



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

Office of Airport Compliance
and Management Analysis

800 Independence Ave., SW.
Washington, DC 20591

RECEIVED

September 22, 2023

SEP 22 2023

Mr. William C. Poe
City Manager
City of Zephyrhills
5335 Eighth Street
Zephyrhills, FL 33542-4312

PART 16 DOCKETS

Re: *In the Matter of Compliance With Federal Obligations by the City of Zephyrhills, Florida*
FAA Docket No. 16-22-01

Dear Mr. Poe:

On January 28, 2022, the Federal Aviation Administration (FAA) initiated a Notice of Investigation (NOI) under 14 CFR Part 16, of the compliance by the City of Zephyrhills, Florida. The City attempted to resolve the issues raised in the NOI informally between January 2022 and January 2023, but was unsuccessful. On January 4, 2023, the FAA reinitiated its investigation which is now complete.

Enclosed is the resulting Director's Determination (DD) under 14 CFR § 16.31 finding the City in violation of Grant Assurance 19, *Operation and Maintenance*; its Surplus Property Act of 1944, as amended, obligations; Grant Assurance 24, *Fee and Rental Structure*; Grant Assurance 25, *Airport Revenues*; and Grant Assurance 5, *Preserving Rights and Powers*. The specific details and reasons for the violations are outlined 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
WILLIS

Digitally signed by KEVIN
WILLIS
Date: 2023.09.22
06:05:42 -04'00'

Kevin C. Willis
Director, Office of Airport Compliance
and Management Analysis

Enclosure

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

RECEIVED

SEP 22 2023

IN THE MATTER OF COMPLIANCE WITH
FEDERAL OBLIGATIONS BY THE

CITY OF ZEPHYRHILLS



PART 16 DOCKETS

FAA Docket No. 16-22-01

DIRECTOR'S DETERMINATION

I. INTRODUCTION AND SUMMARY

This matter is before the Federal Aviation Administration (FAA) based on the Notice of Investigation (NOI) initiated by the FAA on January 28, 2022, under FAA *Rules of Practice for Federally-Assisted Airport Enforcement Proceedings*, 14 Code of Federal Regulations (CFR) Part 16 (Part 16). The FAA issued the NOI to the City of Zephyrhills (City), Florida, the sponsor of the Zephyrhills Municipal Airport (ZPH or Airport) in accordance with 14 CFR Part 16, Subpart D.

The purpose of the investigation was to ascertain the City's compliance with its Federal sponsor obligations and included a review of the City's lease and operating agreement with Skydive City, Inc. (Skydive City). The current lease is a 20-year lease that expires in 2030 with an optional five-year extension available to Skydive City. The lease permits nonaeronautical uses in an aeronautical use area including a Recreational Vehicle (RV) campground (also referred to as RV sites or RV park). The review also included an examination of the rates charged for nonaeronautical use of airport property, and the City's ability to maintain its rights and powers (FAA Exhibit 1, Item 2).

In accordance with 14 CFR §§ 16.103 and 16.105, the FAA invited good faith efforts by the City to resolve informally the matters that are addressed in the NOI (FAA Exhibit 1, Item 2). The City tried to resolve the issues raised in the NOI informally, (FAA Exhibit 1, Item 14) but its efforts were not successful.

With respect to the issues raised in the NOI, under the particular circumstances existing at the Airport and the evidence of record, as discussed below, the Director finds the City of Zephyrhills in violation of 49 U.S.C. § 47107(a)(7), specifically Grant Assurance 19, *Operation and Maintenance*; and the Surplus Property Act of 1944, as amended, by permitting incompatible land use in an area designated for aeronautical use. The Director finds the City in violation of Grant Assurances 24, *Fee and Rental Structure*; and Grant Assurance 25, *Airport Revenues*, by

not charging commercial fair market value (FMV) rates for nonaeronautical use within the Skydive City leasehold. Additionally, the Director finds the City in violation of Grant Assurance 5, *Preserving Rights and Powers*, by not protecting its rights and powers under the terms of the lease.

The Director's Determination in this matter is based on the applicable Federal law, FAA policy, and review of the filings and supporting documentation submitted and researched by the FAA, which comprise the administrative record reflected in the attached FAA Exhibit 1.

II. THE AIRPORT

Zephyrhills Municipal Airport is located in the City of Zephyrhills, Florida. It is a general aviation airport with 118 based aircraft and over 49,000 annual operations (FAA Exhibit 1, Item 20). The Airport is owned and operated by the City. The Airport has two paved runways. Runway 5/23 is 5,000 feet long and 100 feet wide and Runway 1/19 is 4,694 feet long and 100 feet wide (FAA Exhibit 1, Item 20).

The City has accepted Federal grants and is obligated under the Airport Improvement Program (AIP) grant assurances. FAA records indicate that the planning and development of ZPH has been financed, in part, with funds provided by the FAA under AIP, authorized by the Airport and Airway Improvement Act of 1982 (AAIA), as amended, Title 49 U.S.C. § 47101, *et seq.* AIP funds totaling \$13,171,752.30 were granted between 1987 and 2021 (FAA Exhibit 1, Item 19). The City also received Coronavirus Aid, Relief, and Economic Security Act (CARES) and Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) funds in 2020 and 2021, respectively (totaling \$467,197). In addition, the City has specific obligations and deed restrictions associated with the surplus property that was transferred to the City in 1947 from the United States (U.S.) under the Surplus Property Act of 1944, as amended (FAA Exhibit 1, Item 4c).

III. HISTORY AND BACKGROUND

A. Property History

- 1) On May 15, 1947, the U.S. signed a *Quit Claim Deed and Agreement* (Quit Claim Deed) with the City of Zephyrhills transferring its interest in approximately 774 acres (FAA Exhibit 1, Item 4b) of surplus property to the City for use as an airport pursuant to Executive Order 9689, dated January 31, 1946. The transfer of the property was subject to specific rules and regulations outlined in the Quit Claim Deed that runs with the land pursuant to the Surplus Property Act of 1944. Originally the property was leased from the City to the U.S. on April 4, 1942, and there were three supplemental lease agreements dated May 18, 1942, December 10, 1943, and January 8, 1945. All of the rights of the U.S. under these agreements were surrendered in the 1947 Quit Claim Deed (FAA Exhibit 1 Item 4c).
- 2) Two parcels were released from the Quit Claim Deed restrictions and removed from airport property on October 7, 1958 (FAA Exhibit 1, Item 4d) and December 30, 1958, (FAA Exhibit 1, Item 4e). These releases did not include the parcel where Skydive City leasehold is located.

- 3) On October 22, 1959, an agreement was signed between the City and the U.S. to release the entire property from the Quit Claim Deed National Emergency Use Provision (NEUP) (FAA Exhibit 1, Item 4f). The Skydive City leasehold area was released from its NEUP obligations at that time.

B. Background

- 1) On October 25, 2010, the City entered into a 20-year lease and operating agreement that runs through 2030 with a five-year extension at Skydive City's option. (FAA Exhibit 1, Item 3). The basic provisions of the lease include:
 - a. Lease of specific parcels with the right for ingress/egress by vehicles and aircraft.
 - b. Lease of the improvements to the parcels including, buildings, hangars, fuel farm, RV parking sites and other structures and infrastructure on the parcel.
 - c. Specific allowable nonaeronautical uses including: RV campground, skydive equipment and jumpsuit manufacturing, skydive equipment sales and rentals, and restaurant/bar.
 - d. Compensation for the use of the land and facilities including a base annual rate of \$23,148 (adjusted every two years for inflation), a fuel flowage fee of \$.04 per gallon and a skydiver fee (\$.10 per jump) for use of the airfield.
- 2) The Airport Layout Plan (ALP) approved September 30, 2014 (FAA Exhibit 1, Item 4a) for ZPH identifies an "*aviation use*" area in the southeast corner of the Airport for an interim "*non-aviation use not to exceed current lease term (expiration 2030)*". This area is where the Skydive City leasehold and RV sites are located.
- 3) On September 29, 2020, the Orlando Airports District Office (ADO) sent a letter to the City, (FAA Exhibit 1, Item 6) raising a concern over the RV campground and outlining their expectation of the City in addressing this issue to be in compliance with their Federal obligations. The letter indicated that 1) the RV campground was not essential to the skydiving activity, 2) had not been approved by the FAA, and 3) was being used for long-term residential dwellings which is an incompatible land use. In addition, the letter stated it was unclear if the City was receiving FMV for the nonaeronautical use. The ADO requested the City respond by October 30, 2020, with a corrective action plan (CAP).
- 4) On October 28, 2020, the City responded to the FAA's letter (FAA Exhibit 1, Item 7) with four options to ultimately remove the RV campground from the airport property. The letter also indicated that Skydive City had been involved in the discussions that resulted in these options. The City indicated that they would be meeting again with Skydive City in December 2020 to further discuss the options.
- 5) On November 17, 2020, the Southern Region Airports Division sent a letter to the City (FAA Exhibit 1, Item 8) stating they required a CAP from the City identifying the specific steps they would take to address the issues to bring the Airport into compliance. The letter requested a response from the City by December 15, 2020.

- 6) On December 11, 2020, the City provided a revised CAP (FAA Exhibit 1, Item 9) to the FAA that included:
 - a. Removing the entire RV campground from the lease within 180 days and negotiating a new lease with Skydive City.
 - b. Establishing a nonaeronautical lease for a new “customer- only camping and event staging area” to the east of the existing location on the opposite side of Skydive Lane and designate the old RV campground for a new Parachute Drop Zone (PDZ).
 - c. Establishing “very clear short-term stay agreements for camping and event hosting” to eliminate any long-term residential uses.
- 7) Communication between the City and the FAA occurred between December 2020 and June 2021, as the City continued to try to negotiate with Skydive City.
- 8) On June 16, 2021, the City sent a letter to Skydive City (FAA Exhibit 1, Item 10) regarding options to remove the RV campground from the Airport. The first three options included several different terms to extend the operating agreement for the skydiving activity (past 2030) and removing the RV campground. The fourth option, in the case the first three options were not accepted, was to terminate the lease and remove the RV campground within 180 days.
- 9) On July 21, 2021, Skydive City sent a letter to the City (FAA Exhibit 1, Item 11) rejecting the four options and presenting four counter options to remedy the non-compliant position. The first three options included compensation to Skydive City in the order of \$3.2 to \$7 million. The fourth option was to let the lease run out with no five-year extension (2030) and then remove the RV campground from the airport property.
- 10) On January 28, 2022, the FAA issued a NOI identifying three potential violations to the City’s Federal obligations and requesting a response by the City within 30 days (FAA Exhibit 1, Item 2).
- 11) In February 2022, the City met with the FAA Office of Airport Compliance and Management Analysis to better understand the allegations outlined in the NOI and required corrective actions.
- 12) On February 28, 2022, the City requested a 90-day extension of time to allow them to negotiate with Skydive City to informally resolve the issues (FAA Exhibit 1, Item 12).
- 13) On March 4, 2022, the FAA granted the 90-day extension (FAA Exhibit 1, Item 13).
- 14) On May 31, 2022, the City provided a draft lease amendment to the FAA in response to the NOI to resolve the matter informally. Between May 31, 2022, and July 21, 2022, the FAA and City discussed changes to the amendment to ensure that it was addressing the FAA’s concerns.

- 15) On July 21, 2022, the City submitted to the FAA a revised First Amendment to the Lease Agreement (FAA Exhibit 1, Item 14) to correct the deficiencies in the lease with Skydive City to address the issues raised in the NOI.
- 16) On August 18, 2022, the FAA accepted the revised lease as the informal resolution to the issues raised in the NOI (FAA Exhibit 1, Item 15).
- 17) Between August 18, 2022, and December 12, 2022, the City unsuccessfully attempted to negotiate the revised lease with Skydive City.
- 18) On December 12, 2022, the City made the FAA aware of its failed attempts to negotiate a lease amendment with Skydive City.
- 19) On January 10, 2023, the FAA sent a letter to the City (FAA Exhibit 1, Item 16) indicating that it was reinitiating the investigation based on the City's inability to informally resolve the issue and gave the City 10 days to provide any additional information to the FAA.
- 20) On January 19, 2023, the City sent a letter (FAA Exhibit 1, Item 17) to Skydive City stating Skydive City was in breach of its lease and indicating that it had 30 days to respond.
- 21) On February 17, 2023, Skydive City sent a letter in response to the City's January 19, 2023 letter (FAA Exhibit 1, Item 18).
- 22) At present the City has been unable to successfully resolve the issues raised in the NOI.

IV. APPLICABLE LAW AND POLICY

A. Airport Sponsor Grant Assurances

As a condition precedent to providing airport development assistance under the AIP, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth certain 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 (FAA Exhibit 1, Item 1).

B. Surplus Property Act Obligations

Surplus property instruments of disposal are issued under the Surplus Property Act of 1944 as amended (SPA). The SPA authorizes conveyance of property surplus to the needs of the Federal Government. Surplus property instruments of transfer are one of the means by which the Federal Government provides airport development assistance to public airport sponsors. The conveyance of surplus Federal land to public agencies for airport purposes is administered by the FAA, in conjunction with the U.S. Department of Defense and the General Services Administration (GSA) and pursuant to 49 U.S.C. §§ 47151, 47152, and 47153.

All surplus airport property instruments of disposal, except those conveying only personal property, provided that the covenants assumed by the grantee regarding the use, operation and maintenance of the airport and the property transferred shall be deemed to be covenants running

with the land. Accordingly, such covenants continue in full force and effect until released under Public Law 81-311 or other applicable Federal law. In addition, the law permits the FAA to provide additional conditions, reservations, or restrictions on any release that it deems necessary to support civil aviation.

For ZPH, the original 1947 deed conveyed 774 acres of property to the City for use as an airport (FAA Exhibit 1, Item 4c). The deed states:

That the aforesaid leased premises and all property herein conveyed which together hereinafter be called the 'Airport', shall be used for public airport purposes and only for such purposes... However, until, in the opinion of the Civil Aeronautics Administration or its successor Government agency [FAA], it is needed for public airport purposes, any particular structure transferred hereby may be utilized for non-manufacturing or non-industrial purposes in such manner as the party of the second part [City] deems advisable, provided that such use does not interfere with the operation of the remainder of the airport as a public airport. (FAA Exhibit 1, Item 4c, p. 5).

Other deed restrictions include prohibition of unjust discrimination and granting of an exclusive right, ensuring no hazards to air navigation, maintaining the airport in good and serviceable condition for the efficient operation, ensuring nonaviation areas are not used or developed in a manner that interferes with the efficient use of operations, and permitting use by government aircraft. The original deed includes a requirement to allow the government to use the facilities in case of a declaration of an emergency (National Emergency Use Provision – NEUP).

Two parcels were released from its Federal obligations and allowed for use for manufacturing or industrial including a 16-acre parcel under a deed of release dated October 7, 1958 and another 86 acres parcel under a deed of release dated December 30, 1958 (FAA Exhibit 1, Items 4d and 4e). The entire airport was also released from its NEUP obligations only in 1959 (FAA Exhibit 1, Item 4f). The remaining airport property is still obligated under all of the original deed restrictions with the exception of the NEUP provision.

C. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958 (FAA Act), as amended, 49 U.S.C. § 40101, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. 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 must ensure that airport owners comply with their Federal grant assurances.

D. The Investigative Process

Subpart D of FAA *Rules of Practice for Federally Assisted Airport Enforcement Proceedings* make clear of the FAA's continuing authority to initiate its own investigation without having received a complaint, as authorized by the FAA Act and the AAIA.

Specifically, pursuant to 14 CFR § 16.101 “The FAA may initiate its own investigation of any matter within the applicability of this part without having received a complaint. The investigation may include, without limitation, any of the actions described in § 16.29(b).”

Per 14 CFR § 16.103, the FAA may issue a NOI to the sponsor outlining the areas of concern under investigation and request a response from the sponsor. Further, the FAA may invite good faith efforts to resolve the issues informally throughout the investigation. Pursuant to §16.105 “If the matters addressed in the FAA notices are not resolved informally, the FAA may issue a Director's Determination under § 16.31.”

In accordance with 14 CFR § 16.33 (c), “within 30 days after the date of service of the initial determination, a party adversely affected by the Director's Determination may file in accordance with § 16.13 and serve in accordance with § 16.15 a simultaneous Notice of Appeal and Brief.” Per 14 CFR § 16.33(h) “if no appeal is filed within the time period specified in paragraph (c) of this section, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final, because there is no administrative appeal, is not judicially reviewable.”

V. ISSUES

The NOI identified three issues of concern:

Issue 1 - Whether the City is in violation of Grant Assurance 5, *Preserving Rights and Powers* by entering into a long-term lease with Skydive City with sublease rights permitting long-term RV parking, and that impairs the sponsor’s rights and powers to operate the Airport. In addition, whether the provision of the lease entitling Skydive City the right to extend the lease term for additional five years constitutes a violation of Grant Assurance 5.

Issue 2 - Whether the City is in violation of Grant Assurance 19, *Operation and Maintenance*, and Grant Assurance 21, *Compatible Land Use*, by allowing residential land use (RV campground) on airport property and specifically in areas designated for aeronautical use.

Issue 3 - Whether the City is in violation of Grant Assurance 24, *Fee and Rental Structure*, Grant Assurance 25, *Airport Revenues*, and 49 U.S.C. § 47133, as implemented by the FAA Policy and Procedures Concerning the Use of Airport Revenue, by not being “as self-sustaining as possible” and transferring or leasing property and assets at less than fair market value for the nonaeronautical activities identified in the lease including:

- RV campground
- Skydive jumpsuit manufacturing
- Skydive equipment manufacturing
- Skydive equipment vendor
- Restaurant/bar

Based on the Director’s investigation, the issues identified in the NOI are substantially unchanged but certain elements have evolved or changed to account for current circumstances. Accordingly, the revised issues under investigation by the Director are as follows:

Issue 1 - **Whether the City is in violation of Grant Assurance 19, *Operation and Maintenance*, and the Surplus Property Act of 1944 as amended, by allowing incompatible land use (RV campground) on airport property in an area designated for aeronautical use.**

Issue 2 - Whether the City is in violation of Grant Assurance 24, *Fee and Rental Structure*, Grant Assurance 25, *Airport Revenues*, and 49 U.S.C. § 47133, as implemented by the *FAA Policy and Procedures Concerning the Use of Airport Revenue*, by not being as self-sustaining as possible and leasing property and assets at less than fair market value for the nonaeronautical activities.

Issue 3 - Whether the City is in violation of Grant Assurance 5, *Preserving Rights and Powers*, by entering into a lease with Skydive City that impairs the City's ability to maintain required rights and powers.

VI. ANALYSIS AND DISCUSSION

Issue 1 - Whether the City is in violation of Grant Assurance 19, *Operation and Maintenance*, and the Surplus Property Act of 1944, as amended, by allowing incompatible land use (RV campground) on airport property in an area designated for aeronautical use.

An important initial matter under consideration in the Director's analysis of Issue 1 is whether the on-airport RV campground with permanent residents at ZPH is incompatible with airport operations.

At ZPH there are two factors regarding the RV campground that make it incompatible. First, as indicated in a letter from the Airports District Office to the City dated September 29, 2020 (FAA Exhibit 1, Item 6), there are permanent residents occupying the RV campground. During the informal resolution discussions, the City did not dispute the allegation that at least one permanent resident is living at the RV campground.

A review of photos (FAA Exhibit 1, Item 5) reveals many of the parked RVs at the facility have additional facilities, including sheds, porches, decks, patios, and fences attached or adjacent to the RV trailers. This demonstrates that more permanent or at minimum seasonal occupants reside at the campground. Permanent or seasonal occupancy is considered domicile or residential use of airport property and is incompatible with airport operations. FAA Order 5190.6B, Change 2, *Airport Compliance Manual* states:

[T]he FAA considers residential use to include: permanent or long-term living quarters; part-time or secondary residences; and developments known as residential hangars, hangar homes, campgrounds, fly-in communities or airpark developments – even when co-located with an aviation hangar or aeronautical facility...Allowing residential development on federally obligated airports is incompatible with aircraft operations and conflicts with several grant assurance and surplus property requirements. (FAA Order 5190.6B Change 2, p. 20-6).

Secondly, the location of the campground in an area designated for aeronautical use adjacent to the airfield is not compatible with airport operations. The primary purpose of the airport property is to support aeronautical activity. Airport sponsors are required to have control of the development of the property and have the ability to plan for the efficient use of that property to support aeronautical activity. As pointed out in the September 29, 2020 letter from the ADO the campground is a nonaeronautical use that is not a required element of the aeronautical use of skydiving.

Nonaeronautical activities in areas designated for aeronautical purposes and adjacent to the airfield are not an efficient use of airport property. The long-term lease allowing nonaeronautical use encumbers the property at the expense of aeronautical development. In addition, the campground located adjacent to the airfield potentially poses unnecessary safety and security risks to the airfield and is incompatible with airport operations. The Director finds that the RV campground at ZPH is incompatible with airport operations for the two reasons outlined above.

Grant Assurance 19, *Operation and Maintenance* requires an airport sponsor to maintain and operate its airport for aeronautical uses in a safe and serviceable condition. Additionally, this assurance requires that airport sponsors not cause or permit any activity or action which interferes with its use for airport purposes.

Nonaeronautical land use that is considered incompatible with airport operations is inconsistent with the requirements of Grant Assurance 19. The City does not dispute the violation in the NOI and it attempted – unsuccessfully – to rectify the violation through lease renegotiations with lessee Skydive City.

The Director recognizes the City’s efforts to attempt to achieve current compliance. However, in light of the unsuccessful renegotiation, the Director finds the City is in violation of Grant Assurance 19 for permitting an incompatible residential land use on airport property in an area designated for aeronautical use.

The ZPH 1947 deed of conveyance required the airport property be used for airport purposes. The deed specifically states “That the aforesaid leased premises and all property herein conveyed which together hereinafter be called the ‘Airport’, shall be used for public airport purposes and only for such purposes.” (FAA Exhibit 1, Item 4c p. 5) The deed included an exception to allow the City to use the originally conveyed structures on the airport for other uses.¹ However, the land underlying the RV campground are not structures conveyed by the 1947 deed, eliminating any possibility that the campground could be considered a use allowed by the deed.

Furthermore, it is FAA’s policy to not approve nonaeronautical interim uses that are incompatible with airport operations. The FAA Order 5190.6B Change 2, *Airport Compliance Manual* states “Interim use should not be incompatible with current or foreseen aeronautical use of the property in question or other airport property.” The approved Airport Layout Plan (ALP) for ZPH identified a “non-aviation interim use not to exceed the current lease term (Expiration 2030)” (FAA Exhibit 1, Item 4a). While arguably this could be deemed tacit approval, the ADO rejects that by stating in a letter to the Airport Manager dated September 29, 2020, (FAA Exhibit 1 Item 6) that the RV campground was not approved by the FAA. This statement supports that the interim use identification on the ALP was incidental and not the formal consent necessary to

¹The deed states “However until, in the opinion of the Civil Aeronautics Administration of its successor Government agency [FAA], it is needed for public airport purposes, any particular structure transferred hereby may be utilized for non-manufacturing or non-industrial purposes in such manner as the party of the second part [city] deems advisable, provided the such use does not interfere with operation of the remainder of the airport as a public airport.” (FAA Exhibit 1, Item 4c).

The 1947 deed allows exceptions for some of the buildings that were conveyed to be used for nonaeronautical purposes. It states “However until, in the opinion of the Civil Aeronautics Administration of its successor Government agency, it is needed operation of the remainder of the airport as a public airport.” (FAA Exhibit 1, Item 4c p. 5).

approve an interim nonaeronautical use in accordance with FAA policy and the 1947 deed. Further, the depiction of the RV campground on the ALP does not detail the permanent or seasonal occupancy of the RV campground, one of the factors that makes the campground incompatible with airport operations.

The approved ALP showing the interim use may have been in error, but the agency may properly correct inadvertent, ministerial errors. However, in no case does a previous ministerial error change policy or limit the FAA's authority to require the sponsor to rectify the issue through a CAP. Moreover, policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring airport compliance states:

FAA airports district offices (ADOs) and regional airports divisions are responsible for ensuring that residential developments are not approved when reviewing a proposed ALP or any other information related to the airports subject to FAA review. There is no justification for the introduction of residential development inside a federally obligated airport. It is the sponsor's federal obligation not to make or permit any changes or alterations in the airport or any of its facilities that are not in conformity with the ALP, as approved by the FAA, and that might, in the opinion of the FAA, adversely affect the safety, utility, or efficiency of the airport. (FAA Order 5190.6B Change 2, pages 20-7 - 20-8).

The City remains subject to the provisions of the 1947 deed, which does not allow for incompatible nonaeronautical land use development on the airport property.

In summary, the Director finds the City in violation of Grant Assurance 19 by permitting incompatible land use on airport property in an area designated for aeronautical use. Further, the actions by the City to enter into a long-term lease permitting the incompatible land use on federally conveyed property is inconsistent with the Surplus Property Act and the obligations in the 1947 deed. The Director finds that a CAP is warranted and must include actions and a timeframe for removing the incompatible land use.

Issue 2 - Whether the City is in violation of Grant Assurance 24, *Fee and Rental Structure*, Grant Assurance 25, *Airport Revenues*, and 49 U.S.C. § 47133, as implemented by the *FAA Policy and Procedures Concerning the Use of Airport Revenue*, by not being as self-sustaining as possible and leasing property and assets at less than fair market value for the nonaeronautical activities.

Grant Assurance 24 states “[Airport sponsor] will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport” and Grant Assurance 25 requires “[a]ll revenues generated by the airport ... will be expended by it for the capital or operating costs of the airport” (FAA Exhibit 1, Item 1).

To analyze this issue the Director reviewed the current lease between the City and Skydive City and held discussions with the City as part of the City's effort to resolve the issue informally. The Director in the NOI invited good faith efforts by the City to resolve informally the matters at issue (FAA Exhibit 1, Item 2). The lease permits several nonaeronautical activities including the

incompatible RV campground, skydive equipment vendor, and the restaurant/bar. A plain reading of the lease indicates that the City is charging a flat rate for the entire leasehold and does not break out the nonaeronautical from the aeronautical use.

As explained in the FAA's Revenue Use Policy, under Grant Assurances 24 and 25 a failure to collect FMV rates for nonaeronautical use is considered a form of revenue diversion and deprives the airport the opportunity to be as self-sustaining as possible. The FAA Order 5190.6B, Change 2, *Airport Compliance Manual* states "Rental of land to, or use of land by, the sponsor for nonaeronautical purposes at less than FMV rent is considered a subsidy of local government and is a prohibited use of airport revenue." (FAA Order 5190.6B change 2, p. 15-10)

The City admitted that they are not charging FMV for the nonaeronautical use and attempted to correct this as part of its unsuccessful lease amendment negotiations (FAA Exhibit 1, Item 14). The City advised that between August 18, 2022, and December 12, 2022, it attempted to negotiate a revised lease with Skydive City. The revised lease included the new commercial FMV lease rates for the skydive vendor and the restaurant/bar. It did not include revised lease rates for the nonaeronautical RV campground because it was proposed to be removed.

The Director finds that the City's failure to collect FMV rentals is inconsistent with the City's obligations under Grant Assurances 24 and 25. Moreover, the Director is concerned that the City does not break out the rates for nonaeronautical use in its lease agreement, nor does the City charge commercial FMV rates for this use. This suggests the City may not be aware of its responsibilities under Grant Assurances 24 and 25, and the Director believes a CAP is warranted.

In accordance with Grant Assurances 24 and 25, the City is required to have a fee and rental structure that ensures the airport is as self-sustaining as possible, and that the City charges FMV rates for all nonaeronautical use. Further, as pointed out in the September 29, 2020 letter from the Airports District Office, the leases for the aeronautical and nonaeronautical activities should be separate agreements to help avoid confusion on lease terms and rates.

While the loss of revenue for the City's failure to charge FMV may be relatively minor, the City needs to demonstrate in the CAP that it has or will develop a fee and rental structure that charges appropriate nonaeronautical rates in accordance with Grant Assurances 24 and 25. In addition, the CAP must provide the City's timeframe to separate out the nonaeronautical and aeronautical use in the Skydive City lease and charge appropriate rates.

Issue 3 - Whether the City is in violation of Grant Assurance 5, *Preserving Rights and Powers* by entering into a lease with Skydive City that impairs the City's ability to maintain required rights and powers.

Grant Assurance 5, *Preserving Rights and Powers*, requires an airport sponsor to maintain control of the airport property so it can ensure that it is meeting its Federal obligations. It states "[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 this Grant Agreement." (FAA Exhibit 1, Item 1).

To analyze this issue the Director reviewed the terms of the lease between the City and Skydive City (FAA Exhibit 1, Item 3).

The Director's review confirmed that the lease between Skydive City and the City permits an incompatible land use on airport property in an area designated for aeronautical purposes in violation of the City's Federal obligations, as discussed in Issue 1. Further, the 20-year term and the five-year extension option available to Skydive City contain the same terms and are a violation of Grant Assurance 5.

The Lease states:

The term of this lease shall be for a period of twenty (20) years ... Lessee shall have the option exercisable upon at least one hundred eighty (180), but not more than three hundred sixty-five (365), days' notice to the Lessor prior to the Termination Date, to extend the term of the Agreement for an additional period of five (5) years from and after the Termination Date upon the same terms and conditions with the exception of established rental rate as are contained in this Agreement (FAA Exhibit 1, Item 3, p. 1).

As executed, the lease allows Skydive City the option to continue the lease beyond the original term with terms that are contrary to the City's obligation under Grant Assurance 19, *Operation and Maintenance* by allowing incompatible land use in an area designated for aeronautical use.

A subordination clause is one way an airport sponsor can protect its rights and powers; the clause can help to ensure that a sponsor can readily amend leases that may be noncompliant and not protecting the sponsor's rights and powers.

The FAA Order 5190.6B, Change 2 *Airport Compliance Manual* states:

[The] 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. A method a sponsor may use in this regard is to place a 'subordination clause' in all of its tenant leases and agreements that subordinates the terms of the lease or agreement to the federal grant assurances and surplus property obligations... 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 federal grant assurances, the grant assurances will take precedence and govern. (FAA Order 5190.6B, Change 2, p. 6-2).

Article XIII of the lease with Skydive City includes a subordination clause that states:

This Agreement shall be subject and subordinate to the provisions of any existing or future agreement between Lessor and the United States, or any agency therefore, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development or operation of the Airport; provided, however, that Lessor shall, to the extent permitted by law, use its best efforts to cause any

such agreements to include provision protecting and preserving the rights of Lessee in and to the Premises and to compensation for the taking thereof, interferences therewith and damage thereto, caused by such agreement or actions of the Lessor or the United State pursuant thereto (FAA Exhibit 1, Item 3 p. 15).

Although the subordination clause states that the lease shall be subordinate to the City's grant obligations with the United States Government, it does not adequately preserve the rights and powers of the City to correct violations of grant assurances. Instead, the clause protects Skydive City's rights as lessee, and even expresses an intent to compensate Skydive City when a violation of the sponsor's Federal obligations interferes with Skydive City's contractual arrangement.

The Director does not take a position on lessor/lessee compensation arrangements – contractual matters are the purview of local courts. However, the spirit and intent of a subordination clause is to protect the Federal investment in airport development and to provide the sponsor the ability to mitigate conflicts that may arise from the contracted use of federally obligated airport property.

Compliance with Federal grant obligations is condition precedent to receiving Federal development funding. As such, the Director finds that 1) the City's lease with Skydive City contains terms that violate the City's Federal obligations, and 2) the subordination clause does not preserve the City's right to extinguish the noncompliant terms in violation of Grant Assurance 5.

The Director finds the City in violation of Grant Assurance 5 since it entered into a lease with Skydive City that improperly permits activities that are a violation of the grant assurances, allows these terms to continue at Skydive City's prerogative, and fails to provide an adequate means to rectify any areas of noncompliance. The Director directs the City to develop a CAP to resolve the aforementioned grant assurance violations.

The Director recommends that a formal airport leasing policy be developed, including a revised subordination clause and other requisite language protecting airport operating and financial concerns. This will assist in ensuring consistency and compliance in all future leases of airport property, both aeronautical and nonaeronautical.

VIII. FINDINGS AND CONCLUSIONS

The Director acknowledges that the City's response to the NOI via a proposed lease amendment attempted to remove the incompatible land use from airport property, and to adjust the rental rates for nonaeronautical land use to reflect FMV. The Director also acknowledges the City's attempt to modify Skydive City's lease terms in order to informally resolve the noncompliance issues and allow for the City to maintain its rights and powers. Unfortunately, the City has been unsuccessful in its negotiations with Skydive City.

Consequently, under the particular circumstances existing at Zephyrhills Municipal Airport and the entire record herein, and upon consideration of the filings, submissions and responses by the City, applicable law and policy, and for the reasons stated above, the Director finds:

- 1) The City is in violation of Grant Assurance 19, *Operation and Maintenance*, and the City's Surplus Property Act obligations by permitting incompatible land use on airport property in an area designated for aeronautical use;
- 2) The City is a violation of Grant Assurances 24, *Fee and Rental Structure* and 25, *Airport Revenues* by failing to charge required FMV for nonaeronautical activities; and
- 3) The City is in violation of Grant Assurance 5, *Preserving Rights and Powers* by entering into a lease that violates its grant assurance obligations, permits Skydive City to extend non-compliant terms, and does not permit the City to correct the violations through an appropriate subordination clause thereby eroding the City's rights and powers to control the property.

ORDER

ACCORDINGLY, it is ordered that:

1. The City is directed to submit a CAP within 60 days that outlines its actions and proposed timeline to
 - a. remove the incompatible land use;
 - b. demonstrate that it has or will develop a fee and rental structure that includes charging commercial FMV rates for nonaeronautical activities;
 - c. separate out aeronautical and nonaeronautical activities in the Skydive City lease into two agreements and charge appropriate rates; and
 - d. protect its rights and powers through appropriate lease terms.
2. The Director recommends that the City develop a leasing policy that will help to ensure it adheres to a fee and rental structure that charges appropriate FMV rates for all nonaeronautical activities and ensures that airport leases have appropriate lease terms to protect its rights and powers.
3. Pending the City's ability to implement an acceptable CAP, this office will recommend to the FAA Director of the Office of Airport Planning and Programming to withhold approval of any applications submitted by the City of Zephyrhills for funding projects authorized under 49 U.S.C. §§ 47114(d) and 47115.
4. All motions not specifically granted herein are denied.

RIGHT TO APPEAL

This Director's Determination under FAA Docket No. 16-22-01 is an initial agency determination and does not constitute final agency decision and order subject to judicial review under 49 U.S.C. § 46110. [14 CFR § 16.247(b)(2).] A party to this proceeding adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination. If no appeal is filed within the time period specified, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final because there is no administrative appeal is not judicially reviewable. [14 CFR § 16.33.]

KEVIN
WILLIS

Digitally signed by KEVIN
WILLIS
Date: 2023.09.22
06:08:51 -04'00'

Kevin C. Willis
Director, Office of Airport Compliance
and Management Analysis
Federal Aviation Administration

Date

IN THE MATTER OF COMPLIANCE WITH FEDERAL OBLIGATIONS**BY THE CITY OF ZEPHYRHILLS, Respondent.****Docket No. 16-22-01****INDEX OF ADMINISTRATIVE RECORD**

The following items constitute the administrative record in this proceeding:

FAA Exhibit 1

- Item 1 – FAA Airport Grant Assurances, dated May 2022.
https://www.faa.gov/airports/aip/grant_assurances**
- Item 2 – FAA Notice of Investigation, dated January 28, 2022.**
- Item 3 – Lease and operating agreement between the City of Zephyrhills and Skydive City, Inc., dated October 25, 2010.**
- Item 4a – Zephyrhills Airport Layout Plan and approval letter September 30, 2014.**
- Item 4b - Zephyrhills Airport Property Map, dated December 2020.**
- Item 4c - 1947 Quitclaim deed, dated May 1947.**
- Item 4d – 1958 Release, dated October 7, 1958.**
- Item 4e – 1958 Release, dated December 30, 1958.**
- Item 4f – October 22, 1959 NEUP Release.**
- Item 5 – Photos of Skydive City RV park, Google Earth, dated January 2021.**
- Item 6 – Letter from Manager, FAA Orlando Airports District Office to Airport Manager, Zephyrhills Municipal Airport finding the City in apparent noncompliance with its Federal obligations and requesting a corrective action plan, dated September 29, 2020.**
- Item 7 – Letter from City Manager, City of Zephyrhills to Manager, FAA Orlando Airports District Office in response to FAA’s request for CAP, dated October 28, 2020.**
- Item 8 - Letter from Manager, FAA Southern Region Office of Airports to Airport Director, Zephyrhills Municipal Airport requesting a CAP with specific actions, dated November 17, 2020.**
- Item 9 – City’s proposed corrective action plan, dated December 11, 2020.**

Exhibit 1 – Proposed Skydive City RV registration form
 Exhibit 2 – Proposed Skydive City RV campground relocation site plan

- Item 10 – Letter from Attorney for the City of Zephyrhills to owner of Skydive City providing four options to correct the issues of noncompliance, dated June 16, 2021.**
- Item 11 – Letter from Attorney for Skydive City to City Attorney, Airport Director, and City Manager, City of Zephyrhills rejecting City’s four options and providing four new options, dated July 21, 2021.**
- Item 12 - Letter from the City’s Attorney requesting a 90-day extension of time to allow them to negotiate with Skydive City to informally resolve the issues, dated February 28, 2022.**
- Item 13 – FAA’s order granting a 90-day extension, dated March 4, 2022.**
- Item 14 - The City’s First Amendment to the Lease Agreement with Skydive City, updated.**
- Item 15 - FAA letter to the City accepting the lease as the informal resolution to the issues, dated August 18, 2022.**
- Item 16 - FAA letter to the City indicating that it was reinitiating the investigation, dated January 10, 2023.**
- Item 17- The City’s letter to Skydive City, dated January 19, 2023.**
 - Exhibit A- FAA’s Notice of Investigation, dated January 28, 2022
 - Exhibit B - First Amendment to Lease Agreement, undated
 - Exhibit C - FAA’s acceptance of the proposed lease amendment, dated August 18, 2022
 - Exhibit D – FAA’s letter reinitiating investigation, dated January 10, 2023
- Item 18 - Skydive City’s response to 1/19 Letter from the City, dated February 17, 2023.**
- Item 19 - Zephyrhills Municipal Airport grant history 1987 to 2021.**
- Item 20 - Zephyrhills Municipal Airport 5010 Form, dated June 2023.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 22, 2023, I caused to be emailed and/or to be placed in the Federal Express a true copy of this Director's Determination for FAA Docket No. 16-22-01 addressed to:

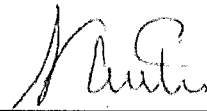
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Copy to:

FAA Part 16 Airport Proceedings Docket (AGC-600)
FAA Office of Airport Management and Management Analysis (ACO-100)
FAA Office of Airports Southern Region (ASO-600)
FAA Orlando Airports District Office



Natalie Curtis
Office of Airport Compliance
and Management Analysis

Walenga, Pat (FAA)

From: 9-ARP-Part16-Complaints (FAA)
Sent: Friday, September 22, 2023 11:41 AM
To: WPoe@ci.zephyrhills.fl.us; mmaggard@ci.zephyrhills.fl.us; ncoleman@ci.zephyrhills.fl.us
Cc: 9-AWA-AGC-Part-16 (FAA)
Subject: Director's Determination - FAA Docket No. 16-22-01
Attachments: P16_Docket 16-22-01_FL_City of Zephyrhills_ZPH_DD_Final_2023 09 22 Signed.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Please see the attached Director's Determination for FAA Docket No. 16-22-01.

Best Regards,

Natalie Curtis
Administrative Support to
Airport Compliance and Management Analysis
202-267-3085