, the Director finds the Town of Norwood is in violation of Federal law and the Federal grant obligations. The Town has 30 days to submit a corrective action plan that (1) provides access for BAC to conduct self-fueling operations consistent with state and local regulations; (2) ends the practice of awarding long-term leases of the federally-funded ramps that had the effect of granting one party control over the majority of the ramps on the Airport; (3) puts in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally-funded ramps and (4) regain the Airport's rights and powers to access the "1100 Foot Strip" to provide power to the Airport ramps for Airport tenants.


Failure to submit a corrective action plan acceptable to the FAA within the time provided, unless extended by the FAA for good cause, will lead to suspension for grant applications for AIP discretionary grants under 49 U.S.C §47115 and general aviation airport grants under 49 U.S.C. §47114(d) .

All Motions not expressly granted in this Determination are denied.

These Determinations are made under 49 U.S.C. § 40103(e), and 49 U.S.C. § 47107(a)(1)(4)(5) and the instruments of surplus property conveyance pursuant to Title 49 U.S.C. § 47152 and related Federal Grant Assurance 22, *Economic Nondiscrimination*.

RIGHT OF APPEAL

This Director's Determination is an initial agency determination and does not constitute a final agency action and order subject to judicial review. [14 CFR 16.247(b)(2)]. A party to this Complaint adversely affected by the Director's Determination may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR 16.33(b) within thirty (30) days after service of the Director's Determination.



Kelvin Solco
Acting Director,
Office of Airport Safety and Standards

Date: 4/23/08

CERTIFICATE OF SERVICE

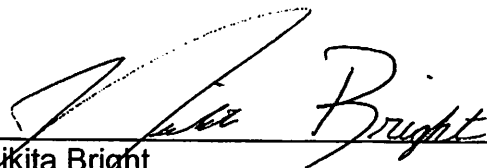
I HEREBY CERTIFY that on, April 23, 2008, I placed in the United States mail (first class, postage paid) a true copy of the foregoing document addressed to:

Norwood Airport Commission
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

Michael C. Lehane, Esquire
Murphy, Hesse, Toomey & Lehane, L.L.P.
300 Crown Colony Drive
Quincy, MA 02269

Matthew Watsky, Esquire
Eastbrook Executive Park
30 Eastbrook Road
Suite 301
Dedham, MA 02026

FAA Part 16 Airport Proceedings Docket
Federal Aviation Administration (AGC-610)
800 Independence Avenue, S.W.
Washington, D.C. 20591



Nikita Bright
FAA, Airports Division



The TOWN OF NORWOOD

Commonwealth of Massachusetts

5-16-08

80

NORWOOD AIRPORT COMMISSION

CERTIFIED MAIL

Bryan H. Corbett, *Chairman*
Mark P. Ryan, *Vice Chairman*
Leslie W. LeBlanc
Kevin J. Shaughnessy
Thomas J. Wynne

May 16, 2008

U.S. Department of Transportation
Federal Aviation Administration
Attn: Kelvin Solco, Acting Director
Office of Airport Safety and Standards
800 Independence Ave., S.W.
Washington, D.C. 20591

Dear Mr. Solco:

FAA Docket Number 16-07-03

Per the above-captioned formal complaint, under 14 C.F.R. Part 16, the Town of Norwood, Massachusetts, acting through the Norwood Airport Commission (NAC), has received your Determination, dated April 11, 2008, and the April 23, 2008 Errata.

To comply with your Determination, and without waiving its right of appeal, the NAC respectfully submits a corrective action plan that will address each of the four required components. These issues are as follows: (1) providing access to BAC to conduct self-fueling operations consistent with state and local regulations; (2) ending the practice of awarding long-term leases of the federally funded ramps that have the effect of granting one party control over the majority of the ramps on the airport; (3) putting in place a short-term ramp leasing permit policy to assert more control of the federally funded ramps; and (4) re-gaining the Airport's rights and powers to access the "1,100 foot strip" to provide power to the Airport ramps for Airport tenants. Separately, the NAC is currently preparing its appeal of your April 11, 2008 Determination, as amended by the April 23, 2008 Errata, because it disagrees with the findings and conclusions contained therein.

CORRECTIVE ACTION PLAN

1. NAC must provide access to BAC, to conduct self-fueling operations

As of January 2008, *Flight Level* Norwood, LLC (*Flight Level*) acquired *Eastern Air Center's* (EAC) interests at Norwood Airport (Airport). At the time that EAC assigned its interests to *Flight Level*, the parties had already submitted their pleadings and documentary materials in the above-captioned formal complaint and your Determination remained pending.

Due to the EAC assignment, Flight Level is the current sub-lessee of the 1,100 foot strip. At the request of both Boston Air Charter (BAC) and Flight Level—which effectively replaced EAC as a fixed-base operator—NAC has approved BAC's self-fueling arrangement with Flight Level. This action was voted favorably and unanimously by the NAC at its March 12, 2008 public meeting. I've enclosed a copy of the "Self-Fueler Operations Agreement" executed by Flight Level and BAC and the minutes from the NAC's March 12, 2008 meeting. As a result, BAC has been self-fueling for approximately eight weeks and now has access to conduct self-fueling operations.

Concurrently, through the Town of Norwood's Light Department, the NAC is pursuing alternative options to accessing power on the Airport's northwest quadrant. As a potential electrical source, one locus being investigated is sited at the Airport's centerfield windsock, east of the Gate 3/Taxiway B intersection, where power is available. This area in question is not currently encumbered by leasehold.

2. NAC must no longer award long-term leases on federally-funded ramps

The awarding of short-term leases on federally-funded apron projects, except for fuel farms, is reflected both by the NAC's prior conduct and in its recent formalized policy. During its most recent lease negotiations, which occurred during 2005 and concerned Airport Lots A, B, C, the NAC awarded a five-year only lease to EAC. This action was taken contrary to the vigorous arguments of EAC, which wanted a 20-year lease with options to renew. At that time, the Commission expressed a re-direction of its leasing policy, with a focus on shorter lease terms. A copy of the NAC minutes pertaining to the lease of Lots A, B, C is attached hereto.

The Commission also articulated its interest in effectively "un-encumbering" land so that prospective lessees, other than EAC, may also bid on future leaseholds. During a May 14, 2008 public meeting, the NAC voted to both formalize, and further on a broader basis, the actions the NAC had taken on Lots A, B, C—by affirming a shorter term leasing policy for all land it leases at the Airport. In so doing, the NAC expressed an interest in seeking to prevent the granting of one party control over the majority of the airport ramps.

3. NAC must have a short-term leasing policy to assert more control of the ramps

During its May 14, 2008 public meeting, the NAC voted to formalize into future practice a shorter term leasing policy that will seek to prevent the granting of one party control over the majority of the airport ramps. This short-term leasing policy also includes the NAC's intention to implement subordination agreement and non-exclusivity clauses in all future leases. In particular, the proposed subordination agreement clause provides that any term or condition of

Any long-term leases of the Airport were executed many years ago. In recent years, the Commission has consistently declined to grant long-term leases. As a case in point, in November 2007, during construction on a site adjacent to Lots A, B, C, EAC attempted to leverage a 20-year lease on Lots A, B, C by withholding agreement to a five-year only lease on that EAC leasehold, subsequently entering into litigation against EAC rather than agree to make such a long-term lease. As a result of the Commission's position, the Town of Norwood incurred additional delay costs for the project, totaling more than \$35,000. However, the five-year only lease on Lots A, B, C remained unchanged once the issue was finally resolved.

the lease in conflict or inconsistent with any Federal Aviation Administration (FAA) and/or Massachusetts Aeronautics Commission grant assurances shall be subordinated to such grant assurance. By contrast, the proposed non-exclusivity clause provides explicitly that any commercial activities carried on pursuant to the lease shall be subject to competition from others and the lessee shall not have exclusive access or monopolistic rights on or to the Airport.

4. NAC must regain the Airport's rights and powers to access the "1,100 foot strip"

The Town of Norwood has had a long-standing interest in regaining rights and powers to access the 1,100 foot strip. Some 14 months ago, in March 2007, the NAC completed Phase II of the Norwood Airport Master Plan (Master Plan). The FAA reviewed and subsequently approved Phase II of the Master Plan, which was funded under a federal Airport Improvement Program (AIP) grant. Several sections specifically address the Town of Norwood's interest in buying out the *Boston Metropolitan Airport* (BMA) lease. Included within the options identified in Section 3.16 *Facility Needs* (p. 3-19) is a buyout of the BMA lease. Additionally, in the Master Plan's Section 4.0 *Alternatives Analysis* (p. 4-29), under *Land Acquisition*, the action alternative proposes as follows: "The BMA lease parcel is at the heart of the Airport's upland area and should be acquired as part of a long-range effort . . . Acquisition of the BMA parcel would enable a clean-slate approach to plan for a more efficient and self-sustaining Airport . . . Due to the financial and legal issues attendant to acquiring the BMA parcel, this would be a long-term, low priority alternative on the five to ten-year time frame." By comparison, the NAC deemed the No Action Alternative, which would maintain the existing land holdings and pattern of leases at the Airport, as unacceptable.


Nevertheless, following your recent Determination, the NAC pursued emergency funding through the FAA New England Region to hasten the acquisition of the 1,100 foot strip. However, according to administration officials, FAA does not have the monies to participate in such a request. A similar appeal—to include multi-year AIP funding for an appraisal and purchase of the *BMA* leasehold years remaining—was discouraged by FAA regional officials.

In response, the NAC is now negotiating with BMA to gain a utilities easement on that portion of the Gate 3 taxi-lane overlapped by the 1,100 foot strip currently leased by BMA. If these negotiations are unsuccessful, the NAC will consider its other options, including but not limited to a declaratory judgment action concerning the NAC's rights under its lease with BMA.

Further, the approved Master Plan also acknowledges the NAC's willingness to provide fuel vendor competition at the Airport in Section 6.3.3 *Future Revenue Enhancement Options* (pp. 6-10 to 6-12). To that end, the Commission is evaluating the establishment of a second aviation fuel facility at the Norwood Airport.

In closing, the Town of Norwood, through its Airport Commission, respectfully submits this corrective action plan, to comply with each component of the Order contained in your Determination. Please feel free to contact Airport Manager Russ Maguire at (781) 255-5616 if you have any questions or concerns regarding this corrective action plan.

Sincerely,



Bryan H. Corbett, Chairman
Norwood Airport Commission

Enclosures

cc: Michael C. Lehane, Esquire
Matthew Watsky, Esquire
LaVerne Reid

several efforts to assist BAC in establishing a presence and undertaking fueling operations at the Airport.

II. STATEMENT OF THE CASE

On April 5, 2006, BAC requested that NAC immediately grant to BAC the right to install and operate, on reasonable terms, a proposed fueling facility located in Area DC-3 of the Airport. [FAA Exhibit 1, Item 3, exhibit B]. This proposed fueling facility required BAC to install an electrical conduit upon an approximately ten (10) feet portion of the so-called "1100 Foot Strip," which at the time was subleased by EAC. [FAA Exhibit 1, Item 3, exhibit B]. Relying upon state law concepts of leasehold rights, Massachusetts General Laws Chapter 90, and Grant Assurances 22 and 23, BAC demanded that NAC immediately grant BAC the right to install and operate, on reasonable terms, the proposed fueling facility and all necessary utilities. [FAA Exhibit 1, Item 3, exhibit B]. BAC's April 5, 2006 request was sent to Donna Witte, Airports Program Specialist for the FAA New England Region Office. [FAA Exhibit 1, Item 3, exhibit B]. NAC responded to and refuted BAC's contentions, given that NAC declined to choose sides in a tenant dispute involving rights of access, NAC engaged in good faith negotiations with BAC but BAC remained a tenant at will, and NAC did not discriminate against BAC or grant exclusive rights to EAC [FAA Exhibit 1, Item 7, exhibit A].

On February 28, 2007, LaVerne F. Reid ("Ms. Reid"), Airports Division Manager for the FAA New England Region Office rejected BAC's contention that NAC violated Assurance No. 23, "Exclusive Rights," and instead made a preliminary determination that no further FAA action was warranted. [FAA Exhibit 1, Item 3, exhibit A]. Significantly, Ms. Reid observed "that the Town of Norwood intended to allow BAC to install and operate a fuel farm at Norwood Memorial Airport, if BAC could negotiate with EAC to run electrical service across EAC's leasehold." [FAA Exhibit 1, Item 3, exhibit A]. However, Ms. Reid concluded that "[t]he Town's ability to force EAC to permit the electrical line is outside FAA's prevue [sic]." [FAA Exhibit 1, Item 3, exhibit A] (emphasis added).

In response to Ms. Reid's preliminary determination, BAC filed a Complaint Under Part 16 on or about April 2, 2007, which was docketed on April 10, 2007, and opposed by NAC. [FAA Exhibit 1, Items 3, 7]. In his April 11, 2008 Determination, the Acting Director made the following findings and conclusions: (1) the Town violated Grant Assurance 5 and (FAAP) 9-19-019-0803, Special Condition 17, by leasing the 1100 Foot Strip to Boston Metropolitan Airport, Inc. ("BMA"); (2) the Town violated 49 U.S.C., § 47107(a)(1) and related Grant Assurance 22 by depriving BAC of reasonable use and access to the Airport on reasonable terms for carrying out a commercial aeronautical activity, thereby resulting in an unreasonable denial of access and unjust economic discrimination; and (3) the Town violated 49 U.S.C., § 40103(e) and related Grant Assurance 23 by granting an exclusive right to EAC to operate a fueling facility on the Airport in light of the leases with EAC and BMA, empowering EAC to control the sole source of power to the Airport ramps to maintain a fueling facility, and by depriving BAC of access to install its own fueling facility.

Consequently, the Acting Director ordered the Town to submit a corrective action plan to the FAA within thirty (30) days of April 11, 2008. This corrective action plan must: “(1) provide[] access for BAC to conduct self-fueling operations consistent with state and local regulations; (2) end[] the practice of awarding long-term leases of the federally-funded ramps that had the effect of granting one party control over the majority of the ramps on the Airport; (3) put[] in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally-funded ramps; and (4) regain the Airport’s rights and powers to access the ‘1100 Foot Strip’ to provide power to the Airport ramps for Airport tenants.” [Letter from Kelvin Solco, Acting Director, Office of Airport Safety and Standards, to Attorneys Matthew Watsky and Michael C. Lehane, Apr. 11, 2008].

On April 23, 2008, the Acting Director issued an Errata to his April 11, 2008 Determination, which provides that, absent an extension by the FAA for good cause, the Town’s failure to timely submit a corrective plan will result in a suspension of its grant applications for AIP discretionary grants under 49 U.S.C., § 47115 and general aviation airport grants under 49 U.S.C., § 47114(d). In light of this Errata, the commencement of NAC’s thirty (30) day deadline to appeal the Acting Director’s Determination or submit a corrective plan was extended from April 12, 2008 to April 24, 2008. Pursuant 14 C.F.R., §§ 16.17(b)-(c) and 16.33(b), the Town’s deadline to appeal the Acting Director’s Determination or submit a corrective plan expires on May 27, 2008. Accordingly, this Appeal has been timely filed by NAC. Under separate cover, NAC previously filed its corrective action plan with the FAA.

III. STATEMENT OF THE FACTS

The gravamen of the present matter concerns BAC’s attempt to install and operate a fuel storage facility to be located in Area DC-3, which it has leased from NAC as a tenant at will since 2003. [FAA Exhibit 1, Item 3, exhibit C.1.; FAA Exhibit 1, Item 11, exhibit (3.)]. In furtherance of the fuel storage facility it proposed in March 2004, BAC required access to an electric utility power source, which was a transformer located in the so-called 1100 Foot Strip. [FAA Exhibit 1, Item 11, exhibits (4.)-(6.)]. In particular, BAC sought to encroach upon an approximately ten (10) foot portion of the 1100 Foot Strip by installing an underground conduit. [FAA Exhibit 1, Item 11, exhibits (4.)-(6.)].

Prior to 1967, BMA owned the 1100 Foot Strip. [FAA Exhibit 1, Item 7, exhibit E]. In Special Condition No. 17 to a Grant Agreement between the Town and the FAA relating to the development of the Airport under FAAF Project Number 9-19-019-C803 (“Special Condition No. 17”), the FAA directed the Town to acquire the 1100 Foot Strip from BMA. [FAA Exhibit 1, Item 10; FAA Exhibit 1, Item 7, exhibit E]. At the time, however, the Town lacked sufficient funds to comply with Special Condition No. 17 by acquiring the 1100 Foot Strip for fair monetary value. [FAA Exhibit 1, Item 7, exhibit E].

Consequently, the only way that the Town was able to acquire the 1100 Foot Strip was through a sale and leaseback arrangement executed between the Town and BMA in December 1967 ("1967 Lease"). [FAA Exhibit 1, Item 7, exhibit E]. Specifically, BMA transferred its title to the Town in exchange for a lease back of the 1100 Foot Strip for a period of time sufficient to enable its fair market value to be realized. [FAA Exhibit 1, Item 7, exhibit E]. The 1967 Lease had an initial twenty (20) year term, subject to three (3) consecutive renewals for separate twenty (20) years periods. [FAA Exhibit 1, Item 7, exhibit E]. Under the 1967 Lease, BMA requires written approval from NAC before any of the following occur: it subleases the 1100 Foot Strip or any portions thereof; it assigns the 1967 Lease; or there are any improvements or any buildings or structures are constructed on the 1100 Foot Strip. [FAA Exhibit 1, Item 7, exhibit E].

The 1967 Lease omits any specific grant of a right to grant utility easements. [FAA Exhibit 1, Item 7, exhibit E]. For a period of time prior to January 9, 2008, EAC subleased the 1100 Foot Strip from BMA. EAC, however, declined to provide BAC or the Town with access to the 1100 Foot Strip for the installation of the underground conduit.

BAC applied for and obtained several permits required for the construction of its proposed fuel storage facility. [FAA Exhibit 1, Item 11, exhibits (9.), (11.), (18.), (119.), (120.), (123.)]. On May 5, 2004, the Norwood Board of Selectmen tentatively issued a Volatile Inflammable Fluids ("VIF") permit to BAC for the storage of flammables, pending approval by the Massachusetts State Fire Marshall. [FAA Exhibit 1, Item 11, exhibit (119.)]

During 2004, BAC applied for and received approval from the Town to self-fuel its aircraft using a 5,100 gallon Jet A fuel track. [FAA Exhibit 1, Item 11, exhibits (6.), (120.)]. However, this temporary self-fueling permit required BAC to adhere to local, state and federal rules and regulations concerning the transportation of aviation fuel. [FAA Exhibit 1, Item 11, exhibit (120.)].

In October 2005, NAC staff discovered drip pans filled with aviation fuel underneath the BAC fuel track and residual fuel stains on the pavement from BAC's parked Citation Jet. [FAA Exhibit 1, Item 11, exhibit (122.)]. At its November 1, 2005 meeting, NAC terminated BAC's temporary self-fueling permit upon thirty (30) days notice, effective immediately. [FAA Exhibit 1, Item 11, exhibit (36.)]. Subsequently, the Town issued two (2) violation notices to BAC because it continued to fuel its aircraft, notwithstanding state fire prevention regulations and the terms of its VIF license. [FAA Exhibit 1, Item 11, exhibits (43.), (52.)].

On January 11, 2006, the Norwood Board of Selectmen furnished BAC a ninety (90) day extension to obtain the necessary permits for installing a fuel facility or else its VIF license would be revoked. [FAA Exhibit 1, Item 11, exhibit (50.)]. However, EAC declined to provide access to BAC for the installation of an underground conduit for the proposed fuel storage facility. [FAA Exhibit 1, Item 11, exhibits (51.), (65.)].

As of February 21, 2006, the Norwood Board of Selectmen also required BAC to provide authorization that the storage of each inflammable fluid was authorized under the terms of its lease because it was a non-owner applicant. [FAA Exhibit 1, Item 11, exhibit (62.)]. On February 23, 2006, NAC declined to approve BAC's lease agreement for Area DC-3 because the VIF license would expire in less than ninety (90) days and an unresolved issue pertaining to the encroachment of the 1100 Foot Strip by the proposed underground conduit. [FAA Exhibit 1, Item 11, exhibit (63.)]. NAC advised BAC to provide the legal right and ability to provide electrical power to the proposed fuel storage facility without encroaching upon the 1100 Foot Strip. [FAA Exhibit 1, Item 11, exhibit (63.)].

At no time has BAC provided a reasonable, viable alternative to the proposed electrical conduit encroaching upon the 1100 Foot Strip. For example, NAC provided BAC with the opportunity to install electrical service and trench drains during a federally funded project for the reconstruction of a runway and rehabilitation of two (2) public aircraft parking aprons EAC leased. [FAA Exhibit 1, Item 7, exhibits B, H]. BAC, however, did not accept this offer. [FAA Exhibit 1, Item 7, exhibits B, H]. More importantly, BAC stated its intent to voluntarily withdraw its request for a VIF license on May 9, 2006 and the Norwood Board of Selectmen voted to revoke this license without prejudice. [FAA Exhibit 1, Item 7, exhibit D.8].

Although BAC discontinued its fueling operations, on August 4, 2006 it notified the Town of its intention to recommence self-fueling operations on or about September 1, 2006. (FAA Exhibit 1, Item 11, exhibit (96.)). The Norwood Fire Department responded that such proposed operations could not proceed without a VIF license or permit. [FAA Exhibit 1, Item 7, exhibit G].

On April 10, 2007, NAC voted to discontinue all discussions and negotiations with BAC concerning its proposed fuel farm. [FAA Exhibit 1, Item 7, exhibit L]. In particular, NAC considered and relied upon BAC's conduct over the prior eighteen (18) months in which BAC failed to promote its intent to fully comply with the Rules and Regulations of the Norwood Memorial Airport ("Airport Regulations"). [FAA Exhibit 1, Item 7, exhibit L]. For example, NAC cited BAC's repeated attempts to pursue unauthorized mobile fueling operations at the Airport. [FAA Exhibit 1, Item 7, exhibit L]. In addition, BAC's stated intent to defy the Airport Regulations occurred subsequent to a cease and desist order issued by the Norwood Fire Department on January 4, 2006 and its misrepresentation of the position of Norwood Fire Chief Mike Howard at a January 10, 2006 NAC public meeting. [FAA Exhibit 1, Item 7, exhibit L].

Several developments occurring subsequent to the parties' respective filings in the present matter are contrary to and undermine the Acting Director's findings. In that regard, EAC no longer maintains a presence at Norwood Memorial Airport, as a lessee, sublessee or otherwise. Therefore, BAC's arguments and the Acting Director's findings concerning BAC's inability to conduct fueling operations are moot.

On January 9, 2008, EAC Partners I LLP assigned and transferred to FLN one hundred (100%) percent of its beneficial interest in EAC Realty Trust. (Exs. A, B.) Included within this assignment was EAC's sublease for the 1100 Foot Strip. (Exs. A, B.) Accordingly, FLN currently sublessees the 1100 Foot Strip. (Exs. A, B.)

Unlike EAC, FLN has demonstrated its willingness to allow BAC to conduct fueling operations at Norwood Memorial Airport. During NAC's February 13, 2008 meeting, FLN introduced and embraced the concept of turning over its self-fueling capability to BAC. (Ex. B.) NAC was receptive to FLN's proposal to allow BAC to use its fuel farm. (Id.)

Consequently, on or about February 15, 2008, FLN and BAC executed a Self-Fueler Operations Agreement under which FLN agreed to allow BAC use of its Jet-A self-fueler located on FLN's fuel farm at Norwood Memorial Airport to fuel BAC aircraft. (Ex. C.) Pursuant to this Self-Fueler Operations Agreement, BAC is authorized to use FLN's fuel farm when FLN personnel are not on the premises, consisting of the hours between 9:30 p.m. and 5:30 a.m. (Ex. D.) During its March 12, 2008 meeting, NAC unanimously approved this self-fueling arrangement between FLN and BAC. (Id.)

IV. ARGUMENT

A. Standard of Review

"Upon appeal of a Director's Determination, pursuant to 14 CFR § 16.33, the FAA Associate Administrator for Airports must determine whether the findings of fact made by the Director are supported by a preponderance of reliable, probative, and substantial evidence, and whether each conclusion of law is made in accordance with applicable law, precedent, and public policy." [United States Constr. Corp. v. City of Pompano Beach, FAA Docket No. 16-00-14 (July 10, 2002)]. In his April 11, 2008 Determination, the Acting Director made substantial errors in reviewing the evidence, and he misapplied and misconstrued applicable law and FAA precedent. Therefore, NAC respectfully requests that the Associate Administrator reverse the Acting Director's April 11, 2008 Determination, as amended by the April 23, 2008 Errata.

B. The status of FLN as a successor-in-interest to EAC and its agreement to provide BAC with certain access to its fuel farm renders the Acting Director's Determination moot.

In considering an administrative appeal, new evidence may be submitted if it was not previously available and it could not have been previously discovered or proffered by the parties. [Roadhouse Aviations, LLC v. Tulsa, FAA Docket No. 16-05-08 (June 26, 2007)]. Here, NAC seeks to supplement the Administrative Record in part by including documentary evidence relating to FLN and the agreement it approved between FLN and BAC for access to BAC's fuel farm. These supplemental documents appear as Exhibits A through E of this Appeal.

The additional documentary evidence pertaining to FLN was not in existence at the time of the parties' respective pleadings and written submissions in the present matter. Nor were the matters relating to FLN even contemplated during the pendency of the present matter. As a practical matter, FLN was organized under the laws of Delaware on October 11, 2007 and it was registered in Massachusetts as a foreign entity on January 9, 2008, well after the parties' respective pleadings and submissions. (Ex. E.) By comparison, BAC filed its Complaint in April 2007 and NAC's Answer and Motion to Dismiss were filed in May 2007. [FAA Exhibit 1, Items 1, 3, 9].

FLN acquired the beneficial interest in EAC Realty Trust on or about January 9, 2008. (Exs. A, B.) FLN's agreement to furnish BAC with access to its fuel farm was executed during February 2008 and approved by NAC at its March 2008 public meeting. (Ex. B-D.) Therefore, the Associate Administrator should consider this new documentary evidence relating to FLN and allow the Administrative Record to be supplemented accordingly.

In his April 11, 2008 Determination, the Acting Director focused extensively upon EAC's role in opposing the installation of an underground conduit in the 1100 Foot Strip it subleased from BAC. [Determination at 6-7, 23-25, 28-29; FAA Exhibit 1, Item 11, exhibit (65.)]. The Acting Director also relied upon EAC's opposition to the introduction of competition at the Airport and BAC's fuel proposal, along with EAC's concerns of preserving its financial investment. [Determination at 23-25, 28-29; FAA Exhibit 1, Item 11, exhibits (1.), (2.), (5.), (6.), (7.), (16.), (18.), (51.) and (55.)]. The Acting Director questioned whether EAC would have provided approval to BAC to access the transformer on the 1100 Foot Strip if it installed underground conduits. [Determination at 26]. In light of EAC's position, the Acting Director concluded that the Town altered its position concerning BAC when EAC expressed its refusal to allow access to the 1100 Foot Strip without its prior permission. [Determination at 25].

EAC's involvement underpins the Acting Director's determination that the Town violated Grant Assurance 5 and 49 U.S.C., § 47107, Grant Assurance 22 and 49 U.S.C., § 40103(e), and Grant Assurance 23. Of particular concern is that the Acting Director's analysis and resulting conclusions are displaced and undermined by the introduction of FLN as a successor-in-interest at the Airport. Unlike its predecessor, EAC, FLN has demonstrated a willingness to allow BAC to engage in certain fueling operations at the Airport. Reflective of this willingness, FLN entered into the Self-Fueler Operations Agreement with BAC. The Self-Fueler Operations Agreement affords BAC with access to FLN's fuel farm between the hours of 9:30 p.m. and 5:30 a.m. NAC affirmatively and unanimously approved the Self-Fueler Operations Agreement at its March 12, 2008 meeting.

With respect to Grant Assurance 5 and 49 U.S.C., § 47107, the Acting Director determined that "the Town's right to grant BAC access for the purpose of receiving electric service to the DC-3 Ramp was effectively blocked by the Town's 1967 Lease agreement with BMA." [Determination at 22-23]. However, the Town's right to grant such access was not blocked through the 1967 Lease, but rather through EAC's specific

construction of its rights under its sublease, which in turn derived from the 1967 Lease. [FAA Exhibit 1, Item 7, exhibit E]. Because EAC no longer subleases the 1100 Foot Strip from BMA, such a conclusion is moot.

In its findings under Grant Assurance 22 and 49 U.S.C., § 40103(e), the Acting Director determined that the Town was obligated to provide an alternative location or an alternative source of power for BAC's proposed fuel facility. [Determination at 28]. In addition, the Acting Director determined that it was "unreasonable for the Town to enable an airport tenant to override its ability to respond to new business opportunities and comply with its Federal obligations." [Determination at 28]. Unlike EAC, there is no indication that FLN has overridden NAC's ability to respond to new business opportunities or to comply with its Federal obligations. To the contrary, NAC approved such a new business opportunity through its approval of the Self-Fueler Operations Agreement between FLN and BAC.

The Self-Fueler Operations Agreement also constitutes the very type of alternative contemplated by Grant Assurance 22. Prior to the Self-Fueler Operations Agreement, and absent the requisite permits and licenses, BAC was effectively precluded from furnishing any fueling services. However, the Self-Fueler Operations Agreement enables BAC to provide such fueling services at the Airport. "The fact that [BAC] does not enjoy the ability to offer every variety of aeronautical service upon terms it deems sufficiently advantageous or at the location of its choice does not constitute the granting of an exclusive right to its FBO competitor." [Wilson v. MSCAA, FAA Docket No. 16-99-10]. For that same reason, a determination of unjust discrimination or unreasonable denial of access under these circumstances is also unwarranted. [Monaco Coach Corp. v. Eugene Airport, FAA Docket No. 16-03-17 (Mar. 4, 2005)].

Finally, the Acting Director determined that the Town granted an exclusive right to EAC to operate a fueling facility on the Airport, in violation of Grant Assurance 23 and 49 U.S.C., § 40103(e). The Acting Director properly recognized that the existence of a single fixed base operator operating a fueling facility does not constitute a per se violation of the exclusive rights prohibition. [Determination at 28]. Nevertheless, the Acting Director concluded that an exclusive right was granted to EAC in light of EAC's opposition and active program of preventing BAC from constructing an aircraft fueling facility on the Airport, in conjunction with the then-existing lease and sublease arrangements for the Airport. [Determination at 28-29]. Any such purported exclusive right at the Airport no longer exists because EAC is not a lessee or sublessee. It is unreasonable to conclude that FLN has an exclusive right for operating a fueling facility at the Airport, especially because EAC's opposition and efforts to stymie BAC's proposed fueling facility cannot be attributed to FLN. Indeed, the very concept of exclusive rights is contrary to the Self-Fueler Operations Agreement, under which BAC may provide fuel services between 9:30 p.m. and 5:30 a.m.

Accordingly, the Acting Director's Determination must be reversed for the mere reason that EAC is no longer a lessee or sublessee at the Airport. In light of such substantial changed circumstances, the Acting Director's conclusions that the Town

violated Grant Assurance 5 and 49 U.S.C., § 47107, Grant Assurance 22 and 49 U.S.C., § 40103(e), and Grant Assurance 23 are moot.

C. The Town complied with Grant Assurance #5 because the 1967 Lease was executed pursuant to the express requirements of Special Condition 17 and restricts the rights conferred upon BMA.

The Acting Director determined that the Town violated Grant Assurance 5 by “surrendering significant rights and powers to BMA in the lease of the ‘1100 Foot Strip’” and that the 1967 Lease “effectively violates (FAAP) 9-19-019-0803, Special Condition 17 that required the Town to gain control of all Airport property.” [Determination at 24]. Conspicuously absent from the arguments raised by the parties before the Acting Director, however, was the fact that BAC failed to explicitly contend that the Town violated Grant Assurance 5. Nor did Ms. Reid consider Grant Assurance 5 in her February 28, 2007 preliminary determination. That the Acting Director determined that the Town failed to comply with Grant Assurance 5 exceeds the scope of the present proceeding.

Grant Assurance 5.a provides in part that a sponsor:

Will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary

By comparison, Special Condition 17 required the Town to “acquire the following property interests: Parcel 2 as shown on Exhibit A—Fee simple title, free and clear of all liens and encumbrances determined objectionable by the FAA” Parcel 2 is the 1100 Foot Strip.

Consistent with Special Condition 17, the Town acquired both the 1100 Foot Strip and Parcel 4, which represents an aviation easement, from BMA. [FAA Exhibit 1, Item 7, exhibit E; Determination at 22]. However, the Town could not purchase the 1100 Foot Strip at “fair value.” [FAA Exhibit 1, Item 7, exhibit E]. Therefore, the only manner in which the Town could acquire the 1100 Foot Strip, and therefore comply with Special Condition 17, was through a sale and leaseback arrangement with BMA.

Nevertheless, the Acting Director was correct in concluding that, upon acquisition of the title to the 1100 Foot Strip (and Parcel 4, an aviation easement), the Town “became the property owner and had all rights associated with the property with the exception of the reversionary interest.” [Determination at 21]. Indeed, the Town did so acquire the 1100 Foot Strip and Parcel 4 from BMA in December 1967. Moreover, the Acting Director correctly determined that, upon acquiring the 1100 Foot Strip, the Town had the right to lease that property. [Determination at 21]. Accordingly, the 1967 Lease reflects an exercise of the Town’s right to lease the 1100 Foot Strip to BMA.

While the Acting Director determined that the FAA did not require the Town to enter into a leaseback arrangement, the Town similarly was not explicitly prohibited from such an arrangement by either Special Condition 17 or Grant Assurance 5. Rather, Special Condition 17 simply required the Town to acquire the 1100 Foot Strip. Notably, the December 13, 1967 deed from BMA to the Town did not include any explicit liens or encumbrances, and instead simply included a reversionary interest by BMA in the event that the Airport was no longer used as an airport. (Ex. F.)

In addition, the Acting Director determined that the terms of the 1967 Lease “deprive it of its rights and powers to direct and control a significant portion of the aeronautical infrastructure on the Airport and to comply with the FAA grant assurances.” [Determination at 23]. In that regard, the Acting Director regarded BMA’s interest in the 1100 Foot Strip as a “superior property interest . . . that restricts the Town’s ability to preserve its rights and powers to operate the Airport in compliance with its Federal obligations.” [Determination at 23]. Such summary conclusions, however, clearly overlook explicit provisions within the 1967 Lease that restrict the nature and scope of the leasehold interest the Town conveyed to BMA.

Significantly, the 1967 Lease requires “[t]he subleases of said parcel or portions thereof shall be reviewed prior to their execution by the Massachusetts Aeronautics Commission and the Federal Aviation Administration, or the successor agencies, and approved, in writing, by the Norwood Airport Commission.” [FAA Exhibit 1, Item 7, exhibit E]. Therefore, any subleases involving the 1100 Foot Strip were conditioned upon not only the involvement of NAC, but also the FAA and the Massachusetts Aeronautics Commissions. Contrary to the Acting Director’s finding, the 1967 Lease requires NAC’s written consent to an assignment of the 1967 Lease. [Determination at 23; FAA Exhibit 1, Item 7, exhibit E]. Further, the 1967 Lease requires that NAC approve in writing any improvements or the construction of any buildings or structures on the 1100 Foot Strip. [FAA Exhibit 1, Item 7, exhibit E]. Certainly, such restrictions operated to vastly limit the scope of BMA’s leasehold interest under the 1967 Lease and cannot be regarded as a surrender of significant rights and powers to BMA. Moreover, these restrictions effect a preservation of the Town’s rights and powers to direct and control the 1100 Foot Strip.

The Acting Director confuses BMA with EAC. Yet, the underlying dispute at the center of the present matter is EAC’s direct opposition to the installation of an underground conduit in a portion of the 1100 Foot Strip. Acting at its own volition because of perceived competitive concerns, EAC, not BMA, objected to BAC’s proposed fuel storage facility. At the time that the 1967 Lease was executed, EAC was not even a sublessee of the 1100 Foot Strip and the same leasehold rights that the Acting Director criticizes in his Determination were directly conveyed to BMA.

Moreover, the Acting Director’s statement that “BMA, the Town’s lessee, indicated that it would join with EAC in seeking to bar BAC from installing underground conduit for electrical service through ‘1100 Foot Strip’ leasehold” is not supported by FAA Exhibit 1, Item 3, exhibit C, exhibit 1. [Determination at 6]. Rather, the foregoing

exhibit only indicates EAC's unwillingness to provide access for the installation of an underground conduit in the 1100 Foot Strip and makes no reference to BMA. Nevertheless, a March 6, 2006 letter from BMA to NAC stated that BMA would "grant a right-of-way for access to the electrical transformer on the portion of the 1100' strip subleased to Eastern Air Center providing you obtain a right-of-way from them as well." (Ex. G.) Thus, BMA never denied access to the 1100 Foot Strip, but rather indicated that NAC would require approval from EAC. Unfortunately, the 1967 Lease is silent on providing a utility easement or right of access to the Town for the 1100 Foot Strip.

The Acting Director overlooked the nature of the present action as a dispute between a former sublessee (EAC) and a lessee (BAC), which share the common nexus of the Town's status as a sublessor and lessor, respectively. Yet, the FAA is reluctant to involve itself with disputes between airport sponsors and airport tenants. [Platinum Aviation v. Bloomington-Normal Airport Auth., FAA Docket No. 16-06-09 (Nov. 28, 2007)]. In that regard, the FAA does not resolve such disputes through the Part 16 complaint process and it does not enforce clauses if it is not a party to a contract. [Platinum Aviation v. Bloomington-Normal Airport Auth., FAA Docket No. 16-06-09 (Nov. 28, 2007)]. Notwithstanding such FAA precedent and policy, the Acting Director unreasonably suggests that NAC should choose sides in a sublessee-lessee (i.e. tenant) dispute by "regaining its rights and powers including extinguishing rights of other parties that prevent the sponsor from complying with its Federal obligations." [Determination at 23]. As Ms. Reid determined, however, such a dispute is outside the FAA's purview. [FAA Exhibit 1, Item 3, exhibit A]. Additionally, EAC's assignment of its rights in the 1100 Foot Strip to FLN conflicts with the Acting Director's suggestion that the Town extinguish the rights of other parties.

The Acting Director's statement that "[t]he Record provides no evidence that the Town offered BAC an alternative course of action" is inconsistent with his Determination and FAA policy. [Determination at 23]. In actuality, and as acknowledged by the Acting Director, the Town provided BAC with an alternative by furnishing it the option of installing electrical service during the AIP-funded project. [FAA Exhibit 1, Item 7, exhibits B, H]. That BAC challenged the cost of this alternative is immaterial because "[t]he Grant Assurances do not identify or guarantee a specific method for fueling aircraft." [The Aviation Ctr., Inc. v. Ann Arbor, FAA Docket No. 16-05-01 (Dec. 16, 2005)]. "A sponsor is not obligated to provide a specific level of service or convenience, however reasonable it may be, when it provides an alternative, reasonable level of service or convenience." [Monaco Coach Corp. v. Eugene Airport, FAA Docket No. 16-03-17 (Mar. 4, 2005)]. Nor should BAC be rewarded for failing to attend project meetings and on-site meetings where it could have meaningfully participated in effecting an alternative, which the Acting Director overlooks.

The Town complied with FAA's direction in acquiring the 1100 Foot Strip. Notwithstanding the practical limitations upon the Town's ability to purchase the 1100 Foot Strip outright as of 1967, the 1967 Lease does restrict BMA's actions in certain respects.

D. NAC's actions were neither unreasonable nor unjustly discriminatory and instead NAC simply required BAC to adhere to the same rules and regulations as all other carriers and business at the Airport.

Grant Assurance 22.a. requires a sponsor to:

make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

The scope of Grant Assurance 22 is not unlimited, because a “sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.” [FAA Grant Assurance 22.h. (emphasis added)]. In addition, a “sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.” [FAA Grant Assurance 22.i. (emphasis added)]. “[A]n airport owner is under no obligation to permit aircraft owners to introduce on the airport practices which would be unsafe, unsightly, detrimental to the public welfare or which would affect the efficient use of airport facilities.” [FAA Order 5190.6A, § 3-9.e.(3) (Oct. 2, 1989); Monaco Coach Corp. v. Eugene Airport, FAA Docket No. 16-03-17 (Mar. 4, 2005); Roadhouse Aviations, LLC v. Tulsa, FAA Docket No. 16-05-08 (June 26, 2007)].

As the Acting Director properly concluded, at all relevant times “the Town of Norwood intended to allow BAC to install and operate an aircraft fuel facility at” the Airport. [Determination at 24]. To that end, the Town “immediately leas[ed] the aircraft tie-downs on the DC-3 Ramp to BAC over EAC’s objections, authoriz[ed] BAC to conduct temporary truck self-fueling operations, and enter[ed] into initial negotiations with BAC for construction of the aircraft fuel facility and a long-term lease of the DC-3 Ramp.” [Determination at 24].

There is no support in the Administrative Record that “[t]he Town’s position regarding BAC changed when EAC indicated that the Town and BAC did not have the right to access BMA/EAC leasehold without prior permission . . .” [Determination at 25]. To the contrary, NAC exercised its discretion to preclude BAC from introducing practices at the Airport that are unsafe or detrimental to the public welfare. In that regard, BAC failed to comply with state licensing requirements for the use of fuel trucks at the Airport, declined to provide information requested by NAC, and was cited for lease violations on multiple occasions. Accordingly, NAC’s response was not based upon EAC’s opposition to the possibility of a second fixed-base operator, but rather BAC’s prior conduct, the implications of its intended practices, and local and state law.

“The Grant Assurances do not identify or guarantee a specific method for fueling aircraft.” [The Aviation Ctr., Inc. v. Ann Arbor, FAA Docket No. 16-05-01 (Dec. 16,

2005)]. The Acting Director overlooked the fact that BAC failed to reasonably consider and accept NAC's offer to dig trench drains and install electrical access during the apron construction project in 2005. BAC was informed of the repaving and invited to participate in the weekly job meetings at the site. [FAA Exhibit 1, Item 7, exhibits B, H]. As the job meeting notes indicated, BAC was contacted and invited to participate in the meetings, yet BAC's owner only attended a single meeting. [FAA Exhibit 1, Item 7, exhibits B, H] "A sponsor is not obligated to provide a specific level of service or convenience, however reasonable it may be, when it provides an alternative, reasonable level of service or convenience." [Monaco Coach Corp. v. Eugene Airport, FAA Docket No. 16-03-17 (Mar. 4, 2005)]. NAC's offer was reasonable and BAC must be held exclusively responsible for its failure to accept NAC's installation proposal. Moreover, NAC remains willing to allow BAC to dig the trench drains required by the Superseding Order of Conditions and install electrical access, provided that it restores the Airport parking apron to its current condition. [FAA Exhibit 1, Item 7].

"[T]he purpose of the grant assurances is . . . not to provide alternative or supplemental rights to those normally available to commercial tenants in disputes with their landlords, i.e., negotiation or commercial litigation under applicable state and local laws." Penobscot Air Servs., Ltd. v. FAA, 164 F.3d 713, 727 (1st Cir. 1999). The utility easement or right to access for the 1100 Foot Strip sought by BAC is thus outside the scope of the grant assurances because they constitute alternative or supplement rights not normally available to a commercial tenant.

In addition, the Acting Director's findings fail to account for the requirements of local and state law and the bona fide basis for NAC's suspension of lease negotiations with BAC. Of particular significance is the fact that BAC voluntarily and unilaterally withdrew its request for a VIF license on May 9, 2006. [FAA Exhibit 1, Item 7, exhibit D.8]. NAC cannot allow BAC to thwart state regulations or evade requirements applying equally to other carriers and businesses at the Airport.

As to the status of the proposed lease between NAC and BAC, the present circumstances are similar to those in The Aviation Center, Inc. v. Ann Arbor. [The Aviation Ctr., Inc. v. Ann Arbor, FAA Docket No. 16-05-01 (Dec. 16, 2005)]. In The Aviation Center, the airport sponsor denied a complainant's request for a self-fueling facility because of its deficient progress in completing agreed upon improvements in accordance with its lease agreement. In addition, the airport sponsor relied upon possible contamination of the municipal water supply due to the complainant's conduct. In light of these concerns, the FAA determined that the airport sponsor's denial of the complainant's request for a self-fueling facility was not unreasonable.

Here, NAC acted upon safety and general welfare concerns when it terminated BAC's temporary self-fueling permit. Yet, BAC intended and continued to conduct self-fueling operations even after its temporary self-fueling permit was revoked. Similar concerns motivated NAC's suspension of lease negotiations with BAC because of BAC's failure to provide documentation regarding its assertion that it is was not required to install trench drains; and that it had obtained all required permits. BAC was also

witnessed by Airport officials using its self-fueling permit to fuel aircraft not owned or operated by BAC, in violation of its permit. These actions were captured on security footage and archived by Airport officials.

Accordingly, the Acting Director erroneously concluded that NAC effectively placed BAC in an unworkable situation by concurrently depriving it of a lease and required permits. The Town's conduct was reasonable and nondiscriminatory because it merely expected BAC to comply with all local and state requirements and attempted to accommodate BAC during its apron reconstruction project.

E. The Town's conduct is consistent with 49 U.S.C., § 40103(e) and related Grant Assurance 23 because it did not explicitly or implicitly grant an exclusive right to EAC to operate a fueling facility.

Although the granting of an "exclusive right" violates Section 308(a) of the Federal Aviation Act of 1958 and Order 5190.6A, no exclusive right has been explicitly/implicitly bestowed upon EAC. [FAA Order 5190.6A, c. 3 (Oct. 2, 1989)].

As construed by FAA Order 5190-5:

An exclusive right is defined as a power, privilege, or other right excluding or debarring another form enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.

[Jetaway Aviation, LLC v. Bd. of County Comm'rs, Montrose County, Colo., FAA Docket No. 16-06-01 (Nov. 6, 2006) (quoting FAA Order 5190-5 (June 10, 2002))].

"The presence on an airport of only one enterprise engaged in any aeronautical activity will not be considered a violation of this policy [against exclusive rights] if there is no understanding, commitment, express agreement, or apparent intent to exclude other reasonably qualified enterprises." [FAA Order 5190.6A, § 3-9.a. (Oct. 2, 1989) (emphasis added)]. "[T]he providing of services at an airport by a single fixed-based operator shall not be construed as an exclusive right if it would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and if allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport . . ." [FAA Order 5190.6A, § 3-9.a. (Oct. 2, 1989)]. "So long as the opportunity to engage in an aeronautical activity is available to those who meet reasonable and relevant standards, the fact that only one enterprise takes advantage of the opportunity does not constitute a grant of an exclusive right." [Pompano Beach v. FAA, 774 F.2d 1529, 1542 (11th Cir. 1985) (quoting FAA Advisory Circular No. 150/5190-2A at 4-5 (Apr. 4, 1972))]

There is simply no evidence in the Administrative Record militating towards a conclusion that NAC explicitly or implicitly acted to exclude BAC's fueling operation or as a competitor to EAC in violation of the Grant Assurances. [See Jetaway Aviation, LLC v. Bd. of County Comm'rs, Montrose County, Colo., FAA Docket No. 16-06-01 (Nov. 6, 2006)] To that end, there is no understanding, commitment, express agreement, or apparent intent by NAC to exclude BAC or any other reasonably qualified enterprises from undertaking operations at the Airport. Nor can the simple fact that NAC entered into formal leases with entities other than BAC be regarded as a per se violation of Grant Assurance No. 23. [See J. Andrew Lange, Inc. v. FAA, 208 F.3d 389, 394 (2d Cir. 2000)].

In fact, NAC's actions to terminate its lease with EAC for the Area DC-3 parcel in order to allow BAC to lease the same parcel are inconsistent with the notion that NAC granted exclusive rights to EAC. The practical consequence of such action deviated from the concept of an exclusive right by affording BAC a presence at the Airport. Further, NAC's General Rules and Regulations for the Airport, provide "that nothing in the lease shall be construed to grant or authorize the granting of an exclusive right" and "[t]hat no lessee will be given more favorable terms for providing the same public service than any other lessee." [FAA Exhibit 1, Item 11, exhibit (95.) at § IV.B.2. and 3].

The Acting Director erred by implying that NAC acquiesced to EAC's purported program of preventing BAC from constructing an aircraft fueling facility on the Airport. Such a conclusion directly conflicts with the Acting Director's belief "that the Town of Norwood intended to allow BAC to install and operate an aircraft fuel facility at Norwood Memorial Airport." [Determination at 24].

Undeterred by EAC's opposition to the lease to BAC for tie-down spaces on the DC-3 Ramp, NAC nevertheless terminated EAC's lease and awarded the spaces to BAC. Although BAC is currently a tenant at will for the DC-3 Ramp, the Acting Director properly noted that NAC entered into negotiations for a long-term lease. [Determination at 24].

In addition, the very fact that the Town allowed BAC to conduct temporary truck self-fueling operations is inconsistent with the existence of exclusive rights. [FAA Exhibit 1, Item 11, exhibits (6.), (120.)] While the temporary self-fueling permit obligated BAC to follow local, state and federal rules and regulations for the transportation of aviation fuel, BAC failed to do so. [FAA Exhibit 1, Item 11, exhibit (120.)]. Because BAC failed to adhere to the requirements of its temporary self-fueling permit, this permit was revoked by NAC during November 2005. [FAA Exhibit 1, Item 11, exhibit (36.)]. However, BAC was in possession of a temporary self-fueling permit for nearly eighteen (18) months.

Safety, environmental and general welfare concerns motivated the revocation of BAC's temporary self-fueling permit, rather an objective of effecting exclusive rights. In fact, the Acting Director acknowledged and agreed as such in his analysis of Grant

Assurance 22. [Determination at 24]. In addition, BAC voluntarily and unilaterally elected to withdraw its request for a VIF license on May 9, 2006. [FAA Exhibit 1, Item 7, exhibit D.8]. Subsequent attempts by BAC to pursue unauthorized mobile fueling operations at the Airport reflect BAC's unwillingness to meet reasonable and relevant standards governing Airport activities. [FAA Exhibit 1, Item 7, exhibit L]. The failure of BAC to obtain the required license from the Board of Selectmen and permit from the Fire Department for the operation of a fuel farm do not constitute the granting of an exclusive right. [FAA Exhibit 1, Item 7, exhibit G]. Moreover, NAC discontinued lease negotiations in response to BAC's actions and because BAC failed to provide relevant information concerning the fuel farm it was seeking to operate.

"The exclusive rights prohibition does not guarantee an airport user the right to acquire a specific piece of private property, or access to a specific location on the airport." [Roadhouse Aviations, LLC v. Tulsa, FAA Docket No. 16-05-08 (June 26, 2007)]. Although NAC attempted to accommodate BAC in connection with the apron construction project, BAC effectively rebuffed these efforts by failing to engage NAC's contractor or attend all but a single weekly job progress meeting.

Accordingly, the Acting Director's finding that NAC conferred an exclusive right upon EAC is unsupported by the Administrative Record. To the contrary, NAC made repeated efforts to introduce and advance BAC's status as a competitor to EAC at the Airport.

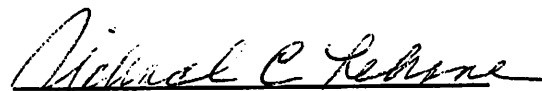
V. CONCLUSION

For the foregoing reasons, NAC respectfully requests that the Associate Administrator reverse the Acting Director's April 11, 2008 Determination, amended by the April 23, 2008 Errata.

VI. REQUEST FOR HEARING

NAC respectfully requests that the Associate Administrator conduct a hearing on this Appeal.

Respectfully submitted
The Norwood Airport Commission,
By its attorneys:



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Certificate of Service

I, Michael C. Lehane, counsel for the Norwood Airport Commission, certify that I have served the foregoing Appeal Pursuant to 14 C.F.R., § 16.33 and Request for Hearing, with Exhibits, on the following persons by first class mail, postage prepaid:

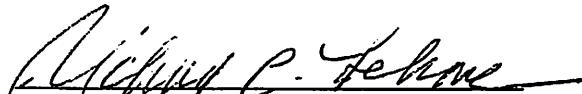
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5/23/08
Date


Michael C. Lehane

June
2008

**U. S DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

In the Matter of:

Docket No. 06-07-03

Boston Air Charter and
Norwood Airport Commission

Norwood Massachusetts

**BOSTON AIR CHARTER'S REPLY TO NORWOOD AIRPORT
COMMISSION'S APPEAL PURSUANT TO 14 C.F.R. PART 16.33**

1. Introduction:

In the Director's Decision issued April 11, 2008, the FAA made comprehensive findings of fact and rulings, with the conclusion that the Norwood Airport Commission was in violation of Grant Assurances 5, 22 and 23 as a result of its actions relating to the operation of Norwood Airport, and specifically in regard to NAC's having blocked Boston Air Charter's ("BAC") request to install and operate its own self fueling facility. In its appeal, the NAC has sought to reargue and put a new spin on old facts, and sought to introduce new facts in an inaccurate and misleading manner. BAC will not readdress all the issues below, but focus and address specific issues. BAC is in agreement with the facts as found by the FAA. To the extent that BAC does not once again correct or respond to specific assertions by the NAC that are in conflict with the facts as found in the Director's Decision, the BAC wishes to express its agreement with the FAA's findings.

2. BAC's Reply to NAC's Statement of Facts:

As noted above, BAC will not reply to all factual assertions made by NAC in its Appeal. To the extent that BAC does not respond, it stands by its position in its prior filings and the findings in the Directors Determination.

A. Reply to NAC's Statement of Facts, Appeal p. 5

The NAC asserts that BAC did not provide a viable alternative means to "encroaching" to the 1100 foot strip. BAC is not in control of the Airport - NAC is. It is NAC's obligation and burden to provide alternatives, if such alternatives are necessary.

The NAC asserts that BAC did not avail itself of the opportunity to install conduits during a federally funded project that reconstructed the ramp. BAC addressed this extensively in its appeal, and the FAA properly found the facts. The NAC made it clear at the time that the repaving was being undertaken that BAC could choose to wait

until the NAC's contractor was done, and then hire BAC's contractor to install conduits later. Thereafter, the Town Engineer, who is now a member of the NAC, barred BAC from opening the new pavement to install the conduits, even at BAC's sole expense. Further, this is really a "red herring," as installation of the conduits does not solve the basic problem – the electric service can not be provided without crossing over about 10 feet of the 1100 foot strip. The EAC asserted that it could bar both the NAC and BAC from entering that area to install the conduits and make the electric connection. Even if BAC had paid the NAC's contractors who were working on the federally funded project to install conduits under the ramp, the NAC did not then and has never allowed actual connection of the electric service across the short section of the 1100 foot strip to the transformer.

The NAC asserts that the BAC withdrew its application that was pending to the Norwood Board of Selectmen for a Volatile and Inflammable Fluids permit. As the NAC well knows, the Selectmen had informed the BAC that they would issue the permit only if the BAC had a lease for its premises. The BAC had long sought that lease, which was denied it by the NAC. The NAC refused to grant the lease to BAC unless BAC had demonstrated it had the rights to provide electric service by obtaining permission from EAC to cross its leasehold. Since BAC had no ability to obtain such rights from EAC, and knew that NAC would not grant it a lease, BAC withdrew its VIF permit application rather than have the Selectmen forced to deny it due to NAC's intransigence.

The NAC asserts, in a remarkable and specious argument presented as a statement of fact, that NAC's vote to discontinue all discussions with BAC was justified because of BAC "failure to promote its intent to fully comply with the NAC's Rules and Regulations, and for stating its intent to re-commence self-fueling operations," which NAC characterizes as "repeated attempts to pursue unauthorized mobile fueling." In fact, BAC only conducted mobile self fueling while explicitly permitted to do so by the NAC and the local Fire Department; and though sending a letter indicating its intent to recommence, which BAC reasonably believed that it was entitled to do, BAC complied with a later directive from the Fire Department and did not proceed with further mobile fueling. NAC apparently seeks to penalize BAC for advocating its wishes, and then complying with the orders of local officials, despite disagreeing with those orders.

B. Further Reply to NAC's Statement of Facts, Bottom of p. 5 to p 6.

In a new argument first presented in NAC's "Corrective Action Plan" ("CAP") and now again in the statement of facts section of the Appeal, NAC asserts that Easter Air Center ("EAC") has left the airport, assigning its rights to Flight Level Norwood (FLN"), and that this changes matters in several respects. In short, it does not.

The NAC asserts that with EAC "no longer maintains a presence" at the airport, and that thus the Acting Director's findings concerning BAC's inability to conduct fueling operations are moot. This is clearly an argument, not a fact, and disregards the fact that the NAC still has not provided BAC with permission, a lease or electric power to run BAC's fueling facility. BAC has no knowledge of whether NAC has asked FLN for

permission, or asserted NAC's rights to install improvements such as electric lines within the 1100 foot strip, but on information and belief it has not asserted such rights.

NAC asserts that FLN has, unlike its predecessor EAC, demonstrated its willingness to allow BAC to conduct fueling operations at Norwood Airport, and the NAC even suggests that FLN "embraced the concept" of turning over its self fueling capability to BAC. (NAC referenced its Ex B, Minutes of the February 13, 2008 NAC meeting). Nothing could be further from the truth. All that FLN expressed an interest in doing at the February 13 meeting, as evident in NAC's Ex. B, was that FLN "would like to give one of their [BAC] personnel access to the [FLN]self fueler through the late night for Boston Med Flights that require quick response." As expressed by Mr. Bishop on behalf of BAC, FLN has a commercial fueling operation at Norwood Airport. Exhibit A. BAC has merely entered into a temporary agreement with Flight Level that provides BAC with the permission to fuel BAC's planes using Flight Level's commercial fuel pump equipment and fuel supply. BAC is not self fueling with its own equipment and is not supplying itself with purchases of its own fuel at wholesale. But for NAC having denied BAC the rights needed to install and operate BAC's own self fueling facility, BAC would not have been forced to use FLN for this service. NAC's actions have channeled BAC's fuel business to FLN's commercial fueling operation.

The "Self Fueler Operations Agreement" between FLN and BAC merely allows a BAC employee to use the equipment that FLN calls its "Jet -A Self Fueler" after regular business hours, when BAC's Med Flights might need to re-fuel on an emergency basis. Ex A. (see also NAC's Appeal Ex D. 4 "This will take place when Flight Level personnel are not on the premises - after 9:30 at night and before 5:30 am. It is essentially for the med flights.")

3. BAC's Reply to NAC's Arguments:

The NAC argues, in its Appeal, Section IV(B), that the change from EAC to Flight Level Norwood ("FLN") is substantive. It is not. The obligation to comply with the FAA Grant assurances is the NAC's, not EAC's or FLN's. NAC has done nothing to facilitate providing BAC with its right to self fuel, as that term is defined by the FAA, and has done nothing to regain control of the airport ramps and the 1100 foot strip. The change to FLN has made no difference, NAC still will contend that it lacks the authority to install electric power across any portion of the 1100 foot strip, and BAC still can not install or operate its own self fueling facility.

NAC contests the Director's Determination that the Town's right to grant BAC's access was effectively blocked "by the Town's 1967 lease agreement with BMA." (Appeal p7.) NAC remarkably argues that the terms of the 1967 Lease did not block the Town from granting BAC access, but instead it was EAC's assertion of its rights as a subtenant that blocked the Town. The NAC is trying to draw a distinction that has no difference. If the NAC really believed that it had retained the necessary degree of control over the leased premises to comply with the Grant Assurances, it would have responded firmly to EAC's assertion and proceeded to grant BAC access. Instead, the NAC

deferred to EAC's assertion that as the tenant it had the right to bar the NAC or BAC as the tenant from any access for any purpose into the 1100 foot strip. The transfer of tenancy from EAC to FLN has had no effect on NAC's interpretation of its rights under the lease – the NAC still asserts no control and asserts that it has no rights to enter to make improvements to benefit the airport as a whole or to improve conditions and facilities for other tenants.

FLN's agreement to allow BAC to use FLN's commercial self fueler in emergency conditions does nothing for the NAC in the way of compliance with Grant Assurance #22.

Next, NAC argues that while perhaps the Director was correct in finding that the NAC had violated Grant Assurance #23, barring grants of exclusive rights, that such exclusivity has been nullified by the transfer of all of EAC's rights to FLN and FLN's agreement to allow BAC to use the FLN self fueler for emergencies. Again – nothing has changed. FLN is now the sole, exclusive commercial fueling operation at Norwood Airport, and BAC has been forced by the NAC's policies to "channel" its fueling business to FLN. FLN owns the fueling operation, buys the fuel at its wholesale cost, and will sell it to BAC at a marked up retail cost. In point of fact, however, BAC has never had the occasion to use the FLN facility with BAC's employees, as no emergency has occurred that required after hours fueling since the execution of the agreement. (Ex. A.)

Next the NAC argues that it has complied with Grant Assurance #5 not to take any action that would deprive it of all the rights that it needs to comply with the grant assurances. In this lengthy section of its appeal, the NAC's position can be summed up simply as follows: it received FAA approval to enter into the 1967 leases, has always had the right to review and approve any tenant's installation of any structure, but the lease has always been silent on whether NAC has ever had the right to enter into leased premises to install its own improvements. NAC points to BMA's assent, contingent on NAC's assent, as proof that the 1967 lease did not divest the NAC of its authority. In this, the NAC completely misses the point – it should not have to seek the permission of BMA, or EAC, or EAC's successor, when the NAC has an obligation to make improvements and to access and control the federally funded ramps. The fact that NAC has interpreted the lease contracts to give the tenants such rights to control NAC's decisions regarding improvements and operation of the airport is the problem, and that has not been cured. NAC must reassert its rights, and now obtain either a court order, the tenant's express acquiescence, or secure its rights in another manner, perhaps via eminent domain proceedings.

In its discussion of its violations of Grant Assurance #5, NAC points to BAC's alleged refusal to pay for the installation of conduits during the AIP funded repaving project. As noted *supra*, BAC was assured that it could install the conduits at a later date and was ready willing and able to do so; but that would not have solved the problem – NAC has never provided BAC the right to access the 1100 foot strip to install the electric conduits and service necessary to connect to the electric power. Even if BAC had paid to

install the conduits as suggested in NACs' appeal, there still would not have been electric power to the BAC fueling facility, because EAC had purported to bar the NAC and BAC from entering to install the electric power across the 10 foot wide section of the 1100 foot strip. The NAC argument about BAC's alleged failure to pay to install the conduits is merely a "red herring." The NAC has allowed its tenants BMA, EAC and EAC's successor FLN, to assert rights to absolute control over the airport, barring NAC or NAC's other tenants such as BAC from access to make basic improvements. NAC had an opportunity to take a hard line when EAC first sought to control the airport by purporting to assert its rights as a tenant and objecting to the installation of BAC's fueling facility. It was clear then that EAC was seeking to protect its monopoly on fuel sales at Norwood Airport. NAC could then have asserted that where the lease was silent regarding NAC's rights to enter, given that the lease was executed for the purpose of compliance with the FAA requirements, that by implication the NAC must have retained what ever rights it needed to comply with the Grant Assurances. By failing to assert such rights timely and forcefully in the face of EAC's aggressive, anticompetitive position, the NAC violated its basic obligations. It ceded control over the airport to EAC.

In Section D of NAC's Appeal, the NAC now argues that the real reason for it refusing to facilitate BAC's installation of its fueling facility was not the refusal of EAC to provide access across the leased premises, but BAC's alleged unsafe practices. The argument is obviously pretextual – the record is replete with NAC's arguments that it would have permitted BAC to have the access, but could not because BAC had failed to negotiate terms with EAC, and NAC would not intervene in a dispute between two tenants. BAC has safely operated its business at Norwood Airport for years, and had safely and capably operated the fuel truck during the time that it was allowed to do so. NAC's assertion that "BAC failed to comply with state licensing requirements for the use of fuel trucks" is an outrageous misrepresentation. BAC had temporary approval from the selectmen to operate the fuel truck and ultimately the fixed fueling facility, contingent on receipt of a written long term lease from the NAC. The NAC refused to give BAC a lease, allegedly because BAC lacked the access to have electric power to run the equipment, while NAC sought to place the burden on BAC to obtain the electric access NAC itself had the sole power and legal obligation to provide. NAC, by failing to assert control over the airport and refusing to give BAC the access for electric power, made it impossible for BAC to comply and secure all licenses needed. Ultimately, BAC withdrew its application to the Selectmen, removed its fueling truck as directed by the Fire Department and ended its temporary self fueling, and sought review by the FAA of the NAC's decision that made further local efforts by BAC futile.

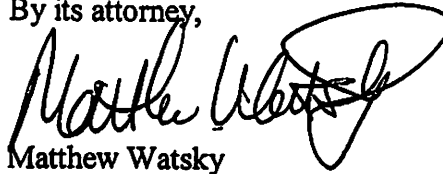
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4. Conclusion:

BAC respectfully requests the Associate Administrator uphold the April 11, 2008 Director's Determination in every respect, and conclude that NAC has failed to present an adequate proposed CAP to solve the many violations.

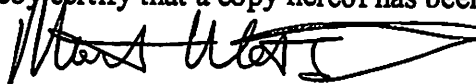
Respectfully submitted,
Boston Air Charter, Inc.
By its attorney,



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Certificate of Service

I, Matthew Watsky, hereby certify that a copy hereof has been served by first class mail, postage pre-paid, to



Michael C. Lehane, Esquire
Murphy, Hesse, Toomey & Lehane, LLP
300 Crown Colony Dr.
Quincy, MA 02269

Norwood Airport Commission
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

**U. S DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

In the Matter of:

Boston Air Charter and
Norwood Airport Commission

Docket No. 06-07-03

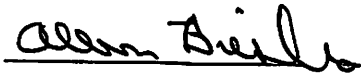
Norwood Massachusetts

**AFFIDAVIT OF AL BISHOP IN SUPPORT OF BOSTON AIR CHARTER'S
REPLY TO NORWOOD AIRPORT COMMISSION'S APPEAL PURSUANT TO
14 C.F.R. PART 16.33**

1. I, Al Bishop, am the President and primary operator of the Boston Air Charter, Inc., which flies out of Norwood Airport, Norwood Massachusetts.
2. I have worked at Norwood Airport for 35 years, and have been personally involved in and am personally familiar with all the facts relevant to the BAC's efforts to obtain approvals to install a fueling facility for its own aircraft.
3. As a practical matter, the NAC's refusal to allow BAC to install and operate its own fueling facility has conservatively cost BAC \$1,300,000 in excess fuel costs, making this the single highest extra cost factor BAC faces to operate its business and continue to provide aeronautical services.
4. EAC sold its business to Flight Level-Norwood ("FLN"). BAC has entered into an agreement with FLN to provide BAC the right to use BAC's employees to fuel BAC's aircraft using FLN's fueling equipment, which FLN calls its "Self Fueler," when FLN's employees are not present after FLN's usual business hours, after 9:30 at night and before 5:30 am.
5. FLN operates its Self Fueler as a commercial fueling facility, as the sole entity selling fuel to aircraft operators at Norwood Airport.
6. FLN has expressed no interest in assigning to BAC its fueling business or operation. BAC's only rights with regard to FLN's fueling equipment are to dispense the fuel and pay FLN for the fuel at FLN's rates.

7. The change from EAC to FLN as the primary tenant at Norwood Airport has not made a substantive change at the airport. FLN has offered nothing, and the NAC has done nothing further to facilitate providing BAC with its right to self fuel, as that term is defined by the FAA, and has done nothing to regain control of the airport ramps and the 1100 foot strip.
8. If BAC were operating its own Self Fueling facility, its fuel costs would be substantially lower, being able to purchase fuel at a lower wholesale rate than FLN, and not having to pay any retail mark up or fee other than the usual federal and state taxes, and a local flowage fee that BAC would expect to pay to the NAC.

Signed under the penalties of perjury, this 12th day of June, 2008,



Al Bishop, President
Boston Air Charter

6-12-08

MATTHEW WATSKY
ATTORNEY AT LAW
East Brook Executive Park
30 Eastbrook Road, Suite 301
Dedham, MA 02026

Tel. (781) 329-5009

Fax (781) 461-9068

June 12, 2008

Kevin Solco, Acting Director
Office of Airport Safety and Standards
Federal Aviation Administration
800 Independence Ave., SW
Washington, DC 20591

Office of Chief Counsel
FAA Part 16 Airport Proceedings Docket
AGC-610
Federal Aviation Administration
800 Independence Ave, SW
Room #9251
Washington, DC 20591

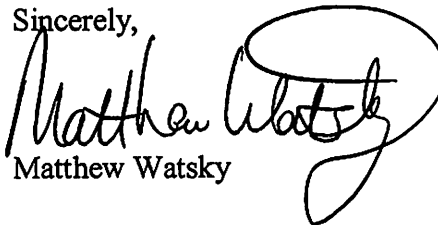
Re: Boston Air Charter v. Norwood Airport Commission
FAA Docket 16-07-03
Complainants Reply to NAC's Appeal to the Associate Administrator

Dear Mr. Solco and Office of the Chief Counsel:

On behalf of the Complainant, Boston Air Charter, please accept this reply, on behalf of the Boston Air Charter ("BAC"), pursuant to 14 CFR Part 16.33(c) in response to the appeal of the Norwood Airport Commission's ("NAC"), dated May 23, 2008.

Thank you for docketing in the usual manner.

Sincerely,


Matthew Watsky

cc: Attorney Lehane

**U. S DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

In the Matter of:

Docket No. 06-07-03

Boston Air Charter and
Norwood Airport Commission

Norwood Massachusetts

**BOSTON AIR CHARTER'S REPLY TO NORWOOD AIRPORT
COMMISSION'S APPEAL PURSUANT TO 14 C.F.R. PART 16.33**

1. Introduction:

In the Director's Decision issued April 11, 2008, the FAA made comprehensive findings of fact and rulings, with the conclusion that the Norwood Airport Commission was in violation of Grant Assurances 5, 22 and 23 as a result of its actions relating to the operation of Norwood Airport, and specifically in regard to NAC's having blocked Boston Air Charter's ("BAC") request to install and operate its own self fueling facility. In its appeal, the NAC has sought to reargue and put a new spin on old facts, and sought to introduce new facts in an inaccurate and misleading manner. BAC will not readdress all the issues below, but focus and address specific issues. BAC is in agreement with the facts as found by the FAA. To the extent that BAC does not once again correct or respond to specific assertions by the NAC that are in conflict with the facts as found in the Director's Decision, the BAC wishes to express its agreement with the FAA's findings.

2. BAC's Reply to NAC's Statement of Facts:

As noted above, BAC will not reply to all factual assertions made by NAC in its Appeal. To the extent that BAC does not respond, it stands by its position in its prior filings and the findings in the Directors Determination.

A. Reply to NAC's Statement of Facts, Appeal p. 5

The NAC asserts that BAC did not provide a viable alternative means to "encroaching" to the 1100 foot strip. BAC is not in control of the Airport – NAC is. It is NAC's obligation and burden to provide alternatives, if such alternatives are necessary.

The NAC asserts that BAC did not avail itself of the opportunity to install conduits during a federally funded project that reconstructed the ramp. BAC addressed this extensively in its appeal, and the FAA properly found the facts. The NAC made it clear at the time that the repaving was being undertaken that BAC could choose to wait

until the NAC's contractor was done, and then hire BAC's contractor to install conduits later. Thereafter, the Town Engineer, who is now a member of the NAC, barred BAC from opening the new pavement to install the conduits, even at BAC's sole expense. Further, this is really a "red herring," as installation of the conduits does not solve the basic problem – the electric service can not be provided without crossing over about 10 feet of the 1100 foot strip. The EAC asserted that it could bar both the NAC and BAC from entering that area to install the conduits and make the electric connection. Even if BAC had paid the NAC's contractors who were working on the federally funded project to install conduits under the ramp, the NAC did not then and has never allowed actual connection of the electric service across the short section of the 1100 foot strip to the transformer.

The NAC asserts that the BAC withdrew its application that was pending to the Norwood Board of Selectmen for a Volatile and Inflammable Fluids permit. As the NAC well knows, the Selectmen had informed the BAC that they would issue the permit only if the BAC had a lease for its premises. The BAC had long sought that lease, which was denied it by the NAC. The NAC refused to grant the lease to BAC unless BAC had demonstrated it had the rights to provide electric service by obtaining permission from EAC to cross its leasehold. Since BAC had no ability to obtain such rights from EAC, and knew that NAC would not grant it a lease, BAC withdrew its VIF permit application rather than have the Selectmen forced to deny it due to NAC's intransigence.

The NAC asserts, in a remarkable and specious argument presented as a statement of fact, that NAC's vote to discontinue all discussions with BAC was justified because of BAC "failure to promote its intent to fully comply with the NAC's Rules and Regulations, and for stating its intent to re-commence self-fueling operations," which NAC characterizes as "repeated attempts to pursue unauthorized mobile fueling." In fact, BAC only conducted mobile self fueling while explicitly permitted to do so by the NAC and the local Fire Department; and though sending a letter indicating its intent to recommence, which BAC reasonably believed that it was entitled to do, BAC complied with a later directive from the Fire Department and did not proceed with further mobile fueling. NAC apparently seeks to penalize BAC for advocating its wishes, and then complying with the orders of local officials, despite disagreeing with those orders.

B. Further Reply to NAC's Statement of Facts, Bottom of p. 5 to p 6.

In a new argument first presented in NAC's "Corrective Action Plan" ("CAP") and now again in the statement of facts section of the Appeal, NAC asserts that Easter Air Center ("EAC") has left the airport, assigning its rights to Flight Level Norwood (FLN"), and that this changes matters in several respects. In short, it does not.

The NAC asserts that with EAC "no longer maintains a presence" at the airport, and that thus the Acting Director's findings concerning BAC's inability to conduct fueling operations are moot. This is clearly an argument, not a fact, and disregards the fact that the NAC still has not provided BAC with permission, a lease or electric power to run BAC's fueling facility. BAC has no knowledge of whether NAC has asked FLN for

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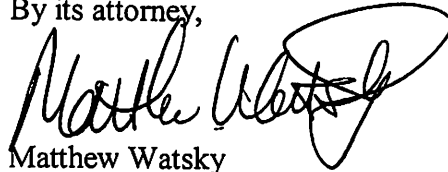
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4. Conclusion:

BAC respectfully requests the Associate Administrator uphold the April 11, 2008 Director's Determination in every respect, and conclude that NAC has failed to present an adequate proposed CAP to solve the many violations.

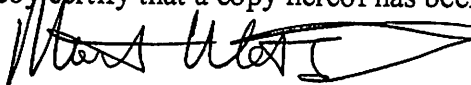
Respectfully submitted,
Boston Air Charter, Inc.
By its attorney,



Matthew Watsky
30 Eastbrook Road, Suite 301
Dedham, MA 02026
(781) 329-5009
(781) 461-9068 (fax)
Matt@Watskylaw.com

Certificate of Service

I, Matthew Watsky, hereby certify that a copy hereof has been served by first class mail, postage pre-paid, to



Michael C. Lehane, Esquire
Murphy, Hesse, Toomey & Lehane, LLP
300 Crown Colony Dr.
Quincy, MA 02269

Norwood Airport Commission
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

7-7-2008

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

CROWN COLONY PLAZA
300 CROWN COLONY DRIVE
SUITE 410
P.O. BOX 9126
QUINCY, MA 02269-9126
TEL: (617) 479-5000 FAX: (617) 479-6469

75 FEDERAL STREET
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BOSTON, MA 02110
TEL: (617) 479-5000 FAX: (617) 338-1324

ONE MONARCH PLACE
SUITE 1310R
SPRINGFIELD, MA 01144
TEL: (800) 227-6485 FAX: (617) 479-6469

Arthur P. Murphy
James A. Toomey
Katherine A. Hesse
Michael C. Lehane
John P. Flynn
Regina Williams Tate
Edward F. Lenox, Jr.
Mary Ellen Sowyrda
David A. DeLuca
Ann M. O'Neill
Donald L. Graham
Andrew J. Waugh
Geoffrey P. Wermuth
Robert S. Mangiaratti
Doris R. MacKenzie Ehrens
Geoffrey B. McCullough

Lorna M. Hebert
Clifford R. Rhodes, Jr.
Kathryn M. Murphy
Karis L. North
Thomas W. Colomb
Alisia St. Florian
Donna A. Heimlich
Jason M. Gesing
Bryan R. LeBlanc
Brandon H. Moss
Kevin F. Bresnahan
Kathleen E. Yasger
Brian P. Fox
Lauren C. Galvin
Jessica L. Ritter
Carolyn J. Lyons

Please Respond to Quincy

July 7, 2008

Kelvin Solco, Acting Director
Office of Airport Safety and Standards
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591

Re: Docket No. 16-07-03
In the Matter of Boston Air Charter and Norwood Airport Commission

Dear Mr. Solco:

Please accept this correspondence as the Norwood Airport Commission's ("NAC") reply to the Complainant, Boston Air Charter's ("BAC"), response to its corrective action plan ("Plan") in the above-referenced matter.

As an initial matter, NAC objects to BAC's continuing effort to misconstrue the underlying factual context of the above-referenced matter. To that end, BAC erroneously attributes Eastern Air Charter's ("EAC") conduct to NAC and its use of the terms "restrictions" and "intransigence" is grossly inaccurate and misleading. EAC, rather than NAC, objected to the encroachment of the so-called 1100 Foot Strip by BAC.¹ NAC has not declined to provide BAC with the access to install or provide electric power or to operate its own self-fueling facility. To the extent that NAC declined permission to EAC, it properly acted in accordance with safety,

¹Significantly, EAC is no longer a tenant at the Norwood Memorial Airport ("Airport"). Subsequent to the parties' pleadings in the above-referenced matter, EAC executed an assignment in favor of FlightLevel Norwood, LLC ("FLN"). Consequently, FLN is EAC's successor-in-interest at the Airport.

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Kelvin Solco, Acting Director
Office of Airport Safety and Standards
Federal Aviation Administration
July 7, 2008
Page 4

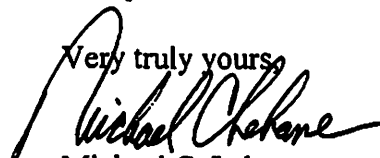
Order did not require NAC to exclusively pursue eminent domain and instead ostensibly contemplates negotiations and/or litigation as reasonable alternatives.

The exercise of eminent domain authority requires a town meeting vote, which is anything but a certainty considering the substantial fiscal considerations involved. See M.G.L. c. 40, § 14; M.G.L. c. 44, § 53; M.G.L. c. 90, § 51G. BAC simply overstates and misconstrues the eminent domain process under Massachusetts law. Additionally, BAC's characterization of the alleged compensation stemming from a taking as "minimal" is unsupported and unjustified. Rather, eminent domain has the potential of exposing NAC and/or the Town of Norwood to substantial liability from any persons seeking damages. See M.G.L. c. 79, §§ 14, 16. Contrary to BAC's assertion, eminent domain is a time-consuming process, rather than an immediate solution. Therefore, as a practical matter, eminent domain is the least feasible possibility for compliance with the fourth component of the Order.

Accordingly, NAC reasserts that its Plan conforms to each of the four (4) components of the Order and the FAA should reject BAC's response.

Thank you for your attention to this correspondence.

Very truly yours,


Michael C. Lehane

cc: Matthew Watsky, Esquire
Norwood Airport Commission (c/o Russ Maguire)

8.15.08



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Associate
Administrator for Airports

800 Independence Ave., S.W.
Washington, D.C. 20591

AUG 15 2008

Mr. Michael C. Lehane, Esq.
Murphy, Hesse, Toomey & Lehane, LLP
300 Crown Colony Drive
Quincy, MA 02269

Mr. Matthew Watsky, Esq.
Eastbrook Executive Park
30 Eastbrook Road, Suite 301
Dedham, MA 02026

**RE: Boston Air Charter v. Norwood Airport Commission, Norwood, Massachusetts
Docket No. 16-07-03**

Dear Messrs. Lehane and Watsky:

Enclosed is a copy of the Final Decision and Order of the Federal Aviation Administration (FAA) with respect to the above-referenced matter.

Based on the record in this proceeding, FAA finds that the Determination made by the Director of Airport Safety and Standards is supported by a preponderance of reliable, probative, and substantial evidence. I affirm the Director's Determination that the Norwood Airport Commission is currently in violation of grant assurances 5, *Preserving Rights and Powers*; 22, *Economic Nondiscrimination*; and 23, *Exclusive Rights*.

The Town of Norwood is ordered to submit a corrective action plan to the Director, Office of Airport Compliance and Field Operations¹ within 30 days that explains how the Norwood Memorial Airport has or will correct the deficiencies identified in the Director's Determination and upheld in this Final Decision and Order.

¹ This office was formerly part of the Office of Safety and Standards; the Office of Airport Compliance and Field Operations is now a separate directorate responsible for adjudicating Part 16 formal complaints, among other matters.

The reasons for upholding the Director's Determination are set forth in the enclosed Final Decision and Order.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Kirk Shaffer", with a long horizontal flourish extending to the right.

D. Kirk Shaffer
Associate Administrator
for Airports

Enclosure

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on AUG 15 2008, I placed in the United States mail (first class, postage paid) a true copy of the foregoing document addressed to:

For the Respondent

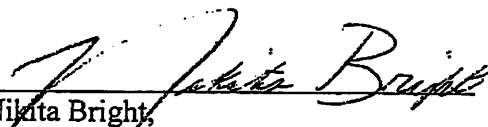
Mr. Michael C. Lehane, Esq.
Murphy, Hesse, Toomey & Lehane, LLP
300 Crown Colony Drive
Quincy, MA 02269
Phone: (617) 479-5000
Fax: (617) 479-6469

Norwood Airport Commission
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

For the Complainant

Mr. Matthew Watsky, Esq.
East Brook Executive Park
30 Eastbrook Road, Suite 301
Dedham, MA 02026
Phone: (781) 329-5009
Fax: (781) 461-9068

FAA Part 16 Airport Proceedings Docket
FAA Airport Compliance and Field Operations, ACO-100
FAA New England Region, ANE-600


Nikita Bright,
Office of Airport Compliance
and Field Operations



U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Associate
Administrator for Airports

800 Independence Ave., SW.
Washington, DC 20591

EXHIBIT

135 AC0-1

OCT - 6 2008

Mr. Russ Maguire
Airport Manager
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

*N/AAC Failed
on First Corrective
Action Plan
See Page #2
Regarding
Ramp
Leases*

Dear Mr. Maguire:

Thank you for your letter of August 28 about the Town of Norwood's (Town) corrective action plan required by the Director's Determination in Federal Aviation Administration Docket Number 16-07-03, *Boston Air Charter v. Norwood Airport Commission*, and as affirmed in the FAA's Final Decision and Order. I am also in receipt of your September 18, 2008 letter and am pleased that the Town stands ready to comply with FAA's Final Decision and Order. **The FAA did receive the Town's May 23, 2008 corrective action plan as noted in the Final Decision and Order of August 14, 2008. Unfortunately, it fails to comply with the Final Agency Decision.**

Specifically, the Town must take the following corrective actions to comply with the Final Agency Decision:

- The Town has or will provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with State and local regulations.

Boston Air Charter is still unable to gain power to install its own fuel facility and self-fuel its aircraft. The "Self-Fueler Operation Agreement" between Flight Level Norwood, LCC, and Boston Air Charter essentially grants Boston Air Charter limited access to Flight Level's fueling facility. As stated in the Final Agency Decision, this is not self-fueling. This issue is addressed in detail on pages 30, 31, 32, 33, and 34 of the Final Agency Decision.

Appropriate corrective action will occur when aeronautical service providers, including Boston Air Charter, gain access to power from either the public transformer on the "1100-foot strip" or another source on the airport. Expressing intent to provide access to power for Boston Air Charter in the future is not acceptable corrective action.

- The Town has ended or will end the practice of awarding long-term leases of federally funded ramps that have the effect of granting one party control over the majority of the ramps on the airport.
- The Town will put in place a short-term ramp leasing permit policy for the airport to assert more control of the federally funded ramps.

Appropriate corrective action will occur when the Town enacts a short-term leasing policy or short-term standard lease form or revocable permit for ramp parking. The lease or permit should include a subordination clause to the FAA grant assurances. The subordination clause should give the Town the ability to amend the lease or permit to comply with all existing and future FAA grant assurances. Such corrective action will demonstrate the Town's ability to gain control of the federally funded ramps.

- The Town has or will regain the airport's rights and powers to access the "1100-foot strip" to provide power to the airport ramps for airport tenants.

As addressed in the Director's Determination and Final Agency Decision (pages 14 and 15), the Town was obligated by a grant condition of a 1967 FAA grant to acquire title to the "1100-foot strip." On December 28, 1967, the Town counsel signed a certificate indicating the Town held fee simple title, free and clear of all liens, encumbrances and adverse interests. The Town then leased the property back to the owner under a 20-year lease with three 20-year renewal options for 80 years. The Town retained no rights under the lease to maintain or install utilities or provide access to public power on the "1100-foot strip." The terms of the lease essentially nullified the 1967 FAA grant condition.

It is the Town's obligation to gain and maintain access to utilities on the "1100-foot strip." It is not a funding obligation of FAA to correct the Town's mistake in entering into a lease that relinquished the Town's rights and powers. Corrective action will be achieved when the Town provides documentation to this office evidencing that it has gained unrestricted access to the public power source on the "1100-foot strip" to provide power to the airport ramps for airport tenants.

I also note that in your September 18 letter, you requested a 30-day extension of time to amend your corrective action plan. I grant your request for a 30-day extension of time to submit a corrective action plan that addresses the compliance issues in the Final Agency Decision and as further detailed here. The Town's corrective action plan is now due on October 24, 2008. Please be advised that when my office receives satisfactory evidence of compliance with each of the corrective actions, the Town will again be eligible for FAA discretionary grant funding.

For further information, please contact Charles C. Erhard, Manager of the Airport Compliance Division, at (202) 267-3187.

I trust this information is helpful.

Sincerely,

Original Signed By:
D. Kirk Shaffer

D. Kirk Shaffer
Associate Administrator
for Airports

cc: Matthew Watsky, Counsel for Complainant
Laverne Reid, New England Airports Division Manager

10-7-08



The Town of Norwood

Commonwealth of Massachusetts

Norwood Memorial Airport

Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS

125 Access Road
Norwood, MA 02062

MAILING ADDRESS

125 Access Road
Norwood, MA 02062

BY FAX

October 7, 2008

Federal Aviation Administration

Attn: Donna Witte, Realty Program Specialist/Compliance

12 New England Executive Park

Burlington, MA 01803-5299

RE: FAA Docket No: 16-07-03

Dear Donna:

At your earliest convenience, please see the attached letter—dated September 18, 2008—requesting from FAA Headquarters a 30-day extension to re-draft elements of our corrective action plan (CAP).

Within the past week, I again spoke with Kathryn Baxter at FAA Headquarters, at which time Ms. Baxter confirmed that the Norwood Airport Commission (NAC) did in fact receive a 30-day extension. However, as of this writing, we have not yet received correspondence to this effect. Furthermore, we never received a letter from FAA Headquarters noting the deficiencies in our CAP, as referenced in my September 18th request letter. Ms Baxter has assured me that both the granting of the 30-day extension request and the noted deficiencies in our CAP are being re-drafted into one letter.

My growing concerns are two-fold:

1. That while we have verbal confirmation of a 30-day extension, we do not know exactly when that extension begins and ends
2. That without the actual correspondence detailing those elements of our CAP that need to be re-addressed, it is difficult to do so—with any certainty that all of the issues posed by FAA will be fully covered

Any information you can provide regarding these anticipated articles of correspondence would be much appreciated.

As we await this correspondence, I've begun to work with my commission on other electrical service options for aeronautical service providers seeking self-fueling operations on the Norwood Airport. Specifically, I've met with both the Town Engineer, Mark Ryan (also, the NAC Vice Chair) as well as a senior manager in the *Norwood Light Department*, Kevin Shaughnessy (also, an NAC commissioner) to discuss alternative measures for bringing electrical service to the airport, while getting around the long-term leasehold to *BMA, Inc.*, which so greatly contributed to this Part 16 complaint.

Finally, you'll note in my September 18th letter that we'd like to work with you when fine-tuning the alternative measures we anticipate having to incorporate into our CAP re-draft. As we look to finalize these changes, would you be available to meet with Commissioners Ryan, Shaughnessy and myself, preferably here at the Norwood Airport, where we can actually look at the areas pertinent to corrective action?

Please advise at your convenience. I can be reached by cell phone at (781) 603-5373, or by e-mail at: rmaguire@norwoodma.gov

Thank you, Donna.

Sincerely,



Russ Maguire, Airport Manager
Norwood Memorial Airport

Cc: *Norwood Airport Commission*

10-17-08

October 17, 2008

Norwood Airport Commission
125 Access Road
Norwood, MA. 02062

Dear Mr. Chairman,

This letter is sent to you by request of members of the Norwood Airport Commission (NAC) to state my position of granting the NAC a permanent utility easement for construction, maintenance and improvements on the Gate 3 taxiway.

According to the Airport Manager and two of NAC's members, this easement is sought by the NAC as a result of actions by a tenant at the Norwood Memorial Airport. This tenant wishes to gain access to power so that he can operate a fuel farm for self-fueling and presumably sale of fuel to others on at the airport.

I am not opposed to granting this easement as long as it does not result in a loss of revenue for Boston Metropolitan Airport (BMA). Currently BMA receives a flowage fee of \$0.04 per gallon delivered by our tenant Flightlevel Norwood LLC. We plan to increase this amount in January 2009 to \$0.06 per gallon delivered. We believe that another fuel farm on the Airport will significantly reduce our fuel revenue. In order for BMA to agree to an easement for the new fuel farm we would require compensation equal to the flowage fee paid by Flightlevel or future BMA tenants for gallons of fuel delivered at this new fuel farm. Payment would be made quarterly with manifests to verify quantities.

As long as this provision is met, I will grant The NAC a utility easement down the Gate 3 Taxiway for the extent of the lease of area known as the 1100 foot strip.

Sincerely,

Michael Pendergast, President
Boston Metropolitan Airport, Inc.



The TOWN OF NORWOOD

Commonwealth of Massachusetts

10-23-08
#60A

NORWOOD AIRPORT COMMISSION

BY FEDEX

October 23, 2008

U. S. Department of Transportation
Federal Aviation Administration
Attn: Mr. D. Kirk Shaffer, Associate Administrator for Airports
800 Independence Ave., S.W.
Washington, D.C. 20591

Bryan H. Corbett, *Chairman*
Mark P. Ryan, *Vice Chairman*
Leslie W. LeBlanc
Kevin J. Shaughnessy
Thomas J. Wynne

RE: FAA Docket No: 16-07-03, Boston Air Charter v. Norwood Airport Commission; Amended Corrective Action Plan to meet the FAA Order

Dear Mr. Shaffer:

On behalf of the Norwood Airport Commission (NAC), please be advised that your letter, dated October 6, 2008, has been received. We understand that the Town's corrective action plan, filed with your office May 23, 2008, fails to fully comply with the final agency decision on the four parts of its Order. In response, we've taken actions that we believe more fully meet the obligations set forth.

Part 1 of the Order states:

"That the Town has or will provide access to aeronautical service providers, including *Boston Air Charter*, to establish a fuel facility and conduct self-fueling operations consistent with state and local regulations"

Specific to this part of the Order, in your October 6th letter, you stated: "Appropriate corrective action will occur when aeronautical service providers, including *Boston Air Charter*, gain access to power from either the public transformer on the '1,100-foot strip' or another source on the airport."

Corrective Action: At its October 21, 2008 public meeting, the NAC voted to approve funding the appraisal of a 20-foot wide, 300-foot long utilities easement, that will run from Access Road, east, through the 1,100-foot long-term leasehold of *BMA, Inc.* Once effected, this easement will allow aeronautical service providers: 1) to access to the public transformer on the 1,100-ft. strip; and/or 2) to access the Town's off-airport electrical service along Access Road, at the west boundary to the airport. Since the October 21st NAC vote, the Commission has moved forward with the appraisal process. From the Town Engineer's office, *Exhibit A* shows a schematic of the proposed utilities easement, bisecting the long-term leasehold on the airport's Gate 3.

The NAC does not have the appraisal cost, purchase price, or eminent domain damages for the proposed utilities easement in its current budget, which was adopted in March 2008 and made effective July 1, 2008. The current budget was prepared and approved prior to the issuance of the FAA's Final Decision and Order. Yet, Massachusetts law requires the NAC to have an appropriation prior to retaining an appraiser. See Mass. Gen. Laws ch. 44, §§ 31, 53. Appropriations are made by the legislative body,

which is the town meeting. The NAC intends to request an appropriation for an appraiser during the next town meeting, which is expected to take place later this fall. Nevertheless, in the interim, the NAC will attempt to negotiate an easement with *BMA* for the proposed utilities easement.

An appropriation by town meeting is also required for the acquisition of the proposed utilities easement via purchase or a taking by eminent domain. See Mass. Gen. Laws ch. 90, § 51G. Therefore, once the appraisal process is complete, the NAC will introduce an article at the Annual Town Meeting, which occurs during the spring, requesting an appropriation to cover the costs associated with the utilities easement, or, if necessary, to seek the taking of the proposed utilities easement by eminent domain. The foregoing strategy was approved by the NAC at its October 21, 2008 meeting.

In anticipation of an easement, Norwood Town Counsel has drafted a model *Deed of Easement (Exhibit B)* between *BMA* and the Norwood Airport Commission. The NAC voted to approve this model document at its October 21st meeting.

As a sidebar note: Prior to its decision to move forward with the valuation of *BMA*'s leasehold, specific to a utilities easement on Gate 3, the NAC approached *BMA*, requesting that *BMA* grant the Town an easement. However, *BMA* would only agree to an easement if the company were to receive compensation from the Town equal to a flowage fee already being received from its leasehold sub-tenant, *Flight Level*, formerly *Eastern Air Center*. (See *Exhibit C*.) The NAC did not consider this an acceptable arrangement, since the Town would have been required to pay a flowage fee to *BMA* for an indefinite period of time, based on the assumption that any decrease in *BMA*'s fuel flowage from *Flight Level* would be made up by the NAC. Though this was studied as a possible means to access the long-term leasehold quickly, the NAC concluded that, long-term, this would not constitute prudent action. Moreover, the NAC believed that the FAA would not consider supporting, as an acceptable practice, such an arrangement. Indeed, the possibility of reverter contemplated by *BMA*'s proposal conflicts with the type of long-term commitment disavowed by the FAA as inconsistent with the grant assurances and the responsibility of the NAC to retain control over Norwood Memorial Airport.

Parts 2 and 3 of the Order state:

“That the Town has ended or will end the practice of awarding long-term leases of federally funded ramps that have the effect of granting one party control over the majority of the ramps on the airport”

“That the Town will put in place a short-term ramp leasing policy for the airport to assert more control of the federally funded ramps”

Specific to these parts of the Order, in your October 6th letter, you stated: “Appropriate corrective action will occur when the Town enacts a short-term leasing policy or short-term standard lease form or revocable permit for ramp parking. The lease or permit should include a subordination clause to the FAA grant assurances. The subordination clause should give the Town the ability to amend the lease or permit to comply with all existing and future FAA grant assurances. Such corrective action will demonstrate the Town’s ability to gain control of the federally funded ramps.

Corrective Action: At its October 21, 2008 public meeting, the NAC voted to approve the enclosed short-term lease form, and all conditions set forth therein, as shown in *Exhibit D, Norwood Memorial Airport, Standard Ground Lease Form, Short-Term*.

Specifically, I direct your attention to the following sections of the *Norwood Memorial Airport, Standard Ground Lease Form, Short-Term*:

IX. RULES AND REGULATIONS: Lessee agrees to observe and obey the Norwood Memorial Airport General Regulations, and any standards, regulations, plans and programs incorporated therein (collectively referred to as the General Regulations), adopted by the Norwood Airport Commission, as the same may be amended from time to time, and to conform to such rules and regulations applicable to the operation of aircraft also issued by the Norwood Airport Commission on an airport. Additionally, to comply with the directives of the Federal Aviation Administration (FAA) and the Massachusetts Aeronautics Commission (MAC) with respect to operation of aircraft on an airport. Lessee to acknowledge receipt of a copy of the General Regulations referred to herein and relating to conduct of person and business at the airport. The provisions of the General Regulations, as amended from time to time, are incorporated herein. To the extent the General Regulations are inconsistent with this lease, the the General Regulations shall control.

...

XXX. FEDERAL AND STATE REQUIREMENTS: It is mutually understood and agreed that in exercising the rights and privileges herein granted for furnishing aeronautical services to the public, the Lessee will: a.) Furnish said services on a fair, equal and not unjustly discriminatory basis to users thereof, and b.) Charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided, however, that Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

It is understood and agreed that: a.) no right or privilege has been granted which would serve to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform; b.) nothing herein contained shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958; and c.) no lessee will be given more favorable terms for providing the same public service than any other lessee.

The Lessee for self, personal representatives, assigns and successors in interest, further agrees as a covenant running with the land: a.) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise subjected to discrimination in the use of its facilities. b.) In the construction of any improvements on, or under such land and the furnishing of services thereon, no person, on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, c.) Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulation may be amended, that in the event of a breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the lease, and to

re-enter and repossess said land, order the removal of Lessee's goods and to hold said land as if this lease had never been made or issued.

This lease shall be subordinate to the provisions of any existing or future agreement entered into between the Lessor and the United States of America for the purpose of obtaining federal aid for the improvement and/or development of the airport; that nothing in the lease shall be construed to grant or authorize the granting of an exclusive right; that the facilities of Norwood Memorial Airport have been financed in large part by grants from the Federal Aviation Administration (FAA) and/or Massachusetts Aeronautics Commission (MAC), meaning that receipt of these grants is conditional upon compliance by the NAC with certain assurances, and therefore, any term or condition of this lease which is found to be in conflict or inconsistent with any such federal and/or state grant assurance shall be subordinated to such federal and/or state grant assurance; and that the NAC, in compliance with FAA and/or MAC grant assurances, may not and does not give any lessee assurances of exclusive access or monopolistic rights on or to Norwood Memorial Airport, and thus, any commercial activity authorized on the premises of this lease may be subject to competition from others, on or off the airport. The Lessor has the right to amend this lease to comply with all existing and future FAA and/or MAC grant assurances.

Lessor reserves the right to cancel this lease in the event of a national emergency or declaration of war by the United States of America, and Lessor is notified of the exercise of the federal government's right to recapture and control the airport.

To the extent any of the foregoing sections required by Federal or Massachusetts law are inconsistent with other, non-statutory sections in this lease, any statutorily-mandated provisions contained herein shall control.

XXXI. RESERVED RIGHTS. In addition to any rights reserved by the Lessor hereunder, the Lessor reserves the right: a.) to further develop or improve the airside and landside areas of the airport as it sees fit, and without interference or hindrance; b.) to maintain and keep in good repair the landing areas of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of lessees in this regard; c.) to take any action it considers necessary to protect the aerial approaches to the airport against obstruction, together with the right to prevent lessees from erecting, or permitting to be erected, any building or other structure on or adjacent to the airport which would limit the usefulness of the airport or constitute a hazard to aircraft; and d.) to take any action it considers necessary to comply with any grant assurances, obligations, or responsibilities imposed upon the Town of Norwood or the Lessor by the FAA and/or the MAC, including but not limited to entering the Airport's leased premises for any reason and/or amending or terminating any lease agreement.

In addition, I direct your attention to the proposed *Norwood Memorial Airport General Regulations*, which is attached as *Exhibit E*. Specifically, Section VI., *Lease/Sub-Lease Requirements*, is consistent with your October 6, 2008 letter and mirrors the above-quoted provisions of the *Norwood Memorial Airport, Standard Ground Lease Form, Short-Term*. On October 21, 2008, the NAC voted to approve the *Norwood Memorial Airport General Regulations*, pending approval by the MAC, which remains ongoing.

Part 4 of the Order states:

“That the Town has, or will, regain the airport’s rights and powers to access the ‘1,100-foot strip’ to provide power to the airport’s ramps for airport tenants.”

Specific to this part of the Order, in your October 6th letter, you stated: “Appropriate corrective action will occur when the Town provides documentation to this office evidencing that it has gained unrestricted access to the public power source on the “1,100-foot strip” to provide power to the airport ramps for airport tenants.”

Corrective Action: As noted in the Town’s corrective action for Part 1 of the Order, at its October 21, 2008 public meeting, the NAC voted to approve the appraisal of a 20-foot wide, 300-foot long utilities easement, that will run from Access Road, east, through the 1,100-foot leasehold of *BMA, Inc.* Such an easement will enable the Town to regain the airport’s rights and powers to access the “1,100-ft. strip” to provide power to the airport’s ramps for airport tenants.

To determine the value of the easement, the Town must first complete the appraisal process now underway. *BMA* and the Town must then agree to the appraised value of the utilities easement. Alternatively, the NAC may acquire the proposed utilities easement via a taking by eminent domain. Regardless of the specific manner of acquisition, an appraisal is appropriate and necessary. Realistically, we anticipate this process to take 6-8 months to complete, after which we expect to: (1) request an appropriation at the Annual Town Meeting; and (2)(a) either execute a Deed of Easement with *BMA (Exhibit B)*, or (b) execute an order of taking by eminent domain.

In closing, Mr. Shaffer, the NAC believes it has fully met Parts 2 and 3 of the FAA Order, and is moving earnestly toward full compliance relative to Parts 1 and 4. These parts to the Order require that we pursue a utilities easement. We’ve determined this action to be the only viable and practical option for bringing power to tenants not currently able to gain access to power, and who desire electrical service in that quadrant of the airport. However, the NAC is subject to the requirements of the Massachusetts General Laws. We ask for the FAA’s patience as we forge ahead in a direction we believe will render a satisfactory conclusion to these parts of the Order. We will certainly continue to keep Donna Witte, of FAA’s New England Region, briefed on our progress.

Thank you.

Sincerely,



Mark P. Ryan, Vice Chairman
Norwood Airport Commission

Attachments:

- Exhibit A: Proposed Utilities Easement*
- Exhibit B: Deed of Easement*
- Exhibit C: October 17, 2008 Letter from BMA to the Norwood Airport Commission*
- Exhibit D: Norwood Memorial Airport, Standard Ground Lease Form, Short-Term*
- Exhibit E: Norwood Memorial Airport General Regulations*

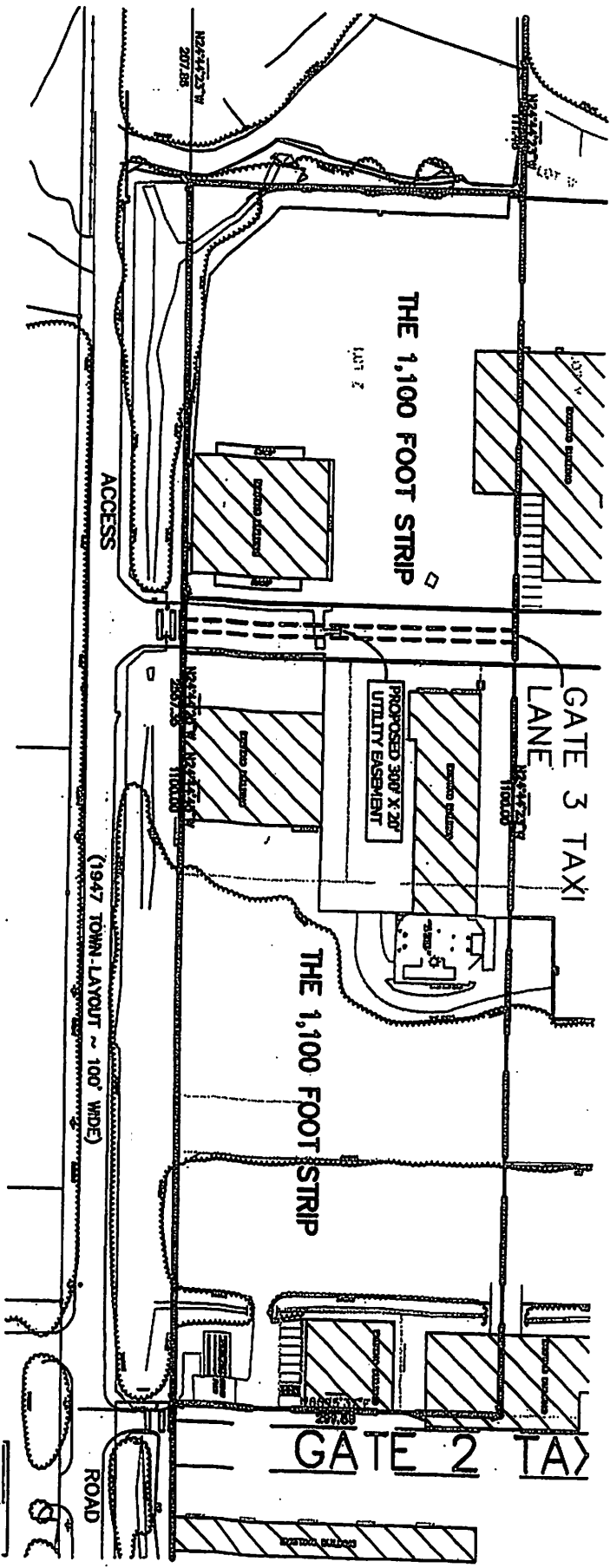


EXHIBIT A

**PROPOSED UTILITY EASEMENT
NORWOOD MEMORIAL AIRPORT
IN**

NORWOOD, MA

**TOWN OF NORWOOD ENGINEERING DEPT.
SCALE: 1"=150'
OCTOBER 20, 2008**

DEED OF EASEMENT

THIS DEED OF EASEMENT is made this ____ day of _____, 2008 by BOSTON METROPOLITAN AIRPORT, INC. ("Grantor"), a Massachusetts corporation whose principal office is at 29C Longview Road, North Falmouth, Massachusetts 02556, in favor of the TOWN OF NORWOOD, a Massachusetts municipal corporation acting by and through the NORWOOD AIRPORT COMMISSION, whose mailing address is 125 Access Road, Norwood, Massachusetts 02062 ("Grantee").

RECITALS

WHEREAS, Grantee is the holder of a leasehold estate involving the parcel of land described in Document No. 288220 on Certificate of Title No. 83911, filed with the Norfolk County Registry District of the Land Court on December 28, 1967 ("Subject Premises");

WHEREAS, Grantee leased the Subject Premises to Boston Metropolitan Airport, Inc. ("BMA"), filed with the Norfolk County Registry District of the Land Court on December 28, 1967 as Document No. 288221 on Certificate of Title No. 83911;

WHEREAS, Grantee desires to obtain an all-purpose utility easement across, over, along, upon, under and through the Subject Premises ("Easement"); and

WHEREAS, Grantor is willing to grant such an Easement and subject to the terms set forth below.

NOW, THEREFORE, for consideration of \$ _____, Grantor hereby grants and conveys to Grantee, its successors and assigns, an Easement across, over, along, upon, under and through the Subject Premises, as shown _____, and annexed hereto as Exhibit A and made a part hereof.

The Easement rights within the easement area ("Easement Area") granted by this Deed of Easement are more specifically described as follows:

1. Grantee shall have the right to construct, install, replace, maintain, repair, improve and operate underground utility lines and appurtenant facilities and equipment. Grantor and its successors-in-interest shall not erect, install, place or maintain any building, improvement, equipment or fixture in or on the Easement Area that would interfere with the exercise of the easement rights granted herein.
2. Grantor hereby authorizes and empowers Grantee, its agents, servants, workers, successors and assigns to enter in and upon the Subject Premises with tools, materials and equipment for the purposes expressed in Paragraph 1. above. Grantor hereby authorizes Grantee, its successors and

EXHIBIT B

assigns, to enter in and upon the Easement Area with persons and machinery, vehicles and material, at any and all times for the purposes expressed in Paragraph 1. above, and for doing anything necessary, useful or convenient for the enjoyment of the easement herein granted.

3. Grantee shall have the right of access over the Easement Area to exercise the easement rights granted herein.
4. Grantee shall be authorized to clear debris from the said Easement Area and to do all work which is consistent with the foregoing purposes.
5. The parties agree that if there is a conflict between the terms of this Deed of Easement and the Federal Aviation Administration ("FAA") Grant Assurances, said Grant Assurances shall take precedence and govern. Further, the terms of this Deed of Easement shall be subordinated to said FAA Grant Assurances and any surplus property obligations of Grantee to the FAA. The parties agree to amend this Deed of Easement and to execute any additional legal documents in the furtherance of Grantee's compliance with said FAA Grant Assurances and surplus property obligations of Grantee.
6. The easement rights granted herein shall extend to and be binding on the heirs, successors and assigns of the parties hereto and shall run with the land.
7. It is in the intent of the parties that this Easement be freely transferable by Grantee to one or more transferees. Furthermore, Grantee shall have the right to transfer its rights under this Easement separately from any lands owned by Grantee and benefited by this Easement.
8. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
9. Grantor has full legal capacity, power and authority to grant the easement created hereby.

For Grantor's title see

Certificate No. _____

IN WITNESS WHEREOF, Grantor has caused this Deed of Easement to be executed and delivered as of the date first set forth above.

WITNESS:

GRANTOR:
BOSTON METROPOLITAN AIRPORT, INC.

THE COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

, 2008

On this ____ day of _____, 2008, before me the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

NOTARY PUBLIC

My Commission Expires: _____

RECEIPT AND ACCEPTANCE

We, the undersigned members of the AIRPORT COMMISSION of the TOWN OF NORWOOD, hereby certify that we approve the receipt and acceptance of the foregoing Deed of Easement under Massachusetts General Laws, Chapter 90, Section 51G as it has been and may be amended.

EXECUTED AND SEALED THIS _____ DAY OF _____, 2008.

October 17, 2008

Norwood Airport Commission
125 Access Road
Norwood, MA. 02062

Dear Mr. Chairman,

This letter is sent to you by request of members of the Norwood Airport Commission (NAC) to state my position of granting the NAC a permanent utility easement for construction, maintenance and improvements on the Gate 3 taxiway.

According to the Airport Manager and two of NAC's members, this easement is sought by the NAC as a result of actions by a tenant at the Norwood Memorial Airport. This tenant wishes to gain access to power so that he can operate a fuel farm for self-fueling and presumably sale of fuel to others on at the airport.

I am not opposed to granting this easement as long as it does not result in a loss of revenue for Boston Metropolitan Airport (BMA). Currently BMA receives a flowage fee of \$0.04 per gallon delivered by our tenant Flightlevel Norwood LLC. We plan to increase this amount in January 2009 to \$0.06 per gallon delivered. We believe that another fuel farm on the Airport will significantly reduce our fuel revenue. In order for BMA to agree to an easement for the new fuel farm we would require compensation equal to the flowage fee paid by Flightlevel or future BMA tenants for gallons of fuel delivered at this new fuel farm. Payment would be made quarterly with manifests to verify quantities.

As long as this provision is met, I will grant The NAC a utility easement down the Gate 3 Taxiway for the extent of the lease of area known as the 1100 foot strip.

Sincerely,

Michael Pendergast, President
Boston Metropolitan Airport, Inc.

EXHIBIT C

Norwood Memorial Airport Standard Ground Lease Form, Short-Term

This Lease agreement is made the first day of _____ (Month, year) by and between the Norwood Airport Commission (NAC) (Lessor) and _____ (Lessee). Lessor: Norwood Airport Commission, acting pursuant to its statutory powers as set forth under Massachusetts State Laws, Chapter 90, Sections 51D through 51N, as the same may be amended, by and on behalf of the Town of Norwood, and having its usual place of business at the Norwood Memorial Airport, 125 Access Road, Norwood, MA 02062. Lessee: _____ (Business name) having its usual place of business at the Norwood Memorial Airport, _____ (Street address), Norwood, MA 02062.

I. **GROUND SPACE:** In consideration of the rent and covenants herein reserved and contained on the part of the Lessee to be paid, performed and observed, the Lessor hereby leases unto the Lessee a parcel of land containing approximately _____ square feet of land (commonly referred to as "_____ Ramp") and shown on an Exhibit A plan attached hereto, situated on the Norwood Memorial Airport in Norwood, Massachusetts. The leased premises are marked "_____ Ramp" on said plan.

II. **TERM:** Subject to earlier termination as hereunder provided, this lease is for one term of five (5) years, commencing on the first day of _____ (Month, year) and ending on the last day of _____ (Month, year).

III. **RENT:** It is the intent of both the Lessor and the Lessee that the Lease shall be a net Lease, with the Lessor to receive all rental payments herein, without offset or deduction of any kind. Lessee shall pay the sum of \$ _____ annually, payable in quarterly installments of \$ _____ in advance. The basis for this land rental fee is per square foot per year. The first payment shall be made upon the execution and delivery of this Agreement to the Lessor, and subsequent payments shall be made on the first day of each month thereafter, in advance, during the Term hereof, as same may be extended, as Lessee or anyone claiming under Lessee shall occupy said premises or any part thereof. The Lessee further agrees to pay the Lessor finance charges of 1 ½% per month (18% annual percentage rate) on all rents and payments due under this lease for each month or fraction of a month that the rents or payments remain unpaid beyond thirty (30) days after the date on which they are due, or as specified above.

IV. **USE OF THE PREMISES:** Lessee shall have the right to use the premises for the following purposes and activities, and those purposes directly needed to accomplish such uses and none other. The leased premises shall be used for: _____ . Further the Lessee agrees to adhere to all environmental

EXHIBIT D

requirements regarding _____ . As an accessory due to limited parking, Lessee may also park automobiles on the leased premises for personnel and customers. It is agreed that the Lessor makes no representation or guarantees that the leased area is fit for the uses to which they are placed by the Lessee, but rather, that Lessee has made its own independent judgment that the leased premises are suitable to Lessee's needs.

V. **INSURANCE:** The Lessee agrees that it will secure and pay for general liability insurance with respect to the leased area, insuring the Lessee and the Lessor against all claims for injuries to a person or property sustained by anyone while on the premises leased to the Lessee. Insurance will include product and service provided by the Lessee. Lessee will maintain property and public liability insurance with limits not less than one million dollars (\$1,000,000) per incident for bodily injury or death, and property damage with aggregate limits not less than ten million dollars (\$10,000,000). Insurance will be in responsible companies authorized to do business in Massachusetts. Lessee shall provide Lessor with duplicate original of policies providing such insurance and shall provide reasonable evidence by providing an annual updated policy to the Lessor. Insurance amounts shall at all times conform to the rules and regulations issued by the Massachusetts Aeronautics Commission (MAC) and the Norwood Airport Commission's rules and regulations for operating the airport. Copies of all insurances and binders will be filed in the offices of the Norwood Airport Commission.

VI. **ASSIGNMENTS, MORTGAGES, OR SUBLEASES:** Neither Lessee, nor its successor, heirs or assigns, shall assign, mortgage, pledge, or encumber this lease. Leased area may not be sub-let for any purpose. Lease shall not be assigned or transferred by operation of law, without the prior consent in writing of the Lessor in each instance. If lease is assigned or transferred, or any part of the leased area is used by other than the Lessee, Lessor may, after default by Lessee, collect rent from assignee, transferee, or occupant and apply amount collected to the rent reserved herein, but no such assignment, occupancy, or collection shall be deemed a waiver of any agreement or condition hereof, or acceptance of the assignee, transferee, or occupant as Lessee. Lessee shall continue to be liable hereunder in accordance with the terms and conditions of this lease and shall not be released from the performance of the terms and conditions hereof. The consent of the Lessor to an assignment, mortgage, pledge, or transfer shall not be construed to relieve Lessee from obtaining the express written consent to any future transfer of interest.

VII. **SPECIAL CONDITIONS:**

All activities shall be in accordance with the Norwood Airport Security Plan, including restrictive access control to and from the leased area. The NAC reserves the right to alter its security plan as needed to reflect the national security requirements in the future. The NAC further reserves the right to alter access to the site for safety and security reasons.

— STANDARD PROVISIONS —

VIII. ACCESS AND EGRESS: Lessee shall at all times have the full and free right of access and egress to the leased property referred to herein, subject, however, to safety and security requirements. This applies additionally, for employees, customers, passengers, guests and invitees of the Lessee. Such rights shall extend to persons or organizations supplying materials or furnishing services to the Lessee, including the use of vehicles, machinery and equipment reasonably required by such person or organization, provided, however, that such use shall conform to rules and regulations, plus security guidelines of the Norwood Airport Commission regulating such activity.

IX. RULES AND REGULATIONS: Lessee agrees to observe and obey the Norwood Memorial Airport General Regulations, and any standards, regulations, plans and programs incorporated therein (collectively referred to as the General Regulations), adopted by the Norwood Airport Commission, as the same may be amended from time to time, and to conform to such rules and regulations applicable to the operation of aircraft also issued by the Norwood Airport Commission on an airport. Additionally, to comply with the directives of the Federal Aviation Administration (FAA) and the Massachusetts Aeronautics Commission (MAC) with respect to operation of aircraft on an airport. Lessee to acknowledge receipt of a copy of the General Regulations referred to herein and relating to conduct of person and business at the airport. The provisions of the General Regulations, as amended from time to time, are incorporated herein. To the extent the General Regulations are inconsistent with this lease, the General Regulations shall control.

X. GOOD AND SUFFICIENT REPAIR: It is agreed the Lessor shall be under no obligation to maintain or repair leased area, but that Lessee shall keep leased area in good and sufficient repair and to quit and deliver up premises upon termination of the lease in the same condition they are now in. Ordinary wear and tear and damage resulting from the elements, or circumstances over which Lessee had no control are excepted. The Lessee shall be responsible for snow removal within the leased area. It is further agreed that pavement maintenance and crack seal repair be performed annually, or more frequently, if needed.

XI. RIGHT TO MAKE IMPROVEMENTS, ALTERATIONS, OR REPAIR: Lessor reserves the right from time to time to make improvements, alterations, renovations, changes and repairs in and about the leased premises. Other than those herein before provided for the Lessee to do, as to the Lessor shall be deemed desirable. Lessee shall make no claim against the Lessor for interference with leasehold interest or for loss or damage to its business during such improvements, alterations, renovations, change and repair. The Lessee shall not hinder or interfere with the Lessor. Lessor shall have the right at all times to erect a building or structure on adjoining or neighboring

premises as it deems fit or proper, without any liability to Lessee therefore in any event or any cause. The Lessor, as the authorized representative of the airport, is solely in charge of determining the nature and scope for improvements to the airport. Through the Airport Layout Plan (ALP) and/or the Airport Master Plan, the Lessor shall determine as it seems fit and proper, without any liability to the Lessee, therefore in any event, or any cause. Lessee agrees not to make or suffer to make any alteration therein without the approval of Lessor in advance of any work.

XII. **LESSEE TO RESTORE PREMISES:** In the event the leased property is destroyed in whole or in part by fire or other casualty, or by the Lessee's want of care, Lessee shall on receipt of notice from Lessor promptly rebuild or restore premises to their previous condition, or alternately, may elect to demolish the remaining structure, restore the ground site to pre-lease condition, and terminate this agreement upon thirty day's (30) written notice to Lessor. The Lessee shall remain liable for any rent hereunder at all times, notwithstanding rebuilding, restoration or demolition, and the Lessor shall not be liable for any costs incurred by the Lessee attributable to any election of Lessee hereunder.

XIII. **LESSEE TO COMPLY WITH FIRE PREVENTION LAWS:** Lessee shall at all times comply with fire Code, rules and regulations of the Norwood Fire Department for the prevention of fires and the environmental safety of the Leased area. Lessee shall at their own expense comply with all orders relating thereto, provided, however that there shall be no obligation to make substantial changes or to install costly fire prevention systems. No hazardous use of the leased area is authorized.

XIV. **INDEMNIFICATION OF LESSOR:** Lessor shall not be liable for any loss, injury, death or damage to person or property, which may be suffered, sustained or incurred by Lessee, employees, visitors, users or occupants of leased area, whether such loss, injury, death or damage shall be caused by, or in any way result from, or arise out of any act, omission, or negligence of Lessee or any occupant, subtenant, visitor, or user of any portion of the leased area, or result from or be caused by any other matter or thing, whether of the same kind or of a different kind than the matter of things set forth, and Lessee shall indemnify the Lessor against all claims, liability, loss, injury, death or damage. Lessee hereby waives all claims against Lessor for damages to improvements that are now on or hereafter may be placed on the premises and to the property of the Lessee in or about the leased area, from any cause arising at any time during the term thereof. The two preceding sentences shall not apply to loss, injury, death or damage by reason of the sole negligence or misconduct of Lessor, its agents or employees.

It is understood that the Lessor shall not be liable in any way to the Lessee, its agents, representatives, or employees for any injury to persons or damage to property resulting from the sinking or settlement of the land or from any change in the physical condition of

the land or from any change in the physical condition of the land caused by the elements, erosion or deterioration.

XV. **TAXES:** Real estate taxes, if any, on leased land will be the obligation of the Lessee.

XVI. **TERMINATION BY LESSOR:** Lessee hereby covenants with Lessor, its successors and assigns, that it will pay hereof unto the Lessor the monthly rent upon the days appointed for payment, and also all taxes and assessments, including any penalties of whatever nature. If the Lessee fails to make payments due within thirty (30) days on the date on which payment is due, Lessor may, at its option, terminate this agreement and take possession the leased premises. Lessor shall have the right to terminate this agreement in the event that the Lessee, its agents or employees cause the premises to strip, waste or commit any breach of the covenants of this lease, and the Lessee shall have the right to remove its building or property not held by the Lessor for security of payment.

XVII. **LESSOR'S RIGHT OF ENTRY:** Lessee shall permit Lessor, its agents, attorney, or employees to enter demised premises at all reasonable times for the purpose of inspecting the same, or for the purpose of posting notices of non-responsibility for alterations, or repairs, without any rebate of rent and without any liability to the Lessee for any loss of occupation or quiet enjoyment of the premises thereby occasioned.

XVIII. **RE-ENTRY AND REPOSSESSION ON DEFAULT:** Lessor may terminate this agreement pursuant to Article XV, or for non-payment of taxes, assessments, or other payments obligated hereunder, or if the leased premises are abandoned or vacated by the Lessee during the term thereof.

XIX. **LESSEE'S RIGHT TO TERMINATE:** In the event the airport or the leased premises shall for any reason become unsuitable by reason of any law or regulation now or hereafter enforced affecting the Lessee's business, the Lessee shall have the right to terminate and cancel this lease upon giving the Lessor thirty (30) days' notice in writing, provided, however, that the Lessor may within such time, remove such cause for cancellation by placing the premises in suitable and safe condition so as to comply with the law and regulation affecting the same.

XX. **LESSOR'S RIGHT OF FIRST REFUSAL:** It is understood and agreed that upon the termination, cancellation, or at the end of any term hereof, if the Lessee determines not to remove property or building, the Lessor shall have first refusal to purchase property and/or buildings located on the leased premises upon terms and conditions as then are agreed, based on the original installation cost. If Lessor shall fail to execute the agreement within forty-five (45) days, Lessee shall be free thereafter to sell to

- XXIX. RIGHT TO CLOSE AIRPORT: Lessor reserves the right to develop, improve, construct, repair, reconstruct, or rehabilitate any or all of the airport facilities, including runways, taxiways, aprons, lighting systems, approach lighting installations, beacons, avionics equipment and any other facility which may at times be used to provide service to users of the airport, and in the event that such development, improvement, construction, repair, reconstruction or rehabilitation interrupts, inconveniences, interferes with or in any way adversely affects Lessee's use of the airport, or any of its facilities, the, Lessee does hereby waive any and all claim for damages arising out of such action in carrying out the aforementioned functions. Lessee hereby agrees that Lessor has not nor hereby represent, warrant or guarantee, either expressly or by implication, that the use of the airport will be available continuously or at all times, but that the airport or any of its facilities may be closed by Lessor in whole or in part for reasonable periods of time as a result of causes beyond the control of the Lessor, or for the execution of any or all of the functions set forth herein above.

XXX. FEDERAL AND STATE REQUIREMENTS: It is mutually understood and agreed that in exercising the rights and privileges herein granted for furnishing aeronautical services to the public, the Lessee will: a.) Furnish said services on a fair, equal and not unjustly discriminatory basis to users thereof, and b.) Charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided, however, that Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

It is understood and agreed that: a.) no right or privilege has been granted which would serve to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform; b.) nothing herein contained shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958; and c.) no lessee will be given more favorable terms for providing the same public service than any other lessee.

The Lessee for self, personal representatives, assigns and successors in interest, further agrees as a covenant running with the land: a.) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise subjected to discrimination in the use of its facilities. b.) In the construction of any improvements on, or under such land and the furnishing of services thereon, no person, on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, c.) Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, and as said

regulation may be amended, that in the event of a breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the lease, and to re-enter and repossess said land, order the removal of Lessee's goods and to hold said land as if this lease had never been made or issued.

This lease shall be subordinate to the provisions of any existing or future agreement entered into between the Lessor and the United States of America for the purpose of obtaining federal aid for the improvement and/or development of the airport; that nothing in the lease shall be construed to grant or authorize the granting of an exclusive right; that the facilities of Norwood Memorial Airport have been financed in large part by grants from the Federal Aviation Administration (FAA) and/or Massachusetts Aeronautics Commission (MAC), meaning that receipt of these grants is conditional upon compliance by the NAC with certain assurances, and therefore, any term or condition of this lease which is found to be in conflict or inconsistent with any such federal and/or state grant assurance shall be subordinated to such federal and/or state grant assurance; and that the NAC, in compliance with FAA and/or MAC grant assurances, may not and does not give any lessee assurances of exclusive access or monopolistic rights on or to Norwood Memorial Airport, and thus, any commercial activity authorized on the premises of this lease may be subject to competition from others, on or off the airport. The Lessor has the right to amend this lease to comply with all existing and future FAA and/or MAC grant assurances.

Lessor reserves the right to cancel this lease in the event of a national emergency or declaration of war by the United States of America, and Lessor is notified of the exercise of the federal government's right to recapture and control the airport.

To the extent any of the foregoing sections required by Federal or Massachusetts law are inconsistent with other, non-statutory sections in this lease, any statutorily-mandated provisions contained herein shall control.

XXXI. **RESERVED RIGHTS.** In addition to any rights reserved by the Lessor hereunder, the Lessor reserves the right: a.) to further develop or improve the airside and landside areas of the airport as it sees fit, and without interference or hindrance; b.) to maintain and keep in good repair the landing areas of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of lessees in this regard; c.) to take any action it considers necessary to protect the aerial approaches to the airport against obstruction, together with the right to prevent lessees from erecting, or permitting to be erected, any building or other structure on or adjacent to the airport which would limit the usefulness of the airport or constitute a hazard to aircraft; and d.) to take any action it considers necessary to comply with any grant assurances, obligations, or responsibilities imposed upon the Town of Norwood or the Lessor by the FAA and/or the MAC, including but not limited to entering the Airport's leased premises for any reason and/or amending or terminating any lease agreement.

XXXII. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the heirs, assigns or successors in interest to the parties.

XXXIII. **SEVERABILITY.** If for any reason any provision of this lease is determined to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

XXXIV. **WAIVER.** The failure by the Lessor to enforce any provision of this lease will not constitute a waiver of future enforcement of that or any other provision.

XXXV. **JURISDICTION.** Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts of Massachusetts and the parties hereby consent to the personal jurisdiction and venue of such courts.

XXXVI. **ENTIRE AGREEMENT.** This lease represents the entire agreement between the parties hereto with respect to the matter covered herein. No other agreement, representations, warranties, proposals, oral or written, shall be deemed to bind the parties.

XXXVII. **CAPTIONS.** All captions in this lease are intended solely for the convenience of the parties and none shall be deemed to affect the meaning or construction of any provision of this lease.

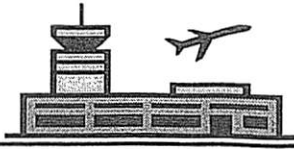
IN WITNESS WHEREOF, the parties hereto have duly affixed their hand and seal as of the day and year first above written.

LESSOR: NORWOOD AIRPORT COMMISSION, acting on behalf of the Town of Norwood

Approved by Counsel _____

LESSEE:

10-31-2008



NORWOOD MEMORIAL AIRPORT

MEMO

TO: Norwood Board of Selectmen
FROM: Russ Maguire, Airport Manager
RE: Summary on FAA Determination and Order (FAA Docket #16-07-03)

TODAY'S DATE: October 31, 2008

Per your October 23, 2008 request (attached), I am forwarding a three-page summary of the Federal Aviation Administration's determination and order (FAA Docket #16-07-03). A similar summary, in question/answer format, was presented to the Town's Finance Committee on October 7th.

As requested, I will be available to speak to the Board of Selectmen at the November 4th meeting, beginning at 7:45 p.m.

Russ Song and
dance to BOS

Pass
to
202
and

[Redacted]

1. Where are we with the FAA 'lawsuit'?

The Town of Norwood, as represented by the Norwood Airport Commission (NAC), is not currently in a lawsuit. The NAC has been given an order by FAA headquarters in Washington, D.C., pursuant to enforcement proceedings (under Part 16 of the federal aviation regulations, or FARs). This follows a complaint filed in April 2007 by one of the airport's business tenants, *Boston Air Charter*.

Summary of Issues and Findings (excerpted from the FAA Order)

The complainant (*Boston Air Charter*) alleged that the Town of Norwood violated federal law and policy when the Town failed to provide the complainant with access for the installation of electric service underground conduits to support its aviation fuel facility. However, this underground conduit would have encroached into the leasehold of *Eastern Air Center* (now *Flight Level*), the existing fixed base operator, which opposed the complainant providing aircraft fueling services.

The complainant (*Boston Air Charter*) contended that the Town of Norwood engaged in discriminatory practices and granted an exclusive right by not supporting the encroachment of *Eastern Air Center's* (*Flight Level*) leasehold, which would have given the complainant access for its underground electrical conduit. Furthermore, the complainant believed that it was prohibited from performing self-service fueling of its aircraft.

The Town argued that it could not be expected to take sides in a private dispute between two tenants over rights of access, despite the Town's desire to encourage competition. The Town's position was that it did not have the right to force *Eastern Air Center* (*Flight Level*) to provide to another business access for utilities through its leasehold. The Town also contended that it did not have an exclusive agreement with *Eastern Air Center* (*Flight Level*) to provide fixed-base operator services, including fueling. The Town further argued that the existence of one fixed base operator business (*Flight Level*) did not constitute an exclusive right. Finally, since the complainant (*Boston Air Charter*) did not/does not have a lease with the Town, the Town believed the issue was moot and the complaint should be dismissed.

In April 2006, the complaint was first filed by *Boston Air Charter* with the FAA New England Region. FAA Region determined that the Town of Norwood was not in violation of its grant assurances. However, in April 2007, the complainant filed a formal complaint with the FAA headquarters in Washington, D.C., citing federal grant assurance violations by the Town of Norwood under FAR Part 16. Subsequent to this filing, in April 2008, FAA headquarters overturned the FAA New England Region's decision, by determining that the Town of Norwood was in violation of the federal grant assurances.

The FAA said they did!

FAA said they violated Law

Sound familiar?

Per the Part 16 process, the Town of Norwood was then allowed to appeal this decision, which Town Counsel filed in August of this year. But the Town's appeal did not overturn the decision by FAA headquarters.

Therefore, the FAA determination concluded that:

- The Town violated federal grant assurance #5, *Preserving Rights and Powers*, when the Town signed a 1967 lease agreement with *Boston Metropolitan Airport, Inc.* (BMA), a tenant, depriving the Town of certain rights and powers necessary to comply with its federal obligation under the FAA grant assurances.
- The Town violated federal grant assurance #22, *Economic Nondiscrimination*, as it denied the complainant (*Boston Air Charter*) use and access to the airport on reasonable terms for the purpose of conducting a commercial aeronautical activity.
- The Town violated grant assurance #23 *Exclusive Rights*, as its granted an exclusive right to *Eastern Air Center (Flight Level)*, constructively or directly, to operate a fueling facility on the airport by entering into leases with *Eastern Air Center* and *BMA, Inc.*, thus enabling *Eastern Air Center (Flight Level)* control of the only source of power to the airport ramps, to operate a fueling facility.

1a. Have we filed a response?

To address these grant assurance violations, the Town of Norwood was required to file a corrective action plan. This has been filed with the FAA headquarters. Following an FAA review of this plan, a re-draft of some elements of this plan was re-submitted on October 23rd.

Plan rejected

1b. Will the response have any financial impact on spending or reduce planned revenues?

?

When an FAR Part 16 complaint is filed, the sponsor airport (Norwood Memorial Airport) cannot receive federal grant monies until the issue is resolved by either a determination favoring the sponsor; or acceptance of the sponsor's corrective action plan. The Town of Norwood was therefore disallowed from receiving a federal grant this past summer, which was to address the partial re-construction of a runway. This grant would have paid 95% of the cost for the project, with the state paying 2.5% and the Town picking up the remaining 2.5%. The Town was also disallowed from receiving federal grant monies this past summer to purchase an additional piece of snow removal equipment. Again, the federal grant would have paid 95% of the cost for the equipment, with the state paying 2.5%.

Any spending impacts might include the airport's local share for these projects as programmed into the airport's FY 2009 budget. Sub-account #9024 *Airport Construction - Matching Grant* identifies \$51,750 in our revised airport budget. This is an aggregate

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6/04/1979

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which includes local share monies for the aforementioned two federal projects anticipated this past summer. From this total, \$24,750 was programmed for the runway reconstruction project; and \$10,000 was programmed for the snow removal equipment project.

As for the airport's planned revenues, the FAA determination should not have an impact.

1c. What, if any, penalties, charges may come with a judgment?

When an FAR Part 16 complaint is filed, the sponsor airport (Norwood Memorial Airport) cannot receive federal grant monies until the issue is resolved by either a determination favoring the sponsor; or acceptance of the sponsor's corrective action plan.

2. Where are we with the FY 2009 airport budget activity?

See budget variance report

2a. Analysis of revenues and expenses to date?

See revenues/expenses sheet

2b. Any cost savings from rent elimination due to the new building?

The building is now nearing Phase 1 completion, which essentially will make it a cold storage facility for all of the airport's equipment. The building will require a financial commitment from the Massachusetts Aeronautics Commission and Town to address Phase II, which will include the second floor fit-out for office space. Therefore, the Airport Department must continue to lease out space for its operation, until Phase II is completed.

2c. Forecast through the end of FY09 – due to lawsuit corrective action?

Again, this is not a lawsuit, it is a complaint. However, addressing the FAA's violations will not allow the Town of Norwood to accept federal grant monies until our corrective action plan is approved by FAA. Direct and indirect revenues to the Town will not be affected.

*Russ/Mark
Snow Building
Completed 1.5 million
"Fit out"
Code for
New for
Palace for
Russ*

George
Loren
for
first
out
of
the
project
for
the
1.2 million
mark
1967
George
Loren

U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Associate
Administrator for Airports

800 Independence Ave., SW.
Washington, DC 20591

JAN 15 2009

Mark P. Ryan, Vice Chairman
Norwood Airport Commission
Post Office Box 40
Norwood, MA 02062

**RE: Boston Air Charter v. Norwood Airport Commission,
FAA Docket 16-07-03
Amended Corrective Action Plan, October 23, 2008**

Dear Mr. Ryan

Thank you for your October 23, 2008 amended corrective action plan required by the Director's Determination in FAA Docket 16-07-03 and affirmed in the FAA's Final Decision and Order. We appreciate the Norwood Airport Commission's (NAC) efforts to address the issues raised in the FAA's Final Decision and Order. The NAC's intention to conduct an appraisal and acquire the easement combined with the development of a model easement indicates the Airport's recognition of the problem.

We concur with your decision not to accept Boston Metropolitan Airport's offer. Boston Metropolitan Airport's offer, granting a utility easement in return for fuel flowage fee receipts from all aeronautical service providers using the easement, may jeopardize the Town's rights and powers and the Airport's financial self-sustainability.

Unfortunately, the corrective action plan fails to address the following concerns:

- Part One: *"The Town has provided or will provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with state and local regulations."*
- Part Four: *"That the Town has, or will, regain the airport's rights and powers to access the "1,000-foot strip" to provide power to the airport's ramps for airport tenants."*

While the plan describes the process the NAC must employ to gain access to the property, it does not address how the Airport will provide access to aeronautical service providers. A key piece of an acceptable corrective plan will be the description of how the Airport will provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with state and local regulations.

Your letter indicated that the Commission does not have an appropriation in the current fiscal year Town budget for the appraisal and acquisition of this easement. FAA's Final Order and Decision is very clear, it requires the Town, the airport sponsor, to correct these deficiencies and bring the Airport in compliance with its grant assurances.

Plan fails

Same thing
done to
BEH

The FAA's Final Order and Decision also requires:

- Part Two: "The Town has ended or will end the practice of awarding long-term leases of federally funded ramps that have the effect of granting one party control over the majority of the ramps on the Airport".
- Part Three: *The Town will put in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally funded ramps".*

← Key -
BEH still
waiting

We have no objection to the NAC using a five year term as the basis for its short-term standard ground lease. However, we do not see a provision in the lease that permits the Airport to recapture the common use ramps and redistribute the space in the event new fixed base operators establish businesses on the Airport. Based on provisions in the lease, a new operator would have to wait five years before ramp space could be made available. Adding a provision in the lease that permits the Airport to redistribute common use ramp space based on the needs of the Airport would be an appropriate means to address this issue. FBO operators would still have a preferential right to use ramp space immediately in front and adjacent to their FBO facilities.

Please submit the necessary changes to your lease form. In addition, please submit a revised corrective action plan to my office identifying a reasonable timetable to comply with the requirements of Part one and four and that also includes the date when funds will be made available for the necessary corrective action. Please direct all future correspondence to my attention

We look forward to reviewing your new submission.



Randall Fiertz
Director, of Airport Compliance
and Field Operations

Copies to:

Mr. Matthew Watsky, Esquire
Attorney at Law
East Brook Executive Park
30 Eastbrook Road, Suite 301
Dedham, MA 02026

Michael C. Lehane, Esquire
Murphy, Hesse, Toomey & Lehane, L.L.P.
300 Crown Colony Drive
Quincy, MA 02269

Game to
BEH

BEH
Game to
BEH

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The TOWN OF NORWOOD

Commonwealth of Massachusetts

1-16-09 (D)

Norwood Memorial Airport

Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS

125 Access Road
Norwood, MA 02062

MAILING ADDRESS

125 Access Road
Norwood, MA 02062

January 16, 2009

BY FAX; ORIGINAL SENT BY MAIL

Masterman, Culbert & Tully
Attn: Mr. Paul L. Bacari, Esq.
One Lewis Wharf
Boston, MA 02110

Dear Mr. Bacari:

On January 9, 2009, I received your November 12, 2008 letter, which you apparently attempted to send to my office, but which never actually arrived by U.S. mail. However, I did receive your request by way of the *Public Records Division* of the Commonwealth of Massachusetts.

According to your most recent letter, in light of the cost projections detailed in my November 5, 2008 letter, you have attempted to narrow the scope of the original document list, which was a request for 22 classes of documents going back to 2004, and relating to:

- Boston Air Charter
- Al Bishop
- Eastern Air Center
- FAA
- Electrical transformers
- Russ Maguire
- Peter Eichleay
- AvFuel
- Agents, servants and employees of AvFuel
- Mass. State Fire Marshal's office
- Norwood Fire Department
- NFD Lieutenant Paul Butters

E

- NFD Chief Michael Howard
- Massachusetts Aeronautics Commission
- Massachusetts Department of Environmental Protection

However, in reviewing your most recent request, and comparing this request to your October 24, 2008 request, I only note that you are not asking for documents and correspondence between the Norwood Airport Commission and Bahig Bishay, Sidney Fagelman, Anthony Prevett and Joe Federico. Otherwise, your itemized requests appear to be similar between the October 24, 2008 letter and the November 12, 2008 letter.

More specifically, here are my findings:

1. Items #10 and 11 from the October 24, 2008 letter have been combined into Item #10 in the November 12, 2008 letter
2. Items # 12, 13, 14 and 15 were deleted from the November 12, 2008 letter
3. Items #16, 17, 18, 19, 20, 21 and 22 in the October 24, 2008 letter were incorporated into Items #11, 12, 13, 14, 15, 16 and 17 of the November 12, 2008 letter.
4. In the November 12, 2008 letter, for items #13, 14, 15, 16 and 17, you have added additional language to the itemized requests "...that pertain to Al Bishop, fueling services, or electrical power sources at the Norwood Airport.

Therefore, in your most recent letter, you again are requesting documents going back to 2004, relating to:

- Boston Air Charter
- Al Bishop
- Eastern Air Center
- FAA
- Electrical transformers
- Russ Maguire
- Peter Eichleay
- AvFuel
- Agents, servants and employees of AvFuel
- Mass. State Fire Marshal's office
- Norwood Fire Department
- NFD Lieutenant Paul Butters
- NFD Chief Michael Howard
- Massachusetts Aeronautics Commission
- Massachusetts Department of Environmental Protection

At this time, I estimate it will take approximately 152 man-hours to segregate and identify these documents. Since the Norwood Airport Commission employees only two persons (myself and the Assistant Airport Manager), the hourly rate of the lowest-rated

(F)

employee who could do this work is that of the Assistant Airport Manager, at the hourly rate of \$27.52.

In addition, I estimate that your request would entail at least 9,500 pages, which would be charged at \$0.20 per page. The actual number of pages could be far larger, but almost certainly would not be less. Thus, there may be additional charges. In any case, the actual charges both for time and for copies will be adjusted (either upward or downward) to correspond with actual experience.

At this point, my best estimate of the charges to comply with your request is as follows:

a) Labor:	152 man-hours @ \$27.52/hr.	=	\$4,183.04
b) Copies:	9,500 copies @ \$0.20/copy	=	<u>\$1,900.00</u>

TOTAL	=	\$6,083.04
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If you wish me to proceed with providing these documents, please forward your check in the amount of \$6,083.04, made payable to the Norwood Airport Commission, together with written recognition that actual charges may be more or less, and that reconciliation will be done at the completion of the task.

On a final note: To ensure that any future letter requests are received, I would urge you to also send your requests directly by fax. My fax number is (781) 255-5617.

Thank you.

Sincerely,



Russ Maguire, Manager
Norwood Memorial Airport

CC: *Norwood Airport Commission; Norwood Town Counsel; Rebecca Murray, Public Records Division, Commonwealth of Massachusetts*

G



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Alan N. Cote
Supervisor of Records

January 7, 2009
SPR08/302

Mr. Paul L. Baccari, Esq.
Masterman Culbert & Tully
One Lewis Wharf
Boston, MA 02110

Re: fee estimate

Dear Atty. Baccari:

I have received your letter appealing the response of the Norwood Memorial Airport to your request for records.

I have directed a member of my staff, Attorney Rebecca S. Murray, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Very truly yours,

Alan N. Cote
Supervisor of Records

ANC/js

Cc: Mr. Russ Maguire

(H)

One Lewis Wharf Boston 02110 TEL 617.722.8100 FAX 617.722.8101 WEB WWW.MCTLAW.COM

Masterman
Culbert & Tully

Paul L. Baccari, Esquire
plb@mctlaw.com
617-722-8132

November 12, 2008

Mr. Russ Maguire
NORWOOD AIRPORT COMMISSION
125 Access Road
Norwood, Massachusetts 02062

Re: Massachusetts Public Records Request

Dear Mr. Maguire:

I have received your letter dated November 5, 2008, responding to my document production request pursuant to Massachusetts Public Records Law, M. G. L. c. 66, §10. In light of the cost projections detailed in your letter, I have narrowed the scope of the original document list.

Please provide an updated price estimate for the production of the following documents in accordance with the definitions annexed hereto:

- 1) All documents that pertain to Boston Air Charter, and any correspondence between the Commission and Boston Air Charter.
- 2) All documents that pertain to Al Bishop, and any correspondence between the Commission and Al Bishop.
- 3) All agreements between the Commission and Boston Air Charter, and any document that pertains to such written or oral agreements.
- 4) All agreements between the Commission and Al Bishop, and any document that pertains to such written or oral agreements.
- 5) All documents that pertain to electrical transformers or other power sources at the Norwood Airport.
- 6) Any correspondence between the Commission and the FAA regarding or pertaining to Boston Air Charter, Al Bishop, Eastern Air Center, the FAA Ruling, fueling services or facilities, or the Commission's corrective plan of action required and described in the FAA Ruling.



Mr. Russ Maguire
NORWOOD AIRPORT COMMISSION
November 12, 2008
Page 2

- 7) All documents discussing, describing, or pertaining to the Commission's corrective plan of action required by the FAA Ruling.
- 8) All documents that pertain to the direct, indirect, actual, or considered sale of fuel by the Commission.
- 9) Any correspondence between Russ McGuire and Mark Ryan regarding or pertaining to Boston Air Charter, Al Bishop, the FAA Ruling, fueling services or facilities, or the Commission's corrective plan of action required and described in the FAA Ruling.
- 10) All documents and correspondences between the Commission and Eastern Air Center that pertain to Eastern Air Center's fueling operations, leases, access to electrical resources, or relationship, status, competition, or effect on Boston Air Charter or Al Bishop.
- 11) All documents that pertain to Peter Eichley, and any correspondence between the Commission and Peter Eichley.
- 12) All documents that pertain to the Avfuel Corporation, and any correspondence between the Commission and the Avfuel Corporation or any of the Avfuel Corporation's officers, employees, agents, or representatives.
- 13) Any correspondence from January 2004 to the present between the Commission and the Office of the Massachusetts State Fire Marshal, or any of the Office of the Massachusetts State Fire Marshal's officers, employees, agents, or representatives that pertains to Boston Air Charter, Al Bishop, fueling services, or electrical power sources at the Norwood Airport.
- 14) Any correspondence from January 2004 to the present between the Commission and the Norwood Conservation Commission, or any of the Norwood Conservation Commission's commissioners, officers, employees, agents, or representatives that pertains to Boston Air Charter, Al Bishop, fueling services, or electrical power sources at the Norwood Airport.
- 15) Any correspondence from January 2004 to the present between the Commission and the Norwood Fire Department, or any of the Norwood Fire Department's officers, employees, agents, or representatives, including, but not limited to, Lt. Paul Butters and Chief Michael Howard, that pertains to Boston Air Charter, Al Bishop, fueling services, or electrical power sources at the Norwood Airport.

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Mr. Russ Maguire
NORWOOD AIRPORT COMMISSION

November 12, 2008

Page 3

- 16) Any correspondence from January 2004 to the present between the Commission and the Massachusetts Aeronautics Commission, or any of the Massachusetts Aeronautics Commission's commissioners, officers, employees, agents, or representatives that pertains to Boston Air Charter, Al Bishop, fueling services, or electrical power sources at the Norwood Airport.

- 17) Any correspondence from January 2004 to the present between the Commission and the Massachusetts Department of Environmental Protection, or any of the Massachusetts Department of Environmental Protection's commissioners, officers, employees, agents, or representatives that pertains to Boston Air Charter, Al Bishop, fueling services, or electrical power sources at the Norwood Airport.

If you have any questions, please contact the undersigned.

Sincerely,



Paul L. Baccari

(K)

Mr. Russ Maguire
NORWOOD AIRPORT COMMISSION
November 12, 2008
Page 4

DEFINITIONS ANNEXURE

1. **Boston Air Charter** – shall mean the Boston Air Charter corporation and any of its directors, officers, owners, employees, agents, representatives, assigns, or successors in interest.
2. **Commission** – shall mean the Norwood Airport Commission and any of its commissioners, directors, officers, employees, agents, representatives, assigns, or successors in interest.
3. **Correspondence(s)** – shall mean any oral or written utterance, notation, or statement of any nature whatsoever, and any verbal or nonverbal transmission, exchange of thoughts, information or knowledge, by and to whomever made, including but not limited to telecopied, telephonic, wire or computer transmissions, electronic mails, conversations, dialogues, discussions, interviews, consultations, agreements, and understandings.
4. **Document(s)** – shall mean and is used in its normally broad sense to mean and include all handwritten, typed, printed or otherwise visually or orally reproduced materials, whether copies or originals, and irrespective of whether they are privileged or within the possession, custody or control of the Commission, or the officers, directors, employees, agents or attorneys of the Commission, or any other person acting or purporting to act on behalf of the Commission. Furthermore, the term “*document*” refers to any writings, electronic information, or tangible objects whether produced or reproduced mechanically, magnetically, electrically, electronically, photographically, chemically or by any other means.

By way of a non-exhaustive and non-exclusive illustration, the term “*document*” means all letters, cables, wires, telegrams, notes, printed, typed, stenographic or handwritten

(L)

Mr. Russ Maguire
NORWOOD AIRPORT COMMISSION
November 12, 2008
Page 5

memoranda, notes of telephone calls and conferences, interoffice and intra-office communications of all types, writings, records, agreements, communications, papers, correspondence, summaries of records of personal conversations or interviews, diaries, calendars, tables, indices, drawings, blueprints, flow sheets, sketches, diagrams, graphs, charts, maps, plans, notebooks, data, photographs, pictures, movies, video or sound recordings, tapes, microfilm, books, catalogues, published material of any kind, assignments, licenses, contracts, insurance policies, insurance files, minutes or records of meetings or conferences, reports or summaries of investigations, opinions or reports of consultants, appraisals, reports or summaries of negotiations, newspapers or other articles, press releases, ledgers, bills, invoices, orders, files, accounts, forecasts, statistical statements, work papers, work sheets, schedules, audit programs and procedures, projections, checks (front and back), check stubs or receipts, receipts of any variety, expenses, statements or receipts for goods or services purchased of any nature from any source, invoice vouchers, drafts of any document, microfilm of documents that may have been destroyed, computer tapes, data sheets, punchcards, disks, and diskettes.

Any original or copy of a document containing thereon or having attached thereto any alterations, notes, comments or other material not included in the first document shall be deemed a separate document.

5. **Eastern Air Center** – shall mean the Eastern Air Center corporation and any of its directors, officers, owners, employees, agents, representatives, assigns, or successors in interest.

M

Mr. Russ Maguire
NORWOOD AIRPORT COMMISSION
November 12, 2008
Page 6

6. **FAA** – shall the Federal Aviation Administration and any of its directors, officers, employees, or agents.
7. **FAA Ruling** – shall mean the Director’s Determination of *Boston Air Charter v. Norwood Airport Commission*, FAA Docket Number 16-07-03, on April 11, 2008, and the subsequent FAA Final Decision and Order on August 15, 2008, which affirmed the Director’s Determination.
8. **Pertain(s)** – is used in its normally broad sense to mean and include matters that directly or indirectly concern, make reference to, are related to, bear upon, have an influence upon the subject matter of the requested document(s).

FAA CONTRACT TOWER - AIRPORT OPERATIONS COUNT RECORD

Facility Name: **Norwood Memorial FCT Airport** Location: **Norwood, MA** Mo. Yr. Location Ident.

Airport Operations Count

ITINERANT Facility Operating Hours →

Day	IFR					Total IFR Inherent Ops	VFR					LOCAL			Total Airport Operations
	AC	AT	GA	MI			AC	AT	GA	MI	Total VFR Inherent Ops	Civil	Military	Total Local Ops	
01			1			1			2		2				3
02		3		6		9			54		94	2		96	159
03		1		10		11			71		52			52	134
04		1		11		12			119		140			140	271
05		3		1		4		3	43		46			74	124
06		2		10		12		1	88		89			128	229
07		3		4		7									7
08		3		7		10			20		20				30
09		1		1		2		2	57	2	61			40	103
10				5		5			96		96			168	269
11									2		2				2
12		1		6		7		2	54		56			48	111
13		2		8		10			78		78			152	240
14				4		4		2	35		37			2	43
15		4		3		7			17		17			36	60
16		1		8		9		1	61		62			18	89
17		2		4		6		3	94		97			114	217
18				1		1									1
19		2		7		9			49		49			104	162
20		5		7		12			72		72			152	236
21		2		7		9		1	84		85			198	292
22		1		17		18		3	93		96			42	156
23		2		13		15		2	103		105			120	240
24				7		7			32		32			28	67
25		1		10		11			97		97			162	270
26				6		6		2	63		65			70	141
27				8		8		2	77		79			156	243
28		3				3									3
29		3		9		12			41	2	43			55	176
30		4		15		19			73		73			84	176
31				7		7			60		60			44	111
Total		50		203		253		24	1735	4	1763	2		2228	4244

FAA CONTRACT TOWER OVERFLIGHT SUMMARY RECORD

Facility Name

Norwood Memorial FCT Airport

Location:

Norwood, MA

Mo.

0 | 1

Yr.

0 | 9

Loc Ident.

0 | W | D

OVERFLIGHT COUNT

Day	IFR OVERFLIGHTS					VFR OVERFLIGHTS					Total Overflights
	AC	AT	GA	MI	Total	AC	AT	GA	MI	Total	
01											
02								36		36	36
03								16		16	16
04								10		10	10
05								20		20	20
06								66		66	66
07											
08								26		26	26
09								48		48	48
10								28		28	28
11		2			2						2
12								42		42	42
13								54		54	54
14								32	2	34	34
15								40		40	40
16								46		46	46
17								40		40	40
18											
19								28		28	28
20								50		50	50
21								62		62	62
22								76		76	76
23								48		48	48
24								14		14	14
25								30		30	30
26								54		54	54
27								42		42	42
28											
29								34		34	34
30								60		60	60
31								26		26	26
Total		2			2			1028	2	1030	1032

1-20-2009

From: valj555 <valj555@aol.com>

To: valj555 <valj555@aol.com>

Subject: Fwd: FAA finding on corrective action plan

Date: Wed, Jul 16, 2014 2:13 pm

Attachments: 20090120141541676.pdf (279K)

—Original Message—

From: Matthew Watsky <watsky@worldnet.att.net>

To: Valj555 <Valj555@aol.com>; Eric Giler <EGiler@GMail.com>; Paul L. Baccari <plb@mctlaw.com>

Sent: Tue, Jan 20, 2009 2:44 pm

Subject: FAA finding on corrective action plan

Al, Eric and Paul:

Here is the next round of the on going story.

We were not copied on the October 23, 2008 amended corrective action plan that the NAC submitted. Apparently, Boston Municipal Airport, LLC has made a proposal to the NAC to provide the easement, but only on condition of receiving fuel flowage fees from "all aeronautical service providers using the easement." The NAC apparently rejected that option, and FAA has supported the decision. (Interesting bit of maneuvering by BMA to get through the Town what it could not get from you.)

I have left a message for FAA asking for a copy of the 10-23 CAP. Tempting, though, to put in an updated public records request to the NAC for every document they have that relates to the preparation of the CAP. I briefly went through the response from Russ Maguire to Paul's Public Records Request of October 24, 2008, and the NAC's response did not include anything more current than April 08. Query - how did the various documents that reflect a proposal from BMA and submittal of a CAP by NAC to FAA not get included in the documents that were produced?

Anyway - FAA has informed NAC that it must comply; there is no specific deadline to do so, but NAC will remain ineligible for grants until they are in compliance.

Matt

Matthew Watsky, Esq.
30 Eastbrook Road, Suite 301
Dedham, MA 02026
(781) 329-5009 (O)
(781) 461-9068 (fax)

Statement of Confidentiality

The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, please notify Matthew Watsky, Attorney at Law, at the indicated phone number or e-mail address.



The TOWN OF NORWOOD

Commonwealth of Massachusetts

2-13-09

Norwood Memorial Airport

Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS

125 Access Road
Norwood, MA 02062

MAILING ADDRESS

125 Access Road
Norwood, MA 02062

February 13, 2009

Mr. Michael Pendergast, President
BMA, Inc.
29 Longview Road
North Falmouth, MA 02556

Dear Mike:

At its recent meeting February 11, the Norwood Airport Commission (NAC) directed me to contact you regarding the board's interest in acquiring a utilities easement on the airport's Gate 3 taxi-lane. For that reason, I'm enclosing an appraisal report of the easement valuation, prepared last month by *Sheehan & Co.*

The proposed permanent utilities easement would be 20 feet wide and 300 feet deep, or 6,000 square feet; and it would run east/west along the Gate 3 taxi-lane. In addition to the permanent easement, a temporary construction easement of the same dimensions as the permanent easement would be needed for a three-month period.

Based on the appraiser's findings, as of January 6, 2009, just compensation for the combined temporary/permanent easement totals \$9,450 (*Appraiser's Report, page 20*). In the interest of acquiring this easement by agreement, so as to meet the FAA order and resolve the ongoing Federal Aviation Regulation Part 16 dispute, the NAC would like to make an offer to *BMA*. The board proposes to acquire the 20-ft. wide, 300 ft. long utilities easement (both temporary and permanent) for the appraised value of \$9,450.

If this proposal meets your approval, a *Grant of Easement* will be drafted by Norwood Town Counsel, subject to your review and approval. If, on the other hand, *BMA* intends to obtain its own appraisal, please advise the board. Due to our current grant-ineligible status, as well as time constraints imposed by the FAA, the board is interested in reaching agreement as soon as possible. The NAC is therefore requesting your response no later than Monday, March 9. On a final note: The Commission is aware of your interest in negotiating by way of the electronic mail system. For that reason, please feel free to contact me at: rmaguire@norwoodma.gov.

Thank you.

Sincerely,

Russ Maguire, Manager
Norwood Memorial Airport

3-16-09



The Town of Norwood
Commonwealth of Massachusetts

Norwood Memorial Airport
Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS
125 Access Road
Norwood, MA 02062

MAILING ADDRESS
125 Access Road
Norwood, MA 02062

March 16, 2009

Mr. Michael Pendergast, President
BMA, Inc.
29 Longview Road
North Falmouth, MA 02556

RE: Gate 3 Utilities Easement, Norwood Memorial Airport

Dear Mike:

Thank you for your correspondence, dated March 4, 2009 regarding the financial terms your company is requiring in order to grant to the Town of Norwood a utilities easement on the Gate 3 taxi-lane.

At its monthly meeting March 11, the Norwood Airport Commission (NAC) did discuss these terms, most notably, your proposal that the NAC make an initial payment of \$9,450 as well as annual payments of at least \$9,500. As stated in your March 4th letter, these annual payments would be subject to adjustments based on fuel flowage fees charged by the NAC.

In considering your latest proposal, which incorporates a cost variable tied to the town's fuel flowage fees, the NAC returned to the January 15, 2009 letter from FAA Headquarters in Washington, D.C., which stated: "*Boston Metropolitan Airport's* offer, granting a utility easement in return for fuel flowage fees receipts from all aeronautical service providers using the easement may jeopardize the Town's rights and powers and the Airport's financial self-sustainability." With this as the basis for the NAC's position, the commission decided that your most recent proposal cannot be considered. The board did state its interest in a second appraisal authorized by *BMA*. But unless such a study is conducted, the NAC's offer remains unchanged.

Therefore, in the interest of acquiring this easement by agreement, so as to meet the FAA order and resolve the ongoing Federal Aviation Regulation Part 16 dispute, the NAC would again like to make an offer to *BMA*. The board proposes to acquire the 20-ft. wide, 300 ft. long utilities easement (both temporary and permanent) for the appraised value of \$9,450.

If this proposal meets your approval, a *Grant of Easement* will be drafted by the Norwood Town Counsel, subject to your review and approval. If, on the other hand, *BMA* intends to now obtain its own appraisal, please advise the board. Due to our current grant-ineligible status, as well as time constraints imposed by FAA, the board is interested in reaching agreement as soon as possible. The NAC is therefore requesting your response no later than Monday, April 6, 2009.

Please feel free to contact me directly at: rmaguire@norwoodma.gov

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Russ Maguire".

Russ Maguire, Manager
Norwood Memorial Airport

4-8-09

SHEEHAN & COMPANY

Real Estate Appraisal and Consulting

April 8, 2009

Mr. Russ Maguire
Airport Manager
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062
rmaguire@norwoodma.gov

Dear Mr. Maguire:

Pursuant to your letter dated March 31, 2009, I have read the correspondence from Mike Pendergast, President of BMA and reviewed my appraisal report of January 6, 2009. In the following paragraphs I have set forth my thoughts regarding the issues raised in these documents.

The appraisal report was commissioned as a result of a directive from the FAA. The directive categorically states that:

"The Town has or will provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with State and local regulations."

The intent of this directive was to end the practice of awarding long term leases of federally funded ramps granting one party control of the airport ramps.

The appraisal considered the value of the long-term lease to be the same as the fee ownership for valuation purposes. The loss in value due to the placement of the permanent easement and the rental value for the temporary construction easement was calculated to be \$9,450. This amount was considered to be Just Compensation due to BMA.

Boston Metropolitan Airport president Mike Pendergast contends that "if and when" a competing fuel farm is installed there will result additional damages. Undoubtedly, there will be a loss of revenue due to competition. This loss of revenue would be a result of changes in the Norwood/BMA contract. It would not be a direct result of an eminent domain easement taking.

Mr. Russ Maguire
Airport Manager
Norwood Memorial Airport
Page 2

The appraiser is not aware of the terms and conditions of the Norwood/BMA contract. If the long-term contract was made in consideration for a transfer of the land to the Town of Norwood, perhaps the terms of the contract would need to be renegotiated "if and when" the competing fuel farm is installed.

Should you have any questions regarding my appraisal or this letter, please call.

Very truly yours,

John F. Sheehan, A.S.A.

John F. Sheehan, A.S.A.
MA Certified General Appraiser No. 236



4-17-09

Commonwealth of Massachusetts

Norwood Memorial Airport
Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS
125 Access Road
Norwood, MA 02062

MAILING ADDRESS
125 Access Road
Norwood, MA 02062

April 17, 2009

BMA, Inc.
Attn: Michael Pendergast, President
29 Longview Road
North Falmouth, MA 02556

RE: Gate 3 Utilities Easement, Norwood Memorial Airport

Dear Mike:

Thank you for your correspondence, dated March 30, 2009, regarding the revised financial terms your company is requesting to grant to the Town of Norwood a permanent utilities easement.

At its monthly meeting last week, the Norwood Airport Commission (NAC) did discuss these terms, most notably, your proposal that the NAC make a one-time payment to *BMA* totaling \$374,250. In calculating this amount, you've claimed that *BMA* should receive \$9,450—the appraised value of the permanent easement, based on the January 2009 *Sheehan* report—plus 50% of the anticipated loss in revenue *BMA* believes it will incur by granting this easement. In considering your proposal, the Commission again underscored that *BMA*'s calculation includes a cost variable based on perceived financial losses from a potential competing fueling operation. For this reason, the NAC voted to reject your proposal.


Massachusetts courts adhere to a well-established and longstanding rule that income derived from a business is not compensable when a real estate interest is acquired via eminent domain. Commonwealth v. Armory, 321 Mass. 240, 258 (1947) (citing several cases). As these courts have recognized, the market value of real estate cannot be determined based upon the income from a business operated on the premises because it involves a variety of factors unrelated to the land. Id. Accordingly, any perceived financial losses from a potential competing fueling operation are not compensable under Massachusetts law.

However, the Commission wishes to re-affirm its willingness to negotiate. In the interest of good will, and to forestall any further proceedings, the Commission will extend a final counteroffer beyond the appraised value cited in the *Sheehan* report. For a permanent utilities easement on Gate 3, the NAC offers to *BMA* a one-time total payment not to exceed \$15,000.

Because the Commission anticipates the placing of an article on the warrant for the May 11th special town meeting—to obtain the permanent utilities easement via purchase or eminent domain—we would ask that you respond to the NAC counteroffer no later than Friday, May 8th.

Please feel free to contact me directly at: rmaguire@norwoodma.gov. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Russ Maguire".

Russ Maguire, Manager
Norwood Memorial Airport

CC: Norwood Airport Commission, Norwood Town Counsel

5-28-2009

MATTHEW WATSKY
ATTORNEY AT LAW
East Brook Executive Park
30 Eastbrook Road, Suite 301
Dedham, MA 02026

Tel. (781) 329-5009

Fax (781) 461-9068

May 28, 2009

Norwood Airport Commission
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

Attention: Russ Maguire, C.M., Airport Manager

Re: Boston Air Charter, Self Fueling
Lease for DC-3 Ramp

Sound familiar?

Dear Mr. Maguire:

On behalf of Boston Air Charter ("BAC"), I am writing to request the Norwood Airport Commission ("NAC") enter into a lease with BAC for the so called DC-3 Ramp, to enable BAC to install and operate a self fueling facility. We have closely followed the Norwood Town Meeting, and are aware that Town Meeting has approved the NAC's request for authority to acquire an easement through which electric service can be provided to the DC-3 Ramp.

The Norwood Board of Selectmen ("BOS") and Fire Department originally approved BAC's application for a so called VIF license to construct and install the tanks for AV-Gas and Jet A Aviation Fuel with an expectation that a lease from NAC to BAC would soon follow. Later, when the NAC declined to enter into a lease with BAC while issues arose over access to install electricity, the BOS and Fire Department made clear that re-issuance of the license was dependent on, as a pre-condition, BAC securing a lease to the land from the NAC. We consider, therefore, acquiring a lease as the first step - a condition precedent - to thereafter proceeding with any other steps to obtain licenses under Chapter 148 of the General Laws to construct and install the above ground fuel storage tanks.

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

6809-106 (Rev. 1-25-60)

FORM NO. 1 (Rev. 1-25-60)

1961

MEMORANDUM FOR THE DIRECTOR
SUBJECT: [Illegible]

TO: [Illegible]

FROM: [Illegible]

DATE: [Illegible]

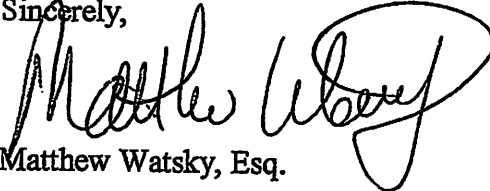
Room 1-106

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We would welcome an opportunity to appear at an upcoming NAC meeting, or to negotiate the terms of the lease through counsel. Please advise this office as soon as possible when we can expect to hear from you regarding the lease.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Watsky". The signature is fluid and cursive, with a large loop at the end of the last name.

Matthew Watsky, Esq.

cc: Boston Air Charter
Donna Witte, FAA
Kevin Willis, FAA
Norwood Board of Selectmen



FLIGHTLEVEL
A V I A T I O N

6-3-2009

PHONE: 781.769.8680
FAX: 781.769.7180
www.flightlevelaviation.com

June 3, 2009

Mr. Mark Ryan, Chairman
Norwood Airport Commission
Norwood Memorial Airport
P.O. Box 40
Norwood, MA 02062

RE: LOTS A, B, C (8, 9, 10) Negotiation

Dear Mr. Chairman:

I'm pleased to report that FlightLevel Norwood (FLN) recently completed the crack sealing work on its main ramp. I understand that the delay in responding to the letter delivered to the Norwood Airport Commission in late October of last year regarding FLN's desire to renew its ground lease for Lots A, B, and C (also known as lots 8, 9, and 10 and the South Ramp), was on account of FLN making this investment. That being the case, kindly let me know at your earliest convenience when we can begin negotiating a renewal and extension.

As we continue to attract larger aircraft to the airport, the need for additional transient parking space is a pressing issue for us which makes these leaseholds ever more important, as I'm sure you can appreciate.

I'm looking forward to discussing these matters with you and getting the renewal/extension process underway. Again, please let me know when and where works best for you and if there's anything else I or anyone at FlightLevel can do to be of assistance, don't hesitate to let us know.

I hope all is well.

Sincerely,

Peter Eichleay
President

*Flight level
has no problem
getting leases*

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6-26-2009 (F)

MURPHY, HESSE, TOOMEY & LEHANE, LLP ← Same Firm For years
Attorneys At Law

CROWN COLONY PLAZA
300 CROWN COLONY DRIVE
SUITE 410
P.O. BOX 9126
QUINCY, MA 02269-9126
TEL: 617-479-5000 FAX: 617-479-6469

75 FEDERAL STREET
SUITE 410
BOSTON, MA 02110
TEL: 617-479-5000 FAX: 617-338-1324

ONE MONARCH PLACE
SUITE 1310R
SPRINGFIELD, MA 01144
TEL: 888-841-4850 FAX: 617-479-6469

www.mhtl.com

Arthur P. Murphy
James A. Toomey
Katherine A. Hesse
Michael C. Lehane
John P. Flynn
Regina Williams Tate
Edward F. Lenox, Jr.
Mary Ellen Sowyrda
David A. DeLuca
Donald L. Graham
Andrew J. Waugh
Geoffrey P. Wermuth
Robert S. Mangiaratti
Doris R. MacKenzie Ehrens
Geoffrey B. McCullough
Lorna M. Hebert

Clifford R. Rhodes, Jr.
Kathryn M. Murphy
Karis L. North
Thomas W. Colomb
Alisia St. Florian
Jason M. Gesing
Bryan R. LeBlanc
Brandon H. Moss
Kevin F. Bresnahan
Kathleen E. Yaeger
Brian P. Fox
Lauren C. Galvin
Jessica L. Ritter
Carolyn J. Lyons
Samantha E. Kaplan

Please Respond to Quincy

June 26, 2009

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

Re: Lots A, B, C (8, 9, 10) and DC Ramp

Dear Mr. Maguire:

Thank you for your June 24, 2009 letter and attachments.

As regards the letter from Mr. Eichlay, I presume that the NAC would intend to lease the lots for the period commencing when the current lease expires. Since the provisions of the Uniform Procurement Act do not restrict the NAC¹ in its leasing of land, it would not be improper for the NAC or its designee to enter into direct negotiations with Flight Level.

My recollection is that the NAC has adopted or now utilizes a standard form of lease which incorporates the language about the supremacy of grant assurances and the subordination of lease terms to federal and state requirements. Under this scenario, any potential tenant would be told, "this is the lease form which we use; the areas of negotiation so far as NAC is concerned are term and price".

*OK to talk with Flight Level
in secret*

¹ See M.G.L. c.30B §1 (29).

FORMS
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FILM

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MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Russ Maguire, A.A.E., ACE
June 26, 2009
Page 2

The requested lease of the DC-3 ramp has some particular unique features, relating to the NAC's prior experience with this potential lessee and their inability or unwillingness to carry the project forward to completion consistently with permitting and licensure requirements. For this reason, I would recommend that any lease which the NAC would consider with this Lessee should include a schedule or timeline for licensing, permitting and construction, and provide that departure from, or failure by the Lessee to meet, the schedule for any reason, would be deemed a material breach of the lease, for which the NAC could terminate it upon written notice, and without recourse.

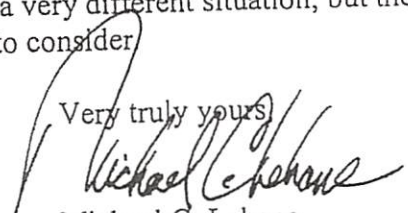
Don't talk to BAC

However, there is a more overarching issue as regards Boston Air Charter Company, LLC. The corporate records division of the Office of the Secretary of State of the Commonwealth of Massachusetts indicate that though such a company was formed in 2003, it was dissolved on April 30, 2009. The online records provide information from which it could be inferred that the dissolution was based upon a failure by Boston Air Charter Company, LLC to file Annual Statements, although there could conceivably be other reasons for the dissolution. A call to the Secretary of State's office disclosed that many LLC's were dissolved on 4.30.09 because of a failure to make required filings. We are currently attempting to get further information on this.

lets make things up
?

In any case, though, regardless of the underlying reason for the dissolution it appears that Boston Air Charter Company, LLC was dissolved on 4.30.09 and therefore no longer exists as a legal entity. Consequently, there is no legal capacity for Boston Air Charter Company, LLC (managed by Allen L. Bishop of 6 Daisy Drive, Norfolk, MA) to negotiate or enter into a lease. The dissolution is certainly not an insoluble problem for BACC, LLC, but it is one that must be addressed and remedied before anything like lease negotiations can be addressed.

For your information, I'm attaching copies of pages printed off the Secretary of State's website which reflect the BACC, LLC status. We will follow up to attempt to obtain further information. I'm also enclosing a lease document which another attorney in our office prepared for another municipal airport. The lease is for a very different situation, but there well may be provisions in it which the NAC may wish to consider

Very truly yours

Michael C. Lehane
Town Counsel

MCL/emw
Enclosure
C: Brandon H. Moss, Esq.
504497v1

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Washington, D. C. 20535
Date: 11/11/77
Page: 3

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Special Agent in Charge
Federal Bureau of Investigation
Washington, D. C. 20535

7-8-2009

APPROVED

1

8/12/09

Norwood Airport Commission

Regular Business Meeting

July 8, 2009

In attendance: Mark Ryan, Chairman, Thomas Wynne, Vice Chairman, Commissioners Les LeBlanc, Kevin Shaughnessy and Marty Odstrchel

Minutes

May and June Meetings

Comments/Amendments

Attorney Lehane's name is misspelled on page 2.

Motion made by Les LeBlanc and seconded by Thomas Wynne to accept the minutes of the June meeting with the amendments discussed. Voted: 4-0 in favor (Marty Odstrchel abstained)

Motion made by Thomas Wynne and seconded by Marty Odstrchel to accept the minutes of the May 13th meeting. Voted: 4-0 in favor (Les LeBlanc abstained)

Motion made by Kevin Shaughnessy and seconded by Thomas Wynne to accept the June Executive Session Minutes. Voted: 4-0 in favor. (Marty Odstrchel abstained)

Manager's Report

A window in the SRE building was damaged when it was struck by the wing of an aircraft. It will need to be replaced. The cost is \$1,620. The bill will be paid by the owner of the Horizon flight school whose plane collided with the building. The price will include removal of the window.

Motion made by Kevin Shaughnessy and second by Les LeBlanc to direct the Manager to proceed with directing Horizon to pay for the window. Voted: 5-0 in favor

Dubois & King

Engineer Jeff Adler was present at the meeting to discuss payment arrangements. Per the Town Accountant, the remainder of the monies owed will be paid out of a FY 2010 sub account to be replenished when the Treasurer borrows that Fiscal Year money. The payment to Dubois and King has already been processed. At the Town Accountant's request, the payment was put in memo form to

create a paper trail, including engineering cost for reconstruction of the runway and the snow removal equipment.

The Chairman thanked the Manager for arranging the fly^{at} over for the July 4th parade. It was impressive.

Flight Level has communicated with Horizon to ensure that the incident involving the plane coming in contact with the SRE building does not happen again. From now on the planes will be taxied in a different manner.

Motion made by Kevin Shaughnessy and seconded by Les LeBlanc to accept the Manager's Report.
Voted: 5-0 in favor.

Old Business

Heli Ops was present at the meeting in regard to the request for a commercial permit. The Commission has determined there must be an application before any discussion of waivers can take place.

The applicant must provide evidence of office space and either a hangar or tie down lease because he has to base the aircraft at Norwood and have the operation based here also.

The Commission must be consistent with how these applications are dealt with and with the requirement to meet all the minimum standards, including office space and tie down or hangar. In support of this there is a Town Counsel letter stating there should have been a permit application first.

The Manager has confirmed with MAC that Heli Ops has not been given a permit because the applicant is unable to meet the minimum standards.

Motion made by Kevin Shaughnessy and seconded by Thomas Wynne to direct the Manager to send a letter to Heli Ops informing them that in order to qualify for a commercial permit they need to meet the minimum standards which include having an office and tie down. If they disagree their application should state clearly what waivers they are looking for. Voted: 5-0 in favor.

Mr Morse has made multiple requests for a security badge. The Commission will support the Airport Manager. Although this Commission understands Mr. Morse's situation, to deviate from the standard would not be right.

Motion made by Thomas Wynne and seconded by Marty Odstrchel to deny Mr. Morse's request for a security badge on the grounds that he does not meet the security requirements because he is not an aircraft owner and he is not an authorized pilot to a based aircraft owner; in order to do that you need a letter of authorization. Voted: 5-0 in favor.

New Business

Flight Level request to begin lease negotiations – we are not obligated to do this, nac could take it over themselves – there does not have to be an rfp – nac can start negotiations if they wish to.

OK to
Speak with
Flight Level -

the Commission is not a political body and should not be subject to political pressure.

The Commission is not a political body and should not be subject to political pressure.

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The Commission is not a political body and should not be subject to political pressure.

Ok to talk with Lexel

Motion made by Les LeBlanc and seconded by Marty Odstrchel to enter into negotiations with Flight Level with a committee which would include the Manager and Vice Chairman and Chairman at their discretion and limit the lease to five years. Voted: 5-0 in favor.

This decision was based on several conditions, some of which being the location of the apron and its proximity to Flight Level. It would not only help Flight Level business but it cannot be opened up to another business because a building cannot be placed there. It will have to remain a tie down apron.

Len Carroll spoke on behalf of Flight Level in favor of this motion.

Commercial Permits

All commercial business permits expire June 30th and all business owners are required to apply for new permits.

This Commission is now considering seven applications as follows:

Norwood Flight Center

Blue Hill Helicopter

Norwood Air Multi Engine Training

Kestrel Aviation

Flight Level

Stow Enterprises – dba Fresh Air Services

Boston Air Charter

All applicants with the exception of Boston Air Charter meet the requirements and are recommended to be accepted for 2010 permits. There is a \$30 renewal fee.

Motion made by Les LeBlanc and seconded by Marty Odstrchel to approve commercial permit applications for renewal of the first 6 applicants, excluding Boston Air Charter, on the grounds that they do not meet the application requirements. Voted: 5-0 in favor.

At the last Commission meeting, Boston Air Charter requested to enter into lease negotiations for the DC3 Ramp. Upon that request, the Norwood Airport Commission consulted with Town Counsel and determined that as of April 30, 2009, BAC had been dissolved as a legal entity in the Commonwealth of Mass and have been operating improperly since then.

The Manager confirmed with the State that BAC was notified in 2008 that it would be dissolved if they did not file with the Secretary of the Commonwealth. Pursuant to this, BAC missed filings from 2005 on after becoming a corporation in 2003 and filed only in 2004. BAC lists the Town as additionally insured – and their insurance certificate is dated April 7th, in which case the insurance company may not even be

ABC ramps -
No Hangar -
then 2019
Hangar for
Flight level

Flight level
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Of Course BAC
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Handwritten notes on the right side of the page, including "Of course", "BNC", and "Lindsay".

Large handwritten notes on the bottom right side of the page, including "to", "Gambler", "Good", "16/11/15", "15/15", "New", "Huddle", "2/10/15", "to", "BBC", "Lamb?", "New", "Huddle", "2/10/15", "to", "BBC", "Lamb?".

aware that they are insuring a non business. The flying public is also an issue – BAC’s 135 certificate for charter operations is also at issue.

Kevin Shaughnessy directs the Manager to respond to Attorney Watsky’s letter of July 2d and also to copy the parties Attorney Watsky copied. (Al Bishop, Donna Witt, Kevin Willis and the Norwood Board of Selectmen.

Motion made by Kevin Shaughnessy and seconded by Thomas Wynne to have the Manager check with the insurance company to determine if BAC is currently insured and have they been insured in the past. The Manager shall also check on Parts 135 Charter Certificate with FAA. (The \Manager will respond to Attorney Watsky, FAA, etc. and if the information shows BAC is uninsured , The Commission will proceed with injunction with Town Counsel. Voted: 5-0 in favor.

In regard to the same matter, the Norwood Finance Commission has received and email from Attorney Watsky claiming NAC is not complying with FAA requirements and not acting in good faith by not entering into negotiations. The Manager prepared a time line for Finance Commission with all the dates of the commission’s actions on this matter . Up to this point the Finance Commission had been fed bad information by BAC but they are now aware that the company is not a legal entity.

Today Boston Air Charter filed their annual reports electronically and the Manager called the State and nothing is for certain until a hard copy is filed with the State. As of now, in the eyes of the Commonwealth, BAC is dissolved until they apply for reinstatement and are approved by the Commonwealth . As far as the NAC Chairman is concerned, BAC will have to start over with this Commission.

BAC Will have to start over - Bad People - File Complaints

The Manager will send a letter to the Board of Selectmen in regard to the current situation by this Friday in order for the issue to be addressed on the current agenda

In regard to the land transfer, Mr. Mike Pendergast will get the deed back to the Commission as soon as possible for signature as a part of the corrective action plan.

Motion made by Les LeBlanc and seconded by Thomas Wynne to adjourn the meeting. Voted: 5-0 in favor.

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Complete by
 4/16
 people
 - state
 will
 have to

7-9-2009

(D)



The town of Norwood

Commonwealth of Massachusetts

Norwood Memorial Airport

Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS

125 Access Road
Norwood, MA 02062

MAILING ADDRESS

125 Access Road
Norwood, MA 02062

July 9, 2009

Matthew Watsky
Attorney At Law
East Brook Executive Park
30 Eastbrook Road, Suite 301
Dedham, MA 02026

RE: *Boston Air Charter*, Lease Request for DC-3 Ramp (FAA Docket 16-07-03)

Dear Mr. Watsky:

At its scheduled public meeting last night, the Norwood Airport Commission (NAC) directed me to respond to your July 2, 2009 correspondence regarding an inquiry of the Deed of Easement being sought between the NAC and *BMA, Inc.* This document was in fact sent to *BMA* on June 16, 2009, though at the time of this writing, a signed and notarized deed has not been received by the NAC for execution. In a telephone conversation yesterday with *BMA* President, Michael Pendergast, I requested that this document be reviewed by his company as soon as possible, since a copy of the executed deed will be included in an amended corrective action plan sent to FAA Headquarters.

We can delay this for years

However, Norwood Town Counsel has determined that there is a more overarching issue with regard to your client, *Boston Air Charter Company LLC*. The Corporations Division for the Secretary of the Commonwealth (SOC) in Massachusetts indicates that though such a company was formed in 2003, it was dissolved on April 30, 2009 (copies attached). The online records provide information from which it could also be inferred that the dissolution was based on a failure by *Boston Air Charter Company, LLC* to file the required annual statements beginning in 2005, and continuing consecutively through 2009. A phone call to the Corporations Division yesterday afternoon confirmed that the *Boston Air Charter Company LLC* was dissolved on April 30th of this year. According to the SOC, in 2008 the company had been warned in writing of dissolution pending the required filing of annual statements.

In any case, *Boston Air Charter Company LLC* no longer exists as a legal entity, with no legal capacity to either negotiate or enter into the lease being sought.

Nonsense
Payback with
the or help
MHTL

(1)



UNITED STATES DEPARTMENT OF JUSTICE

Washington, D.C. 20535

Memorandum for the Director
of the Federal Bureau of Investigation

Subject: [Illegible]

Date: [Illegible]

TO: [Illegible]

FROM: [Illegible]

Reference is made to [Illegible]

On [Illegible]

[Illegible typed text]

*Mr. X
Mr. Y
Mr. Z
Mr. A
Mr. B
Mr. C
Mr. D
Mr. E
Mr. F
Mr. G
Mr. H
Mr. I
Mr. J
Mr. K
Mr. L
Mr. M
Mr. N
Mr. O
Mr. P
Mr. Q
Mr. R
Mr. S
Mr. T
Mr. U
Mr. V
Mr. W
Mr. X
Mr. Y
Mr. Z*

[Illegible typed text]

*Mr. A
Mr. B
Mr. C
Mr. D
Mr. E
Mr. F
Mr. G
Mr. H
Mr. I
Mr. J
Mr. K
Mr. L
Mr. M
Mr. N
Mr. O
Mr. P
Mr. Q
Mr. R
Mr. S
Mr. T
Mr. U
Mr. V
Mr. W
Mr. X
Mr. Y
Mr. Z*

[Illegible typed text]

⑤

Sincerely,

Russ Maguire

Russ Maguire, Manager
Norwood Memorial Airport

Attachments:

- July 8, 2009 online records, Corporations Division for the Secretary of the Commonwealth in Massachusetts: 4/30/09 Dissolution of *Boston Air Charter Company LLC*

Copies to:

- Kevin Willis, FAA Headquarters, Washington, D.C.
- Donna Witte, FAA – New England Region
- Christopher Willenborg, Massachusetts Aeronautics Commission
- Norwood Airport Commission
- Norwood Board of Selectmen
- Norwood Finance Commission
- Norwood Town Counsel
- Boston Air Charter

7-14-2009

(B)

Draft Lewis Wharf Boston 02110 617.722.8100 617.722.8101 www.mctlaw.com

Masterman
Culbert & Tully

Paul L. Baccari, Esquire
plb@mctlaw.com
Direct Dial 617-722-8126

July 14, 2009

VIA TELECOPIER NO. (781) 255-5617

Mr. Russ Maguire, Manage
Norwood Memorial Airport
125 Access Road
Norwood, Massachusetts 02062

Re: Boston Air Charter - Lease Request for DC-3 Ramp (FAA Docket 16-07-03)

Dear Mr. Maguire:

As you know, I represent Boston Air Charter along with Attorney Matthew Watsky. I have a copy of your letter dated July 9, 2009.

Consistent with its past practice, the Norwood Airport Commission ("NAC") continues to act with a complete lack of good faith towards Boston Air Charter ("BAC"). As I am sure counsel would have advised you, when an entity falls out of good standing due to inadvertent failure to file annual reports, that omission can be cured very simply, as has been done in this case. Instead of commencing negotiations towards a lease while the ministerial act of filing was completed by BAC, NAC chose to continue its intentional delay of my client's ability to install the fueling facility which it acquired and on which it has been paying interest and storage charges for several years. It took BAC less than 48 hours after becoming aware of the clerical error to cure the error and obtain the attached Certificate of Good Standing. BAC has always been in continuous and uninterrupted operation, as NAC surely knows. It is time for the NAC to cease its intentional delay of the installation of BAC's fueling facility. Given the FAA's order, it would be both refreshing and appropriate for NAC to begin dealing with my client in good faith, as opposed to continuing its efforts to delay the inevitable.

Sincerely,

Paul L. Baccari
Paul L. Baccari

Key ↑
NAC / Maguire
will delay
for years

(2)

MEMORANDUM FOR THE RECORD
DATE: 10/10/53
SUBJECT: [Illegible]

ATTACHED FOR INFO

10/10/53

MEMORANDUM FOR THE RECORD

DATE: 10/10/53
SUBJECT: [Illegible]

[Illegible text]

[Illegible text]

[Illegible typed text, possibly a list or report]

↑
Key
MVC / Mill
9/6/53
for books

[Illegible signature or stamp]

7-16-2009 (A)

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

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TEL: 617-479-5000 FAX: 617-338-1324

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James A. Toomey
Katherine A. Hesse
Michael C. Lehane
John P. Flynn
Regina Williams Tate
Edward F. Lenox, Jr.
Mary Ellen Sowyrda
David A. DeLuca
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Lorna M. Hebert

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Jason M. Gesing
Bryan R. LeBlanc
Brandon H. Moss
Kevin F. Bresnahan
Kathleen E. Yaeger
Brian P. Fox
Lauren C. Galvin
Jessica L. Riner
Carolyn J. Lyons
Samantha E. Kaplan

Please Respond to Quincy

July 16, 2009

Boston Air Charter Company, LLC
209 Access Road
Norwood, MA 02062
Attn: Mr. Bacari

Dear Mr. Bacari:

Your July 14, 2009 letter addressed to Mr. Maguire has been forwarded to me for reply.

In my view, it would have been quite sufficient to have given notice to the Norwood Airport Commission that Boston Air Charter, Inc. had remedied the defaults which caused the involuntary dissolution of that entity on April 30, 2009.

Your gratuitously offensive, inaccurate and pugnacious characterization of events adds nothing to the equation, but I'm certain you appreciate being advised of the dissolution of BAC which, according to your letter, your client was able to remedy within 48 hours of being so notified.

Very truly yours,
Michael C. Lehane
Michael C. Lehane
Town Counsel

MCL/emw
c: Matthew Watsky, Esq.
Mr. Maguire ✓
NAC
Brandon H. Moss, Esq.

*NAC/Maguire have the
of full backing
of MHTL-
Sovnet
Familiar?*

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

MEMORANDUM FOR THE DIRECTOR
FROM: SAC, [illegible]
SUBJECT: [illegible]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

[illegible text]

Handwritten notes on the left side of the page, including "Mrs. [illegible] Parkman" and "of [illegible] family".

7-16-09 (A)

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

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Please Respond to Quincy

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Carolyn J. Lyons
Samantha E. Kaplan

July 16, 2009

Boston Air Charter Company, LLC
209 Access Road
Norwood, MA 02062
Attn: Mr. Bacari

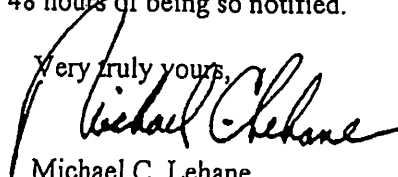
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Your gratuitously offensive, inaccurate and pugnacious characterization of events adds nothing to the equation, but I'm certain you appreciate being advised of the dissolution of BAC which, according to your letter, your client was able to remedy within 48 hours of being so notified.

Very truly yours,



Michael C. Lehane
Town Counsel

MCL/emw

c: Matthew Watsky, Esq.
Mr. Maguire ✓
NAC
Brandon H. Moss, Esq.

(B)

270 Lewis Wharf Boston 02110 617.722.8100 617.722.8101 www.mctlaw.com

Masterman
Culbert & Tully

Paul L. Baccari, Esquire
plb@mctlaw.com
Direct Dial 617-722-8126

July 14, 2009

VIA TELECOPIER NO. (781) 255-5617

Mr. Russ Maguire, Manage
Norwood Memorial Airport
125 Access Road
Norwood, Massachusetts 02062

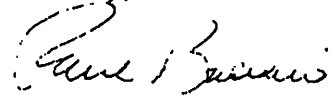
Re: Boston Air Charter – Lease Request for DC-3 Ramp (FAA Docket 16-07-03)

Dear Mr. Maguire:

As you know, I represent Boston Air Charter along with Attorney Matthew Watsky. I have a copy of your letter dated July 9, 2009.

Consistent with its past practice, the Norwood Airport Commission ("NAC") continues to act with a complete lack of good faith towards Boston Air Charter ("BAC"). As I am sure counsel would have advised you, when an entity falls out of good standing due to inadvertent failure to file annual reports, that omission can be cured very simply, as has been done in this case. Instead of commencing negotiations towards a lease while the ministerial act of filing was completed by BAC, NAC chose to continue its intentional delay of my client's ability to install the fueling facility which it acquired and on which it has been paying interest and storage charges for several years. It took BAC less than 48 hours after becoming aware of the clerical error to cure the error and obtain the attached Certificate of Good Standing. BAC has always been in continuous and uninterrupted operation, as NAC surely knows. It is time for the NAC to cease its intentional delay of the installation of BAC's fueling facility. Given the FAA's order, it would be both refreshing and appropriate for NAC to begin dealing with my client in good faith, as opposed to continuing its efforts to delay the inevitable.

Sincerely,



Paul L. Baccari

(E)

Sincerely,

Russ Maguire

Russ Maguire, Manager
Norwood Memorial Airport

Attachments:

- July 8, 2009 online records, Corporations Division for the Secretary of the Commonwealth in Massachusetts: 4/30/09 Dissolution of *Boston Air Charter Company LLC*

Copies to:

- Kevin Willis, FAA Headquarters, Washington, D.C.
- Donna Witte, FAA – New England Region
- Christopher Willenborg, Massachusetts Aeronautics Commission
- Norwood Airport Commission
- Norwood Board of Selectmen
- Norwood Finance Commission
- Norwood Town Counsel
- Boston Air Charter



4

Norwood Airport Commission &
Russ Maguire, Airport Manager
125 Access Road
Norwood, MA 02062

7/22/09

Subject: Written Waiver Application

Heliops LLC has a Base of Operations at Plymouth Airport and conducts both Part 91 and Part 135 helicopter operations from all over the Commonwealth and also in other states. Heliops has both DOT and FAA authority for all such operations. It is unrealistic for Heliops or any other commercial operator to have a Base of Operations at every location they do operations from.

Heliops has no intentions of establishing a Base of Operations at Norwood Memorial Airport and we believe it unreasonable and illegal for the NAC to require a commercial operator without a Base of Operations at Norwood Memorial Airport to meet the same minimum standards as commercial operators based at Norwood in order to conduct commercial Part 91 flights (sightseeing & photography) which originate at Norwood.

As Norwood has no formal procedure whereby non-based commercial operators may apply for a permit or waiver to conduct commercial Part 91 operations from Norwood,

Heliops LLC hereby formally applies for a written waiver from the Norwood Airport Commission which will allow Heliops LLC to conduct commercial Part 91 flights which originate from Norwood Memorial Airport as a non-based commercial operator. Granting of this waiver will bring the NAC into compliance with existing Federal Laws.

Heliops LLC has listed the Town of Norwood, the Norwood Airport Commission, and Norwood Airport Management as also insured on its aircraft liability policy (copy attached). While at Norwood, Heliops LLC would operate under all Federal Laws and Safety Guidelines applicable to rotorcraft using FAA funded airports. Heliops estimates it would conduct approximately 20 commercial Part 91 flight per year from Norwood Memorial Airport. For Part 91 commercial operations, Heliops LLC personnel would meet passengers at an FBO (Flight Level or other) and escort them to the aircraft. For loading and unloading, the helicopter would be parked either at the designated helicopter parking circles or, with prior landing permission, the designated airport helipad or FBO ramp area.

Please respond within 15 days with a written Approval or Denial of this Waiver Application
(with reasons clearly stated) to:

Wesley H. Verkaart
Heliops LLC Base of Operations
226 South Meadow Road
Plymouth, MA 02360

A handwritten signature in black ink, appearing to read "W. Verkaart", with a long horizontal flourish extending to the right.



(M)

TOWN OF NORWOOD

Commonwealth of Massachusetts

Norwood Memorial Airport

Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS
125 Access Road
Norwood, MA 02062

MAILING ADDRESS
125 Access Road
Norwood, MA 02062

July 15, 2009

Heli-Ops Helicopter Tours
Attn: Wes Verkaart, Owner
226 South Meadow Road
Plymouth, MA 02360

Dear Wes:

At its monthly meeting held on July 8, the Norwood Airport Commission (NAC) voted to notify you in writing regarding your commercial permit request. Specifically, to receive a permit to conduct commercial operations on the Norwood Airport, *Heli-Ops* is being required by the board to meet the Norwood Airport minimum standards. These include having a Norwood Airport-based office, plus a Norwood Airport-based hangar lease and/or aircraft tie-down lease.

If *Heli-Ops* cannot meet the minimum standards, and still wishes to apply for a commercial permit, the company must state clearly in writing what waiver(s) it is seeking from the NAC.

Sincerely,

Russ Maguire, Manager
Norwood Memorial Airport

CC: *Norwood Airport Commission*



U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Associate Administrator
for Airports

800 Independence Ave., SW.
Washington, DC 20591

7-31-2009

JUL 31 2009

Mark P. Ryan
Vice Chairman
Norwood Airport Commission
Post Office Box 40
Norwood, MA 02062

Dear Mr. Ryan:

We want to commend the Norwood Airport Commission (NAC) on the progress that it is making in regaining control of utility access on Norwood Memorial Airport. The utility easement, once completed, will permit NAC to fulfill its obligation to make the Airport available for public-use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities including air carriers who have the right of self-service to fuel and maintain their aircraft.

As you undertake the corrective action to bring the airport into compliance, we thought it would be helpful to review the direction provided by the Associate Administrator for Airports. The Associate Administrator for Airports in his letter of October 6, 2008, to Russ Maguire, Airport Manager for Norwood Memorial Airport stated: "Appropriate corrective action will occur when aeronautical service providers, including Boston Air Charter (BAC), gain access to power from either the public transformer on the 1100-foot strip or another source on the Airport."

Once you have executed the utility easement, please submit a final corrective action plan with all applicable agreements. As we've previously discussed, there is no requirement for NAC to incur the cost of installing the conduit. We do expect the Norwood Airport Commission to extend an offer to BAC, a Part 135 operator, to lease, subject to reasonable standards, space on the DC-3 Ramp and be able to construct and operate an aircraft self-fueling facility. Once this has been achieved, FAA will find the Town of Norwood in compliance with its Federal obligations. If you have any questions, please contact Kevin Willis at 202-267-8741.

Russ ignores even today

Not done -

Randall S. Fiertz

Randall Fiertz
Director
Airport Compliance and Field Operations

cc: Matthew Watsky, Esquire

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8-3-2009

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

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Kevin F. Bresnahan
Kathleen E. Yaeger
Brian P. Fox
Lauren C. Galvin
Jessica L. Ritter
Carolyn J. Lyons
Samantha E. Kaplan

Please Respond to Quincy

August 3, 2009

Matthew Watsky, Esq.
30 Eastbrook Road
Dedham, MA 02026

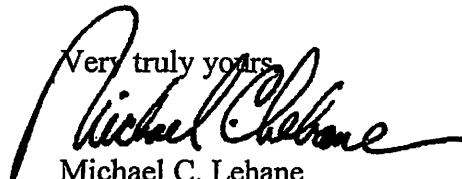
Re: *Norwood Memorial Airport/Boston Air Charter*

Dear Mr. Watsky:

When we spoke last week you indicated that you intended to make a "*summary proposal*" of the terms upon which Boston Air Charter proposes to lease an area at the Norwood Memorial Airport.

As soon as I receive that I will be forwarding it to the Airport Commission and their staff.

Very truly yours,



Michael C. Lehane
Town Counsel

MCL/emw

C: Brandon Moss, Esq.
Russ Maguire

510478v1

8-12-2009

DRAFT ONLY¹

Norwood Airport Commission Report
August 12, 2009

Present: Chairman Mark Ryan, Vice-Chairman Thomas Wynne, Clerk Kevin Shaughnessy, Les LeBlanc;
Airport Manager, Russ Maguire; Assistant Manager, Mark Raymond
Absent: Martin Odstrchel

The meeting was called to order at 5:00 p.m.

Appointments: none

Minutes from July 8, 2009. Mr. Shaughnessy requested clarification of some items from the minutes of the previous meeting. Chairman Ryan clarified the items in question. Chairman addressed the board if there were any question from the *minutes*. Mr. LeBlanc made a motion to accept the minutes; Mr. Wynne seconded the motion. The board voted unanimously in favor of the motion.

Airport Managers Report: Mr. Maguire submitted the manager's report with highlights from the written report.

Taxiway Crack Seal Project- Bids will open on August 20 which will address taxiway areas.

Runway Markings Project - Mr. Maguire was able to encumber funding, and this project is to be advertised on September 4.

SRE Phase 1 – Mr. Maguire is still waiting to submit a final close-out payment. Federal and state grant monies have been received, and local funding has been budgeted. There is an issue with water leakage in the glass panels which is minor. However, this does have to be addressed and wanted to address the issue while the building is still under warranty. A sub-contractor, *J & R Glass*, is scheduled to address this issue on August 13. Mr. Wynne questioned if it just needed to be re-sealed. Mr. Maguire stated that the general contractor had addressed this before and it was assumed that this issue was fixed; but the building is still leaking. Chairman Ryan questioned whether the general contractor had been notified of the issue. Mr. Maguire stated they had and were scheduled to be there the next day to investigate the problem.

Mr. Wynne asked about the crack seal coating. Mr. Maguire explained that, per the advertising spec, the awarded bid contractor is going to remove the existing material in large cracks and replace with new bonding material. He also stated the a runway markings project, long overdue, will be performed this fall as well. Mr. Maguire had been waiting on funding from the state aeronautics commission, since Norwood Airport had tentatively been programmed by the state for a crack seal project. State funding never materialized. So the airport manager is planning to use encumbered funds to address threshold markings, center-line markings and aiming points for Runway 35. The advertisement indicates industry-specific reflective paints to be used on the project.

The *Collings Foundation* will be at the airport October 2 – October 5, with the following World War II aircraft: a P-51 Mustang, a B-24 Liberator and a B-17 Flying Fortress. Mr. LeBlanc questioned whether

this event was to be on Norwood Day. Mr. Maguire replied no; Norwood Day is scheduled for September 19; and the Airport Department will sponsor trolley tours through the airport.

Mr. Maguire is requiring the *Collings Foundation* to put the town of Norwood, Norwood Airport Commission and Norwood Airport management on its certificate of insurance, and to provide—if necessary—additional security at the airport’s Gate 1. Chairman Ryan suggested advertising the event on NPA-V as well as the town web page, specifically on the scrolling marquee and calendar. Mr. Maguire agreed and stated there will be a press kit and press release that will follow.

The air traffic control tower is still slated for a federally funded security fence project, and this is scheduled for the spring. The fence will completely enclose the control tower’s base building. All level 1 towers, such as the one at Norwood, are being required to have security fencing with barbed wire; however, Mr. Maguire doesn’t believe this will affect the public’s ability to utilize the airport park and its viewing areas.

Mr. Wynne questioned the charges in the letter from Mr. Bacari, the attorney for *Boston Air Charter (BAC)*. Mr. Maguire responded that when the town started negotiating with BAC on its interest to install a fueling facility at the Norwood airport, BAC claimed that it had already invested money in two 12,000-gallon fuel tanks prior to an agreed upon and executed lease with the Airport Commission. Norwood Town Counsel stated that this was not necessarily a good business decision for BAC, to invest in this fueling equipment prior to signing a lease. Town Counsel has stated that was BAC’s business decision, and the airport is not liable. Initially, BAC had approached the Airport Commission for a commercial self fueling facility, which the company was expecting to derive revenues from. This facility would be similar to an automobile self-fueling station. However, when BAC filed their complaint with the FAA, the company emphasized its inability to self-fuel its own aircraft, with little or no mention of its original proposal to the Airport Commission that it be permitted to install a commercial self-fueling facility.

BAC Complaint - We will delay for years

Mr. Shaughnessey referenced letter from Attorney Lehane which stated that Town Counsel is still waiting for a letter from the BAC attorney, Matthew Watsky, for a summary of proposal which would state what BAC’s proposed plans are, to include the draft terms of its lease with the Airport Commission.

Mr. Maguire stated should BAC present a proposal that includes a commercial self-fueling operation as opposed to a self-service of its aircraft only, the FAA should be kept informed of this.

Mr. LeBlanc questioned if there were any rules/regulations on the distance to tie down aircraft from fuel. Mr. Maguire stated doesn’t recall whether there are any required set-backs, though there are FAA advisory circulars and National Fire Protection Association standards for aviation fueling areas.

Maguire made up rules - fake NFPA to delay - stop BAC for years

Chairman Ryan questioned if board had any addition questions. Mr. Shaughnessey made a motion to accept the managers’ report, Mr. LeBlanc seconded the motion. The board voted unanimously in favor of the motion.

Old Business

Heli-Ops waiver request for FY 2010 commercial permit:

The following information is being provided to you for your information and is not intended to constitute an offer of insurance. The information is provided for your information only and is not intended to constitute an offer of insurance. The information is provided for your information only and is not intended to constitute an offer of insurance.

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Handwritten notes on the left side of the page, including "Wading Water" and "XO 2/11/10".

Mr. Maguire stated he has a certificate of insurance which lists the town and Airport Commission as additionally insured. Chairman Ryan questioned whether the letter from Heli-Ops was to request a waiver of the airport's minimum standards for a commercial permit. Mr. Maguire stated yes. Mr. LeBlanc wanted to know why *Heli-Ops* has gone through this. Mr. Maguire explained that *Heli-Ops* has been marketing the Norwood Airport for some time as a base of operations. The company has also been using the airport as a base of operations for its sightseeing business--without the required permit. *Heli-Ops* cannot use the *Flight Level* passenger terminal as a security loophole to channel its customers through, and out onto the restricted access aircraft parking aprons--without a commercial permit.

Several months ago, *Heli-Ops* got caught doing this during a paid photo shoot, which concluded with the *Heli-Ops* pilot dropping off its customers inside the security fence after hours, when *Flight Level* line service personnel were not there to account for them and give them a proper escort. There then was a security concern out in the airport parking lot, involving persons from the *Heli-Ops* photo shoot. But the *Heli-Ops* pilot was already gone, flying back to the company's physical base of operations at the Plymouth Airport.

Mr. Maguire stated that *sightseeing* is listed in the Norwood Airport minimum standards as a commercial aeronautical activity.

Mr. Shaughnessy stated there are minimum standard requirements if you want a base such an operation at Norwood, and it is not fair to require other similar companies to stick with these standards, and then make an exception for one company. He stated that if a company wanted a base of operations at the airport, then it should have to have a presence on the airport, with a staffed office and aircraft tie downs. Mr. Shaughnessy made a motion to deny the application. Mr. Wynne seconded the motion. The board voted unanimously in favor of the motion.

New Business

Five-year Capital Improvement Program

Chairman Ryan presented a spreadsheet for the board to review. He questioned if the board's interest was in maintaining the same multi-year capital planning as before. Mr. Maguire stated with clarification; the AIP funding is federal funding only, and local funding on the spreadsheet includes both state and local funding shares. The board discussed various scheduled improvement/reconstruction projects on runways

Chairman Ryan questioned if the scheduled meeting was with the Massachusetts Aeronautics Commission (MAC) was to discuss this. Mr. Maguire replied yes, the meeting is scheduled for September 8th, @ 1:00 p.m. Any member of the Norwood Airport Commission is welcome to attend. Chairman Ryan questioned whether the board recommended any adjustments to the spreadsheet, and then requested a motion to accept. Mr. Wynne questioned what equipment was to be purchased; Mr. Maguire replied a sander and sweeper. The board discussed various percentages of funding for proposed projects. Mr. Maguire reminded the board that he has received a letter from the FAA which

says once the town becomes AIP eligible, the town will be reimbursed for the grant monies already advanced to the airport's engineering firm, *DuBois & King*. Reimbursed funds will go back to the town.

Mr. Wynne had questions about the snow removal equipment building. He wanted to know where funds to complete this building would come from. Mr. Maguire said the Airport Commission could consider applying to the MAC for grant funding once the town became grant-eligible. Mr. LeBlanc wanted to know if this could be tied into homeland security. Mr. Maguire replied that this had been attempted in the past. However, MEMA had no money. Mr. Shaughnessey questioned whether MEMA had a presence on the airport now. Mr. Maguire replied no, though the MAC does have a presence on the airport by way of the state agency's flight department. Mr. Shaughnessey asked whether the airport would be interested in renting space in the building once it is completed. Mr. Maguire stated that this could be looked into in the future. Mr. Ryan proposed to the board a motion to accept the five-year capital improvement plan. Mr. Wynne made a motion to accept, Mr. Shaughnessey seconded the motion. The board voted in favor of the motion.

Amendments -Norwood Airport Model Short-Term Lease

Mr. Maguire stated there were two highlighted sections in the document to be addressed; the Airport Commission had already approved the rest of the document. An earlier draft of the easement document had been reviewed by FAA in Washington, D.C., as part of the required corrective action plan submitted to the federal agency. In January of this year, FAA Headquarters stated that it wanted additional language in the short-term lease document, as shown in the highlighted sections of the proposed changes before the Commission. Mr. Shaughnessey made a motion to have an ('s) at the end of successor/entity (ie's). Mr. LeBlanc made a motion to accept with the recommended change, Mr. Wynne, seconded the motion. The board voted unanimously in favor of the motion.

Mr. Maguire stated the proposed deed of easement between *BMA, Inc.* and the town of Norwood has been through several iterations between Town Counsel and the *BMA* attorney. In June, a revised deed of easement was sent to the FAA New England region for review. The FAA New England Region then sent it to FAA Headquarters in Washington, D.C. The Airport Commission is still waiting to get the proposed deed of easement back from the FAA Washington.

Mr. LeBlanc questioned if the Airport Commission had to apply for a contractor to provide power for the conduit. Mr. Maguire replied that this is not a requirement of the town. The Airport Commission is only required to provide the easement. FAA Headquarters has stated, in a telephone conversation to Mr. Maguire, that in the future—when the town is again grant-eligible—it should apply for federal grant funding to install a common-use conduit

FY2010 commercial permit requests

We will tell FAA we are standard lease but do whatever we want -
We will take FAA required language from Verizon lease -

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Mr. Maguire submitted to the board three commercial permits with renewals that he would make a recommendation to approve - *New Horizon Aviation*, *Ariel Productions*, and *The Pilot Shop*. Chairman Ryan asked the board if there was a motion to renew these commercial permits.

Mr. Wynne questioned why *The Pilot Shop* is required to have a commercial permit. Mr. Maguire stated that the airport's minimum standards do allow commercially permitted businesses to be sited not only on the Norwood Airport proper, but also along Access Road, within the north/south airport property boundaries. Therefore, *The Pilot Shop* qualifies under the minimum standards to be a commercial permit holder, and the company has held a commercial permit for some four years. Mr. Shaughnessey made a motion to approve, Mr. LeBlanc seconded the motion. The board voted unanimously in favor of the motion.

Mr. Maguire addressed the commercial permit application of *Swift Aviation Services*. Mr. Maguire stated this is not the company's first time as an applicant. However, the company is asking to operate aircraft sales/exchange in addition to its main business of aircraft maintenance. In reviewing *Swift Aviation Service's* corporate filings, the company is listed as an aircraft repair shop only. For that reason, and the fact that the company has never provided copies of its state and federal aircraft dealer certificates, Mr. Maguire recommended that the company be approved for commercial operations specific to aircraft maintenance only. This would be a conditional approval of their commercial permit application, pending the submittal of required state and federal dealer certificates. Mr. Shaughnessey made a motion for the conditional approval. Mr. Wynne seconded the motion. The board voted in favor of the motion.

Boston Air Charter (BAC) – The company was recently dissolved by the Secretary of the Commonwealth of Massachusetts for not filing annually, as required by the state. In July, the company filed retroactively and was then issued a Certificate of Reinstatement from the Commonwealth. The company now has all of its required certificates and its insurance and has been reinstated as a solvent company. However, in addition to applying to the Airport Commission for FY 2010 air charter operations, BAC is also applying as a flight school and aircraft sales/exchange dealer. Mr. Maguire requested a motion to recommend that BAC be given a commercial permit specific to air charter operations only. If, at a later date, BAC can provide documentation demonstrating that it has been properly certificated by the federal and state governments to be a legitimate aircraft dealer and flight school, the Airport Commission might then consider authorizing such commercial services for BAC as well. Chairman Ryan proposed to the board that it issue a commercial permit to BAC as an air charter only. Mr. LeBlanc made the motion, Mr. Shaughnessey seconded the motion. The board voted unanimously in favor of the motion. Mr. Shaughnessey asked Mr. Maguire to notify the applicant what was done and what would be needed for additional business.

lets delay BAC for years
Maguire will take care of BAC-

Mr. Maguire stated that after an incident last month involving Boston Air Charter he checked all of the corporate filings of the Norwood Airport commercial permit holders. Boston Air Charter was the only company that had not filed as required by the Secretary of the Commonwealth.

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- 10/1
- Key
- SAC

Mr. Shaughnessey made a motion to adjourn at 5:45, Mr. Wynne seconded the motion. The board voted unanimously in favor of the motion.

LAW OFFICES OF STUART D. RAVECH, P.C.

212 CARNEGIE ROW
NORWOOD, MASSACHUSETTS 02062
Email: sravech@ravechmurphy.com

(781) 278-9990

FACSIMILE (781) 278-9992

September 8, 2009

9-8-2009

IN HAND

Norwood Airport Commission
125 Access Road
Norwood, MA 02062

Dear Commission Members:

Please be advised that this office represents David Spiegel as Trustee for Annex Realty Trust. Annex Realty Trust desires to enter into a long term Sub-Lease of the property now leased by the Norwood Airport Commission to Annex Realty Trust. The Sub-Tenant would be a nationally recognized AAA tenant. The terms of the proposed Sub-Lease would require Annex Realty Trust to fund significant improvements to the land now leased. Due to this investment and the requirements of the Sub-Tenant, Annex Realty Trust respectfully requests this Honorable Commission consider an amendment to the Lease between Norwood Airport Commission and Annex Realty Trust dated July 1, 2007 as enumerated below.

1. Paragraph entitled SPACE.

- a. Amend the provision which states "no structures can be built or placed on this parcel except for a fence or other structure to ensure the safety and security of Lessee's property and with the approval of the Lessor, set approval not to be unreasonably withheld", to add the words "or lighting posts" after the word fence.
- b. Amend the final sentence of the **SPACE** section which provides that the area shall remain a gravel surface by deleting the remainder of the final sentence after the words the lease area and inserting the words "may be paved at the sole cost and expense of Lessee".

2. Paragraph entitled TERMS.

- a. Amend the date of commencement from July 1, 2007 to "January 1, 2010" and the date of Termination of Lease from June 30, 2017 to "December 31, 2019".

3. Paragraph entitled LESSEE'S USE OF SPACE.

- a. Amend the Lease by placing ", lighting posts" after the word fence.

*We want the lease to say what we want, Now.
NAC response to Spiegel - Verizon - No problem.
response to BAC - Unlimited years - We have dollars to taxpayer - destroy you*

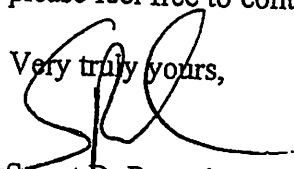
1929
To the
Hon. Secy
of the
Interior
Washington
D.C.
Dear Sir:
I have the
pleasure to
acknowledge
the receipt
of your
letter of
the 10th
inst. in
reference
to the
above
subject.
The same
has been
forwarded
to the
proper
authorities
for their
consideration.
Very
truly
yours,
Wm. C. Clegg
Chief of
Bureau

- b. Amend the Lease in the final sentence to add the words "with exception of improvements made by Lessee".
4. Paragraph entitled SUB-LEASE/ASSIGNMENT.
 - a. The section now states that the Lease shall not be assigned to any party or entity that David Spiegel does not have a controlling interest. Annex Realty Trust respectfully requests this Honorable Commission amend this section by adding the words "or has assets or net worth in excess of \$10,000,000.00".
 5. Paragraph entitled DEFAULT.
 - a. Currently this section states that an event of default occurs after five days, it is requested that the period of time for default be amended to "fifteen" days.
 6. Paragraph entitled TERMINATION.
 - a. The final sentence of the **TERMINATION** section states "During the second five year term extension, The Lessor has may terminate the Lease upon sixty days written notice that the Lessor intends to use the Leased Premises in a different manner, pursuant to an airport master plan which has been adopted by the Lessor". As a result of the proposed Sub-Lease remaining in force for the entire period of the second five year term extension option, Annex Realty Trust respectfully requests this Honorable Commission delete the provision which allows for the sixty day written notice of termination of the second five year term extension option.

I apologize for the late submission of this letter to the Honorable Commission. I further respectfully request that should a review by the full Commission be necessary that these matters be added to the agenda for the Airport Commission Public Meeting now scheduled for Wednesday September 9, 2009.

If I may be of any further assistance, please feel free to contact me at 781-278-9990.

Very truly yours,


Stuart D. Ravech

SDR/dmw

9-9-2009

APPROVED

10/14/09

Norwood Airport Commission
Regular Business Meeting
September 9, 2009

Quorum being present, the meeting was called to order by the Chairman.

Appointments

Timothy Karanja, Horizon Aviation: Airport security badge revocation; appeal

Manager outlined the issues for the Commission. In response to an incident on 8/26/09 during which one of Mr. Karanja's students was observed walking unescorted and without a security badge, on the south apron of the airport, Mr. Maguire had suspended and has now revoked, Mr. Karanja's security badge privileges. This was not the first time a student of Horizon was found unescorted and un-badged on the airport.

Ken Dustin, the manager at Horizon, has spoken with the flight instructors and they all realize they need to follow the security regulations and that they get the message.

Mr. Maguire spoke about an herbicide project that is ongoing now. Upon completion of the herbicide project the manager will arrange to have the area around the fence cleaned up.

In regard to the upcoming Bombers visit to the airport, the Manager will have VIP passes to distribute to Town officials, etc. There will be a fee for all others to get onto the aircraft. The Manager has made arrangements to conduct tours at the airport on Norwood Day, September 19th.

Motion made by Mr. Shaughnessy and seconded by Mr. Leblanc to accept the Manager's Report dated 8/31/09. voted: all in favor.

New Business

There is an updated CIP available. One of the items, and airspace analysis, which was scheduled for 2016 has been recommended to be moved up to 2012 by MAC.

Motion by Mr. Wynne and second by Mr. LeBlanc to accept the amended 5 year CIP and to notify MAC as such. Voted: all in favor.

Correspondence

The first three letters listed on the agenda have all been addressed

The fourth item, BAC lease letter, will be addressed in executive session.

A letter received from David Speigle will also be addressed in executive session.

Motion by Mr. Shaughnessy to enter into executive session to discuss these two items was made and seconded. Roll call vote: All in favor.

BAC - Forget about it
Speigle - all set -
We can do that
in secret

SECRET

CONFIDENTIAL

CONFIDENTIAL

[Faint, mostly illegible typed text, possibly a memorandum or report]

SECRET
We can go that
Eh...
BAC...
SECRET

[Faint, mostly illegible typed text, possibly a memorandum or report]

9-18-2009

APPROVED

10/14/09

Norwood Airport Commission

Special Meeting

September 18, 2009

Present: Mark Ryan, Thomas Wynne, Kevin Shaughnessy, Russ Maguire

David Speigle, Elliot Ravech

Quorum being present, the meeting was called to order at 12:04 PM by Chairman Ryan.

David Speigle of Annex Realty Trust was present to discuss proposed changes to the leasehold with the Airport Commission.

Motion made by Mr. Wynne and seconded by Mr. Shaughnessy to enter into executive session. – Roll call vote: Mr. Wynne – yes; Mr. Ryan – yes; Mr. Shaughnessy – yes. Motion passed.

Executive session was adjourned at 12:40 PM and the Commission returned to regular session.

Mr. Shaughnessy made a motion to adjourn, seconded by Mr. Wynne. Voted: 3-0 in favor.

12:43 PM Adjournment.

We Can do this in Secret With You -

100-100000-100000

Department of Justice
Federal Bureau of Investigation
Washington, D.C. 20535

Mr. J. Edgar Hoover, Director, FBI
Washington, D.C. 20535

Dear Mr. Hoover:

I am writing to you regarding the matter of the late Mr. J. Edgar Hoover.

Enclosed for you are two copies of a letterhead memorandum

dated and captioned as above. The information contained therein is being furnished to you for your information.

Very truly yours,
Special Agent in Charge

Enclosure

100-100000-100000

Milk
Dairy
Company
100-100000-100000

9-25-2009



U.S. Department
of Transportation
**Federal Aviation
Administration**

Federal Aviation Administration
New England Region

12 New England Executive Park
Burlington, MA 01803

September 25, 2009

Mr. Russ Maguire
Airport Manager
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

Dear Mr. Maguire:

This office has reviewed your letter dated September 11, 2009, requesting guidance on a proposed long-term lease of an apron to Boston Air Charter (BAC).

On April 11, 2008, the FAA issued a Director's Determination ordering the Town of Norwood to end the practice of awarding long-term leases of federally funded aprons. As a result, the Town submitted an action plan to the FAA stating that it would discontinue its long term leasing practice. The proposal by BAC is contrary to both these documents.

However, the FAA has no objection to a lease for the apron area required for BAC's fuel farm for a thirty-year term. This will allow BAC to amortize the cost of constructing the fuel farm.

The lease of any additional apron space must be in accordance with the Compliance Handbook, FAA Order 5190.6A, Paragraph 4-17.k.

If you have any questions, you can reach me at 781-238-7624.

Sincerely,

Donna R. Witte
Airports Program Specialist

cc: Mr. C. Willenborg, MAC

*FAA - No Problem with
BAC lease -
NAC - We will keep
this from
BAC*

Mr. Tolson
Mr. Boardman
Mr. Nichols
Mr. Belmont
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Mr. Tele. Room
Miss Holmes
Miss Gandy

~~CONFIDENTIAL~~

9-28-2009

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

CROWN COLONY PLAZA
300 CROWN COLONY DRIVE
SUITE 410
P.O. BOX 9126
QUINCY, MA 02269-9126
TEL: 617-479-5000 FAX: 617-479-6469

75 FEDERAL STREET
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BOSTON, MA 02110
TEL: 617-479-5000 FAX: 617-338-1324

ONE MONARCH PLACE
SUITE 1310R
SPRINGFIELD, MA 01144
TEL: 888-841-4850 FAX: 617-479-6469

www.mhtl.com

Arthur P. Murphy
James A. Toomey
Katherine A. Hesse
Michael C. Lehane
John P. Flynn
Regina Williams Tate
Edward F. Lenox, Jr.
Mary Ellen Sowyrda
David A. DeLuca
Donald L. Graham
Andrew J. Waugh
Geoffrey P. Wermuth
Robert S. Mangiaratti
Doris R. MacKenzie Ehrens
Geoffrey B. McCullough

Lorna M. Hebert
Clifford R. Rhodes, Jr.
Kathryn M. Murphy
Karis L. North
Thomas W. Colomb
Alisia St. Florian
Jason M. Gesing
Bryan R. LeBlanc
Brandon H. Moss
Kevin F. Bresnahan
Kathleen E. Yaeger
Brian P. Fox
Lauren C. Galvin
Carolyn J. Lyons
Samantha E. Kaplan

Please Respond to Quincy

September 28, 2009

Matthew Watsky, Esq.
30 Eastbrook Road
Dedham, MA 02026

Dear Mr. Watsky:

Thank you for your email Friday afternoon. No thank you for the factual inaccuracies which are too numerous to respond to individually. Suffice it to say that in 2005, the DC-3 Ramp area was repaved at a cost of \$660,000. Prior to the repaving, BAC was invited to work with the contractor on that job to install conduits before the repaving. BAC declined to do so and declined to participate in weekly job meetings despite being invited. I'm sure the reasonable side of your nature can appreciate that cutting into a new \$660,000 paving job is not the preferred alternative.

Please let me respectfully point out also that a lease is a consensual document, not to be dictated by either side, but that each side may (if the lease is to be agreed to) have to make concessions which it would prefer not to. That is part and parcel of the negotiation process which typically precedes any lease, particularly those for longer terms.

But we will allow flight level to dig the ramp up later
I have all the time and money to delay you for years

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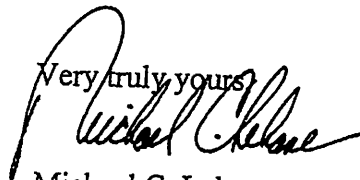
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MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Matthew Watsky, Esq.
September 28, 2009
Page Two

The FAA has given guidance to NMA suggesting that the first focus of efforts should be to resolve the easement issue. As I mentioned in my 9.25.09 email, there has been a minor "glitch" but I'm hopeful that will be quickly resolved. In the meantime, staff has been working on a proposed lease for NAC which follows a format approved by FAA. We hope to have that to you shortly.

Very truly yours,



Michael C. Lehane
Town Counsel

MCL/emw

C: Mr. Maguire
NAC

518842v1

9-29-09 (C)



The TOWN OF NORWOOD

Commonwealth of Massachusetts

Norwood Memorial Airport

Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS

125 Access Road
Norwood, MA 02062

MAILING ADDRESS

125 Access Road
Norwood, MA 02062

September 29, 2009

Murtha Cullina LLP, Attorneys at Law
Attn: Paul L. Bacari
99 Hiah Street
Boston, MA 02110

**RE: Request for Executive Session Minutes Released to the Public Domain; per
Public Information Request SPR 08/302**

Dear Mr. Bacari:

Your letter dated September 25, 2009 has been received. To date, your client has signed for 11 packets of releasable public documents, under public information request **SPR 08/302**. These released documents now total 408. Additionally, regarding your request for the release of executive session minutes, I will pass this along to the Norwood Airport Commission (NAC) for the board's consideration.

Also, please see attached copies of the following letters:

- October 24, 2008 letter from P. Bacari to R. Maguire re: Massachusetts Public Records Request
- November 5, 2008 letter from R. Maguire to P. Bacari responding to 10/24/08 letter from P. Bacari to R. Maguire
- June 25, 2009 letter from P. Bacari to R. Maguire re: October 24, 2008 P. Bacari to R. Maguire, Public Information Request

As you can see from your initial correspondence on October 24, 2008, you requested from my office 22 classes of documents going back to 2004. In each of these classes, your request begins with: "All documents..." "All agreements..." or "Any correspondence..." My November 5, 2008 letter to your office was a response to your very broad public information request, along with an applicable calculation.

After receiving seven packets of releasable information totaling some 316 documents under "all documents—," all agreements—," and/or "any correspondence—as you had

requested, in your June 25, 2009 letter, you largely revised your October 24, 2008 request. However, again, the calculation of charges references your *initial* public information request October 24, 2008.

Therefore, to the last sentence of your most recent September 25, 2009 letter, in which you state: "We are now many months since our request and have been provided only a fraction of the documents identified as responsive (based upon the amount that you charged for copies)," I would again state that our calculation was based on your *initial* request for information. Had you been more specific in your initial request, we surely would have spent less time tracking down "all documents," "all agreements," and/or "any correspondence.."

Finally, should the NAC decide to release any of the aforementioned and requested executive session minutes, these documents—along with any other materials requested by, and releasable to your client—will be added to a final calculation of charges, thus offsetting the current balance.

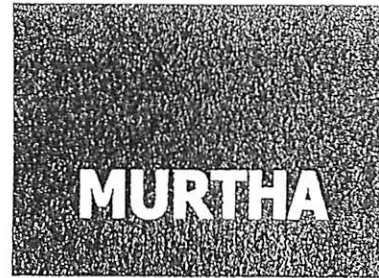
Sincerely,



Russ Maguire, Manager
Norwood Memorial Airport

CC: *Rebecca S. Murray, Commonwealth of Massachusetts; Norwood Airport Commission*

Ε



September 25, 2009

VIA TELECOPIER NO. (781) 255-5617

Mr. Russ Maguire, Manager
Norwood Memorial Airport
125 Access Road
Norwood, Massachusetts 02062

Re: Boston Air Charter – Executive Session Minutes for NAC

Dear Mr. Maguire:

I am told by my client that you have not provided any executive session minutes.

Minutes of Executive Sessions may remain secret only for so long as publication may defeat the lawful purposes of the session. It is difficult to imagine what lawful purpose might be defeated with regard to 3-5 year old executive session minutes.

Please advise when these minutes as well as other requested documents will be made available. We are now many months since our request and have been provided only a fraction of the documents identified as responsive (based upon the amount that you charged for copies).

Kindly note my new contact information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul L. Baccari".

Paul L. Baccari

PLB:afj
Attachment
cc: Eric Giler
Al Bishop

Attorney Rebecca S. Murray
The Commonwealth of Massachusetts
Office of the State Secretary
One Ashburton Place, Room 1719
Boston, Massachusetts 02108

File No. SPR08/302

Murtha Cullina LLP | Attorneys at Law

BOSTON

HARTFORD

MADISON

NEW HAVEN

STAMFORD

WOBURN

BMA will be paid \$15000 for the easement as soon as the deed is registered. FAA in Washington has asked the NAC to send a certified letter to BAC stating that the easement has been approved.

Mr. Wynne made a motion to enter into Executive Session for the purpose of discussing lease negotiations and return to Regular Session with the sole purpose of adjournment.

Mr. Odstrchel seconded the motion. The Commission voted unanimously by roll call vote in favor of the motion.

6:22 pm adjournment

11-13-09 (E)

MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

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Lauren C. Galvin
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Samantha E. Kaplan

Please Respond to Quincy

November 13, 2009

Norwood Airport Commission
125 Access Road
Norwood, MA 02062
Attn: Russ Maguire, AAE, ACE, Airport Manager

Re: Public Documents Request

Dear Mr. Maguire:

The Legislature has approved an Ethics Reform Law which will fundamentally alter many aspects of established open meeting procedures. However, those changes do not become effective until July 1, 2010. Consequently the "old law" still governs.

A provision of c.39/23B currently in force says:

"A governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. The records of each meeting shall become a public record and be available to the public; provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become a part of the record of said executive sessions. No votes taken in open session shall be by secret ballot."

F

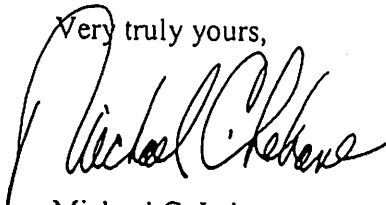
MURPHY, HESSE, TOOMEY & LEHANE, LLP
Attorneys At Law

Russ Maguire
Page 2
11/12/2009

Thus, each governmental body is implicitly required to review its executive session minutes (particularly when a request for them is made) to determine if the legitimate reason for the executive session still requires the minutes to be withheld from public disclosure. Mr. Bacari's letter dated September 25, 2009 addresses this point. Though I don't agree with the characterizations in that letter, I do agree that as time passes, the need to keep minutes from the public generally diminishes, as a general proposition.

I'm enclosing a copy of a page from the Attorney General's website which addresses these issues and the change in the law.

Very truly yours,



Michael C. Lehane
Town Counsel

MCL/mpq
Enc.

Cc: Brandon Moss, Esquire

11-18-2009

APPROVED
12/16/09

Norwood Airport Commission

Regular Business Meeting

November 18, 2009

Present: Mark Ryan, Les LeBlanc, Thomas Wynne, Russ Maguire

Jeff Adler, Peter Eichlay, Al Buri, Brad Cole

Quorum being present, the meeting was called to order by the Chairman at 5:04 PM.

Dubois & King

Jeff Adler gave an engineering update.

In regard to the runway 1028 reconstruction project, page 4 had incorrect numbers - total contract value should be \$ 176,286 because it had gone out to bid but then the grievance of BAC was filed and NAC wasn't eligible for any money. The amendment is to get the project out to bid again.

The additional money for the design phase is because information had been taken from past projects but the drainage didn't match the drawings - now there will be some additional field work to figure out where the existing drainage goes. A lot of them don't have any outlets to tie into. The drawings will be revised as needed before going out to bid.

Plans were reissued for FAA review and Mr. Adler did meet with FAA regarding the project. FAA is in support but had problem with declared distances. FAA has asked Manager for some information which he gave them - The Manager has asked Bill Richardson of E & K for information. FAA's concern is that some pilots will not understand declared distances and will not do proper flight plans because of this. The runway is now a group b 2 runway so it needs a 300 foot area at the end.

Jeff Adler will contact Michelle at FAA to get this resolved timely - in order to get it out to bid in January.

In regard to the permitting, initially Conservation Agent Al Goetz seemed to concur with the process but then he became uncomfortable and forced Dubois & King to do additional permitting that wasn't included in the original quote. There will be a construction storm water plan done by a consultant, Smart Associates on the airport storm water plan and just that work will cost \$4000.

Permitting issues are all settled at this point, other than submitting the Smart Associates plan.

We have to go through the whole bid phase again. The hours and fees are the same. Grant applications have to be prepared for FAA and MAC in addition to a pre- design meeting.

\$7,000 is sub consultants and their fees, which have escalated.

The local share is just over \$5,000.

the final number of 176,286 is lower than the price submitted for funding purposes with FAA and MAC.

Motion made by Mr. Wynne and seconded by Mr. LeBlanc to sign off on the \$42,685

contract amendment. Voted: 3-0 in favor.

Minutes

October 14th regular business meeting.

The following corrections will be made to the minutes of the October 14th meeting. Cliff Vircirca is FAA not MAC and the executive session minutes will be put on a separate page.

Motion by Mr. Wynne and seconded by Mr. Wynne to accept minutes of the regular business meeting of October 14th 2009 as amended. Voted: 3-0 in favor.

October 30th - special meeting to discuss leases.

The following corrections will be made to the minutes of the October 30th special meeting.

Add the word over to the statement about policing the work to be done.

Change "sell fuel" to "self fuel" in two places on page 1 fourth paragraph.

Motion made by Mr. Wynne and seconded by Mr. LeBlanc to accept the minutes of the October 30, 2009 special meeting. Voted: 3-0 in favor.

Manager's Report

The Commission has been spending a lot of money on lighting and signage. The Assistant Manager has been doing work on snow removal equipment, and also the trucks. That work took up a big portion of October .

In regard to the 2011 budget meeting with Town Manager John Carroll, there will have to be another appraisal fro 2011 done on Access Road so \$25,000 was programmed in for that. Mr. Carroll suggested putting in a \$10,000 placeholder for he local share of the cost of land acquisition. He also asked Mr. Maguire to do a revenue projection for that piece of land if it is acquired. When the NAC meets with the Finance Commission they will let them know that Mr. Carroll recommended the placeholder.

This appraisal is not expected to cost \$25,000 because the appraiser has already done the leg work. Jeff Adler will call Decastro and keep in touch with Mr. Maguire.

FAA requires that a review appraisal be done on any land by an appraiser hired by NAC. The grant application must be in by May 2011. There will possibly be a special town meeting in November of 2010, the appraisal work could be done after July 1 2010.

In regard to the signage work, it is budgeted money coming out of the airfield lighting. The Assistant Manager does all the work he is qualified to do on this, as he does with the snow removal equipment. The Ford 350 truck is now repaired. All the bays in the SRE building are being used. The Assistant Manager has been using the old army vehicles for parts but he may look into getting rid of them.

The Manager would like to do a survey of public use airports tie down leases to see what they are charging for them.

There will be an FAA compliance seminar December 9th which Mr. Maguire, Mr. Wynne and Mr. LeBlanc will attend. Also, the FAA is publishing a new compliance handbook.

Old Business

Boston Air Charter public information request.

Letter dated 11-13-09 from Attorney Michael regarding public information request. The Manager can put together all the executive session minutes and send them to Town Counsel for his review. Attorney Lehane will determine whether or not they can be released to BAC.

BAC has provided money that is in an account at town hall and Mr. Maguire keeps an accurate accounting. Under public information law, the lowest paid employee's pay rate is used to determine charges, so Mark Raymond, Assistant Manager's was used.

New Business

Snow Removal Contract

The Manager recommends the Commission approve the snow removal contract with PJ Hayes.

Motion made by Mr. LeBlanc and seconded by Mr. Wynne to approve the contract with PJ Hayes for snow removal this coming winter. Voted: 3-0 in favor.

Auto storage lease with David Spiegel.

Motion made by Mr. Wynne and seconded by Mr. LeBlanc to enter into Executive Session for the purpose of discussing the auto storage lease and to return to regular session with the sole purpose of adjourning. Roll call vote: All in favor.

The Commission entered into Executive Session at 5:50 PM.

The Commission returned to regular session for adjournment at 6:10 pm.

Motion made by Mr. Wynne and seconded by Mr. LeBlanc to adjourn. Voted: 3-0 in favor.

*We will do this in
secret to
no one knows -
especially the
FAA*

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Mr. J. Edgar Hoover
Director
Federal Bureau of Investigation
Washington, D. C.
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The town of Norwood

Commonwealth of Massachusetts

11-25-2009 (D)

Norwood Memorial Airport
Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS
125 Access Road
Norwood, MA 02062

MAILING ADDRESS
125 Access Road
Norwood, MA 02062

CERTIFIED MAIL

November 25, 2009

Boston Air Charter
Attn: Al Bishop, President
209 Access Road
Norwood, MA 02062

RE: DC-3 Apron Lease Offer to Construct Aircraft Self-Fueling Facility

Dear Mr. Bishop:

On Norwood Memorial Airport's gate 3 taxi-lane, the town of Norwood recently acquired a 20-ft. wide by 300-ft. long easement from lessee, *Boston Metropolitan Airport, Inc.* The Norwood Airport Commission has therefore directed me to now extend an offer to your company, so that *Boston Air Charter* (BAC) may lease space on the DC-3 apron, thus enabling BAC to then construct and operate an aircraft self-fueling facility.

The gate 3 easement will facilitate installation of conduit and electrical service needed by your company to provide power for a fuel farm. All construction and material costs are to be borne by your company, following a complete design review/approval, as specified in the lease proposal.

To that end, please see enclosed the subject lease document for your company's consideration. As drafted, the proposed lease for the DC-3 apron contains a five (5) year lease term. At this time, the Airport Commission has determined that it is premature to extend a longer-term lease for the portion of the DC-3 apron that will comprise the footprint of the proposed fueling facility. However, once your company obtains all of the required permits and approvals, and the fueling facility is constructed and operational, the Airport Commission will entertain a longer-term lease for the portion of the DC-3 apron comprising the footprint of the proposed fueling facility, on substantially the same terms and conditions contained in the initial five (5) year lease.

Please direct your questions and/or comments either to the Norwood Town Counsel or to my office once you've had an opportunity to review the lease.

Thank you.

Handwritten notes on the right side of the page:
- FAA told Maguire on 9-25-2009 -
- 30 year lease OK
- Cost of fuel farm

Handwritten notes at the bottom right:
- Maguire -
- I can delay you and hide FAA letter

11/10/03
 M. J. J. (11/10/03)
 M. J. J. (11/10/03)
 M. J. J. (11/10/03)
 M. J. J. (11/10/03)
 M. J. J. (11/10/03)

This document contains several pages of text that are extremely faint and mostly illegible. There are some discernible words and fragments, such as "United States", "of the", "and", "the", and "of", but the majority of the content is too light to transcribe accurately.

⑤

Sincerely,

Russ Maguire

Russ Maguire, Manager
Norwood Memorial Airport

*Enclosure: Norwood Memorial Airport Standard Ground Lease, Short-Term: DC-3
Apron*

CC: *FAA Headquarters, Washington, D.C.; FAA (ANE) New England Region;
Norwood Airport Commission; Norwood Town Counsel*



The TOWN OF NORWOOD

Commonwealth of Massachusetts

11 9-25-2009

Norwood Memorial Airport

Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS

125 Access Road
Norwood, MA 02062

MAILING ADDRESS

125 Access Road
Norwood, MA 02062

CERTIFIED MAIL

November 25, 2009

Boston Air Charter
Attn: Al Bishop, President
209 Access Road
Norwood, MA 02062

RE: DC-3 Apron Lease Offer to Construct Aircraft Self-Fueling Facility

Dear Mr. Bishop:

On Norwood Memorial Airport's gate 3 taxi-lane, the town of Norwood recently acquired a 20-ft. wide by 300-ft. long easement from lessee, *Boston Metropolitan Airport, Inc.* The Norwood Airport Commission has therefore directed me to now extend an offer to your company, so that *Boston Air Charter* (BAC) may lease space on the DC-3 apron, thus enabling BAC to then construct and operate an aircraft self-fueling facility.

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To that end, please see enclosed the subject lease document for your company's consideration. As drafted, the proposed lease for the DC-3 apron contains a five (5) year lease term. At this time, the Airport Commission has determined that it is premature to extend a longer-term lease for the portion of the DC-3 apron that will comprise the footprint of the proposed fueling facility. However, once your company obtains all of the required permits and approvals, and the fueling facility is constructed and operational, the Airport Commission will entertain a longer-term lease for the portion of the DC-3 apron comprising the footprint of the proposed fueling facility, on substantially the same terms and conditions contained in the initial five (5) year lease.

Please direct your questions and/or comments either to the Norwood Town Counsel or to my office once you've had an opportunity to review the lease.

Thank you.

Sincerely,

Russ Maguire

Russ Maguire, Manager
Norwood Memorial Airport

*Enclosure: Norwood Memorial Airport Standard Ground Lease, Short-Term: DC-3
Apron*

*CC: FAA Headquarters, Washington, D.C.; FAA (ANE) New England Region;
Norwood Airport Commission; Norwood Town Counsel*

Norwood Memorial Airport

Standard Ground Lease, Short-Term: DC-3 Ramp

This Lease agreement is made the ____ day of December 2009 by and between the Norwood Airport Commission (NAC) (*Lessor*) and Boston Air Charter (*Lessee*). Lessor: Norwood Airport Commission, acting pursuant to its statutory powers as set forth under Massachusetts State Laws, Chapter 90, Sections 51D through 51N, as the same may be amended, by and on behalf of the Town of Norwood, and having its usual place of business at the Norwood Memorial Airport, 125 Access Road, Norwood, MA 02062. Lessee: Boston Air Charter, having its usual place of business at the Norwood Memorial Airport, 209 Access Road, Norwood, MA 02062.

I. **GROUND SPACE:** In consideration of the rent and covenants herein reserved and contained on the part of the Lessee to be paid, performed and observed, the Lessor hereby leases unto the Lessee a parcel of impervious, asphalt-covered land containing 13,617 square feet of land (commonly referred to as the "DC-3 Ramp") and shown on an Exhibit A plan attached hereto, situated on the Norwood Memorial Airport in Norwood, Massachusetts. Contained outside and east of this parcel of land, west of the taxiway B centerline, is part of a taxiway object-free area (commonly referred to as a "TOFA") totaling 5,455 square feet, also shown on Exhibit A.

The leased premises are marked "DC-3 Ramp" on said plan.

II. **TERM:** Subject to earlier termination as hereunder provided, this lease is for one term of five (5) years, commencing on the ____ day of December 2009 and ending on the ____ day of November 2014.

III. **RENT:** It is the intent of both the Lessor and the Lessee that the Lease shall be a net Lease, with the Lessor to receive all rental payments herein, without offset or deduction of any kind. Prior to installation and approval by local and state officials of a fueling facility on the DC-3 Ramp, Lessee shall pay the sum of \$ 595.00 per month. Said rent shall be increased annually by two percent (2%) during the term of this lease.

Once the fueling facility is fully installed, inspected and approved for operation by local and state officials, the Lessee shall pay in year one \$20,000 (referred hereinafter as the "Base Annual Rent") regardless of any flowage fee as described below. For year one, the Base Annual Rent shall be paid in 12 equal monthly installments of \$1,666.67 due in advance of the first day of each month. For each successive year of this Lease, the Base Annual Rent will increase by 2% from the preceding year, and shall be paid in 12 equal monthly installments.

The Actual Annual Rent that the Lessee will pay to the Lessor shall be calculated on the basis of a flowage fee of twelve cents (\$.12) per gallon of Jet A fuel and/or ten cents (\$.10) per gallon of aviation gas (100 LL); calculated on the basis of all bills of lading for that month, which are submitted at the end of each month to the Lessor, for all Jet A and/or aviation gas deliveries to the Lessee's fueling facility. In the event the Actual

Annual Rent, calculated above using flowage fees, exceeds the Base Annual Rent, the Lessee shall make an additional payment at the end of each Lease year. Within sixty (60) days of the end of each Lease year, Lessee shall pay the Lessor such amount, if any, of the difference between the Actual Annual Rent and the Base Annual Rent. It is understood that the Actual Annual Rent calculated from the flowage fees may exceed the Base Annual Rent and that excess amount will be rent due under this lease agreement.

The first payment shall be made upon the execution and delivery of this Agreement to the Lessor, and subsequent payments shall be made on the first day of each month thereafter, in advance, during the Term hereof, as same may be extended, as Lessee or anyone claiming under Lessee shall occupy said premises or any part thereof. The Lessee further agrees to pay the Lessor finance charges of 1 ½% per month (18% annual percentage rate) on all rents and payments due under this lease for each month or fraction of a month that the rents or payments remain unpaid beyond thirty (30) days after the date on which they are due, or as specified above.

IV. USE OF THE PREMISES: Lessee shall have the right to use the premises for the following purposes and activities, and those purposes directly needed to accomplish such uses, and none other. The leased premises shall be used to accommodate the installation of an above ground, non-commercial self-fueling¹ storage facility, for the purpose of dispensing aviation fuel, together with the appropriate industry-standard pumping, filtering, security, fire suppression, electrical and containment equipment; plus aircraft parking apron.

The Lessee is restricted from selling or dispensing fuels to other airport users, including locally based and transient aircraft. Lessee's fuel dispensing activities shall consist of and be limited to self-fueling by the Lessee or the Lessee's employees, of aircraft owned by the Lessee; or, exclusively leased for two (2) years or more to the Lessee and under the complete operational control of the Lessee. Upon the request of airport management, the Lessee is required to provide evidence of aircraft ownership (and/or lease agreements) of any aircraft being fueled by the Lessee or the Lessee's employee. The Lessee may also be required to show proof that the person fueling the aircraft is an employee of the Lessee. Proof of employment may be a copy of the employee's W-2 statement.

All aircraft to be self-fueled by the Lessee must furthermore be carried on the Lessee's insurance certificate. It is the responsibility of the Lessee to ensure that airport management has an updated copy of the Lessee's insurance, with the required aircraft listed; and coverage limits.

¹ As defined in Federal Aviation Administration Advisory Circular AC 150/5190-7 *Minimum Standards*, Appendix 1. *Definitions*, (p.14) "Self-fueling means the fueling or servicing of an aircraft...by the owner of the aircraft with his or her own employees and using his or her own equipment. Self-fueling and other self-services cannot be contracted out to another party. Self-fueling implies using fuel obtained by the aircraft owner from the source of his/her preference. As one of many self-service activities that can be conducted by the aircraft owner or operator by his or her own employees using his or her own equipment, self-fueling differs from using a self-service fueling pump made available by the airport, an FBO, or an aeronautical service provider. The use of a self-service fueling pump is a commercial activity and is not considered self-fueling as defined herein."

The Lessee's fuel storage and dispensing activities shall consist of and be limited to self-fueling by the Lessee of aircraft which the Lessee owns or exclusively leases for its own use of two (2) years or more, with fueling equipment owned by the Lessee. Self-fueling co-ops are prohibited.

Lessee shall have the sole responsibility for maintaining fuel quality standards in all phases of fuel storage and dispensing.

Further the Lessee agrees to adhere to all environmental permitting and stewardship requirements regarding the installation and operation of a fuel storage and dispensing facility; and aircraft parking apron. As an accessory due to limited parking, Lessee may also park automobiles on the leased premises for personnel and customers. It is agreed that the Lessor makes no representation or guarantees that the leased area is fit for the uses to which they are placed by the Lessee, but rather, that Lessee has made its own independent judgment that the leased premises are suitable to Lessee's needs.

V. **INSURANCE:** The Lessee agrees that it will secure and pay for general liability insurance with respect to the leased area, insuring the Lessee and the Lessor against all claims for injuries to a person or property sustained by anyone while on the premises leased to the Lessee. Insurance will include product and service provided by the Lessee. Lessee will maintain property and public liability insurance with limits not less than five million dollars (\$5,000,000) per incident for bodily injury or death, and property damage with aggregate limits not less than ten million dollars (\$10,000,000). Insurance will be in responsible companies authorized to do business in Massachusetts. Lessee shall provide Lessor with duplicate originals of policies providing such insurance and shall provide reasonable evidence by providing an annual updated policy to the Lessor. Insurance amounts shall at all times conform to the rules and regulations issued by the Massachusetts Division of Aeronautics and the Norwood Airport Commission's rules and regulations for operating the airport. Copies of all insurances and binders will be filed in the offices of the Norwood Airport Commission.

VI. **ASSIGNMENTS, MORTGAGES, OR SUBLEASES:** Neither Lessee, nor its successor, heirs or assigns, shall assign, mortgage, pledge, or encumber this lease. Leased area may not be sub-let for any purpose. Lease shall not be assigned or transferred by operation of law, without the prior consent in writing of the Lessor in each instance. If lease is assigned or transferred, or any part of the leased area is used by other than the Lessee, Lessor may, after default by Lessee, collect rent from assignee, transferee, or occupant and apply amount collected to the rent reserved herein, but no such assignment, occupancy, or collection shall be deemed a waiver of any agreement or condition hereof, or acceptance of the assignee, transferee, or occupant as Lessee. Lessee shall continue to be liable hereunder in accordance with the terms and conditions of this lease and shall not be released from the performance of the terms and conditions hereof. The consent of the

Lessor to an assignment, mortgage, pledge, or transfer shall not be construed to relieve Lessee from obtaining the express written consent to any future transfer of interest.

VII. SPECIAL CONDITIONS:

All activities shall be in accordance with the Norwood Airport Storm Water Pollution Prevention Plan, Norwood Airport Spill Prevention, Control and Countermeasures Plan and Norwood Airport Security Plan, including restrictive access control to and from the leased area. The NAC reserves the right to alter these plans as needed to reflect the federal and/or state environmental and security requirements in the future. The NAC further reserves the right to alter access to the site for safety and security reasons.

The Lessee must cooperate with a number of local and state agencies, and officials, to effect the installation, inspection, approval, and operation of an aircraft fueling facility. Required critical path steps include, but may not be limited to the following:

- i) The Lessee must appear before the NAC with a proposal that defines the design, dimensions, equipment and space requirements for an aviation fueling facility.
- ii) The Lessee must provide to the NAC a complete set of detailed engineering drawings, signed off by a professional engineer, showing the fueling facility's design, dimensions, equipment and space requirements. These drawings will include an electrical plan and a conduit trench detail drawing, which depicts the pipe material to be installed. Both the electrical plan drawing and the conduit trench detail drawing must be signed off by the Town of Norwood. The fueling facility's design, dimensions, equipment and space requirements must be approved by the NAC; and any NAC-required design changes, modifications or deletions must be adhered to.
- iii) The Lessee's Superseding Order of Conditions from the Massachusetts Department of Environmental Protection must remain in good standing;
- iv) The Lessee must file a notice of intent with the Norwood Conservation Commission, and receive a subsequent order of conditions. A letter from the Norwood Conservation Commission, noting any requirements, or the absence thereof, must be copied to the NAC.
- v) The Lessee must receive: a) a written recommendation from the Norwood Fire Department to the Norwood Board of Selectmen, copied to the NAC, recommending that the Lessee be issued a VIF license to store flammables; and b) a subsequent VIF license issued by the Norwood Board of Selectmen for the storage of flammable liquids in a permanent fuel facility must be received by the lessee, copied to the NAC. This license constitutes an approval by the Town of Norwood, conditional to

the requirements then set forth by the office of the State Fire Marshal for the Commonwealth of Massachusetts.

- vi) The Lessee must file an *Application for Construction and Installation of Above Ground Tanks*, and all required documentation, specifications and plans, with the office of the State Fire Marshal in the Commonwealth of Massachusetts; and a permit must be approved by the State Fire Marshal. Unless otherwise noted on the permit from the State Fire Marshal's office, construction on the subject fuel tank(s) must begin within six (6) months of the date of the issued permit; and construction of the subject fuel tank(s) must be fully completed within one year of commencement.
- vii) No construction of the fueling facility will be granted until all local and state permits have been received by the Lessee. Construction will only begin with the issuance to the Lessee of a Notice to Proceed from the NAC.
- viii) The Lessee's fueling facility must pass inspection by both the Norwood Fire Department and the Massachusetts Division of Aeronautics. A copy of the inspection report(s) must be provided to the NAC.
- ix) Prohibited from the fueling facility locus, or use as an aircraft, ground vehicle or equipment parking or staging area, is the TOFA-designated area outside of the leased premises; the abutting aprons; and/or the public use Taxiway B.

Within three years from the date of execution of the lease, the Lessee's fueling facility must be fully constructed, inspected and approved for operation. The Lessee's inability to meet these requirements effectively breaches this lease.

— STANDARD PROVISIONS —

VIII. **ACCESS AND EGRESS:** Lessee shall at all times have the full and free right of access and egress to the leased property referred to herein, subject, however, to safety and security requirements. This applies additionally, for employees, customers, passengers, guests and invitees of the Lessee. Such rights shall extend to persons or organizations supplying materials or furnishing services to the Lessee, including the use of vehicles, machinery and equipment reasonably required by such person or organization, provided, however, that such use shall conform to rules and regulations, plus security guidelines of the Norwood Airport Commission regulating such activity.

IX. **RULES AND REGULATIONS:** Lessee agrees to observe and obey the Norwood Memorial Airport General Regulations, and any standards, regulations, plans and programs incorporated therein (collectively referred to as the General Regulations),

adopted by the Norwood Airport Commission, as the same may be amended from time to time, and to conform to such rules and regulations applicable to the operation of aircraft also issued by the Norwood Airport Commission on an airport. The Lessee must furthermore comply with the directives of the Federal Aviation Administration (FAA) and the Massachusetts Division of Aeronautics with respect to operation of aircraft on an airport. The provisions of the General Regulations, as amended from time to time, are incorporated herein. To the extent the General Regulations are inconsistent with this lease, the General Regulations shall control.

X. **GOOD AND SUFFICIENT REPAIR:** It is agreed the Lessor shall be under no obligation to maintain or repair leased area, but that the Lessee shall keep leased area in good and sufficient repair and to quit and deliver up premises upon termination of the lease in the same condition they are now in. Ordinary wear and tear and damage resulting from the elements, or circumstances over which Lessee had no control are excepted. The Lessee shall be responsible for snow removal within the leased area. It is further agreed that pavement maintenance and crack seal repair be performed annually, or more frequently, if needed.

XI. **RIGHT TO MAKE IMPROVEMENTS, ALTERATIONS, OR REPAIR:** Lessor reserves the right from time to time to make improvements, alterations, renovations, changes and repairs in and about the leased premises. Other than those herein before provided for the Lessee to do, as to the Lessor shall be deemed desirable. Lessee shall make no claim against the Lessor for interference with leasehold interest or for loss or damage to its business during such improvements, alterations, renovations, change and repair. The Lessee shall not hinder or interfere with the Lessor. Lessor shall have the right at all times to erect a building or structure on adjoining or neighboring premises as it deems fit or proper, without any liability to Lessee therefore in any event or any cause. The Lessor, as the authorized representative of the airport, is solely in charge of determining the nature and scope for improvements to the airport. Through the Airport Layout Plan (ALP) and/or the Airport Master Plan, the Lessor shall determine as it seems fit and proper, without any liability to the Lessee, therefore in any event, or any cause. Lessee agrees not to make or suffer to make any alteration therein without the approval of Lessor in advance of any work.

XII. **LESSEE TO RESTORE PREMISES:** In the event the leased property is destroyed in whole or in part by fire or other casualty, or by the Lessee's want of care, Lessee shall on receipt of notice from Lessor promptly rebuild or restore premises to their previous condition, or alternately, may elect to demolish the remaining structure, restore the ground site to pre-lease condition, and terminate this agreement upon thirty day's (30) written notice to Lessor. The Lessee shall remain liable for any rent hereunder at all times, notwithstanding rebuilding, restoration or demolition, and the Lessor shall not be liable for any costs incurred by the Lessee attributable to any election of Lessee hereunder.

XIII. **LESSEE TO COMPLY WITH FIRE PREVENTION LAWS:** Lessee shall at all times comply with fire Code, rules and regulations of the Norwood Fire Department for the prevention of fires and the environmental safety of the Leased area. Lessee shall furthermore comply with the National Fire Protection Association recommendations and standards, where applicable. Lessee shall at their own expense comply with all orders relating thereto

XIV. **INDEMNIFICATION OF LESSOR:** Lessor shall not be liable for any loss, injury, death or damage to person or property, which may be suffered, sustained or incurred by Lessee, employees, visitors, users or occupants of leased area, whether such loss, injury, death or damage shall be caused by, or in any way result from, or arise out of any act, omission, or negligence of Lessee or any occupant, subtenant, visitor, or user of any portion of the leased area, or result from or be caused by any other matter or thing, whether of the same kind or of a different kind than the matter of things set forth, and Lessee shall indemnify the Lessor against all claims, liability, loss, injury, death or damage. Lessee hereby waives all claims against Lessor for damages to improvements that are now on or hereafter may be placed on the premises and to the property of the Lessee in or about the leased area, from any cause arising at any time during the term thereof. The two preceding sentences shall not apply to loss, injury, death or damage by reason of the sole negligence or misconduct of Lessor, its agents or employees.

It is understood that the Lessor shall not be liable in any way to the Lessee, its agents, representatives, or employees for any injury to persons or damage to property resulting from the sinking or settlement of the land or from any change in the physical condition of the land or from any change in the physical condition of the land caused by the elements, erosion or deterioration.

XV. **TAXES:** Real estate taxes, if any, on leased land will be the obligation of the Lessee.

XVI. **TERMINATION BY LESSOR:** Lessee hereby covenants with Lessor, its successors and assigns, that it will pay hereof unto the Lessor the monthly rent upon the days appointed for payment, and also all taxes and assessments, including any penalties of whatever nature. If the Lessee fails to make payments due within thirty (30) days on the date on which payment is due, Lessor may, at its option, terminate this agreement and take possession of the leased premises. Lessor shall have the right to terminate this agreement in the event that the Lessee, its agents or employees cause the premises to strip, waste or commit any breach of the covenants of this lease, and the Lessee shall have the right to remove its building or property not held by the Lessor for security of payment.

XVII. **LESSOR'S RIGHT OF ENTRY:** Lessee shall permit Lessor, its agents, attorney, or employees to enter demised premises at all reasonable times for the purpose of inspecting the same, or for the purpose of posting notices of non-responsibility for

alterations, or repairs, without any rebate of rent and without any liability to the Lessee for any loss of occupation or quiet enjoyment of the premises thereby occasioned.

XVIII. **RE-ENTRY AND REPOSSESSION ON DEFAULT:** Lessor may terminate this agreement pursuant to Article XV, or for non-payment of taxes, assessments, or other payments obligated hereunder, or if the leased premises are abandoned or vacated by the Lessee during the term thereof.

XIX. **LESSEE'S RIGHT TO TERMINATE:** In the event the airport or the leased premises shall for any reason become unsuitable by reason of any law or regulation now or hereafter enforced affecting the Lessee's business, the Lessee shall have the right to terminate and cancel this lease upon giving the Lessor thirty (30) days' notice in writing, provided, however, that the Lessor may within such time, remove such cause for cancellation by placing the premises in suitable and safe condition so as to comply with the law and regulation affecting the same.

XX. **LESSOR'S RIGHT OF FIRST REFUSAL:** It is understood and agreed that upon the termination, cancellation, or at the end of any term hereof, if the Lessee determines not to remove property or building, the Lessor shall have first refusal to purchase property and/or buildings located on the leased premises upon terms and conditions as then are agreed, based on the original installation cost. If Lessor shall fail to execute the agreement within forty-five (45) days, Lessee shall be free thereafter to sell to a third party, making the offer on the same terms and conditions. If the property is not sold, then, the Lessee shall give the Lessor the same right to purchase on receiving any subsequent offer from any third party that is acceptable to Lessee.

XXI. **CONFORMITY OF AGREEMENT:** Lessor reserves the right to enter into other agreements which authorize the use of the airport facilities on terms similar to those extended to Lessee. However, Lessor agrees not to enter into any similar agreements with respect to the airport, which contain more favorable terms than the agreement with the Lessee, or to grant potential competitors of Lessee privileges not herein authorized unless the same are extended to the Lessee.

XXII. **SURRENDER OF POSSESSION:** On expiration or other termination of this agreement, the Lessee's right to use the premises, facilities and service set herein shall cease, and Lessee shall vacate the premises without unreasonable delay. Except as otherwise provided herein, all buildings, hangars, structures, fixtures, improvements, equipment and other property bought, installed, erected, or placed by Lessee in, or about the airport and leased premises, including, but not limited to, storage tanks, pipes, pumps, poles, machinery, and air conditioning equipment, shall be deemed and shall remain the property of the Lessee. Lessee shall have the right at any time during the term hereof and for an additional ten (10) days after the expiration or other termination of the agreement to remove any and all of such property from the airport, subject, however, to Lessee's obligation to repair all damage, if any, resulting from moving or removal. Any and all property not removed by Lessee prior to expiration of the ten-day period shall thereupon

became part of the land on which it is located and title shall vest with the Lessor at the sole election of the Lessor.

XXIII. ABANDONMENT OF PREMISES: Lessee hereby agrees not to vacate or abandon the premises at any time during the term hereof. If Lessee shall abandon, vacate or surrender the demised premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the premises shall be deemed to be abandoned, and may either be retained by the Lessor as property of the Lessor or may be disposed of at a public or private sale as Lessor sees fit. Any property of the Lessee sold at public or private sale or retained by Lessor shall have all proceeds of any such sale, or the then current fair market value of such property as may be retained by the Lessor, shall be applied by Lessor against (1) the expenses of Lessor removal, storage, or sale of the property, (2) the arrears of rent or future rent payable under this lease, and (3) any other damages to which Lessor may be entitled hereunder. The balance of such amounts if any shall be given to Lessee. Lessor may, at its option, re-let the premises as agent of the Lessee, however, Lessee shall remain liable for loss or damages resulting from the abandonment. Lessee hereby waives all rights of notice to quit or intention to re-enter the premises under the provisions of any statute of the Commonwealth of Massachusetts, or of this lease, in the event of abandonment of the premises.

XXIV. ARBITRATION: If any controversy between the Lessor and the Lessee shall arise as to the fair rental value of the premises, or, as to the value of any building or structure constructed by the Lessee, or question of reasonableness of denial of consent to a proposed building or structure, such controversy shall be submitted to three (3) disinterested persons, one of whom shall be selected by the Lessor, another by the Lessee, and the third by the two chosen; provided, that if either party shall neglect or refuse to choose an arbitrator for a space of fifteen (15) days after written notice from the other, the other shall choose two (2) disinterested persons and the two (2) so chosen shall choose a third. The three (3) persons chosen in either of the manners aforesaid shall give notice to and hear the parties and decide the matter upon equitable principles. The written award signed by any two (2) shall be decisive of such controversy. Each party shall pay the fee of the person elected by it and both shall pay all other expenses equally.

XXV. SIGNS, AWNINGS, AND MARQUEES INSTALLED BY LESSEE: Lessee shall not construct or place signs, awnings, marquees, or other structures projecting from the exterior of the premises without written consent of Lessor. Lessee shall remove such signs, displays, advertisements, or decorations placed on the premises, which, in the sole opinion of Lessor, are offensive or otherwise objectionable. If Lessee shall fail to remove signs, displays, advertisements, or decorations within seven (7) days after receiving written notice from Lessor to remove, then, Lessor reserves the right to enter the premises and remove the objectionable item at the expense of the Lessee.

XXVI. AGENCY: Lessee shall not at any time during the period of this lease, or any extensions thereof, act as agent, servant, or employee of Lessor, and shall not be liable for failure to act.

XXVII. **NOTICE:** All notices to be given with respect to this lease shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid, and returned receipt requested, to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mails in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of a summons or other legal process.

XXVIII. **ATTORNEY'S FEES:** If any action at law or in equity shall be brought to recover rent under this lease, or for, or on account of any breach hereof, or to enforce or to interpret any of the covenants, terms or conditions of this lease, or for the recovery of the demised premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs, reasonable attorney's fee, the amount of which shall be fixed by the court, and shall be made part of any judgment or decree rendered.

XXIX. **RIGHT TO CLOSE AIRPORT:** Lessor reserves the right to develop, improve, construct, repair, reconstruct, or rehabilitate any or all of the airport facilities, including runways, taxiways, aprons, lighting systems, approach lighting installations, beacons, avionics equipment and any other facility which may at times be used to provide service to users of the airport, and in the event that such development, improvement, construction, repair, reconstruction or rehabilitation interrupts, inconveniences, interferes with or in any way adversely affects Lessee's use of the airport, or any of its facilities, the, Lessee does hereby waive any and all claim for damages arising out of such action in carrying out the aforementioned functions. Lessee hereby agrees that Lessor has not nor hereby represents, warrants or guarantees, either expressly or by implication, that the use of the airport will be available continuously or at all times, but that the airport or any of its facilities may be closed by Lessor in whole or in part for reasonable periods of time as a result of causes beyond the control of the Lessor, or for the execution of any or all of the functions set forth herein above.

XXX. **FEDERAL AND STATE REQUIREMENTS:** It is mutually understood and agreed that in exercising the rights and privileges herein granted for furnishing aeronautical services to the public, the Lessee will: a.) Furnish said services on a fair, equal and not unjustly discriminatory basis to users thereof, and b.) Charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided, however, that Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

It is understood and agreed that: a.) no right or privilege has been granted which would serve to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform; b.) nothing herein contained shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958;

and c.) no lessee will be given more favorable terms for providing the same public service than any other lessee.

The Lessee for self, personal representatives, assigns and successors in interest, further agrees as a covenant running with the land: a.) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise subjected to discrimination in the use of its facilities. b.) In the construction of any improvements on, or under such land and the furnishing of services thereon, no person, on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, c.) Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulation may be amended, that in the event of a breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the lease, and to re-enter and re-possess said land, order the removal of Lessee's goods and to hold said land as if this lease had never been made or issued.

This lease shall be subordinate to the provisions of any existing or future agreement entered into between the Lessor and the United States of America for the purpose of obtaining federal aid for the improvement and/or development of the airport; that nothing in the lease shall be construed to grant or authorize the granting of an exclusive right; that the facilities of Norwood Memorial Airport have been financed in large part by grants from the Federal Aviation Administration (FAA) and/or the Massachusetts Division of Aeronautics precursor entity, meaning that receipt of these grants is conditional upon compliance by the NAC with certain assurances, and therefore, any term or condition of this lease which is found to be in conflict or inconsistent with any such federal and/or state grant assurance shall be subordinated to such federal and/or state grant assurance; and that the NAC, in compliance with FAA and/or the Massachusetts Division of Aeronautics grant assurances, may not and does not give any lessee assurances of exclusive access or monopolistic rights on or to Norwood Memorial Airport, and thus, any commercial activity authorized on the premises of this lease may be subject to competition from others, on or off the airport. The Lessor has the right to amend this lease to comply with all existing and future FAA and/or Massachusetts Division of Aeronautics grant assurances.

Lessor reserves the right to cancel this lease in the event of a national emergency or declaration of war by the United States of America, and Lessor is notified of the exercise of the federal government's right to recapture and control the airport.

To the extent any of the sections required by Federal or Massachusetts law are inconsistent with other, non-statutory sections in this lease, any statutorily-mandated provisions contained herein shall control.

XXXI. **RESERVED RIGHTS.** In addition to any rights reserved by the Lessor hereunder, the Lessor reserves the right: a.) to further develop or improve the airside and landside areas of the airport as it sees fit, and without interference or hindrance; b.) to maintain and keep in good repair the landing areas of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of lessees in this regard; c.) to take any action it considers necessary to protect the aerial approaches to the airport against obstruction, together with the right to prevent lessees from erecting, or permitting to be erected, any building or other structure on or adjacent to the airport which would limit the usefulness of the airport or constitute a hazard to aircraft; and d.) to take any action it considers necessary to comply with any grant assurances, obligations, or responsibilities imposed upon the Town of Norwood or the Lessor by the FAA and/or the Massachusetts Division of Aeronautics, or its precursor entity, including but not limited to entering the Airport's leased premises for any reason and/or amending or terminating any lease agreement.

Lessor also reserves the right to recapture the common use ramps of the airport, or any portion thereof, and to redistribute any portion of such ramps in the event a new fixed base operator ("FBO") establishes a business on the premises of the airport in the future, based upon the needs of the airport as determined from time to time by Lessor, exercising its discretion, and/or as necessary to comply with any federal or state grant assurances, statutes, regulations or other requirements. In the event that Lessor exercises its discretion under this paragraph, an FBO shall have a preferential right to use ramp space immediately in front and adjacent to said FBO's facilities, provided that nothing contained herein shall be construed as a guarantee of any right to use such ramp space.

XXXII. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the heirs, assigns or successors in interest to the parties.

XXXIII. **SEVERABILITY.** If for any reason any provision of this lease is determined to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

XXXIV. **WAIVER.** The failure by the Lessor to enforce any provision of this lease will not constitute a waiver of future enforcement of that or any other provision.

XXXV. **JURISDICTION.** Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts of Massachusetts and the parties hereby consent to the personal jurisdiction and venue of such courts.

XXXVI. **ENTIRE AGREEMENT.** This lease represents the entire agreement between the parties hereto with respect to the matter covered herein. No other agreement, representations, warranties, proposals, oral or written, shall be deemed to bind the parties.

XXXVII. **CAPTIONS.** All captions in this lease are intended solely for the

convenience of the parties and none shall be deemed to affect the meaning or construction of any provision of this lease.



The TOWN OF NORWOOD

Commonwealth of Massachusetts

12-9-09

(A)

Norwood Memorial Airport

Russ Maguire, A.A.E., ACE, Airport Manager

OFFICE ADDRESS

125 Access Road
Norwood, MA 02062

MAILING ADDRESS

125 Access Road
Norwood, MA 02062

BY FEDEX

December 9, 2009

COPY

U.S. Department of Transportation
Federal Aviation Administration
Attn: Randall Fiertz, Director, Airport Compliance and Field Operations
Office of the Associate Administrator for Airports
800 Independence Ave., S.W.
Washington, D.C. 20591

**RE: FAA Docket No.: 16-07-03, *Boston Air Charter v. Norwood Airport*
Commission; Revised Corrective Action Plan to Meet the FAA Order**

Dear Mr. Fiertz:

On behalf of the Norwood Airport Commission (NAC), please consider this letter—and its attachments—as the board’s revised corrective action plan following your correspondence dated January 15, 2009 and July 31, 2009, and subsequent conversations and e-mails between our offices. Because the NAC’s October 23, 2008 amended corrective action plan did not fully comply with the final agency decision on the four parts of its Order, the NAC has taken the following additional actions that we now believe fully meet the obligations set forth in the FAA Order.

Part 1 of the Order states:

“That the Town has or will provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with state and local regulations.”

Part 4 of the Order states:

“That the Town has, or will, regain the airport’s rights and powers to access the ‘1,100-foot strip’ to provide power to the airport’s ramps for airport tenants.”

Corrective Actions: On October 14, 2009, following lengthy but productive negotiations with *Boston Metropolitan Airport (BMA), Inc.*, the town of Norwood agreed to appraise and then acquire (by Town Meeting vote and appropriation) a 20 ft. by 300 ft. utilities easement that now bisects the *BMA* long-term leasehold through the Norwood Airport gate

3 taxi-lane. A copy of the official document, now registered in Norfolk County Land Court, is included as *Attachment 1*. With this action, the town of Norwood has regained rights and powers to access the 1,100-ft. strip, that in turn provides access to power for airport tenants, including *Boston Air Charter (BAC)*.

As requested by your office, on November 25, 2009 I sent a certified mailing to BAC, notifying the company that the town of Norwood had acquired the utilities easement from *BMA*; and extending a lease offer, subject to reasonable standards, for space on the DC-3 apron, so that BAC would then be able to construct and operate an aircraft self-fueling facility. (See *Attachments 2, 3 and 4.*)

Part 2 of the Order states:

“The Town has ended or will end the practice of awarding long-term leases of federally funded ramps that have the effect of granting one party control over the majority of the ramps on the Airport.”

Part 3 of the Order states:

“The Town will put in place a short-term ramp leasing permit policy for the Airport to assert more control of the federally funded ramps.”

Corrective Action: Specific to these parts of the Order, at its October 21, 2008 public meeting, the NAC voted to approve the standard short-term lease form noted in *Attachment 4*, and all conditions set forth therein. Specifically, I direct your attention to the following excerpted sections of the *Norwood Memorial Airport Standard Ground Lease Form, Short-Term*:

Section XXX. FEDERAL AND STATE REQUIREMENTS (paragraphs 4 and 6): “...This lease shall be subordinate to the provisions of any existing or future agreement entered into between the Lessor and the United States of America for the purpose of obtaining federal aid for the improvement and/or development of the airport; that nothing in the lease shall be construed to grant or authorize the granting of an exclusive right; that the facilities of Norwood Memorial Airport have been financed in large part by grants from the Federal Aviation Administration (FAA) and/or the Massachusetts Division of Aeronautics precursor entity, meaning that receipt of these grants is conditional upon compliance by the NAC with certain assurances, and therefore, any term or condition of this lease which is found to be in conflict or inconsistent with any such federal and/or state grant assurance shall be subordinated to such federal and/or state grant assurance; and that the NAC, in compliance with FAA and/or the Massachusetts Division of Aeronautics grant assurances, may not and does not give any lessee assurances of exclusive access or monopolistic rights on or to Norwood Memorial Airport, and thus, any commercial activity authorized on the premises of this lease may be subject to competition from others, on or off the airport. The Lessor has the right to amend this lease to comply with all existing and future FAA and/or Massachusetts Division of Aeronautics grant assurances...To the extent any of the sections

(C)

required by Federal or Massachusetts law are inconsistent with other, non-statutory sections in this lease, any statutorily-mandated provisions contained herein shall control.”

Furthermore, as required by the Order, and as noted in *Section XXXI Reserved Rights*, paragraph 2 of the standard short-term lease form, a provision has been added to the document, permitting the airport to re-capture the common use ramps and re-distribute the space in the event that a new fixed-base operator(s) should establish business on the Norwood Airport.

In closing, Mr. Fiertz, acting through the NAC, the town of Norwood believes it has taken the necessary steps to meet all parts of the FAA Order. Throughout this process, we have worked very closely with Ms. Donna Witte, FAA’s compliance officer in the New England region, as well as Mr. Kevin Willis from your office, to cure the issues relative to our case. We therefore respectfully request that your agency now consider this revised corrective action plan to meet the full measure of our compliance obligations, thus rendering Norwood Memorial Airport as federally grant-eligible.

Please feel free to contact my office directly should FAA require any additional information relative to our case. My point-of-contact information is as follows:

Mailing address:	125 Access Road Norwood, MA 02062
E-mail:	rmaguire@norwoodma.gov
Work phone:	(781) 255-5616
Cell phone:	(781) [REDACTED]

Thank you.

Sincerely,



Russ Maguire, Manager
Norwood Memorial Airport

Attachments:

- 1 — 10/14/2009 deed of easement between *BMA, Inc.* and the town of Norwood
- 2 — 11/25/2009 Norwood Airport Commission lease offer to *BAC*
- 3 — Mail receipt, Norwood Airport Commission lease offer to *BAC*
- 4 — Norwood Memorial Airport, standard ground lease, short-term; DC-3 apron

Copies to: *Federal Aviation Administration, (ANE) New England Region, Attn: Donna Witte; Norwood Town Counsel; Norwood Airport Commission*

12-11-2009 (F)

MATTHEW WATSKY
ATTORNEY AT LAW
East Brook Executive Park
30 Eastbrook Road, Suite 301
Dedham, MA 02026

Tel. (781) 329-5009

Fax (781) 461-9068

December 11, 2009

Russ Maguire, Manager
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

Re: NAC Lease Proposal to BAC for DC-3 Ramp

Dear Mr. Maguire:

We have received your letter dated November 25, 2009 (received in this office on November 30, 2009) with a draft lease attached. As you are aware, Attorney Lehane, and I spoke this past summer and he requested me to present the terms under which Boston Air Charter ("BAC") would propose to lease the parcel from the Norwood Airport Commission to locate BAC's self fueling facility. On August 21, 2009, I forwarded that proposed lease to Attorney Lehane, using a standard form previously used by the NAC and incorporating the site specific substantive terms of use, compensation and leased premises. Now, here we are over 3 months later, and we get back a revision that has ignored essentially all of the substantive terms we proposed, and presents terms that I am sure you realize are commercially unreasonable.

Just like B&H

Over a year has gone by, since the FAA decision directed the Norwood Airport Commission ("NAC") to provide BAC with the access necessary to conduct self fueling operations. To comply with the terms of the FAA Final Decision, the NAC must present BAC with a lease that provides commercially reasonable terms. I will highlight a number of examples of where the terms the NAC has presented fails that standard.

oh boy - Russ caught

Section II - TERM: The proposed five year term with to no options to extend is unacceptable. As recently as September 25, 2009, in response to your inquiry of September 11, 2009, Ms. Witte of the FAA informed you that it had no objections to a thirty year lease term (apparently responding to an inquiry about whether that length term would violate FAA policy) and adding that this term "would allow BAC to amortize the cost of constructing the fuel farm." Consistent with commercial practices and Ms. Witte's guidance, we are seeking a total lease term of 30 years. I have spoken with Ms. Witte on December 8, 2009 and she reiterated that view.

Maguire will stop that scammy fee/ Company - No Problem

Section IV: USE OF THE PREMISES: Just as problematic, is the proposed limitation to self-fueling and prohibition against sales of fuel to the public. The second, third and fourth paragraphs of Section IV of the NAC draft lease all are directed at

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Handwritten text block in the middle of the page.

Handwritten text on the right side of the page.

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Second section of handwritten text, separated by a horizontal line.

Third section of handwritten text, separated by a horizontal line.

Final section of handwritten text at the bottom of the page.

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(G)

restricting BAC's fueling operations, micro managing and restricting the manner in which BAC carries out its business. This is unacceptable to BAC, treats BAC differently from the other FBO with self fueling at Norwood Airport, and is impermissible under the FAA Final Decision. At pages 31-32, the FAA final decision points out that the failure to permit BAC to sell fuel to the public constitutes economic discrimination in violation of the grant assurances. On page 32, the FAA states:

Source familiar?

"The Town fails to appreciate the constructive nature of the exclusive right conferred upon Eastern Air Center then, and Flight Level Norwood now- when the Town failed to provide a viable means for competitor Boston Air Charter to obtain electrical service necessary to conduct fueling operations. Without electrical service, Boston Air Charter could not install its fuel facility. Without installing the fuel facility, Boston Air Charter could not compete with Easter Air Center for fuel sales and could not conduct its own self-fueling. The result is that Easter Air Center remained the only entity on the Airport with the ability to dispense fuel to the public. Flight Level took over the lease from Eastern Air Center and is now the only entity on the Airport offering fuel sales to the public."

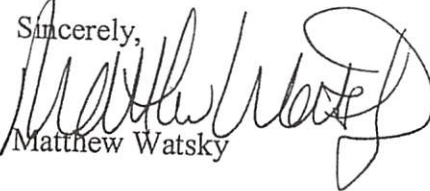
But NAC may inquire of following Plan.

The FAA decision could not have been clearer on this point. The lease must not restrict to whom BAC may sell fuel.

Section VI: ASSIGNMENTS: The wording of this paragraph is vague and internally inconsistent, appearing to prohibit assignments, but then saying that when consent is given it will not be construed to relieve Lessee from obtaining the express written consent to any future transfer of interest. We have provided clear language regarding assignments. I suggest you refer to Section VIII of our proposed lease for this term. It is critical, for example, that a transfer or assignment be permissible, with written consent of the Lessor, which consent shall not be unreasonably withheld.

Section VII: SPECIAL CONDITIONS: The last, unnumbered paragraph sets three years as a deadline to have the facility fully constructed, the failure of which is a breach of the lease. Obviously, BAC wishes to and intends to do everything possible to have the facility operational far sooner than three years. Nevertheless, in the event of obstruction of that goal by other parties, such provision is not acceptable, unless it has a provision stating that failure to meet that deadline due to appeals filed by others or due to matters beyond the control of BAC shall not be deemed a breach.

I look forward to your earliest response.

Sincerely,

Matthew Watsky

cc: BAC
Attorney Baccari
Attorney Lehane

Family
Council

~~_____~~
~~_____~~
~~_____~~
~~_____~~

at Fellowship Place
Knox Co. Christian
Church
Boys' Life Building

1-1-2010

Bahig F. Bishay

P.O. Box 396
Norwood, Massachusetts 02062

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

June 1, 2010

Mr. Peter Eichleay
Flight Level Aviation
125 Access Road,
Norwood, MA 02062

cc: Norwood Airport Commission (By Hand)

Re: Hangar Storage Space Agreement (“The Agreement”).

Dear Mr. Eichleay:

Reference is made to The Agreement mentioned above.

Whereas, on information and belief, you or an entity you represent, are/is successor in interest to Eastern Air Center, Inc., as Trustee of EAC Realty Trust II. Copy of The Agreement is appended hereto for your convenience.

Whereas, The Agreement, specifically at ¶ 3 entitled “*Common Areas*”, *inter alia*, entitles the undersigned and his employees and invitees unfettered use of the “*parking spaces*” located at the north entrance of the complex at issue; Whereas, via electronic mail dated April 22, 2010, the undersigned put you on notice that certain individual known as Hans Laenen, or an entity he owns or controls, claims to be a holder of a similar agreement to The Agreement, whereupon the undersigned demanded that the placement of certain trash dumpster, certain unregistered vehicles, storage trailer and other equipment currently located at the parking spaces at issue, be halted forthwith.

Whereas, pursuant to ¶ 8(b) of The Agreement, the undersigned is responsible for the maintenance of the electric overhead door “*servicing the Premises, the door opening equipment, and the door mechanism ...*”, the undersigned recently learned that the key to the electrical panel room where the circuit breakers are located which feed the electric door motor and other related safety switches, no longer operates the door accessing said electrical panel.

Now therefore, and due to the safety concerns outlined above; and the blatant breach of the terms mentioned herein, **DEMAND IS HEREBY MADE UPON YOU TO: (A) DELIVER TO THE UNDERSIGNED A KEY TO THE ELECTRICAL PANEL ROOM; AND (B) TO REMOVE THE UNAUTHORIZED EQUIPMENT LISTED ABOVE, FORTHWITH.**

Very truly yours,


Bahig F. Bishay

1-27-10 Exhibit [REDACTED]
135



U.S. Department
of Transportation
Federal Aviation
Administration

Airport Compliance and Field Operations

800 Independence Ave., SW.
Washington, DC 20591

JAN 27 2010

Mr. Russ Maguire
Manager
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

Dear Mr. Maguire:

Thank you for your December 9, 2009 submission about the Town of Norwood's Corrective Action Plan (CAP) for FAA Docket Number 16-07-03, *Boston Air Charter v. Norwood Airport Commission*. The Federal Aviation Administration (FAA) finds that the CAP has resolved the issues identified in the Director's Determination (DD) dated April 11, 2008 and affirmed in the Final Agency Decision dated August 14, 2008.

Our review of the CAP indicates that the Town has taken the necessary and appropriate steps to comply with the FAA Order to:

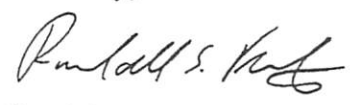
- Provide access to aeronautical service providers, including Boston Air Charter, to establish a fuel facility and conduct self-fueling operations consistent with state and local regulations;
- Regain the Airport's rights and powers to access the "1,100 foot strip" to provide power to the Airport's ramps for the Airport's tenants;
- End the practice of awarding long-term leases of federally funded ramps that have the effect of granting one party control over the majority of the ramps on the Airport; and
- Establish a short-term ramp leasing permit policy for the Airport to assert more control of the federally funded ramps.

The Town has acquired a utilities easement from Boston Metropolitan Airport, Inc., to provide access to power for all interested tenants including Boston Air Charter. As required, the Town has extended a lease offer to Boston Air Charter, consistent with the state and local regulations, and advised BAC of the availability of this utility easement. The Town has also taken appropriate action to terminate the practice of long-term leasing of public ramps and institute a policy of short-term leasing of federally funded ramps on

the Airport. A review of the Town's proposed CAP and follow-up documentation demonstrates that the corrective actions are acceptable.

In conclusion, we find the Town's CAP acceptable, as submitted. The FAA finds the Town of Norwood in compliance with its Federal obligations.

Sincerely,



Randall S. Fiertz
Director of Airport Compliance
and Field Operations

cc: Donna Witte, Compliance and Real Estate Specialist
New England Region - Airports Division

4-27-2010



U.S. Department
of Transportation
Federal Aviation
Administration

Airport Compliance and Field Operations

800 Independence Ave., SW.
Washington, DC 20591

JAN 27 2010

Mr. Russ Maguire
Manager
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

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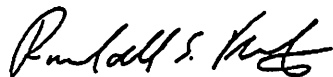
(4)

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Sincerely,



Randall S. Fiertz
Director of Airport Compliance
and Field Operations

cc: Donna Witte, Compliance and Real Estate Specialist
New England Region - Airports Division

January 31, 2013

Chairman
Norwood Airport Commission

Dear Mr. Chairman,

Russ informed me that you would like to know the terms of BMA's sub leases on Norwood Memorial Airport. All rent adjustments are in five year increments directly linked to the change in the CPIU for all urban consumers unless otherwise specified. The terms are as follows.

1. Boch Aviation:
Previous lease: January 31, 1982 thru December 31, 2007.
Current lease: January 1, 2007 thru December 31, 2027. There are 3 additional 5 year options available to Boch Aviation extending their lease to December 31, 2042.
2. Flightlevel (Fuel Farm):
Lease: December 15, 1989 thru December 14, 2038
3. Flightlevel Lot Z:
Lease December 1, 1988 thru November 30, 2008. Flightlevel has exercised option for an addition 20 year term ending November 30, 2028.
4. Flightlevel (Hanger Nominee Trust Building):
Lease: November 1977 thru April 1993. Three 15 year options are available extending the lease to April 2038.
5. Flightlevel Lot 5:
Lease: July 1986 thru July 2005. Flightlevel has options available thru July 2025 in 5 year increments which started in July 2005.

All tenants are also responsible for their percentage of payment in lieu of taxes and tax on their buildings and property.

Let me know if I can be of any more assistance so that we can resolve this matter as soon as possible.

Thank you,

Michael Pendergast
President
Boston Metropolitan Airport, Inc.

9-3-13



Deval L. Patrick, Governor
Richard A. Davey, Secretary & CEO
Christopher J. Willenborg, Administrator



GRANT ASSURANCES Norwood Memorial Airport

Phase I Environmental - EA for Relocation of Taxiway A
AIP Project No. # 3-25-0037-34
State Project No. # OWDTXYAEA

A. Definitions.

1. "Aeronautics Division" shall mean the Massachusetts Department of Transportation (MassDOT) Aeronautics Division.
2. "Airport" shall mean the Norwood Memorial Airport and all appurtenant areas and facilities which are used, or intended for use, for airport buildings, airport facilities, or rights-of-way, together with all buildings and facilities located thereon.
3. "Airport Commission" shall mean the Norwood Airport Commission with members appointed by the Board of Selectmen, as appropriate pursuant to Section 51 E of Chapter 90 of the General Laws.
4. "Town" shall mean the Town of Norwood.
5. "FAA" shall mean the Federal Aviation Administration.
6. "Grant" shall mean the Grant Agreements dated 7/24/2013 as amended by these Grant Assurances by and between the Aeronautics Division, the Airport Commission and the Town of Norwood.
7. "Grant Assurances" shall mean the assurances and certifications contained herein and made by the Airport Commission for the purpose of securing the Aeronautics Division's approval and award of the Grant.
8. "Program" shall mean the investigation and analysis, engineering, consulting, planning, design and construction of the subject project.
9. "Project" shall mean Phase I Environmental - EA for Relocation of Taxiway A and related work included as additional efforts in the Program at the sole discretion of the Aeronautics Division.
10. The project will be conducted upon Airport property as well as outside the Airport boundaries with funding from the FAA, the Airport Commission and the Aeronautics Division.

Logan Office Center, One Harborside Drive, Suite 205N
East Boston, MA 02128
Tel: 617-412-3680, TDD: 617-973-7306
www.mass.gov/massdot

B. General.

1. These Grant Assurances shall be complied with in the performance of the obligations imposed upon the Airport Commission, the Town and its respective successors pursuant to the Grant.
2. Upon acceptance of the Grant by the Airport Commission and the execution of the Grant by the Airport Commission, the Town and the Aeronautics Division, these Grant Assurances shall be incorporated in and become a part of the Grant without further reference.

C. Duration.

1. The terms and conditions of these Grant Assurances shall take full force and effect on the date the Grant is executed by the Aeronautics Division and shall remain in full force and effect for twenty (20) years from the date of the receipt of funds for this Project by the Airport Commission or from the Aeronautics Division, whichever occurs later.

D. Certifications by the Airport Commission

1. The Airport Commission hereby assures and certifies that it will comply with:
 - a. all applicable federal, state and local laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the acceptance, application, and use of federal and state funds for this Project; and
 - b. all applicable federal, state and local laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the custody, care, management and operation of the Airport.
2. The Airport Commission hereby assures and certifies that:
 - a. oversight of the Airport is exclusively held by the Airport Commission and that the Airport Commission has sole custody and control of the Airport pursuant to Chapter 90, Section 51 E of the General Laws;
 - b. the state funds from previous grants from the Aeronautics Division, and the physical assets they produced, were sought by the Airport Commission on the basis that they would ensure the continued fiscal and operational stability of the Airport;
 - c. the state funds from this Grant, and the physical assets they will produce, are sought by the Airport Commission on the basis that they will ensure the continued fiscal and operational stability of the Airport;
 - d. the Airport Commission has the legal authority to apply for, accept, and be bound by this Grant and the understandings and assurances contained therein;

- e. the Airport Commission has the legal authority to oversee the performance of all of the obligations imposed upon the Airport Commission and the Town by this Grant
- f. the Airport Commission, with the acceptance of this Grant, has sufficient state and local funds to finance and carry out this Project;
- g. the Airport Commission shall submit within thirty (30) days of the date the Aeronautics Division executes this Grant a finance plan with details as to the total cost to design and construct the subject project and the sources and amounts of funds the Airport Commission has available to it to pay those costs;
- h. the Airport Commission shall not take any action which would deprive the Airport Commission of, or otherwise diminish, any of the rights, privileges, responsibilities or powers of the Airport Commission as are necessary to exercise the custody, care and management of the Airport or to perform the terms, conditions, and assurances in this Grant, previous grants and future grants from the Aeronautics Division without the prior written approval of the Aeronautics Division. The Airport Commission will act promptly to acquire, extinguish or modify any outstanding rights or claims of rights of others which would interfere with such performance by the Airport Commission;
- i. the Airport Commission shall not sell, encumber, other than leasing, or otherwise transfer or dispose of the title to or interests in the physical assets and real property located at the Airport without the prior approval of the Aeronautics Division, which shall not be unduly withheld;
- j. the Airport Commission shall not eliminate all or any portion of the physical assets and real property previously purchased through a MAC grant, located at the Airport without the prior approval of the Aeronautics Division, which shall not be unduly withheld; and
- k. the Airport Commission has authorized the Chairman of the Airport Commission to execute the Grants and the Grant Assurances on behalf of the Airport Commission and has attached hereto a copy of the Airport Commission meeting minutes, certified by the Secretary of the Airport Commission to be a true copy of said minutes, documenting such authorization.

(E) Certification of the Chairman of the Board of Selectmen of Norwood:

- 1. Notwithstanding any powers that may be granted to the Board of Selectmen of Norwood the Town agrees not to attempt to reorganize the Airport Commission, or in any way to interfere with the autonomy and authority of the Airport Commission as created under Chapter 90, Section 51E of the General Laws, without the express approval of the Aeronautics Division.
- 2. The Town assures and certifies that it will take no actions that would interfere with the Airport Commission's ability to comply with:

- a. all applicable federal, state and local laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the acceptance, application, and use of federal and state funds for this Project; and
- b. all applicable federal, state and local laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the custody, care, management and operation of the Airport.

3. The Town hereby assures, certifies and acknowledges that:

- a. notwithstanding any powers, authority of responsibility that may be granted to the Town, it agrees not to interfere unlawfully with the powers, authority and responsibilities granted to the Airport Commission by Chapter 90, Section 51 E of the General Laws; provided, however, that this provision shall not preclude the establishment of a management agreement or agreements between the Airport Commission and the Town to contract for services, resources and skills of the Town offices or any department of the Town; provided further that each such agreement shall not take effect until approved by the Aeronautics Division in writing;
- b. the state funds from the Grant, and the physical assets they will produce, are sought by the Airport Commission on the basis that they will ensure the continued fiscal and operational stability of the Airport;
- c. The Airport Commission has the legal authority to apply for and accept this Grant and the understandings and assurances contained therein;
- d. The Airport Commission has the legal authority to oversee the performance of all the obligations imposed upon the Airport Commission and the Town by this Grant and
- e. the Airport Commission, with the acceptance of this Grant, has sufficient state and local funds to finance and carry out this Project.

4. The Town hereby assures and certifies that:

- a. the Town shall not take or permit any action which would dissolve the Airport Commission or deprive the Airport Commission of any of the rights, privileges, responsibilities or powers of the Airport Commission as are necessary for it to exercise the custody, care and management of the Airport or to perform any or all of the terms, conditions, and assurances in the Grant, previous grants and future grants from the Aeronautics Division without the prior written approval of the Aeronautics Division, and the Town will act promptly to acquire, extinguish or modify any outstanding rights or claims of rights of others which would interfere with such performance by the Airport Commission;

- b. the Town shall not take any actions which would have the effect of modifying or terminating any of the obligations and responsibilities imposed upon and accepted by the Airport Commission pursuant to this Grant without the prior written approval of the Aeronautics Division; and
 - c. the Town shall not take any action which would have the effect of altering, modifying, expanding, or eliminating all or any portion of the physical assets and real property located at the Airport without the prior written approval of the Aeronautics Division.
5. The Board of Selectmen hereby assures and certifies that it has authorized their Chairman to execute these Grant Assurances on behalf of the Town and has attached hereto a copy of the meeting minutes, certified by the Secretary to be a true copy of said minutes, documenting such authorization.

F. Accounting System, Audit and Record Keeping Requirements:

1. The Airport Commission hereby covenants and agrees to:
- a. deposit all funds received for this Project into an Airport Commission segregated account and to disburse said funds solely for the purposes for which they were paid;
 - b. keep all Project accounts and records which fully disclose: I) the total cost of the Project. II) the amount and disposition by the Airport Commission of the proceeds of all grants and other funds received by the Airport Commission for this Project. III) the amount and nature of the funds supplied by each source for this Project. and, IV) such other financial records as are pertinent to the Project;
 - c. keep all Project accounts and records in accordance with an accounting system that will facilitate an effective financial audit of the Project; and
 - d. upon request, make available to the Aeronautics Division or its designated representative for the purpose of audit and examination, any books, documents, papers, and records of the Airport Commission or Town that is pertinent to the Project.

H. Conformity to Plans, Specifications and Aeronautics Division Approvals.

1. The Airport Commission shall execute the Project subject to the plans, specifications, budgets and schedules reviewed and approved by the Aeronautics Division and such other guidance as the Aeronautics Division deems appropriate. All modifications to the approved plans, specifications, budgets and schedules shall also be subject to the review and approval of the Aeronautics Division.

2. The Airport Commission shall provide and maintain competent technical and administrative supervision throughout the duration of the Project to ensure the Project is completed in accordance with the terms of the Grant, these Assurances, the approved plans, specifications, budgets and schedules.

I. Airport Operation and Maintenance.

1. The Airport Commission shall operate the Airport for:
 - a. the aeronautical benefit of the public using the Airport;
 - b. the uses intended by the Aeronautics Division in the approval of the Airport Certificate;
 - c. the uses intended by the Aeronautics Division and Federal Aviation Administration in the award of their respective funding grants; and
 - d. such non-aeronautical uses as are explicitly approved in writing by the FAA and the Aeronautics Division.
2. The Airport Commission shall suitably operate and maintain the Airport and all facilities located thereon or connected therewith with due regard to climatic and flood conditions. The Airport and all facilities which are necessary to serve the aeronautical users of the Airport, other than facilities owned and controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by federal or state agencies for airport maintenance and operation.
3. Except as provided for in Section I (5) below, the Airport Commission shall not cease to operate, abandon, or dispose of the Airport, or any part thereof, without the prior written consent of the Aeronautics Division.
4. The Airport Commission or the Board of Selectmen of the Town shall not close the Airport or restrict the use of the Airport or any of the facilities located thereon or connected therewith without the prior written permission of the Aeronautics Division.
5. The Airport Commission, the Airport Manager or, in the absence of the Airport Manager, the Assistant Airport Manager, may suspend the operation of the Airport for aeronautical use only during temporary periods when a climatic condition or other condition identified as a reason for suspension of airport operations in applicable federal or state aeronautical laws, rules, regulations, advisories, or orders, interferes with the safe operation and maintenance of the Airport. The Airport Commission, the Airport Manager or, in the absence of the Airport Manager, the Assistant Airport Manager, shall comply with all applicable federal or state aeronautical laws, rules, regulations, advisories, or orders governing said suspension of operations.

6. The obligation to operate the Airport as prescribed above shall run for twenty (20) years from the date of the receipt of funds for this Project by the Airport Commission from the Aeronautics Division or the Federal Aviation Administration, whichever occurs later.

J. Compatible Land Use.

1. The Airport Commission and Board of Selectmen of the Town shall take appropriate action to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the Airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft.

K. Economic Nondiscrimination.

1. The Airport Commission and the Board of Selectmen of the Town shall make the Airport available as an airport for public use on fair and reasonable terms and without unjust discrimination, to all types, kinds and classes of aeronautical use.
2. Every agreement, contract, lease or other arrangement under which a right or a privilege is granted to any person, firm, or corporation to conduct or engage in any activity at the Airport, shall require such person, firm, or corporation to conduct or engage in their respective activity(ies) in a fair, reasonable and not unjustly discriminatory manner.
3. Each person, firm, or corporation operating at the Airport shall be subject to the same rates, fees, rentals and other charges as are uniformly applicable to all other persons, firms, or corporations making the same or similar uses of the Airport and utilizing the same or similar facilities.
4. The Airport Commission and Board of Selectmen of the Town shall not exercise or grant any exclusive right or privilege which operates to prevent any person, firm or corporation from providing the same or similar service at the Airport.
5. Subject to the prior written approval of the Aeronautics Division, the Airport Commission may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public.
6. The Airport Commission shall establish such fair, equal and not unjustly discriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport.

L. Airport Revenues.

1. The Airport Commission shall maintain a fee and rental structure for all Airport property, facilities and services. Said fee and rental structure shall be constructed so as to make the

Airport as self-sustaining as possible under the circumstances existing at the Airport. A copy of said fee and rental structure and any future amendments thereto shall be provided to the Aeronautics Division, upon request.

2. All revenues generated at the Airport and payable to the Airport Commission plus any local taxes on aircraft fuel established after December 30, 1987, shall be deposited in an Airport Commission segregated account and expended by the Airport Commission for the capital or operating costs of the Airport.

M. Reports and Inspections.

1. The Airport Commission shall, upon reasonable request:
 - a. submit to the Aeronautics Division such annual or special financial and operations reports to the Aeronautics Division;
 - b. make available to the public at reasonable times and places a report of the airport budget in a format satisfactory to the Aeronautics Division;
 - c. make all Airport and Airport Commission records and documents affecting the Airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Aeronautics Division; and
 - d. in a format prescribed by the Aeronautics Division, provide to the Aeronautics Division and make available to the public, not later than one hundred and twenty (120) days following each of its fiscal years, an annual report listing in detail:
 - i. all amounts paid by the Airport to any other unit of government and the purposes for which each such payment was made; and
 - ii. all service and property provided by the Airport to other units of government and the amount of compensation received for providing each such service and property.

N. Airport Layout Plan.

1. The Airport Commission shall maintain an up to date Airport Layout Plan (ALP) of the Airport which shall show:
 - a. the boundaries of the Airport and all proposed additions thereto or deletions therefrom, together with the boundaries of all offsite areas owned or controlled by the Airport Commission for Airport purposes and any proposed additions thereto or deletions therefrom;

- b. the location and nature of all existing and proposed Airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, other buildings and structures, and roads) including all proposed extensions and reductions of existing airport facilities; and
 - c. the location and nature of all existing and proposed non-aviation areas at the Airport and of all existing or proposed improvements located thereon.
- 2. The ALP, and each amendment, revision or modification thereof, shall be subject to the approval of the Aeronautics Division, which approval shall be evidenced by the signature of a duly authorized representative of the Aeronautics Division on the face of the ALP.
- 3. The Airport Commission and/or Board of Selectmen shall not make or permit any changes or alterations in the Airport or any of the facilities at the Airport thereby causing non-conformity with the ALP as approved by the Aeronautics Division and which might, in the opinion of the Aeronautics Division, adversely affect the safety, utility or efficiency of the Airport. If a change or alteration of the Airport or the facilities is made which the Aeronautics Division subsequently determines adversely affects the safety, utility or efficiency of the Airport, the Airport Commission and Chairman of the Board of Selectmen shall, if requested by the Aeronautics Division:
 - a. eliminate such adverse effect in a manner approved by the Aeronautics Division; or,
 - b. bear all costs of relocating such property (or replacement thereof) to the level of safety, utility, efficiency and cost of operation existing prior to the unapproved change in the Airport or its facilities.

O. Civil Rights.

- 1. The Airport Commission, Board of Selectmen and their respective agents, employees and representatives, shall comply with applicable federal, state, and local laws, regulations, rules and orders to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participating in any activity conducted with or benefiting from funds received from this Grant.

P. Disposal of Land and Airport Facilities.

- 1. The Airport Commission and Board of Selectmen shall not sell or otherwise transfer or dispose of the title to or interests in the Airport, its facilities, real property or personal property without the prior approval of the Aeronautics Division, which will not be unduly withheld.

Q. Foreign Market Restrictions.

1. The Airport Commission and Board of Selectmen shall not allow funds provided under this Grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

R. Future Grants.

1. This Grant is being awarded in the expectation that the Airport Commission will complete the scope of work associated with this Project.
2. The Airport Commission and Board of Selectmen (collectively referred to here as "the local entities") and the Aeronautics Division jointly and severally acknowledge and agree that this Grant is awarded and accepted on the explicit understanding that this Grant and any future grant or grants, anticipated to fund further development of the Airport will have included in its (their) terms a guarantee by the local entities that no part of the assets or income of the Airport, whether presently existing or to be created pursuant to these grants, will be diverted to non-airport uses without the express prior written approval of the Aeronautics Division, the granting of such approval being universally recognized to be considered as highly unlikely.

S. Successors.

1. This Grant, as amended by these Assurances, shall be binding upon and shall inure to the benefit of the successors of the parties hereto.

3-19-15



U.S. Department
of Transportation
Federal Aviation
Administration

New England Region
Office of the Regional Administrator

12 New England Executive Park
Burlington, MA 01803

MAR 19 2015

Mr. Peter Eichleay
President
FlightLevel Aviation
125 Access Road
Norwood, MA 02062

Dear Mr. Eichleay:

Thank you for your correspondence dated February 20, 2015, to the Federal Aviation Administration (FAA) New England Region concerning Norwood Memorial Airport.


As you are well aware, there is an FAA Part 13 Informal Investigation currently underway with the Town of Norwood concerning whether it is in compliance with its federal obligations. This includes Grant Assurance 22, *Economic Nondiscrimination*, Grant Assurance 23, *Exclusive Rights*, and Grant Assurance 24, *Fee and Rental Structure*.

Additionally, a Part 16 Formal Investigation was recently filed against the Town.

Consequently, the FAA is unable to provide any further information to you until these investigations are complete with the airport sponsor.

Thank you again for your correspondence.

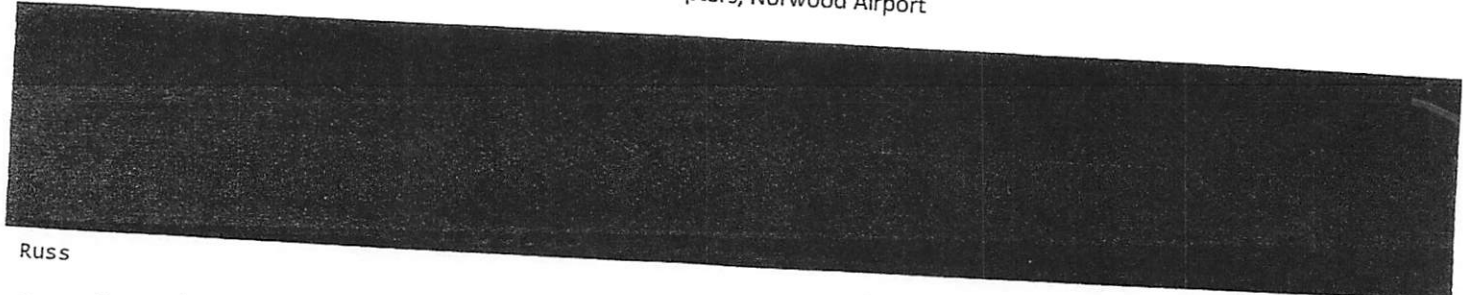
Sincerely,


Amy L. Corbett
Regional Administrator

5-21-15

Message

From: Russ Maguire [rmaguire@norwoodma.gov]
Sent: 5/21/2015 11:52:24 AM
To: Brandon H. Moss [bmoss@mhtl.com]
CC: Mark Ryan [mryan@norwoodma.gov]
Subject: Fwd: Fuel Farm Status; Boston Executive Helicopters, Norwood Airport



Russ

----- Forwarded Message -----

From: "tgreeley" <tgreeley@norwoodma.gov>
To: "rmaguire" <rmaguire@norwoodma.gov>
Sent: Wednesday, February 12, 2014 9:44:51 AM
Subject: Re: Fuel Farm Status; Boston Executive Helicopters, Norwood Airport

Good Morning Russ,
Hope you are well. Lt Butters was reassigned to Group 1 as a shift Captain last month. Now I am overseeing this project until he returns in early March. Here are the answers to your questions:
- construction of the fuel farm is not complete and therefore not ready for Final Inspection. Permission to backfill the tanks was granted after inspection of that phase of the job.
- Mobile Fuel trucks are a DOT and Local Fire Dept Inspection annually.
- Class A-B Operators are a DEP/ DFS requirement that is obtained by testing on-line with the agencies. We just check to make sure they have obtained them.

If you grant the full service commercial permit, you may want to release that only after final inspection by the NFD when the job is fully completed. Many times the Board of Selectmen grant the VIF License only to release when final inspection is conducted by the Fire Prevention Bureau. NFD will communicate to your board when final inspection is complete and accepted.

I hope that helps. BEH has communicated with us in a positive manner. We have all documentation regarding this project and are standing by for inspection when ready.

Regards,
Chief Greeley

----- Original Message -----

From: "Russ Maguire" <rmaguire@norwoodma.gov>
To: "Paul Butters" <pbutters@norwoodma.gov>
Cc: "Tony Greeley" <tgreeley@norwoodma.gov>, "Thomas Joseph Wynne" <tomwynnere@norwoodlight.com>, "Mark Ryan" <mryan@norwoodma.gov>, "H. Moss, Brandon" <bmoss@mhtl.com>
Sent: Wednesday, February 12, 2014 8:48:25 AM
Subject: Fuel Farm Status; Boston Executive Helicopters, Norwood Airport

Good morning Paul--
Chris Donovan, of Boston Executive Helicopters (BEH), will go before the Norwood Airport Commission (NAC) at noon today. Chris is seeking a full service commercial permit from the board. As you know, this would include the ability for his company to store and dispense both aviation gas (100 low lead) and jet fuel on the airport.

As part of the NAC's permit process, under the airport's minimum standards, the board requires that the applicant's fueling plan be approved by both my office and the Norwood Fire Department. So my first question: Has BEH provided you with a copy of their plan yet? BEH has already provided me with a copy.

Also, BEH has provided us with a listing of the Massachusetts-certified Class A-B Underground Storage Tank (UST) operators, showing Chris Donovan on that list. Does this inclusion mean that BEH's fuel farm has already been inspected by Norwood Fire? If not, can you refresh my memory on what this process entails, and whether Chris Donovan has given you any indication of the facility's readiness for inspection?

Finally, BEH has expressed an interest in having mobile fuel trucks as part of their operation? Do the mobile fuelers need to be inspected by Norwood Fire?

Thanks Paul. If needed, please feel free to contact my cell phone at (781) 603-5373.

Russ

--

Russ Maguire, Manager
Norwood Memorial Airport

--

Anthony J Greeley
Fire Chief
Norwood Fire Dept.
135 Nahatan Street
Norwood, MA 02062
(781) 440-5202 Office
(781) 727-6236 Cell
tgreeley@norwoodma.gov

--

Russ Maguire, Manager
Norwood Memorial Airport

4-5-17

NORWOOD CONSERVATION COMMISSION
Meeting Agenda*
April 5, 2017
Town Hall Room 12 at 7:30pm**

1. **New Business**
2. **7:30 pm Request for Extension** – Gill Pond Realty Trust, N2006-05 (town order only), project location: 61 Endicott Street, Norwood, MA.
3. **7:35 pm Notice of Intent** – Glossa Engineering, Inc. representing Peter Celona / River Ridge Ltd Partnership, DEP File No. 251-0486, N2017-04, project location: 100 River Ridge Drive, Norwood, MA.
4. **7:45 pm Notice of Intent** – Town of Norwood/DPW representing Town of Norwood, DEP File No. 251-0485, N2017-03, project location: Access Road, Norwood, MA.
5. **8:00 pm Notice of Intent** – Epsilon Associates representing Norwood Airport Commission, DEP File No. 251-0484, N2017-02, project location: 125 Access Road, Norwood, MA.
6. **Treasurer's Report**
 - a. 2016 Aquatic Management Program @ Ellis Pond
7. **Conservation Agent's Report**

Norwood DPW - ?
Mark Ryan - Chairman of Norwood Airport Comm.
also - DPW Superintendent - has secret meeting with
Con-Com - acting as DPW -

Who Paid for this work?

*Agenda is subject to revision up to 48 hours prior to meeting. Please check website for any changes: www.norwoodma.gov.

**Meeting start time subject to delay.

Remaining Meetings for 2017

April 19 th	August 2 nd & 16 th
May 3 rd & 17 th	September 6 th
June 7 th & 21 st	October 4 th & 18 th
July 19 th	November 1 st & 15 th
December 6 th & 20 th	

**Norwood Conservation Commission
Regular Business Meeting
April 5, 2017**

7:45 pm Notice of Intent – Town of Norwood/DPW representing Town of Norwood, DEP File No. 251-0485, N2017-03, project location: Access Road, Norwood, MA.

PRESENT:

John Gear, Chairman
Lee Leach, Vice Chairman
Peter Bamber, Treasurer
Cheryl Doyle
Joseph DiMaria
Carol Fishman
Al Goetz (staff)
Mark Ryan, DPW
Russ Maguire, Airport

Absent:

None

John Gear: Notice of intent, Town of Norwood DPW representing the Town of Norwood DEP file 251-0485 N2017-03 project location Access Road, Norwood, Mass.

Mark Ryan: Good evening, everyone. Mark Ryan, Norwood Airport Commission, town engineer, Director of Public Works.

Mark Ryan: I have Russ Maguire here, airport manager, who's working at the airport day to day that can answer any questions as we go along. This is the Norwood Airport Commission's proposal to construct an airport aircraft hanger at Norwood Memorial Airport. Norwood Airport has been in existence since 1946 and after it was a training facility for US Navy during World War II and was eventually gifted to the town. It's a municipal airport run by the town of Norwood.

Norwood Airport many years ago, in the 70s it was more of a recreational airport. A lot of single engine, piston driven aircraft down there. People who love to fly, a lot of training was going on there for people. Northeastern used to operate out of there so it was a very busy airport recreationally. There were on average, back in the 1970s, an average of 200,000 operations per year at Norwood airport. So it was a very busy facility and as time has gone on, Norwood airport to this date we're talking about 70,000 operations per year. So almost one third of what went on back in the 70s. And part of that is recreational aircraft aren't recreational anymore. They're a very expensive item to own so you don't see many purchases of recreational aircraft. Fuel prices are a lot more expensive so you don't see that desire to own an aircraft and fly it.

What Norwood Airport has become is more of a corporate, business setting. And what you see down at Norwood Airport now is more jets coming in, for bringing in CEOs and different business people wanting to come to the greater Boston area and to avoid Logan Airport. It's a great facility down here and we're getting a lot of activity and a lot of aircraft owners want to base at Norwood Airport. The one drawback we have is the lack of space to store aircraft. The aircraft that these businesses and CEOs own are multimillion dollar pieces of equipment and leaving them outside is not really the desired

No Public Notice Per NAC

Not mentioned ever in NAC meetings

Norwood Conservation Commission
Regular Business Meeting
April 5, 2017

atmosphere for them, especially in New England. So as outlined in a 2007 airport master plan, Norwood Airport is really deficient in aircraft hangers. So what we are proposing tonight is a 6,000 square foot hanger.

We have Access Road along this way here and we have what we call gate one, the first gate when you get here, Taso's restaurant is right here. Doctor [Rayard] is right here and then the airport business park is right here. So as you come through gate one and take a right, we have an aircraft apron here. This facility is the town owned SRE building. SRE stands for Snow Removal Equipment building and that's where we house our snow removal equipment, lawnmowers, and different tractors. Just to the south of it we're proposing a 60 foot by 100 foot hanger – the optimal size would be 120 foot long by 60 foot deep hanger. As we went through the environmental part of it we scaled it back to 100 foot long by 60 foot deep hanger. The reason being that there is a border vegetated wetland to the south. A very large one that was flagged by Epsilon Associates. Also identified by Epsilon is an isolated vegetative wetland that doesn't meet the jurisdiction of the state wetland bylaw but it does meet your local bylaws. So we have a 1400 square foot wetland right here and to build this hanger we're going to have to disturb about 415 square feet of that isolated vegetative wetland. As far as replicating that, what we've proposed in this project is to build this 60 by 100 foot structure, have a segmental retaining wall separating the development from a wetland area. In this wetland area, we're going to maintain the isolated wetland and also construct wetland replication. So the total replication will be 2850 square feet. We added 415 square foot alteration, 2850 square feet of replication.

We have provided some storage for flood plain because this is, the vast majority of the airport is in the flood plain elevation, 47.1. and that cuts through the building in that fashion. So we've carved out in area in here to provide for flood plain compensation.

The building will be served by a sewer that's existing. We will be tapping into that sewer and we will also have an oil water separator because there will be four drains in this building. We will have town water provided to this building, town electric, and we're working with the national grid as far as the capacity of the natural gas line to service the building.

All in all, we think it's a great project for the town for a number of reasons. As an airport we're trying to be competitive with other airports. We want to try and keep good tenants here at the airport. In the past we've lost tenants, for example the State Police Air Wing was stationed at Norwood Airport and because they couldn't get a hanger appropriately built for them, they went to Plymouth so we've lost that tenant.

We want to keep these corporate aircraft here and we want them to keep visiting Norwood. We want them to buy the fuel at Norwood. So it's good for the airport to have that, it's good for the town of Norwood because all the revenue we generate at Norwood Airport doesn't go to Norwood Airport it goes back to the town of Norwood General Fund. All the revenue that comes into Norwood comes in and then how it works, police, fire, school, conservation committee, we're all benefit of that. So it's good for the town of Norwood, good for the airport, and I think we're doing a better job environmentally of

*Complete lie
against Federal and
State law*

Norwood Conservation Commission
Regular Business Meeting
April 5, 2017

providing a more viable wetland, a larger wetland, and something that will work well at the airport.

Russ Maguire works very closely with the conservation agent on projects and on any activities on here and I think I can say he's a great steward of the environmental of Norwood Airport. So hopefully you'll look favorably on this project and I'll be more than happy, Mr. Chairman, to answer any questions.

Al Goetz: After looking at the site several times, my guess is the reason that wetland is there and isolated is because when the sewer line was put in the contractor didn't grade it out properly. It's wetland now, it's vegetated with sedges and grasses that like wetland conditions and some things that most people would consider weeds but are important for wetland areas. It's stable at the present time. There's no erosion going on, there's no bare earth or mucky things that are undesirable. There's no mosquito pools but it is a wetland and it's possible to make the wetland better, if you want to think of it in those terms, by expanding it because small little isolated wetlands don't have much habitat value and they don't propagate good plants and things. But it is a disturbance, it is a filling of a small amount of wetland to do this project and I think we have to look at the issue of, is making it a little bigger better for the wetland to make it more sustainable for the future?

Al Goetz: When I first looked at the site, my first comment was "Well before you start thinking about building a hangar here, get your wetland consultant to flag the wetland and find exactly what's there and how big it is before they go any further." Which they did, so that's why they're here with this project because they found there's some wetland but not the whole area was wetland.

Joe DiMaria: I'm not happy with the plan. What I'd like to see is, and it may well be that this particular wetland, as an isolated wetland, was made because of other changes in the airport. Frequently, in all the little wetlands that are in the islands between the taxiway and the runways and all of that, those were put in because of the need to replicate wetlands. I would prefer to see this wetland not replicated where they're choosing to replicate it, but replicate it along the bank of the existing large wetland so it's no longer an isolated wetland but a continuous wetland from the existing wetland kind of right along the area where they have the waddles shown.

Joe DiMaria: In that case, what I would suspect that we could do is replicate the whole wetland out there and allow them to make the building the size they really wanted to make it. And I know that would be a change in plan but isolated wetlands are very, very difficult to keep going. But if you take an existing wetland and you expand it, and we're not talking about a whole lot of lateral expansion on that. You've got a very long bank, you're only looking for six or seven hundred square feet so it would be easier and much easier to sustain if in fact that's the way it was done. I would think that what we would do is improve the quality of the wetland by making it elsewhere.

Peter Bamber: I think that's a very good idea.

Norwood Conservation Commission
Regular Business Meeting
April 5, 2017

Carol Fishman: You have the whole area of snowplows, I'm sure somewhere in town there are other places where you could store that equipment and have that building, your hanger, further over out of the wetland or further away from the wetland.

Mark Ryan: That's a town building. It was funded by the FAA and Mass DOT. It would not go out to a private entity, it has to stay in its function, what it was designed for. So turning that into a hanger, FAA would not allow that.

Joe DiMaria: It's not regular plows, that's plows specially made for the airport.

Carol Fishman: Oh I'm sorry, you're saying they store plows so I thought it was town plows.

Mark Ryan: Not DPW but this is right. Airport equipment.

Peter Bamber: I just think Mr. DiMaria's comments about taking that fairly weak isolated wetland and expanding over to the right there a healthy wetland and making it even bigger is just a far better idea. And so it's a "win-win."

Joe DiMaria: And the other side of the coin is that you really are not supposed to be using wetland that you make as flood storage. They're sort of incompatible kinds of purposes. So this would now say that you're not going to use it as flood storage because you don't need to use it as flood storage. We really haven't addressed the flood storage issue. It's really a very small amount of compensatory storage that you need. It's only the base of the building, it being only slightly higher than the flood level for the finished floor grade.

Joe DiMaria: What I am concerned about in the airport is that the amount of land that you can replicate for a wetland is limited to 5,000 square feet. That's not 5,000 square feet per project, that's 5,000 square feet per wetland. And it's really unfair because if you have a two acre plot and you replicate 5,000 square feet it seems reasonable. But if you have a square mile plot and you're only allowed to replicate 5,000 square feet that seems very unfair. So I think by expanding it, although you are replicating it, I wouldn't consider that a separate replication. I would consider that not having a replicated wetland.

John Gear: Called for additional comments, questions or a motion.

Joe DiMaria: I'd like to continue the hearing to our next meeting to see if, in fact, the airport commission would like to accept those changes.

Mark Ryan: Absolutely. We can work that out. We'll go back to the drawing board and calculate those square footages and the flood compensation and I believe we can meet your requests.

Al Goetz: You know, Joe, one of the reasons we went with this is the minor change in shrinking the building was because of your objections to other projects at the airport. So when we were talking about that project we were thinking of making it something that you would be willing to accept that it wasn't going to be big. But I absolutely agree that little small isolated wetland patches, as I said, it doesn't have much value.

Norwood Conservation Commission
Regular Business Meeting
April 5, 2017

Peter Bamber: When you do come back with a new plan be prepared to explain where the roof drainage water will go.

Al Goetz: I agree with that kind of a solution here.

John Gear: Are we in agreement on that? Do we need to vote on that?

Peter Bamber: Second.

John Gear: Okay, all in favor?

Motion to continue the hearing until the next meeting by Joe DiMaria. Seconded by Peter Bamber. Vote 6 to 0. Unanimous, motion passed.

No further action was taken.

NORWOOD CONSERVATION COMMISSION

Meeting Agenda*

April 19, 2017

Town Hall Room 12 at 7:30pm**

DPW - Ryan

1. **7:30 pm Notice of Intent (cont. from April 5, 2017)** – Town of Norwood/DPW representing Town of Norwood, DEP File No. 251-0485, N2017-03, project location: Access Road, Norwood, MA.

Never noticed

2. **Sign Order of Conditions (Town approval; State denial)** – Norwood Airport Commission, DEP File No. 251-0484, N2017-02, project location: 125 Access Road, Norwood, MA.

3. **Sign Extension** – Gill Pond Realty Trust, N2006-05 (town order only), project location: 61 Endicott Street, Norwood, MA.

4. **Sign Order of Conditions** – Peter Celona / River Ridge Ltd Partnership, DEP File No. 251-0486, N2017-04, project location: 100 River Ridge Drive, Norwood, MA.

5. **New Business**

a. Fishing Derby 2017

6. **Treasurer's Report**

7. **Conservation Agent's Report**

*Agenda is subject to revision up to 48 hours prior to meeting. Please check website for any changes: www.norwoodma.gov.

**Meeting start time subject to delay.

Remaining Meetings for 2017

May 3rd & 17th

September 6th

June 7th & 21st

October 4th & 18th

July 19th

November 1st & 15th

August 2nd & 16th

December 6th & 20th

?

Norwood Conservation Commission
Regular Business Meeting
April 19, 2017

PRESENT:

John Gear, Chairman
Lee Leach, Vice Chairman
Peter Bamber, Treasurer
Cheryl Doyle
Joseph DiMaria
Carol Fishman
Al Goetz (staff)
Mark Ryan, DPW

Absent:

None

John Gear: Good evening, this is Norwood Conservation Commission meeting for April 19, 2017. This meeting is being recorded, if you have any recording devices please let us know.

Opening roll call – all members present responded.

Meeting called to order by Chairman John Gear at 7:30pm.

7:30 pm Notice of Intent (cont. from 4/5/17) – Town of Norwood/DPW representing Town of Norwood, DEP File No. 251-0485, N2017-03, project location: Access Road, Norwood, MA.

John Gear: Notice of intent, Town of Norwood DPW representing the Town of Norwood DEP file 251-0485 N2017-03 project location Access Road, Norwood, Mass.

Mark Ryan: Good evening, everyone. Mark Ryan, Norwood Airport Commission, town engineer, Director of Public Works.

Mark Ryan: Thank you for having me back. We revised the plans in accordance with the discussions of the last meeting. Initially we had a proposal of a 60' by 100' aircraft hangar and now we've increased that to 60' by 120', rather than try to produce an isolated vegetated wetland we took your advice. We provided 1,670 square feet of a wetland replication to replace the 1,412 square feet of the isolated vegetated wetland. We also provided for the stormwater basin here for the roof drains - that will handle more than a hundred year storm. It also provides a one to one replication of bordering land subject to flooding area. The area to the south of it will be vegetated and back here in the basin will all be vegetated and the wetland replication, there is a plan by Epsilon Associates, which provides a number of stipple bush, button bush and meadow stein and New England wet mix they have recommend for the wetland replication. Are there any questions?
Comments?

Members reviewed the materials and plans. There were no additional comments or discussion.

Joe DiMaria: Move we approve the project and issue the order.

Cheryl Doyle: Second.

John Gear: All those in favor? All those opposed?

8

**Norwood Conservation Commission
Regular Business Meeting
April 19, 2017**

Motion to approve the project and issue the order by Joe DiMaria. Seconded by Cheryl Doyle. Vote 6 to 0. Unanimous, motion passed.

No further action was taken.

10-30-18



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Airport Compliance
and Management Analysis

800 Independence Ave., SW.
Washington, DC 20591

October 30, 2018

Michael C. Fee, Esq.
Pierce & Mandell, P.C.
11 Beacon Street, Suite 800
Boston, MA 02108

Brandon H. Moss, Esq.
Murphy, Hesse, Toomey & Lehane, LLP
Crown Colony Plaza
300 Crown Colony Drive, Suite 410
Quincy, MA 02169

Town of Norwood, Massachusetts
566 Washington Street Norwood,
MA 02062

Norwood Airport Commission
125 Access Road
Norwood, MA 02062

Dear Mr. Fee, Mr. Moss:

Re: Boston Executive Helicopters v. Town of Norwood, Massachusetts and Norwood Airport
Commission, FAA Docket No. 16-15-05.

Enclosed is the Federal Aviation Administration's, (FAA) Director's Determination with respect to the above-referenced matter finding the Town of Norward and the Norwood Airport Commission are in violation of its Federal obligations with respect to this complaint. The reasons for the finding of noncompliance are set forth in the enclosed Director's Determination.

The Director's Determination does not constitute a Final Agency Decision and order subject to judicial review. [14 CFR § 16.247(b) (2)] A party adversely affected by the Director's Determination once issued may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR § 16.33(c) within 30 days after the service of the Director's Determination.

Sincerely,

Kevin C. Willis
Director of Airport Compliance
and Management Analysis

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

11-2-18
NAC Violations
2018

Boston Executive Helicopters,

Complainant

v.

Town of Norwood, Massachusetts
And Norwood Airport Commission,

Respondent



Docket No. 16-15-05

DIRECTOR'S DETERMINATION (revised)

I. INTRODUCTION

The Director, by Order, withdrew the Director's Determination dated October 30, 2018, to correct certain errors.

This matter is before the FAA based on a complaint filed in accordance with Title 14 of the Code of Federal Regulations Part 16, Rules of Practice for Federally-Assisted Airport Enforcement Proceedings (14 CFR Part 16).

Boston Executive Helicopters ("BEH or Complainant") filed a complaint against the Town of Norwood, Massachusetts ("Town"), the sponsor of Norwood Memorial Airport and the Norwood Airport Commission ("NAC" or "Commission" and jointly "Respondents"), regarding its management of the Norwood Memorial Airport ("Airport").

The Complaint alleges the Town is engaged in economic discrimination and granted a single Fixed Based Operator (FBO)¹ an exclusive right, in violation of Title 49 United States Code (USC) §§47107(a) and 40103(e) and Grant Assurance 23, *Exclusive Rights*. Complainant also alleges the Town is in violation of Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 5, *Preserving Rights and Powers*, by allowing one FBO to operate exclusively on the Airport. BEH has not been issued an FBO permit. BEH alleges that the Town unreasonably delayed and withheld numerous reasonable requests for access to Airport property for commercial tenants, as well as permission to conduct an FBO aviation business at the airport.²

Based on the evidence and record presented in this proceeding, the Director finds the Town and Commission in violation Grant Assurance 22, *Economic Nondiscrimination*, Grant Assurance 23, *Exclusive Rights* and Grant Assurance 29, *Airport Layout Plan*.

¹ A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public.

² Exhibit 1, Item 1, pages 24-25.

The Director's decision in this matter is based on applicable Federal law and FAA policy, as well as the Director's review of the pleadings and supporting documentation submitted by the parties, which comprises the administrative record contained in the attached FAA Exhibit.

II. PARTIES

A. Complainant

The Complainant, BEH, is a Delaware limited liability company based at 209 Access Road, Norwood, Massachusetts 02062. BEH holds a 14 CFR Part 135³ operating certificate and provides helicopter charter services. BEH has been a commercial tenant⁴ of the Norwood Memorial Airport since 2010, and at the time of the complaint leases an area of approximately 3/4 acre⁵ on which the company has finished construction of a new hangar and a new fuel farm.⁶

B. Town/Airport Commission

The Norwood Memorial Airport is a public use general aviation airport designated by the FAA as a reliever airport for Boston Logan International Airport. The Airport has 688 acres, 2 runways, and a contract Air Traffic Control (AYC) tower. The Airport Master Record (FAA Form 5010)⁷ shows 109 fixed-wing aircraft, including 8 jets, and 15 helicopters, are based at the Airport, and it had 58,346 annual operations as of November 2016. Much of the Airport land is wooded and most of the usable flight line facilities are located along the west side of Runway 17-35. A substantial portion of flight line property at the Airport is under long-term lease to Boston Metropolitan Airport, Inc. (BMA), which subleases property to airport tenants that provide aviation services.

Planning and development of the Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 USC § 47101, *et seq.* Since 1982, the Town of Norwood, the Airport owner and sponsor, received 27 grants totaling \$11,577, 569 in Federal financial assistance for airfield improvements. The Airport's taxiways and most of the aprons have been rehabilitated with the assistance of AIP grant funds.⁸

The Town has delegated daily operation of the Airport to the Norwood Airport Commission. The Commission is an agent of the Town, while the Town is the airport sponsor with respect to the applicable federal obligations. As such, the Town is ultimately responsible for ensuring compliance with its federal obligations concerning any and all of the Commission's actions or inaction. References to the Commission's actions and statements in the pleadings and in this decision are understood to be the Town's as well.

³ A Part 135 operator holds an Air Carrier Certificate and provides passenger service as a commuter or on-demand service.

⁴ BEH initially operated its helicopters from hangars 7 and 8, which were leased to MII Aviation Services LLC. (Exhibit 7, Item 1, Exhibit 172).

⁵ BEH subleases Lot F from BMA (Exhibit 1, Item 1, page 2).

⁶ Exhibit 1, Item 1.

⁷ Exhibit 9, Item 1, FAA Form 5010.

⁸ Exhibit 1, Item 1, Exhibit 84 & Exhibit 9, Item 4

Director's Determination

**Index of Administrative Record
Boston Executive Helicopters, LLC.**

v.

**Town of Norwood, Massachusetts and Norwood Airport Commission
Docket No. 16-15-05**

FAA Exhibit 1

Item 1 Part 16 Complaint, dated **March 11, 2015**, alleges that the Respondents violated 49 U.S.C. §47107 (a) (1) and Grant Assurances 5, 22, and 23. Includes exhibits 1-5, 7-8, 10-17, 21-28, 30, 33-34, 37-38, 52-69, 70-72, 76-86, 89, 91, 94, 96, 100-102, 104-107, 109-118, 135, and 157.¹

Exhibit 1: Letter from Donovan to the NAC dated September 1, 2010 in which Donovan asks if there is any town owned land available at Norwood Airport. Donovan makes clear his intentions of developing any available space at Norwood Airport.

Exhibit 2: Email exchange from Donovan to Maguire in which Donovan again asks for space (the DC-3 ramp). 9-27-2010.

Exhibit 3: Email exchange between Donovan and Maguire dated October 13, 2010. Donovan once again asks for any public space available and states his desire to become a full service FBO at Norwood Airport, 10-13-2010.

Exhibit 4: This is a letter from the FAA to the Attorneys for Boston Air Charter outlining the determinations from FAA part 16-07003 in which the FAA found the Sponsor, the Norwood Airport and Town of Norwood in violation of General written assurances regarding Federal Law, Title 49, United States Code 40103(e) and 47107 (a) (1).

Exhibit 5: This chart shows the current lease plan at Norwood Airport to the best knowledge of BEH.

(Exhibit 6 not included by party).

Exhibit 7: This is a representation of BEH's understanding of the AIP status, current leases and rates for Norwood Airport parcels.

Exhibit 8: NAC meeting minutes of February 13, 2013 in which the NAC acknowledges the Fuel license granted by the Norwood Board of Selectmen. As of 3-4-2015, although BEH has complied with all requirements, the NAC has not granted approval for a commercial permit for BEH to operate as an FBO and sell fuel.
(Exhibit 9 not included by party).

¹ The gaps in the sequencing of exhibits reflect the Complainants efforts to narrow the myriad factual allegations and their proofs for the benefit of the Agency. (This note was included in the complainant identified above as Item 1)

Exhibit 10: Page 2 of the part 13 response from the NAC. NAC claims BEH has appeared in front of them at least 28 times.

Exhibit 11: BEH Business plan #3. This is the 3rd business plan submitted by BEH since 2010 and the second submitted in 2014 for the operations. This business plan contains copies of certificates and Letters of reference which according to NAC members they do not have time contact. In addition to the business plans BEH submitted Insurance binders, Fuel permits from the Commonwealth of Massachusetts, snap shots of available cash reserves and detailed plans concerning the FBO operations, fueling and equipment purchased.

Exhibit 12: Lease for the DC-3 ramp given to Papa Whiskey Aviation, a company owned in Part by Peter Eichley, who also owns FlightLevel Aviation. This lease by its language prohibits any commercial operations in the area.

Exhibit 13: Series of emails from Maguire to Donovan concerning questions concerning the lease of Lots A.B.C to FlightLevel Aviation. Beginning on May 3, 2014 Donovan asks for the status of the expiring lease of Lots A, B, C. Maguire claims initially that the lease has not been again given to FlightLevel and then changes his mind and states that the lease has been given to FlightLevel for another 5 years. This email exchange shows that Maguire and the NAC, although aware of the pending FBO application and request for ramp space, had not even considered BEH for available space on lots A, B, C.

Exhibit 14: NAC lease offer of February 12, 2015, for 11,786 square feet of available space on the West ramp, which has approximately 75,000 square feet available for operations. The 11,786 square foot area is still well below the 15,295 SF of space on the DC-3 ramp that the NAC claimed was insufficient for a full service FBO.

Exhibit 15: Email from Maguire to Donovan. Maguire is discussing the assumption of a lease by BEH from Swift Aviation. The Town of Norwood is not party to the lease. However, Maguire claims that the lease and assumption would have to be approved by the FAA and Massachusetts Department of Transportation in writing.

Exhibit 16: Letter from Maguire to Norwood Board of Selectmen regarding approval of the BEH hangar and fueling system by the NAC.

Exhibit 17: Email from Donovan to Maguire to put the Lease assumption on the next NAC agenda for December 15, 2011. It would be approximately 14 months before the NAC approved this lease assumption.

(Exhibits 18-20 not included by party).

Exhibit 21: NAC meeting minutes from May 14, 2014. The minutes reflect the fact that BEH had accepted the lease of the West ramp for 6,889 square feet. NAC later claimed that BEH had not accepted the lease, and then withdrew the lease offer. The tape recording of the April 9, 2014, NAC meeting was then destroyed.

Exhibit 22: March 17, 2014, lease offer from the NAC for approximately 6,889 SF of the West ramp to conduct a full service FBO

Exhibit 23: Affidavit from BEH Attorney Joshua Fox regarding the April 9, 2014, meeting and the lease of Lots A, B, C to FlightLevel. The affidavit also discusses statements by commissioners at the April 2014 meeting that FlightLevel would be given preference for ramp space, and the destruction of the audio recording of this meeting in violation of the Commonwealth of Massachusetts open meeting law.

Exhibit 24: Page 32 of the Norwood Airport Minimum standards in part regarding the required information for an "initial application" for a Commercial permit. BEH was not an initial applicant after 2010 when BEH was first granted a Commercial permit to operate at Norwood Airport.

Exhibit 25: Copies of BEH Commercial permit to operate Airport issued by the NAC for 2010, 2011, 2013, and 2014.

Exhibit 26: BEH Business plan #2. This business plan contained detailed information on BEH and our proposed operations. Additionally, the plan listed credit references that have never been contacted to the best of knowledge of BEH.

Exhibit 27: BEH Business plan #1, submitted in May of 2010 to the NAC.

Exhibit 28: NAC meeting minutes from May 14, 2014. NAC requested: Balance sheet, Income statement and Cash flow analysis, Market analysis, 12 months of bank statements, profit/loss statements, feasibility study, 36 month projection, Micro/Macro, competitors analysis, as well as a personal financial statement from Principals (2 years of Tax returns).

(Exhibit 29 not included by party).

Exhibit 30: Addendum #1 to the DC-3 Apron request for proposals, responding to questions posed regarding the availability of the ramp for commercial operations. NAC makes clear that the DC-3 ramp was restricted so that no Commercial activity could take place on this AIP-improved apron.

Exhibit 33: February 22, 2013, email from Donovan to the NAC with detailed factual questions regarding the DC-3 ramp RFP.

Exhibit 34: February 6, 2013, email from Donovan to the Town of Norwood Purchasing Manager with questions on the DC-3 RFP.

(Exhibits 35-36 not included by party).

Exhibit 37: July 28, 2014, letter from BEH Attorney James Hilliard to the Board of Selectmen at their suggestion asking to meet with a member of the BOS and NAC to try and resolve the ongoing denials and issues between BEH and the NAC. August 6, 2014, letter from the Board of

Selectmen approving the request. Proposed terms sheet submitted by Mr. Hilliard based upon two meetings with the Town Manager for the Town of Norwood, Mr. John Carroll, and the Chairman of the Norwood Board of Selectmen, Mr. Michael Lyons. Town officials terminated further discussions with Mr. Hilliard after this email.

Exhibit 38: March 14, 2013, letter from NAC Chairman Wynne to Donovan, with BEH notes and highlighting made at the time it was received. Wynne is responding to the earlier questions regarding the DC-3 ramp lease. Wynne states that Lot F is sufficient to compete with FlightLevel, and states that the DC-3 ramp is too small for FBO operations at 15,295 square feet.

(Exhibits 39-51 not included by party).

Exhibit 52: January 22, 2014, letter from Maguire to Donovan. At the bottom of page 2, foot note 1 states that BEH is restricted from fueling until it can demonstrate to NAC that BEH has rights to the area.

Exhibit 53: Copy of the lease between the NAC and Annex Realty trust dated July 1, 2007, for the Airport property to be used to store automobiles only. There is no recapture clause to make this land subordinate to aviation uses or the AIP grant assurances.

Exhibit 54: Copy of the notice of consent to sublease between the NAC and Spiegel (Annex realty), allowing sublease and structures as well as pavement and light poles which extend into the runway 10/290 RPZ.

Exhibit 55: Letter from Russ Maguire to Laverne Reid, FAA dated March 15, 2010, expressing intent to request a release of the Annex Realty/Spiegel lease property from Federal obligations for aeronautical use.

Exhibit 56: Copy of a letter from Russ Maguire to Barry Hammer, FAA dated March 8, 2012, Norwood Memorial Airport, requesting a release of airport property for non-aeronautical land use. This was years after the land had been leased for 20 years for non-aviation use.

Exhibit 57: Tab G, from FAA FOIA request, "Description of how the sponsor acquired the property" from Russ Maguire, showing the subject property was on the Exhibit A for Norwood Airport and came under the AP-4 agreement.

Exhibit 58: Multiple photos of the Airport land lease property that house Verizon bucket trucks and facilities in the runway 10/28 RPZ.

Exhibit 59: NAC meeting minutes from March 14, 2012, which show the NAC collecting vehicle excise tax from the Verizon vehicles that are housed "on the Airport".

Exhibit 60: NAC meeting minutes from September 8, 2010, which show that the NAC was attempting to use AIP funding to improve the Airport land for non-aviation use and acknowledging that Verizon put up light poles without FAA approval via FAA form 7460.

Exhibit 61: Page 4-24 of the Airport Master plan to support the need for additional parking on the North end of the Norwood Airport.

Exhibit 62: FAA Form 7460 issued 12/5/2011. According to the NAC meeting minutes the light poles for the FAA approval were installed PRIOR to filing and FAA approval. The 7460 shows the structure (light pole) “does exceed obstruction standards.”

Exhibit 63: Airport Master plan page 3-11 showing a recommendation to purchase land in the Runway 10 RPZ, in contrast to the actions of the NAC in leasing this property long term to Verizon to park bucket trucks and build a structure in the RPZ.

Exhibit 64: Airport Master Plan page 3-14 and 3-20, which again recommends the purchase upland to include the runway 10 RPZ that is the area that NAC leased to Verizon.

Exhibit 65: Airport Master Plan page 3-19 and 3-20, which discusses acquiring land in the Runway 10 RPZ.

Exhibit 66: Airport Master Plan page 3-21, showing land acquisition is both a short-term, mid-term and long term planning need. This property could have been used for the airport vehicle parking needs or aircraft storage. The overhead of this property clearly shows the old dirt taxi way and the elevation of the taxiway around the surrounding low area outside the wet lands and flood plain.

Exhibit 67: Airport Master Plan pages 4-18, 19, and 20 showing the long-term lease area of land to Verizon and the old taxiway to this area. Note the high ground that allows airside access to the land and the proposed Heliport and hanger facilities recommended in the Master Plan. This also shows the runway protection zone overlay and the access available from the Airport to this property, counter to the claim by Maguire that this property was not accessible from the Airport.

Exhibit 68: Airport Master Plan pages 4-28, 29, and 30. This area discusses the need to acquire additional land in the area of the Verizon leased parcel. The Master plan specifically recommends acquiring more land in the runway 10 RPZ and Verizon lease area for the airport and aviation use as well as future needs. The Master plan also recommends a parking lot on the North end of the Airport for aviation needs and growth.

Exhibit 69: Airport Master plan page 5-2. This discusses the Verizon lease property as it could be used for both additional parking aprons and hangers as well as a helipad.

Exhibit 70: Copies of emails from Maguire to Donovan and Barry Hammer from the FAA in March and April 2014. Maguire claimed that Hammer had approved the conversion of land to non-aviation use. Hammer was emailed several times requesting if this was true and never responded.

Exhibit 71: Pictures showing the Verizon lease property and the access from the north end of the Norwood Airport, including a retaining wall to improve the property.

Exhibit 72: April 18, 2013, email from Maguire to Donovan showing that Maguire was claiming the conversion of property for non-aviation use was “all set” according to Barry Hammer at the FAA, via Maguire.

(Exhibits 73-75 not included by party).

Exhibit 76: January 27, 2014, letter from Donovan to Maguire in which BEH again requests some space on the West apron from the available space.

Exhibit 77: March 4, 2015, affidavit from BMA in support of FlightLevel’s attempt to deny use of Lot G.

Exhibit 78: Letter from Mary T. Walsh to Maguire regarding the part 13 complaint by BEH.

Exhibit 79: Copy of page 13 from the NAC part 13 response to the FAA. The NAC states that due to the part 13 complaint the NAC voted to table any further discussion indefinitely on the BEH FBO/Lease interests. This was done solely in light of the part 13 request for assistance BEH had made to the FAA and as retaliation for asking the FAA for assistance.

Exhibit 80: May 13, 2014 letter from BEH Attorney Joshua Fox to NAC Attorney Moss stating BEH would accept the 6,889 square feet of West ramp but it was not sufficient to conduct FBO operations. Attorney Fox asks for more of the available space and also ask the NAC to preserve any evidence regarding the April 9, 2014 NAC meeting where members of the NAC stated they would give preference to FlightLevel on all leases, etc.

Exhibit 81: Copy of the NAC meeting minutes from June 11, 2014, in which the NAC vote to table any further requests and discussion regarding the FBO request as well as the lease for space to operate at Norwood Airport based solely as retaliation for BEH having filed a part 13 complaint and asked the FAA for assistance.

Exhibit 82: Copy of the specifications section for the DC-3 ramp lease. Section 8 lists the requirements for the DC-3 lease.

Exhibit 83: January 12, 2015, memo from Mark Ryan to Donovan concerning multiple questions from the BEH submitted Business plan #3 in July of 2014. NAC had refused to discuss the business plan since July of 2014 due to the BEH filing of part 13 complaint.

Exhibit 84: Listing of the AIP grants at Norwood Airport from the FAA with a map of the Airport.

Exhibit 85: NAC lease to FlightLevel Aviation for Lots A, B, C from October 2009 to October 2014. This lease had no extension or renewal term.

Exhibit 86: New lease to FlightLevel for the Lots A, B, C.

(Exhibits 87-88 not included by party).

Exhibit 89: Aerial picture of Gate 2 and the area in front of the hanger on gate 2. This exact same situation exists in front of Gate #3 but the NAC has marked a taxilane only on the Gate #3 lane.

(Exhibit 90 not included by party)

Exhibit 91: This is a letter from the prior owner of Lot F (Swift Aviation services) to Maguire in which he discusses the “ramp” area in front of his hanger. Maguire claims that Swift was treated the same way as BEH when this is not true.

(Exhibits 92-93 not included by party).

Exhibit 94: 20 photos taken around Norwood Airport, showing various locations used by FlightLevel where restrictions placed on BEH are simply ignored regarding FlightLevel.

(Exhibit 95 not included by party).

Exhibit 96: Figure 2-3 from the Airport Master Plan, showing aprons that abut the old Taxiway B. Aircraft are parked in front of the Lot F (the BEH lease) in numerous pictures.

(Exhibits 97-99 not included by party).

Exhibit 100: This exhibit is a copy of the NAC meeting minutes of February 8, 2-12 in which they discuss removing the striping on Taxiway B to simply make the area a ramp without any TOFA/OFA.

(Exhibit 101 not included by party).

Exhibit 102: December 27, 2013, letter from Donovan to the NAC, requesting the elimination of the taxilane in front of the BEH hangar.

(Exhibit 103 not included by party).

Exhibit 104: September 19, 2014, email from Airport Assistant Manager Mark Raymond to Robert Silva, the Manager of operations at BEH.

Exhibit 105: Master Plan page 4-27, 26 recommending a pedestrian gate at the North end of the Apron (Gate 3).

Exhibit 106: Letter from Maguire dated August 23, 2013, denying the BEH pedestrian gate request.

Exhibit 107: Letter from Donovan to the NAC requesting Gate #3 pedestrian access.

(Exhibit 108 not included by party)

Exhibit 109: Letter from the Commonwealth of Massachusetts, Secretary of State's office regarding the destruction of the audio recording from the April 9, 2014, meeting.

Exhibit 110: March 11, 2014, email from Maguire to Donovan regarding several questions posed by Donovan.

Exhibit 111: Page 5 of 55 of the Part 16 Docket 16-07-03 Director's Determination prior showing land lease and AIP grants, etc. BEH edits added to show the Eastern Air Center leases that have been assumed by FlightLevel, and recent AIP grants for improvement of the leased aprons.

Exhibit 112: Norwood Airport lease plan, as of December 2007.

Exhibit 113: Part II, Section C excerpts from two different AIP applications in which the NAC did not disclose the existence of long term leases or any lease or encumbrance on property which was encumbered under lease

Exhibit 114: Page 13 of the NAC letter responding to the BEH Part13 complaint, stating that: "At the June 11, 2014, meeting, the NAC voted to table further discussion of the BEH lease/FBO interest in light of BEH's Part 13 Complaint filing".

Exhibit 115: NAC June 11, 2014, meeting minutes in which the NAC voted to table all requests from BEH regarding our FBO application or Lease request.

Exhibit 116: November 4, 2014, letter from Timothy I. McCulloch to Thomas Vick in a further attempt to obtain a permit to operate at Norwood Airport, BEH notified the FAA of BEH's intent to withdraw its part 13 complaint.

Exhibit 117: NAC November 25, 2014 meeting agenda.

Exhibit 118: December 1, 2014, email from Donovan to Maguire regarding November 25, 2014 NAC meeting in which the NAC did not allow BEH to speak or make any requests.

(Exhibits 119-134 not included by party).

Exhibit 135: October 6, 2008, letter from D. Kirk Shaffer and a January 27, 2010, letter from Randall Fiertz regarding the corrective action plan directed in docket 16-07-03.

(Exhibits 136-156 not included by party).

Exhibit 157: Court's Order of March 6, 2015.

Item 2 Copy of Email, dated September 27, 2010, to be included as Exhibit 12 in Respondents' Answer to part 16 Complaint filed by the Complainant, dated May 8, 2015.

Item 3— Letter from Brandon Moss including a DVD to replace Exhibit 12 associated with May 8, 2015 Complaint. Letter is dated May 19, 2015.

FAA Exhibit 2

Item 1 Notice of Docketing, dated March 31, 2015.

FAA Exhibit 3

Item 1— Respondents Motion to Extend the Time to Respond to the part 16 Complaint filed by the Complainant, dated April 13, 2015.

FAA Exhibit 4

Item 1— Respondents Answer to part 16 Complaint filed by the Complainant, dated May 8, 2015. Includes exhibits 1-105.

Exhibit 1: Norwood Police Report by Patrol Officer Daniel J. Kehoe dated November 21, 2007.

Exhibit 2: Decision and Order Dismissing Complaint, Shachtman v. Helicopters, Inc.

Exhibit 3: Letter from Christopher Donovan to Russ Maguire dated April 8, 2010.

Exhibit 4: Letter from Christopher Donovan to Norwood Municipal Airport Commission dated May 12, 2010.

Exhibit 5: BEH Commercial Permit Application and Permit, FY 2010.

Exhibit 6: BEH Commercial Permit Application and Permit, FY 2011.

Exhibit 7: BEH Commercial Permit Application and Permit, FY 2012.

Exhibit 8: BEH Commercial Permit Application and Permit, FY 2013.

Exhibit 9: BEH Commercial Permit Application and Permit, FY 2014.

Exhibit 10: Email exchange between Christopher Donovan and Russ Maguire dated May 12-13, 2010.

Exhibit 11: Email from Russ Maguire to Peter Eichleay dated May 11, 2010

Exhibit 12: Email exchange between Christopher Donovan and Russ Maguire dated September 24 and 27, 2010.

Exhibit 13: Email exchange between Christopher Donovan and Russ Maguire dated September 27, 2010.

Exhibit 14: Email from Christopher Donovan to Russ Maguire dated September 27, 2010.

Exhibit 15: Email from Christopher Donovan to Russ Maguire dated October 14, 2010.

Exhibit 16: Email from Donna Witte to Russ Maguire dated December 21, 2010

Exhibit 17: Letter from Randall Fiertz to Russ Maguire dated January 27, 2010.

Exhibit 17a: Letter from Russ Maguire to Peter Eichleay dated November 29, 2010.

Exhibit 18: Email from Russ Maguire to Barry Hammer dated March 2, 2011, with forwarded message from Russ Maguire to Donna Witte dated January 7, 2011.

Exhibit 19: Letter from Joshua Fox to Russ Maguire dated June 13, 2011.

Exhibit 20: Letter from Michael Lehane and Brandon Moss to Joshua Fox dated July 2, 2011.

Exhibit 21: Letter from Russ Maguire to Christopher Donovan dated March 21, 2014.

Exhibit 21a: Minutes of Norwood Airport Commission Meeting dated August 13, 2014

Exhibit 21b: Email from Russ Maguire to K. Putnam, Mike DeLaria, Peter Eichleay, and Mark Raymond dated April 25, 2015.

Exhibit 21c: Letter from Russ Maguire to William Haney dated November 4, 2010

Exhibit 22: Email exchange between Christopher Donovan and Russ Maguire dated September 24 and 27, 2010.

Exhibit 23: Lease between Town of Norwood and Boston Metropolitan Airport, Inc. dated December 1967.

Exhibit 24: Email from Russ Maguire to Barry Hammer dated November 28, 2012.

Exhibit 25: BEH Loan Amortization Schedule, 2013 through 2043.

Exhibit 26: Email from Christopher Donovan to Russ Maguire dated August 21, 2012, with forwarded email exchange from Barry Hammer to Christopher Donovan dated August 20, 2012.

Exhibit 27: Memo to file by Russ Maguire re 1-8-2013 phone conversation with Mary Walsh dated January 8, 2013.

Exhibit 28: Letter from Russ Maguire to Barry Hammer dated February 12, 2013.

Exhibit 29: Email from Barry Hammer to Russ Maguire dated February 20, 2013

Exhibit 30: Letter from Russ Maguire to Christopher Donovan dated February 22, 2013.

Exhibit 31: Assignment, Assumption, and Amendment of Lease dated October 19, 2012 for Lot F.

Exhibit 32: Minutes of Norwood Airport Commission Meeting dated December 12, 2012.

Exhibit 33: Letter from Russ Maguire to Norwood Board of Selectmen dated December 14, 2012.

Exhibit 34: Email from Jeffrey Adler to Russ Maguire dated December 20, 2012.

Exhibit 35: Memo from Russ Maguire to Christopher Donovan dated January 28, 2013.

Exhibit 36: Norwood Airport Minimum Standards.

Exhibit 37: Minutes of Norwood Airport Commission Meeting dated May 14, 2014

Exhibit 38: Minutes of Norwood Airport Commission Meeting dated June 11, 2014.

Exhibit 39: Minutes of Norwood Airport Commission Meeting dated July 30, 2014.

Exhibit 40: FAA Airport Design Document dated January 3, 2008 (AC 150/5300-13 CHG 12).

Exhibit 42: Airport/Facility Director, Northeast U.S., effective May 29, 2014 to July 24, 2014.

Exhibit 43: Norwood Memorial Airport Master Plan Update, Final — Phase II, dated March 2007.

Exhibit 44: Office Agreement between Eastern Air Center, Inc., and HB Holdings Inc. dated June 15, 1996.

Exhibit 45: Notes to personal calendar re BAC TOFA issues dated September 25 through October 2, 2008.

Exhibit 46: Email from Russ Maguire to Airport Businesses, Pilots, ATC re TOFA dated April 11, 2014.

Exhibit 47: Memo from Mike DeLaria to Line Department Personnel dated April 24, 2014

Exhibit 48: Note from Jason Tibbetts to all authorities concerned regarding incident occurring September 4, 2014.

Exhibit 49: Email from Peter Eichleay to Christopher Donovan dated September 9, 2014

Exhibit 50: Letter from Nick Burlingham to Joshua Fox dated December 5, 2013

Exhibit 51: Memo from Russ Maguire to Norwood Airport Commission dated June 17, 2013.

Exhibit 95: Letter from Russ Maguire to Bryon Rakoff dated April 9, 2015.

Exhibit 96: Letter from Mark Ryan to Mary Walsh dated March 6, 2015.

Exhibit 97: Letter from Mary Walsh to Russ Maguire dated January 15, 2015.

Exhibit 98: Letter from Peter Eichleay to Russ Maguire dated May 23, 2014.

Exhibit 99: Incident report by Kevin Putnam dated November 28, 2014.

Exhibit 100: Letter to the Editor, Norwood Record, dated March 26, 2015.

Exhibit 101: Minutes of Norwood Airport Commission Meeting dated January 14, 2015.

Exhibit 102: Miscellaneous Documents related to February 13, 2015, Spill Incident.

Exhibit 103: Email from Kevin Grasso to Russ Maguire and Mark Raymond dated May 6, 2015.

Exhibit 104: Norwood Memorial Airport General Regulations (Revised: October 2008).

Exhibit 105: May 9, 2014, Photographs of Norwood Airport Gate 3 Taxi-Lane C, Showing Christopher Donovan's Personal Vehicle and BEH Aircraft in the TOFA.

FAA Exhibit 5

Item 1— Letter from Russ Maguire, Manager, Norwood Memorial Airport, including 3 photographs (?) of the airport, dated May 14, 2015.

FAA Exhibit 6

Item 1 — Complainant's motion to Extend the Time to Respond to the Answer of the Town of Norwood (Town) and the Norwood Airport Commission (NAC), dated May 15, 2015.

FAA Exhibit 7

Item 1 Complainant's Response to the Answer of the Town of Norwood (Town) and the Norwood Airport Commission (NAC), dated June 8, 2015. Includes exhibits 158-176.

Exhibit 158: Norwood Selectmen Agenda May 19, 2015, re fuel restrictions.

Exhibit 159: VJF Fuel Permit

Exhibit 160: Selectmen transcript.

Exhibit 161: March 16, 2015, letter from Moss to McCulloch.

Exhibit 162: May 26, 2015, letter from McCulloch to Moss.

Exhibit 163: Transcript from April 15, 2015 NAC meeting.

Exhibit 164: Email string dated May 6, 2015, email from McCulloch to Moss; and May 11, 2015, email exchange between McCulloch and Moss with draft Confidentiality Agreement.

Exhibit 165: Email string between May 6, 2016, through May 12, 2015, email exchange between McCulloch and Moss.

Exhibit 166: Transcript from May 13, 2015, NAC meeting.

Exhibit 167: Email dated May 21, 2015, from McCulloch to Moss

Exhibit 168: Email dated June 1, 2015, from McCulloch to Moss.

Exhibit 169: Wall Street Journal article dated April 29, 2015.

Exhibit 170: Corporate Records of FlightLevel from Massachusetts Secretary.

Exhibit 171: OWD Gates 2 and 3 2015, (color photos).

Exhibit 172: Email dated August 15, 2012, from Donovan to Donna Witte of the FAA with attachments.

Exhibit 173: Maguire letter dated November 29, 2010, to Eichleay.

Exhibit 174: Norwood Airport Regulations.

Exhibit 175: FAA emails and letters.

Exhibit 176: Reference email dated May 11, 2010, from Eichleay to Maguire.

FAA Exhibit 8

Item 1—Respondents' Rebuttal to Complainant's Reply, dated July 9, 2015, Includes exhibits 106-141.

Exhibit 106: Email from Norwood Fire Chief Anthony Greeley to Russ Maguire, dated February 12, 2014

Exhibit 107: May 19, 2015, Norwood Board of Selectmen Meeting Minutes.

Exhibit 108: Letter from Mark Ryan to Christopher Donovan, dated May 26, 2015.

Exhibit 109: Printouts from Boston Executive Helicopters, LLC Website, dated July 2, 2015.

Exhibit 110: Boston Executive Helicopters, LLC Financial Submission, dated April, 2014.

Exhibit 111: Letter from Attorney Timothy I. McCulloch to Attorney Brandon H. Moss, dated March 12, 2015.

Exhibit 112: Letter from Attorney Timothy I. McCulloch to Attorney Brandon H. Moss, dated March 27, 2015

Exhibit 113: April 15, 2015 Norwood Airport Commission Meeting Minutes

Exhibit 114: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated May 12, 2015.

Exhibit 115: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated May 13, 2015.

Exhibit 116: May 13, 2015 Norwood Airport Commission Meeting Minutes.

Exhibit 117: Letter from Attorney Brandon H. Moss to Attorney Timothy McCulloch, dated June 3, 2015.

Exhibit 118: Email from Attorney Timothy I. McCulloch to Attorney Brandon H. Moss, dated June 4, 2015.

Exhibit 119: Email from Attorney Timothy I. McCulloch to Attorney Brandon H. Moss, dated June 11, 2015.

Exhibit 120: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated June 12, 2015.

Exhibit 121: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated June 15, 2015

Exhibit 122: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated June 18, 2015

Exhibit 123: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated June 22, 2015.

Exhibit 124: Edits to Aviation Management Consulting Group Engagement Letter by Attorney Timothy I. McCulloch.

Exhibit 125: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated June 24, 2015

Exhibit 126: Letter from Attorney Timothy I. McCulloch to Attorney Brandon H. Moss, dated June 25, 2015.

Exhibit 127: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated July 8, 2015.

Exhibit 128: June 10, 2015, Norwood Airport Commission Meeting Minutes.

Exhibit 129: Letter from Attorney Timothy I. McCulloch to Attorney Brandon H. Moss, dated June 17, 2015.

Exhibit 130: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated June 22, 2015.

Exhibit 131: Email from Attorney Timothy I. McCulloch to Attorney Brandon H. Moss, dated June 23, 2015.

Exhibit 132: Letter from FlightLevel Aviation to Norwood Board of Selectmen and Norwood Airport Commission, dated June 8, 2015.

Exhibit 133: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated June 25, 2015.

Exhibit 134: Email from Russ Maguire to Christopher Donovan, dated November 8, 2013.

Exhibit 135: Email from Mark Ryan to Norwood Airport Commission and Christopher Donovan, dated November 8, 2013.

Exhibit 136: Photograph of Gate 3 Taxi-Lane Damage.

Exhibit 137: Email from Christopher Donovan to Norwood Airport Commission, dated November 10, 2013.

Exhibit 138: Email from Russ Maguire to Christopher Donovan, dated September 14, 2014.

Exhibit 139: Taxi-Lane Photographs.

Exhibit 140: Letter from Mark Ryan to Christopher Donovan, dated July 8, 2015.

Exhibit 141: August 13, 2014, Norwood Airport Commission Meeting Minutes.

FAA Exhibit 9

Item 1-Norwood Memorial Airport Form -5010.

Item 2-January 9, 2015, Denial letter from FAA to OWD Airport Manager concerning land release request.

Item 3-July 28, 2009, AIN article, *FBO Profile: FlightLevel Aviation*.

Item 4-July 20, 2016, OWD Grant History Report.

FAA Exhibit 10

September 2, 2016, Respondent's Motion for Leave to File a Third Supplemental Rebuttal

Item 1-Exhibit 145, United States District Court Order

FAA Exhibit 11

November 10, 2016, Respondent's Motion for Leave to File a Fourth Supplemental Rebuttal

Item 1-Exhibit 146, Letter from the NAC to BEH with permit condition dated November 1, 2016
Letter from the NAC to BEH with permit conditions dated July 1, 2016

FAA Exhibit 12

November 29, 2016, Opposition to the Motion to file a Fourth Supplemental rebuttal

FAA Exhibit 13

December 15, 2016, Letter from Complainant with correspondence between the parties

Item 1-Exhibit A, December 12, 2016, letter from Complainant to the NAC regarding permit conditions,

FAA Exhibit 14

January 3, 2016, Respondent's Response to Complainant's Pleadings and Motion to Strike
November 29, 2016, Filing

FAA Exhibit 15

February 7, 2017, Correspondence update with copy of February 1, 2017, letter responding
December 12, 2016 letter.

space [at the Airport]”.¹⁷⁰ However, the record reflects that the Airport had already placed the land into a non-aeronautical use.

FAA compliance policy would have properly permitted only a temporary lease of this land, without permanent construction, however, and with a clause allowing this non-aeronautical use only to the point that an aviation need for the property became necessary.¹⁷¹ Given the airport’s current predicament in claiming inadequate space to accommodate aeronautical demands, it is unlikely that FAA would have approved a request by the Commission for any non-aeronautical disposal of this land even if the Airport had done so properly. This is evidenced by the FAA’s January 9, 2015, decision in not releasing this land to non-aeronautical use.¹⁷²

The Director notes that on March 15, 2010, the Airport manager disclosed to the Manager of the FAA’s New England Airports Division that this Airport property, “included in the Norwood Airport Exhibit A,” had been previously put into a non-aeronautical use status by the Airport. The Airport manager further disclosed that the property had been developed into a vehicle parking lot using municipal funds only. The Airport manager stated in the letter that the FAA requested that the Airport formally request a release of the land for non-aviation purposes. He continued his letter to the FAA saying, “We are moving forward on this now and expect to have the formal request for your review as soon as possible.” The Director also notes that the next letter to the FAA from the Airport manager was not until March 8, 2012, almost 2 years later.¹⁷³

The FAA acknowledges that the Airport had previously self-disclosed putting this land into non-aeronautical use. However, the fact remains that having done so without the approval of the FAA amounts to a violation of the grant assurance. Thus, the Director finds the Town and Commission in violation of Grant Assurance 29.

VI. FINDINGS AND CONCLUSIONS

Upon consideration of the submissions, responses by the parties, the record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office of Airport Compliance and Management Analysis finds that The Town of Norwood is currently in violation of Grant Assurance 22, Grant Assurance 23 and Grant Assurance 29.

VII. ORDER

ACCORDINGLY, the Director finds that the Town and Commission in violation of Federal law and its Federal grant obligations. The FAA directs the Town and Commission to take immediate steps to, 1) provide BEH any remaining requirements for the FBO permit and promptly complete the permitting process; 2) discontinue leasing practice that provides exclusive rights to a single FBO; and 3) to contact the appropriate FAA Regional office and comply with their direction regarding the Verizon property.

The Authority is hereby directed to submit a Corrective Action Plan to the Director within 30 days of the date of this Determination demonstrating how the Town and Commission will comply with the corrective actions prescribed above.

¹⁷⁰ Exhibit 1, Item 1, Exhibit 4, Item 93.

¹⁷¹ See FAA Order 5190.6B, paragraph 22.6.

¹⁷² Exhibit 1, Item 1, Exhibits 55 and 56.

¹⁷³ Exhibit 1, Item 1, Exhibit 55

FAA Exhibit 2

Item 1 Notice of Docketing, dated March 31, 2015.

FAA Exhibit 3

Item 1— Respondents Motion to Extend the Time to Respond to the part 16 Complaint filed by the Complainant, dated April 13, 2015.

FAA Exhibit 4

Item 1—Respondents Answer to part 16 Complaint filed by the Complainant, dated May 8, 2015. Includes exhibits 1-105.

Exhibit 1: Norwood Police Report by Patrol Officer Daniel J. Kehoe dated November 21, 2007.

Exhibit 2: Decision and Order Dismissing Complaint, Shachtman v. Helicopters, Inc.

Exhibit 3: Letter from Christopher Donovan to Russ Maguire dated April 8, 2010.

Exhibit 4: Letter from Christopher Donovan to Norwood Municipal Airport Commission dated May 12, 2010.

Exhibit 5: BEH Commercial Permit Application and Permit, FY 2010.

Exhibit 6: BEH Commercial Permit Application and Permit, FY 2011.

Exhibit 7: BEH Commercial Permit Application and Permit, FY 2012.

Exhibit 8: BEH Commercial Permit Application and Permit, FY 2013.

Exhibit 9: BEH Commercial Permit Application and Permit, FY 2014.

Exhibit 10: Email exchange between Christopher Donovan and Russ Maguire dated May 12-13, 2010.

Exhibit 11: Email from Russ Maguire to Peter Eichleay dated May 11, 2010

Exhibit 12: Email exchange between Christopher Donovan and Russ Maguire dated September 24 and 27, 2010.

Exhibit 13: Email exchange between Christopher Donovan and Russ Maguire dated September 27, 2010.

Exhibit 14: Email from Christopher Donovan to Russ Maguire dated September 27, 2010.

Exhibit 15: Email from Christopher Donovan to Russ Maguire dated October 14, 2010.

Exhibit 16: Email from Donna Witte to Russ Maguire dated December 21, 2010

Exhibit 17: Letter from Randall Fiertz to Russ Maguire dated January 27, 2010.

Exhibit 17a: Letter from Russ Maguire to Peter Eichleay dated November 29, 2010.

Exhibit 18: Email from Russ Maguire to Barry Hammer dated March 2, 2011, with forwarded message from Russ Maguire to Donna Witte dated January 7, 2011.

Exhibit 19: Letter from Joshua Fox to Russ Maguire dated June 13, 2011.

Exhibit 20: Letter from Michael Lehane and Brandon Moss to Joshua Fox dated July 2, 2011.

Exhibit 21: Letter from Russ Maguire to Christopher Donovan dated March 21, 2014.

Exhibit 21a: Minutes of Norwood Airport Commission Meeting dated August 13, 2014

Exhibit 21b: Email from Russ Maguire to K. Putnam, Mike DeLaria, Peter Eichleay, and Mark Raymond dated April 25, 2015.

Exhibit 21c: Letter from Russ Maguire to William Haney dated November 4, 2010

Exhibit 22: Email exchange between Christopher Donovan and Russ Maguire dated September 24 and 27, 2010.

Exhibit 23: Lease between Town of Norwood and Boston Metropolitan Airport, Inc. dated December 1967.

Exhibit 24: Email from Russ Maguire to Barry Hammer dated November 28, 2012.

Exhibit 25: BEH Loan Amortization Schedule, 2013 through 2043.

Exhibit 26: Email from Christopher Donovan to Russ Maguire dated August 21, 2012, with forwarded email exchange from Barry Hammer to Christopher Donovan dated August 20, 2012.

Exhibit 27: Memo to file by Russ Maguire re 1-8-2013 phone conversation with Mary Walsh dated January 8, 2013.

Exhibit 28: Letter from Russ Maguire to Barry Hammer dated February 12, 2013.

Exhibit 29: Email from Barry Hammer to Russ Maguire dated February 20, 2013

Exhibit 30: Letter from Russ Maguire to Christopher Donovan dated February 22, 2013.

Exhibit 31: Assignment, Assumption, and Amendment of Lease dated October 19, 2012 for Lot F.

Exhibit 32: Minutes of Norwood Airport Commission Meeting dated December 12, 2012.

Exhibit 33: Letter from Russ Maguire to Norwood Board of Selectmen dated December 14, 2012.

Exhibit 34: Email from Jeffrey Adler to Russ Maguire dated December 20, 2012.

Exhibit 35: Memo from Russ Maguire to Christopher Donovan dated January 28, 2013.

Exhibit 36: Norwood Airport Minimum Standards.

Exhibit 37: Minutes of Norwood Airport Commission Meeting dated May 14, 2014

Exhibit 38: Minutes of Norwood Airport Commission Meeting dated June 11, 2014.

Exhibit 39: Minutes of Norwood Airport Commission Meeting dated July 30, 2014.

Exhibit 40: FAA Airport Design Document dated January 3, 2008 (AC 150/5300-13 CHG 12).

Exhibit 42: Airport/Facility Director, Northeast U.S., effective May 29, 2014 to July 24, 2014.

Exhibit 43: Norwood Memorial Airport Master Plan Update, Final — Phase II, dated March 2007.

Exhibit 44: Office Agreement between Eastern Air Center, Inc., and HB Holdings Inc. dated June 15, 1996.

Exhibit 45: Notes to personal calendar re BAC TOFA issues dated September 25 through October 2, 2008.

Exhibit 46: Email from Russ Maguire to Airport Businesses, Pilots, ATC re TOFA dated April 11, 2014.

Exhibit 47: Memo from Mike DeLaria to Line Department Personnel dated April 24, 2014

Exhibit 48: Note from Jason Tibbetts to all authorities concerned regarding incident occurring September 4, 2014.

Exhibit 49: Email from Peter Eichleay to Christopher Donovan dated September 9, 2014

Exhibit 50: Letter from Nick Burlingham to Joshua Fox dated December 5, 2013

Exhibit 51: Memo from Russ Maguire to Norwood Airport Commission dated June 17, 2013.

Exhibit 51a: NFPA 407 Standard for Aircraft Fuel Servicing, 2007 Edition.

Exhibit 52: Letter from Russ Maguire to Christopher Donovan dated June 24, 2013.

Exhibit 53: Memo from Russ Maguire to Christopher Donovan dated July 12, 2013.

Exhibit 54: Email from Lisa Lesperance to Russ Maguire dated July 17, 2013.

Exhibit 54a: BEH Proposed Hangar Reconstruction and Fuel Facility at Norwood Municipal Airport, dated June 27, 2013.

Exhibit 55: Letter from Russ Maguire to Christopher Donovan dated July 19, 2013.

Exhibit 56: Letter from Joshua Fox to Michael DeLaria dated November 19, 2013

Exhibit 57: Minutes of Norwood Airport Commission Meeting dated February 12, 2014.

Exhibit 58: Minutes of Norwood Airport Commission Meeting dated March 12, 2014.

Exhibit 59: Letter from Russ Maguire to Christopher Donovan dated March 17, 2014.

Exhibit 60: Minutes of Norwood Airport Commission Meeting dated April 9, 2014.

Exhibit 61: Email from Christopher Donovan to Russ Maguire dated April 8, 2014.

Exhibit 62: Email from Russ Maguire to Christopher Donovan dated April 30, 2014.

Exhibit 63: Letter from Matthew Watsky to Norwood Airport Commission dated April 9, 2014.

Exhibit 64: Minutes of Norwood Airport Commission Meeting dated May 14, 2014.

Exhibit 65: Letter from Mary Walsh to Russ Maguire dated June 5, 2014.

Exhibit 66: Letter from Timothy McCulloch to Thomas Vick dated November 4, 2014

Exhibit 67: Minutes from Norwood Board of Selectmen Meeting dated December 18, 2014

Exhibit 68: Letter from Brandon Moss to Timothy McCulloch dated February 12, 2015.

Exhibit 69: Letter from Allen Bishop to Howard Pendergast dated March 15, 1988.

Exhibit 70: Letter from Allen Bishop to Lawrence Egan dated July 12, 1994.

Exhibit 71: Letter from John Updegraph to Lawrence Egan dated July 28, 1994.

Exhibit 72: Kertzman Inc.'s FBO Proposal dated March 11, 1988.

- Exhibit 73:** Letter from Donald E. Church to Paul Pazniokas dated May 26, 1999.
- Exhibit 74:** Lessees of Norwood Airport Land Lease Lots, 1988 through 2013.
- Exhibit 75:** Letter from Peter Eichleay to Norwood Airport Commission and Russ Maguire dated January 22, 2014.
- Exhibit 76:** Advertisement for Proposals, Town of Norwood dated December through January 2013.
- Exhibit 77:** Addendum to Request for Proposal of DC-3 Apron dated January 28, 2013.
- Exhibit 78:** Letter from Thomas Wynne to Christopher Donovan dated March 14, 2013.
- Exhibit 79:** Letter from Peter Eichleay to Michael Lyons dated January 20, 2015.
- Exhibit 80:** Letter from Peter Eichleay to Russ Maguire dated January 29, 2015.
- Exhibit 81:** Letter from Nick Burlingham to Joshua Fox dated July 29, 2014.
- Exhibit 82:** Letter from Nick Burlingham to Christopher Donovan dated February 14, 2015.
- Exhibit 83:** Letter from Peter Eichleay to Norwood Airport Commission dated March 6, 2015.
- Exhibit 84:** Letter from Nick Burlingham to Joshua Fox dated July 29, 2014.
- Exhibit 85:** Norwood Police Report by Patrol Officer James Payne dated February 16, 2015.
- Exhibit 86:** Affidavit of Michael Pendergast dated March 4, 2015.
- Exhibit 87:** Superior Court Order in BEH v. FlightLevel dated March 6, 2015.
- Exhibit 88:** Letter from Russ Maguire to Barry Hammer dated March 8, 2012.
- Exhibit 89:** Email from Barry Hammer to Russ Maguire dated July 26, 2012.
- Exhibit 90:** Email from Russ Maguire to Barry Hammer dated July 26, 2012.
- Exhibit 91:** Email from Russ Maguire to Mary Walsh dated June 14, 2013, with forwarded message from Russ Maguire to Barry Hammer dated May 15, 2013.
- Exhibit 92:** Email from Russ Maguire to Barry Hammer dated April 3, 2014.
- Exhibit 93:** Letter from Mary Walsh to Russ Maguire dated January 9, 2015.
- Exhibit 94:** Letter from Mary Walsh to Russ Maguire dated September 16, 2014.

Exhibit 95: Letter from Russ Maguire to Bryon Rakoff dated April 9, 2015.

Exhibit 96: Letter from Mark Ryan to Mary Walsh dated March 6, 2015.

Exhibit 97: Letter from Mary Walsh to Russ Maguire dated January 15, 2015.

Exhibit 98: Letter from Peter Eichleay to Russ Maguire dated May 23, 2014.

Exhibit 99: Incident report by Kevin Putnam dated November 28, 2014.

Exhibit 100: Letter to the Editor, Norwood Record, dated March 26, 2015.

Exhibit 101: Minutes of Norwood Airport Commission Meeting dated January 14, 2015.

Exhibit 102: Miscellaneous Documents related to February 13, 2015, Spill Incident.

Exhibit 103: Email from Kevin Grasso to Russ Maguire and Mark Raymond dated May 6, 2015.

Exhibit 104: Norwood Memorial Airport General Regulations (Revised: October 2008).

Exhibit 105: May 9, 2014, Photographs of Norwood Airport Gate 3 Taxi-Lane C, Showing Christopher Donovan's Personal Vehicle and BEH Aircraft in the TOFA.

FAA Exhibit 5

Item 1— Letter from Russ Maguire, Manager, Norwood Memorial Airport, including 3 photographs (?) of the airport, dated May 14, 2015.

FAA Exhibit 6

Item 1 — Complainant's motion to Extend the Time to Respond to the Answer of the Town of Norwood (Town) and the Norwood Airport Commission (NAC), dated May 15, 2015.

FAA Exhibit 7

Item 1 Complainant's Response to the Answer of the Town of Norwood (Town) and the Norwood Airport Commission (NAC), dated June 8, 2015. Includes exhibits 158-176.

Exhibit 158: Norwood Selectmen Agenda May 19, 2015, re fuel restrictions.

Exhibit 159: VJF Fuel Permit

Exhibit 160: Selectmen transcript.

Exhibit 161: March 16, 2015, letter from Moss to McCulloch.

Exhibit 162: May 26, 2015, letter from McCulloch to Moss.

Exhibit 163: Transcript from April 15, 2015 NAC meeting.

Exhibit 164: Email string dated May 6, 2015, email from McCulloch to Moss; and May 11, 2015, email exchange between McCulloch and Moss with draft Confidentiality Agreement.

Exhibit 165: Email string between May 6, 2016, through May 12, 2015, email exchange between McCulloch and Moss.

Exhibit 166: Transcript from May 13, 2015, NAC meeting.

Exhibit 167: Email dated May 21, 2015, from McCulloch to Moss

Exhibit 168: Email dated June 1, 2015, from McCulloch to Moss.

Exhibit 169: Wall Street Journal article dated April 29, 2015.

Exhibit 170: Corporate Records of FlightLevel from Massachusetts Secretary.

Exhibit 171: OWD Gates 2 and 3 2015, (color photos).

Exhibit 172: Email dated August 15, 2012, from Donovan to Donna Witte of the FAA with attachments.

Exhibit 173: Maguire letter dated November 29, 2010, to Eichleay.

Exhibit 174: Norwood Airport Regulations.

Exhibit 175: FAA emails and letters.

Exhibit 176: Reference email dated May 11, 2010, from Eichleay to Maguire.

FAA Exhibit 8

Item 1—Respondents' Rebuttal to Complainant's Reply, dated July 9, 2015, Includes exhibits 106-141.

Exhibit 106: Email from Norwood Fire Chief Anthony Greeley to Russ Maguire, dated February 12, 2014

Exhibit 107: May 19, 2015, Norwood Board of Selectmen Meeting Minutes.

Exhibit 108: Letter from Mark Ryan to Christopher Donovan, dated May 26, 2015.

Exhibit 109: Printouts from Boston Executive Helicopters, LLC Website, dated July 2, 2015.

Exhibit 110: Boston Executive Helicopters, LLC Financial Submission, dated April, 2014.

Exhibit 111: Letter from Attorney Timothy I. McCulloch to Attorney Brandon H. Moss, dated March 12, 2015.

Exhibit 112: Letter from Attorney Timothy I. McCulloch to Attorney Brandon H. Moss, dated March 27, 2015

Exhibit 113: April 15, 2015 Norwood Airport Commission Meeting Minutes

Exhibit 114: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated May 12, 2015.

Exhibit 115: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated May 13, 2015.

Exhibit 116: May 13, 2015 Norwood Airport Commission Meeting Minutes.

Exhibit 117: Letter from Attorney Brandon H. Moss to Attorney Timothy McCulloch, dated June 3, 2015.

Exhibit 118: Email from Attorney Timothy I. McCulloch to Attorney Brandon H. Moss, dated June 4, 2015.

Exhibit 119: Email from Attorney Timothy I. McCulloch to Attorney Brandon H. Moss, dated June 11, 2015.

Exhibit 120: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated June 12, 2015.

Exhibit 121: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated June 15, 2015

Exhibit 122: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated June 18, 2015

Exhibit 123: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated June 22, 2015.

Exhibit 124: Edits to Aviation Management Consulting Group Engagement Letter by Attorney Timothy I. McCulloch.

Exhibit 125: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated June 24, 2015

Exhibit 126: Letter from Attorney Timothy I. McCulloch to Attorney Brandon H. Moss, dated June 25, 2015.

Exhibit 127: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated July 8, 2015.

Exhibit 128: June 10, 2015, Norwood Airport Commission Meeting Minutes.

Exhibit 129: Letter from Attorney Timothy I. McCulloch to Attorney Brandon H. Moss, dated June 17, 2015.

Exhibit 130: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated June 22, 2015.

Exhibit 131: Email from Attorney Timothy I. McCulloch to Attorney Brandon H. Moss, dated June 23, 2015.

Exhibit 132: Letter from FlightLevel Aviation to Norwood Board of Selectmen and Norwood Airport Commission, dated June 8, 2015.

Exhibit 133: Email from Attorney Brandon H. Moss to Attorney Timothy I. McCulloch, dated June 25, 2015.

Exhibit 134: Email from Russ Maguire to Christopher Donovan, dated November 8, 2013.

Exhibit 135: Email from Mark Ryan to Norwood Airport Commission and Christopher Donovan, dated November 8, 2013.

Exhibit 136: Photograph of Gate 3 Taxi-Lane Damage.

Exhibit 137: Email from Christopher Donovan to Norwood Airport Commission, dated November 10, 2013.

Exhibit 138: Email from Russ Maguire to Christopher Donovan, dated September 14, 2014.

Exhibit 139: Taxi-Lane Photographs.

Exhibit 140: Letter from Mark Ryan to Christopher Donovan, dated July 8, 2015.

Exhibit 141: August 13, 2014, Norwood Airport Commission Meeting Minutes.

FAA Exhibit 9

Item 1-Norwood Memorial Airport Form -5010.

Item 2-January 9, 2015, Denial letter from FAA to OWD Airport Manager concerning land release request.

Item 3-July 28, 2009, AIN article, *FBO Profile: FlightLevel Aviation*.

Item 4-July 20, 2016, OWD Grant History Report.

FAA Exhibit 10

September 2, 2016, Respondent's Motion for Leave to File a Third Supplemental Rebuttal

Item 1-Exhibit 145, United States District Court Order

FAA Exhibit 11

November 10, 2016, Respondent's Motion for Leave to File a Fourth Supplemental Rebuttal

Item 1-Exhibit 146, Letter from the NAC to BEH with permit condition dated November 1, 2016
Letter from the NAC to BEH with permit conditions dated July 1, 2016

FAA Exhibit 12

November 29, 2016, Opposition to the Motion to file a Fourth Supplemental rebuttal

FAA Exhibit 13

December 15, 2016, Letter from Complainant with correspondence between the parties

Item 1-Exhibit A, December 12, 2016, letter from Complainant to the NAC regarding permit conditions,

FAA Exhibit 14

January 3, 2016, Respondent's Response to Complainant's Pleadings and Motion to Strike
November 29, 2016, Filing

FAA Exhibit 15

February 7, 2017, Correspondence update with copy of February 1, 2017, letter responding
December 12, 2016 letter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 2, 2018, I caused to be placed with Federal Express, emailed, or personally delivered a true copy of the foregoing Notice addressed to:

Counsel for Complainant:

Michael C. Fee, Esq.
Pierce & Mandell, P.C.
11 Beacon Street, Suite 800
Boston, MA 02108
mfee@piercemandell.com

Counsel for Respondents:

Karis L. North Esq.
Kevin S. Freytag, Esq.
Murphy, Hesse, Toomey & Lehane, LLP
Crown Colony Plaza
300 Crown Colony Drive, Suite 410
Quincy, MA 02169
knorth@mhtl.com
kfreytag@mhtl.com

Town of Norwood, Massachusetts
566 Washington Street Norwood,
MA 02062

Norwood Airport Commission 125
Access Road
Norwood, MA 02062

Copy to:

FAA Part 16 Airport Proceedings Docket, AGC-610
FAA Airport Compliance and Management Analysis,
ACO-100
ANE



Claudia Roberts
Office of Airport Compliance
and Management Analysis

III. PROCEDURAL HISTORY AND BACKGROUND

A. Procedural History

March 11, 2015	Formal complaint filed under 14 CFR Part 16. ⁹
March 31, 2015	FAA docketed the Complaint. ¹⁰
April 14, 2015	FAA received Respondents Motion to Extend the Time to Respond to the part 16 Complaint filed by the Complainant, dated April 13, 2015.
May 12, 2015	FAA received <i>Respondent's Answer</i> to part 16 Complaint filed by the Complainant, dated May 8, 2015, includes exhibits 1-105.
May 14, 2015	Letter from Russ Maguire, Manager, Norwood Memorial Airport, of the airport, received by the FAA.
May 15, 2015	Complainant's Motion to Extend the Time to Respond to the Answer of the Town of Norwood and the Norwood Airport Commission.
May 19, 2015	Letter from Brandon Moss including a DVD to replace Exhibit 12 associated with May 8, 2015 Complaint.
June 10, 2015	FAA received Complainant's Response to the Answer of the Town of Norwood and the Norwood Airport Commission, dated June 8, 2015, includes exhibits 158-176.
July 9, 2015	Respondent's Rebuttal to Complainant's Reply, including exhibits 106-141.
June 13, 2016	Respondent's Motion for Leave to File a Supplemental Rebuttal. ¹¹
Junes 17, 2016	Respondent's Motion for Leave to File a Second Supplemental Rebuttal.
September 2, 2016	Respondent's Motion for Leave to File a Third Supplemental Rebuttal.
November 15, 2016	Respondent's Motion for Leave to File a Fourth Supplemental Rebuttal.
November 29, 2016	Complainant's Opposition to the motion filed by the Respondent for Leave to File a Fourth Supplemental Rebuttal.
December 15, 2016	Complainant's correspondence between the Parties.
January 3, 2016	Respondent's Response to Complainant's Pleadings and Motion to Strike November 29, 2016 Filing.
February 7, 2017	Correspondence update with copy of February 1, 2017 letter responding December 12, 2016 letter.

B. Background

a. Previous 14 CFR Part 16 Formal Complaint

As an initial matter, in its Complaint, BEH refers to a previous Part 16 case, *Boston Air Charter v. Norwood Airport Commission, Norwood Massachusetts*, Docket Number 16-07-03.¹² The

⁹ Exhibit 1, Item 1.

¹⁰ Exhibit 2, Item 1.

¹¹ The last filing date is December 15, 2016. The Director did not reject these items; however, given the delay of more than a year filing the documents only the information therein related to the allegations in the initial pleadings are considered in the decision. New allegations are not addressed.

¹² *Boston Air Charter v. Norwood Airport Commission, Norwood Massachusetts*, FAA Director's Determination, Docket No. 16-17-03, (April 11, 2008) page 4 and FAA Final Agency Decision, Docket No. 16-17-03, (August 14, 2008), page 4.

FAA: Norwood Airport Authority Violated Federal Law

by Gordon Gilbert

- November 1, 2018, 10:40 AM

Following review of an [FAR Part 16 filing](#), the FAA has determined that the town of Norwood, Massachusetts, and the Norwood Memorial Airport commission violated federal grant assurances by “unreasonably denying” Boston Executive Helicopters (BEH) the ability to establish an FBO at the airport and “improperly granting” exclusive rights to the existing FBO, FlightLevel Aviation. The ruling also addressed unauthorized leasing of airport property to Verizon for non-aeronautical use.

Over the last decade, BEH has been attempting to establish an FBO at Norwood Memorial Airport but has been thwarted continuously by the city and airport commission, according to the FAA. In early 2016, BEH filed the Part 16 complaint against the Norwood Airport authorities. Under Part 16, grievances can be submitted for alleged violations of fair and equal treatment of all users at airports that receive FAA grants.

In its filing, BEH contended—and the FAA agreed—that the commission has been violating Part 16 “through a pattern of unreasonable demands,” offers of access on “unreasonable terms” not applied to FlightLevel, restrictions on its operations “not imposed on other tenants, preferred treatment of the airport’s sole FBO, [and] leasing of most flight line facilities to the one FBO.”

According to the FAA, the airport 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 also determined that the town and the commission’s actions constitute an “unreasonable denial of access [to BEH] and unjust economic discrimination [against BEH].”

As a result of the FAA’s investigation, the agency ordered 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 until December 1 to appeal. “We will be meeting with counsel to determine our next steps,” an airport commission spokesperson told AIN.

Meanwhile, a trial is set to begin on December 10 in the Norfolk, Massachusetts district court on the lawsuit filed in 2015 by BEH against the town and the commission over the FBO dispute.



U.S. Department
of Transportation
Federal Aviation
Administration

New England Region

1200 District Avenue
Burlington, MA 01803

November 16, 2018

Russ Maguire
Manager
Norwood Memorial Airport
125 Access Road
Norwood, MA 02062

Dear Mr. Maguire:

We are in receipt of the Part 16 Directors Determination between Boston Executive Helicopters and the Town of Norwood, Massachusetts dated October 30, 2018. The findings identify the Town of Norwood, airport Sponsor, and the Airport Commission in violation of its grant assurances.

After further internal discussion, the New England Region Federal Aviation Administration (FAA) will not consider future discretionary project funding until the Town of Norwood completes a Corrective Action Plan (CAP) that is acceptable to the FAA.

If you should have any questions regarding the inspection, please call Jorge Panteli, Compliance and Land Use Specialist, at (781) 238-7618.

Sincerely,


Gail B. Lattrell
Director, Airports Division (Acting)

CC: Kelly Slusarski – FAA
Jorge Panteli – FAA
Lisa Lesperance – FAA
Michelle Ricci – FAA
John Merck – FAA
Jeff DeCarlo – MassDOT
Tracy Klay – MassDOT

11-27-18



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Stephanie Pollack, Secretary & CEO
Jeffrey DeCarlo, Administrator



November 27, 2018

VIA FIRST CLASS MAIL

Mark P. Ryan, Chairman
Norwood Airport Commission
125 Access Road
Norwood, MA 02062

Re: Part 16 Complaint - FAA's Director's Determination and Order

Dear Chairman Ryan:

The Aeronautics Division has reviewed the FAA's recent, very thorough, and exhaustive Director's Determination in connection with Boston Executive Helicopters, LLC's Federal Part 16 Complaint against the Town of Norwood and the Norwood Airport Commission in relation to alleged violations of FAA Grant Assurances. Since the State Grant Assurances mirror the Federal Grant Assurances, a violation of one or more Federal Grant Assurances is, in most cases, also a violation of one or more State Grant Assurances. Our records indicate that the Norwood Airport is the recipient of numerous State Grants and, as such, has executed the State Grant Assurances accompanying each State Grant, thereby legally obligating the Town and the Commission to abide by the Grant Assurances.

In the opinion of the Aeronautics Division, the FAA's Director's Determination that Federal Grant Assurances 23 and 29 have been violated by the Town and the Commission is also a violation of reciprocal State Grant Assurances. Accordingly, the Aeronautics Division demands that the Town and the Commission comply with the Director's Order (as set forth in "Section VII. Order" on Page 36 of the Director's Determination) and will monitor compliance with that and any other related FAA directive and/or order. Furthermore, be advised that the Aeronautics Division is in close contact with FAA's NE Region's Compliance and Land Use Specialist and reserves the right to seek additional enforcement under state law until such time as the FAA notifies it that full compliance has been achieved.

Sincerely,

Tracy W. Klay, Deputy General Counsel

cc: Jeffrey DeCarlo, Administrator, Aeronautics Division, MassDOT (via email)
FAA (via email)
Russ Maguire, Manager, Norwood Memorial Airport (via email)
Karis L North, Esq., Murphy, Hesse, Toomey & Lehane, LLP
Michael C. Fee, Esq., Pierce & Mandell, P.C.

6-6-19



MH MURPHY HESSE
TL TOOMEY & LEHANE LLP
 Attorneys at Law

Peter L. Mello
 pmello@mhtl.com

June 6, 2019

BY CERTIFIED MAIL
 (Return Receipt requested)
AND FIRST CLASS MAIL

Donald Quinn
 P.O. Box 623
 North Truro, MA 02652

Donald Quinn
 220 Langley Road
 Newton, MA 02459

**Re: Further Demand for Compliance with Notices to Quit
 and of Termination of Commercial Tenancy-at-Will**

Dear Mr. Quinn:

As you know, in the attached letter dated December 21, 2018, and in subsequent communications, the Norwood Airport Commission ("NAC") directed that you vacate, no later than April 1, 2019, the West Apron tie-down space number W-15 ("Space W-15") of the Norwood Memorial Airport (the "Airport"). In violation of these demands and applicable legal requirements, to date you continue to occupy Space W-15 improperly.

In view of your continued unlawful occupancy of Space W-15, and the NAC's pressing need for unfettered use of such space, the NAC intends imminently to commence formal legal proceedings to obtain a court order compelling your immediate removal from the Airport. In a final, good faith attempt to facilitate your voluntary removal without the need for such proceedings, we will refrain from our intended filing until **July 17, 2019**. Please be advised that we intend to commence litigation immediately upon the expiration of such deadline should you fail to vacate the Airport in advance thereof. In addition, I am compelled to caution that, in the absence of your compliance, the NAC and Town of Norwood hereby reserve all rights to fully pursue any damages, remedies and other available relief against you, at law or otherwise.

We are hopeful that, in accordance with the NAC's good faith demands and applicable law, you will vacate Space W-15 voluntarily no later than July 17, 2019. Please contact NAC's

300 Crown Colony Drive, Suite 410 | Quincy, Massachusetts 02169 | T 617.479.5000 | F 617.479.6469
 Boston | Springfield | info@mhtl.com | www.mhtl.com

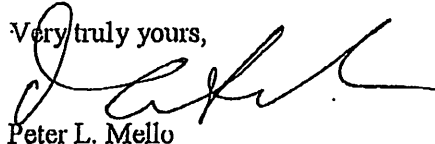
(P)

MH MURPHY HESSE
TL TOOMEY & LEHANE LLP
Attorneys at Law

Donald Quinn
June 6, 2019
Page 2

Airport Manager, Russ Maguire, to coordinate or confirm your removal from Space W-15. If you are represented in this matter, please forward this letter to your counsel.

Very truly yours,



Peter L. Mello

Enclosure

cc: Norwood Airport Commission
Russ Maguire, Manager

12-6-19

DAVIDS|COHEN

Eric H. Loeffler, Esq.
Direct Dial: (339) 686-2543
Email: eloeffler@davids-cohen.com

December 6, 2019

VIA EMAIL & REGULAR MAIL

Federal Aviation Administration
Office of Airport Compliance and Management Analysis
ATTN: Kevin C. Willis, Director
800 Independence Avenue, S.W.
Washington, DC 20591

**RE: FAA Docket No. 16-15-05 Boston Executive Helicopters v. Town of Norwood
Corrective Action Plan Submitted by Norwood on November 18, 2019**

Dear Mr. Willis,

I represent Boston Executive Helicopters, LLC (“BEH”) relative to the above referenced matter. We have received a copy of the Norwood Airport Commission (“NAC”) and the Town of Norwood’s (“Norwood”) first Corrective Action Plan dated November 18, 2019. We respectfully request that you allow BEH an opportunity to address the claims by the NAC and Norwood in their Corrective Action Plan.

Unfortunately, as you are likely aware, the NAC and Norwood have submitted a previous plan based on violations only to then ignore them completely. What is most troubling is the pattern of retaliation from the NAC and Norwood in meeting their past promises and obligations. BEH has not been allowed to operate an FBO as the NAC and Norwood claim. BEH was hopeful after the NAC and Norwood proposed and agreed to a settlement regarding their retaliation against BEH for initially contacting the FAA and asking for assistance. Once again, however, the NAC and Norwood have shown that any such agreement is simply an attempt to delay and escape accountability. The NAC and Norwood continue to ignore past promises to the FAA, as well as to BEH under the settlement agreement, and instead suggest incorrectly that they have taken all steps to cure their non-compliance. That is not the case.

Contrary to the terms of the settlement agreement, BEH has been denied most communication between the FAA and Norwood which would allow BEH to meaningfully participate in working with the Town to address systemic violations. Actions taken since BEH’s initial Part 16 filing in 2015 have frankly shown complete disregard for the FAA and the Grant Assurances. The manner in which the NAC has leased airport land has severely harmed aviation and the Airport. BEH believes its comments will help the FAA to fully understand the outstanding issues and lack of compliance by the NAC and Norwood.

Federal Aviation Administration
ATTN: Kevin C. Willis, Director
December 6, 2019
Page 2

BEH respectfully requests that it be permitted the opportunity to submit its comments, which BEH believes will assist the FAA in considering the Corrective Action Plan recently submitted by the NAC and Norwood.

Thank you for your attention to this matter.

Very truly yours,

/s/ Eric H. Loeffler

Eric H. Loeffler

cc: Christopher Donovan, President, BEH
Ms. Gail Lattrell, FAA
Karis L. North, Esq.
Mr. Jeffrey DeCarlo, MassDOT