



U. S. Department
of Transportation

**Federal Aviation
Administration**

Great Lakes Region
Illinois, Indiana, Michigan,
Minnesota, North Dakota
Ohio, South Dakota
Wisconsin

RECEIVED

JUL 28 2005

2300 E Devon Avenue
Des Plaines, Illinois 60018

July 26, 2005

Mr. Joe Tocci, Chairman
SMDfund
P.O. Box 15058
Fort Wayne, Indiana 46885-5058

Mr. Torrance A. Richardson, A.A.E.
Executive Director of Airports
Fort Wayne -- Allen County Airport Authority
Lt. Paul Baer Terminal, Suite 209
Fort Wayne, Indiana 46809

RE: Smith Field
Fort Wayne, Indiana
SMDfund Complaint

The Federal Aviation Administration (FAA) has been involved in a review of alleged violations brought by Mr. Joe Tocci, Chairman of SMDfund, against the Fort Wayne -- Allen County Airport Authority (Authority) as owner/operator of Smith Field (SMD). Mr. Tocci submitted the complaint by letter dated August 22, 2004.

SMD is a public-use general aviation airport located approximately four miles north of the center of the business district in Fort Wayne, Indiana. SMD is owned and operated by the Authority, who also owns and operates Fort Wayne International Airport (FWA), a non-hub primary airport that enplanes approximately 330,000 passengers annually. SMD was considered a reliever airport to FWA prior to the criteria defining a reliever airport changing in the early 2000's. SMD currently has 44 based aircraft with 5,429 annual local general aviation operations and 3,000 annual itinerant general aviation operations. SMD has two runways: Runway 5/23, a 3,110-foot long runway with a 200-foot displaced threshold for Runway 5, and Runway 13/31, a 2,910-foot long runway with a 720-foot displaced threshold for Runway 13.

SMD has received grants under the Airport Improvement Program (AIP) as well as a grant under the Planning Grant Program (PGP) in 1973. All the AIP grants received to date have been planning grants that included a Master Plan performed and funded in three phases (AIP Grants 01, 02 and 03) in Fiscal Years 1988 and 1989. An RSA Study grant was funded in Fiscal Year 2001 under AIP Grant 04, and a grant to prepare an Airport Layout Plan (ALP) was funded in Fiscal Year 2003 under AIP Grant 05. As a result of accepting these planning grants at SMD, the Authority is obligated to comply with the applicable Grant Assurances within the Terms and Conditions, signed by the Authority on April 26, 2001. With planning grants, though, not all the Grant Assurances apply. Specifically for SMD, only Grant Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33 and 34 are those with which the Authority must comply. These Terms and Conditions can be accessed on our website at www.faa.gov.

Claiming the inability of SMD to remain self-sustaining from a financial standpoint, the Authority voted in 2002 to close the airport effective July 1, 2003. The FAA did not receive any formal notification from the Authority to close the airport (i.e. no FAA Form 7480-1 "Notice of Landing Area Proposal" was submitted to FAA indicating the abandonment of SMD). Due to public outcry from organizations such as SMDfund and SAFE (Smith Field Forever, Inc.) and pressures from local political entities, the Authority revisited their decision to close SMD and in 2003, voted to rescind the original vote to close SMD.

During the course of our review, the FAA has had several discussions with Mr. Tocci. Mr. Tocci's allegations include conduct by the Authority's Airport Manager at Smith Field that could, in his opinion, create an exclusive right at the airport, and the Authority not acting in accordance with Federal guidelines in terms of the development of the Airport Layout Plan (ALP) for Smith Field, a planning study that was funded with Federal Airport Improvement Program (AIP) funds. As a result of these allegations, the FAA had written a letter dated October 15, 2004, to the Authority requesting any information and/or documentation related to Mr. Tocci's allegations. The Authority, by letter dated November 12, 2004, responded to FAA's request. The following discussion addresses FAA's informal position as it relates to resolution of Mr. Tocci's allegations:

Complaint Issues

1. **Task Force Selection.** Mr. Tocci feels that the selection of the Task Force members was not accomplished in a manner that would allow an objective review of the alternatives presented to the Task Force, and ultimately the Authority. According to Mr. Tocci, it appears the Task Force lacks appropriate diversity.

Discussion

The Authority provided background on the individuals chosen for the Task Force. Judging from the members' backgrounds, it appears that a diverse group was assembled to form the Task Force Committee.

Conclusion

While there are no requirements as part of the preparation of an ALP to form such a Task Force Committee, forming such a group was prudent here since there was high visibility from an aviation community and local political standpoint. If there were a differing opinion locally between parties on the development of the Task Force Committee, the FAA would not be a party to the resolution of the disagreement as this falls outside the scope of our normal investigation responsibilities.

2. **Premature Hangar Construction.** Mr. Tocci alleges the Authority, prior to the Task Force's development plan recommendation, negotiated for the construction of a new hangar at Smith Field, which may have impacted an ultimate preferred alternative. Mr. Tocci alleges he attempted to address this subject at a subsequent Authority meeting on August 25, 2003, and was denied the opportunity to comment on the proposal because he was "not a principal in the proposed project."

Discussion

The Authority's response to these allegations states the site being considered for the construction of the hangar did not interfere with any future layout of Smith Field that could be reasonably foreseen. The SMDfund's ALP concept (that had a potential conflict with the proposed hangar site) was ultimately forwarded to the Authority by Mr. Tocci. The plan was submitted to FAA for information purposes in February of 2004, and was presented to the Task Force Committee after the airspace study request for the subject hangar was submitted to the FAA by the Authority (in July, 2003).

The airspace study that could have affected SMDfund's ALP concept (a proposed east-west turf runway) was Aeronautical Study 2003-AGL-0883-NRA, with the FAA's determination issued on October 30, 2003. Another new hangar proposal was submitted to the FAA in March of 2004 for a hangar on the east side of the airport, with an FAA determination issued on June 29, 2004.

In FAA's determination letter for the subject hangar, there was verbiage included that stated "While no ALP submittal has taken place, the consultant(s) responsible for the ALP

development should have a good working knowledge of FAA's requirements and design standards to ensure that the proposal does not impact the ultimate development of Smith Field and any possible alternatives being addressed in the ALP development process." This comment was specifically included in the determination letter to protect and/or address any possible alternatives, such as SMDfund's ALP concept.

As a side note, the subject runway in SMDfund's ALP concept that had potential conflicts with the hangar, based on our experience, may not have been able to be accepted by FAA from a safe and efficient utilization standpoint without alteration. The ALP plan submitted by SMDfund also made assumptions of non-aeronautical use of airport property, something generally discouraged by the FAA.

As for the allegations that the Authority violated the Indiana Open Door Law during a public meeting, the Authority claims that they are within the law to refuse the right for someone to speak unless certain subjects are discussed in a public hearing venue.

Conclusion

While the FAA was contacted by Mr. Tocci regarding the possible construction (or talk thereof by the Authority at a Board meeting) of a hanger at SMD, there was no construction performed without the submission of a FAA Form 7460-1 "Notice of Proposed Construction or Alteration", which would be required in this situation. The requirement under Federal Aviation Regulation (FAR) Part 77 had been complied with. As to whether the Authority had proceeded with a plan for the hangar that may have affected an ultimate preferred alternative, Mr. Tocci's (SMDfund's) ALP concept was not submitted until after the FAA Form 7460-1 was submitted to the FAA for airspace review. To date, the Authority has also complied with any requirements as per the Grant Assurances (6. Consistency with Local Plans. and 18. Planning Projects.).

The alleged violation (or compliance) by the Authority to the Indiana Open Door Law is an issue that is outside of FAA's jurisdiction. Mr. Tocci would have to address that issue through the State of Indiana's legal system.

3. **Interference with Public Input.** Mr. Tocci alleges that numerous attempts to have SMDfund's ALP proposal reviewed professionally based on its merits have fallen on deaf ears. The Authority also allegedly misrepresented a unanimous vote in favor of the preferred alternative, when in fact there was a dissenting vote on the Task Force. Mr. Tocci also states he requested a direct presentation of the SMDfund ALP proposal to the Authority President and never received a response.

Discussion

The Authority's response letter gives a detailed description and timeline for the review of SMDfund's ALP concept. The Task Force Committee saw enough merit in the plan to invite Mr. Tocci to present the ALP concept at the November 5, 2003 meeting. The Task Force Committee felt that certain parts of the plan were very interesting. These parts were mostly related to landside development, though, as the airside development on SMDfund's ALP concept were not acceptable, in the Task Force Committee's opinion, from a FAA standards standpoint. Mr. Tocci was also invited to present SMDfund's ALP concept in a public information working session/open house on March 18, 2004, where he did present the plan.

As for the allegation of the Authority's misrepresentation of a unanimous vote in favor of the preferred alternative, the Authority claims that it stated "Although not unanimous, there was a consensus among Task Force members that they wanted to continue to recommend a three-phase development program as stated in the attached recommendation." The dissenting vote by one of the Task Force members was documented and submitted to the Authority.

Conclusion

Whether the Authority later misrepresented the status of the vote is a local issue that is outside the scope of our normal investigation responsibilities.

Even though Mr. Tocci's request to present SMDfund's ALP concept directly to the Authority may have been initially denied, he did present the plan to the Task Force Committee as well as participate in the public information workshop. The Authority has satisfied its obligation to Grant Assurances 6 and 18.

4. **Unproductive Delays.** Mr. Tocci alleges the Task Force and the Authority intentionally delayed the public process, and then ultimately shortened it when the second and third public workshops were canceled.

Discussion

The process that the Authority is going through for the SMD ALP is very involved and it is common during such a process for unplanned issues to arise. Such is the case of FAA's recommendation to perform a feasibility study as it pertains to the possible use of the declared distance concept at SMD. With respect to this feasibility study, the FAA has, regrettably, been more of a delay to the ALP process than any other entity involved in the process. According to the Authority's response letter, a public information open houses/workshop will occur after FAA's feasibility study is performed.

Conclusion

Given the level of analysis for the SMD ALP, and aside from the aforementioned delay, the schedule seems to have been fairly aggressive based on FAA's recent experience with similar planning efforts. In the eyes of FAA, the Authority has not intentionally delayed the ALP process.

5. **Threats to Historic Property.** According to Mr. Tocci, Smith Field, including its existing airfield configuration and Hangar #2, is listed on the United States and Indiana State Registries of Historic Places and should be protected from demolition.

Discussion

While Mr. Tocci believes the preferred alternative for SMD will impact the SMD facilities that are listed on the Indiana state and United States Registries of Historic Places, the Authority states that historic preservation issues will be taken into consideration if Federal funds are used to develop SMD.

Conclusion

The applicable Grant Assurance for this item is Grant Assurance 1. General Federal Requirements, which requires conformance to The National Environmental Policy Act (NEPA) of 1969 and the National and Historic Preservation Act of 1966 – Section 106. These are laws with which conformance is mandatory for a Federally funded construction projects. Conformance with these laws is accomplished in a different manner during the planning process, though, mainly because there is no development actually occurring as a result of the Federal funding. For the planning process, the Authority can meet the requirements of NEPA and Section 106 by documenting that there are facilities on the airport that will need to be addressed, designed around, or mitigated as a result of any future construction project. The Authority is cognizant of the historical significance of the facilities at SMD. At this time, some the potential impacts of any future planned runway at SMD on Hangar #2 will be determined during the ALP airspace process. The impacts of future development on the airfield pavement classified as historical would normally be subject to more in-depth study that would likely be revealed as a result of a more comprehensive environmental assessment associated with a future development project.

Since the planning process is not yet completed, we will ensure that these laws are complied with as they apply to the planning process. At this time, though, a full-scale environmental assessment is not required.

6. **Exclusive Rights.** Mr. Tocci claims the Authority is in violation of its grant obligations as an agent of the Authority (Airport Manager) requested Dery Air, a fixed based operator, to cease operations at Smith Field, in effect, creating an exclusive right for Smith Field Air Services (SFAS).

Discussion

In early discussions regarding this subject, the FAA informed Mr. Tocci that because Smith Field has only received planning grants, the exclusive rights grant assurance (Grant Assurance 23) does not apply to SMD. However, Mr. Tocci did bring forward some verbiage in FAA Order 5190.6A "Compliance Handbook", Chapter 3 "Exclusive Rights" that stated "there shall be no exclusive right for the use of any landing are or air navigation facility upon which Federal funds have been expended."

Conclusion

The current Terms and Conditions (that include grant assurances) signed by the Authority on April 26, 2001, for Smith Field supersede any other Federal obligations regarding exclusive rights. And since only planning grants have been issued for Smith Field, the exclusive rights provision is not applicable at Smith Field.

This concludes the informal review of the complaint brought by Mr. Joe Tocci against the Fort Wayne – Allen County Airport Authority. We are aware the individual airport users and/or general public often view differently the airport sponsor's Federal obligations. In cases where issues are directly related to the airport sponsor's obligations are involved, the FAA may be the final authority or arbiter. The issues that we determine to be local in nature and not under the Federal jurisdiction need to be resolved locally between the disputing parties. We trust that our position has been clearly established on the above-mentioned issues. If Mr. Tocci, as the complaining party, does not agree with the determination, he may file a formal 14 CFR Part 16 complaint with the FAA at the following address:

Office of Chief Counsel
Attention: FAA Part 16 Airport Proceedings Docket
AGL-610
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Sincerely,

**ORIGINAL SIGNED BY:
RICHARD PUR**

Richard A. Pur
Program Manager
Chicago Airports District Office

cc: Indiana Department of Transportation – Jim Keefer
Fort Wayne – Allen County Airport Authority – Michael Gouloff