

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

ROBINSON AIR CRANE, LLC, A Florida Limited Liability Company)	
)	
Complainant,)	FAA Docket No. 16-18-02
v.)	
)	
SAINT LUCIE COUNTY, FLORIDA,)	
)	
Respondent.)	

Director's Determination

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

Robinson Air Crane, LLC, (Robinson) filed a formal complaint against Saint Lucie County, Florida, (St. Lucie) as owner and sponsor of the Treasure Coast International Airport (FPR or Airport), in Fort Pierce, Florida.

Robinson alleges St. Lucie engaged in practices at FPR that violated 49 USC 47107(a) and FAA Grant Assurance 1, *General Federal Requirements*, by refusing to allow Robinson to build hangars resulting in predatory conduct and illegal restraint of trade in violation of 15 USC §1, *et. seq.*, the Sherman Anti-Trust Act (Item 1, p. 9, ¶ 29)¹; Grant Assurance 5, *Preserving Rights and Powers*, by denying Robinson the right to develop open, unused and developable land at the Airport (Item 1, p.9, ¶33); Grant Assurance 19, *Operation and Maintenance*, by precluding construction of the hangars when there is an established need for hangar space and denying Airport users the ability to service medium sized jets and large helicopters, (Item 1, p.10, ¶36); Grant Assurance 22, *Economic Nondiscrimination*, by attempting to restrict airport development which only benefits APP Jet Center (the sole FBO² operating at FPR) (Item 1, p.11, ¶46); and Grant Assurance 23, *Exclusive Rights*, by granting another an exclusive right of providing FBO services at FPR but denying that right to Robinson (Item 1, p.13, ¶58).

¹ The Items referenced in this Determination are listed in FAA Exhibit 1 attached hereto and made a part of this Director's Determination.

² A Fixed-Base Operator (FBO) is a commercial entity, providing multiple aeronautical services, such as maintenance, storage, ground and flight instruction, *etc.*, to the public. (FAA Order 5190.6B, *Airport Compliance Manual*, September 30, 2009, at Chpt. 20 fn. 45 and definition in Appx. Z.)

In response, St. Lucie denies Robinson's allegations and requests that the matter be dismissed. St. Lucie further states that the FAA lacks jurisdiction to adjudicate Count I of the Complaint regarding an alleged Sherman Anti-Trust Act violation. St. Lucie requests that Count III of the Complaint be dismissed arguing that Robinson's allegations exclusively concern leasehold areas rather than aircraft movement areas and does not state a claim under Grant Assurance 19, *Operations and Maintenance*. St. Lucie denies the alleged violations of Grant Assurance 5, *Preserving Rights and Powers*, and argues that it processed Robinson's site plan application using the transparent and orderly process specified in the County's Land Development Code. St. Lucie also denies the allegations that it violated Grant Assurance 22, *Economic Nondiscrimination*, claiming that it allowed Robinson access to the Airport by expediting its review of Robinson's site plan. Lastly, St. Lucie denies the alleged violations of Grant Assurance 23, *Exclusive Rights*, stating that having one FBO does not amount to an exclusive-rights violation, given that it afforded Robinson many opportunities to present a plan to develop hangars and an FBO at FPR (Item 7, p.1).

With respect to the allegations presented in this Complaint, under the specific circumstances at the Treasure Coast International Airport 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 St. Lucie is not currently in violation of its Grant Assurances, and the Director hereby dismisses the Complaint.

II. PARTIES

A. The Airport

FPR is a public-use general aviation airport owned by St. Lucie County, Florida. FPR consists of 3,844 acres and has three runways: a 4,000-foot runway, a 6,492-foot runway, and a 4,755-foot runway. It has an Air Traffic Control Tower. FPR has 253 based aircraft, including 58 multi-engine aircraft and 16 jets. There were 196,000 operations at FPR for the 12-month period ending January 24, 2017. FPR is located about three miles northwest of the city of Ft. Pierce, Florida (Item 25).

The planning and development of FPR has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 USC 47101, *et seq.* Since , St. Lucie has accepted approximately \$36,431,832 in Federal AIP grants for FRP. St. Lucie is obligated to comply with the FAA sponsor grant assurances and related Federal law, 49 USC 47107.

B. The Complainant

Robinson is a Florida limited liability company of which James T. Robinson is an authorized member. Robinson by itself or through an associated business, JP Aviation Investments, LLC, has extensive airport development experience, which includes the multi-million-dollar airport development expansion at the Miami-Opa Locka Executive

Airport (Item 1, pp.1-2, ¶1). When this Complaint was filed, Robinson owned a hangar located on property it subleased at FPR in which it conducted large helicopter storage (Item 1, p.4, ¶9). James Robinson states that he is a veteran in the aircraft storage and operations profession (Item 11, p.3).

III. PROCEDURAL HISTORY AND BACKGROUND

A. Procedural History

March 9, 2018	Robinson files a formal Part 16 Complaint (Item 1).
March 29, 2018	The Notice of Docketing is issued (Item 2).
April 9, 2018	St. Lucie files Notices of Appearance (Item 3).
April 9, 2018	St. Lucie files its Unopposed Motion for Extension of Time (Item 4).
April 16, 2018	The Director issues an Order extending time (Item 5).
June 22, 2018	St. Lucie files its Answer and Motion to Dismiss (Item 6).
June 22, 2018	St. Lucie files its Brief in Support of Answer to Complaint and Motion to Dismiss (Item 7).
July 2, 2018	Robinson files an Unopposed Motion for Extension of Time to Answer Motion to Dismiss (Item 8).
July 10, 2018	The Director issues an Order extending time for Robinson to answer Motion to Dismiss (Item 9).
July 17, 2018	Robinson files a Reply to Motion to Dismiss and Affirmative Defenses (Item 10).
July 17, 2018	Robinson files its Memorandum in Support of its Reply to St. Lucie's Motion to Dismiss and Affirmative Defenses (Item 11).
July 23, 2018	St. Lucie files its unopposed motion for extension of time to file Rebuttal (Item 12).
August 10, 2018	St. Lucie files its Rebuttal (Item 13).
August 17, 2018	The Director issues an Order (Item 14)
August 28, 2018	Robinson files its Notice of Serving Discovery (Item 15).

August 30, 2018	The Director issues an Order directing that Robinson's Discovery Requests is not part of the record (Item 16).
August 30, 2018	Robinson files a Reply to St. Lucie's Affirmative Defenses (Item 17).
August 30, 2018	Robinson files its Memorandum in Support of its Reply to St. Lucie's Affirmative Defenses (Item 18).
September 7, 2018	St. Lucie files a Letter it sent to Robinson regarding Discovery Requests (Item 19).
September 7, 2018	St. Lucie files its Rebuttal (Item 20).
September 14, 2018	Robinson files a Motion for Discovery (Item 21).
September 24, 2018	St. Lucie files an Answer in Opposition to Complainant's Motion to Conduct's Discovery Motion (Item 22).
October 1, 2018	The Director issues an Order denying Robinson's Discovery Requests (Item 23).
October 4, 2018	Robinson files its Response to the Order dated October 1, 2018 (Item 24).

B. Background

One of St. Lucie's tenants, APP Jet Center, operates as the airport's sole FBO (Item 1, p.2, ¶4). Until 2009, St. Lucie had another FBO tenant named Key Air and states that it has been seeking a tenant to act as an additional FBO (Item 7, Exhibit 2). APP Jet Center has a "Second Amended and Restated Lease Agreement" with St. Lucie, dated May 16, 2008 (Item 7, Exhibit 3), which modifies an agreement dated January 27, 2003, which modifies an original agreement dated March 12, 1992 (three leases collectively "APP Lease"). The APP Lease provides that APP Jet Center will operate as a non-exclusive FBO and may sub-lease its leased properties to subtenants (Item 7, Exhibit 3, p. 29).

The FPR Master Plan dated February 1, 2011, shows that APP Jet Center leases 84 acres from St. Lucie and manages or subleases 27 out of 35 structures on the property (Item 7, Exhibit 1, p. 2-56). One such property sublease is from APP Jet Center to Robinson, (through assignments) consisting of approximately 14,600 square feet of land located on the south side of taxiway E and further described in a sublease from B&E Houck Enterprises, Inc., to KJS, LLC (Item 1, Exhibit 2A).

Robinson purchased a hangar on this subleased property from KJS LLC. This hangar is known as Hangar 8 West (Hangar 8W) in the APP Lease and Hangar 51 on the Airport Layout Plan (ALP) (Item 1, Exhibit 2B). Robinson approached St. Lucie on several occasions to inquire about leasing and developing the vacant space adjacent to their

Hangar 8W, and about leasing and developing property along Tailwind Drive, all with the purpose of constructing hangar(s) for aircraft storage (Item 1, ¶12 and 15). Robinson submitted a site plan for the development of the land located adjacent to its Hangar 8W to St. Lucie in 2015, and St. Lucie expedited the processing and review of the plan (Item 7, p.4).

In evaluating Robinson's site plan, the Development Review Committee of the St. Lucie County Planning and Development Services (Committee) concluded that the plan did not contain adequate storm water drainage, did not avoid encroaching on APP Jet Center's pre-existing leasehold, and did not relocate a water main. Each one of these factors had previously been identified and required during the planning and development process (Item 7, Exhibit 2, p.1, ¶13). The Committee further states in its report that St. Lucie requested that Robinson provide the requested documentation, however Robinson failed to address the Committee's concerns. St. Lucie states that Robinson was notified of these deficiencies on three occasions and given the opportunity to meet with the Committee to discuss its site plan but failed to appear or submit a revised plan (Item 7, Exhibit 5).

Rather than pursuing the sublease of the vacant parcel adjacent to Hangar 8W and construction of a new hangar, on November 8, 2017, Robinson stated that the vacant parcel was too small for the type of hangar it wished to construct (Item 7, Exhibit 2, p.4) and then proposed a larger hangar development along Tailwind Drive (Item 1, Exhibit 9A). Because hangar construction along Tailwind Drive was not envisioned in the Airport Master Plan or the ALP, St. Lucie invited Robinson to participate in the public process for updating these Plans (Item 20, p.7). Robinson has not participated in this public process nor has Robinson submitted a required site plan for the construction of hangars along Tailwind Drive (Item 7, Exhibit 2, p.4, ¶22; Item 20, p.7-8).

Robinson claims that St. Lucie's delay of Robinson to construct hangars and refusal to accept Robinson's development plans led to the filing of this Complaint (Item 1, p.15)

IV. APPLICABLE LAW AND POLICY

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

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

The Airport Improvement Program

Section 47101, *et seq.*, of Title 49 USC provides for Federal airport financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act of 1982, (AAIA) as amended. Section 47107 sets forth assurances to which an airport sponsor agrees as a condition of receiving Federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the Federal Government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system.

Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the AIP and 49 USC 47107, the Secretary of Transportation and, by extension, the FAA, must receive certain assurances from the airport sponsor, including the statutory sponsorship requirements under 49 USC 47107(a). The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.³ FAA Order 5190.6B, *FAA Airport Compliance Manual*, issued on September 30, 2009, (FAA Order 5190.5B or Order) provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to compliance with federal obligations of airport sponsors. The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

The Grant Assurances listed in the Complaint include: Grant Assurance 1, *General Federal Requirements*; Grant Assurance 5, *Preserving Rights and Powers*; Grant Assurance 19, *Operation and Maintenance*; Grant Assurance 22, *Economic Nondiscrimination*; and Grant Assurance 23, *Exclusive Rights*.

Grant Assurance 1, General Federal Requirements

Grant Assurance 1, *General Federal Requirements*, states: “[The airport sponsor] will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project”

Grant Assurance 5, Preserving Rights and Powers

Grant Assurance 5, *Preserving Rights and Powers*, implements the provisions of 49 USC 47107(a), *et. seq.*, and requires, in pertinent part, that a sponsor of a federally obligated airport “...will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will

³ See the Federal Aviation Act of 1958, as amended and recodified, 49 USC 40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110; and the Airport and Airway Improvement Act of 1982, as amended and recodified, 49 USC 47105(d), 47106(d), 47107(k), and 47107(l).

act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor.”

Grant Assurance 19, *Operation and Maintenance*

Grant Assurance 19, *Operation and Maintenance*, of the prescribed sponsor assurances, implements the requirements of 49 USC 47107(a)(7) and (a)(8). It provides, in pertinent part, that the sponsor of a federally obligated airport will operate the airport and all facilities necessary to serve the aeronautical users in a safe and serviceable condition at all times, and in accordance with the minimum standards as required or prescribed by applicable Federal, state and local agencies for maintenance and operation.

FAA Order 5190.6B describes the responsibilities under Grant Assurance 19, *Operation and Maintenance*, as follows: “[A] fundamental obligation on the sponsor is to keep the airport open for public use.” Further,

“[It] requires the sponsor to protect the public using the airport by adopting and enforcing rules, regulations, and ordinances as necessary to ensure safe and efficient flight operations. Accordingly, the sponsor is more than a passive landlord because the assurance federally obligates it to maintain and operate the aeronautical facilities and common-use areas for the benefit of the public.” (FAA Order 5190.6B p. 7-6).

It also explains that this includes responsibility for warnings, safe operations, and local rules and procedures. It provides, in pertinent part, that:

“*Safe Operations*. The sponsor should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure safety⁴ ... of aircraft operations and to protect the public using the airport.

“*Local Rules and Procedures*. One of the most important functions of local regulations is to control the use of the airport in a manner that will eliminate hazards to aircraft and people and structures on the ground.” (FAA Order 5190.6B, pp. 7-7, 7-8, and 7-9).

Grant Assurance 22, *Economic Nondiscrimination*

Grant Assurance 22, *Economic Nondiscrimination*, requires the owner of any airport developed with federal grant assistance to make the airport available as an airport for public use on reasonable terms without unjust discrimination to all types, kinds, and classes of aeronautical activities. Grant Assurance 22, *Economic Nondiscrimination*, deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. Further, Grant Assurance 22 provides that a sponsor of a federally obligated airport:

⁴ Safety - The state in which the risk of harm to persons or property damage is acceptable. See, FAA Order 8040.4B, *Safety Risk Management Policy*, May 2, 2017, p. A-2.

“* * *

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

* * *

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

FAA Order 5190.6B describes the responsibilities assumed by the owners or sponsor of a public use airport developed with Federal assistance under Grant Assurance 22, *Economic Nondiscrimination*. Among these responsibilities is the obligation to treat users making the same or similar use of the airport in a uniform manner those and to make all airport facilities and services available on reasonable terms without unjust discrimination. (FAA Order 5190.6B, Chapter 9).

Grant Assurance 23, *Exclusive Rights*

Grant Assurance 23, *Exclusive Rights*, of the sponsor grant assurances, implements the provisions of 49 USC 40103(e) and 47107(a)(4), and requires that 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... .”

FAA Order 5190.6B, Chapter 8, explains the development of the statutory prohibition against exclusive rights into FAA policy:

The FAA considers it inappropriate to provide Federal funds for improvements to airports where the benefits of such improvements will not be fully realized by all users due to the inherent restrictions of an exclusive monopoly on aeronautical activities. (FAA Order 5190.6B, p.8-4.)

While public-use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, the FAA has taken the position that the application of any unreasonable requirement or any standard applied in an unjustly discriminatory manner may constitute the constructive grant of an exclusive right. Courts have found the grant of an exclusive right where a significant burden has been placed on one competitor that is not placed on another. *See e.g. Pompano Beach v. FAA*, 774 F2d 1529, 1532, 1544 (11 Cir, 1985).

The FAA has provided exclusive rights guidance in FAA Advisory Circular (AC) 150/5190-6 *Exclusive Rights at Federally-Obligated Airports*, January 4, 2007, stating:

An exclusive rights violation can occur through the use of leases where, for example, all the available airport land and/or facilities suitable for aeronautical activities are leased to a single aeronautical service provider who cannot put it into productive use within a reasonable period of time, thereby denying other qualified parties the opportunity to compete to be an aeronautical service provider at the airport. An airport sponsor's refusal to permit a single FBO to expand based on the sponsor's desire to open the airport to competition is not a violation of the grant assurances. Additionally, an airport sponsor may exclude an incumbent FBO from participating under a competitive solicitation in order to bring a second FBO onto the airport to create a more competitive environment. AC 150/5190-6, Section 1.3(b)(3).

Federal Law

Sherman Anti-Trust Act, 15 USC 1 *et. seq.*,

The Sherman Anti-Trust Act states, "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." (15 USC 1, *et. seq.*)

The FAA Airport Compliance Program

The FAA discharges its responsibility for ensuring airport owners' compliance with their federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the contractual obligations an airport owner accepts when receiving federal grant funds or the transfer of federal property for airport purposes. These obligations are incorporated in grant agreements and instruments of conveyance in order to protect the public's interest in civil aviation and to ensure compliance with Federal laws.⁵ The FAA Airport Compliance Program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' federal obligations and the public's investment in civil aviation.

The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that the public interest is being served. FAA Order 5190.6B establishes

⁵ The Airport Compliance Program is administered by FAA's Office of Airport Compliance and Management Analysis (ACO-100). The Airport Compliance Division oversees the Airport Compliance Program. The division holds primary responsibility for interpreting, recommending, and developing policies and resolving matters that involve the federal obligations of airport sponsors. It also adjudicates formal complaints and FAA-initiated investigations under 14 CFR part 16 and monitors airport sponsor compliance with limits on the use of airport revenue.

the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition of receiving a grant of Federal funds or the conveyance of Federal property for airport purposes.

Order 5190.6B analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of those assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel. The FAA Compliance program is designed to achieve voluntary compliance with federal obligations accepted by owners and operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will determine whether an airport sponsor is *currently* in compliance with the applicable federal obligations. The FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations.⁶

Enforcement procedures regarding airport compliance matters are located in the FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings (14 CFR part 16).

The Complaint Process

Under 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complaint shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. The complaint shall also describe how the complainant was directly and substantially affected by the things done or omitted by the respondents (14 CFR § 16.23(b)(3,4)). If these statements provide a reasonable basis for further investigation, the FAA will investigate the complaint. In rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided. Each party shall file documents it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance.

Part 16 further provides that the burden of proof is on the complainant to show noncompliance with a statute, regulation, order, agreement, or document of conveyance (14 CFR § 16.23(k)(1)). The proponent of a motion (including a motion to dismiss, or for summary judgment), request, or order has the burden of proof (14 CFR § 16.23(k)(2)). Additionally, a party who has asserted an affirmative defense has the burden of proving the affirmative defense (14 CFR § 16.23(k)(3)). This standard burden of proof is consistent with the Administrative Procedure Act (APA) and Federal case law (5 USC 556(d) ("Except as otherwise provided by statute, the proponent of a rule or order has the

⁶ See e.g., *Wilson Air Center v. Memphis and Shelby County Airport Authority*, FAA Docket No. 16-99-10, Final Agency Decision, August 30, 2001; *affirmed by Wilson Air Center, LLC v. FAA*, 372 F.3d 807 (6th Cir. 2004).

burden of proof."); *see also* *Director, Office of Worker's Compensation Programs, Dept. of Labor v. Greenwich Collieries*, 512 U.S. 267, 272 (1994); *Air Canada v. Dept of Transp.*, 148 F.3d 1142, 1155 (D.C. Cir. 1998)).

The Director's Determination will include "findings of fact and conclusions of law, accompanied by explanations and based upon all material issues of fact, credibility of the evidence, law and discretion presented on the record, together with a statement of the reasons therefor." (14 CFR § 16.31(b)(1)). 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, within 30 days after the date of service of the initial determination (14 CFR § 16.33(c)). Additionally, if no appeal is filed within the time period, the Director's Determination becomes the final decision and order of the FAA without further action and is not judicially reviewable (14 CFR § 16.33(h)). 14 CFR § 16.247(a) provides for judicial review of the Associate Administrator for Airports' final decision and order.

V. ANALYSIS AND DISCUSSION

Issues

Upon review of the allegations and the relevant airport-specific circumstances summarized above, the FAA has determined that five issues require analysis to provide a complete review of the St. Lucie's compliance with applicable Federal law and policy. The issues are analyzed in each of Robinson's Counts and St. Lucie's responses.

1. Is St. Lucie violating Grant Assurance 1, *General Federal Requirements*, by refusing to grant Robinson the right to construct and rent the hangars resulting in predatory conduct and an illegal restraint of trade in violation of 15 USC 1, *et. seq.*? (Count I of the Complaint).
2. Is St. Lucie violating Grant Assurance 5, *Preserving Rights and Powers*, by repeatedly denying Robinson the right to develop open, unused and developable land at FPR? (Count II of the Complaint).
3. Is St. Lucie violating Grant Assurance 19, *Operation and Maintenance*, by precluding construction of hangars (by denying Robinson's initial application and not acting upon its second request) when there is an established need for hangar space and denying Airport users the ability to service medium-sized jets and large helicopters? (Count III of the Complaint).
4. Is St. Lucie violating Grant Assurance 22, *Economic Nondiscrimination*, by limiting a kind or class of aeronautical use of FPR, when it allegedly refused to permit hangar construction, failed to negotiate the hangar project in good-faith, and refused to allow the construction of hangars on usable airport land? (Count IV of the Complaint).
5. Is St. Lucie violating Grant Assurance 23, *Exclusive Rights*, by denying Robinson the right to construct and lease hangars in competition with St. Lucie and APP Jet Center? (Count V of the Complaint).

Issue 1 - Is St. Lucie violating Grant Assurance 1, *General Federal Requirements*, by refusing to grant Robinson the right to construct and rent the hangars resulting in predatory conduct and an illegal restraint of trade in violation of 15 USC 1 *et. Seq.*? (Count I of the Complaint).

In its Complaint, Robinson argues that St. Lucie's refusal to grant Robinson the right to construct and rent the hangars is predatory conduct and an illegal restraint of trade in violation of 15 USC § 1, *et. seq.* (Item 1, ¶¶22 and 29). Robinson claims that by violating the Sherman Anti-Trust Act, 15 USC § 1 *et. seq.*, St. Lucie violated Grant Assurance 1, *General Federal Requirements* (Item 1, ¶¶29-30).

In its Answer/Motion to Dismiss⁷, St. Lucie argues, "the FAA is not the proper forum to adjudicate a Sherman Act claim . . .," and "Claim 1⁸ should be dismissed for lack of jurisdiction." Additionally, St. Lucie states, "the FAA's jurisdiction under Part 16 is limited to matters arising from certain statutes governing airport development and operations," and "the FAA has properly declined to review constitutional claims and those arising under state, local, or other laws that are not among those listed in Part 16." (Item 7, p.8)

The Director has previously determined that 14 CFR Part 16 is not the appropriate forum for alleged violations of the Sherman Anti-Trust Act. (*See Mansfield Heliflight, Inc. v. City of Burlington*, FAA Docket No. 16-14-06, Director's Determination, (September 5, 2017), pp.18-19 (*Mansfield*) *aff'd* Final Agency Decision, (June 22, 2018), *citing*, *Gina Michelle Moore, individually, and d/b/a War bird Sky Ventures, Inc. v. Sumner County Regional Airport Authority*, FAA Docket No. 16-07-16, Director's Determination, (February 27, 2009) p. 18, *aff'd* Final Decision and Order (July 13, 2010)).

In keeping with the precedent set in *Mansfield*, the Director finds that Robinson's claim that St. Lucie violated Grant Assurance 1, *General Federal Requirements*, through its alleged restriction of trade in violation of the Sherman Anti-Trust Act is outside of the jurisdiction of this proceeding. Accordingly, St. Lucie's Motion to Dismiss Count I is granted.

Issue 2 - Is St. Lucie violating Grant Assurance 5, *Preserving Rights and Powers*, by repeatedly denying Robinson the right to develop open, unused and developable land at FPR? (Count II of the Complaint).

Robinson alleges that St. Lucie repeatedly denied Robinson the right to develop open, unused and developable land at the Airport constituting a violation of Grant Assurance 5, *Preserving Rights and Powers* (Item 1, p.9, ¶33). Robinson states that despite its

⁷ St. Lucie filed its Answer together with a Motion to Dismiss Counts I and III of the Complaint, which was not consistent with 14 CFR § 16.26(a). This rule states, "In lieu of an answer, the respondent may file a motion to dismiss the complaint . . ." (emphasis added). The Director did not act upon the Motion to Dismiss within 30 days from when the answer to the motion was due and, in accordance with 14 CFR § 16.26(b)(5), required St. Lucie to file an Answer to the Complaint within 20 days.

⁸ The Director interprets the Respondent's reference to "Claim 1" as Count 1 of the complaint.

submission of plans, the expenditure of over \$20,000, and multiple meetings with St. Lucie and APP Jet Center, its proposal ultimately met with resistance and disapproval (Item 1, p. 5, ¶13).

St. Lucie answers that it never denied Robinson the ability to develop land at FPR (Item 7, p. 9). St. Lucie states that the County has a process under its county code where the County holds a pre-application meeting with the proposed developer, followed by the developer submitting a site plan for the Development Review Committee (Committee) to consider (Item 7, Exhibit 6). Under this code, if the Committee “[i]nform[s] the applicant ... in writing of the deficiencies of the application,” the applicant shall notify the County whether it intends to address the cited deficiencies. If the developer does not respond to the deficiencies within 120 days, the process must restart and an additional fee must be paid (Item 7, Exhibit 6, § 11.02.03(A)(4)(b)).

The County followed that process to review Robinson’s original proposed hangar development. Robinson submitted a site plan for the first single hangar sublease/construction, however St. Lucie argues that Robinson failed to follow the development process under the County’s Land Development code. Robinson did not attend its meeting with the Committee (Item 7, Exhibit 7) and never responded to the deficiencies identified in the Committee’s report (Item 7, Exhibit 5, ¶ 16).

Regarding its second proposal for development, Robinson never submitted an official site plan for a development along Tailwind Drive, and, despite the County’s encouragement, did not participate in the public process for amending the Airport Master Plan and Airport Layout Plan (Item 7, Exhibit 5, ¶¶ 20-25).

FAA Order 5190.6B describes the responsibilities assumed by the owners of public-use airports developed with federal assistance under Grant Assurance 5, *Preserving Rights and Powers*. Among these is the responsibility for enforcing rules, regulations, and ordinances as are necessary to ensure the safe and efficient operation of the airport (FAA Order 5190.6B, p.7-6). *See, Ricks v. Millington Municipal Airport*, FAA Docket No. 16-98-19, Director’s Determination (July 1, 1999), p.3. (*Ricks*). The sponsor’s consideration of an application should result in a clear process and provide reasons for its decision to deny a user’s proposal. *See, Bodin v. County of Santa Clara*, FAA Docket No. 16-11-06, Final Agency Decision and Order (August 12, 2013), p.41. (*Bodin*).

The Director finds that St. Lucie developed rules, regulations, or ordinances necessary to ensure the safe and efficient operation of the airport as set forth in FAA Order 5190.6B and in the precedent espoused *Ricks*. (Item 7, pp. 2 and 9). The Director further finds that, as in *Bodin*, St. Lucie utilized a transparent and coherent process to consider applications for development such as Robinson’s and it applied that process in its consideration of the development plan Robinson offered for the sublease of land adjacent to its Hangar 8A and in its consideration of Robinson’s offer to develop land on Tailwind Drive.

The Director finds that Robinson failed to follow up with its plans to develop the site adjacent to hangar 8W and, in fact, Robinson abandoned this plan. Robinson has been

unresponsive in the process and cannot now claim St. Lucie is violating Grant Assurance 5, *Preserving Rights and Powers*. The Director finds that, similar to the complainant's actions in *Mansfield*, Robinson failed to provide input and failed to provide a development plan to St. Lucie's Master Plan or ALP with a clear understanding of how the Tailwind Drive land would be used. Robinson had several chances to present this information but failed to avail itself of these opportunities (*Mansfield*, p.22). Robinson may not complain that its abandoned attempts to acquire the single hangar lease and/or its failure to assist in the revision of the FPR Master Plan to develop Tailwind Drive somehow resulted in St. Lucie's violation of its grant assurances.

The Director finds that St. Lucie is not presently in violation of Grant Assurance 5, *Preserving Rights and Powers*, by allegedly repeatedly denying Robinson the right to develop open, unused and developable land at FPR.

Issue 3 - Is St. Lucie violating Grant Assurance 19, *Operation and Maintenance*, by precluding construction of hangars (by denying Robinson's initial application and not acting upon its second request) when there is an established need for hangar space and denying Airport users the ability to service medium-sized jets and large helicopters? (Count III of the Complaint).

Robinson alleges that St. Lucie refused to allow hangar construction when there is an established need for hangar space, and denying Airport users the ability to service medium-sized jets and large helicopters is a violation of Grant Assurance 19, *Operation and Maintenance* (Item 1, p.10, ¶¶34-36). Robinson explains that "in December 2017, Robinson applied to the City (*sic*, County) for approval to construct four new hangars on 8.8 acres of vacant land as part of a potential multi-million-dollar, multi-phase development project at the Airport." (Item 1, p.6, ¶15). Robinson sought to build four hangars on Tailwinds Drive designed to service medium-sized jets as phase one of its proposed project. This would be followed by the construction of additional hangars in phase two, construction of an FBO and the development of industrial sites in phase three (described by Robinson as the "Development Plan"). (*Id.*) Robinson claims that it submitted a site plan that was "again disapproved" as not consistent with the controlling Airport Layout Plan (Item 1, p.6, ¶16). Robinson alleges "[St. Lucie] has failed or refused to provide an alternative to Robinson's suggestions which would allow Robinson to develop otherwise vacant sites at the Airport which are not in use and for which no immediate development plans exist." (Item 1, p.7, ¶17).

In its Answer, St. Lucie argues that the Director should "dismiss Count 3 for failure to state a claim upon which relief may be granted . . ." (Item 7, p.8). It explains that Robinson's allegations concern leasehold areas, which are not subject to Grant Assurance 19, *Operation and Maintenance*. The parcel that Robinson originally identified for its proposed hangar development is adjacent to two existing hangars on APP's leasehold and functions as a storm water retention swale and utility access corridor (Item 7, Exhibit 5, ¶ 7). The County anticipated receiving Robinson's proposal to develop that parcel, but made clear from the outset of negotiations that Robinson would need to design, obtain

permits, and construct drainage improvements necessitated by its proposed hangar (Item 7, Exhibit 5, ¶ 8; Item 7, Exhibit 4-1; Item 1, Exhibit 5). Robinson agreed to and initially attempted to meet those terms, but abandoned its plans to develop the parcel because it decided that the available space between APP's pre-existing lease lines was too small (Item 7, Exhibit 4-10). St. Lucie states that Robinson's dissatisfaction with the size of the vacant parcel does not involve Grant Assurance 19, *Operation and Maintenance*, nor does St. Lucie's insistence that Robinson provide adequate storm water management facilities to support its proposed development (Item 7, p.12). St. Lucie supports these claims by citing *Desert Wings v. City of Redmond*, FAA Docket No. 16-09-07, Director's Determination, (November 10, 2010) (*Desert Wings*), p. 21., *aff'd*, Final Agency Decision (May 25, 2012). St. Lucie argues that none of Robinson's allegations raise a "claim that [St. Lucie] is not maintaining *aeronautical* facilities at the Airport in a safe and serviceable condition." (Emphasis original) (*Id.*). St. Lucie concludes that Count 3 fails to state a claim on which relief may be granted and should be dismissed.

The Director disagrees with St. Lucie's interpretation of the precedent in *Desert Wings* and its argument that Grant Assurance 19, *Operation and Maintenance*, applies only to aeronautical or movement areas of an airport. The FAA has ruled on alleged violations of Grant Assurance 19, *Operation and Maintenance*, as it applies to taxiways in non-movement areas. *See, Roadhouse Aviation LLC v. City of Tulsa*, FAA Docket No. 16-05-08, Final Decision and Order, (June 26, 2007); as it applies to a car detailing business in a hangar, *Hicks v. City of Mount Airy*, FAA Docket No. 16-15-07, Director's Determination, (April 29, 2016); as it applies to off-airport construction, *Paskar v. Port Authority of New York and New Jersey*, FAA Case No. 16-11-04, Director's Determination, (September 27, 2012), *aff'd*, Final Agency Decision, (June 17, 2015); and as it applies to wildlife activity and off-airport land-fills. *Town of Fairview v. City of McKinney*, FAA Docket 16-99-04, Final Decision and Order, (January 23, 2001)

St. Lucie quotes *Desert Wings* as stating, "On its face, Grant Assurance 19 'applies to aircraft movement areas' and generally, 'does not extend to leasehold areas.'" (Item 7, p. 11, citing *Desert Wings*, p. 21). The Director explicitly states in that case, "Grant Assurance 19 applies to all airport aviation facilities shown on an Airport Layout Plan. These include common-use areas such as runways, taxiways, and public aprons, as well as their associated lighting and *drainage structures*." [*emphasis added*] (*Desert Wings*, pp.20-21). The drainage swale across the property adjacent to hangar 8W abuts and drains water from taxiway E, and, thus, is included as an "aviation facility" subject to Grant Assurance 19, *Operation and Maintenance* (Item 7, Exhibit 2, Attachment A). The Director is not persuaded by St. Lucie's argument that Grant Assurance 19, *Operation and Maintenance*, applies only to airport movement areas. Accordingly, the Director denies St. Lucie's motion to dismiss Count III of the Complaint.

St. Lucie also asks to deny Count III because there is no evidence that it is neglecting to maintain aeronautical facilities at the Airport. St. Lucie argues that the St. Lucie County Development Review Committee's report shows that the County analyzes and conducts storm water management at the Airport in a serious manner (Item 7, p.12; Item 7, Exhibit 4-3).

Robinson replies that St. Lucie and APP Jet Center are not willing to allow future development, (Item 11, p. 9), and that the lease between St. Lucie and APP Jet Center places a duty on St. Lucie "to prevent any use of the Premises which would materially interfere with or materially adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard." (Item 18, p. 10 at fn 8).

Robinson further alleges in its Reply dated July 17, 2018, that St. Lucie is violating Grant Assurance 19, *Operation and Maintenance*, by failing to improve the vacant parcel's drainage facilities in order to "make [it] suitable to lease" for Robinson's proposed hangar (Item 11, p. 13).

Under Grant Assurance 19, *Operation and Maintenance*, a proposed developer of a leasehold area "assumes the ultimate responsibility to resolve site conditions of its leasehold if it wants to construct its improvements" (*Desert Wings*, p. 21). The Director rejected Desert Wings' claim that the City of Redmond violated Grant Assurance 19, *Operation and Maintenance*, by not correcting a leasehold's "flooding due to storm water runoff and poor drainage." Robinson asserts that a gravel road constructed by the County has increased storm water runoff into the vacant parcel (Item 11, p. 13).

St. Lucie argues that whether the road has increased storm water runoff into the vacant parcel is irrelevant because the very purpose of that parcel is to hold storm water runoff (Item 7, Exhibit 2, ¶¶ 12-14). St. Lucie states that the vacant parcel is functioning as intended, and drainage improvements to that parcel would become necessary only if a developer proposed to build on it (*Id.*). St. Lucie denies it violated Grant Assurance 19, *Operation and Maintenance*, by requiring Robinson to make the improvements that are necessary for its proposed development of the property (Item 7, pp. 11-12).

The Director agrees with the precedent set forth in *Desert Wings*, and with St. Lucie's argument. St. Lucie should not be made to improve the parcel adjacent to Hangar 8W for the benefit of Robinson when that parcel was always intended to be a drainage swale. It is disingenuous for Robinson to ask to lease property identified as a "drainage swale," submit a site plan that does not adequately resolve the drainage issue so as to erect a hangar, and then blame St. Lucie for not having a drainage plan that would accommodate a hangar being built at that location.

Robinson attached pictures of flooding inside its existing hangar on APP's leasehold (hangar 8W). In 2013, St. Lucie investigated the complaint and determined that APP Jet Center and Robinson were involved in a landlord-tenant dispute regarding which entity, between the two of them, was responsible to rectify that issue (Item 20, Exhibit 10). St. Lucie's policy is that tenants or subtenants at the Airport are responsible for maintaining storm water facilities within their leaseholds (Item 7, Exhibit 2, Attachment A, pp. 12, 14, and 26). Robinson complains that its existing hangar floods during periods of heavy rain, and submits unauthenticated photos to verify this allegation. This is irrelevant to this proceeding. In addressing this issue, a question to resolve is whether Robinson complied with St. Lucie's requirements to submit a successful site plan. In this case, St. Lucie found that the site plan was inadequate in that it did not provide a method to deal with the drainage problem at this location. The Director concludes that it is beyond the scope of

this proceeding to address Robinson's claims against St. Lucie related to flooding of its existing hangar. The Director will address only Robinson's claims concerning its alleged inability to develop a new hangar on the adjacent vacant parcel (Item 1, ¶¶ 27-60; Item 11, pp. 12-13).

The Director finds that St. Lucie is not violating Grant Assurance 19, *Operation and Maintenance*, by allegedly precluding construction of hangars (by denying Robinson's initial application and not acting upon its second request) when, as stated by Robinson, there was an established need for hangar space and denying Airport users the ability to service medium sized jets and large helicopters. The very purpose of Grant Assurance 19 is to insure that the sponsor operates airport facilities in a safe and serviceable condition and in accordance with the minimum standards as may be required under law for maintenance and operation. Robinson has provided no evidence that St. Lucie is not operating the facilities in a safe and serviceable condition or contrary to minimum standards for maintenance and operation under law. Therefore, Robinson's allegation that the denial by St. Lucie to lease and develop airport property when there is a need for hangar space, which allegedly denies airport users the means to service jets and helicopters, does not constitute a violation of Grant Assurance 19.

Issue 4 - Is St. Lucie violating Grant Assurance 22, *Economic Nondiscrimination* by limiting a kind or class of aeronautical use of FPR, when it allegedly refused to permit hangar construction, failed to negotiate the hangar project in good-faith, and refused to allow the construction of hangars on usable airport land? (Count IV of Complaint).

Robinson alleges that "[d]espite the . . . communicated goals and intent of [St. Lucie to expand the airport as set forth in its Master Plan], it has over the past two and one half (2.5) years discriminated against [Robinson] and taken active measures to limit aviation related services to the public in accordance with its own goals as set forth in the Plan" (Item 1, p.4). Robinson points out that, as a sponsor receiving AIP funds, St. Lucie is obligated to make the Airport available for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport (Item 1, p.10, ¶38). Robinson alleges that St. Lucie actively limited a kind or class of aeronautical use of the Airport and has not demonstrated the limitation is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public (Item 1, p.10, ¶39).

Robinson goes on to say that St. Lucie has refused to permit hangar construction that would provide utilization of medium-sized aircraft, large helicopters and aviation services to the public (Item 1, p.10, ¶40). Robinson alleges that this refusal is driven by St. Lucie's impermissible desire to usurp public opportunities for its own benefit by building its own hangars or to protect the interests of the existing, sole FBO, APP Jet Center (Item 1, p.11, ¶41). Robinson claims operating the Airport for aeronautical use is

St. Lucie's primary obligation. Part of this obligation is to provide the opportunity for leaseholders to develop airport property for aeronautical use (Item 1, p.11, ¶42). St. Lucie has an obligation to make suitable areas or space available on reasonable terms to those who are willing and otherwise qualified to offer the needed services (Item 1, p.11, ¶43).

Robinson claims there is a need for hangar space at FPR and that it has demonstrated it is qualified to offer the needed services (Item 1, p.11, ¶44). Robinson alleges it submitted a proposal to build hangars on reasonable and favorable terms and St. Lucie failed to negotiate the hangar project in good faith (Item 1, p.11, ¶45). Robinson states that attempting to restrict development at the airport, which only benefits APP Jet Center and St. Lucie and disregards the public's needs, is inconsistent with St. Lucie's federal obligations and contrary to Robinson's rights (Item 1, p.11, ¶46). Robinson alleges that St. Lucie has purposefully refused to allow the construction of hangars on usable land within the borders of the airport in contravention of the requirements of the FAA and the assurances St. Lucie made under AIP (Item 1, p.11, ¶47). Robinson concludes that St. Lucie's refusal is an unreasonable denial of access to aeronautical development and a violation of Grant Assurance No. 22, *Economic Nondiscrimination* (Item 1, p.12, ¶48).

St. Lucie answers that Robinson provided no evidence to support the allegation that St. Lucie unreasonably denied access to aeronautical development in violation of Grant Assurance 22, *Economic Nondiscrimination* (Item 7, p. 12). St. Lucie further states, "Robinson's inability to develop its proposed hangar stems not from any discrimination by [St. Lucie], but instead from Robinson's constantly changing plans and its refusal to comply with the Land Development Code or to participate in the process to amend the Airport Master Plan and Airport Layout Plan" (Item 7, p.13).

The Director notes that under Grant Assurance 22, the sponsor of a federally obligated airport must "make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport" (FAA Order 5190.6B, App. A at 10). Although Grant Assurance 22(a) prohibits unreasonable denial of access to an airport, "[f]ailing to conclude successful negotiations is not, in and of itself, a violation of Grant Assurance 22" (*BMI Salvage Corp. v. Miami-Dade County*, FAA Docket No. 16-05-16, Final Decision and Order on Remand, (April 15, 2011) (*BMI*), p. 58, pet. for review denied, 488 F. App'x 341 (11th Cir. 2012)). When there is evidence that a lease applicant is "hampering [its] own efforts" by failing to be "responsive to the requirements of the Airport" or by proposing development that is "not consistent with the Airport's development plan," the FAA will not find a violation of Grant Assurance 22(a) (*BMI*, pp. 57-59).

The Director finds sufficient similarities between the extant case and *BMI* so as to provide guidance. Both complainants argue that the respondents failed to offer alternative development sites when the initial site failed. In *BMI*, it was because the site was not economically feasible, (*Id.* p.58), and Robinson, because the site was not sufficiently large (Item 7, p.14). Both complainants allege that the respondents failed to negotiate or negotiated in bad faith (*BMI*, p.58; Item 1, p.11, ¶45). On remand in *BMI*, the Associate

Administrator found that while the complainant could propose an alternative development site the sponsor was under no obligations to provide a specific tract of land or specific facilities or infrastructure. (*BMI*, p. 58). Here, the Director finds that St. Lucie had no duty under its county code or FAA guidance to offer alternative development sites to Robinson. Robinson abandoned its plans to develop the small parcel adjacent to hangar 8W and failed to provide input to updating the Master Plan and ALP for development of the Tailwind Drive property.

Grant Assurance 22, *Economic Nondiscrimination* does not require the airport sponsor to offer certain convenience or a certain level of cost effectiveness to its tenants and airport users. See *Asheville Jet, Inc. d/b/a Million Air Asheville v Asheville Regional Airport Authority; City of Asheville, North Carolina: and Buncombe County*, FAA Docket No. 16-08-02, Director's Determination, (October 1, 2009), p. 18; See *BMI*, p.33.

While St. Lucie is obligated to make airport property available for public use on reasonable terms, it is not required to avail the lot adjacent to Hangar 8W without imposing requirements for adequate storm water drainage and non-encroachment upon adjacent leaseholds. In the case of the Tailwind Drive request, St. Lucie is not required to offer the property to Robinson without the property being evaluated and approved in the ALP and the Master Plan. It would not have been an inordinate delay for the Tailwind Drive property to be included into the Airport's scheme of development - the Master Plan was being modified at the time Robinson wanted to acquire a leasehold on Tailwind Drive. Meetings were being held to consider reclassification of land so as to be developed for airport purposes. It was Robinson who elected to not attend the meetings and by not submitting proposals for inclusion of the Tailwind Drive property as development land. These were required either by the County's established Land Development Code or under its federal obligations in updating the airport's ALP.

The Director finds that St. Lucie is not violating Grant Assurance 22, *Economic Nondiscrimination*, by limiting a kind or class of aeronautical use of FPR, refusing to permit hangar construction that would provide utilization of medium-sized aircraft, large helicopters and aviation services to the public, failing to negotiate the hangar project in good-faith, and refusing to allow the construction of hangars on usable land within the borders of FPR. St. Lucie did not unjustly discriminate against Robinson when it presently has only one FBO, when it required compliance with its Land Development Code or the procedures for updating the Master Plan and ALP.

Issue 5 - Is St. Lucie violating Grant Assurance 23, *Exclusive Rights*, by denying Robinson the right to construct and lease hangars in competition with St. Lucie and APP Jet Center? (Count V of the Complaint)

Robinson states that APP Jet Center currently operates the only FBO at Airport and proposes to operate its own FBO and alleges that the addition of a second FBO would not require the reduction of space leased. Robinson alleges that APP Jet Center, as the sole FBO at the Airport, has the exclusive right to the sale of aviation petroleum products. Robinson proposed an additional FBO and fuel sales station and alleges that St. Lucie denied it the right to construct and lease hangars, and operate an FBO in competition with

St. Lucie and APP Jet Center. Robinson alleges St. Lucie's refusal to permit Robinson to construct and lease hangars or operate an FBO in conjunction with Robinson's proposal is a violation of Grant Assurance No. 23, *Exclusive Rights* (Item 1, ¶¶54-60).

St. Lucie answers that it has demonstrated its intent to attract another FBO and is taking steps to do so by attending trade shows and reaching out to prospective FBOs (Item 7, Exhibit 2, ¶5). It says it has not entered into any express or implied agreement to protect APP Jet Center from competition, but rather has reserved its "right to grant similar privileges to another lessee or other lessees on other parts of the Airport" (Item 7, Exhibit 3, ¶24). St. Lucie asserts that it "has not denied Robinson the ability to develop a hangar at the Airport. Robinson simply failed to submit the information required by the Land Development Code, and [St. Lucie] is 'under no obligation to provide land to a current or prospective tenant that [does] not submit a development plan for the land in question'" (Item 7, p. 18, *quoting, Lytton v. Sheridan County Board of County Commissioners*, FAA Docket No. 16-01-16, Director's Determination, (December 20, 2002), p.13).

Robinson replies that St. Lucie is not actively seeking an additional FBO as demonstrated by the lack of evidence naming trade shows it attended or entities asked to become FBOs. Robinson avers further substantiation saying, "the economy is booming, hanger space in South Florida is at an all-time low and yet no new hangers have been built in recent history at the airport and APP [Jet Center] has existed as the sole, monopolistic FBO" (Item 11, p.14).

St. Lucie rebuts this, stating there is no evidence of an exclusive rights violation. St. Lucie states that the evidence shows that Robinson twice abandoned its development plans despite St. Lucie's responsiveness and engagement. The Director agrees with St. Lucie that there is no evidence that St. Lucie's actions amount to a deliberate attempt to prevent Robinson from establishing its business (Item 20, p. 4).

The Director notes that an airport sponsor may not grant a special privilege or a monopoly to anyone providing aeronautical services on the airport or engaging in an aeronautical use. The intent of this restriction is to promote aeronautical activity and protect fair competition at federally obligated airports (FAA Order 5190.6B, ¶8.1). An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege or right. An exclusive right may be conferred either by express agreement, by imposition of unreasonable standards or requirements or by another means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or right, would be an exclusive right and in conflict with Grant Assurance No. 23, *Exclusive Rights* (FAA Order 5190.6B, ¶8.2. *Footnote citation*, 30 FR 13661; *see also* AC 150/5190.6, *Exclusive Rights at Federally-Obligated Airports*, (January 4, 2007), p.8, ¶1.1.f).

The fact that a single business or enterprise may provide most or all of the on-airport aeronautical services is not, in itself, evidence of an exclusive rights violation. An exclusive rights violation is the denial by the airport sponsor to afford other qualified parties an opportunity to be an on-airport aeronautical service provider. . . . The airport sponsor is not required to

accept all qualified service providers without limitation. The fact that only one qualified party pursued an opportunity in a competitive offering would not subject the airport sponsor to an exclusive rights violation. (FAA Order 5190.6B, ¶8.9.b.)

Where the sponsor has not entered into an express agreement, commitment, understanding, or an apparent intent to exclude other reasonably qualified enterprises, the FAA does not consider the presence of only one provider engaged in an aeronautical activity as a violation of the exclusive rights prohibition. The FAA will consider the sponsor's willingness to make the airport available to additional reasonably qualified providers (FAA Order 5190.6B, ¶8.9.b. *Citing*, 49 USC 40103(e) and 47107(a)(4)).

St. Lucie has not entered into an express agreement, commitment, understanding, or an apparent intent to exclude other reasonably qualified enterprises from being an FBO at FPR (Item 7, p18). To comply with the spirit of this requirement, St. Lucie has reserved its "right to grant similar privileges to another lessee or other lessees on other parts of the Airport." (*Id.*) The lease between St. Lucie and APP Jet Center has a specific "Lease Not Exclusive" clause that states, "the rights granted under this Lease are non-exclusive and the Lessor herein reserves the right to grant similar privileges to another lessee or other lessees on other parts of the Airport." (Item 7, Exhibit 3, p.31, ¶24).

Despite Robinson's claim, there is nothing in the record to indicate that St. Lucie and/or APP Jet Center are "in competition" with Robinson. There is no proof that St. Lucie and APP Jet Center acted together to prevent Robinson from acquiring a new leasehold, from building a hangar or from becoming an FBO. In its Reply, Robinson admits that it is not in possession of evidence suggesting that County and APP have entered into an express agreement, commitment or understanding. (Item 18, p. 14) It appears from the record that St. Lucie has afforded Robinson multiple opportunities to present a plan for the development of a leasehold and a hangar on the single piece of property adjacent to hangar 8W and on the parcel of property located on Tailwind Drive (Item 7, Exhibit 2, ¶13; Item 20, Exhibit 10). Robinson abandoned its idea to develop the leasehold adjacent to hangar 8W and it did not pursue any plan to develop Tailwind Drive by submitting plans for the update of the Master Plan and ALP (Item 7, p.11; Item 7, p.14; Item 20, p.1; Item 20, p.7).

St. Lucie's actions requiring Robinson to correct deficiencies in its application are not an intent to protect or benefit any other business already on the Airport. A complainant's failure to provide a sponsor with adequate information upon which to form an agreement to lease land does not result in a sponsor's violation of grant assurances (*Lytton v. Sheridan County Board of County Commissioners*, FAA Docket No. 16-01-16, Director's Determination, (December 20, 2002), p.14 (*Lytton*)). St. Lucie is not obligated to lease space for a commercial aeronautical activity without determining if the activity would be beneficial to the Airport and would meet the minimum standards of that airport. St. Lucie's denial was not a violation of its federal grant assurances.

In *Lytton*, a prospective airport tenant proposed to construct a hangar, but “did not provide a business plan, did not indicate what services [it] would provide, did not identify what rates would be offered, and did not provide proof of insurance or financial backing.” (*Id.* p.11). The airport sponsor denied the application, and the prospective tenant accused the sponsor of attempting to “direct all business to the only FBO on the airport.” (*Id.* p.16).

In *Lytton* the Director found that the sponsor did not deny the application to “protect or benefit any other business already on the Airport.” (*Id.* p.14). Rather, the evidence showed that the applicant “failed to provide the [sponsor] with adequate information upon which to form an agreement to lease land” at the airport (*Id.*). Likewise, Robinson cannot now lay blame on St. Lucie for its failure to correct its application to the Development Review Committee or for its failure to provide input to the FPR Master Plan and ALP, or submit a formal site plan, for the development of Tailwind Drive.

The Director finds no credible evidence in the record supporting Robinson’s claim that St. Lucie permitted APP Jet Center to be an exclusive FBO at the airport. There is no evidence that St. Lucie allowed APP Jet Center to have a monopoly at FPR preventing the development of the Tailwind Drive proposed site. Robinson failed to support its allegation that APP Jet Center had a hold on St. Lucie (Item 11, p.13). Accordingly, the Director finds that APP Jet Center does not hold an exclusive right at FPR resulting in St. Lucie’s violation of Grant Assurance 23, *Exclusive Rights*.

The Director finds that St. Lucie is not violating Grant Assurance 23, *Exclusive Rights*, by denying Robinson the right to construct and lease hangars; Robinson is not in competition with St. Lucie and APP Jet Center for the operation of an FBO, for the sublease of property or for the construction of new hangars.

St. Lucie’s Motion to Dismiss.

St. Lucie filed an Answer and Motion to Dismiss dated June 22, 2018 (Items 6 and 7). The Rules of Practice for Federally-Assisted Airport Enforcement Proceedings provide, “If the Director does not act on the motion to dismiss within 30 days of the date an answer to a motion is due under this section, the respondent shall file an answer to the complaint within the next 20 days” (14 CFR § 16.26(b)(5)). The Director did not act on said motion within the 30 days. However, St. Lucie had already filed its Answer concurrently with its Motion to Dismiss (*see*, footnote 8, *supra*). The Director accepts St. Lucie’s Answer to Complaint and Motion to Dismiss (Item 7) as its answer required to be filed under 14 CFR §16.23(d).⁹ The issues and arguments set forth in St. Lucie’s Motion to Dismiss

⁹ Robinson filed a Reply dated July 17, 2018, to Motion to Dismiss and Affirmative Defenses (Item 10) and Memorandum dated July 17, 2018, in Support of its Reply to St. Lucie’s Motion to Dismiss and Affirmative Defenses (Item 11). Robinson also filed its Reply dated August 30, 2018, to St. Lucie’s Affirmative Defenses (Item 17) and a Memorandum dated August 30, 2018, in Support of its Reply to St. Lucie’s Affirmative Defenses (Item 18). The Director accepts these pleadings as the reply required to be submitted in accordance with 14 CFR §16.23(e). St. Lucie filed a rebuttal dated August 10, 2018, (Item 13) and a rebuttal dated September 7, 2018 (Item 20). The Director accepts these pleadings as the rebuttal required to be filed in accordance with 14 CFR §16.23(f).

were addressed and considered in this Determination. As stated herein, St. Lucie's motion to dismiss Count I is granted, and its motion to dismiss Count III is denied and further analyzed in this decision.

VI. Findings and Conclusions

Upon consideration of the submissions and responses by the parties, the entire record herein, and the applicable law and policy and for the reasons stated above, the Director, Airport Compliance, and Management Analysis, finds that St. Lucie is not currently in violation of Grant Assurance 1, *General Federal Requirements*; Grant Assurance 5, *Preserving Rights and Powers*; Grant Assurance 19, *Operation and Maintenance*; Grant Assurance 22, *Economic Nondiscrimination*; Grant Assurance 23, *Exclusive Rights*; or any other grant violation as alleged in the pleadings.

ORDER

ACCORDINGLY, it is ordered that:

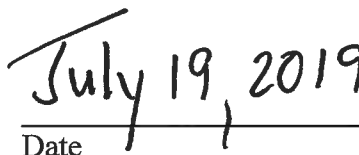
1. St. Lucie's Motion to Dismiss Count I is GRANTED;
2. St. Lucie's Motion to Dismiss Count III is DENIED;
3. The Complaint filed in this matter is hereby dismissed with prejudice;
4. All other motions not specifically granted herein are denied.

RIGHT OF APPEAL

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



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



Date