



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

**Office of Airport Compliance
and Management Analysis**

800 Independence Ave., SW.
Washington, D C 20591

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PART 16 DOCKETS

August 18, 2022

Mr. Mark A. Dombroff
Fox Rothschild LLP
Tysons Pointe
8300 Greensboro Drive
Suite 1000
Tysons, VA 22102

Mr. Randal A. Hayes
City Attorney
City of Ormond Beach
22 South Beach Street
Ormond Beach, FL 32175

Mr. Richard J. Leidl
Richard J. Leidl, P.C.
5335 Wisconsin Avenue, NW, Suite 440
Washington, D.C. 20015

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

Dear Messrs. Dombroff, Hayes, and Leidl:

Enclosed is a **revised** copy of the Final Decision and Order of the Federal Aviation Administration (FAA) with respect to the above-referenced matter, affirming the Director's Determination in FAA Docket No. 16-20-03. The revisions were necessary to correct formatting errors that occurred during the scanning of the signed document.

Based on the record in this proceeding, the FAA finds that the Director's Determination is supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and the FAA policy. The Complainant's Appeal does not have persuasive arguments sufficient to reverse any portion of the Director's Determination.

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

Sincerely,

**LORRAINE M HERSON-
JONES**

Digitally signed by LORRAINE M
HERSON-JONES
Date: 2022.08.18 11:25:23 -07'00'

Lorraine Herson-Jones
Manager, Office of Airport Compliance
and Management Analysis

Enclosure

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 18, 2022, I caused to be emailed and/or to be placed in the Federal Express a true copy of this Final Agency Decision for FAA Docket No. 16-20-03 addressed to:

For the Complainant

Mr. Mark A. Dombroff
Fox Rothschild LLP
Tysons Pointe
8300 Greensboro Drive
Suite 1000
Tysons, VA 22102
MDombroff@FoxRothschild.com

For the Respondent

Mr. Randal A. Hayes
City Attorney
City of Ormond Beach
22 South Beach Street
Ormond Beach, FL 32175
Randy.Hayescormondbeach.org

Mr. Richard J. Leidl
Mr. Richard J. Leidl, P.C.
5335 Wisconsin Avenue, NW, Suite 440
Washington, DC 20015
rleidl@rjleidlpc.com

Copy to:
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FAA Office of Airport Management and Management Analysis (ACO-100)
FAA Eastern Region Airports Division (ASO-600)

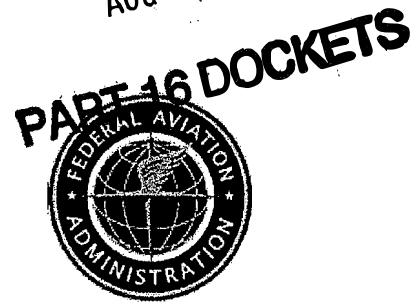


Natalie Curtis
Office of Airport Compliance
and Management Analysis

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

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AUG 16 2022



JEFFREY LEFEVER, PRESIDENT
SUNRISE AVIATION, INC.

APPELLANT,

v.

CITY OF ORMOND BEACH, FLORIDA

APPELLEE.

FAA Docket No. 16-20-03

FINAL AGENCY DECISION

I. INTRODUCTION

This matter is before the Federal Aviation Administration's (FAA) Associate Administrator for Airports on an Appeal filed by Jeffrey Lefever and Sunrise Aviation, Inc. (Sunrise/Appellant). The Appellant challenges the Director's Determination (DD) issued on August 30, 2021, which rejected Sunrise's claims that the City of Ormond Beach (City/Appellee) was not in compliance with Grant Assurance 22, *Economic Nondiscrimination* and Grant Assurance 23, *Exclusive Rights*. (FAA Exhibit 2, Item 1). Sunrise specifically appeals two elements of the DD that are outlined below in Section VII. (FAA Exhibit 2, Item 2, p. 2).

The City in its Reply to the Appeal asserts "Complainant has failed to show that the Director erred in concluding that the City is not in violation of Grant Assurances 22 and 23," and rejects Sunrise's general claim that the City entered into an invalid lease with KOMN Hangar Investors, LLC (KOMN). (FAA Exhibit 2, Item 3).

The Associate Administrator re-examined the record, including the DD, the administrative record, and the pleadings. Based on this reexamination, the Associate Administrator concludes that the DD is supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and FAA policy. The Associate Administrator finds that the City's Appeal does not contain persuasive arguments sufficient to reverse any portion of the DD. Accordingly, the Associate Administrator affirms the DD.

II. SUMMARY OF THE DIRECTOR'S DETERMINATION

On August 30, 2021, the Director of the Office of Airport Compliance and Management Analysis (Director) issued a DD concluding the City was not currently in violation of Grant Assurance 22, *Economic Nondiscrimination* by failing to accept Sunrise's proposal for leasing three parcels of property and instead leasing them to KOMN. The Director found that the City

attempted to reasonably accommodate Sunrise's requests. The Director also found that the City did not deny access, impose unreasonable terms and conditions, or unjustly discriminate against Sunrise. (FAA Exhibit 2, Item 1, pp. 11-12).

The Director also found that the City's actions did not grant an exclusive right to KOMN in violation of Grant Assurance 23, *Exclusive Rights*. The Director noted that Sunrise is already a well-established, dominant service provider with significant leased property and is one of many service providers at Ormond Beach Municipal Airport. The Director found the City did not exclude Sunrise from participating in an on-airport aeronautical activity. (FAA Exhibit 2, Item 1, pp. 12-13).

III. PARTIES

A. Appellant

The Appellant/Sunrise is a Fixed Base Operator (FBO) at Ormond Beach Municipal Airport (OMN/Airport) and has been in business for over 16 years. Sunrise has several leases at the Airport and is a joint lessee with MAC Charter Inc., another FBO, for two sizeable leaseholds 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 2, Item 1, p. 2).

B. Appellee

The City of Ormond Beach is the sponsor of the OMN. OMN is a 1,128-acre, general aviation, reliever airport. 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, K & G Aviation, Kadalec Interiors, Morrow Aviation, Ormond Aircraft Brokers, Ormond Airport Hangars, Rams Aviation, Super Petrel, Tomlinson Aviation, and MAC Charter. 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. OMN is also obligated under the *Surplus Property Act*, as amended, 49 U.S.C. §§ 47151-153. This is because the airport is a former naval aviation base conveyed to the City in 1959 under that Act. (FAA Exhibit 2, Item 1).

IV. PROCEDURAL HISTORY

1. On August 30, 2021, the Director issued the Director's Determination. (FAA Exhibit 2, Item 1).
2. On September 29, 2021, the Appellant filed its Notice of Appeal and Brief of Jeffrey Lefever, President, Sunrise Aviation, Inc. (FAA Exhibit 2, Item 2).

3. On October 18, 2021, the City of Ormond Beach filed its Reply of the City of Ormond Beach, Florida, to the Appeal of Jeffrey Lefever, President, Sunrise Aviation, Inc. (FAA Exhibit 2, Item 3).
4. On December 22, 2021, the Appellant filed a Petition for Leave to File Supplement to Record on the Basis of Newly Discovered Evidence. (FAA Exhibit 2, Item 4).
5. On January 3, 2022, the City of Ormond Beach filed its Opposition Response to the Appellant's Petition for Leave to File Supplement to Record on the Basis of Newly Discovered Evidence. (FAA Exhibit 2, Item 5).

V. 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, pp. 1-2 and FAA Exhibit 1, Item 1, p. 8).
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, Item 1, p. 7 and Exhibit S, p. 1).
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, pp. 1-2).
4. On or about April 15, 2020, KOMN contacted the City about hangar development at KOMN. (FAA Exhibit 1, Item 1, p. 8).
5. On April 15, 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 1, Exhibit P, pp. 1-2 and Exhibit 1, Item 3, pp. 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, p. 8). The City acknowledged Sunrise's interest in the parcels and agreed to draft a lease agreement and related materials. (FAA Exhibit 1, Item 1, Exhibit P, p. 2 and Exhibit 1, Item 3, Exhibits 6, 7, and 11).
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 1, Exhibit P, p. 2 and Exhibit 1, Item 3, p. 9, Exhibits 6, 7, 11).
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, 7, and 8).
9. On May 20, May 21, 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, p. 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, p. 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, p. 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, p. 2).
 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, p. 2).
 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, pp. 2-3).
 15. On June 9 and June 10, 2020, the Airport provided Sunrise with the requested records. (FAA Exhibit 1, Item 1, Exhibit P, pp. 2-3).
 16. On July 9, 2020, Sunrise advised the City that it intended to submit a competing proposal. (FAA Exhibit 1, Item 1, Exhibit P, p. 3, and Exhibit R).
 17. On July 20, 2020, Sunrise advised the City that it 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, p. 11, Exhibit P, p. 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, Exhibit P, p. 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 Request for Proposal (RFP) 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, p. 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, pp. 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, pp. 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, p. 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).

VI. THE APPEALS PROCESS

A party adversely affected by the DD may, in cases such as this, file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination (14 CFR

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

VII. ISSUES

The Appellant raises two issues:

ISSUE 1 - Whether the Director erred in concluding that the City did not deny access or unjustly discriminate in violation of Grant Assurance 22, *Economic Nondiscrimination*.

ISSUE 2 - Whether the Director erred in finding that the City did not grant an exclusive right to KOMN in violation of Grant Assurance 23, *Exclusive Rights*.

PRELIMINARY ISSUE

Sunrise petitioned the Associate Administrator to consider new evidence on appeal for the Final Agency Decision:

1. New Evidence by Sunrise

Sunrise requests to supplement the record with the deposition testimony of Steven Lichliter and Brian Rademacher conducted as part of Jeffrey Lefever's lawsuit against the City of Ormond Beach and KOMN Hangar Investors, LLC, filed in Volusia County, Florida. (FAA Exhibit, Item 4, p. 5). Sunrise claims the deposition testimony "demonstrates there was neither a written nor an unwritten 'first come, first served' policy regarding the leasing of parcels of land at the City of Ormond Beach Municipal Airport". Sunrise contends that "the leasing of the parcel of Airport land at issue in this matter constituted the first time that Mr. Lichliter and the City of Ormond Beach ever applied the so-called 'first come, first served' leasing policy." (FAA Exhibit 2, Item 4, p. 2).

Sunrise also argues:

The deposition testimony also shows that at the time the City of Ormond Beach accepted the draft leases signed by KOMN, the City of Ormond Beach knew or should have known that KOMN was not legally qualified as a limited liability company under Florida law, and, therefore, its purported representatives, Frank Bullard and Paul Holub, lacked the ability to enter into a lease agreement for the property at issue. (FAA Exhibit 2, Item 4, p. 4).

Sunrise states that the depositions of Lichliter and Rademacher were conducted more than 13 months after the record closed. Sunrise claims this new evidence could not have been discovered through the exercise of due diligence prior to the date the evidentiary record closed, and that it has demonstrated good cause as to why the new evidence was not presented to the Director. (FAA Exhibit 2, Item 4, pp. 5-6).

2. City of Ormond Beach's Position on New Evidence

In response to the new evidence, the City opposes the petition for leave to supplement, and requests the FAA to deny the petition. (FAA Exhibit 2, Item 5, pp. 2-5). The City refutes Sunrise's claims and states the information is not new, not relevant, and has already been addressed in the pleadings. The City states, "regardless of whether there was a 'first-come, first served' policy or not, Ormond Beach still gave the Complainant an opportunity to lease the Parcels." (FAA Exhibit 2, Item 5, p. 3). (FAA Exhibit 2, Item 5, p. 6).

3. Associate Administrator's Analysis of New Evidence on Appeal

The FAA's process for accepting a new issue or evidence in an appeal or reply to an appeal is stated in 14 CFR § 16.33(f) (1-3):

Any new issues or evidence presented in an appeal or reply will not be considered unless accompanied by a petition and good cause found as to why the new issue or evidence was not presented to the Director. Such a petition must:

- (1) Set forth the new matter;
- (2) Contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and
- (3) Contain a statement explaining why such a new issue or evidence could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed.

After review of the petition, it is apparent to the Associate Administrator that the new evidence in the deposition does not set forth a new matter requiring consideration (14 CFR § 16.33(f)(1)). The issue of first come, first served leasing policies was considered by the Director and will be deliberated in the analysis set forth below. Therefore, the petition does not provide good cause for the Associate Administrator to consider the new information on appeal. The petition to supplement is denied, and for these reasons, the deposition testimony will not be considered in this appeal.

VIII. ANALYSIS

ISSUE 1 - Whether the Director erred in concluding that the City did not deny access or unjustly discriminate in violation of Grant Assurance 22, *Economic Nondiscrimination*.

1. Sunrise's Position on Appeal:

Sunrise stated in its appeal the:

Director erred in concluding that Respondent, City of Ormond Beach entered into a valid lease of airport property with a qualified entity. Because the lease was executed on behalf of a non-existent entity, it could not fall within the City's unwritten policy of "first come, first served," and therefore the transaction violated Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*. The Director's contrary conclusion is not supported by the evidence presented, and is contrary to law, precedent, and policy. For these reasons, the Complainant respectfully requests that the Director's Determination be reversed. (FAA Exhibit 2, Item 2, p. 2).

Sunrise argues that the Director failed to adequately address that the City's acceptance of a lease from a non-existent entity violated its 'first come, first served' leasing policy. Specifically, Sunrise claims that the City should have "made efforts to consider the proposal of Sunrise for the airport parcels" since it was the "only legally qualified entity making a proposal at that time." Sunrise contends that KOMN "had no legal authority to execute a lease," and the "record contradicts the Director's conclusion that the City 'openly negotiated with both parties' and 'considered Sunrise's various proposals.'" Sunrise argues that the City "afforded no consideration to Sunrise's lease proposal during or after the agreement with KOMN." (FAA Exhibit 2, Item 2, pp. 10-11).

Sunrise contends:

The record evidence in this matter belies the Director's assertion that the City's first come, first served policy did not impede "interactions between the City and Sunrise," Director's Determination at 10, or that "KOMN simply negotiated better than Sunrise". Despite its express knowledge that, as of May 29, 2020, Sunrise had executed signature pages for the leases of the airport parcels, the City took no steps to consider Sunrise's proposal. In fact, the City impeded such consideration by accepting, at a later date, a competing proposal from an entity that the City knew did not even exist at the time, and that was therefore incapable of submitting a valid proposal. (FAA Exhibit 2, Item 2, pp. 11-12).

Sunrise states that it presented "clear evidence" that KOMN was not a "limited liability company... when it executed its lease with the City" and that the Director "chose ...to omit any analysis of this issue." Sunrise also contends that the Director failed to address Sunrise's complaint that KOMN was incapable of executing a valid lease. Sunrise argues that the case does not involve a challenge to entity ownership, but rather "a challenge to the City's acceptance of a lease from an entity" with "no existence under Florida law." Sunrise relies on Chapter 605 of the Florida Revised Limited Liability Company Act in claiming that the record demonstrates that KOMN did not become a legally effective limited liability company under Florida law until July 6, 2020. (FAA Exhibit 2, Item 2, p. 6-8).

Sunrise claims the Director's errors resulted in prejudice to Sunrise's ability to compete fairly for the leases for Parcels 1, 2, and 3, and requests the Associate Administrator to find that the City violated Grant Assurance 22, *Economic Nondiscrimination*. (FAA Exhibit 2, Item 2, p. 14).

2. City's Position on Appeal:

In its Reply, the City argues that Sunrise wants to expand its dominant position at the airport by leasing the parcels and increasing the amount of FBO acreage. The City continues to state that a lease agreement was provided to Sunrise on May 20, 2020, for signature. The City also counters Sunrise's allegations regarding the text message sent on or about May 29, 2020, (FAA Exhibit 1, Item 4, Exhibit 2) by asserting that the message "does not show Lefever requesting the Airport Manager to come to his office to 'pick up' the leases and does not show the Airport Manager committing to go to Lefever's office to 'pick up' the leases." Sunrise did not return the signed lease; therefore "losing the opportunity." (FAA Exhibit 2, Item 3, p. 9).

The City also states that Sunrise fails to show that the Director's Determination's finding no Grant Assurance 22 violation was incorrect regarding the KOMN lease. The City acknowledges the Appellant's central argument on appeal - the City could not lease the Parcels to KOMN because it was not incorporated on the date when the lease was signed on behalf of KOMN. But the City confirms that the City Commission approved the KOMN lease at its August 4, 2020 meeting. Additionally, the City argues that Sunrise's claim is a matter for local Florida law and outside the purview of the FAA's authority. (FAA Exhibit 2, Item 3, pp. 3-4).

Lastly, regarding the first come, first served policy, the City notes that it "properly approved a Lease with a valid entity." The City asserts that the record establishes, and the

Director properly determined, that 'the City considered Sunrise's proposals', the 'City gave Sunrise an opportunity to submit a proposal', and 'KOMN timely submitted a proposal and a signed lease. Sunrise did not.' (FAA Exhibit 2, Item 3, pp. 6- 9).

The City claims the Director properly concluded Sunrise was given the opportunity to lease the parcels and the City is not in violation of Grant Assurance 22. (FAA Exhibit 2, Item 3, p. 11).

The City contends that the Director's findings of fact are supported by a preponderance of reliable, probative, and substantial evidence, and the Director's conclusion that the City is not in violation on Grant Assurance 22 was made in accordance with applicable law, precedent, and policy. The City requests that the Director's Determination be affirmed and that the Appeal be dismissed. (FAA Exhibit 2, Item 3, p. 11 and p. 14).

3. Associate Administrator's Analysis:

The Associate Administrator reviewed the record relied upon by the Director and finds that the Director did an extensive analysis of the issues, arguments, and applicable policy and precedent. Regarding proper consideration, the Director evaluated the record and determined that:

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 (sic) 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. (Director's Determination at p. 10).

And, regarding business incorporation, the Director found:

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. (Director's Determination at p. 11).

The Director further cited a number of precedential cases under 14 CFR Part 16 to show that 1) the City acted properly by engaging in direct negotiations with interested parties and in accordance with the City's plans, terms, and conditions; 2) facts regarding timing, timely responses, completeness of submissions, counteroffers, etc., do not support Sunrise's allegation of preferential treatment; and 3) the Part 16 process is not a means for Sunrise to reverse the outcome of lawful negotiations and local approvals. (Director's Determination at p. 11). Notably, Sunrise did not substantively contest the Director's application of Part 16 precedent in arriving at his determination.

In summary, Sunrise's appeal rests on the (unsupported) premise that KOMN's failure to incorporate under Florida State law before or during the period between the City's lease solicitation; KOMN's lease negotiation with the City; and KOMN's lease execution on June 3, 2020, should result in a finding of non-compliance with Grant Assurance 22. Sunrise presents no Federal law, precedent, or policy to substantiate its argument that the Director erred in his application of the sponsor's Federal obligations (14 CFR § 16.33). Instead, it relies on recitations from Chapter 605 of the Florida *Revised Limited Liability Company Act*.

Sunrise's appeal argument, including reliance on Chapter 605, fails on the merits. Part 16 precedent in *Skydive Myrtle Beach, Inc. v. Horry County Department of Airports, South Carolina*, FAA Docket No. 16-14-05 (pp. 30-32) provides that the Director does not opine on issues of state law nor is the FAA bound by state court opinions on issues covered by the grant assurances or other federal obligations. Simply put, it is not the Director's role to evaluate whether the City had proper authority under state law to deem KOMN's lease valid or effective prior to legal incorporation. Under these facts and circumstances, the Associate Administrator could reject Sunrise's appeal on this basis alone. Nevertheless, the Associate Administrator deems it beneficial to this proceeding to provide further evaluation.

First, it is reasonable for an airport sponsor to perform due diligence in determining the eligibility and viability of a tenant prior to entering into a contractual relationship. And, the

Associate Administrator notes, the City's informal leasing process is arguably a leasing policy in practice. Therefore, in adjudicating the complaint, the Director was compelled to assess Sunrise's allegations of unreasonableness in the City's leasing process leading to the disputed outcome.

Here, the City established a plan to develop the southwest quadrant of the airport and solicited proposals from both KOMN and Sunrise. The City - using its proprietary right as airport sponsor - deemed both KOMN and Sunrise as qualified entities by granting each an equal opportunity to develop a site plan proposal and to negotiate and present a signed lease. Grant Assurance 22 compliance is not at issue by the City electing to negotiate with an unincorporated proposed tenant, so long as legal incorporation status (or lack of such status) is reasonably applied to similar proposed commercial users.

Under Section 16.23, Sunrise carries the burden to demonstrate that KOMN's delayed legal incorporation resulted in unreasonable treatment having the effect of denying Sunrise reasonable access to the airport in violation of Grant Assurance 22. There is no evidence that Sunrise - a similarly situated commercial tenant - was subjected to a standard not imposed on KOMN.

Absent evidence of inequitable and unreasonable treatment of Sunrise, the Director rightfully deferred the matter of KOMN's legal incorporation to the airport sponsor and local jurisdiction. (Director's Determination at p. 11). And, as the record shows, KOMN and the City accomplished that when "KOMN filed its Articles of Incorporation with the State of Florida on July 6, 2020" and the City Commission "properly approved the KOMN lease on August 4," which it deemed a "valid entity." Sunrise's interpretation of who may validly execute a commercial lease at a federally obligated airport - and when - is an issue outside of Federal law or policy.

Regarding the City's first come, first served leasing policy, Sunrise argued that "the City cannot sign a lease with a company that did not exist at the time of execution" and therefore KOMN could not be considered at all. (Director's Determination at p. 7). Given that KOMN achieved legal incorporation status prior to the City Commission voting to formally approve its lease, the Associate Administrator considers the issue moot as to grant assurance compliance. The City points out that "the Director determined that the County is within its proprietary powers to make leasing decisions on airport property by direct negotiations. *Resort Aviation Services, Inc., Id.* at 8". (FAA Exhibit 2, Item 3, p. 10). The Part 16 process is not a substitute for negotiation or a means or process to reverse the outcome of lawful negotiations. (Director's Determination at p. 11). It is not the Director's role to substitute his judgment in lease negotiations or to intervene in local airport development decisions.

In any case, the Director properly concluded that even with no written first come, first served lease policy or applicable minimum standards in place, ample opportunity - including knowledge of the lease solicitation and requirements - was provided to both KOMN and Sunrise to respond. KOMN responded with a site proposal and executed lease, and Sunrise did not. (Director's Determination at p. 10). The record is rife with communications between the City and Sunrise, and Sunrise itself acknowledged delays related to unresolved

business decisions. (Director's Determination at pp. 3, 4, 10). (FAA Exhibit 2, Item 2, pp. 3-4, and FAA Exhibit 1, Item 4, Exhibit 2). Accordingly, Sunrise's delay and inability to submit a signed lease are circumstances having no relation to KOMN's incorporation status or the City's decision to approve KOMN's lease.

The Associate Administrator finds that after a review of the record that the conclusions in the Director's Determination were made in accordance with law, precedent, and policy. The Director did not err in his analysis of the City's leasing process or practice, and affirms the Director's finding that the City is not currently in violation of Grant Assurance 22, *Economic Nondiscrimination*.

ISSUE 2 - Whether the Director erred in finding that the City did not grant an exclusive right to KOMN in violation of Grant Assurance 23, *Exclusive Rights*.

1. Sunrise's Position on Appeal:

In its appeal, Sunrise argues that the Director erred when he determined that an exclusive right was not granted because "Sunrise still has an opportunity to lease other available airport property". The Director adds the fact that the City "conducted negotiations with KOMN on a 'first come, first served' basis." (FAA Exhibit 2, Item 2, pp. 12-13).

Sunrise states "the City did *not* negotiate with KOMN on a 'first come, first served' basis, since KOMN was not even qualified to bid on the parcels at the time it submitted the executed signature pages for the lease." (FAA Exhibit 2, Item 2, p. 13).

Sunrise concludes:

The City's actions prevented Sunrise's proposal for the airport parcels from even being considered by the City Commission. By failing to abide by its own, self-proclaimed 'first come, first served' policy, and by refusing to allow Sunrise's July 20, 2020, proposal to be brought before the City Commission, the City effectively *did* 'exclude Sunrise from participating in an on-airport aeronautical activity,' Director's Determination at 13, and *did* 'grant to another entity the exclusive right to conduct a particular aeronautical activity or to provide a particular aeronautical service on the Airport[,] notwithstanding the Director's contrary and unsupported conclusion. (FAA Exhibit 2, Item 2, p. 13).

Sunrise claims the Director erred in finding that the City's acts and omissions resulted in a violation of Grant Assurance 23, *Exclusive Rights*. (FAA Exhibit 2, Item 2, p. 13).

2. City's Position on Appeal:

The City argues in its Reply that it has complied with Grant Assurance 23 because it has "already leased 14.43 acres to Sunrise and related entities" and "given Sunrise alternatives for additional leases." (FAA Exhibit 2, Item 3, p. 12). The City claims the "Director's conclusion that the City did not violate Grant Assurance 23, was also made in accordance with applicable

law, precedent, and policy, as supported by the precedents cited in the Director's Determination, and cites to FAA Order 5190.6B:

An exclusive rights violation is the denial by the airport sponsor to afford other qualified parties an opportunity to be an on-airport aeronautical provider. Id. 8.9(b) at 8-10. (FAA Exhibit 2, Item 3, p. 12.).

The City asserts that "even if the City had excluded Sunrise at the start, the City would have been in compliance with the FAA's policy under Grant Assurance 23" and again points to FAA Order 5190.6B:

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. FAA Order 5190.6B, 8.9(d) at 8-11." (FAA Exhibit 2, Item 3, p. 13).

The City argues Sunrise "has no valid argument that the City violated Grant Assurance 23 simply because Sunrise was not able to lease yet another site of its choosing." (FAA Exhibit 2, Item 3, p. 12).

The City contends that the Director's findings of fact are supported by a preponderance of reliable, probative, and substantial evidence, and the Director's conclusion that the City is not in violation on Grant Assurance 23 was made in accordance with applicable law, precedent, and policy. The City requests that the Director's Determination be affirmed and that the Appeal be dismissed. (FAA Exhibit 2, Item 3, pp. 13-14).

3. Associate Administrator's Analysis:

The Associate Administrator examined the record and notes that the Director found that the City did not grant an exclusive right to KOMN. The Director explained, "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," and Sunrise "has been given, and continues to be given, opportunities to expand." (FAA Exhibit 2, Item 1, pp. 12-13).

An exclusive rights violation occurs when the airport sponsor excludes others, either intentionally or unintentionally, from participating in an on-airport aeronautical activity. A prohibited exclusive right can be manifested by an express agreement, unreasonable minimum standards, or by any other means. (See FAA Advisory Circular 150/5190-6, *Exclusive Rights at Federally Obligated Airports*, para. #1.2).

In this case, as the City noted, Sunrise currently leases 14.43 acres and has a dominant presence at the airport. (FAA Exhibit 2, Item 3, p. 10). Also, the record shows the City did not exclude Sunrise from participating in an aeronautical activity. Sunrise had sufficient opportunity to

present a site plan proposal and to negotiate a lease with the City for the same property as KOMN. Lastly, Sunrise cannot substantiate that KOMN has been granted preferential treatment since Sunrise has been given the opportunity to lease other available airport property.

In consideration of the above, Sunrise cannot credibly argue that the City granted an exclusive right to KOMN. The record provides no evidence to support Sunrise's allegation that it has been unreasonably excluded from the airport, or that KOMN has been provided preferential treatment to Sunrise's detriment.

The Associate Administrator finds that after a review of the record that the conclusions in the Director's Determination were made in accordance with law, precedent, and policy. The Director did not err in finding that the City did not grant an exclusive right to KOMN in violation of Grant Assurance 23, *Exclusive Rights*. The Associate Administrator affirms the Director's finding that the City is not currently in violation of Grant Assurance 23, *Exclusive Rights*.

IX. CONCLUSIONS AND FINDINGS

The Associate Administrator's role in this appeal is to determine whether the Director erred in findings of fact or conclusions of law in issuing the Director's Determination.

Specifically, upon appeal of a Part 16 DD, the Associate Administrator must determine whether: (a) the findings of fact made by the Director are supported by a preponderance of reliable, probative; and substantial evidence; (b) each conclusion of law is made in accordance with applicable law, precedent, and policy; (c) the questions on appeal are substantial; and (d) any prejudicial errors occurred. (14 CFR § 16.33(e)).

In arriving at a final decision in this appeal, the FAA has reexamined the record, including the DD, the supporting administrative record, parties' filings on appeal, and applicable law and policy. Based on this reexamination, the Associate Administrator concludes that the DD is supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and the FAA policy. The appeal does not raise persuasive arguments sufficient to reverse any portion of the DD.

The Associate Administrator affirms the findings made by the Director that the City is not currently in violation of Grant Assurance 22, *Economic Nondiscrimination*, or Grant Assurance 23, *Exclusive Rights*. This decision constitutes a final agency decision of the Associate Administrator pursuant to 14 CFR § 16.33.

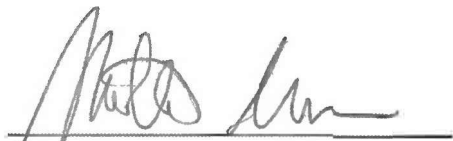
ORDER

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

All other Motions not specifically granted herein are **DENIED**.

RIGHT OF APPEAL

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



Shannetta R. Griffin
Associate Administrator for Airports
Federal Aviation Administration

8/16/22
Date

INDEX OF ADMINISTRATIVE RECORD
FAA Docket No. 16-20-03
FAA Exhibit 1

Mr. Jeffrey Lefever, President
Sunrise Aviation, Inc., Appellant

v.

City of Ormond Beach, Florida, Appellee

The following items constitute the administrative record in this proceeding:

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, pp. 5-19, 10/2015.
- Exhibit I- Approved Forecast (Presentation Slide), undated.
- Exhibit J- Ormond Beach Airport Master Plan Update, pp. 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, 10/19/2020.
- 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 to 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.rademacher@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.Lichliter@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 2021.

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

Item 11 – Sunrise Aviation Web page (<https://flysunrise.com/fbo/>, 8/12/2021 version submitted to docket).

Item 12 – Notice of Extension of Time, July 2, 2021.

FAA Exhibit 2

Item 1 – Director’s Determination, dated August 31, 2021.

Item 2 – Notice of Appeal and Brief filed by Mr. Jeffrey Lefever, President, Sunrise Aviation, Inc., docketed on September 29, 2021.

Item 3 – Reply of the City of Ormond Beach, Florida, to the Appeal of Jeffrey Lefever, President, Sunrise Aviation, Inc. docketed on October 18, 2021.

Item 4 - Notice of Extension of Time, December 10, 2021.

Item 5 – Petition for Leave to File Supplement to Record on the Basis of Newly Discovered Evidence docketed on December 22, 2021.

Item 6 – Response of the City of Ormond Beach in Opposition to the Appellant’s Petition for Leave to File Supplement to Record on the Basis of Newly Discovered Evidence docketed on January 3, 2022.

Item 7 - Notice of Extension of Time, February 15, 2022.

Item 8 - Notice of Extension of Time, April 14, 2022.

Item 9 - Notice of Extension of Time, June 14, 2022.