



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

Office of Airport Compliance
and Management Analysis

800 Independence Ave., SW.
Washington, DC 20591

August 31, 2021

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SEP 1 2021

PART 16 DOCKETS

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Mr. Randal A. Hayes
City Attorney
City of Ormond Beach
22 South Beach Street
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Mr. Richard J. Leidl, P.C.
5335 Wisconsin Avenue, NW, Suite 440
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Dear Messrs. Dombroff, Hayes and Leidl:

Re: Jeffrey Lefever, President, Sunrise Aviation, Inc. Complainant v. City of Ormond Beach, Florida, FAA Docket No. 16-20-03

Enclosed is a copy of the Federal Aviation Administration (FAA)'s determination with respect to Jeffrey Lefever, President, Sunrise Aviation, Inc. Complainant v. City of Ormond Beach, Florida, FAA Docket No. 16-19-03. The Director finds the Respondent, City of Ormond Beach, Florida, not in violation of its Federal obligations, as set forth in the airport grant assurances and existing Federal statutes with respect to this complaint.

Accordingly, the complaint is dismissed in accordance with the attached Director's Determination. The Director's Determination is an initial Agency determination and 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 may appeal the initial determination to the FAA Office of Airports Associate Administrator for pursuant to 14 CFR § 16.33(c) within 30 days after the service of the Director's Determination.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kevin C. Willis". The signature is written in a cursive, flowing style.

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

Enclosure

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

**Jeffrey Lefever, President, Sunrise Aviation,
Inc.**

Complainant,

v.

City of Ormond Beach, Florida

Respondent.



FAA Docket No. 16-20-03

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DIRECTOR'S DETERMINATION

PART 16 DOCKETS

I. INTRODUCTION

Sunrise Aviation (Sunrise or Complainant) filed a Complaint pursuant to 14 CFR Part 16 against the City of Ormond Beach (City), sponsor of the Ormond Beach Municipal Airport (Airport, OMN), in Ormond Beach, Florida. Sunrise alleges the City violated Grant Assurance 22 *Economic Nondiscrimination* and Grant Assurance 23 *Exclusive Rights*.

Specifically, Sunrise argues that the City's failure to accept its proposal for leasing three parcels of property and instead leasing them to another party (KOMN)¹ violated Grant Assurance 22. Sunrise further argues that the City's actions and/or inactions constitute a violation of Grant Assurance 23. Sunrise requests the FAA to (1) find the City is in violation of Grant Assurances 22 and 23, (2) order the City to rescind its lease agreement with KOMN, (3) consider and evaluate the proposals of both KOMN and Sunrise and make a determination to award the lease to the party whose proposal is in the best interest of the City's taxpayers and consistent with the Airport's Master Plan Update, (4) place the City on the Airport Noncompliance List (ANL) and (5) consider precluding additional federal financial assistance to the City until the instances of violation are resolved. [FAA Exhibit 1, Item 1, Pages 15, 18, and 19].

In response, the City argues that it gave Sunrise an opportunity to lease the contested parcels in a manner consistent with Grant Assurances 22 and 23, but that Sunrise failed to respond and act in a timely fashion. The City adds that Sunrise "wants to expand [its] dominant position at the Airport by locking down the subject parcels and controlling 75% of the FBO acreage." The City takes the position that it acted properly in leasing the Parcels to a qualified third party. [FAA Exhibit 1, Item 3, Pages 2 and 12 and Item 6, Page 2].

¹ For clarity, the name KOMN, as used in this determination, refers to the third party entity known as KOMN Hangar Investors, LLC (KHI), its principals and the individuals involved with that company including Frank Bullard and Mr. Holub.

With respect to the allegations presented in this complaint, under the specific circumstances at OMN discussed in this determination and based on the evidence of record in this proceeding, the Director, FAA Office of Airport Compliance and Management Analysis (Director) finds that the City is not in violation of Grant Assurance 22 Economic Nondiscrimination and Grant Assurance 23 Exclusive Rights.

II. PARTIES

A. Complainant

The Complainant/Sunrise is a Fixed Base Operator (FBO) at OMN and has been in business for 16 years. [FAA Exhibit 1, Item 1, Exhibit R]. Sunrise has several leases at the Airport and is a joint lessee with MAC Charter Inc., another FBO, for two sizeable leases at the Airport. Sunrise is also listed as the Managing Member of Hangar 7 Aviation, another FBO at the Airport. Services provided by Sunrise include hangar services, flight training, ground handling, fueling, aircraft maintenance, and pilot and passenger services. [FAA Exhibit 1, Item 3, Pages 7, 8-10, and Item 11].

B. Respondent

The City of Ormond Beach is the sponsor of the OMN. The OMN is a 1,128-acre, general aviation, reliever airport. The OMN has two intersecting runways (4,004 feet and 3,701 feet), 170 based aircraft, and approximately 127,000 annual operations. There are 12 service providers at OMN, including Sunrise, Endeavor Aire, Hangar 7 Aviation, Kadalec Interiors, Morrow Aviation, Ormond Aircraft Brokers, Ormond Airport Hangars, Rams Aviation, Super Petrel, Tomlinson Aviation, and MAC Charter. [FAA Exhibit 1, Item 1, Exhibit K and Item 3, Page 1, and 6]. 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* (AAIA), 49 U.S.C. § 47101. Between 1983 and 2020, the Airport received approximately \$17 million in AIP funds. [FAA Exhibit 1, Item 7]. The OMN is also obligated under the *Surplus Property Act*, as amended, 49 U.S.C. §§ 47151-153.² This is because the airport is a former naval aviation base conveyed to the City in 1959 under that Act.

III. PROCEDURAL HISTORY

1. September 4, 2020 - Sunrise filed a 14 CFR Part 16 Complaint. [FAA Exhibit 1, Item 1].
2. September 18, 2020 - FAA issued a Notice of Docketing. [FAA Exhibit 1, Item 2, 2020].
3. October 8, 2020 - The City filed its Answer. [FAA Exhibit 1, Item 3].

² FAA Order 5190.2R, Page 63.

4. October 19 - Sunrise filed its Reply. [FAA Exhibit 1, Item 4].
5. October 29, 2020 - The City filed its Rebuttal. [FAA Exhibit 1, Item 5].
6. October 30, 2020 - Sunrise filed a Motion to Amend the Reply. [FAA Exhibit 1, Item 6].

See *Index* for other administrative filings.

IV. FACTUAL BACKGROUND

1. In October of 2019, KOMN began to explore the possibility of leasing land at the Airport to develop a hangar complex. [FAA Exhibit 1, Exhibit P, Pages 1-2 and FAA Exhibit 1, Item 1, Page 7].
2. Sunrise states that on March 19, 2020, it met with the Airport to discuss its plans to build a Corporate Hangar Facility to include five 100' x 100' hangars. [FAA Exhibit 1, Exhibit P, Pages 1-2 and FAA Exhibit 1, Item 1, Page 7].
3. In April of 2020, KOMN advised the Airport that it was working with a development company and a professional engineering firm to help develop the hangar project. [FAA Exhibit 1, Item 1, Exhibit P, Pages 1 and 2].
4. On or about April 15, 2020, KOMN contacted the City about hangar development at OMN. [FAA Exhibit 1, Item 1, Page 8].
5. On April 29, 2020, the Airport provided KOMN examples of existing lease agreements, a current sample lease agreement, and sample site plans for Parcels 1, 2, and 3 in the southeast quadrant of the Airport. [FAA Exhibit 1, Item 3, Pages 10-12].
6. On May 18, 2020, Sunrise notified the City of its interest in leasing Parcels 1, 2, and 3. The City advised Sunrise that there was another party interested in the parcels. [FAA Exhibit 1, Item 1, Page 8]. The City acknowledged Sunrise's interest in the parcels and agreed to draft a lease agreement and related materials. [FAA Exhibit 1, Item 3, Exhibits 6 and 7].
7. On May 20, 2020, the Airport provided Sunrise with draft lease agreements for the parcels and added that "if [Sunrise] agree with the terms of these agreements and [wishes] to proceed, [the Airport would] need...executed signature pages," and that the agreements would have to be approved by the City Attorney before they may be presented to the City Commission for approval. [FAA Exhibit 1, Item 3, Exhibits 6 and 7].
8. During the month of May, Sunrise had several communications with the Airport concerning the rent for the parcels and the "proposed building [of] a T-hangar complex

for smaller aircraft in order to perhaps gain a lower lease rate.” [FAA Exhibit 1, Item 3, Exhibits 6 and 7].

9. On May 26 and May 27, 2020, in response to requests from Sunrise, the Airport provided copies of the current lease for FBO Areas 1 and 2, plans for the existing T-hangar facility in FBO Area 2, copies of the draft leases for Parcels 1, 2, and 3, and the 2020 rent increase letters for all leases on the airport. [FAA Exhibit 1, Item 1, Exhibit P, Pages 2].
10. On May 29, 2020, KOMN provided the City with an initial draft site plan for the proposal. [FAA Exhibit 1, Item 1, Exhibit P, Pages 2].
11. On June 2, 2020, KOMN followed with a formal proposal and draft site plan to lease and develop Parcels 1, 2, and 3. The project was for the construction of ten large hangars and related improvements in compliance with the most recent Airport Master Plan Update. [FAA Exhibit 1, Item 1, Exhibit P, Pages 2].
12. On June 3, 2020, the Airport provided KOMN with two copies of a draft lease agreement for Parcels 1, 2, and 3. The City told KOMN that it “will need two (2) original, signed signature pages in order to commence the process of presenting your lease to the City Commission for approval.” [FAA Exhibit 1, Item 1, Exhibit P, Pages 2 and 3].
13. On June 5, 2020, KOMN delivered two original, executed signature pages for their lease agreement. As a result, the Airport began the process to prepare the lease agreement for presentation to the City Commission for approval. [FAA Exhibit 1, Item 1, Exhibit P, Pages 2 and 3].
14. On June 9, 2020, the City advised Sunrise that it was in receipt of an executed lease from KOMN for Parcels 1, 2, and 3. Later that day, Sunrise made a public records request to the City for pertinent documents. [FAA Exhibit 1, Item 1, Exhibit P, Pages 2 and 3].
15. On June 9 and June 10, 2020, the Airport provided Sunrise with the requested records. [FAA Exhibit 1, Item 1, Exhibit P, Pages 2 and 3].
16. On July 9, 2020, Sunrise advised the City that it intended to submit a competing proposal. [FAA Exhibit 1, Item 1, Page 11, Exhibit P, Page 3, and Exhibit R].
17. On July 20, 2020, Sunrise advised the City that he had “put together a proposal... [and] had made intent to lease the Parcels known.” Sunrise asked that its proposal, which is far more likely to attract transient jet traffic...be added to the agenda to afford City...the opportunity to decide whom the Parcels should be leased to.” [FAA Exhibit 1, Item 1, Page 11, Exhibit P, Page 3, and Exhibit R].
18. Also on July 20, 2020, the City received a proposal package from Sunrise outlining its project, which referenced Sunrise’s prior lease of Parcel 2, which had been terminated 9 years earlier because Sunrise failed to develop the lot over a 36-month period. [FAA Exhibit 1, Item 1, Page 11, Exhibit P, Page 3, and Exhibit R].

19. On July 21, 2020, Sunrise asked the City why its proposal could not be placed on the August 4, 2020 agenda and why an RFP (Request for Proposal) was not issued. Sunrise “offered to pay more money to lease the three lots” and stated that its “proposal makes better use of the land” and “is far more likely to attract...jet traffic...and private jet owners” to the Airport. Sunrise also disclosed that, in 2010-2011, it “leased a portion of this land (Parcel 2) for over a year” and that the plan was “to build a corporate hangar...in anticipation of the runway extension,” which did not materialize, resulting in Sunrise abandoning the lease for the land and the intended development of the property. Sunrise also noted that its 2020 plan is “in anticipation of the completion of the runway extension and increase in corporate jet traffic... and the need for large hangars.” [FAA Exhibit 1, Item 1, Page 9, and Exhibits R, T, and Y].
20. On July 22, 2020, the City informed Sunrise that its policy had consistently been to consider proposals for the development of airport property on a first come, first served basis. The City noted Sunrise “did not show any interest in the property until he became aware of [KOMN’s] proposal,” even though Sunrise had leased part of the property in 2010-11 and yet did nothing with it. The City stated that it “intends to support KOMN’s proposal, consistent with its policy.” In response, Sunrise stated that it did not understand why the City would not present a competing proposal that provided more revenue and reiterated that its proposal be presented at the August 4, 2020 Commission meeting. [FAA Exhibit 1, Item 1, Pages 8-9, and Exhibit S].
21. On August 4, 2020 the City Manager submitted a Memorandum to the Mayor and the Commissioners recommending approval of the lease with KOMN. As a result, the City Commission voted 5 to 0 to approve the lease. [FAA Exhibit 1, Item 3, Pages 10-12]. Resolution No. 2020-91 followed and authorized “the execution of a ground lease agreement between the City and KOMN...for the leasing of certain...real property.” [FAA Exhibit 1, Item 1, Exhibit B, and Exhibit P, Page 4].
22. On September 2, 2020, the City notified Sunrise that it was willing to consider options for Sunrise’s proposals. The City presented three options. The first option was for Sunrise to use a vacant, undeveloped parcel located in its existing joint lease with MAC Charters. The second option was an unleased parcel adjacent to a Sunrise/MAC corporate hangar at 740 Airport Road. The third option was to lease space in the Southwest Quadrant, an area the City stated it is planning to open up for development. [FAA Exhibit 1, Item 1, Exhibit A-2].
23. That same day, Sunrise reviewed the City’s three options but found them unacceptable and instead proposed splitting the KOMN leased area “into two leases,” a proposal the City rejected. [FAA Exhibit 1, Item 1, Exhibit A-2].
24. On September 4, 2020, Sunrise filed its 14 CFR Part 16 Complaint. [FAA Exhibit 1, Item 1].

V. ISSUES

Having considered the record, the Director has interpreted the Complainant as raising 2 issues:

Issue 1 – Whether the City violated Grant Assurance 22 *Economic Nondiscrimination* by rejecting Complainant's proposal to lease three parcels and instead leasing them to KOMN.

Issue 2 – Whether the City's granted an exclusive right to KOMN in violation of Grant Assurance 23 *Exclusive Rights*.

VI. APPLICABLE FEDERAL 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.³ 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. See FAA Exhibit 1, Item 9 in the Index for a list of all the grant assurances.

B. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, 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.

C. The Complaint and Investigative Process

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant should provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. The regulations governing Part 16 proceedings provide that, if the parties' pleadings supply "a reasonable basis for further investigation," the FAA should investigate "the subject matter of the complaint." 14 CFR § 16.29(a). In accordance with 14 CFR § 16.33(b) and (e), "a party adversely affected by the Director's Determination may file an appeal with the Associate Administrator for Airports within 30 days after the date of service of the initial determination." If no appeal is filed within the time period specified in paragraph (b) of this section, the Director's Determination becomes the final decision and order of the FAA without further action.

VII. ANALYSIS

A. Preliminary Issue

Sunrise makes several allegations concerning the City's motives, representing the City as engaging in "deceptive scheme[s], double-crossing, deceitful representation and deceptive dealings." Sunrise also alleges wrongdoing by City officials relating to campaign contributions that resulted in favoritism. Sunrise also challenges the integrity of City officials. [FAA Exhibit 1, Item 4, Pages 5, 8, and 19 and FAA Exhibit 1, Item 1, Pages 11, 12, 13, 16 and FAA Exhibit 1, Item 1, Exhibit R]. However, these allegations fall outside the Director's jurisdiction where they fail to evidence a grant assurance violation. See 14 CFR § 16.1. Sunrise also presents arguments concerning technical difficulties and possibly intentional delays by the City to provide public records requests. [FAA Exhibit 1, Item 5]. Again, where these allegations fail to evidence a grant assurance violation, they fall outside the Director's jurisdiction. See 14 CFR § 16.1

B. Issue 1 – Whether the City violated Grant Assurance 22 *Economic Nondiscrimination* by rejecting Complainant's proposal to lease three parcels and instead leasing them to KOMN.

1. SUNRISE'S POSITION

Sunrise argues the City is in violation of Grant Assurance 22 by failing to solicit competitive proposals, not considering Sunrise's proposal, and denying it the right to lease the three parcels. Sunrise challenges the City's decision not to add its proposal to the August 4, 2020 City Commission meeting agenda as an alternative to the KOMN proposal. Sunrise challenges the City's lease with KOMN as being awarded "without any competitive solicitation, or the opportunity for Sunrise to submit a competing proposal," despite KOMN's interest in a lease "two weeks after [Sunrise] made [its] intent to lease the parcels known, and by failing to "inform [Sunrise] there was another interested party. Sunrise summarizes that despite its "intention to lease the land," the City "did not give [it] an opportunity to fairly compete." [FAA Exhibit 1, Item 1, Pages 8, 12-13 and Exhibit R].

Sunrise supports its argument by affirming that it was "willing and qualified" to offer aeronautical services to the public. Sunrise further asserts that the City's Code does not provide nor has the City developed minimum standards for aeronautical services activities. It adds that the City does not have a policy in explaining its "first come, first served basis" adequately and that this policy is not "in the best interest of the City's taxpayers and does not result in making the Airport as self-sustaining as possible." [FAA Exhibit 1, Item 1, Pages 10, 12, and 15]. Sunrise also emphasizes its "long-standing presence on the Airport conducting aeronautical activities on the Airport for almost two decades." [FAA Exhibit 1, Item 1, Pages 10, 12, and 15]. Sunrise argues that its proposal would generate more revenue...and that the City should rely on Sunrise's "extensive experience in the aviation industry..." [FAA Exhibit 1, Item 1, Exhibit R].

Finally, Sunrise asserts that the lease the City entered into with KOMN is invalid because "the lease was signed more than a month before the company was incorporated," and that "the City cannot sign a lease with a company that did not exist at the time of execution" of the leases. [FAA Exhibit 1, Item 1, Pages, 11, 12, 13, 16 and FAA Exhibit 1, Item 1, Exhibit R].

2. CITY'S POSITION

The City maintains that it considers proposals for development of airport property on a first come, first served basis and that it provided Sunrise with a lease agreement for the parcels two full weeks prior to providing KOMN with a similar lease. However, the City also states that while KOMN submitted a proposal, engineered site plan, and signed lease, Sunrise did not provide the City with a signed lease agreement or any other proposal prior to receipt of the signed lease agreement by KOMN. The City adds that Sunrise already controls a large amount of hangar and ramp space and asked "the City to delay and potentially deny a lease of airport land to another qualified aeronautical user" in part "because [Sunrise] is willing to pay more." [FAA Exhibit 1, Item P, Pages 3 and 4].

The City states that "[Sunrise]...wants to expand [its] dominant position at the Airport by locking down the subject parcels and controlling 75% of the FBO acreage," but that the City acted properly and in accordance with Grant Assurances 22 and 23 in leasing the Parcels to KOMN to construct hangars consistent with the City's Master Plan Update and increase competition at the Airport. [FAA Exhibit 1, Item 6, Page 2].

The City states that the facts are simply that the City gave Sunrise an opportunity to lease the parcels on May 20, but Sunrise missed the opportunity through its fault while KOMN submitted a valid plan acceptable to the City and agreed to the lease terms. The City states that Sunrise should have been well-aware that the parcels were vacant and available for lease because Sunrise had previously leased, but did not build on Parcel 2 and because the property are near the Sunrise's leaseholds and it could easily be seen that the parcels have been vacant for many years. The City also states that it specifically publicized the availability of the parcels in its periodic newsletters and on the City's website. Finally, the City notes that it had several communications and discussions with the Sunrise about leasing the parcels. [FAA Exhibit 1, Item 3, Pages 8-10].

The City takes the position that Sunrise "simply failed to sign and return the leases in a timely fashion," but instead "requested additional information, which the City provided" and made counter-proposals that would have been unacceptable since [Sunrise's] proposed 100 foot by 100 foot hangars appeared to intrude into the Taxiway Charlie Object Free Area in violation of FAA design criteria. In addition, the City notes that the Sunrise was offered several alternatives, which Sunrise rejected, to construct hangars to include (1) vacant land is available to construct a hangar at the parcel at 740 Airport Rd, which is under a joint Sunrise/MAC Charters lease, (2) an unleased parcel adjacent to, and southeast of, a Sunrise/MAC corporate hangar at 740 Airport Rd, and (3) lease space in the Southwest Quadrant in an area the City is planning to open for development by installing utilities and constructing an access road. [FAA Exhibit 1, Item 3, Pages 8-10, and 14].

The City rejects Sunrise argument that the City was obligated to consider a proposal that Sunrise submitted on July 20, two months after the City had agreed to lease the parcels to KOMN, subject to City Commission approval at the next Commission public meeting on August 4. The City defends its actions in engaging in direct negotiations with KOMN and not issuing an RFP because this is consistent with and supported by FAA's policies. The City

asserts an airport sponsor can award a lease by any of several methods, including direct negotiation and that FAA policy does prohibit an airport sponsor from entering into long-term leases with commercial entities by negotiation, solicitation, or other means, such as an RFP. [FAA Exhibit 1, Item 3, Pages 14-15].

The City takes the position that both Sunrise's plan and KOMN's are consistent with the Master Plan Update. The City states that Complaint misconstrues the Master Plan Update because it is simply a planning document to give the sponsor a sense of the future development needs over the course of 20 years, which will vary based on evolving circumstances. The City argues the Master Plan Update does not require the sponsor to build the specific projects listed in the document and that it is only in the sixth year of a 20-year plan, giving it ample time to consider the need for additional corporate hangars. [FAA Exhibit 1, Item 3, Pages 16-18].

With respect to establishing Minimum Standards, the City emphasizes that Sunrise incorrectly alleges that "the City has not done so" when in fact "the City does have comprehensive Minimum Standards in place as part of its Ordinance at Chapter 3.3, *Aircraft and Airport*, which sets forth extensive rules governing the Airport." [FAA Exhibit 1, Item 3, Pages 18-20, and Exhibit 6].

The City also challenges Sunrise's argument that the City does not have a written policy to adequately explain the City's first come, first served leasing policy. The City explains that there is no FAA requirement for such a written policy and that even Sunrise acknowledges that the FAA gives the City broad flexibility in leasing Airport property. The City adds that as long as the airport sponsor complies with its grant obligations, the sponsor can enter an agreement to lease available and suitable property through negotiation, solicitation, or other means. The City argues that it complies with its FAA obligations as long as it negotiates in good faith with all parties that are willing and qualified to provide commercial aeronautical services to the public. [FAA Exhibit 1, Item 3, Pages 18-20].

Concerning the timing of the lease with KOMN raised by Sunrise, the City notes that although KOMN was incorporated on July 6, subsequent to the signing of the lease on June 3 by Mr. Holub and Mr. Bullard, the two principals acting on behalf of KOMN, the City deemed the signed lease to be effective as to KOMN upon its incorporation and deemed it to be ready for presentation to the City Commission on August 4, 2020. [FAA Exhibit 1, Item 3, Pages 14-15]. The City does not see this rationale as an issue or as a point of contention.

The City concludes that (1) Sunrise had an opportunity to lease the Parcels on May 20, but missed it through its own fault, (2) KOMN submitted a valid plan acceptable to the City and agreed to the lease terms, and (3) the Airport and the City provided a review and recommended that the City Commission approve the lease with KOMN, which it did through an open public meeting with a unanimous 5 to 0 vote. [FAA Exhibit 1, Item 3, Pages 18-20].

3. DIRECTOR'S DETERMINATION

Grant Assurance 22, *Economic Nondiscrimination* implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires the sponsor of an airport developed with Federal grant

assistance 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. In this case, the issue is whether the City provided reasonable and not unjustly discriminatory access.

Contrary to Sunrise's assertion, a review of the record shows that the City considered Sunrise's proposals. Sunrise and the City had several communications regarding entering into a lease agreement for the Parcels 1, 2, and 3. The City gave Sunrise an opportunity to submit a proposal while the City was also reviewed KOMN's proposal. The City also kept Sunrise informed of the status of its dealings with KOMN. Specifically, on May 20, the City provided Sunrise with a lease agreement for Parcels 1, 2, and 3, almost two full weeks prior to providing KOMN with a similar lease for the same parcels, which occurred on June 3. KOMN timely submitted a proposal and a signed lease. Sunrise did not.

While Sunrise argues that the City did not have minimum standards on how to lease airport property, and that this relates to the alleged violation, a review of the record shows that the City has adopted minimum standards as part of a set of airport provisions in the City's Ordinances at Chapter 3.3 *Aircraft and Airport*. As noted in *Boston Executive Helicopters v. Town of Norwood, Massachusetts and Norwood Airport Commission*, FAA Docket No. 16-15-05 at 13, while minimum standards are optional, the FAA recommends that such guidance be implemented. The adequacy of minimum standards does not, by itself, result in a violation of Grant Assurance 22. However, the improper application of those standards could create a violation. In this case, a review of the record does not show that Chapter 3.3 *Aircraft and Airport* was a factor in City negotiating with the parties or making the decision to proceed with KOMN's proposal.

Grant Assurance 22 does not require adherence to any particular leasing methodology. The airport sponsor has discretion to use practices that best suit its individual needs. See *Signature Flight Support Corp. v. County of Orange, California*, FAA Docket 16-17-02, at 6. As long as the airport sponsor complies with its grant obligations, the sponsor can enter an agreement to lease available and suitable airport property through negotiation, solicitation, or other means. Choosing not to issue an RFP, in and by itself, is not unreasonable or contrary to the federal obligations.

In *Pac. Coast Flyers, Inc. v. County of San Diego, Cal.*, FAA Docket No. 16-04-08 at 28, the FAA noted that the airport "did not violate Grant Assurance 23 by granting a lease...without issuing a Request for Proposal (RFP)" and that the grant assurances do "not require an airport sponsor to provide public notice, solicit competitive bids, or conduct qualification investigations for the redevelopment of airport property." Similarly, the City's unwritten policy of "first come, first served" leasing policy followed by negotiation with a potential tenant is not a violation of Grant Assurance 22 either. In this case, the argument fails because the City openly negotiated with both parties and the City considered Sunrise's proposals before, during and after its agreements with KOMN. The City's "first come, first served" policy did not impede those same interactions between the City and Sunrise.

Sunrise and the City disagree as to whether KOMN's proposal was consistent with the Master Plan Update. Master plans are not binding. A master plan is a planning document to

give the sponsor a sense of the future development needs which may vary based on evolving circumstances. A Master Plan Update is not a requirement or obligation. An airport does not “violate” its federal obligations by not adhering to its Master Plan Update nor does it require the City to build the specific projects listed therein. In *Boston Executive Helicopters v. Town of Norwood, Massachusetts and Norwood Airport Commission*, FAA Docket No. 16-15-05 at 30 (Director’s Determination), the FAA determined that “the master plan is a planning document and a sponsor is not obligated to complete every aspect of its Master Plan. Not adhering to a specific item on a Master Plan or making changes outside the Master Plan are not a violation of the federal obligations.”

Sunrise also argues that it is the best qualified for the development of the parcels and believes that its proposal should have been chosen because it would have yielded higher rents, was more in line with the Master Plan Update, and would have best served the interest of the Airport and the City. Sunrise essentially assumes the role of airport sponsor and advocates what is best for the airport from both planning and financial perspectives. However, those types of decisions belong to the airport sponsor, not Sunrise. The City can choose a development that may produce less revenues but enhance or diversify levels of service or enhance competition. As the airport sponsor, the City can make that decision.

Finally, the Sunrise’s argument that the City’s lease with KOMN is somehow invalid because at the time it was signed that company was not yet incorporated in the state of Florida is rejected. Nothing in the federal obligations requires a specific type of ownership, prevents individuals from leasing property at the airport, or challenges changes in ownership and how and by whom the management of the entity is achieved, maintained, or altered. That is a decision and matter belonging to the airport sponsor and local jurisdiction.

This is a case where ultimately the City, through direct negotiation, entered into a lease of available property with a new and qualified entity that showed interest in the property, presented a plan and accepted the City’s terms and conditions, and did so in a timely way. The Director agrees that the City acted properly in leasing the Parcels to KOMN to construct hangars of the type of the City’s choosing at a location the City chose. An airport sponsor is not required to develop any and all parcels of land in a manner consistent with the wishes of one party. See *Resort Aviation Services v. Kootenai County, Idaho*, FAA Docket No. 16-20-01 (Director’s Determination), at 8.⁴

While there are variables in this case, such as timing, timely response by the proponents, completeness of submissions, counteroffers, different parcels being offered or sought, the facts do not support Sunrise’s allegations that there was preferential treatment. KOMN simply negotiated better than Sunrise, and the Part 16 process is not a substitute for negotiation or a means or process to reverse the outcome of lawful negotiations. See *Skydive Myrtle Beach v. Horry County Department of Airports, South Carolina*, FAA Docket No. 16-14-05 (Director’s Determination), at 31.

⁴ Also see sponsor is not required to develop any and all parcels of land in a manner consistent with the wishes of any one party, but rather may exercise its proprietary rights and powers to develop and administer the airport’s land. [See *Santa Monica Airport Association, Krueger Aviation, Inc. and Santa Monica Air Center v. City of Santa Monica*, FAA Docket No. 16-99-21 (February 4, 2003) (Final Decision and Order).]

With respect to the allegations presented in Issue 1 by both parties, under the specific circumstances at OMN and based on the evidence of record in this proceeding, the Director finds that the City attempted to reasonably accommodate Sunrise's requests. The City did not deny access, impose unreasonable terms and conditions, or unjustly discriminate against Sunrise. As a result, the City is not in violation of Grant Assurance 22, *Economic Nondiscrimination* by rejecting Sunrise's proposal and instead moving forward with KOMN's.

C. Issue 2 – Whether the City's granted an exclusive right to KOMN in violation of Grant Assurance 23 *Exclusive Rights*.

1. SUNRISE'S POSITION

Sunrise argues that the City's actions and/or inactions, individually or cumulatively, resulted in the City granting an exclusive right to KOMN to conduct an aeronautical activity at the Airport in violation of 49 U.S.C. § 47107(a)(4) and related Grant Assurance 23 *Exclusive Rights*. [FAA Exhibit 1, Item 1, Page 13]. Sunrise adds that "there can be no more serious exclusive rights violation than what has occurred in this case" because "the City [excluded] Sunrise from even submitting a competing proposal." [FAA Exhibit 1, Item 1, Pages 17 and 18].

2. CITY'S POSITION

The City denies it has violated Grant Assurance 23 and asserts that it did not exclude Sunrise from competing for the leases in question. In fact, the City notes that it gave Sunrise an opportunity to lease the Parcels on May 20, before it offered to same parcels to KOMN, but that Sunrise failed to act. The City takes the position that despite Sunrise controlling 59% of the acreage leased to FBOs at the Airport through its various affiliations and joint leases, the City still gave Sunrise an opportunity.

The City also notes that the Sunrise has other options available to construct hangars and, moreover, that Sunrise already has undeveloped areas in his leaseholds. The City adds that it is planning to open the Southwest Quadrant for development and that this would provide ample opportunity for Sunrise to lease a site and build hangars. [FAA Exhibit 1, Item 3, Pages 20-22].

3. DIRECTOR'S DETERMINATION

Grant Assurance 23, *Exclusive Rights*, of the sponsor grant assurances [49 U.S.C. 40103(e) and 47107(a)(4)] requires the sponsor of a federally obligated airport "will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical service to the public..." and, further, the sponsor "will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities..."

The Director disagrees the City granted an exclusive right to KOMN. Sunrise is already a well-established, dominant service provider with significant leased property and is one of

many service providers at the Airport. The City did not exclude Sunrise from participating in an on-airport aeronautical activity. A review of the record does not provide evidence supporting a claim that the City has granted KOMN an exclusive right over hangar development space at the Airport. Absent such evidence, the Director cannot find a violation of Grant Assurance 23. In Port Hangars Association, Inc., and Winn Williams v. County of Los Angeles, California, FAA Docket No. 16-17-14 (Director's Determination) at 10-11 the Director noted that the FAA would not find an airport sponsor in violation of Grant Assurance 23 where "the complainant does not show the airport sponsor granted to another entity the exclusive right to conduct a particular aeronautical activity or to provide a particular aeronautical service on the Airport."

Sunrise is already established at OMN and has been given, and continues to be given, opportunities to expand. An exclusive right does not exist in violation of Grant Assurance 23 since Sunrise still has an opportunity to lease other available airport property. In Walker AG Supply v. Wahoo Municipal Airport, FAA Docket No. 16-14-08 (Director's Determination) at 16, the Director did not make a finding that an exclusive right was granted because "the Complainants still have the opportunity to lease other available airport property." The same result obtains here. The facts that the City conducted negotiations with KOMN on a "first come, first served" basis, that the City ultimately entered into a lease with a new provider, or that Sunrise did not get the parcels it wanted, do not amount to a grant of exclusive rights, either individually or cumulatively, as Sunrise argues. In Pro-Flight Aviation, Inc. v. City of Renton Municipal Airport, FAA Docket No. 16-15-03 (Director's Determination) at 21, the "Director recognize[ed] that the offered spaces did not meet the stated desires of the Complainant; however, that [did] not mean that the Airport has violated the prohibition of granting an exclusive right. The Airport made a business decision regarding the best use of the available space on the airport."

Based on the above, the Director finds that the City's actions did not result in the City granting an exclusive right to KOMN in violation of Grant Assurance 23 *Exclusive Rights*.

VIII. CONCLUSION AND FINDINGS

State whether the FAA finds the respondent in compliance or noncompliance for each of the issues identified in section V and discussed under section VII. The finding should follow the issue statement closely.

After considering the evidence and pleadings in this matter, the Director has determined that the City is not in violation of Grant Assurance 22 Economic Nondiscrimination by not accepting Sunrise's proposal for leasing three parcels and instead leasing them to another party, KOMN. The Director also finds that the City's actions did not result in the City granting an exclusive right to KOMN in violation of Grant Assurance 23 *Exclusive Rights*.

ORDER

Based on the evidence of record in this proceeding, the Director finds that:

Issue 1 – The City has not violated Grant Assurance 22 Economic Nondiscrimination by not accepting Complainant's proposal for leasing three parcels and instead leasing them to another party, KOMN.

Issue 2 – The City's actions did not result in the City granting an exclusive right to KOMN in violation of Grant Assurance 23 Exclusive Rights.

ACCORDINGLY, it is ordered that:

1. The Complaint is dismissed.
2. All Motions not expressly granted in this Determination are denied.

RIGHT OF APPEAL

This Director's Determination is an initial agency determination and does not constitute a final agency decision and order subject to judicial review. 14 CFR § 16.247(b)(2). A party to this proceeding adversely affected by the Director's Determination may appeal the initial determination pursuant to 14 CFR § 16.33(c) within 30 days after service of the Director's Determination.

**KEVIN
WILLIS**

Digitally signed by KEVIN WILLIS
Date: 2021.08.30 17:52:38 -04'00'

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

Date

Jeffrey Lefever, President, Sunrise Aviation, Inc., Complainant

v.

City of Ormond Beach, Florida, Respondent

Docket No. 16-20-03

INDEX OF ADMINISTRATIVE RECORD

The following items constitute the administrative record in this proceeding:

FAA Exhibit 1

Item 1 - Part 16 *Complaint*, September 4, 2020.

- Exhibit A - E-mail from Mark Dombroff to Rich Leidl, 08/03/2020.
- Exhibit A-1 - Letter from Mark Dombroff to City Attorney, 08/27/2020.
- Exhibit A-2 - E-mail from Mark Dombroff to Rich Leidl, 09/02/2020.
- Exhibit B - Resolution No. 2020-91, 08/04/2020.
- Exhibit C - Ormond Beach Airport Master Plan Update, Forecast Summary, 10/2015.
- Exhibit D - Dimensional Standards (Presentation Slide), undated.
- Exhibit E - Critical Aircraft (Presentation Slide), undated.
- Exhibit F - Dimensional Standards (Presentation Slide), undated.
- Exhibit G - Ormond Beach Airport Master Plan Update, Selective Forecast Data, 10/2015.
- Exhibit H - Ormond Beach Airport Master Plan Update, Page 5-19, 10/2015.
- Exhibit I - Approved Forecast (Presentation Slide), undated.
- Exhibit J - Ormond Beach Airport Master Plan Update, Pages 6-18 and 6-19, 10/2015.
- Exhibit K - FBO Directory - Ormond Beach Municipal Airport, undated.
- Exhibit L - E-Mail Notification "Sunrise Aviation - Meet and Greet," 07/09/2020.
- Exhibit M - Letter from UK Charter Operator to Sunrise Aviation, undated.
- Exhibit N - Listing of Aircraft Dimensions, undated.
- Exhibit N-1 - Additional Data on Aircraft Dimensions and Hangar Data, undated.
- Exhibit O - E-Mails From Complainant Re: "I would like to lease property...", 06/09/2020.
- Exhibit P - City Manager Memorandum, KOMN Hangar Investors, LLC, 08/04/2020.
- Exhibit Q - Resolution No. 2020-91, 08/04/2020.
- Exhibit R - Letter From Complainant to City (Undated).
- Exhibit S - E-Mails Between Complainant and Airport, 07/22/2020.
- Exhibit T - E-Mails Between Complainant and Airport, 07/21-22/2020.
- Exhibit U - Sunrise Aviation, Inc. General Ledger Account Detail, 01/01/2010 – 8/12/2020.
- Exhibit V - Signature Page of KOMN Lease With the City, 06/03/2020.
- Exhibit V-1 - Electronic Articles of Organization, KOMN, 07/06/2020.
- Exhibit W - E-Mail From KOMN to City - Lease Agreement, 06/09-10/2020.
- Exhibit X - E-Mails Between KOMN and City, 07/01/2020.
- Exhibit Y - Complainant Letter/Proposal to City, undated.
- Exhibit Z - City Commission Roster, undated.
- Exhibit AA - Document on 2020 Candidates in the Municipal Election, retrieved 08/18/2020.
- Exhibit BB - Officer/Registered Agent Name List, retrieved 09/17/2020.
- Exhibit CC - Holub Info Campaign (E-Mail Listing), retrieved 08/17/2020.

Item 2 - FAA Notice of Docketing, September 18, 2020.

Item 3 – City’s Answer, October 8, 2020.

- Exhibit 1 - Airport Description from the City's Website, undated.
- Exhibit 2 - Declaration of Steven Lichliter, 10/06/2020.
- Exhibit 3 - Map of the Ormond Beach Municipal Airport, Southeast Quadrant, 10/2020.
- Exhibit 4 - Excerpts, Airport Master Plan Update, 2014-2034, Final Report, Revised, 01/2016.
- Exhibit 5 - List of FBOs at the Airport, undated.
- Exhibit 6 - Chapter 3.3, Aircraft and Airport, Ormond Beach Code of Ordinances, 01/07/2020.
- Exhibit 7 - List of FBOs with Leases with the City of Ormond Beach, 10/2020.
- Exhibit 8 - Memorandum from City Manager to City Commission, 08/08/2020.
- Exhibit 9 - Ormond Beach Municipal Airport Newsletter, 11/01/2017.
- Exhibit 10- Notice re: the Parcels being available for leasing, undated.
- Exhibit 11- Emails between Jeffrey Lefever and Steven Lichliter (May 18, 2020 to May 27, 2020).

Item 4 – Complainant’s Reply, October 19, 2020.

- Exhibit 1 - Declaration of Jeffrey Lefever. 10/06/2020.
- Exhibit 2 - Text Message Excerpts, undated.
- Exhibit 3 - Various Communications, 08/18/2020. (Exhibit includes several e-mails).
- Exhibit 3A - E-mail from Steve Lichliter Brian Rademacher, 5/18/2020.
- Exhibit 3B - E-mail from Frank Bullard to Steven Lichliter, 5/29/2020.
- Exhibit 3C - E-mail from Steven Lichliter to holubdev@aol.com, 06/01/2020.
- Exhibit 3D - E-mail from Steven Lichliter to holubdev@aol.com, 06/01/2020.
- Exhibit 3E - E-mail from holubdev@aol.com to Lichliter, Steven, 06/04/2020.
- Exhibit 3F - E-mail from Steven Lichliter to holubdev@aol.com, 06/04/2020.
- Exhibit 3G - E-mail from Alex Cvercko to Bill Partington; Emery, Ann-Margret, 06/09/2020.
- Exhibit 3H - E-mail from Alex Cvercko to Hayes, Randy; Emery, Ann-Margret, 07/24/2020.
- Exhibit 3I - Letter from Holub Development to Randy Hayes, 06/02/2020.
- Exhibit 3J - E-mail from Jeffrey Lefever to brian.radamacher@ormondbeach.org, 07/20/2020.
- Exhibit 3K - Blocked e-mail notification, 07/20/2020.
- Exhibit 3L - E-mail from Hayes, Randy to Alex Cvercko, 07/22/2020.
- Exhibit 4 - Sunrise Aviation Invitation, 03/20/2020.
- Exhibit 4A - Forwarding notice and e-mail from Justin Edwards, 04/09/2020.
- Exhibit 5 - E-mail from Jeffrey Lefever to Steven.Lichiiter@ormondbeach.org, 05/18/2020.
- Exhibit 6 - E-mail exchange between Steven Lichliter and Jeffrey Lefever, 05/18/2020.
- Exhibit 7 - E-mail from Steven Lichliter to Jeffrey Lefever, 05/20/2020.
- Exhibit 8 - City Manager Memorandum to City Commission on –KOMN Lease, 08/04/2020.
- Exhibit 9 - Letter from Sunrise Aviation to City Commission, undated.
- Exhibit 10 - Lease Signature Page (Lease Between KOMN and City), 06/03/2020.
- Exhibit 11 - E-mail from Alex Cvercko to Emery, Ann-Margret, 07/20/2020.
- Exhibit 12 - Electronic Articles of Organization, KOMN HANGER INVESTORS, LLC, 07/06/2020.

Exhibit 13 - Table with names and associated dollar amounts.

Exhibit 14 - Airport Master Plan Update 2014 to 2034 (Excerpt), 01/2016.

Item 5 – Complainant’s Motion to Amend Reply, October 30, 2020.

Exhibit 1- Various e-mails dated 10/28/2020.

Item 6 – City’s Rebuttal, October 29, 2020.

Exhibit 1- Text Messages between Steve Lichliter and Jeffrey Lefever, 05/19/2020.

Exhibit 2- Text Messages between Steve Lichliter and Jeffrey Lefever, 06/09/2020.

Item 7 – OMN Grant History (2/8/2021).

Item 8 – Notice of Extension of Time, March 11, 2021.

Item 9 – Grant Assurances

Item 10 – Notice of Extension of Time, May 21, 2021.

Item 11 – Sunrise Aviation Web page (<https://flysunrise.com/fbo/>, retrieved 04/2021).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 31, 2021, I sent via electronic mail and via FedEx a true copy of the foregoing document addressed to:

FOR COMPLAINANT


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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 Eastern Region Airports Division (ASO-600)



Viola Cijntje
Office of Airport Compliance
and Management Analysis