

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

JOSEPH OCCHIUZZO,

COMPLAINANT,

v.

CITY OF WESTFIELD, MASSACHUSETTS,

RESPONDENT.



FAA Docket No. 16-21-02

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) on the complaint filed by Joseph Occhiuzzo (Complainant/Occhiuzzo) against the City of Westfield, Massachusetts (City) under the *FAA's Rules of Practice for Federally Assisted Airport Enforcement Proceedings*, 14 CFR Part 16. The City is the owner, operator, and sponsor of the Westfield Barnes Regional Airport (BAF) (FAA Exhibit 1, Item 2, p. 1).

Mr. Occhiuzzo filed a complaint alleging that the City violated Grant Assurance 22, *Economic Nondiscrimination*, and Grant Assurance 23, *Exclusive Rights*, when the City: (1) allowed its fixed based operator (FBO)¹ tenant, Ross Aviation and its subsidiary Ross Rectrix Aviation BAF, LLC (collectively Ross Aviation), to sublease similar T-hangars at different rates; (2) allowed Ross Aviation to relocate Mr. Occhiuzzo to a different T-hangar against his wishes; and (3) granted exclusive rights to Rectrix and subsequently Ross Aviation when it allowed Rectrix to absorb the Five Star Jet Center in November 2015 (FAA Exhibit 1, Item 2, p. 1; FAA Exhibit 1, Item 5, p. 9).

In response, the City denied that its tenant, Ross Aviation, provided preferential license terms to any of its T-hangar lessees; and stated that Ross Aviation charged rental rates for its T-hangars based on the relative condition of each T-hangar (FAA Exhibit 1, Item 4, pp. 2-3). The City asserts the rate differential also was justified because other subtenants entered into written Aircraft Storage and Service Agreements with Ross Aviation and Mr. Occhiuzzo did not (FAA Exhibit 1, Item 6, pp. 3-4). The City denied that Ross Aviation's attempts to relocate Mr. Occhiuzzo's T-hangar were unfair or discriminatory (FAA Exhibit 1, Item 4,

¹ A fixed base operator (FBO) is a commercial entity providing multiple aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public. (FAA Order 5190.6B, Appendix Z.)

p. 11). The City denied that it granted Ross Aviation an exclusive right to provide FBO services at the Airport (FAA Exhibit 1, Item 6, p. 6).

With respect to the allegations presented in this Complaint, under the specific circumstances at BAF discussed in this Determination and based on the evidence of record in this proceeding, including applicable Federal law and FAA policy, the Director, FAA Office of Airport Compliance and Management Analysis (Director) finds that the City is not currently in violation of Grant Assurance 22, *Economic Nondiscrimination* or Grant Assurance 23, *Exclusive Rights*.

II. PARTIES

A. Complainant

Mr. Occhiuzzo is the owner/operator of a Piper Cherokee single-engine aircraft and, since early 2008, has occupied T-hangar 8 at the Airport (FAA Exhibit 1, Item 2, p. 2).

B. Respondent

Westfield Barnes Regional Airport is a public use, general aviation airport. The City of Westfield, Massachusetts is the owner, operator, and sponsor of the Airport. The Airport consists of 1,200 acres, two runways (15/33; 02/20), 122 based aircraft, and accommodates 52,500 operations annually (FAA Exhibit 1, Item 7).

Airport development has been financed, in part, with funds provided to the sponsor under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C., § 47101, *et seq.* Since 1982, the City, as the airport sponsor, has accepted approximately \$61,600,000 in Federal grants for airport development and related investments (FAA Exhibit 1, Item 8). As a result of accepting AIP funds, the sponsor is obligated to comply with FAA sponsor assurances and related Federal law, 49 U.S.C. § 47107 *et seq.* The airport has no enduring Federal surplus property conveyances.

III. PROCEDURAL HISTORY

1. Part 16 Complaint filed by Joseph Occhiuzzo alleging violations of Grant Assurances 22 and 23 against City of Westfield, Massachusetts, owner, operator, and sponsor of Westfield Barnes Regional Airport, dated February 24, 2021.
2. U.S. DOT/FAA Notice of Docketing, dated March 17, 2021.
3. City of Westfield, Massachusetts, filed its Answer and Supporting Evidential Material Volumes 1 through 3, dated April 21, 2021.
4. Complainant filed an Answer, dated April 22, 2021.²

² The Complainant titled his document “Answer” but the Director acknowledges that Complainant filed a response to the City’s Answer to the Complaint.

5. City of Westfield, Massachusetts filed Respondent's Rebuttal dated May 3, 2021.
6. Refer to the Index of the Administrative Record for other administrative filings related to this proceeding—FAA Exhibit 1.

IV. BACKGROUND

1. On April 1, 1985, the City entered into a Fixed Based Operator Airport Land Lease and Agreement (1985 FBO Agreement) with Barnes-Westfield Aviation, Corp., for the lease of premises at the Airport for the operations of an FBO, including a 10-unit T-hangar facility. In 2011, the City assigned the 1985 FBO Agreement to Five Star Jet Center, Inc. (FAA Exhibit 1, Item 4, pp. 3-4). In 2015, Rectrix acquired Five Star Jet Center, Inc., and thereafter Rectrix became an FBO at the Airport. In 2018, Ross Aviation acquired Rectrix (FAA Exhibit 1, Item 4, p. 4).
2. Presently, Ross Aviation operates as an FBO at the Airport, and is subject to the 1985 FBO Agreement's "Nondiscrimination" provisions of Section 23 as well as the provisions of Section 3(B)(2)(b) which prohibit the grant of exclusive rights (FAA Exhibit 1, Item 4, p. 4; FAA Exhibit 1, Item 4, Exhibit A, pp. 4, 10).
3. Mr. Occhiuzzo rented T-hangar 8 from Rectrix, the former FBO, without a formal written agreement (FAA Exhibit 1, Item 4, p. 4). Following Ross Aviation's acquisition of Rectrix in February 2019, Ross Aviation requested that Mr. Occhiuzzo sign a written lease for continued use of T-hangar 8. Mr. Occhiuzzo refused to do so. Thereafter, Ross Aviation sent him monthly invoices (FAA Exhibit 1, Item 4, p. 5).
4. Ross Aviation began renovating each of its T-hangars. The City provided copies of receipts of the maintenance and repairs completed in late 2020 and early 2021 (FAA Exhibit 1, Item 4, Exhibit D). When the work was complete Ross Aviation offered each T-hangar at a standard rate of \$325 per month. Mr. Occhiuzzo did not sign any formal license agreement with Ross Aviation (FAA Exhibit 1, Item 4, pp. 5-6).
5. Ross Aviation planned to rent a set of T-hangars to a flight school at the Airport, including the T-hangar rented by Mr. Occhiuzzo. Beginning on or about February 11, 2021, Ross Aviation's general manager reached out to Mr. Occhiuzzo on several occasions to discuss the matter, but Mr. Occhiuzzo did not respond to the general manager (FAA Exhibit 1, Item 2, p. 2; FAA Exhibit 1, Item 4, pp. 5-6).
6. In a December 31, 2020 letter to Ross Aviation's chief operating officer, Mr. Occhiuzzo explained that he did not want to relocate to another T-hangar because he enjoyed the view of airside operations and had enjoyed 15 years of memories at T-hangar 8 with his father (FAA Exhibit 1, FAA Item 4, Exhibit I, p. 1).
7. In January 2021, Ross Aviation's general manager reached out to Mr. Occhiuzzo on several occasions regarding his proposed T-hangar location. Mr. Occhiuzzo did not respond (FAA Exhibit 1, Item 4, p.7). On February 10, 2021, Ross Aviation notified Mr. Occhiuzzo that he

must both relocate and enter into a written agreement for T-hangar 2 or Ross Aviation would seek to evict him. Mr. Occhiuzzo did not respond to the general manager (FAA Exhibit 1, Item 4, p. 8).

8. On February 23, 2021, Mr. Occhiuzzo reached out to the Airport Manager and requested that he intervene in Mr. Occhiuzzo's ongoing dispute with Ross Aviation. Following a review of the allegations and a discussion with the Chair of the Airport Commission, the Airport Manager decided that he would not get involved as requested because the matter appeared to be a landlord-tenant dispute that did not implicate any of the City's Grant Assurances (FAA Exhibit 1, Item 4, p. 8).

9. On February 24, 2021, Mr. Occhiuzzo filed this complaint pursuant to 14 CFR § 16.23 against the City of Westfield, the owner, operator and sponsor of the Airport (FAA Exhibit 1, Item 2, p. 1).

10. On March 29, 2021, Ross Aviation commenced a summary process eviction against Mr. Occhiuzzo due to his failure to relocate or vacate his T-hangar at the Airport (FAA Exhibit 1, Item 4, p. 8).

11. As of May 15, 2021, Mr. Occhiuzzo entered into an aircraft storage agreement with another hangar operator at the Airport, Whip City Aviation, with rent of \$309 per month, which is not significantly different from the \$325 rental offer by Ross Aviation (FAA Exhibit 1, Item 6, Exhibit N, p. 1).

V. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances, the FAA has determined that the following issues require analysis to provide a complete review of the Respondent's compliance with applicable Federal law and policy:

Issue 1 – Whether the City violated Grant Assurance 22, *Economic Nondiscrimination*, by allowing Ross Aviation to lease similar T-hangars at different rates.

Issue 2 – Whether the City violated Grant Assurance 22, *Economic Nondiscrimination*, by allowing Ross Aviation to relocate Mr. Occhiuzzo to another T-hangar against his wishes.

Issue 3 – Whether the City violated Grant Assurance 23, *Exclusive Rights*, by allowing Ross Aviation to relocate Mr. Occhiuzzo to another T-hangar against his wishes.

Issue 4 – Whether the City violated Grant Assurance 23, *Exclusive Rights*, by allowing Ross Aviation to become the sole fixed based operator at the Airport.

VI. APPLICABLE FEDERAL LAW AND POLICY

A. Airport Sponsor Grant Assurances

As a condition precedent to providing airport development assistance under the AIP, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth certain sponsorship requirements to which an airport sponsor receiving Federal financial assistance must agree. The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. See Exhibit 1 in the Index for a list of all the grant assurances.

FAA Order 5190.6B, Change 1, FAA Airport Compliance Manual (Order) provides the policies and procedures to be followed by the FAA in carrying out its compliance program. The grant assurances relevant to this Complaint are listed below as are other relevant policies.

1. Grant Assurances:

- Grant Assurance 22, *Economic Discrimination*; and
- Grant Assurance 23, *Exclusive Rights*.

2. Related Policies:

- FAA Advisory Circular 150/5190-6, “Exclusive Rights at Federally Obligated Airports,” (Jan. 4, 2007); and
- FAA Order 5190.6B, Change 1, *Airport Compliance Manual*, (Nov. 22, 2021).

B. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA must ensure that airport owners comply with their Federal grant assurances.

C. The Complaint and Investigative Process

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant should provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. The regulations governing Part 16 proceedings provide that, if, based on the pleadings there is “a reasonable basis for further investigation,” the FAA should investigate “the subject matter of the complaint.” 14 CFR § 16.29(a).

In accordance with 14 CFR § 16.33(b) and (e), “a party adversely affected by the Director’s Determination may file an appeal with the Associate Administrator for Airports within 30 days after the date of service of the initial determination.” If no appeal is filed within the time period

specified in paragraph (b) of this section, the Director's Determination becomes the final decision and order of the FAA without further action.

VII. ANALYSIS

Issue 1 – Whether the City violated Grant Assurance 22, *Economic Nondiscrimination*, by allowing Ross Aviation to lease similar T-hangars at different rates.

1. Occhiuzzo's Position

Mr. Occhiuzzo claims the City is in violation of Grant Assurance 22 because the City refused to correct the alleged unreasonable and discriminatory practices of Ross Aviation (FAA Exhibit 1, Item 2, p. 1). Specifically, Mr. Occhiuzzo alleges that Ross Aviation favored certain tenants with lease agreements and terms, which consist of vastly different rates for the same type of T-hangar (FAA Exhibit 1, Item 2, p. 1).

To support his complaint, Mr. Occhiuzzo provided an invoice dated July 2017, showing Rectrix charged him \$300 per month for T-hangar rent and during the same period charged the subtenant in the adjacent T-hangar \$150 per month (FAA Exhibit 1, Item 2, p. 2; FAA Exhibit 1, Item 2, Exhibit 2, p. 1; FAA Exhibit 1, Item 2, Exhibit 1, p. 2). Mr. Occhiuzzo claims he brought this alleged disparate lease arrangement to the attention of the FBO in 2019, and the FBO assured Mr. Occhiuzzo that the practice was corrected. However, Mr. Occhiuzzo maintains that Ross Aviation continued this alleged discriminatory practice, as evidenced by its invoice raising Mr. Occhiuzzo's T-hangar rent to \$315 per month (FAA Exhibit 1, Item 2, p. 2; FAA Exhibit 1, Item 2, Exhibit 3, p. 1). Mr. Occhiuzzo alleges that Ross Aviation has yet to offer him a "fair lease agreement" (FAA Exhibit 1, Item 2, p. 2).

2. City's Position

The City asserts there is no basis for Mr. Occhiuzzo's claims that the City is in violation of Grant Assurance 22 (FAA Exhibit 1, Item 4, p. 12). The City denies that its former tenant, Rectrix, provided preferential license terms or rent to any of its T-hanger sublessees; further responding that Rectrix charged rental rates based on the relative condition of each T-hangar. For example, "some T-hangars had defective doors or were in disrepair" (FAA Exhibit 1, Item 4, pp. 1, 2, 5). The City also asserts the rate differential existed because other subtenants, including the subtenant in the T-hangar adjacent to Mr. Occhiuzzo's, had signed an Aircraft Storage and Service Agreement with Rectrix and Mr. Occhiuzzo had not (FAA Exhibit 1, Item 6, pp. 2, 3).

According to the City, "Mr. Occhiuzzo takes issue with past rental practices of Rectrix that he claims unfairly resulted in Rectrix charging him a higher rental rate." The City argues that a rent differential, without more, does not prove unjust discrimination, particularly where there is a justification for the differential (FAA Exhibit 1, Item 4, p. 10). Additionally, the City asserts the FAA is interested in current compliance, and evidence of different charges for a single month in 2017 is insufficient to prove the City is not in current compliance with Grant Assurance 22 (FAA Exhibit 1, Item 6, p. 2).

The City further responds that following Ross Aviation's acquisition of Rectrix Aviation, Ross Aviation renovated each of its T-hangar units and brought them to the same condition so that it could standardize rental rates (FAA Exhibit 1, Item 4, p. 5). The City provided copies of receipts of the maintenance and repairs completed in late 2020 and early 2021 to substantiate Ross Aviation's claim (FAA Exhibit 1, Item 4, Exhibit D). When the renovation work was complete, Ross Aviation offered each of its T-hangars for rent at a standard rate of \$325 per month. The City asserts Ross Aviation provided the City with a copy of each of its current T-hangar license agreements and, aside from the duration of each license agreement, each agreement is identical. Also, each agreement charges the same T-hangar rental rate of \$325 per month (FAA Exhibit 1, Item 4, Exhibit E).

The City denies that its tenant, Ross Aviation raised Mr. Occhiuzzo's monthly rent in retaliation for complaints about his rent; denies Rectrix provided any assurances to Mr. Occhiuzzo concerning his rental rate or any associated consumer price index (CPI) adjustments; and denies Ross Aviation failed to offer Mr. Occhiuzzo a fair license agreement (FAA Exhibit 1, Item 4, p. 2). The City asserts that Mr. Occhiuzzo refused to sign any formal license agreement with Ross Aviation for any T-hangar and occupied T-hangar 8 on a month-to-month basis (FAA Exhibit 1, Item 6, pp. 3, 4).

The City argues, "the FAA has interpreted Grant Assurance 22(b) to require the Airport Sponsor to enforce provisions requiring tenants offering service to the public to charge reasonable, and not unjustly discriminatory prices." (See *Ronald Lytton, Linda Layton v. Sheridan County Board of County Commissioners, Sheridan, Wyoming*, FAA Docket No. 16-01-16, Director's Determination, (Dec. 20, 2002), p. 12.) (FAA Exhibit 1, Item 4, p. 9.) The City asserts that it is in compliance with Grant Assurance 22 because the "Non-Discrimination" provision is included in its lease with Ross Aviation, and the City can enforce that provision. The City asserts it was under no obligation to take action because Ross Aviation was not in violation of the "Non-Discrimination" provision (FAA Exhibit 1, Item 4, p. 9).

The City argues that it is in compliance because there is currently no rent differential among Ross Aviation's tenants that would trigger the City's obligation to intervene. (See *Flightline Aviation Inc., v. City of Shreveport through the Shreveport Airport Authority*, FAA Docket No. 16-07-05, Director's Determination, (March 7, 2008), p. 27.) Nor was there any rent differential when Mr. Occhiuzzo brought this dispute to the City's attention in February 2021, several years after Mr. Occhiuzzo alleges unjustifiable rental rate differences in his month-to-month rental arrangement with Ross Aviation (FAA Exhibit 1, Item 4, pp. 10-11).

3. Director's Determination

The Director finds that Mr. Occhiuzzo has failed to carry his burden of showing that the City is currently in violation of Grant Assurance 22. Mr. Occhiuzzo has failed to show how the differences in the July 2017 T-hangar rental rates constitute unjust economic discrimination against him that currently obligate the City to act on his behalf.

The FAA Compliance program is designed to achieve voluntary compliance with Federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will

make a determination as to whether an airport sponsor is currently in compliance with their Federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable Federal obligations to be grounds for dismissal of such allegations. (*See Wilson Air Center, LLC v. Memphis and Shelby County Airport Authority*, FAA Docket No. 16-99-10, Director's Determination (August 2, 2000), Final Agency Decision and Order (August 30, 2001).)

In December 2020, Ross Aviation offered Mr. Occhiuzzo a T-hangar license agreement at a rate of \$325 per month (FAA Exhibit 1, Item 4, Exhibit H). The record shows that as of February 2021, Ross Aviation charges \$325 per month for each of its T-hangars (FAA Exhibit 1, Item 4, Exhibit E). On February 26, 2021, Ross Aviation offered Mr. Occhiuzzo space in T-Hangar 2 at a monthly rate of \$168 per month through July 31, 2021, with Ross's current market rate of \$325 commencing August 1, 2021 (FAA Exhibit 1, Item 5, Exhibit 7). Mr. Occhiuzzo did not sign any license agreement with Ross Aviation nor did he provide any comments or questions to Ross Aviation about the agreement Ross Aviation offered him (FAA Exhibit 1, Item 4, pp. 5-7).

The City is in current compliance with its Federal obligations due to the nondiscrimination clause in its lease with Ross Aviation (FAA Exhibit 1, Item 4, p. 9). Mr. Occhiuzzo presented no evidence to support the existence of previous or current rent differentials between T-hangar lessees that trigger the City's federal obligations (FAA Exhibit 1, Item 4, p. 10, *citing Flightline Aviation*, 2008 WL 5955355, at *24). While the record shows lower rents for similar facilities in 2017, the absence of identical rents, in and of itself, is not evidence of unreasonableness or unjust economic discrimination (FAA Exhibit 1, Item 4, p. 10).

Part 16 provides in part, "[t]he burden of proof is on the complainant to show current noncompliance with an Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act" (14 CFR § 16.23(k)(1)). Mr. Occhiuzzo provided no evidence to support a claim that there were any unjustly discriminatory rent differentials in February 2021, when he brought this dispute to the City's attention, nor is there currently an unjustly discriminatory rent differential among Ross Aviation's subtenants (FAA Exhibit 1, Item 4, pp. 10, 11).

Mr. Occhiuzzo has had reasonable access to the Airport at all pertinent times via a month-to-month T-hangar rental arrangement. Neither the City nor Ross Aviation have adopted unjustly discriminatory conditions as a method to limit airport access to Mr. Occhiuzzo in violation of Grant Assurance 22.

The Director finds that the City is in compliance with Grant Assurance 22, *Economic Nondiscrimination*. The City has taken action to address its Federal grant obligations with respect to Ross Aviation. Ross Aviation assumed the terms of the 1985 FBO Agreement, including Section 23, Non-Discrimination (FAA Exhibit 1, Item 4, Exhibit A, p. 10).

Therefore, the Director dismisses this specific allegation under Grant Assurance 22, *Economic Nondiscrimination*.

Issue 2 – Whether the City violated Grant Assurance 22, *Economic Nondiscrimination*, by allowing Ross Aviation to relocate Mr. Occhiuzzo to a different T-hangar against his wishes.

1. Occhiuzzo’s Position

Mr. Occhiuzzo alleges the City violated Grant Assurance 22, *Economic Nondiscrimination*, by allowing Ross Aviation to relocate him from T-hangar 8 to T-hangar 2 to accommodate a flight school. Mr. Occhiuzzo states he “informally denied” Ross Aviation’s request to move him to another T-hangar because the new location was unacceptable to him (FAA Exhibit 1, Item 2, p. 2). In a letter to Ross Aviation’s chief operating officer, Mr. Occhiuzzo wrote, “I want to keep my hangar because of 15 years of memories (including memories with my father), and the view of operations which is very important to me.” (FAA Exhibit 1, Item 4, Exhibit I, p.1).

Mr. Occhiuzzo opined that Ross Aviation’s decision to relocate him to another hangar is “. . . very disheartening, hurtful, and brutally inconsiderate—” (FAA Exhibit 1, Item 4, Exhibit I, p. 1). Mr. Occhiuzzo contends that the City’s refusal to correct this alleged unreasonable and discriminatory practice by Ross Aviation constitutes an unfair denial of access in violation of Grant Assurance 22, *Economic Nondiscrimination* (FAA Exhibit 1, Item 2, p. 1).

2. City’s Position

The City asserts that neither Ross Aviation’s business decision to relocate Mr. Occhiuzzo to a different T-hangar to accommodate a flight school nor Mr. Occhiuzzo’s personal connection to T-hangar 8 implicate the nondiscrimination provisions of Grant Assurance 22. The City asserts T-hangar 8 and T-hangar 2 are identical except for location (T-hangar 2 is landside and 300’ from the taxiway, T-hangar 8 is airside). The City asserts this “landlord-tenant dispute did not implicate the City’s Grant Assurances and that it is within its rights to decline to intervene” (FAA Exhibit 1, Item 4, pp. 6, 8, 10).

3. Director’s Determination

The Director agrees with the City. Neither Ross Aviation’s business decision to relocate Mr. Occhiuzzo to a different T-hangar to accommodate a flight school nor Mr. Occhiuzzo’s personal attachment to T-hangar 8 implicate the nondiscrimination provisions of Grant Assurance 22.

Grant Assurance 22, *Economic Nondiscrimination*, provides that an airport sponsor

“will 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.”

Upon review of the record, the Director finds that Ross Aviation notified Mr. Occhiuzzo several times of its intent to relocate his aircraft. In a February 10, 2020 letter, Ross Aviation explained its intention to rent a set of T-hangars, including the one rented by Mr. Occhiuzzo, to a flight school at the Airport (FAA Exhibit 1, Item 2, Exhibit 4, p. 1). Ross Aviation noted that it was

relocating Mr. Occhiuzzo's aircraft to a like-kind T-hangar to optimize operational efficiencies (FAA Exhibit 1, Item 4, Exhibit G, p. 22).

On November 4, 2020, Ross Aviation notified Mr. Occhiuzzo of its intent to evaluate T-hangar occupancy and make location adjustments based on optimization of operations and usage (FAA Exhibit 1, Item 4, Exhibit F, p. 19).

In a December 7, 2020 letter, Ross Aviation further explained the need to optimize operational efficiencies and its intent to relocate Occhiuzzo's aircraft to another T-hangar (FAA Exhibit 1, Item 4, Exhibit G, p. 22). The record shows additional notifications to Mr. Occhiuzzo (FAA Exhibit 1, Item 4, Exhibit H, p. 24, (December 22, 2020); FAA Exhibit 1, Item 4, Exhibit J, p. 45 (January 6, 2021); FAA Exhibit 1, Item 4, Exhibit K, pp. 47-48 (January 20, 2021); FAA Exhibit 1, Item 4, Exhibit L, p. 50 (January 27, 2010)).

Part 16 provides in part, "[t]he burden of proof is on the complainant to show noncompliance with an Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act" (14 CFR § 16.23(k)(1).) Mr. Occhiuzzo has failed to identify how Ross Aviation's proposal to relocate his aircraft to a nearly identical T-hangar on the airport is tantamount to unjust economic discrimination against him. Past Part 16 decisions established that reasonable access means for the use of aeronautical facilities on the airport, not necessarily the ability to lease a particular space on the airport. (See *Skydive Monroe, Inc. v. City of Monroe, Georgia*, FAA Docket No. 16-06-02, Director's Determination, (March 30, 2007), p. 9.)

The record demonstrates that the City has not denied Mr. Occhiuzzo reasonable access to the Airport. The City's tenant, Ross Aviation, offered Mr. Occhiuzzo reasonable accommodation in T-hangar 2 (FAA Exhibit 1, Item 4, p. 8). Mr. Occhiuzzo presented no evidence that the relocation to T-hangar 2 is sufficiently inadequate to constitute an unreasonable restriction or denial of access to the Airport. Rather, Mr. Occhiuzzo explained his reasons for wanting to remain at T-hangar 8 were personal (FAA Exhibit 1, Item 4, Exhibit I, p. 1). Further, as of May 15, 2021, Mr. Occhiuzzo apparently entered into an aircraft storage agreement with a different hangar operator on the Airport, Whip City Aviation (FAA Exhibit 1, Item 6, Exhibit N, p. 1).

The Director finds that the City is in compliance with Grant Assurance 22, *Economic Nondiscrimination*, because it has taken action to address its Federal grant obligations with respect to Ross Aviation. As discussed previously, Ross Aviation assumed the terms of the 1985 FBO Agreement, including Section 23, Non-Discrimination (FAA Exhibit 1, Item 4, p. 5). Mr. Occhiuzzo presented no evidence to support the existence of any current unjust economic discrimination against him that would obligate the City to act.

Issue 3 – Whether the City violated Grant Assurance 23, *Exclusive Rights*, by allowing Ross Aviation to relocate Mr. Occhiuzzo to a different T-hangar against his wishes.

1. Occhiuzzo's Position

Mr. Occhiuzzo claims that Ross Aviation is forcibly relocating him to another T-hangar on the Airport in favor of a flight school and this relocation violates Grant Assurance 23, *Exclusive Rights*. Mr. Occhiuzzo asserts the City refused to act to correct this alleged unreasonable and discriminatory practice of Ross Aviation (FAA Exhibit 1, Item 2, p. 1).

2. City's Position

The City responds that Mr. Occhiuzzo makes no valid argument concerning the alleged violation of Grant Assurance 23. The City contends that Mr. Occhiuzzo fails to make out any claim that the City permitted an exclusive right at the Airport or how he has been directly or substantially affected by any such exclusive right (FAA Exhibit 1, Item 4, p. 11).

Director's Determination

Upon review of the record, the Director finds that Mr. Occhiuzzo has failed to carry his burden of showing the City violated Grant Assurance 23. Mr. Occhiuzzo has failed to identify how Ross Aviation's proposal to relocate his aircraft to a nearly identical T-hangar on the airport is the grant of an exclusive right to a flight school.

In a December 31, 2020 letter to the chief operating officer of Ross Aviation, Mr. Occhiuzzo provided reasons for not wanting to relocate to a different T-hangar including his personal attachment to the T-hangar and the perceived loss of the ability to view airside operations from the T-hangar (FAA Exhibit 1, Item 4, Exhibit I).

The exclusive rights prohibition does not guarantee Mr. Occhiuzzo the right to access a specific T-hangar location on the airport. It does ensure that airport users have the right to access the airport to conduct aeronautical activities. (*See Atlantic Beechcraft Service, Inc., LLC and Southeast Turbine Corp. v. City of Fort Lauderdale, Florida*, FAA Docket No. 16-17-03, Director's Determination, (February 7, 2018), p. 15.) The exclusive rights prohibition applies to both commercial entities engaging in providing aeronautical services and individual aeronautical users of the airport. (*See* FAA Advisory Circular 150/5190-6, "Exclusive Rights at Federally Obligated Airports," (Jan. 4, 2007), pp. 1-2.) Relocating Mr. Occhiuzzo to another T-hangar space to accommodate a commercial flight school does not result in the flight school being granted an exclusive right to the airport to Mr. Occhiuzzo's detriment.

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 manifest 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," (Jan. 4, 2007, p. 3).) In this case, the record provides no evidence that Mr. Occhiuzzo was excluded from the airport or that other tenants have been conferred preferential treatment to his detriment.

In consideration of the above, the Director finds that the record does not support a violation of Grant Assurance 23, *Exclusive Rights*. Therefore, the Director dismisses this specific allegation under Grant Assurance 23, *Exclusive Rights*.

Issue 4 – Whether the City violated Grant Assurance 23, Exclusive Rights, by allowing Ross Aviation to become the sole fixed based operator at the Airport.

1. Occhiuzzo’s Position

Mr. Occhiuzzo alleges that because the City allowed Rectrix FBO to absorb Five Star Jet Center in 2015, it granted Rectrix, and subsequently Ross Aviation, an exclusive right to provide FBO services at BAF (FAA Exhibit 1, Item 5, p. 9).

2. City’s Position

The City denies that it has granted an exclusive right to Ross Aviation. The City asserts that its Agreement with Ross Aviation contains a provision that prohibits the grant of an impermissible exclusive right. According to the City, Section 3(B)(2)(b) of the Agreement provides, “[n]othing contained herein shall be construed as granting to [Ross Aviation] an exclusive right to establish, maintain and operate a fixed based operation at Westfield-Barnes Airport.” (FAA Exhibit 1, Item 6, p. 5). The City asserts that the provision prohibits it from denying a qualified FBO applicant the opportunity to be an aeronautical service provider at the Airport, and does not prohibit two fixed based operators from merging to form a single FBO at the Airport (FAA Exhibit 1, Item 6, p. 5).

The City asserts that Ross Aviation providing most or all of the on-airport aeronautical services is not, in itself, evidence of an exclusive rights violation. The City claims that it has not denied any FBO applicant the opportunity to operate at the Airport, nor has Mr. Occhiuzzo suggested that the City has done so (FAA Exhibit 1, Item 6, pp. 5-6).

3. Director’s Determination

Upon review of the record, the Director finds that Mr. Occhiuzzo has failed to carry his burden of showing the City violated Grant Assurance 23. Mr. Occhiuzzo has failed to show how Ross Aviation’s acquisition of Rectrix Aviation in 2015 is tantamount to a current violation of Grant Assurance 23.

An unlawful exclusive right under Grant Assurance 23 is the exercise of a power, privilege, or other right that excludes or debars another or others from enjoying a like power, privilege or right. (*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. 9.)

“The fact that a single business or enterprise may provide most or all of the on-airport aeronautical services is not 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.” (See FAA Advisory Circular 150/5190-6, “Exclusive Rights at Federally Obligated Airports,” (Jan. 4, 2007), p. 5.)

The Director finds that the City is in compliance because it has taken action to comply with its Federal grant obligations. As discussed previously, Ross Aviation assumed the terms of the 1985 FBO Agreement, including the exclusive rights provisions in Section 3(B)(2)(b) (FAA Exhibit 1, Item 6, p. 5; FAA Exhibit 1, Item 4, Exhibit A, p. 4).

Part 16 provides in part, “[t]he burden of proof is on the complainant to show noncompliance with an Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act” (14 CFR § 16.23(k)(1)). Mr. Occhiuzzo presented no evidence to support the existence of any current exclusive rights violation that would obligate the City to act and enforce the Section 3(B)(2)(b).

In consideration of the above, the Director finds that the record does not support a violation of Grant Assurance 23, *Exclusive Rights*. Therefore, the Director dismisses this specific allegation under Grant Assurance 23, *Exclusive Rights*.

VIII. CONCLUSION AND FINDINGS

Upon consideration of the submissions, responses by the parties, the administrative record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office Airport Compliance and Management Analysis finds and concludes:

The City is not currently in violation of Grant Assurance 22, *Economic Nondiscrimination*, by allowing Ross Aviation to lease similar T-hangars at different rates. [See Issue (1).]

The City is not currently in violation of Grant Assurance 22, *Economic Nondiscrimination*, by allowing Ross Aviation to relocate Mr. Occhiuzzo to a different T-hangar against his wishes. [See Issue (2).]

The City is not currently in violation of Grant Assurance 23, *Exclusive Rights*, by allowing Ross Aviation to relocate Mr. Occhiuzzo to a different T-hangar against his wishes. [See Issue (3).]

The City is not currently in violation of Grant Assurance 23, *Exclusive Rights*, by allowing Ross Aviation to become the sole fixed based operator at the Airport. [See Issue (4).]

ORDER

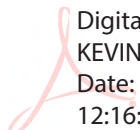
ACCORDINGLY, it is ordered that:

1. The Complaint is dismissed.
2. All motions not expressly granted in this Determination are hereby DENIED.

RIGHT OF APPEAL

This Director's Determination under FAA Docket No. 16-21-02 is an initial agency determination and does not constitute a final agency decision and order subject to judicial review under 49 U.S.C. § 46110. [14 CFR § 16.247(b)(2).] A party to this proceeding adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination. If no appeal is filed within the time period specified, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final because there is no administrative appeal is not judicially reviewable. [14 CFR § 16.33.]

KEVIN
WILLIS

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KEVIN WILLIS
Date: 2023.01.05
12:16:15 -05'00'

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

Date