

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

RICHARD C. BARTEL)
v.)
MONTGOMERY COUNTY REVENUE AUTHORITY)

Docket No. 13-90-20

RECORD OF DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the formal complaint filed in accordance with the FAA Investigative and Enforcement Procedures, 14 CFR Part 13.

Richard Bartel, (hereinafter, Bartel) has filed a formal complaint, pursuant to 14 CFR Part 13, against the Montgomery County Revenue Authority (hereinafter, the Authority), owner of Montgomery County Airpark (GAI). The complaint alleges that the Authority is engaged in granting an exclusive right contrary to its Federal grant assurances by not granting a commercial lease on the Airport to interested competitors, when the Authority has negotiated and signed a lease with other tenants.

Freestate Aviation (hereinafter, Freestate) leased GAI from the Authority.¹ According to the Authority, Freestate subleased the operation of GAI to Bartel of Flight Resources, Inc. In this role, Bartel served as airport manager licensed by the State of Maryland. The complaint presents the following issue for decision:

- Whether the Authority by granting leaseholds to Freestate on GAI, while withholding that same right from other competitors is violating its Federal obligations regarding exclusive rights as set forth in 49 USC § 40103(e), and its Airport Grant agreements.

As discussed below, the FAA has determined that the Authority by not granting a leasehold to Freestate's competitors did not violate the provisions of 49 USC 40103(e), and corresponding Grant Assurance number 23. This determination constitutes the determination of the Director, FAA Office of Airport Safety and Standards, pursuant to 14 CFR Part 13. The determination is based on our investigation of this matter as presented in the pleadings and supporting

¹ Freestate Aviation is the successor to Montgomery County Airpark Incorporated (MCAI) which originally privately financed, constructed and operated GAI.

documentation submitted by the parties in light of the applicable law and policy. See Index of Administrative Record.²

II. THE AIRPORT

GAI opened as a public use airport in 1960 as a replacement for Congressional Airport. GAI is located three nautical miles northeast of the central business district in Gaithersburg, Maryland. The Montgomery County Revenue Authority, a public corporation and an instrumentality of Montgomery County, Maryland, owns the Airport. The Airport had 248-based aircraft and 140,595 operations for a twelve-month period ending 3May 2000.³

The Airport was privately financed and constructed by MCAI. MCAI donated GAI to Montgomery County who in turn leased the entire airport consisting of 115 acres to MCAI under a 99-year lease. The Authority delegated part of its airport management responsibilities to MCAI, the fixed base operator⁴, in addition to MCAI's responsibility to provide fixed base operator services. As a condition of receiving Federal grants the Federal Aviation Administration required the Authority to acquire ten-acres of land to augment the Airport's boundaries and bring the Airport in compliance with the requirements of the exclusive rights provision. This land is under the direct control of the Authority.

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 former Airport and Airway Improvement Act of 1982, as amended and recodified, 49 USC § 47101, *et seq.* Since 1982, the Authority, as the airport sponsor has received eight AIP grant agreements with the FAA and has received a total of \$5,729,807 in federal airport development assistance. In 2000, the Authority received its most recent AIP grant for \$135,000.⁵

Two fixed base operators (FBOs), Montgomery Aviation and Congressional Air charters have been operating at the Airport since 1985. The former FBO provides aircraft maintenance, storage, sales, fuel, charter, rental, flight and ground instruction. The latter provides aircraft charter, rental, maintenance, management, flight and ground instruction. Both FBO's have been providing full service since 1992. As of the close of pleadings, Freestate acts as an airport management firm and is responsible for the daily operation of the Airport. [FAA Exhibit 1, item 38]

² FAA Exhibit 1 provides the Index of the Administrative Record in this proceeding.

³ FAA Exhibit 1, Item 1 provides a copy of the most recent FAA Form 5010 for the Airport.

⁴ A fixed base operator, (FBO) is an individual or firm operating at an airport and providing general aircraft services such as maintenance, storage, ground and flight instruction. FAA Order 5190.1, Airport Compliance Requirements, Appendix 5 (1989)

⁵ FAA Exhibit 1, Item 2 provides the Airport Sponsor's AIP Grant History listing the federal airport improvement assistance provided by the FAA to the Airport Sponsor from 1982 to the Present.

III. APPLICABLE FEDERAL LAW AND FAA POLICY

The Federal role in civil aviation has been augmented by various legislative actions, which authorize programs for providing Federal funds and other assistance to local communities for the development of airport facilities. In each such 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. Commitments assumed by airport 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 fair and reasonable access to the airport.

The Airport Improvement Program

49 USC § 47101, *et seq.*, 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, as amended. Title 49 USC § 47107, *et seq.*, 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 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.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. See, e.g., 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), 47107(l), 47111(d), 47122. FAA Order 5190.6A, Airport Compliance Requirements (Order), issued on October 2, 1989, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to federally-obligated airport owners' compliance with their sponsor assurances.

Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the Airport Improvement Program 49 USC § 47107, *et seq.*, the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. 49 USC 47107(a) sets forth the statutory sponsorship requirements to which an airport sponsor receiving Federal financial assistance must agree. These sponsorship requirements, or assurances, are included in every airport improvement grant agreement as set forth in FAA Order 5100.38A,

Airport Improvement Program (AIP) Handbook, issued October 24, 1989, Ch. 15, Sec. 1, "Assurances-Airport Sponsors,". Upon acceptance of an AIP grant by an airport sponsor, the assurances become a contractual obligation between the airport sponsor and the Federal government.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. 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 FAA Airport Compliance Program

The FAA discharges its responsibilities for ensuring airport sponsor compliance with their Federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the binding contractual obligations that 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.

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, but 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 5190.6A sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling as to airport sponsor conduct; rather it explains 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 for the grant of Federal funds or the conveyance of Federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of these assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

Enforcement of Airport Sponsor Assurances

FAA Order 5190.6A covers all aspects of the Airport Compliance Program except enforcement procedures.

For formal complaints filed before December 16, 1996, 14 CFR Part 13, governs the FAA's investigation of airport compliance matters.

The Prohibition against Exclusive Rights

Assurance 23, Exclusive Rights, of the prescribed sponsor assurances implements the provisions of 49 USC §40103(e) and 47107(a)(4). 49 USC §40103(e) provides, in relevant part, that "[a] person does not have an exclusive right to use an air navigation facility on which government money has been expended." 49 USC §47107(a)(4) similarly provides that "a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport"

Assurance 23, Exclusive Rights, of the prescribed sponsor assurances requires, in pertinent part, 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 services to the public...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...and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Title 49, United States Code.

In FAA Order 5190.1A, Exclusive Rights, (1985) the FAA published its exclusive rights policy and broadly identified aeronautical activities as subject to the statutory prohibition against exclusive rights. While public use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, we have taken the position that the application of any unreasonable requirement or standard that is applied in an unjustly discriminatory manner may constitute a constructive grant of an exclusive right. See FAA Order 5190.1A, Para. 11.c.

FAA Order 5190.6A provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports. See Order, Ch. 3.

IV. BACKGROUND

On April 25, 1960, the Montgomery County Revenue Authority, a public corporation and an instrumentality of Montgomery County, Maryland, and the Montgomery County Airpark, Incorporated (MCAI) signed an agreement for the construction and operation of an airport under a 99-year agreement. [FAA Exhibit 1, item 38, exhibit 1].

MCAI Lease

Under the lease agreement, MCAI proposed to develop an airport on land owned by one of its principal officers. The 115-acre site and improvements were donated to Montgomery County in return for industrial zoning of adjacent land and the MCAI's right to operate the 115-acre facility under a 99-year lease. [FAA Exhibit 1, item 38]

Specifically the agreement provided MCAI:

1. The exclusive right to use and develop the 115.792 acres, more or less, as a general airport facility;
2. The exclusive right to conduct and engage in those activities which are usual and customary in the operation of a general airport facility;
3. The right to construct runways and taxiways and other improvements, at its own expense;
4. The right to make reasonable charges for the services and facilities of the airport.

[FAA Exhibit 1, item 38, exhibit 1]

Under the agreement, title to all improvements was conveyed to the Authority. MCAI agrees to make the airport available for public use, and to refrain from imposing excessive, discriminatory or unreasonable charges or fees for the use of the airport. Noncompliance with these provisions is subject to Authority review. [FAA Exhibit 1, item 38, exhibit 1]

MCAI agreed to pay a rental fee of \$100 annually plus a rental amount equal to real estate taxes on the assessed value of the buildings and 20% of the rental amount for the use of the land. MCAI is permitted to retain an amount not to exceed 50% of the rental payments for reimbursement for the cost of inspection and other services. The balance of funds is to be used by the Authority for the operation and development of the airport. [FAA Exhibit 1, item 38, exhibit 1]

Noncompliance with Exclusive Rights Provision

Nineteen years after the execution of the MCAI lease, the Montgomery County Revenue Authority became interested in applying for Federal financing for airport

development. The Federal Aviation Administration (FAA) Washington Airports District Office (WASHADO) determined that the MCAI lease agreement would place the airport in a status of noncompliance for the purposes of receiving Federal financial assistance. According to the FAA WASHADO, the Authority had granted an exclusive right by leasing all available fixed base operator space to one operator for 99 years. [FAA Exhibit 1, item 38, exhibit 3]

To address the issue of noncompliance with federal requirements, the Authority expanded the airport boundaries and reduced the amount of property under MCAI's control from 115 acres to 38 acres. In 1980, the Authority received its first federal assistance grant; the funds were used to acquire ten-acres of land to expand the Airport and create additional space for FBO services. The purpose of the additional land was to provide space for competitive FBO services and bring the Airport into compliance with its grant assurances. [FAA Exhibit 1, item 38]

Bartel's Role

In 1978, MCAI subleased the operation of the Airport to Gibson Aviation who operated the Airport until 1983. MCAI then subleased the operation of the Airport to Flight Resources, Incorporated, headed by Richard Bartel, the complainant. According to the Authority, in 1989, Flight Resources, Incorporated, filed for Chapter 11 protection under the Bankruptcy laws. In 1990, the US Bankruptcy Court appointed a trustee for Flight Resources, Inc., to operate the Airport. The court-appointed trustee fired Bartel as head of Flight Resources and operated the Airport from April 1990 until June 1992 when Freestate, a successor to MCAI, took over operational control of the Airport. [FAA Exhibit 1, item 38]. Bartel did not provide any information on his relationship to the Authority or Freestate, other than to say he had been the airport manager.

FBO Solicitations

In 1987, the Authority solicited bidders for a second full service fixed base operator (FBO). The second FBO site was located on the ten-acre plot acquired with federal financial assistance. Aero Flight, Limited, was awarded a 25-year lease agreement for 9.375 acres to operate as the Airport's second FBO. [FAA Exhibit 1, item 38]. Aero Flight was unsuccessful in developing the FBO operation and in 1989, Aero Flight defaulted on its lease payments to the Authority. Both parties attribute the FBO failure to lack of utilities and improved access to the site. The Authority subsequently secured ingress-egress easements to alleviate the situation. [FAA Exhibit 1, item 38, exhibit f]. Aero Flight and its fuel supplier, VAO Leasing sued the Authority for breach of contract. [FAA Exhibit 1, items 17, 18, and 38].

In its breach of contract suit, Aero Flight charged that it was not until after lease execution that it found that the ten-acre site was landlocked without ground access. Aero Flight's complaint states that the adjacent landowners sued it for trespass and an injunction was entered barring Aero's access to the leased premises. According to Aero Flight, Ltd., the Authority refused to authorize construction of tiedowns, hangars, and other improvements. Aero Flight contended that a noise abatement study (Part 150 Noise Compatibility Study) was used by the Authority to prohibit the installation of tiedowns. [FAA Exhibit 1, items 18 and 39]. Aero Flight believed these problems made it impossible for it to meet its obligations and the company sued for \$4,500,000.

VAO Leasing, the fuel supplier also sued the Authority for damages totaling \$1,000,000. It contracted with both the Authority and Aero Flight to build and operate a fuel farm. According to VAO, it was not permitted to complete construction of the fuel farm. VAO also charged that when Aero Flight defaulted on its lease payments, the Authority failed to assume Aero Flight's lease payments to VAO as required by its agreement with the Authority. The Authority canceled its agreement with VAO. [FAA Exhibit 1, items 17 and 39].

A jury trial denied both VAO's and Aeroflight's claim and any compensation due the plaintiffs. [FAA Exhibit 1, item 38].

In May 1990, the Authority again solicited potential FBOs for the ten-acre site. Of the three potential candidates identified, the Authority selected Aviator's Cooperative Enterprise Services, Incorporated, (ACES) a pilot's cooperative, to enter negotiations for the FBO operation. These negotiations proved unsuccessful. [FAA Exhibit 1, items 38 and 40]. Again in 1992, the Authority solicited prospective bidders to submit a proposal for an FBO operation. Twenty-two candidates requested a copy of the proposal. Only one of the candidates, Northside Aviation, Incorporated, submitted a bid. [FAA Exhibit 1, item 38]

Two of the principals of Northside Aviation were affiliated with Freestate, formerly MCAI. In response to an inquiry from the Authority concerning the involvement of several principals from Freestate in Northside Aviation, the FAA Washington Airports District office indicated that there was no restriction on the Northside Aviation principal's affiliation with Freestate, especially in light of the fact that the request for proposal was publicly advertised and of the 22 proposers, only one company submitted a bid. [FAA Exhibit 1, item 38, exhibit 9]

In July 1993, the Authority signed an agreement with Northside Aviation for the lease of the second FBO site. The lease agreement was later terminated in March 1994, due to Northside's inability to make lease payments. [FAA Exhibit 1, item 38, exhibit 11]

An internal 1987 memorandum to the Montgomery County Executive indicates that the County wanted to develop the ten acre site without compromising its "no expansion" policy regarding Montgomery County Airpark. It appears that the ten-acre site was to be used for commercial aeronautical purposes excluding aircraft hangar storage or tiedowns. [FAA Exhibit 1, item 40].

Allegations

On June 20, 1990, Richard C. Bartel, Airport Licensee⁶ and former airport manager wrote a letter to the Montgomery County Revenue Authority regarding the leasing or purchase of a Federally acquired ten-acre site on the Airport. In the letter, Bartel indicated that unnamed parties who had made proposals to the Authority for aeronautical use of the land had approached him. According to Bartel, the parties reported that the Authority had not held out the land for lease or purchase for aeronautical uses as required by the grant assurances. Bartel contended because of the Authority's failure to do so, the Authority had granted an exclusive right to the existing operator. Bartel informed the Authority of his intention to file a complaint with the FAA. On June 21, 1990 Bartel filed a complaint under Part 13 to the FAA. [FAA Exhibit 1, item 3]

The Authority's answer to the complaint identified two attempts it had made to lease the ten-acre site to provide competition for the existing FBO. The first attempt had resulted in a lease being executed and the tenant later defaulting on the lease. The second attempt, during 1991, was in the procurement stage. [FAA Exhibit 1, item 8]

On March 17, 1991, Bartel supplemented his formal complaint by advising the FAA that he further contends the Authority, the tenant (Freestate, Bartel's lessor), the Maryland State Aviation Administration, and the staff of the FAA Washington Airports District Office coordinated an effort to strip Bartel of his State of Maryland issued airport license. [FAA Exhibit 1, item 9]. Bartel provided copies of his pleadings filed with the State Office of Administrative Hearings and the Circuit Court of Montgomery County. Neither Bartel nor the Authority provided subsequent filings identifying the outcome of the administrative and legal action concerning his license removal. Bartel also claimed that the Authority had been exercising an exclusive right for over ten years. [FAA Exhibit 1, item 9]. In subsequent filings, Bartel alleges that an exclusive rights violation has existed for twenty years. [FAA Exhibit 1, item 39]. Bartel alleges that the Authority inhibits competition by not letting any competitor park or store a single aircraft and requiring potential bidders to park all of their aircraft in the Freestate leasehold. Bartel contends this results in an exclusive right to Freestate for fuel

⁶ Mr. Bartel has held a license for the Airpark Manager issued by the Maryland State Aviation Administration, as required by the Transportation Code of Maryland at Section 5-304. [See FAA Exhibit 1, item 10].

sales and parking. [FAA Exhibit 1, items 33 and 40]. Bartel also alleges in a supplemental filing that the Authority appeared to hold out the ten-acre parcel for development but that the rates and charges were 10 to 20 times higher than charged to Freestate and that the request for proposals for the ten-acre parcel lease contained excessive "quality" standards which were not applied to Freestate. [FAA Exhibit 1, item 38]. Bartel also requested that Montgomery County be added as a party to the complaint. [FAA Exhibit 1, item 9]. Bartel further alleges that the Authority has solicited proposals for FBO operators, only for the purpose of being able to receive Federal assistance with no intention of accepting a proposal. [FAA Exhibit 1, item 39].

The Authority argues that Bartel's complaint is without merit. In its defense, the Authority references FAA Order 5190.6A, Section 2, paragraph 3-9a, single FBO activity not necessarily an exclusive right. The Authority further states that there are eight for profit and at least six non-profit organizations based at the Airport, including Aerotronic Services, Aviation Facilities Corporation, Congressional Air Charters, Freestate Aviation, J&R Aviation, Montgomery Aviation, Trebor Aviation, West Coast Helicopters, AirLife Line, the United States Coast Guard, the Civil Air Patrol, TSS Flying Club and Congressional Flying Club. Two FBOs, Montgomery Aviation and Congressional Air Charters, have been operating at the Airport since 1985, with each providing full service since 1992. [FAA Exhibit 1, item 38] The Authority further argues that the role of Freestate Aviation on the Airport has evolved to a role of an airport management firm responsible for the operation and development of the Airport. Second, the Authority has solicited and encouraged operators to lease the ten-acre site. The Authority contends that the unsuccessful attempts of operators to develop the site are no evidence that the Authority has violated its grant assurances regarding exclusive rights. The Authority argues its only requirement is to provide an opportunity for anyone interested in operating an FBO. [FAA Exhibit 1, item 38].

On July 16, 1997, the Department of Transportation Office of the Inspector General received complaint #7IH-471-I-000 over the Inspector General's (OIG) Hotline regarding Montgomery Airport. [FAA Exhibit 1, item 36] Bartel, the complainant, alleged that the Montgomery County Revenue Authority fraudulently used DOT grant funds to operate their golf courses. Bartel also alleged that the Authority was in violation of the exclusive rights provision of the grant assurances. The allegations regarding violations of the exclusive rights provision are the subject of this Part 13 investigation. The Office of the Inspector General did not find support for Bartel's allegations regarding fraudulent use of DOT grant funds and the file was closed on June 22, 1998 [FAA Exhibit 1, item 47]

V. ANALYSIS AND DISCUSSION

Summary of Issues and Arguments

Bartel alleges that the Authority is engaged in granting an exclusive right for commercial aeronautical services at the Airport to Freestate by granting Freestate a leasehold and withholding that same right from its competitors.⁷

The Authority maintains Bartel's complaint is without merit. The Authority has solicited and encouraged operators to lease space for the operation of an FBO at Montgomery Airpark. The unsuccessful attempt of operators to develop the site is no evidence that the Authority has violated its grant assurances.

The Authority argues that Bartel has provided a false impression that only one operator is conducting business at the Airport. It points out there are two FBOs providing full service at the Airport.

Specifically Bartel alleges:

- The Authority by granting leaseholds to Freestate on GAI, while withholding that same right from other competitors is violating its Federal obligations regarding exclusive rights as set forth in 49 USC § 40103(e), and its Airport Grant agreements.
- The Authority has required excessive rates and charges for the rental of the 10-acre parcel.
- Freestate maintains an exclusive right for fuel sales and aircraft parking.
- The Authority has exercised an exclusive right at Montgomery County Airpark.
- The Authority in cooperation with Freestate Aviation, the Maryland State Aviation Administration, and the FAA Washington Airport District Office coordinated an effort to revoke Bartel's license as airport manager.
- Montgomery County is bound by the grant assurances and should be considered a respondent in the formal complaint.

⁷ FAA Exhibit 1, Item 3

- The Authority has solicited proposals for FBO operators only for the purpose of being able to receive Federal assistance with no intention of accepting a proposal.
- The Authority has violated certain provisions of the Sherman and/or Clayton Anti-Trust Acts, the Federal Aid to Airport Act, the Federal Aviation Act, 14 CFR Part 152.

Bartel, as the complainant, requests an evidentiary hearing.

On the basis of the record in this proceeding and as discussed below, we conclude that that the Authority is not in violation of the prohibitions on exclusive rights, 49 USC §40103 (e) or AIP grant assurances pursuant to 49 USC §47107(a)(4).⁸

Exclusive Rights

Bartel alleges that by granting Freestate a leasehold and withholding that same right from competitors, the Authority has granted an exclusive right.

The FAA believes that the existence of an exclusive right to conduct a commercial aeronautical activity limits the usefulness of the airport. It also deprives the public of the benefits of a competitive business enterprise. The FAA considers it inappropriate as a matter of policy to expend Federal funds on airports where the travelling public can not enjoy the benefits of federally funded improvements.

An examination of the record indicates that the Authority had an exclusive use agreement with Freestate for the operation and development of the Airport. The 1960 agreement allowed Freestate to donate land for a public-use airport, construct all common use improvements such as aprons, taxiways and runways, at its own expense, in return for a 99 year lease and the exclusive right to conduct and engage in those activities which are usual and customary in the operation of a general airport facility.

In 1979, the Authority modified its relationship with Freestate to apply for Federal assistance. The Authority acquired ten-acres of land to augment the Airport's

⁸ [Pursuant to 14 CFR Part 16, the Rules of Practice for Federally-Assisted Airport Proceedings, which replace Part 13 as the rules for adjudicating complaints against federally funded airports in 1996, only a person directly and substantially affected by the alleged non-compliance has standing to file a complaint. See 14 CFR §16.23. Under this subsequent standard the complainant Bartel would only have standing to raise the issue of the revocation of his license. Part 13, however, had no standing requirements. But see Pollnow v. FAA, No. 97-2847 (7th Circuit, 1999) (Part 13 complainant with no injury in fact lacked standing to file appeal of the Part 13 decision in Court of Appeals.)]

boundaries, and bring the Airport in compliance with the requirements of Assurance 23, "Exclusive Rights". The Authority also reduced the Freestate 115 -acre leasehold to 38 acres leaving the remaining 87-acres including the 10-acres of federally acquired land under the control of the Authority.

Two FBOs, Montgomery Aviation and Congressional Air Charters have been operating at the Airport since 1985, providing full service since 1992. In spite of the Authority's inability to find a FBO for the ten-acre site, the Airport enjoys the services of a number of commercial operators. The Authority has indicated that there are eight for profit and at least six non-profit organizations based at the Airport. This directly contradicts Bartel's allegation that the Authority has granted an exclusive right.

Bartel alleges that the Authority has violated the exclusive rights provision of its grant assurances for the last twenty years, specifically since 1977. To support the allegation of an exclusive rights violation, Bartel alleges that the Authority failed to grant a lease to Aero Flight, Ltd., and ACES.

The objective of the FAA's compliance program is to assure that airports are in compliance with their grant obligations on a current basis, not to impose sanctions for past non-compliance. As discussed, the record establishes that the Authority is not currently granting any entity, FBO or non-FBO, an exclusive right to operate at the Airport. On this basis alone, we conclude that the past treatment of Aeroflight and ACES is not evidence of the granting of a present exclusive right. Moreover, our own analysis does not support a conclusion that the treatment of Aero Flight, Ltd., and ACES, is evidence of a grant of an exclusive right to Freestate in the past. The record indicates that on December 22, 1987, the Authority executed a lease with Aero Flight, Ltd. Aero Flight operated at the Airport until it defaulted on its lease payments in 1989. The Authority, the complainant and T. Robert Verkouteren of VAO Leasing, Aero Flight's fuel supplier, provided the information regarding the Aero Flight lease. The record attributes the failure of the FBO to a lack of utilities and a lack of improved access to the FBO site. [FAA Exhibit 1, items 38 and 39, exhibit 1].

It appears that it would be a reasonable industry practice that basic facility requirements such as utilities, access, and location are addressed in the siting of an FBO operation. In this circumstance, the burden is on the FBO operator to exercise due diligence during contract negotiations to ensure that the airport operator properly addresses the facility infrastructure requirements of the site. The record indicates that the Authority planned to make improvements to the site and Aero Flight had the option of delaying its move to the site until the improvements were completed; yet the FBO chose not to delay its move. [FAA Exhibit 1, items 39, exhibit 1]. In this case, it appears that the failure of the FBO operation was the result of poor business planning not the result of the Authority granting an exclusive right. A jury trial denied the claims and request

for compensation of both Aero Flight and VAO Leasing in their breach of contract suit.

Regarding ACES, the Authority selected ACES to enter contract negotiations for a second full service FBO. According to the Authority, subsequent contract negotiations with ACES proved unsuccessful and an agreement was never executed. [FAA Exhibit 1, item 38].

The record also indicates that the Authority signed a lease with Northside Aviation on July 1, 1993 to operate as the Airport's second full service FBO. This lease was later terminated on March 9, 1994 due to Northside's inability to make lease payments. The record does not provide sufficient detail to identify the reasons for termination beyond Northside's inability to make lease payments. The record does not indicate that Northside's inability to make lease payments was caused by any unreasonable or unjustly discriminatory restrictions imposed by the Authority. [FAA Exhibit 1, item 38 and item 38, exhibit 11].

The statutory provision, 49 USC § 40103(e) provides that, "A person does not have an exclusive right to use an air navigation facility on which Government money has been expended." Assurance 23, "Exclusive Rights", prohibits the airport sponsor from either directly or indirectly granting or permitting any person, firm or corporation the exclusive right at the airport to conduct any aeronautical activities.

In each case noted above, the Authority provided an opportunity for the commercial operator to conduct an FBO operation on the Airport. While the Authority is obligated to provide available and suitable space for commercial aeronautical activity, it is under no obligation to make improvements to the property. It could have easily required all commercial operators to construct improved road and utility infrastructure similar to the improvements provided by Freestate and continued to fulfill its obligations under the grant assurances.

Bartel contends that the Authority solicited proposals to lease the ten-acre parcel at excessive rates and charges and required excessive "quality" standards that were not applied to Freestate. [FAA Exhibit 1, Item 38] We conclude that based upon the administrative record and our investigation of this issue, that the Authority did not engage in an unjustly discriminatory act when it was seeking proposals to lease the ten-acre site. We have consistently recognized that airport sponsors may charge different rates to similar uses of the airport if the differences can be justified as nondiscriminatory.

FAA Order 5190.6A Section 4 pertains to the availability of airport premises on fair and reasonable charges and states as follows:

"Airport owners are not required to construct hangers and terminal facilities, but have the obligation to make available suitable areas or space on reasonable terms to those who are willing and otherwise qualified to offer flight services to the public or support services to aircraft operators. Airport owners have a duty to negotiate in good faith for the lease of airport premises."

Bartel has failed to show that the Authority failed to negotiate in good faith with potential lessees for the development of an FBO at the ten-acre site at the Airport. Bartel failed to present any persuasive evidentiary support for the allegation that the Authority had imposed excessive rates or excessive quality standards on potential developers of the ten-acre site. We conclude that the terms and conditions contained in the Authority's Request for Proposal do not constitute the grant of an exclusive right, direct or indirect, to Freestate for commercial aeronautical use of the airport.

The failure of Freestate's competitors to operate an FBO was not based upon an award of an exclusive right to Freestate or unjustly discriminatory rates or conditions, but on the failure of the competitors to address the terms and conditions previously agreed upon by both competitors and the Authority. It should be noted that none of the commercial operators that executed agreements with the Authority for an FBO operation is a party to this complaint. The resolution of these issues was a business decision best left to the respective parties.

In a 1994 FAA record of decision involving an airport landlord tenant dispute, the Agency made it clear that,

The purpose of the grant assurances is to protect the public interest in the operation of federally obligated airports. The purpose is not to provide alternative or supplemental rights to those normally available to commercial tenants in disputes with their landlords, i.e. negotiation or commercial litigation under applicable state and local laws.⁹

FAA Order 5190.1A, paragraph 6(a) defines an exclusive right to be a

"power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right".

The Order 5190.1A, paragraph 9(a) further states,

"A single activity is not necessarily an exclusive right." As long as the opportunity to engage in an aeronautical activity is available to those meeting reasonable qualifications and standards relevant to such activity, the fact that only one person takes advantage of the opportunity does not constitute the grant of an exclusive right."

⁹ *Sky East Services, Inc. and Hampton Air Transport System, Inc. v. Suffolk County, New York*, Formal Complaint Nos. 13-88-6 and 13-89-1.

In summary, the Authority has not interfered with a right or privilege protected under the relevant Federal law and Sponsor Assurances by failing to accept business terms and conditions of potential bidders for a second FBO or by contracting with a second FBO whose principles are affiliated with the existing FBO.

One issue that is of concern is the availability of the ten-acre site for aircraft storage and tiedown space. The record regarding the Aero Flight and ACES proposals suggests that the Authority may have restricted use of the site in a manner that is inconsistent with the Authority's minimum standards and the Authority's testimony. Information provided by the complainant appears to indicate that the Authority prohibited the use of the site for general aviation aircraft hangars and tiedown storage due to a Part 150 Noise Compatibility Study. [FAA Exhibit 1, items 39 and 40]. The Authority's minimum standards include provision for these services and the Authority's testimony does not address this subject. While the status of the 10-acre site is not a basis for a finding of non-compliance, we are requesting the Authority to provide an explanation of its policy on leasing the ten-acre site and on the impact the Part 150 Noise Compatibility Study has on general aviation aircraft storage and the availability of general aviation tiedowns.

Montgomery County

The Airport Compliance Program is a contractually based program. By executing the grant agreements for Federal assistance, the sponsor enters into a contractual agreement to abide by the grant assurances. In the case of Montgomery County Airpark, the Montgomery County Revenue Authority signs the grant agreements. As owner and sponsor of Montgomery County Airpark, the Authority is bound by the grant assurances. Bartel in a footnote in his supplemental response at page 3, states that the Authority is not subject to regulation by Montgomery County.¹⁰ The Authority, as an independent public corporation, signed the grant assurance and as such is the body responsible to abide by the federal obligations regarding exclusive rights as set forth in 49 USC §40103(e) and its airport grant agreements. Montgomery County does not own the Airport and did not sign the contractual agreements assenting to the terms of the grant assurances. Accordingly, there is no basis to add Montgomery County government as a co-respondent to this complaint. This allegation is therefore dismissed.

Authority's Good Faith Efforts to Solicit FBO Proposals

Bartel alleges that the Authority has solicited proposals for FBO operators only to be able to receive Federal assistance with no intention of accepting a proposal.

¹⁰ FAA Exhibit 1, Item No. 33, page 3

There is no basis for this allegation. The complainant provides no evidence that the Authority solicited proposals with no intention of executing an agreement. On the contrary, on numerous occasions the Authority has solicited proposals to operate a second full service FBO at Montgomery County Airpark. In several cases, the Authority has executed lease agreements with the proposed operator. In each case, the operator has either defaulted on the agreement or failed to satisfactorily reach a mutual agreement. Moreover, two FBOs have been operating at the Airport since 1985 and providing full service since 1992.

The FAA does not require an airport sponsor to enter into an agreement simply because a commercial operator desires to conduct business on the airport. An airport sponsor has the responsibility to execute commercial leases in a fair non-discriminatory manner containing reasonable terms and conditions that will support the airport's ability to be financially self-sustaining. As the airport sponsor, the Authority has the right to terminate a lease when the tenant defaults on its lease obligations. As previously discussed, the Authority's grant obligations did not require the Authority to construct improvements for Aero Flight, Ltd. Rather, as FAA Order 5190.6A clearly states:

The prime obligation of the owner of a federally assisted airport is to operate it for the use and benefit of the public. While the owner is not required to construct hangars and terminal facilities, it has the obligation to make available suitable areas or space on reasonable terms to those who are willing and otherwise qualified to offer flight services to the public or support services to aircraft operators.

Airport Manager's License

Bartel alleges that the Authority in cooperation with Freestate Aviation, the Maryland State Aviation Administration, and the FAA Washington Airports District Office coordinated an effort to revoke his state license as Montgomery County Airpark's Airport Manager.

Bartel alleges that the Authority engaged in a series of retaliatory actions against him, which eventually resulted in the loss of his employment and the airport license. [FAA Exhibit 1, item 33 page 1] However, Bartel fails to mention that the loss of his employment resulted from the actions of a bankruptcy trustee and not the actions of the Authority. In 1989, the company Bartel was associated with, Flight Resources, Inc., had filed for Chapter 11 protection under the Bankruptcy Laws. In 1990, the court-appointed trustee fired Bartel and assumed operation of the sublease until Freestate, as successor to MCAI, resumed control in June of 1992. [FAA Exhibit 1, item 38]

In an April 3, 1991 decision, a State Administrative Law Judge dismissed the State's order for Bartel's license revocation on the grounds that the Maryland

State Aviation Administration did not comply with the notice requirements of the State's Administrative Procedure Act and Transportation Article of the State Code of Maryland. [FAA Exhibit 1, item 15]. According to a newspaper article, the judge indicated that the State must detail why Bartel should not continue in his role as airport manager and must give him an opportunity to resolve the problems. [FAA Exhibit 1, item 26]. Neither party provided information on the final resolution of the court case.

Furthermore, the record fails to provide evidence that any of the parties coordinated together to revoke Mr. Bartel's license as airport manager. Specifically, the complaint fails to identify how the Authority or FAA employees were involved in Bartel's license revocation which is a state function. Additionally, Part 13 Investigative and Enforcement Procedures do not apply for complaints against the Administrator or employees of the FAA acting within the scope of their employment. See 14 C.F.R. § 13.5(a). Furthermore, the issue of Bartel's license revocation is outside the scope of FAA's powers regarding the sponsor's compliance with its grant assurances. The State of Maryland, which acted to revoke Mr. Bartel's license, is not the sponsor of Montgomery County Airpark and has assumed no obligation regarding its operations. The record indicates that Bartel's termination and the revocation of his airport manager's license involved matters of Bankruptcy law and state law. [FAA Exhibit 1, item 38]. The Airport Compliance Program is not intended to convert the FAA into an alternative forum to litigate claims under Federal and state laws that are not administered by the FAA, as the FAA explained in its *Sky East Services Decision*¹¹. This allegation is dismissed.

A Review of the Freestate Lease in Light of the Authority's Airport Manager Responsibilities

The record indicates that the Authority has traditionally delegated part of its airport management responsibilities to the fixed base operator, Montgomery County Airpark, Incorporated¹² (MCAI) and later Freestate Aviation. Presently, it appears that Doug McNeeley, a Freestate Aviation employee fulfills this responsibility. Considering the Authority's limited staff resources, a three person staff, it would not be deemed unusual to delegate this responsibility. This is a common practice for many airports of similar size to the Airpark.

Under the 1960 agreement, MCAI performed all airport management responsibilities. In its submitted testimony, the Authority indicated that the Freestate leasehold has been reduced from 115 acres to 38 acres. Additionally, ten-acres of federally acquired property expanded the Airport's boundaries.

¹¹ See footnote 9.

¹² MCAI delegated these responsibilities to Richard C. Bartel, Flight Resources, Inc.

Given the role of a Freestate employee in managing the Airport, Freestate presumably exercises some control over the Airport. The airport sponsor's delegation of this management responsibility is not, however, inconsistent with the grant obligations. FAA Order 5190.6A, para. 6-2(c), clearly states:

Commercial airport operator agreements become...complex when the owner, for various reasons, chooses to rely on one of its commercial licensees or tenants to carry out its own obligations with respect to the airport. The airport owner may contract with a commercial tenant to perform all or part of the airfield maintenance. It may delegate to the tenant the responsibility to collect landing fees, publish NOTAMS on the owner's behalf, or even assign to him the full authority of an airport manager. It is highly recommended that the FBO responsibilities and obligations be in a separate agreement from the airport managerial responsibilities.

The FAA's interest in leases is to ensure that such arrangements do not have the effect of granting or denying rights to use the Airport contrary to the requirements of law and applicable policy. Whatever the role Freestate has with respect to the management of the Airport, this role has not prevented the establishment of viable commercial aeronautical businesses at the Airport, including two competing FBO. The separation of both the commercial licensed functions from airport manager responsibilities provides a measure of protection to the airport owner during disputes involving the operator/manager. We are therefore requesting the Authority, as the Airport Sponsor, to develop and submit a separate agreement for FAA review defining Freestate's airport management responsibilities.

Possible Violation of Other Laws

Bartel alleges that the Authority has violated certain provisions of the Sherman and/or Clayton Anti-Trust Acts, the Federal Aid to Airport Act and 14 CFR Part 152. Allegations concerning possible violations of Sherman and/or Clayton Anti-Trust Acts are outside the Part 13 jurisdiction of the FAA. The Federal Aid to Airport Act of 1946 was repealed in 1970 and 14 CFR Part 152 is not applicable to violations of the grant assurances under the Airport Improvement Program.

Request for a Hearing

FAA's Investigative and Enforcement Procedures, 14 CFR Part 13, do not provide for a hearing as a matter of right. Bartel's request for a hearing under 14 CFR § 13.101 et seq. is denied because the investigation of Bartel's complaint has not shown that the Airport violated its Federal obligations concerning exclusive rights. The FAA is not obligated under 14 CFR Part 13 to hold an

evidentiary hearing on Bartel's complaint. Under 14 CFR Part 13.5 the FAA may dismiss a complaint without a hearing after investigation has not persuaded the agency that there has been a violation by the airport of its federal obligations. See, William D. House v FAA, Nos. 97-70023, 97-70650, (9th Cir filed August 11, 1998). In that unpublished memorandum decision the Court held that the FAA has the discretion to dismiss a complaint filed under 14 CFR Part 13 without a hearing. See also, Penobscot Air Services, Ltd., v FAA, No. 98-1133, (1st Cir decided January 19, 1999) In this published decision the Court affirmed the FAA's discretion not to grant an evidentiary hearing on a formal complaint filed under 14 CFR Part 16 pursuant to the same statutory framework as under the successor regulation to Part 13.

ORDER

Based on the circumstances at the Montgomery County Airpark and the actions of the Authority and the evidence of the record in its entirety, as discussed, we find that:

The Authority did not violate the provisions of 49 USC § 40103(e) and Grant Assurance No. 23; however, the Authority, as the Airport Sponsor, is requested to provide the following to the FAA Washington Airports District Office:

- A report on its policy on leasing the ten-acre site and a report on the impact the Part 150 Noise Compatibility Study has on general aviation aircraft storage and the availability of general aviation tiedowns.
- A separate agreement for FAA review defining Freestate's airport management responsibilities.

ACCORDINGLY, we dismiss Richard C. Bartel's Formal Complaint No. 13-90-20.

RIGHT OF APPEAL

This order constitutes final agency action under Section 1006(a) of the Federal Aviation Act of 1958, as amended, 49 USC Section 46110, and under Section 519 of the AIA, 49 USC Section 47106. Any party to this proceeding having a substantial interest in this order may appeal the order to the Courts of Appeals of the United States or in accordance with terms of Section 1006 the United States Court of Appeals for the District of Columbia, upon petition filed within 60 days after entry of this order.


James White

Deputy Director,

for David L. Bennett, Director
Office of Airport Safety and StandardsDate AUG 2 2001

RICHARD C. BARTEL
v.
MONTGOMERY COUNTY REVENUE AUTHORITY
DOCKET NO. 13-90-20

INDEX OF ADMINISTRATIVE RECORD¹³

The following documents (Items) constitute the administrative record in this proceeding:

1. FAA Form 5010, dated 03/09/2001, for the Airport. (See Attached Exhibit 2)
2. Airport Sponsor AIP Grant History dated 03/09/2001, listing the federal airport improvement assistance provided by the FAA to the Airport Sponsor since 1982. (See Attached Exhibit 3)
3. Formal Complaint filed by Richard C. Bartel, dated 21 June 1990. List of Exhibits includes:
 - a.) Letter from Bartel to Montgomery County Revenue Authority regarding the complainant's intentions of filing a complaint with the FAA, dated 20 June 1990.
4. Letter from Bartel to FAA Enforcement Docket regarding complaint and referencing specific laws believed to have been violated by the Authority dated 3 December 1990, with the following exhibits:
 - a.) Formal Complaint filed by Richard C. Bartel dated 21 June 1990.
 - b.) Letter from Bartel to Montgomery County Revenue Authority regarding the complainant's intentions of filing a complaint with the FAA, dated 20 June 1990.
5. Letter from Allan H. Horowitz, Manager FAA Enforcement Litigation Branch, Regulations & Enforcement Division, Office of the Chief Counsel to Mr. Richard C. Bartel regarding acknowledging receipt of the complaint dated 12 December 1990.
6. Letter from Allan H. Horowitz, Manager FAA Enforcement Litigation Branch, Regulations & Enforcement Division, Office of the Chief Counsel to Montgomery County Revenue Authority forwarding copy of complaint dated 12 December 1990.

¹³ All documents not served with the complaint, answer, or reply are attached to this index.

7. Letter from Allan H. Horowitz, Manager FAA Enforcement Litigation Branch, Regulations & Enforcement Division, Office of the Chief Counsel to Stuart Kenny, Montgomery County Revenue Authority forwarding copy of complaint (complaint inadvertently omitted from transmittal dated 12 December 1990), dated 16 January 1991.
8. Answer to the complaint from F. Stuart Kenney, Executive Director, Montgomery County Revenue Authority to Allan H. Horowitz, Manager FAA Enforcement Litigation Branch, Regulations & Enforcement Division, Office of the Chief Counsel, dated 8 February 1991.
9. Letter from Richard C. Bartel to Allan H. Horowitz, Manager FAA Enforcement Litigation Branch, Regulations & Enforcement Division, Office of the Chief Counsel requesting the FAA to investigate alleged retaliation for non-renewal of airport license. Complainant also requests that Montgomery County be added to complaint, dated 17 March 1991.
10. Richard C. Bartel v. Theodore Mathison, Administrator Maryland Aviation Administration. Initial Brief on Appeal of An Administrative Action, and Supplement/Amendment to Complaint for Declaratory, Injunctive, and Monetary Relief. In the Circuit Court of Montgomery County, dated 20 March 1991.
11. In the Matter of Richard C. Bartel. Third Amended Appeal of An Administrative Action. Before the Office of Administrative Hearings. Docket Number: 91-DOT-SAA-20-421 dated 20 March 1991.
12. Richard C. Bartel v. Maryland Department of Transportation, Maryland Aviation Administration. Motion for a Writ of Mandamus. In the Circuit Court of Montgomery County, Maryland, No. 93451, certificate of service dated 5 October 1993.
13. Letter from Richard C. Bartel to Allan H. Horowitz, Manager FAA Enforcement Litigation Branch, Regulations & Enforcement Division, Office of the Chief Counsel requesting that Montgomery County and a list of individuals be added to complaint, dated 25 March 1991.
14. Letter from Allan H. Horowitz, Manager FAA Enforcement Litigation Branch, Regulations & Enforcement Division, Office of the Chief Counsel to Manager, Airport Safety and Operations Division, AAS-300 forwarding complaint for review and evaluation, dated 23 April 1991.
15. In the Matter of Richard C. Bartel. Second Amended Appeal of An Administrative Action. Before the Office of Administrative Hearings. Docket Number: 91-DOT-SAA-20-421 dated 4 May 1991.

16. Letter from Richard C. Bartel to Allan H. Horowitz, Manager FAA Enforcement Litigation Branch, Regulations & Enforcement Division, Office of the Chief Counsel regarding Administrative Law Judge's decision on Docket Number 91-DOT-SAA-20-421, dated 5 May 1991.
17. Letter from Richard C. Bartel to Allan H. Horowitz, Manager FAA Enforcement Litigation Branch, Regulations & Enforcement Division, Office of the Chief Counsel requesting the FAA to intervene in the State of Maryland Administrative Proceeding, Case 57977. Complaint attached, VAO Leasing Corporation vs. Montgomery County Revenue Authority, dated 21 May 1991.
18. Letter from Richard C. Bartel to Allan H. Horowitz, Manager FAA Enforcement Litigation Branch, Regulations & Enforcement Division, Office of the Chief Counsel requesting the FAA to intervene in the State of Maryland Administrative Proceeding, Case 77248. Complaint attached, Aero Flight, LTD vs. Montgomery County Revenue Authority, dated 21 June 1991.
19. Letter from Barry L. Molar, Attorney Advisor, FAA AGC-130 to Manager, AGC-130 regarding Bartel's request for FAA intervention in a state court breach of contract lawsuit against Montgomery County Revenue Authority, dated 21 June 1991.
20. Letter from J. Kevin Kennedy, Senior Compliance Officer, Airport Safety and Compliance Branch, AAS-313 to Manager, Airports division, AEA-600, Eastern Region forwarding the complaint to the region for evaluation and review, dated 25 July 1991.
21. Letter from David L. Bennett, Assistant Chief Counsel, FAA Office of Environmental Law Division to Bartel regarding the status of investigation on Docket 13-90-20, dated 3 November 1992.
22. Richard C. Bartel v. Montgomery County Revenue Authority et. Motion to Docket A Formal Investigation Proceeding, filed with the FAA, dated 14 January 1993.
23. Richard C. Bartel v. Montgomery County Revenue Authority. Formal Complaint Pursuant to 14 CFR 13. Filed with the FAA, dated 10 June 1994
24. Letter from Viola M. Pando, Airports Compliance Branch, AAS-300 to Bartel regarding the status of complaint, dated 28 March 1996.
25. Letter from Bartel to Viola M. Pando, Airports Compliance Branch, AAS-300 providing a list of witnesses and individuals involved in the complaint, dated 29 March 1996.

26. Facsimile from Doug McNeeley to Viola M. Pando, Airports Compliance Branch, AAS-300 providing three newspaper articles from The Gazette, dated 27 March 1991, 24 February 1993 and one undated article dated 2 April 1996.
27. Facsimile from Anthony Shore, Montgomery County Revenue Authority to Viola M. Pando, Airports Compliance Branch, AAS-300 providing an agreement between the Montgomery County Revenue Authority and the Montgomery County Airpark, Incorporated, dated 25th April 1960 and part of a draft agreement dated 1992, (fax date of 2 April 1996).
28. Letter from Viola M. Pando, Airports Compliance Branch, AAS-300 to Doug McNeeley regarding location of 10-acre site, dated 4 April 1996
29. Letter from Doug McNeeley to Viola M. Pando, Airports Compliance Branch, AAS-300 providing six airport maps, dated 5 April 1996.
30. Letter from Doug McNeeley to Viola M. Pando, Airports Compliance Branch, AAS-300 regarding the location of the 10-acre site, dated 5 April 1996.
31. Letter from David L. Bennett, Director, FAA Office of Airport Safety and Standards to Bartel regarding complainant's interest in pursuing the complaint, dated 10 April 1997.
32. Letter from Kevin Willis, Compliance Officer, AAS-313 to Anthony M. Shore, Executive Director, Montgomery County Revenue Authority providing a copy of Bartel's original complaint and supporting documentation and a request for an amended response, dated 19 June 1997.
33. Supplementary Filing of Complainant by Richard C. Bartel, dated 10 June 1997. List of Exhibits includes:
 - a.) Memorandum from Clyde H. Sorrell, Deputy County Executive to Sidney Kramer, County Executive, dated February 5, 1997.
 - b.) Letter Carole A. DiLodovico, FAA Washington Airports District Office to D'Wayne Gray, MCRA Executive Director, regarding management structure, dated October 9, 1989.
 - c.) Airport Layout Plan dated January 1991.
 - d.) Letter from Richard C. Bartel to Allan H. Horowitz, Manager FAA Enforcement Litigation Branch, Regulations and Enforcement Division, Office of the Chief Counsel supplementing original complaint, dated March 17, 1991.
 - e.) Letter from Richard C. Bartel to Allan H. Horowitz, Manager FAA Enforcement Litigation Branch, Regulations and Enforcement

Division, Office of the Chief Counsel, enclosing Judicial and Administrative Complaint, dated March 25, 1991.

f.) Letter from Richard C. Bartel to Doug Thomas, Esq., regarding VAO Leasing, dated May 5, 1991.

g.) Letter from Richard C. Bartel to Allan H. Horowitz, Manager FAA Enforcement Litigation Branch, Regulations and Enforcement Division, Office of the Chief Counsel, supplementing original complaint, dated May 5, 1991.

h.) Letter from Richard C. Bartel to Allan H. Horowitz, FAA, AGC, regarding allegations of anti-trust activities and breach of grant assurances, dated May 21, 1991.

i.) Letter from Richard C. Bartel to Allan Horowitz, FAA, AGC-270, enclosing copy of complaint in the case Aero Flight v. Montgomery County Revenue Authority, dated June 21, 1991.

j.) Letter from Richard C. Bartel to Doug Thomas, Esq., regarding VAO Leasing, and a copy of the case Summit Health v. Pinhas, dated May 31, 1991.

k.) Copy of Richard Bartel, Manager, Montgomery County Airport, Airport Operating Certificate covering the period of August 1, 1989 through July 31, 1990.

l.) Appellant's Brief filed by Richard C. Bartel for the case of Bartel v. Maryland Aviation Administration, dated September 1994.

m.) Subpoena issued to the Montgomery County Revenue Authority in the Matter of Richard C. Bartel, dated May 30, 1991.

n.) Monthly Minutes of the Montgomery County Revenue Authority covering the period from February 13, 1991 through August 9, 1988.

34. Letter from Frank J. San Martin, Attorney, Airports Law Branch, Office of Chief Counsel to Anthony M. Shore, Executive Director, Montgomery County Revenue Authority providing supplementary filing by Bartel and requesting a supplemental answer, dated 3 July 1997.

35. Letter from Frank J. San Martin, Attorney, Airports Law Branch, Office of Chief Counsel to Anthony M. Shore, Executive Director, Montgomery County Revenue Authority granting a 60 day time extension to provide an amended answer and supplementary response, dated 26 August 1997.

36. United States Department of Transportation Inspector General Hotline Complaint Number 7IH-471-I-000, CASIS# ACO97643, a confidential complaint alleges the Montgomery County Revenue Authority is fraudulently using DOT grants to operate their golf courses and violated exclusive rights, dated 15 September 1997.

37. Letter from James L. Parsons, Assistant County Attorney, Montgomery County, Maryland to Frank J. San Martin, Attorney, Airports Law Branch, Office of Chief Counsel regarding a two week extension for the filing of an amended answer and response to the supplementary filing, dated 21 October 1997.

38. Amended Answer to Complainant's Original Allegations, and Supplemental Response to Complainant's Supplemental Filing, dated 6 November 1997 and Transmittal letter from James L. Parsons, Assistant County Attorney, Montgomery County, Maryland to Frank J. San Martin, Attorney, Airports Law Branch, Office of Chief Counsel, dated 6 November 1997. Exhibit includes:

- (1) An agreement between the Montgomery County Revenue Authority and the Montgomery County Airpark, Incorporated, dated 25th April 1960.
 - (2) Letter from William A. Whittle, Manager, FAA Washington Airports District Office to Lee W. Swartz, Executive Director, Montgomery County Revenue Authority regarding development of fixed base operator services at Montgomery County Airpark, dated 24 February 1987.
 - (3) Letter from William A. Whittle, Manager, FAA Washington Airports District Office to FAA Eastern Region Counsel, AEA-7 requesting a legal determination of land contract, dated 13 March 1979.
 - (4) Airport Layout Drawings for Montgomery County Airpark, undated.
 - (5) Minutes of the Montgomery County Revenue Authority for Wednesday, May 23, 1990
 - (6) Answer to the complaint from F. Stuart Kenney, Executive Director, Montgomery County Revenue Authority to Allan H. Horowitz, Manager FAA Enforcement Litigation Branch, Regulations & Enforcement Division, Office of the Chief Counsel, dated 8 February 1991
 - (7) Minutes of the Montgomery County Revenue Authority for Wednesday, February 13, 1991
 - (8) Letter from F Stuart Kenney, Executive Director, Montgomery County Revenue Authority to Robert Mendez, FAA Washington Airports District Office, dated 21 December 1992.
 - (9) Letter from Carole A. DiLodovico, FAA Washington Airports District Office, to F Stuart Kenney, Executive Director, Montgomery County Revenue Authority regarding the proposed lease agreement for second FBO, dated 19 January 1993.
 - (10) Lease Agreement between the Montgomery County Revenue Authority and the Northside Aviation Corporation dated 1 July 1993.
- Exhibits include:

- (a) Land survey and map of Montgomery Airpark
- (b) Montgomery County Airpark, Airport Layout Drawings
- (c) Construction and Maintenance Standards
- (d) Solicitation for Fixed Base Operator

(e) Minimum Standards, Montgomery County Airpark, Airport operators, leases and Concessions

(f) Mutual Easement Agreement. Exhibits include:

- A. Description of Parcel 1
- B. Description of Parcel 2
- C. Ingress-Egress Easement Montgomery County Revenue Authority to Smart, LTD.
- D. Ingress-Egress Easement Smart, LTD to Montgomery County Revenue Authority.
- E. Letter from Peter A. Greenburg, counsel for Meyer, Faller, Weisman and Rosenberg, P.C. to Montgomery County Revenue Authority regarding the Northside Aviation, Incorporated proposal, dated 4 December 1992.
- F. Letter from Montgomery County Revenue Authority to Northside Aviation Incorporated regarding request for clarification of the FBO proposal, dated 16 February 1993
- G. Letter from James E. Richardson, Northside Aviation, Incorporated to F. Stuart Kenney, Executive Director, Montgomery County Revenue Authority regarding FBO proposal, dated 22 February 1993.
- H. Letter from James E. Richardson, Northside Aviation, Incorporated to F. Stuart Kenney, Executive Director, Montgomery County Revenue Authority regarding development of the Northside lease area, dated 5 April 1993.

(11) Letter from Anthony M. Shore, Executive Director, Montgomery County Revenue Authority to Peter A. Greenburg regarding development of the Northside lease area, dated 9 March 1994.

(12) Letter from Arnold Polinger to John Luke, Business Manager Montgomery County Revenue Authority regarding development of hangars, dated 23 October 1997.

39. Complainant's Reply to Revenue Authority's Supplemental Response, dated 22 December 1997.

1) Affidavit of T. Robert Verkouteren, VAO Leasing, Inc, dated 19 December 1997.

2) Letter to ACES Members and Supporters from Allen W. Rothenberg regarding FBO proposal, dated 20 December 1997 and attachments

40. Complainant's Supplemental Reply to Revenue Authority's Supplemental Response, dated 22 December 1997.

- 1) Letter to ACES Members and Supporters from Allen W. Rothenberg regarding FBO proposal, dated 20 December 1997.
 - 2) Memorandum from Edmond Rovner, Special Assistant to Sidney Kramer, County Executive regarding recommendation of permitted improvements to meet FAA guidelines- ten-acre parcel, Revenue Authority – Montgomery County Airpark, dated 5 February 1987.
 - 3) Letter from Allen W. Rothenberg, ACES to Stuart Kenney, Montgomery County Revenue Authority regarding FBO proposal, dated 17 December 1991.
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41. Complainant's Amended Reply to Revenue Authority's Supplemental Response, dated 23 December 1997.
 42. Complainant's Second Reply to Revenue Authority's Supplemental Response, dated 26 December 1997.
 43. Letter from Frank J. San Martin, FAA Airports law Branch, AGC-610, Office of the Chief Counsel to Bartel and James L Parsons, Jr., Assistant Montgomery County Attorney regarding the closing of pleadings in the case, dated 23 January 1998.
 44. Letter from James L. Parsons, Jr. to Frank J. San Martin, FAA Airports law Branch, AGC-610, Office of the Chief Counsel regarding change of counsel, dated 26 January 1998.
 45. Notes of telephone conversation between Bartel and Lyle Fjermedal, Airport Compliance Officer, dated 8 May 1998.
 46. Memorandum from Director of Airport Safety and Standards, AAS-1 to Manager, Investigations Division, ACO-300 regarding Complaint No. 17IH-471-I-000, dated 27 May 1998.
 47. Memorandum from Leon Thomas, FAA AAS-400 to Kevin Willis, FAA AAS-400 regarding the Inspector General's position to close the investigation requested by Bartel, Complaint Number 7IH-471-I-000 CASIS#: ACO97643, Montgomery County Revenue Authority, dated 2 October 1998.

March 9, 2001

CITY / GRANT NO	AIRPORT NAME	WORK DESCRIPTION	DISC. FUNDS	ENTIT. FUNDS	FEDERAL FUNDS (AIP)
GAITHERSBURG 01 83	MONTGOMERY COUNTY AIRPARK	CONSTRUCTION REMOVAL, TERRAIN AND TREE PENETRATIONS. TRANSITIONAL SURFACE	303,345	0	303,345
02 84		CONSTRUCT APRON (PHASE I - SITE PREPARATION)	384,621	0	384,621
03 87		RECONSTRUCT TAXIWAYS; CONSTRUCT TAXIWAYS AND APRONS (PHASE II); OVERLAY APRON	2,107,081	123,281	2,230,362
04 90		REMOVE OBSTRUCTIONS	70,708	156,371	227,079
05 90		CONDUCT NOISE COMPATIBILITY PLAN STUDY (PART 150)	180,771	0	180,771
06 93		INSTALL SECURITY FENCING	228,772	0	228,772
07 94		RECONSTRUCT RUNWAY (DESIGN ONLY); EXTEND TAXIWAY (DESIGN ONLY); CONDUCT NOISE CONTROL MEASURES	20,277	135,180	155,457
08 95		RECONSTRUCT RUNWAY; IMPROVE RUNWAY SAFETY AREA; EXTEND TAXIWAY; INSTALL RUNWAY LIGHTING AND VISUAL APPROACH AIDS	1,830,400	0	1,830,400
09 99		CONDUCT AIRPORT MASTER PLAN UPDATE (ENVIRONMENTAL ASSESSMENT)	0	54,000	54,000
10 00		UPDATE AIRPORT LAYOUT PLAN	0	135,000	135,000
		SITE TOTAL	5,125,975	603,832	5,729,807
		STATE TOTAL	5,125,975	603,832	5,729,807

1 ASSOC CITY: GAITHERSBURG

2 AIRPORT NAME: MONTGOMERY COUNTY ARPK

5 COUNTY: MONTGOMERY, MD

3 CBD TO AIRPORT (NM): 03 NE 6 REGION/ADO: AEA / DCA

7 SECT AERO CHT: WASHINGTON

GENERALSERVICESBASED AIRCRAFT

10 OWNERSHIP: PUBLIC

>70 FUEL: * 100LL A

90 SINGLE ENG: 210

11 OWNER: MONTGOMERY COUNTY REV AUTH

>71 AIRFRAME RPRS: MAJOR

91 MULTI ENG: 35

12 ADDRESS: 211 MONROE ST
ROCKVILLE, MD 20850

>72 PWR PLANT RPRS: MINOR

92 JET: 3

>73 BOTTLE OXYGEN: LOW

TOTAL 248

>74 BULK OXYGEN: NONE

93 HELICOPTERS:

75 TSNT STORAGE: HGR TIE

94 GLIDERS:

76 OTHER SERVICES:

95 MILITARY:

AFRT AVNCS CHTR INSTR RNTL
SALES

96 ULTRA-LIGHT:

>16 PHONE NR: 301-963-7100

>17 ATTENDANCE SCHEDULE:

MONTHS DAYS HOURS
ALL ALL 0800-2000FACILITIESOPERATIONS

>80 ARPT BCN: CG

100 AIR CARRIER:

>81 ARPT LGT SKED: * DUSK-DAWN

101 COMMUTER:

>82 UNICOM: * 122.700

102 AIR TAXI:

>83 WIND INDICATOR: YES-L

11,200

84 SEGMENTED CIRCLE: YES

103 G A LOCAL:

85 CONTROL TWR: NO

80,100

86 FSS: LEESBURG

104 G A ITNRNT:

87 FSS ON ARPT: NO

49,295

88 FSS PHONE NR: 703-777-2856

TOTAL 140,595

89 TOLL FREE NR: 1-800-WX-BRIEF

OPERATIONS FOR 12

MONTHS ENDING 3 May 2000

18 AIRPORT USE: PUBLIC

19 ARPT LAT: 39-10-06.0100N ESTIMATED

20 ARPT LONG: 077-09-57.6000W

21 ARPT ELEV: 538 SURVEYED

22 ACREAGE: 125

>23 RIGHT TRAFFIC: 32

>24 NON-COMM LANDING: NO

25 NPIAS/FED AGREEMENTS: NGVY

26 FAR 139 INDEX:

RUNWAY DATA

>30 RUNWAY IDENT:

14/32

>31 LENGTH:

4,195

>32 WIDTH:

75

>33 SURF TYPE-COND:

ASPH-G

>34 SURF TREATMENT:

NONE

35 GROSS WT: SW

36 (IN THSDS) DW

37 DTW

38 DDTW

LIGHTING/APCH AIDS

>40 EDGE INTENSITY:

MED

>41 RWY MARK TYPE-COND

NPI-G / NPI-G

>42 RWY CROSSING HGT

V4L /

>43 VISUAL GLIDE ANGLE

/

>46 CNTRLN-TDZ

/

>47 RVR-RVV

- / -

>48 REIL

Y / Y

>49 APCH LIGHTS

/

OBSTRUCTION DATA

50 FAR 77 CATEGORY

A(NP) / A(V)

>51 DISPLACED THR

/ 700

>52 CTLG OBSTN

TREES / TREE

>53 OBSTN MARKED/LGTD

/

>54 HGT ABOVE RWY END

24 / 80

>55 DIST FROM RWY END

550 / 1,150

>56 CNTRLN OFFSET

0B / 125L

57 OBSTN CLNC SLOPE

22:1 / 14 :1

58 CLOSE-IN OBSTN

Y / Y

DECLARED DISTANCES

>60 TAKE OFF RUN AVBL (TORA)

/

>61 TAKE OFF DIST AVBL (TODA)

/

>62 ACLT STOP DIST AVBL (ASDA)

/

>63 LNDG DIST AVBL (LDA)

/

(C) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >

>110 REMARKS:

A017 UNATNDD THANKSGIVING/CHRISTMAS/NEW YEARS.

A048 RWY 32 - RY 32 REIL OTS INDEFLY.

A058 RWY 14 - +10 FT TREES 200 FT R/L AT THLD.

A058 RWY 32 - +15 FT RIDGE PARALLEL TO RY 155 FT L.

A070 FUEL AVBL 0800-2000; REQUEST ON 122.85.

A081 ACTVT MIRL RY 14/32 & REIL RY 14/32 - 122.85.

A082 FLT SCHOOL FREQ 123.3

A110 - 1 NOISE ABATEMENT DEP RY 32; TURN RIGHT TO AT LEAST 340 DEGS; JETS REFRAIN FROM RY

32 TAKEOFF BTWN 2300-0700.

A110 - 2 DEER & BIRDS ON & INVOF ARPT.

A110 - 4 HELICOPTERS REFRAIN FM AIR TAXI OVER PAVED PARKING RAMPS.

THIS AIRPORT HAS BEEN SURVEYED BY THE NATIONAL OCEAN SERVICE. FOR INFORMATION ON

GEODETIC CONTROL, CONTACT THE NATIONAL GEODETIC SURVEY, 301-443-8168.

INSPECTOR: (S)

112 LAST INSP: 03 May 2000

113 LAST INFO REQ: