

Southern Region Airports Division 1701 Columbia Ave. Atlanta, GA 30337-2747 (404) 305-6700 FAX: (404) 305-6730

July 14, 2021

J Todd Scher Director/Airport Manager Vero Beach Regional Airport 3400 Cherokee Drive Vero Beach, FL 32960 Via Email

> Letter of Inquiry Nonaeronautical Use of Airport Property

Dear Mr. Scher:

It has come to the Federal Aviation Administration's (FAA) attention that the City of Vero Beach (City) may have entered into an agreement that has allowed nonaeronautical residential use of the Vero Beach Regional Airport (VRB) property. Specifically, there is apparently a mobile home park on airport property currently being used for long-term residential purposes. This raises airport compliance questions for the FAA Southern Region Airports Division, since long-term residential use of airport property is incompatible with airport operations.

VRB is a public-use airport owned and operated by the City. It is classified as a Commercial Service airport and has received approximately \$32,272,540.00 in FAA funding since 1983. As a condition precedent to providing airport development assistance under the Airport Improvement Program (AIP), the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the federal government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system, and the City has obligated VRB to the AIP Grant Assurances through its ongoing contractual grant agreement with FAA. These assurances define the scope of FAA's jurisdiction with respect to airport-related matters. The City is obligated to comply with the statutory requirements outlined in the Airport and Airway Improvement Act of 1982, 49 U.S.C., § 47101, et seq., and the AIP grant assurances.

As per the assurances, the FAA will look into any terms and conditions of an airport agreement that could prevent the realization of the full benefits for which the airport was constructed or conveyed, including nonaeronautical agreements that permit residential use. Current FAA policy allows airport sponsors to permit *limited* residential use of airport property when the use is directly related to and compatible with airport operations or programs. One example of this is a flight training program for pilots where the pilots may be allowed to reside on airport property during training only for a short period of time. Airport sponsors proposing to allow limited,

compatible, and short-term residential use of airport property must ensure the land use does not inadvertently result in a violation of the sponsor's federal obligations, including the following:

- Grant Assurance 5, *Preserving Rights and Powers*, prohibits an obligated airport from taking or permitting any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in its grant agreements without the prior approval of the Secretary of Transportation, as delegated to the FAA. However, it appears likely that the contractual agreements related to the long-term residential use of VRB may not contain all the required protective clauses necessary to ensure the City does not relinquish its rights and powers to another entity or party.
- Grant Assurance 21, Compatible Land Use, states that the airport sponsor will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended. Long-term residential use of an obligated airport's property is considered incompatible with airport operations because this type of use is likely to be adversely affected by cumulative noise levels at or above 65dB Day-Night Sound Level (DNL).
- Grant Assurance 24, *Fee and Rental Structure*, and the FAA's Policy and Procedures Concerning the Use of Airport Revenue require airport sponsors to establish a fee and rental structure that will make the airport as self-sustaining as possible under the particular airport circumstances. This includes charging Fair Market Value (FMV) commercial rates for nonaeronautical uses of airport property and aeronautical rates for aeronautical uses. Also, Grant Assurance 25, *Airport Revenues*, requires airport sponsors to ensure that all revenues generated by the airport will be expended for the capital or operating costs of the airport or local airport system. Unlawful revenue diversion is the use of airport revenue for purposes other than airport capital or operating cost or the costs of other facilities owned or operated by the sponsor and directly and substantially related to air transportation. Rental of land to, or use of land by, the sponsor for nonaeronautical purposes at less than FMV rent is considered a subsidy of local government and is a prohibited use of airport revenue. However, it is unclear whether the residents on VRB are paying FMV for their use of the airport property.
- Grant Assurance 29, *Airport Layout Plan* (or ALP), requires airport sponsors to keep up to date an ALP at all times, subject to FAA policy and federal law. However, it appears the long-term residential use of VRB's airport property is not depicted on the airport's current ALP.

• Grant Assurance 30, *Civil Rights*, requires certain contractual clauses required by federal law to be included in most airport agreements; however, it appears that required Title VI Clauses were not included in the long-term residential use agreements at VRB. ¹

The purpose of this inquiry is to determine whether the City is operating VRB in accordance with the City's federal airport obligations, including but not limited to the above listed requirements. Please respond in writing to the following by August 11, 2021:²

- 1. Please indicate whether the apparent long-term residential use of airport property is ongoing as of the date of this correspondence, and provide background concerning when the leases were first executed.
- 2. Please explain why the residential lease(s), if any, were entered into.
- 3. Please provide a copy of any and all airport residential lease(s), including leases that may have residential use as an allowable use of the leasehold along with other primary use(s).
- 4. Please provide a copy of the appraisal(s) or other information the City relied on to determine the appropriate FMV charges related to the airport's residential agreements, if any.
- 5. Please provide a copy of the airport's land use/zoning restrictions plan and/or a description of actions the sponsor has taken to prevent incompatible use of airport property.
- 6. Please provide a copy of the release [written and signed document from FAA] that authorized the residential land use(s), if any.
- 7. Please provide a copy of the underlying land deed(s) and clearly identify whether land was purchased using federal funding (i.e. AIP grant, ADAP grant, etc.).

Thank you for your attention to this matter. If I can be of any assistance or answer any questions that you might have, please do not hesitate to contact me at (404) 305-6723 or Jonathan.L.Husband@faa.gov.

Sincerely,

Jonathan Husband

FAA Regional Airports Compliance Specialist

cc: Steven Hicks, Director, Airports Division, Southern Region Stan Allison, Deputy Director (ASO-600) Pristell, Regional Compliance Specialist, Southern Region Bart Vernace, Manager, ORD ADO Rebecca Harper, Assistant Manager, ORD ADO Juan Brown, Assistant Manager, ORD ADO Marisol Elliott, Community Planner, ORD ADO

¹ Please visit https://www.faa.gov/airports/aip/procurement/federal contract provisions/ for more information on required federal contract provisions, and see Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4 for more on Title VI law.

² Please note that this office may request additional information after reviewing your response to this inquiry.