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FOUNDED 1866

July 22, 2015

Winsome A. Lenfert
 Manager, Airports Division
 Southern Region
 FAA Southern Region
 1701 Columbia Avenue
 College Park, GA 30337

Re: Withdrawal of the Paulding County Airport Part 139 Application

Dear Ms. Lenfert:

I am writing, on behalf of our six landowner clients who live near the Paulding Northwest Atlanta Airport (“PUJ” or “Airport”), to request that the FAA respect the will of the electorate in Paulding County (“County”) and its Board of Commissioner’s (“Board”) decision in Resolution 15-01 to withdraw the application for a Part 139 Airport Operating Certificate.¹ After reviewing your two letters of June 30, 2015, one to the Board and the other to the Paulding County Airport Authority (“PCAA”), my clients are both perplexed and disappointed.

The County was the original Airport Improvement Program (“AIP”) sponsor, responsible for the operation of the airport, including the decision of whether to seek a 139 Certificate. The County remains a sponsor of the Airport today. Yet, the FAA Southern Region is now “inclined” to ignore the County’s legal role and proceed with commercializing this Airport, notwithstanding the County’s withdrawal and lack of local support for the commercialization. This action would be unprecedented and at odds with the facts and long-established aviation law and policy.

First, as the Airport’s AIP sponsor as of September 24, 2013,² it was the County’s obligation and decision to proceed with the application process. As such, the decision to submit,

¹ We have not been provided with a copy of the Part 139 application, Form 5280-1 nor have we been provided with a copy of the September 24, 2013 letter referenced in the FAA’s letter to the PCAA, despite multiple requests to the FAA under the Freedom of Information Act and the PCAA under Georgia’s Open Records Act. While we are aware that in 2013 the County, through its Department of Aviation, conducted initial discussions with the FAA regarding Part 139 certification, we have seen no evidence of an official application for Part 139 certification. If you are in possession of PUJ’s formal application for Part 139 certification, please consider this a renewed request under FOIA for such a copy.

² At that time, Blake Swafford was an employee of the County.

and subsequently withdraw, the application rests with the County and its governing body, the Board. Moreover, the “application” date of September 24, 2013, was before any mention of commercialization was made in a Board meeting. As the sole airport sponsor at the time, the Board would have been required to authorize this application, yet it was never brought to the Board for a vote. Thus, the only formal vote taken regarding Part 139 certification is the Board’s Resolution to withdraw the application.

Second, the FAA’s statement that the “intergovernmental agreement (IGA) . . . appears to make the Authority responsible for operating PUJ” ignores the political maneuvering of a lame-duck Board in late 2014 attempting to tie the hands of an incoming Board opposed to commercialization today. The question of whether PUJ should be converted to commercial service was the defining issue in last November’s county election; the pro-commercialization forces lost because, having debated the issue, the citizens of Paulding County decided that they did not want to convert this sleepy general aviation airport into a busy commercial airport. The purported IGA was no more than a stealthy attempt to thwart the November decision of the voters. Does the FAA Southern Region really want to be complicit in this effort to deny the will of the voters?

My clients do not believe that one Board should be able to restrict in perpetuity the powers of subsequently elected Boards. Instead, they believe elections still have consequences, especially when the election is about a pending application that still could be withdrawn or rescinded by an essential party to the process. At the time the application for the 139 certificate was initiated, the County was airport sponsor and sole AIP sponsor. The County was solely responsible for operation of the airport in compliance with its grant assurance obligations. And, as the FAA is aware, the City of Atlanta has made legal claim of right against the County to enforce the restriction that limited the 163 acres of airport land to general aviation purposes, further supporting the County’s decision to withdraw the Part 139 application. Nothing in the purported IGA granted the PCAA sole sponsor rights, nor could the IGA establish the power to reverse or veto a County decision to withdraw that which the County initiated.

Third, we would respectfully remind the Southern Region of the long-established FAA national policy: local communities and airport sponsors decide whether and how to expand airport facilities, not the federal government.

Airport sponsors, not FAA, own and operate public-use airports in the United States and its territories. *As a result, airport sponsors are responsible for deciding when and where airport development is needed and for building and operating airport facilities.*³

³ FAA Order 5050.4B, National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions, at ¶ 201.

And in doing so, the FAA wisely insists on local and regional consensus among duly elected public officials⁴ – a consensus that does not exist here.⁵ The law is also clear: the FAA may not “require a person to obtain an airport operating certificate if such person does not desire to operate a [commercial] airport.”⁶ The Regional Office’s involvement throughout this process has been diametrically at odds with FAA’s standard pre-requisite of local and regional consensus and support for such a significant change to a general aviation airport.

Fourth, we would respectfully request that the FAA’s Southern Region take actions consistent with other FAA national policies, which recognizes:

Community involvement is an essential element in the development of programs and decisions that affect the public. . . . The basic purpose of citizen involvement is to see that government decisions reflect the preferences of the people. The basic intention of citizen participation is to ensure responsiveness and accountability of government to the citizens.⁷

Here, the “preferences of the people” have spoken, but the FAA Southern Region is ignoring them. In the November 2014 county election, the citizens of Paulding County decided that they do not want to commercialize the Airport by electing a majority of the Board opposed to commercializing PUJ. Under the AIP program, the FAA has a duty to ensure that “the interests of the community in or near which the project may be located have been given fair consideration.”⁸

While an airport may apply for Part 139 certification without AIP funding, the airport will require AIP funding to obtain Part 139 certification and fulfill its corresponding obligations. Given the Board’s opposition to commercialization, the FAA should anticipate the likelihood that the County will not support such applications, as would be required under the current co-sponsorship arrangement for new grants.⁹

⁴ See, e.g., http://articles.chicagotribune.com/1993-10-02/news/9310020103_1_new-airport-faa-administrator-david-hinson-mayor-richard-daley (citing lack of “consensus” over new commercial airport, FAA “concluded we could not justify an additional \$2 million investment in the planning process at this time.”)

⁵ The greater Atlanta community also opposes commercialization of the airport. The Mayor of Atlanta has informed both the FAA and the County that Atlanta opposes commercialization of the Airport.

⁶ 49 U.S.C. § 44706(f); see also *Arapahoe Cnty. Pub. Airport. v. FAA*, 242 F.3d 1213, 1224 (10th Cir. 2001) (citing 49 U.S.C. § 44706(f)).

⁷ FAA Community Involvement Manual at intro and 13, FAA-EE-90-03 (Aug. 1990).

⁸ 49 U.S.C. § 47106(b)(2).

⁹ Letter from Winsome A. Lenfert to David Austin (Oct. 30, 2014) (conditioning acceptance of PCAA as co-sponsor on execution of all future grants by both sponsors). See *Walker Field v. Adams*, 606 F.2d 290 (10th Cir. 1979) (upholding FAA’s decision to withhold federal grant funds until both co-sponsors executed grant agreement even though one co-sponsor had already expended its own funds).

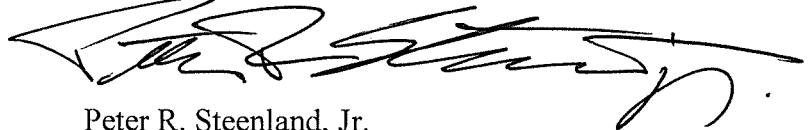
At bottom, the FAA's "inclination" to keep alive this Part 139 application, despite the County's withdrawal, is at odds with FAA policy, established law, and the will of the County's electorate. As you know, the ultimate decision-making power to control the fate of an airport arises from fundamental principles of Federalism concerning local land use and development. As recognized by the Supreme Court, it also arises from the County's potential liability for airport noise in the event PUJ becomes commercialized and experiences significantly higher use by turbine aircraft with much higher noise levels and other environmental effects.¹⁰

If this happens, the Propeller Group, a private equity group from New York with no actual track record in running an airport, will no doubt profit, but nearby residents will suffer the environmental consequences. And the County will get stuck with the costs, all for no apparent reason, as ample capacity exists at ATL to accommodate Allegiant or other new entrant airlines. Indeed, no purpose or need exists to commercialize this airport.

We trust that the Board and PCAA will respond to your letters¹¹ in due time, but urge the FAA Southern Region to follow national law and policy, and respect the will of the electorate as expressed in Board Resolution 15-01.

Thank you for your consideration of these concerns. We look forward to your reply.

Sincerely,



Peter R. Steenland, Jr.

cc: Reginald C. Govan
Eduardo Angeles
David Austin
Calvin Thompson

¹⁰ See *Griggs v. Cnty. of Allegheny*, 369 U.S. 84 (1962) (holding that the owner and lessor of the airport was liable for constitutional taking due to aircraft noise).

¹¹ We have written two letters to the FAA, one dated March 11, 2015, and a second dated May 11, 2015, both raising fundamental statutory and grant compliance concerns, and requesting that the FAA take steps to halt the PCAA's actions in support of commercialization. To date, we have received no replies, but trust responses to those letters are forthcoming.