

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

MIKE WILSON,

APPELLANT,

v.

CITY OF MARINA, CALIFORNIA,

APPELLEE.



FAA Docket No. 16-21-13

FINAL AGENCY DECISION

I. INTRODUCTION

This matter is before the Federal Aviation Administration’s (FAA) Associate Administrator for Airports on an Appeal filed by Mike Wilson (Wilson or Appellant) on December 30, 2021. Wilson challenges the Director’s *Order Granting the Motion for Summary Judgment and Dismissal* (Director’s Determination or DD) issued on November 30, 2021. The Director rejected Wilson’s claims that the City of Marina (City or Appellee), sponsor of the Marina Municipal Airport (Airport) was in violation of its Federal obligations, namely Grant Assurance 22, *Economic Nondiscrimination*, Grant Assurance 23, *Exclusive Rights*, Grant Assurance 29, *Airport Layout Plan*, and Grant Assurance 38, *Hangar Construction*. (FAA Exhibit 2, Item 1).

On Appeal, Wilson states that the Director’s Determination “was based upon errors in the reading of Wilson’s verified complaint,” and “by accepting without evidentiary proof the City’s argument that it needed more information from Wilson as to his proposed hangar project.” Wilson contends that if “rules and laws of evidence had been followed, the Decision would not have been in favor of the City.” Finally, Wilson “suggest[s] the appeal process be stayed while the parties explore possible settlement.” (FAA Exhibit 2, Item 2, p. 2).

In response, the City states that the Director's Determination should be affirmed because its findings “are supported by a preponderance of reliable, probative, and substantial evidence, which...warrants the dismissal.” The City likewise asserts that the Director's “conclusions were made in accordance with law, precedent, and policy on sponsor obligations and compliance with Federal grant assurances,” and that “no prejudicial error or abuse of discretion was committed.” The City stands by the adequacy of its submittals to the pleadings. (FAA Exhibit 2, Item 3, p. 2). Lastly, the City opposes Wilson’s request that the appeal be stayed. (FAA Exhibit 2, Item 3, p. 7).

The Associate Administrator has reexamined the record, including the Director’s Determination, its administrative record, the Appeal and its pleadings, and applicable law and policy. Based on this reexamination, the Associate Administrator concludes that the Director’s Determination is

supported by a preponderance of reliable, probative, and substantial evidence and is consistent with applicable law, precedent, and FAA policy. The Appeal does not contain persuasive arguments sufficient to reverse the Director’s Determination, and therefore, the determination is affirmed.

II. SUMMARY OF THE DIRECTOR’S ORDER

The Director’s *Order Granting the Motion for Summary Judgment and Dismissal* issued on November 30, 2021, as provided in 14 CFR § 16.26, analyzed the following issues:

A. Issue 1- Whether the City is in violation of Grant Assurance 22, *Economic Nondiscrimination* by not granting a lease to build T-hangars.

The Director found that negotiations between Wilson and the City were ongoing and that although there was regular communications between Wilson and the City, the fact that the City did not act “in the time frame preferred by Mr. Wilson does not rise to a violation of Grant Assurance 22.” The Director also found that although under Grant Assurance 22 an “airport sponsor does have an obligation to make available suitable areas or space on reasonable terms to those who are willing and otherwise qualified to offer flight services to the public or support services to aircraft operators,”¹ it does not obligate the airport sponsor to provide specific hangars or hangar types.” (FAA Exhibit 2, Item 1, p. 7).

The Director also stated that it was “apparent that Wilson has not submitted specific information on the type of hangar development he is proposing” and that Wilson demanded a ground lease “before providing this information.” On this, the Director stated that “the City is under no obligation to grant a ground lease for a proposal that has not been made with clarity or in sufficient detail – it is clear that Mr. Wilson has changed his proposals several times.” The Director determined that “the City has not violated Grant Assurance 22 by not concluding negotiations for a ground lease in a period of time acceptable to Mr. Wilson.” (FAA Exhibit 2, Item 1, p. 7). However, the Director noted that although the City was in compliance with Grant Assurance 22, “it would be helpful for the City to develop minimum standards or lease requirements for potential tenants to review and avoid a situation where it may be unclear what is required to obtain a lease on the Airport.” (FAA Exhibit 2, Item 1, p. 7).

B. Issue 2 - Whether the City is in violation of Grant Assurance 23, *Exclusive Rights* by not granting a ground lease to Complainant.

In considering whether the City violated Grant Assurance 23 by not granting a ground lease to complainant, the Director noted that in a formal Part 16 complaint, the complainant has the burden of proof to establish the complaint’s allegations by a preponderance of substantial and reliable evidence.² The Director found that although Wilson alleged that the City was in violation, the allegation was not substantiated. The Director found no “evidence...that land is not

¹ The Director references *Thermco Aviation, Inc., and A-26 Company v. City of Los Angeles, Los Angeles Board of Airport Commissioners, and Los Angeles World Airports*, FAA Docket No. 16-06-07, Director’s Determination, (June 21, 2007).

² The Director references *BMI Salvage Corporation & Blueside Services, Inc., v. Miami-Dade County, Florida*, FAA Docket No. 16-05-16, Director’s Determination, p. 12, (July 25, 2006).

available for additional development,” and that while “the City was in discussions with Mr. Wilson to build hangars,” the “fact that the discussions were either incomplete or terminated does not prove that the City granted an exclusive right or is in violation of Grant Assurance 23.” (FAA Exhibit 2, Item 1, p. 8).

C. Issue 3 - Whether the City is in violation of Grant Assurance 29, *Airport Layout Plan*.

On the issue of whether the City violated Grant Assurance 29, the Director found that Wilson did not provide any evidence that the City is in violation of Grant Assurance 29, which requires the City to keep an updated Airport Layout Plan (ALP), other than to allege that enforcement of the Resolution is somehow connected to the ALP. The Director determined that “no part of Grant Assurance 29 requires the City to document the types of hangar ownership and leaseholds the City provides” and that “there is insufficient evidence to investigate or substantiate an allegation of a violation under Grant Assurance 29.” Therefore, the Director found “that the claim warrants no further action.” (FAA Exhibit 2, Item 1, p. 8]. The Director’s findings on Issue 3 was not appealed. (FAA Exhibit 2, Item 2).

D. Issue 4 - Whether the City is in violation of Grant Assurance 38, *Hangar Construction*.

On the alleged violation of Grant Assurance 38, the Director determined that Wilson did not provide evidence that the City violated that grant assurance, which requires that the “airport owner or operator and a person who owns an aircraft agree that the hangar is to be constructed at the airport for the aircraft at the owner’s expense. The Director noted that Wilson “stated numerous times...that he and the City have not entered into an agreement,” and “without an agreement there cannot be any action required to provide for a long term lease.” Thus, the Director opined that “there is no argument or evidence presented” that would allow examination of this allegation. (FAA Exhibit 2, Item 1, p. 9). As with Issue 3 above, the Director’s findings on Issue 4 was not appealed. (FAA Exhibit 2, Item 2).

E. Director’s Conclusion

The Director concluded that there were no issues of material fact, and that the complaint, when viewed in a light most favorable to Mr. Wilson, should be summarily adjudicated in the City's favor as a matter of law. After consideration of the pleadings and record, the Director found no indication that the City has violated Grant Assurance 22, *Economic Nondiscrimination*, Grant Assurance 23, *Exclusive Rights*, Grant Assurance 29, *Airport Layout Plan* or Grant Assurance 38, *Hangar Construction*. The Director found that there are no claims that warrant further action, and that the complaint should be dismissed. (FAA Exhibit 2, Item 1, p. 9).

III. PARTIES

A. The Airport

The Marina Municipal Airport is a public use airport with approximately 32 based aircraft and averages 115 operations per day. The development of the airport was financed, in part, with

FAA Airport Improvement Program (AIP) funding, authorized by the *Airport and Airway Improvement Act of 1982*, as amended, 49 U.S.C. § 47101, et seq. as a condition of receiving Federal funding, the City must comply with the FAA sponsor grant assurances and related Federal law. The grant assurances are mandated by statute and are part of the terms of the grant agreement. The City of Marina has been the recipient of approximately \$8,709,516.00 since 1992. (FAA Exhibit 2, Item 1, p. 2). In addition, because the Airport was conveyed to the City in 1995 under the *Surplus Property Act of 1944*, as amended, and the *Defense Base Realignment and Closure Act of 1990*, as amended, the Airport is also obligated by the provisions in the Quitclaim Deed for Surplus Airport Property, dated August 11, 1995. (FAA Exhibit 1, Item 2, Exhibit B and FAA Exhibit 2, Item 4).³

B. The Complainant

Mr. Wilson is an individual and a California resident. Mr. Wilson is a pilot, aircraft owner, hangar tenant at the Marina Municipal Airport, and has asked the City for a lease to develop hangars at the Airport. [FAA Exhibit 2, Item 1, p. 2]. Wilson appealed the Director's Order. [FAA Exhibit 2, Item 2].

IV. PROCEDURAL HISTORY

1. On September 24, 2021, Wilson filed a *Complaint* under 14 CFR Part 16. (FAA Exhibit 1, Item 2).
2. On October 5, 2021, the FAA docketed the *Complaint*. (FAA Exhibit 1, Item 3).
3. On October 22, 2021, the City of Marina filed their *Motion to Dismiss and/or for Summary Judgment*. (FAA Exhibit 1, Item 4).
4. On November 1, 2021, Wilson filed a *Declaration in Opposition to Motion to Dismiss the Complaint/for Summary*, an *Opposition to the City's Motion to Dismiss and/or for Summary Judgment*, and an *Objection to Evidence*. (FAA Exhibit 1, Item 7, 8 and 9).
5. On November 30, 2021, the Director issued an *Order Granting the Motion for Summary Judgment and Dismissal*. (FAA Exhibit 2, Item 1).
6. On December 30, 2021, Wilson filed its *Appeal* to the Director's Order (FAA Exhibit 2, Item 2).
7. On January 12, 2022, the City filed its *Reply to the Appeal*. (FAA Exhibit 2, Item 3).

³ The Associate Administrator adds this reference to the record because it was inadvertently omitted in the *Director's Order Granting the Motion for Summary Judgment and Dismissal*.

V. Background

1. On September 14, 2017 Wilson entered into a lease with Marina Aviation for a T-hangar. (FAA Exhibit 1, Item 2, p. 2).
2. Between 2017 and 2019, Wilson had informal conversations with the Airport Services Manager (ASM) expressing a general interest in building hangars. (FAA Exhibit 1, Item 2 pp. 2-3).
3. In December 2019, Wilson purchased an aircraft for restoration which was stored in Hangar 533. (FAA Exhibit 1, Item 2, p. 3).
4. In mid-February 2020 Wilson was asked to vacate the space by the end of the month and that Joby Aviation (Joby) had taken over that hangar lease. (FAA Exhibit 1, Item 2, p. 3).
5. In July 2020 the ASM requested Wilson provide a letter describing Wilson's background and the type of hangars that he intended to develop. (FAA Exhibit 1, Item 2, p. 3).
6. On August 2, 2020, Wilson sent a letter to the City requesting information from the City within 2 weeks. The City indicated they could not respond with this timeframe. Wilson indicated that the City never responded to this letter. (FAA Exhibit 1, Item 2, p. 3).
7. On September 20, 2021, Wilson sent a letter to the City stating that it was the "last good-faith attempt to make a substantial, timely, and reasonable effort to resolve this...matter informally prior to the filing of a formal complaint." (FAA Exhibit 1, Item 2, Exhibit F, p.1).
8. On September 24, 2021, Wilson filed its Complaint. (FAA Exhibit 1, Item 2).
9. On September 29, 2021, the City sent an e-mail to Complainant proposing a discussion of the Part 16 Complaint regarding Wilson's efforts to construct hangars at the Airport to "try to make progress in resolving Mr. Wilson's issues." (FAA Exhibit 1, Item 4, Exhibit 2).

VI. THE APPEALS PROCESS

A party adversely affected by the DD may, in cases such as this, file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination [14 CFR § 16.33(c)]. The review is limited to an examination of the DD and the administrative record upon which such determination was based. The Associate Administrator does not consider new allegations or issues on appeal unless finding good cause as to why the new issue or evidence was not presented to the Director. [14 CFR § 16.33(f)]. On appeal, the Associate Administrator will consider (1) whether the findings of fact are supported by a preponderance of reliable, probative, and substantial evidence contained in the record; (2) whether the conclusions were made in accordance with law, precedent, and policy; and (3) whether there are questions on appeal that are substantial; and (4) whether any prejudicial errors occurred. [14 CFR § 16.33(e)].

VII. ISSUES

The Associate Administrator reviewed Wilson’s specific arguments and identified the following issues for review on Appeal:

Issue 1 - Whether the Director erred in determining that City is not in violation of Grant Assurance 22, *Economic Nondiscrimination* by not granting a lease to build T-hangars.

Issue 2 - Whether the Director erred in determining that the City is not in violation of Grant Assurance 23, *Exclusive Rights* by not granting a ground lease to Complainant.

VIII. ANALYSIS

A. Preliminary Issue - Request for a Stay of the Appeal Process

As part of the appeal, Wilson made a request for a stay. Wilson explains that because the Director stated that “it would be helpful for the City to develop minimum standards or lease requirements” to avoid situations “where it may be unclear what is required to obtain a lease,” he reached out to the City “to enter into negotiations...to determine whether or not the City will allow hangars to be built.” Wilson argues that because the “the City has accepted the offer,” and that “meetings are tentatively scheduled,” Wilson asks “that this appeal be stayed to allow time for the meeting to be conducted and to see what can, or cannot, be achieved in resolving the hangar situation at the Marina Airport.” (FAA Exhibit 2, Item 2, p. 6). The City opposes Wilson’s request because it “impermissibly raises new issues and...new documents,” and “Part 16 does not provide for stay of an appeal, and the appellant cannot unilaterally be allowed to request and stay its own appeal.” (FAA Exhibit 2, Item 3, p. 7).

Upon review and consideration of the above-mentioned request, the Associate Administrator has determined that Wilson’s appeal of the Director’s decision must be adjudicated because (1) the City opposes the stay, (2) there is no reason to delay the decision by the Associate Administrator based on the arguments and facts on appeal, and (3) such a decision does not preclude the parties from negotiating in an attempt to find resolution in the intervening time or afterwards. Consequently, Wilson’s request for a stay is denied.

B. **Issue 1 - Whether the Director erred in determining that City is not in violation of Grant Assurance 22, *Economic Nondiscrimination* by not granting a lease to build T-hangars.**

1. *Appellant Position*

Wilson argues that he attempted “in good faith to meet with City personnel that had authority to negotiate” but that the “ASM had no authority to speak for or bind the City.” Wilson adds that from September 17, 2017 through September 20, 2021 he tried “to arrange such a meeting” but that “it wasn’t until after the complaint was filed, that [the City] offered a nebulous meet and confer [but] not about building of the hangars.” As a result, Wilson rejects the Director’s finding that “negotiations were ongoing” and that “there was regular communication” and characterized

these as “an arbitrary...response to a four-year absence by the City to meet.” (FAA Exhibit 2, Item 2, p. 2).

Wilson also argues that the City “could do better...in arranging a simple meeting” and that he was not, as concluded by the Director, “changing his request to build hangars and to contract for a ground lease” but was “trying to obtain a meeting; hoping to spark some interest by the City - - but without success.” Wilson adds that “there was no concluded negotiations because the City entered into negotiations with Wilson in the first place,” and in four years, he was unable “to get someone with authority to come to the table.” Wilson also argues that “the City offered no evidence of any efforts it made to have staff with authority” to meet with him, and that the “evidence” it provided was not “admissible evidence.” Therefore, Wilson rejects the Director’s statement that the City has not violated Grant Assurance 22 by not concluding negotiations for a ground lease in an acceptable period of time. (FAA Exhibit 2, Item 2, pp. 2-3).

In summary, Wilson’s position is that he attempted to negotiate with the City for four years, but the City would not even meet with him, that the ASM was not in a position to negotiate, and that the City offered no evidence of any effort it made to meet and negotiate.

2. Respondent’s Position

The City argues that Wilson failed to support the allegations in his complaint by a preponderance of substantial evidence and that the Director “properly determined that there is no genuine issue of material fact as to the City’s compliance with its sponsor obligations.” (FAA Exhibit 2, Item 3, p. 3). The City also claims it had discussions with Wilson, but that he did not provide a “detailed proposal for review which is necessary before the City would grant a ground lease.” The City also notes that it “has a lease with 5 entities for hangars at the Airport.” The City adds that it “provided reliable and creditable evidence” but that Wilson “fails to support or even discuss” the grounds for his appeal and instead re-argues the allegations in his Complaint to no avail.” (FAA Exhibit 2, Item 3, p. 2).

The City also argues that “Wilson’s objections to the Declaration of Jeffrey Crechriou are without legal support,” and that “contrary to Mr. Wilson’s argument, the record amply shows the City was in communications with Mr. Wilson for more than three years over Mr. Wilson’s ever-changing proposals.” The City adds that Mr. Crechriou’s Declaration “provides foundation for and authenticates the documents attached as exhibits and properly testifies as to matters about which he has personal knowledge” and that “Mr. Wilson misunderstands and mischaracterizes Mr. Crechriou’s role as the Airport Services Manager.” The City also notes that “Mr. Crechriou’s responsibility and authority in his role is to serve as the first point of contact for negotiations with persons interested in a commercial lease at the Airport (per Marina Municipal Code section 13.22.130.A).” (FAA Exhibit 2, Item 3, p. 3). The City clarifies that Mr. Crechriou lacks of authority to bind the City to a lease, and per the City’s Municipal Code sections 13.22.130.E and 13.22.150, only the City Council Airport Commission can do that. The City emphasizes that staff role is to do the negotiating while the City Council’s role is to make the final decision. (FAA Exhibit 2, Item 3, p. 4).

The City rejects Wilson's allegations that “the Director erred in finding the City did not violate Grant Assurance 22 *Economic Discrimination* on the alleged refusal of the City over a period of four years to negotiate with Mr. Wilson.” The City points to Wilson's own complaint which listed “at least eight separate instances of conversations between the City and Mr. Wilson between 2017 and 2021 concerning Mr. Wilson's various expressions of interest to build hangars,” and that “in his declaration, Mr. Wilson himself refers to “the many conversations that [he] had with the ASM, Jeff Crechriou from 2017 to the present day.” (FAA Exhibit 2, Item 3, p. 4).

The City also notes that Wilson failed to provide a detailed and definite proposal for the City and that “the City engaged in a long series of negotiations with Mr. Wilson, but no decision can be made without a proposal.” The City refers to Wilson admitting “in his declaration that he never made one” and “it was never my intent, nor was I ever requested by the City of its agents, to submit a detailed proposal to do so [i.e., to build hangars].” The City states that Wilson admitted to having conversations with the ASM but that these “were not focused on any specific proposal.” However, the City adds that despite this, it “continued to meet with Mr. Wilson and, contrary to Mr. Wilson's assertion the City was not interested in providing facilities for general aviation at the Airport, the complaint acknowledges the Airport Services Manager provided Mr. Wilson with concepts for the types of hangars the Airport Services Manager believed the City Council/Airport Commission would find compatible with the planned development of general aviation facilities at the Airport - if it were provided with a definite proposal for a ground lease and hangar development.” (FAA Exhibit 2, Item 3, pp. 4-5).

The City rejects Wilson’s argument that “he was entitled to a ground lease from the City before he submits a proposal,” but that “in fact...Wilson was obligated to provide a detailed proposal with economic terms before the City engages in negotiations and grants a ground lease.” The City cites to City Council Resolution 2002-157 which states that the City Council would, “in part, base its decision upon the value of the proposed improvements, which information a proposal ordinarily supplies,” and that “without a proposal, the City Council does not know the value of proposed improvements on which to base such a decision.” The City adds that “without a proposal in hand setting forth the economic terms for a ground lease, the City is unable to assess whether the lease rate for the ground lease for the hangars Mr. Wilson was contemplating would be in accord with the requirements of Grant Assurance 22.” The City then concludes that “as no economic terms were proposed, Mr. Wilson's complaint lacks the fundamental basis on which to allege economic discrimination by the City,” and that “the City cannot be found in violation of Grant Assurance 22 for failure to act on a proposal that was never made.” (FAA Exhibit 2, Item 3, p. 5).

3. *Associate Administrator’s Determination*

Wilson's objections to the role played by the ASM, Mr. Crechriou, as a representative of the City is misplaced. Mr. Crechriou's role as the ASM, includes the responsibility and authority to serve as the first point of contact for negotiations with persons interested in a commercial lease at the Airport (per Marina Municipal Code section 13.22.130.A). In this municipal context, staff’s role is to do the negotiating while the City Council's role is to make the final decision. That is not unreasonable. Nothing in the record shows that the ASM acted outside of its capacity, and in fact shows that he did communicate with other authorities within the City (e.g., City’s Manager’s Office, City engineers, building officials, planning department) as he considered Wilson’s

requests. (FAA Exhibit 1, Item 2, Exhibit D-9, and FAA Exhibit 1, Item 4). As the City points out, having the ASM be the person tasked to start negotiations is not only reasonable, but common.

The record shows that Wilson and the City had substantial communications and written exchanges concerning the proposed hangar development. (FAA Exhibit 1, Item 2, Exhibits D-1 through D-9). The record shows no deliberate and unjustified actions on the part of the City. It shows that between the time Wilson sent the Letter of Intent to the City in October 2020 and the June 2021 both sides were communicating and that the City was responsive to Wilson's requests and e-mails as it progressed with its evaluation process. The City did provide samples, such as the Souang Hangar proposal, as an example of what could be submitted as part of a proposal. (FAA Exhibit 1, Item 2, Exhibit C). While the timing may not have been quick enough to Wilson's liking, nothing in the record amounts to the City unreasonably rejecting or denying Wilson's proposal. The record shows valid concerns, requests, and considerations on the part of the City. In fact, as indicated in Wilson's Request for a Stay of the Appeal Process, the parties are still communicating and willing to continue negotiations. (FAA Exhibit 2, Item 2).

The main point of contention between Wilson and the City includes references to incomplete proposals, lack of written information and details, generally necessary to determine its viability and feasibility. (FAA Exhibit 1, Item 4, p. 6). As the City notes and the Director found, Wilson's "proposals were lacking certain vital information, without which the City is unable to evaluate either proposal in a meaningful way." (FAA Exhibit 1, Item 4, p. 7). Upon review of the record, the Associate Administrator concurs.

A review of the record shows that Wilson's October 2020 Letter of Intent presented to the City stated the following conditions: (1) "that building and engineering plans to be available at the time of the ground lease agreement execution by builders" and (2) "after execution of the ground lease agreement the City of Marina will have 3 months to approve the building plans." (FAA Exhibit 1, Item 2, Exhibit D-3). Wilson also insisted that to "move ahead [he] needs a lease and commitment from the City..." (FAA Exhibit 1, Item 2, Exhibit D-9). The record shows that Wilson stated that "at no time during the many conversations that I had with the ASM...did he request a 'proposal' to build hangars...it was never my intent, nor was I ever requested by the City or its agents, to submit a detailed proposal to do so...I would have done so, and will do so, when requested and when I have received from the City engineers the specifications, details, and plan requirements, along with a ground lease at the airport." (FAA Exhibit 1, Item 7, p. 2). Based on this, Wilson's position, intentional or not, has been consistent in that Wilson wanted a ground lease first and then provide details on the project. On the other hand, the City will not provide a ground lease without a proposal.

As the Director noted, there were regular communications and exchanges, on valid issues and details. However, in this case, there is no evidence that the elapsed amount of time, along with the reasons and spacing for the exchanges between the parties, is a violation of Grant Assurance 22. The fact is that Wilson did not submit specific information on the type of hangar development he was proposing, instead demanding a ground lease before providing this information. The Associate Administrator concurs with the Director that the City is under no obligation to grant a ground lease for a proposal that has not been made with clarity or in sufficient detail.

In fact, the Associate Administrator would argue that doing so could lead to violations of certain Federal obligations, including Grant Assurance 5 *Rights and Powers*, Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 24 *Fee and Rental Structure*. This is because the City could lose control of what is developed at the site or how it is built (Grant Assurance 5), the City would be unable to properly establish reasonable or non-unjustly discriminatory terms and conditions for the use of the property (Grant Assurance 22), and could jeopardize the City's ability to estimate costs and revenues (Grant Assurance 24). Thus, it is not unreasonable for the City to seek to obtain additional details (e.g., business plan, services/rates to be offered, engineering data/drawings, insurance, financial backing, costs to City, such as utilities, etc.) before drafting and proposing a lease to Wilson. (FAA Exhibit 1, Item 4, pp. 16-18).

Therefore, the Associate Administrator finds that the Director did not err in determining that City was not in violation of Grant Assurance 22, *Economic Nondiscrimination* or the similar provisions contained in the 1995 surplus property conveyance, by not granting a lease to build T-hangars to Wilson under the conditions demanded by Wilson.

C. Issue 2 - Whether the Director erred in determining that the City is not in violation of Grant Assurance 23, *Exclusive Rights* by not granting a ground lease to Complainant.

1. Appellant Position

Wilson argues that the Director incorporated material and prejudicial errors into its conclusion and argues that while the Director found that Wilson "has the burden of proof to establish the complaint's allegations by a preponderance of substantial and reliable evidence," the FAA itself failed to heed the requirements for substantial and credible evidence, or to the requirement for a "preponderance" of the evidence. Wilson rejects the credibility and substance of the evidence submitted by the City, namely, the Declaration of Jeff Crechriou. Wilson then argues that without this declaration, "there is no evidence opposing the declaration of Wilson," and thus "the FAA's decision that the preponderance of the evidence favors the City is without legal or factual support, and is contrary to law, resulting in an abuse of the FAA's powers." (FAA Exhibit 2, Item 2, p. 4).

Wilson also argues that the FAA ignored the fact that since before 1998, the City has not allowed any new hangar leases to anyone, except to [Joby] in 2020, and that the City's arguments that there are 5 hangar lessees is rife "with inaccuracies and untruths." Wilson explains that "when the Airport was first deeded over to the City in the 1990's, 4 ground leases for hangars were granted" but that "it was not until 2020-21 that the City granted another hangar ground lease, and that was to Joby." Wilson adds that "none were granted, except to Joby." Wilson asserts that the Director also ignored the fact that City has kicked out all of the tenants in the old military hangars, and given those leases to Joby. (FAA Exhibit 2, Item 2, p. 4). Thus, Wilson argues that "the City has...given exclusive rights and use of the airport to... [Joby], providing Joby with the airport's large, former military hangars, evicting the GA aircraft that were previously stored and hangered [sic] therein, and exclusively negotiating with, and then ground leasing to Joby a 500,000 sf area for a hangar and manufacturing facility, all the while refusing to meet or negotiate a ground lease with Wilson for the much-needed GA hangars at the Marina Airport." (FAA Exhibit 1, Item 8, p. 3).

Wilson also argues against the Director's statement that "there is no evidence presented that land is not available for additional development," and that "the City was in discussions with Mr. Wilson to build hangars." Wilson takes the position that "the City failed to produce any evidence that it has land available to others (other than Joby) to build upon for aircraft hangars," and that the City could, but did not state that it would have hangar space available to others at certain locations. Consequently, Wilson argues, the FAA cannot conclude that the City was in discussions with him to build hangars, when there were no negotiations allowed, or entered into, by the City, so there could be no incomplete or terminated discussion. Finally, Wilson argues, the FAA's decision was "clear and prejudicial," despite Wilson's own "substantial, credible, and admissible evidence." (FAA Exhibit 2, Item 2, p. 5).

2. Respondent's Position

The City rejects Wilson's argument that it failed to meet the burden of proof and argues that Wilson improperly shifted "the burden to the City," which is contrary to established legal principles." Instead, the City argues, Wilson should "have pointed to substantial and credible evidence in his pleadings to support his claims...and that Wilson "continues to use this Appeal to spew unsupported allegations." The City denies it has granted exclusive rights and affirms that it "has shown that it entered into five ground leases for private hangar facilities at the Airport after negotiation and receipt of a definite proposal." The City notes that "the evidence of the five ground leases conclusively demonstrates that the City has not granted anyone exclusive use of its Airport," that it advertises on its website for many years, and still as of today [has] leasing opportunities at its Airport," and thus that "Wilson failed to meet his burden as to his Grant Assurance 23 claim." (FAA Exhibit 2, Item 3, p. 6).

The City rejects Wilson's argument that it "failed to produce any evidence that it has land available to others (other than Joby) to build upon for aircraft hangars." The City also discounts Wilson's claim "that the City kicked out all of the tenants in the old military hangars and given those leases to Joby." The City explains that "there are six large former military hangars on the Airport designated as Buildings 507, 510, 524, 527, 533 and 535," that "the City has leased only Buildings 527, 524, and a portion of 507 to Joby." The City affirms that that "no general aviation tenants were displaced by the leasing of Building 507 or 527 to Joby and the majority of general aviation tenants displaced in Building 524 were relocated to the City-operated general aviation hangar facilities in Building 533." As for the remaining hangars, the City adds that "Hangars 510 and 535 are leased to other private parties." (FAA Exhibit 2, Item 3, p. 6).

3. Associate Administrator's Determination

As the Director found, Wilson did not substantiate the claim that land is not available for additional development, including land for his proposals. As noted above, while there might not have been an agreement, the record indicates that the City was (and continues) in discussions with Wilson to build hangars. The fact that the discussions were either incomplete or did not materialize in time does not prove that the City granted an exclusive right. Also, as noted above under Issue 2, the fact that the City requires additional details on a proposal before entering into a lease is not an action that supports the argument that exclusive rights were granted since that position is not unreasonable or unjustly discriminatory. (FAA Exhibit 2, Item 1, p. 8).

Moreover, Wilson did not substantiate the claim that the City, by entering into a lease with Joby for airport property and hangars and relocating certain existing aeronautical users to other locations, granted an exclusive right to anyone. While Wilson can argue whether actions by the City were appropriate from a planning perspective, it does not mean that an exclusive right was granted. There is no evidence that the City's actions represented any intent to protect another business already on the Airport or that the City granted a lease to anyone competing with Wilson for hangar development at the Airport.

However, if the City was providing any entity so much property or/and facilities as to effectively prevent anyone else from developing aeronautical facilities, this could result in a granting of an exclusive right. In the present case there is no evidence supporting this scenario as argued by the parties and documented by the record.

Consequently, the Associate Administrator is persuaded on appeal that the Director did not err in concluding that the City was not in violation of Grant Assurance 23 or the similar provisions contained in the 1995 surplus property conveyance.

D. Conclusions and Findings

The Associate Administrator's role in this Appeal is to determine whether the Director erred in findings of fact or conclusions of law in issuing the Director's Determination. In arriving at a final decision in this Appeal, the Associate Administrator has reexamined the record, including the Director's Determination, its administrative record, the Appeal, the City's Reply, and applicable law and policy. Based on this reexamination, this decision concludes that the Director's Determination is supported by a preponderance of reliable, probative, and substantial evidence and is consistent with applicable law, precedent, and FAA policy. The Appeal does not contain persuasive arguments sufficient to reverse the Director's Determination, and therefore, it is affirmed. This decision constitutes a final decision of the Associate Administrator pursuant to 14 CFR § 16.33.

However, a detailed review of the record by the Associate Administrator raises some concerns on how active and interested the City has been in accommodating existing aeronautical demand at the Airport. The City's prime obligations under the grant assurances and the surplus property obligations, is to accommodate existing and future aeronautical demand and needs before consenting to non-aeronautical development. Certainly at an airport like Marina, where there is ample improved and unimproved land, accommodating new hangar proposals (e.g., box hangars, T-Hangars) and addressing existing aeronautical needs/demands (e.g., 60+ aircraft on the City's waiting list, additional FBOs, maintenance provider) should not be an issue. Indeed, as validated by the record, the City represents its airport as "the newest general aviation airport on the Monterey Peninsula" consisting of "845.5 acres of property," which indicates that there is plenty of improved and unimproved property that can be made available for aeronautical use, including a potential and properly documented project by Complainant. In addition, since 2002, as provided for in Resolution No. 2002-157, the City adopted a policy designed to promote and increase "the development and construction of private aviation hangar facilities" at the Airport "by encouraging and agreeing to consider in good faith proposals and requests from developers of private aviation hangar facilities." Certainly, against this background, the expectation is that

the City would be eager to get such developments at the Airport underway and completed. (FAA, Exhibit 1, Item 7, Exhibit A).

Thus, to ensure that the City remains in compliance with its grant assurances and surplus property obligations and avoid potential future complaints, the FAA expects the City to consider and act upon, without undue delay, any reasonably detailed proposal (e.g., business plan, services/rates to be offered, engineering data/drawings, insurance, financial backing, costs to City, such as utilities, if needed, etc.) that Wilson or any other service provider or aeronautical user may propose at the Airport. To this end, the City needs to provide prospective service providers or users, with the exact written information/data that needs to be submitted for proper consideration. The City also needs to expedite the implementation of new reasonable leasing policies, related minimum standards to address service providers, including hangar construction, and designate areas for aeronautical development in a manner that is consistent with the City's Federal obligations. Finally, because there appears to be room for and will to achieve reasonable resolution, the Associate Administrator encourages both parties to continue negotiations in good faith.

IX. ORDER

ACCORDINGLY, it is hereby ORDERED that (1) the Director's Determination is affirmed and (2) the Appeal is dismissed pursuant to 14 CFR § 16.33.

X. RIGHT OF APPEAL

The parties are offered the opportunity to appeal the agency's final decision in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the Circuit in which the person resides or has its principal place of business.

A party to this decision disclosing a substantial interest in the final decision and order of the Federal Aviation Administration may file a petition for review pursuant to 49 U.S.C. § 46110, in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the Circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after a Final Decision and Order has been served on the party. [Title 14 CFR § 16.247(a).]

SHANNETTA R
GRIFFIN

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Shannetta R. Griffin, P.E.
Associate Administrator for Airports
Federal Aviation Administration

Date