



AIRCRAFT OWNERS AND PILOTS ASSOCIATION

421 Aviation Way • Frederick, MD 21701-4798
Telephone (301) 695-2000 • FAX (301) 695-2375
www.aopa.org

May 19, 2004

Mr. Michael Nicely
Manager, Texas Airports District Office
Federal Aviation Administration
ASW-650
2601 Meacham Blvd.
Ft. Worth, TX 76137-4298

Dear Mike:

The Aircraft Owners and Pilots Association (AOPA) represents the general aviation interests of over 400,000 members nationwide, including more than 27,000 Texas residents. The highest priority for our members is the preservation of general aviation airports. To ensure the future viability of general aviation airports, we believe it is vitally important that airport sponsors follow established Federal Aviation Administration (FAA) policies and procedures requiring that revenue generated on the airport is invested appropriately for airport maintenance and development. This is an issue of vital importance to the general aviation community and to users of the Addison Airport.

As you and I discussed during the March 2004 FAA Southwest Regional Partnership Conference, our members have informed us of a number of issues at Addison Airport in Addison, Texas. These issues raise serious questions as to whether or not the airport sponsor is in compliance with FAA Airport Improvement Program (AIP) Grant Obligations as well as other agency policies relating to Rates and Charges¹ and FAA Policy and Procedures Concerning the Use of Airport Revenue².

Pursuant to the United States General Accounting Office (GAO) report concerning General Aviation Airports³, GAO suggested that a source for information concerning airports could be "interested parties who may have information about airports' compliance, such as general aviation organization field representatives." Said differently, local pilots and pilot organization could be an excellent source of information relating to airport compliance issues at an airport.

While by no means all inclusive, we are extremely concerned about the following background information about ADS provided by our members and ask that FAA conduct a full audit.

¹ Policy Regarding Airport Rates and Charges FR Vol. 61 No. 121 page 31994 June 21, 1996

² Policy and Procedures Concerning the Use of Airport Revenue FR Vol. 64 No. 30 Page 7696 February 16, 1999

³ General Aviation Airports GAO/RCED-99-109

Background:

- Addison Airport, while owned by the City of Addison, TX, is currently operated and managed under contract by Washington Staubach Addison Airport Venture. The parties entered into the management agreement in 2000. The agreement specifies that all airport operational expenses fall under a budget approved by the city. Airport income items are collected by the operator and deposited monthly with the city. However, the operator retains an 18% “management fee” of Gross Revenue before submitting deposits to the city accounts.
- In our experiences, such compensation agreements are not unusual. However, what is unusual is the inclusion of “bonus” payments to the operator based on certain levels of performance. For example, in fall 2003, Washington Staubach Addison Airport Venture was awarded more than \$167,000 in airport revenue as a bonus payment. It is our belief this payment constitutes revenue diversion under existing FAA policy since the operator is already compensated for services rendered.
- During 2003, the City of Addison entered into an Economic Development Incentive Agreement with Frito-Lay for construction of a corporate aircraft hangar at Addison Airport. The agreement provided \$529,200 of airport revenue for construction of a corporate hangar and infrastructure at Addison Airport. At the same time, the city entered into a lease agreement, with certain performance requirements, with Frito-Lay that provided the lease “rent free” for a period of five (5) years. Copies of these documents are attached. The airport, while expending airport generated revenue for development of private facilities on the airport is not recouping any portion of this investment. Yet, the airport continues to seek federal airport development funding for airport development.
- Based on March 19, 2003 correspondence from the Texas Real Estate Commission to Staubach Airport Management, Inc., there appears to be several unanswered questions regarding airport revenue paid by the city to the contract manager for “Operator’s services prior to July 2002.” A copy of this correspondence is also attached herein. If the Management Agreement is flawed based on Texas State laws, we believe the payment of airport revenues during this period would constitute revenue diversion since the management contract would not have been a valid contract.
- Over the past several years, members of AOPA have had little success receiving answers from the City of Addison and the airport operator to questions regarding the use of airport property for non-aviation. The City of Addison occupied

buildings located on airport property including a fire station, a police station, and a Municipal Service Center. Yet, our review of city financial records fails to show that the city is compensating the airport at fair market valuations for use of airport property. There are also open questions regarding to the FAA's release of airport property for the Addison Toll Tunnel. As part of FAA's release of the property, the property was to be replaced by Addison with additional aviation use property. Our members indicate that has yet to occur.

- Recently a mobile concrete production facility⁴ was erected on airport property, yet product from this on-airport site is being trucked off airport. And, in April 2004, portions of the airport ramp area were closed to aviation uses by the city and used for parking automobiles⁵ as an overflow area to the park center next to the airport. We have not been able to locate FAA approval for these activities using airport property for non-airport purposes nor was a NOTAM issued.

The issues raised by members of AOPA are serious and we believe require direct action by the FAA in order to ascertain whether or not Addison is in compliance with federal obligations and agency policies and procedures. Accordingly, under Federal Aviation Regulations Part 13.1, Informal Complaints, AOPA requests that FAA conduct an investigation of these allegations and conduct a full compliance audit as expeditiously as possible.

With over 425 single-engine and 200 multi-engine aircraft based at the airport, Addison Airport is a thriving and vital general aviation airport in the Dallas-Ft. Worth Metroplex. The FAA and State of Texas clearly recognize this importance. According to records maintained by the Texas Department of Transportation (TXDOT) Division of Aviation, between 1976 and 2000, Addison Airport received just under \$13 million in airport development funds. Prior to 1997, these funds came from FAA directly as grants. After 1997, grants were made directly by TXDOT as a participating agency partner with FAA under the State Block Grant Program. Additionally, nearly \$2.5 million of grants are outstanding to Addison Airport for projects that are currently underway.

This significant level of federal investment placed in ADS over the years leaves no doubt that Addison Airport is heavily obligated to the FAA, and is required to follow all FAA compliance policies, procedures and agency requirements. Therefore, it is of the utmost importance that FAA immediately establishes, in certainty that the airport sponsor is in full compliance with all applicable federal requirements relating to use of airport revenue and grant obligations.

⁴ Attachment – Concrete production facility adjacent to Cessna Flight Line sign - Photo

⁵ Attachment – Automobile parking on airport facilities - photo

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We hope the FAA will make conducting a full compliance of Addison Airport a top priority. Even the GAO report I referenced on the first page of this letter indicated very clearly that "self-certification" was an inadequate means to assure an airport is in compliance with federal requirements.

Thanks for your consideration of these issues. Should you have any additional questions, please feel free to contact me at 301-695-2205 or by e-mail at bill.dunn@aopa.org.

Sincerely,



Bill Dunn
Vice President
Airports Department

cc: Mr. David Fulton, TXDOT

#R11-1

Council Agenda Item: #R11

SUMMARY:

This item is for Council approval of an Economic Development Incentive Agreement between the Town of Addison and Frito-Lay, Inc., for a new hangar project on Addison Airport.

FINANCIAL IMPACT:

The Economic Development Incentive Agreement provides a grant from the Town to Frito Lay of \$529,200 to pay for necessary project infrastructure associated with the development of the property. The grant will come from the Airport Fund.

The new hangar project is estimated to result in approximately \$ 60,000 per year in ad valorem tax revenue. Ground lease rental payments shall be waived for the first five years as additional incentive to Frito Lay.

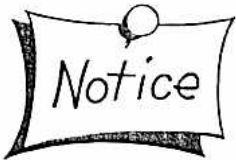
BACKGROUND:

Frito Lay currently subleases hangar and office space on the Airport. They desire to expand their operations and support capabilities by building a new corporate hangar facility at Addison Airport. Consequently, Frito Lay has proposed building a new 21,088 square foot corporate hangar and flight operations facility on a 2.22 acre site at Addison Airport. The company advised the City that in order for them to remain at Addison Airport, lease property and build the desired state-of-the-art facilities, the company would require an economic incentive sufficient to offset a portion of their development costs. In recognition of the many direct and indirect economic and commercial benefits to the City and Airport, the proposed Economic Development Incentive Agreement has been negotiated and agreed to by the company.

The attached memorandum to Mark Acevedo from Lisa Pyles and Bill Dyer provide more detail, with attachments, including the Economic Development Incentive Agreement

RECOMMENDATION:

Staff recommends that Council approve the Economic Development Incentive Agreement and authorize the City Manager to sign the agreement.



*Airport money
being used to
support
General Fund
at expense
of other ADS
users*

#R11-2



William M. Dyer
Real Estate Manager
4651 Airport Parkway
Addison, TX 75001

Main: 972-392-4850
Direct: 972-392-4856
Fax: 972-788-9334

bill.dyer@staubach.com

Memorandum

To: Mark Acevedo
From: Lisa Pyles, Airport Director
Bill Dyer, Real Estate Manger
CC: Lou Elguezabal
Date: 9/5/2003
Re: Consideration of approval of and authorizing the City Manager to enter into an Economic Development Incentive Agreement with Frito~Lay, Inc.

Summary of Requested Action by Airport Manager

Addison Airport Management herein presents to the Town of Addison an Economic Development Incentive Agreement (Exhibit A) in connection with the construction of certain improvements on ground leased premises at Addison Airport by Frito~Lay, Inc. The City is authorized by TEX. LOC. GOV'T CODE §380.001 and other applicable law to establish and provide programs for making economic development grants of public money to promote local economic development and to stimulate business and commercial activity in the City. Airport Management is of the opinion that making such a grant to Frito~Lay in accordance with the proposed agreement will promote local economic development and commercial activity in the City and benefit the operation and economic development of Addison Airport.

Airport Management recommends the City Council approve and authorize the City Manager to enter into the Economic Development Incentive Agreement as presented herein.

Background Information

Frito~Lay currently subleases hangar and office space on the Airport. They desire to expand their operations and support capabilities, which necessitates building a new corporate hangar

facility. Consequently, Frito-Lay has proposed building a new 21,088 square foot corporate hangar and flight operations facility on a certain 2.22 acre-site at Addison Airport. The company advised the City that in order for them to remain at Addison Airport, lease property and build the desired state-of-the-art facilities, the company would require an economic incentive sufficient to, among other things, offset a portion of their development costs. In recognition of the many direct and indirect economic and commercial benefits to the City and Airport, the proposed Economic Development Incentive Agreement has been negotiated and agreed to by the company.

Summary of the Grant

The terms of the Grant include:

- 1) The Effective Date is the date of execution of the Agreement (*Art. 1.2*).
- 2) The Grant is a form of payment (reimbursement) to the company for work performed in connection with "Site Demolition and Site Preparation" of the property and in connection with the hangar development (*Art. 3.1.a*).
- 3) The amount of the Grant is the lesser of i) actual costs of qualified expenditures by the company plus interest (at the *Wall Street Journal* Prime Rate plus 2% per annum calculated from the date of the issuance of that first building permit to the date of Completion of Construction); or ii) \$529,200 (*Art. 3.1.a*).
 - a) "Site Demolition and Site Preparation" includes (*Art. 3.1.a*):
 - i) The demolition of a portion of Airport Parkway (See Exhibit C to the Agreement)
 - ii) Costs of surveys, site plans, plats, permits, environmental reports, asbestos surveys, lime stabilization, concrete work for parking and dedicated ramps for aircraft, on-site utilities, fencing and controlled access gates, upgraded cladding to a portion of the building exterior, landscaping and construction management and over-sight.
- 4) The plans and specifications for design and construction are subject to the City's review and prior written approval (*Art. 3.1.b*).
- 5) The Grant is due payable by the City from lawfully available funds appropriated by the City upon receipt of an invoice from the company and proof of its legal obligation (i.e. construction contract) to expend at least \$2,000,000.00 in total development costs, both in form and content acceptable to the City (*Art. 3.1.c*).
- 6) The City Agrees, at its sole cost and expense to (*Art. 3.3*):
 - a) Demolish the existing building on the leased premises located at 4651 Airport Parkway (See Exhibit D to the Agreement);
 - b) Relocate a portion of Airport Parkway to accommodate the overall multi-site development;
 - c) Perform off-site utility (water and sewer) work on Airport Parkway

The above scope of work is to be completed no later than April 1, 2004.

Conditions to the Grant

- 1) The City's obligation to pay the Grant is conditioned upon (*Art 4.1*)
 - a) Frito~Lay entering into and complying with the Ground Lease for the property;
 - b) Frito~Lay is not to have an uncured material breach or default of this agreement or of the Ground Lease;
 - c) The company must continuously lease and maintain the property in accordance with the terms and conditions of the Ground Lease for a term of not less than 15 consecutive years beginning with the Commencement Date of the Ground Lease.

Should the company fail to satisfy these conditions, the company is obligated to repay all or portion of the Grant as provided for within the Agreement (*Art. 4.2*).

Waiver of Rental Payments

As a further inducement to Frito~Lay, Ground Lease rental payments are waived for the first five (5) years of the term of the Ground Lease. Payments shall begin with the 61st month of the lease term subject to increases in the consumer price index as set forth in the Ground Lease *Art. 5.1*).

Provisions for Termination

The Economic Development Incentive Agreement shall terminate without notice or demand upon the following occurrences (*Art. 6.1*):

- 1) The completion of all obligations by both parties under the Agreement.
- 2) By written agreement by both parties to terminate the Agreement.
- 3) At the option of either party in the event the other party materially breaches any of the terms and conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof.
- 4) At the City's option, if any imposition owed by the company to the City shall become delinquent and such delinquency is not cured within thirty (30) days after written notice is given.

Conclusion and Recommendation

Frito~Lay, Inc. proposes to build a 21,088 square foot corporate hangar and flight operations facility on a certain 2.22 ground lease site at Addison Airport. In order for the company to remain at Addison Airport, lease the property and build the desired state-of-the-art facility, the company requires an economic incentive grant sufficient to offset a portion of the overall development costs. In recognition of the many direct and indirect economic and commercial

benefits to the City and Airport, the proposed Economic Development Incentive Agreement has been negotiated and agreed to by the company.

Airport Management recommends the City Council approve and authorize the City Manager to enter into the Economic Development Incentive Agreement as presented herein.



TEXAS REAL ESTATE COMMISSION

Mailing Address: P.O. Box 12188 • AUSTIN, TEXAS • 78711-2188

Phone: (512) 459-6544 Fax: (512) 465-3962

World Wide Web: <http://www.trec.state.tx.us>

March 19, 2003

Staubach Airport Management, Inc.
Roger T. Staubach, Designated Officer
4651 Airport Parkway
Addison, Texas 75001

CM RRR No. 7001 2510 0007 8754 7488

Roger T. Staubach
15601 Dallas Parkway, #400
Dallas, Texas 75001

CM RRR No. 7001 2510 0007 8754 7471

Re: Our File No. 030760

Dear Mr. Staubach:

This agency has concluded its consideration of the above referenced filed by Danya Sammons. Based on our investigation, we do not believe the evidence in this matter warrants proceeding to an administrative hearing. However, the Commission is concerned about some aspects of this matter and so will close this file by issuing this advisory letter to you.

As a real estate licensee, you must comply with the Real Estate License Act (the "Act") and the Rules of the Commission which prohibits you from conducting your real estate activities in a negligent or incompetent manner. In addition, as a real estate broker you are responsible for the authorized acts of your salespersons, broker associates, and supervision of your brokerage office.

In this matter, on or about June 8, 2000, a joint venture agreement was entered between Raytheon Infrastructure Inc. and Staubach Airport Management Inc. ("SAMI"), creating the Washington Staubach Addison Airport Venture ("WSAAV"). Subsequently, the WSAAV, as Operator, entered into an operation and management of airport agreement with the City of Addison (the "airport agreement"). As SAMI was a wholly owned subsidiary of The Staubach Company and incorporated in May 2000, a provision in the airport agreement was signed by The Staubach Company and guaranteed the Operator's obligations to the City of Addison until about June 2002. Notwithstanding the guarantee, The Staubach Company, by and through its employees Robert Katzen and Larry Kimbler, actually performed the obligations of the Operator related to real estate brokerage services until on or about July 11, 2002 when SAMI obtained its own real estate broker license by a corporation.

A review of Commission records reflect that during the time prior to July 11, 2002, The Staubach Company held a real estate broker license by a corporation and sponsored Robert Katzen and Larry Kimbler as real estate salespersons. It appeared that the real estate brokerage activities, the obligation of the Operator, were performed by real estate licensees. After, July 2002, SAMI as a partner in the WSAAV joint venture, assumed the obligations of the WSAAV as the Operator in the airport agreement.

However, we are concerned about your conduct involved in some aspects of the airport agreement and the payments received for the Operator's services prior to July 2002. We believe as a broker,

Staubach Airport Management, Inc.
Roger T. Staubach, Designated Officer
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you should have known that some of the obligations of the Operator in the airport agreement were real estate brokerage services to be performed only by a real estate licensee. Under §§2(5) and 3(12) of the Act, this required that the a partner in the joint venture hold a real estate license.

In addition, it is Commission policy that before payments are received for real estate brokerage services by a corporation, defined as a person in §2(5) of the Act, the corporation must first hold a real estate broker license. You admitted that during the first 18 month period of the airport agreement, the fees owed to the Operator were paid to The Staubach Company. This company deposited the service fees into its account, before payment was then made to the other joint venture partner, Raytheon Infrastructure Inc. From about October 2001 through July 2002, the City of Addison paid the WSAAV and the Operator deposited these fees into its own bank account and then disbursed payments to Raytheon Infrastructure Inc. and The Staubach Company for SAMI.

Although you have urged that most of the obligations and duties of the WSAAV, as Operator in the airport agreement, did not require a person to have a real estate license, there is no clear delineation of fees paid for services not related to real estate brokerage in the airport agreement. Therefore, we consider any payment received for the services of the Operator to have been received for real estate brokerage services and regulated by the Commission policy set forth above.

Last, we advise you that §15(a)(6)(F) of the Act prohibits you from paying or dividing a commission or fees with a person not licensed for their real estate brokerage services. Further, §15(a)(6)(S) of the Act prohibits you from associating with a person not licensed that is expected to conduct real estate brokerage services. For a period of time, it appeared that you had some involvement when WSAAV were paid Operator fees although it and it's partners were not licensed as real estate licensees. In addition, during the time period prior to July 2002, you may have appeared associated with SAMI, a corporation expected to perform real estate services before it held a real estate broker license.

We trust that having received this advisory letter, you will conduct your real estate activities in accordance with the provisions of the Real Estate License Act and the Rules of the Commission discussed in this letter. Be advised, however, that if a future complaint is received, the issuance of this letter may be considered in the context of other administrative action.

Sincerely,



Sharon S. Rector
Staff Attorney
(512) 465-3960

SSR:alj





NO
Parking
Anytime

RESTRICTED AREA
No Trespassing
Authorized Personnel Only
U.S. Army