

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

**Gina Michelle Moore, individually and d/b/a
Warbird Sky Ventures, Inc.
COMPLAINANT**

v.

**Sumner County Regional Airport Authority
RESPONDENT**

Docket No. 16-07-16

FINAL DECISION AND ORDER

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) Associate Administrator for Airports on appeal filed by Gina Michelle Moore, individually and d/b/a Warbird Sky Ventures, Inc. (Complainant) from the Director's Determination dated February 27, 2009, issued by the Director of the FAA Office of Airport Compliance and Field Operations, pursuant to the Rules of Practice for Federally Assisted Airport Enforcement Proceedings found in Title 14 Code of Federal Regulations (CFR) Part 16.

Complainant argues on appeal¹ to the Associate Administrator that, contrary to the Director's Determination, the Complainant did meet the Respondent's minimum standards and that the Respondent unjustly discriminated against the Complainant.² The Complainant further argues on appeal that the Respondent violated certain grant assurances. More specifically, Complainant argues on appeal that the Director:

- Incorrectly found that the Respondent is not currently in violation of Grant Assurance 22, *Economic Nondiscrimination*, by failing to consider the Complainant's ability to comply

¹ Complainant does not specifically allege in the appeal that the Director erred. Nor does she allege that he erred in conducting the investigation or in interpreting the evidence. The Complainant simply restates the findings in the Director's Determination and then presents her interpretation. In addition, the Complainant raises several new issues and alleges facts that were not contained in the record prior to the issuance of the Director's Determination. For reasons set forth herein, the Associate Administrator can consider neither issues not raised below nor matters outside Part 16 provisions. 14 C.F.R. §§16.23, 16.29.

² The Complainant has alleged in its Appeal many other accusations against the Respondent (some of which are new), such as, for example, the Respondent's failure to provide proper access to its records the Respondent's alleged violation of Complainant's civil rights, and the Respondent's failure to have good title to the airport property. All of the Complainant's allegations contained in its Appeal will be addressed herein.

with the Minimum Standards for a commercial aeronautical provider - specifically, the Complainant's ability to comply with the requirements for (a) insurance, (b) adequate space for aircraft storage, (c) an executed lease agreement, (d) use of common areas, (e) disparate treatment of Complainant, and

- Incorrectly found that the Respondent did not give exclusive rights to Gallatin Flying Service, Global Air Service, and Jet Harbor when the Respondent gave a full service or maintenance "Commercial Aeronautical Service Providers" (CASP)³ to these businesses (in violation of Grant Assurance 23, *Exclusive Rights*).

II. SUMMARY OF THE DIRECTOR'S DETERMINATION

The Complainant alleges the Sumner County Regional Airport Authority (SCRAA) violated Federal law and policy when acting on her request to establish an aircraft maintenance and repair business at the Airport. Complainant states that this request was approved at the February 26, 2007 SCRAA meeting, but was then rescinded at the next monthly meeting. Complainant also asserts that the SCRAA is responsible for her eviction from the hangar she subleased through a third party at the Airport.

The SCRAA states that the Complainant did not make proper application with regards to her request to establish an aircraft maintenance and repair business at the Airport. The SCRAA argues that the Complainant's agreement to operate a business on the Airport expired in June 2004. In its Answer to the Complaint, the SCRAA requested the matter be dismissed as the Complainant failed to identify violations of specific Federal Grant Assurances, improperly identified the Respondent, and did not seek to resolve the matter through informal channels.

The Complainant sought mediation through the Tennessee Department of Transportation's Aeronautics Division, but was not satisfied with the outcome of the informal dispute resolution. As such, the Complainant opted to pursue the matter through 14 CFR Part 16.

Part 16 governs all proceedings involving Federally-assisted airports under the authority of the assurances contained in grant-in-aid agreements issued under the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq* and agreed to by the Authority as sponsor of the Sumner County Regional Airport Authority.

Under the particular circumstances existing at the Airport and the evidence of record, as discussed below, the Director concluded that:

³ The SCRAA Airport Minimum Standards and Rules and Regulations, March 24, 1999 [FAA Exhibit 1, Item 1, exhibit 32, p.2] defines a Commercial Aeronautical Service Provider (CASP) as an entity "duly licensed and authorized by written agreement with the Authority to operate at the Airport under strict compliance with such agreement, and pursuant to these regulations and standards." A full service CASP "provides retail aviation fuel and oil sales and aircraft maintenance" according to additional requirements outlined in the Minimum Standards.

- The Respondent did not apply the Airport’s Minimum Standards in a way to unjustly discriminate against the Complainant, and is not currently in violation of 49 U.S.C. § 47107(a)(1), and Federal Grant Assurance 22, *Economic Nondiscrimination*.
- The Respondent’s failure to grant the Complainant an agreement to operate an aeronautical service does not constitute an unreasonable denial of access in violation of 49 U.S.C. § 47107(a)(1), and Grant Assurance 22, *Economic Nondiscrimination*.
- The Respondent has not limited the provision of specific aeronautical services at the Airport to a single provider, and is not in violation of 49 U.S.C. § 47107(a)(4), and Grant Assurance 23, *Exclusive Rights*.
- The Respondent’s process and procedures for reviewing the Complainant’s request to provide an aeronautical service at the Airport lack transparency and documentation making them confounding in nature. These incoherent, ad hoc practices cede the Respondent’s ability to adhere to the Grant Assurances which constitutes a violation of 49 U.S.C. § 47107(a) and Grant Assurance 5, *Preserving Rights and Powers*.

III. PARTIES

The Complainant, Gina Michelle Moore, is the Owner-Operator of Warbird SkyVentures, Inc., a barnstorming company.⁴ According to the company’s Internet website, Warbird SkyVentures “Provides an instructional hands-on flying in a World War II Warbird.” [FAA Exhibit 1, Item 14] In addition to Warbird SkyVentures, the Complainant states she owns a virtual aviation museum, Museum of Aviators. The Complainant proposed opening an aircraft maintenance and repair business called “Old Airplane Shop.” [FAA Exhibit 1, Item 1, p. 15]

On June 11, 2009, Gina Michelle Moore and Warbird Skyventures, Incorporated filed for bankruptcy under Chapter 7 of the Federal Bankruptcy Act , U.S. Bankruptcy Court Middle District of Tennessee case numbers 3:09-bk-06540 and 3:09-bk-06541 respectively.

Sumner County Regional Airport (Airport) is a public-use airport owned and operated by the Sumner County Regional Airport Authority (SCRAA.) The Airport, two nautical miles east of Gallatin, Tennessee, is classified as a general aviation airport with 69 based aircraft and 33,750 annual operations. The Airport has one runway, Runway 17-35, a 5,000 foot long by 100-foot wide asphalt runway. 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 Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq.* [FAA Exhibit 1, Item 13]

⁴ Documents supplied by the Complainant also refer to the name of her company as “Warbird AirVentures.” According to a business information search conducted by the Respondent, Warbird SkyVentures, Inc., was formed on February 8, 2000. The Record is not clear as to when the name “Warbird SkyVentures” was officially adopted.

IV. PROCEDURAL HISTORY and FACTUAL BACKGROUND

A. Procedural History

On November 26, 2007, FAA received the Complaint. [FAA Exhibit 1, Item 1]

On December 3, 2007, FAA docketed Gina Michelle Moore and dba Warbird Sky Ventures v. Sumner County Regional Airport Authority. [FAA Exhibit 1, Item 2]

On December 10, 2007, FAA amended the notice of docketing. [FAA Exhibit 1, Item 3]

On December 18, 2007, the Notice of Appearance for the Respondent was filed. [FAA Exhibit 1, Item 4]

On December 26, 2007, the Respondent filed an Answer and Motion to Dismiss [FAA Exhibit 1, Item 5] and Brief in Support of Motion to Dismiss. [FAA Exhibit 1, Items 5 & 6]

On December 31, 2007, the Complainant replied. [FAA Exhibit 1, Item 7]

On January 9, 2008, the Respondent submitted its rebuttal. [FAA Exhibit 1, Item 8]

On January 28, 2008, the Respondent made a Request for Admissions and Production of Documents to Complainant. [FAA Exhibit 1, Item 10]

On February 5, 2008, the FAA dismissed the Respondent's Request for Admissions and Production of Documents and notified the Complainant and Respondent the time for submittal of pleadings had closed and the FAA was undertaking its investigation. [FAA Exhibit 1, Item 11]

On April 11, 2008, the Complainant submitted a Motion to Review Additional Facts. [FAA Exhibit 1, Item 12]

On June 6, 2008, the FAA extended the due date of the Director's Determination to on or before August 22, 2008. [FAA Exhibit 1, Item 15]

On August 22, 2008, the FAA extended the due date of the Director's Determination to on or before September 26, 2008. [FAA Exhibit 1, Item 16]

On October 3, 2008 the FAA requested additional information from the SCRAA. The FAA also extended the due date of the Director's Determination to on or before December 31, 2008. [FAA Exhibit 1, Item 17]

On November 12, 2008, the SCRAA responded to the FAA's questions. [FAA Exhibit 1 Item 18]

On November 12, 2008, the Complainant responded to the FAA's questions. [FAA Exhibit 1 Item 19]

On January 8, 2009, the FAA extended the due date of the Director's Determination to on or before February 27, 2009. [FAA Exhibit 1, Item 20]

On February 27, 2009, the Director's Determination was issued. The Director found that the Respondent had not violated 49 U.S.C. §47101(a)(1) and Grant Assurance 22, *Economic Nondiscrimination* and 49 U.S.C. §47107(a)(4), and Grant Assurance 23, *Exclusive Rights*. The Director did find that the Respondent was in violation 49 U.S.C. §47107(a) and Grant Assurance 5, *Preserving Rights and Powers* regarding its incoherent and adhoc practices for processing the Complainant's request. FAA instructed the Respondent to submit a corrective action plan within thirty days.

On March 27, 2009, the FAA docketed the Complainant's Appeal. [FAA Exhibit 1, Item 23]

On June 8, 2009, the FAA accepted the Respondent's corrective action plan and the Respondent was found to be in compliance with 49 U.S.C. §47107(a) and Grant Assurance 5, *Preserving Rights and Powers*. [FAA Exhibit 1, Item 24]

On June 25, the FAA docketed additional correspondence from the Complainant. [FAA Exhibit 1, Item 25]

On August 5, 2009, the FAA docketed the Complainant's Motion to review additional "newly" discovered documents. [FAA Exhibit 1, Item 26]⁵ The Motion had attached to it copies identified as, "1. Original CASP agreement," "2. Original Lease Agreement for office Space," and "3. Original Real Estate Lease between Wilson Family Partnership and Warbird Skyventures."

On August 21, 2009, the FAA docketed the Respondent's Reply Brief and motion to dismiss the appeal. [FAA Exhibit 1, Item 27]

⁵ Part 16 requires all relevant facts to be presented in the complaint documents. [14 CFR, Part 16, §16.23(b)(3).] New allegations or issues should not be presented on appeal. Review by the Associate Administrator is limited to an examination of the Director's Determination and the Administrative Record upon which such determination is based. Under Part 16, Complainants are required to provide with the complaint and reply all supporting documentation upon which it relied to substantiate its claims. In the motion dated August 25, 2009, the Complainant alleges this information was in the possession of an employee. The Part 16 formal complaint process is not an ongoing review process. Complainant has an obligation to compile all necessary information to document the allegations. The existence of business records in the possession of an employee does not warrant a delay in issuing a decision. Failure to raise all issues and allegations in the original complaint documents may be cause for such issues and allegations to be deemed waived and not reviewable upon appeal. Rick Aviation v Peninsula Airport Commission, FAA Docket No. 16-05-18, (November 6, 2007) (Final Decision and Order) page 8. Furthermore, the FAA will not consider this allegation because it has no bearing on the issue of whether the Complainant was denied access to the Airport for the purpose of conducting an aeronautical activity.

B. Factual Background Leading Up to the Director's Determination of February 27, 2009.

The Administrative Record indicates that the Complainant has operated as a sublessee to a number of full-service CASP's on the Airport since December 1999; these include Gallatin Flying Service, Global Air Services, and the Wilson Family Partnership. The Complainant has also leased space from the SCRAA.

Gallatin Flying Service

Gallatin Flying Service, Inc. initially offered space to the Complainant through a verbal agreement. There is no evidence that a written agreement existed between Gallatin Flying Service, Inc. and the Complainant. [FAA Exhibit 1, Item 22] Complainant indicates her arrangement with Gallatin Flying Service, Inc., ended on March 31, 2001, when the Bankruptcy Trustee for Gallatin Flying Service discontinued service on that date. [FAA Exhibit 1, Item 1, exhibit 9]

SCRAA

The Administrative Record references a verbal agreement between the Respondent and Complainant for office space in the Terminal building on a day-to-day basis. It terminated on June 4, 2001, when the new full-service CASP, Global Air Services, Inc., commenced business.

Global Air Services, Inc.,

On May 31, 2001, the SCRAA and Global Air Services, Inc., entered into a lease agreement establishing Global Air Services, Inc., as a full service CASP. [FAA Exhibit 1, Item 19, exhibit 21, p. 6] On June 8, 2001, the SCRAA wrote to Stan Smith, President/CEO of Global Air Services, Inc., authorizing him:

“to enter into a verbal agreement, or written agreement, to lease or rent space to Ms. Gina Moore and/or Warbird AirVentures on a day-to-day basis, for a time period beginning Friday, June 08, 2001, and ending Sunday evening, June 10, 2001, for the purposes of allowing Warbird AirVentures to conduct flight operations for their clients.” [FAA Exhibit 1, Item 18, exhibit 5]

On June 25, 2001, Stan Smith, President of Global FBO, Inc., wrote to the SCRAA requesting the Authority's approval to lease space to Warbird AirVentures. The letter specifically sought, “the ability to sub- lease [sic] the office known as the ‘Flight Training Classroom’ to Warbird AirVentures, until such time that we have the space to move Warbird AirVentures into one of our other offices for a more permanent, annual arrangement.”

[FAA Exhibit 1, Item 19, exhibit 9]

At the February 28, 2002 meeting, the SCRAA discusses the sublease between Global Air Services, Inc., and the Complainant. The minutes state, “Mr. Smith indicated that Gina still has the lease and has not yet signed.” [FAA Exhibit 1, Item 19, exhibit 22, p. 2]

On April 22, 2002 the Complainant advised the Respondent of her lease arrangements with Global FBO. The letter states:

“In response to your request on the status of my lease with Global, I have prepared a time line at best my memory and knowledge.

July 2001 Stan agreed to rent Warbird AirVentures space in the terminal building. He said I could continue with the same arrangement I had with the Airport Authority. Knowing that one of the requirements of the Authority was to have it in writing, I requested several times from July through October as of the status of the written lease. Stan always replied I have been busy running my business or flying and did not have time to have it written. Therefore, after 4 months of asking, I gave up and continued my own flying operation.

December 2001 It was asked in the monthly meeting if a written lease was developed and signed. Stan stated that he felt like he had a verbal lease agreement. Mr. Leath said that it had to be written and signed. Stan agreed to have it drawn up and signed.

February 2002 Neldia received a telephone call from Stan stating that we had to sign a lease or be kicked-out per Randy Leath. Neldia faxed over Stan’s written lease to me in Jackson, Mississippi. Stan had changed our arrangement significantly enough from our original agreement that changes had to be made to the written version to match our verbal agreement.

March 2002 Stan and I met at the terminal building, and went item by item through his written version and made corrections to match our verbal agreement. Stan said he would have the corrections made and faxed over to my office for a signature. The fax never came. Therefore, I called Stan to see what the hang up was. He stated he needed his lawyer to read the lease before we can sign it.

April 2002 I asked Stan if his lawyer was finished reading the lease, and if so, I can sign it before I leave to go on tour with my plane. He stated his lawyer was still reading it.” [FAA Exhibit 1, Item 19, exhibit 15]

This letter was acknowledged by the Authority in their April 2002 meeting. The minutes state, “Ms. Moore said in her letter that Mr. Smith refused to give her a lease.” [FAA Exhibit 1, Item 19, exhibit 16, p. 1]

Limited CASP Agreement

On June 11, 2001, the SCRAA wrote a letter notifying the Complainant that prior to any additional CASP operations, a sublease agreement must be made and all operations must comply with the Airport’s Minimum Standards. The letter also requested the Complainant to attend the next SCRAA meeting. [FAA Exhibit 1, Item 1, exhibit 11]

On June 19, 2001, the Complainant responded to the SCRAA's June 11, 2001 letter. The Complainant stated that Gallatin Flying Service ceased to exist on March 31, 2001, and that Warbird AirVentures would be represented by the company's Vice-President at the next SCRAA meeting. [FAA Exhibit 1, Item 1, exhibit 9]

On June 20, 2001, the SCRAA responded to the Complainant's June 19th letter. This letter stated that the Complainant, and not her Vice President, was requested to attend the next meeting of the SCRAA. The letter states:

"I am aware that you have attempted to operate a Limited CASP without the written consent of the Authority, which is required by Chapter III Section 9A [of the Sumner County Regional Airport Minimum Standards and Rules and Regulations]. Each CASP must have a written agreement with the Authority, which is required by Chapter III Section 9b. You must comply with Chapter III Sections 9 A-R.

Until you have a sub-lease agreement with a CASP on the field to operate and that agreement has been approved in writing by the full authority All [sic] operations by Warbird Air Ventures must cease and desist. There will not be any further temporary agreements allowing your operations until all requirements are met." [FAA Exhibit 1, Item 1, exhibit 10 and FAA Exhibit 1, Item 18, exhibit 14]

The Complainant's representative attended the June 25, 2001 SCRAA meeting. The minutes indicate a discussion about Warbird AirVentures' use of the airport terminal building and signage. A motion was made and adopted unanimously to "approve Global FBO to sublease to Warbirds the space to operate and Global FBO will monitor compliance with the Minimum Standards." [FAA Exhibit 1, Item 19, exhibit 8, p. 2] The minutes also state, "again it was emphasized that Warbirds must comply with all Minimum Standards." [FAA Exhibit 1, Item 19, exhibit 8, p. 2] The Complainant was required to have a sublease agreement for space with an existing operator on the Airport and a limited CASP agreement with the SCRAA.

The following day, the SCRAA sent a letter to the Complainant's representative advising her of the Authority's action. This letter states, "Global FBO, Inc. requested permission to Sub-Lease the office known as the 'Flight Training Classroom' to Warbird AirVentures until such time that they have space to move you into a permanent location." This letter also encourages the Complainant and her representative to familiarize themselves with the Airport Minimum Standards and Rules and Regulations which were enclosed. [FAA Exhibit 1, Item 18, exhibit 6]

Since Warbird AirVentures, Inc., sublease agreement with Global FBO, Inc., was approved by the SCRAA, Warbird Air Venture, Inc., could now execute a CASP agreement with the SCRAA. On June 26, 2001, Warbird Air Venture's CASP was signed. The limited CASP agreement authorized Warbird AirVentures to provide airplane rides and sell related items such as T-shirts, caps, and videos for a term of three years from the date of the agreement's execution. This agreement required the Complainant to maintain \$1 million in aircraft liability insurance. [FAA Exhibit 1, Item 1, exhibit 15]

The January 2002 SCRAA meeting minutes reflect a modification of the Complainant's CASP agreement:⁶

“Warbirds Air Ventures [sic] asked for modifications to the CASP including tail dragger instruction, checkouts, signoffs and rental. David Blankenship made a motion to amend modify [sic] the CASP and accept the request. Jerry Kirby seconded the motion. The motion passed unanimously. The Authority needs a written copy of the agreement between Global FBO and Warbirds Air Ventures.” [FAA Exhibit 1, Item 19, exhibit 13, p. 1]

SCRAA

The January 2002 SCRAA meeting minutes also discuss the Complainant's rental of a hangar from the Respondent:

“In the Airport Managers [sic] report Gina Moore requested a mailbox and that her hangar rental be prorated from 11 January 2002 when she moved in. Ron Edwards made a motion that all rent is due the first of the month; however if rented during the month the rent will be prorated for that month. This is effective 1 January 2002. David Blankenship seconded the motion. The motion passed unanimously.” [FAA Exhibit 1, Item 19, exhibit 13, p. 2]

The May 2002 SCRAA meeting minutes imply that Global Air FBO may no longer be operating at the Airport. There is also a discussion regarding the timeframe for selecting a new full service CASP. [FAA Exhibit 1, Item 19, exhibit 17, p. 1] Two discussions regarding the Complainant are noted:

“Mr. Garrett read a letter from War Birds requesting to lease a room. David Blankenship made a motion to allow Ms. Moore to rent the room for \$100 a month. Wayne seconded the motion. The motion was withdrawn during the discussion since the square footage of the room is not known.

Ron Edwards made a motion to put the rent on a month to month for War Birds until the FSCASP is resolved. Jerry Kirby seconded the motion. The motion passed unanimously.” [FAA Exhibit 1, Item 19, exhibit 17, p. 2]

The June 2002 SCRAA meeting minutes re-visit the issue of the Authority's lease to the Complainant for space in the terminal building:

“There was discussion of renting a room in the terminal for Warbirds. The Authority considered the square footage of the room and the present rental rates.

⁶ Although this modification is noted in the January 2002 SCRAA meeting minutes [FAA Exhibit 1, Item 19, exhibit 13, p.2], there is no documentation of this change on the copy of the limited CASP agreement submitted by the Complainant as FAA Exhibit 1, Item 1, exhibit 15 or the Respondent as FAA Exhibit 1 Item 5, Exhibit A, exhibit 3.

Steve Sudberry made a motion to give Ms. Moore a three lease [sic] at \$175 monthly. David Blankenship seconded the motion which passed unanimously. [FAA Exhibit 1, Item 19, exhibit 25, p. 2]

The August 2002 SCRAA meeting minutes note the selection of a new full service CASP. It states, “the Authority welcomes Damian and Mary Weber as our new CASP.” [FAA Exhibit 1, Item 19, exhibit 26, p. 1]

There was also a discussion regarding the status of the Complainant’s leasing arrangement with the Respondent:

“There was discussion of the space leased to War birds’[sic]. Ms. Moore has not signed the contract. Art McClellan made a motion to give Ms. Moore ten days to sign the contract. Wayne Hooper seconded the motion which passed unanimously.” [FAA Exhibit 1, Item 19, exhibit 26, p. 2]

This issue was resolved as the September 2002 SCRAA meeting minutes state, “Warbirds has signed the lease.” [FAA Exhibit 1, Item 19, exhibit 27, p. 1]

Wilson Family Partnership

In her response to a Request for Additional Information, the Complainant implies she began leasing a 60 foot by 80 foot hangar from Wilson Family Partnership in 2003. [FAA Exhibit 1, Item 19, p. 6 and p. 16] Wilson Family Partnership entered into a lease agreement with the SCRAA to build the hangar on March 8, 1999. [FAA Exhibit 1, Item 18, exhibit 9] This lease agreement allows Wilson Family Partnership to sublease the hangar to a third party acceptable to the SCRAA. [FAA Exhibit 1, Item 18, exhibit 9] The Record contains only one executed lease agreement between the Complainant and Wilson Family Partnership for the 2006 calendar year. [FAA Exhibit 1, Item 19, exhibit 19, p. 2]

On January 3, 2007, Wilson Family Partnership offers the Complainant an *Addendum to Maintenance Portion to Lease*. The Addendum made the Complainant responsible for repairs due to its negligence. Wilson Family Partnership was responsible for repairs not related to normal wear and tear. A lease term of January 1, 2007 to December 31, 2007, was proposed. [FAA Exhibit 1, Item 1, exhibit 7] The Complainant proposed changes to the agreement, but never executed it. [FAA Exhibit 1, Item 1, p. 3]

Complainant’s Parking Problems

During the November 22, 2004 meeting of the SCRAA, a complaint was made about the Complainant’s parking of a mobile home on the Airport. The minutes state:

“Roger Richardson expressed a complaint concerning Gina Moore parking a mobile home on the north end and blocking the area for other hangar owners. Randy Leath made a motion to notify Gina Moore by mail that she is not complying with the Minimum Standards by parking vehicles on the airport. A

copy of the Minimum Standards Chapter 1, Section 8 and Chapter 2, Section 2, Articles A, B and C, should be included with the letter. Bill Sudekum seconded the motion which passed unanimously.” [FAA Exhibit 1, Item 1, exhibit 17, p.1]

The Record contains an unsigned letter dated November 28, 2004, from the Respondent with a signature line for Sam Garrett,⁷ notifying the Complainant of violations of the Authority’s Minimum Standards.⁸ [FAA Exhibit 1, Item 1, exhibit 8]

On January 15, 2005, the SCRAA sent a letter to Warbird SkyVentures stating:

“Warbirds have given permission to park there [sic] motor home behind the hangar she rents, as long as the general public can pass without any problems.

Under no circumstances, should the motor home block the access to any hangar at any time.” [FAA Exhibit 1, Item 19, exhibit 24]

At the January 24, 2005 meeting of the SCRAA, a statement was made by Airport Manager Sam Garrett that the Complainant was “notified of problems”. [FAA Exhibit 1, Item 1, exhibit 18, p. 2]

In the October 23, 2006 meeting of the SCRAA, it was stated a third complaint had been received concerning the Complainant’s plane obstructing other aircraft on the taxiway and not being tied down. A motion was made to authorize the Chairman to send “a third and final warning” to the Complainant to follow the Airport’s Minimum Standards and outlining regulations she was not following. [FAA Exhibit 1, Item 1, exhibit 19, pp 1-2]

At the January 8, 2007 meeting of the SCRAA, concerns about the Complainant were discussed. The minutes state:

⁷ In some parts of the Record, Sam Garrett is described as the Airport Manager. In other parts of the Record, Sam Garrett is described as an employee or representative of the Complainant, Warbird SkyVentures, Inc. It appears that he was employed as the Airport Manager before he was employed by Warbird SkyVentures.

⁸ The Complainant also provides a document signed by Sam Garrett stating, “In the documentation provided by SCRAA to Brian Caldwell [Chief Planner, Tennessee Department of Transportation, Aeronautics Division] included a letter dated November 28, 2004 written to Gina Moore with my name at the bottom was not written or signed by me [sic]. I did not write, type or authorize anyone to write a letter on my behalf. In addition this letter is not on the SCRAA letterhead and has been recently produced.” [FAA Exhibit 1, Item 1, exhibit 25] Another document in the Record further confuses this issue. The Complainant provides a statement signed by Sam Garrett on November 20, 2007 stating:

“As Airport Manager, I gave Ms. Moore permission to park her motor home on the runway side of the hangar for 48 hours as per the minimum standards. Also she had permission to park her motor home on the west side of her hangar for extended periods of times... As Airport Manager, I Have [sic] never witnessed Ms. Moore’s aircraft parked in the object free zone overnight.” [FAA Exhibit 1, Item 1, exhibit 26]

“Damian wants to lease the new hangar. It was pointed out that Gina Moore continues to park her motor home in front of the door on the runway side obstructing passage of aircraft on the taxiway. A letter has been sent to Ms. Moore not to park the motor home on the runway side of the hangar. Ms. Moore also has two dogs which are not leashed and are presenting problems. David Blankenship made a motion for Steve Sudbury to write Ms. Moore a letter indicating we have previously sent correspondence requesting she refrain from parking on the taxiway and blocking traffic. If the vehicle continues to be in violation of airport standards we will have it towed. Charlie Moore seconded the motion which passed unanimously.” [FAA Exhibit 1, Item 1, exhibit 20, pp 1-2]

Complainant’s Request to Expand Service

In the February 26, 2007 meeting of the SCRAA, Sam Garrett, now representing the Complainant as her agent/employee, requested to establish a warbird and other aircraft maintenance CASP in the Complainant’s hangar. It was stated the Complainant had secured the required licensed mechanics and insurance. The Authority requested documentation be produced to prove insurance and qualified mechanics, and Sam Garrett agreed to deliver those documents the next day.⁹ The Authority discussed previous apron problems with the Complainant’s operation and specified that future operations must not block taxiways or aprons. Per the meeting minutes, it was decided that the full service CASP, Jet Harbor, would lease additional parking spaces to the Complainant for storage of her aircraft. The Authority voted to approve the Complainant’s request for an Aircraft Maintenance CASP, with the required documentation. [FAA Exhibit 1, Item 1, exhibit 21, p.1]

In March of 2007, the airport management called Warbird SkyVentures and requested the motor home be moved. These telephone conversations are documented by the Complainant, her employee, and the March 26, 2007 SCRAA meeting minutes. [FAA Exhibit 1, Item 1, pp 8-9, FAA Exhibit 1, Item 1, exhibit 28, and FAA Exhibit 1, Item 1, exhibit 22, p. 2]

In the March 26, 2007 meeting of the SCRAA, the authority reviewed the Complainant’s request to establish a warbird and other Aircraft Maintenance CASP from the previous meeting. During this meeting, the manager of Jet Harbor presented a handout highlighting parts of the Airport’s Minimum Standards that would be violated if the Complainant was given a CASP. The FBO manager cited a concern regarding insurance coverage and the Complainant’s continued parking of her motor home in front of her hangar. The minutes state:

“After review of the Minimum Standards and Requirements, Rich Coker made a motion to rescind the previous motion passed by the Authority concerning Ms. Moore’s request for a CASP. The Authority was mistaken when the previous motion was passed. David Blankenship seconded the motion which passed unanimously. Mr. Coker also made a motion that if Ms. Moore is still interested in the future to extend to a CASP she should

⁹ The Record is unclear as to whether or not this documentation was ever provided from the Complainant to the SCRAA.

work out an agreement prior to presenting to the Authority. Bill Sudekum seconded the motion which passed unanimously.” [FAA Exhibit 1, Item 1, exhibit 22, p. 2]

In another discussion related to the Complainant, an Authority member reminded those in attendance of the motion made at the January meeting to send a letter to the Complainant requesting she refrain from parking on the taxiway and blocking traffic. It was then pointed out that the Complainant did not have a signed lease which is required for a CASP agreement. The minutes further state, “Charlie Moore made a motion that the Authority confer with the owner of the hangar outlining all the issues concerning the Authority. Rich Coker seconded the motion which passed unanimously.” [FAA Exhibit 1, Item 1, exhibit 22, p. 2]

On March 31, 2007, the SCRAA wrote a letter to the Complainant’s landlord, Wilson Family Partnership, regarding concerns with their subtenant, the Complainant. The SCRAA cited concerns with parking of a motor home, parking of aircraft, dogs running loose on airport property and the Complainant’s unresponsiveness to the SCRAA’s previous requests. The SCRAA also reminded Wilson Family Partnership that the Authority must approve all subleases. [FAA Exhibit 1, Item 1, exhibit 5]

On May 4, 2007,¹⁰ Wilson Family Partnership executed a lease termination letter to the Complainant, requesting she vacate the premises by May 5, 2007. The letter states:

“As owner (Wilson Family Partnership, LP) of the aircraft hangar located at 1475 Airport Road, Gallatin Tn. 37066 we delivered a lease to you (Warbird Ventures) with an addendum on January 03, 2007 date [sic] and you have not signed or responded/returned the lease or the addendum; therefore, your lease offer is off of the table and no longer valid.

You are currently a holdover tenant and our lease clearly states that a hold over tenant is a month to month agreement.

This is your 30 day notice to vacate as we have rescinded our lease offer and we have no intentions of continuing to rent you. If you have not vacated the property after 30 days, we will seek a detainer action to have you removed.

In addition please reference the attached letter detailing some of the airport authority violations.

We have discussed these issues with you on numerous occasions and will not tolerate your non-compliance. Your inappropriate behavior has contributed significantly to your eviction notice.” [FAA Exhibit 1, Item 1, exhibit 6]

¹⁰ The lease termination letter submitted by the Complainant and identified in the Administrative Record as FAA Exhibit 1, Item 1, exhibit 6 is dated May 4, 2007. However, the Complainant states, “Todd Wilson post-dated his signature.” [FAA Exhibit 1, Item 1, p. 9] The Director believes the Complainant may have received this letter as early as April 5, 2007, prior to contacting the Tennessee Department of Transportation; however, the Record is unclear.

Complainant's Informal Complaint

On May 3, 2007, the Complainant contacted the Tennessee Department of Transportation regarding her request to open an aircraft maintenance shop and her eviction from the Sumner County Regional Airport. [FAA Exhibit 1, Item 1, exhibit 1] On May 16, 2007, the Complainant submitted a follow-up to her May 3, email and requested the Tennessee Department of Transportation help mediate her dispute with the Airport. [FAA Exhibit 1, Item 1, exhibit 2]

The state reviewed the Complainant's following allegations:

- Sumner County Airport Authority violated the Complainant's Right to Privacy;
- Sumner County Airport Authority violated the Complainant's Right to Due Process; and
- Sumner County Airport Authority violated the Complainant's Right to Equal Protection Under the Law.

Additionally, the Complainant alleged the Airport Authority's actions constituted a violation of Grant Assurance # 30, *Civil Rights*. [FAA Exhibit 1, Item 1, exhibit 4, p. 1]

On July 3, 2007, the Tennessee Department of Transportation issued their findings on the informal investigation requested by the Complainant. The Findings dispute the Complainant's claim that insurance requirements were unreasonable, note the Complainant's violation of the Airport's Minimum Standards, and discuss the lack of specific evidence necessary to document a violation of the Complainant's Civil Rights. In summary, the Tennessee Department of Transportation described the SCRAA as operating consistently with their Federal obligations, and through mediation efforts, it appeared the sponsor was willing to discuss forming a new CASP if suitable space was available for the Complainant. [FAA Exhibit 1, Item 1, exhibit 4 and FAA Exhibit 1, Item 5 Exhibit B]

V. APPLICABLE LAW AND POLICY

The Federal role in civil aviation has been augmented by various legislative actions that authorize programs for providing Federal funds to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in 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 reasonable aeronautical access.

Title 49 U.S.C. § 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 U.S.C. § 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 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.

A. Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the Airport Improvement Program, 49 U.S.C. § 47107, *et seq.*, the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth the statutory sponsorship requirements to which an airport sponsor receiving Federal financial assistance must agree.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.¹¹ FAA Order 5190.6A, *Airport Compliance Manual* (FAA Order 5190.6A, Order, or Order 6A), issued on October 2, 1989, provided 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.¹² 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 following grant assurances are relevant to this Complaint:

1. Federal Grant Assurance 22, Economic Nondiscrimination

Federal grant assurance 22, *Economic Nondiscrimination*, is relevant to this appeal. It deals with the sponsor's obligation to make the airport available for aeronautical use on reasonable and not unjustly discriminatory terms.

Grant assurance 22, *Economic Nondiscrimination*, of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part, that the sponsor of a federally obligated airport:

...will make its airport available as an airport for public use on reasonable terms, and without unjust discrimination, to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. [grant assurance 22(a)]

...may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. [grant assurance 22(h)]

¹¹ See, e.g., the Federal Aviation Act of 1958, as amended and recodified, Title 49 U.S.C. §§ 40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110; and the Airport and Airway Improvement Act of 1982, as amended and recodified, Title 49 U.S.C. §§ 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122

¹² FAA Order 5190.6B issued September 30, 2009, is the current Airport Compliance Manual. This new Order did not change the sponsor assurances or the way in which the FAA required sponsor compliance. (FAA Order 5190.6B or Order 6B)

...may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public. [grant assurance 22(i)]

Subsection (h) qualifies subsection (a), and subsection (i) represents an exception to subsection (a) to permit the sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions, which would be detrimental to the civil aviation needs of the public.

This grant assurance specifically addresses the issue of the treatment of fixed-base operators, stating that “Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and utilizing the same or similar facilities.” [Assurance 22(c).] Subsection (c) specifies the application of subsection (a) to the treatment of fixed-base operators, providing additional specific guidance as to the sponsor obligations.

The Order describes the responsibilities under grant assurance 22, *Economic Nondiscrimination*, assumed by the owners of public-use airports developed with federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport, and to make all airport facilities and services available on reasonable terms without unjust discrimination. [See Order 6A, Secs. 3-1 and 4-13; and Order 6B, Secs. 8.1 and 9.6]

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.¹³ [See Order 6A, Sec 3-2; and Order 6B, Sec. 8.4(c).]

2. Federal Grant Assurance 23, Exclusive Rights

Federal grant assurance 23, *Exclusive Rights*, implements the provisions of 49 U.S.C. §§ 40103(e) and 47107(a)(4), and requires, in pertinent part, that the owner or sponsor of a federally obligated airport:

“...will permit no exclusive right for the use of the airport by any persons 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...”

“...will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49 United States Code.”

¹³ Operating the airport for aeronautical use is not a secondary obligation; it is the prime obligation. This prime obligation includes the opportunity for leaseholders to develop airport property for aeronautical use. [See United States Construction Corporation v. City of Pompano Beach, FL, FAA Docket No. 16-00-14, (July 10, 2002) (Final Agency Decision).]

In Chapter 3 of Order 6A, the FAA discusses its exclusive rights policy and broadly identifies 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 any standard that is applied in an unjustly discriminatory manner may constitute the constructive grant of an exclusive right. Courts have found the grant of an exclusive right where a significant burden has been placed on one competitor that is not placed on another. [*See e.g. Pompano Beach v FAA*, 774 F2d 1529 (11th Cir, 1985).] An owner or sponsor is under no obligation, however, to permit aircraft owners to introduce onto the airport equipment, personnel, or practices which would be unsafe, unsightly, detrimental to the public welfare, or which would affect the efficient use of airport facilities. [*See Order 6A, Sec 3-9(e); Order 6B, Sec.8.8(b).*]

Leasing all available airport land and improvements planned for aeronautical activities to one enterprise will be construed as evidence of an intent to exclude others unless it can be demonstrated that the entire leased area is presently required and will be immediately used to conduct the activities contemplated by the lease. [*See Order 6A, Sec 3-9(c); Order 6B., Sec. 8.9(d).*]

The Order 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 6A, Ch. 3; Order 6B., Ch. 8.*]

B. The FAA Airport Compliance Program

The FAA discharges its responsibility for ensuring that airport sponsors comply with their federal obligations through its Airport Compliance Program. Sponsor obligations are the basis for the FAA's airport compliance effort. The airport owner accepts these obligations when receiving federal grant funds or when accepting the transfer of federal property for airport purposes. The FAA incorporates these obligations in grant agreements and instruments of conveyance to protect the public's interest in civil aviation and to ensure compliance with federal laws.

The FAA designed the Airport Compliance Program to ensure the availability of a national system of safe and properly maintained public-use airports that airport sponsors operate in a manner consistent with their federal obligations and the public's investment in civil aviation. The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights that airport sponsors pledge to the people of the United States in exchange for monetary grants and donations of federal property to ensure that airport sponsors serve the public interest.

The Order sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct. Rather, it establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for ensuring airport compliance. The Order provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for receiving federal funds or federal property for

airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports, and facilitates the interpretation of grant assurances by FAA personnel.

1. The Complaint Process

Pursuant to 14 CFR, Part 16, § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. The complaint shall also describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. [14 CFR, Part 16, § 16.23(b)(3,4)]

If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA will investigate the subject matter of the complaint. In rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided. Each party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance. [14 CFR, Part 16, § 16.29]

The proponent of a motion, request, or order has the burden of proof. A party who has asserted an affirmative defense has the burden of proving the affirmative defense. This standard burden of proof is consistent with the Administrative Procedure Act (APA) and federal case law. The APA provision states, “[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.” 5 U.S.C. § 556(d). [See also, *Director, Office of Worker’s Compensation Programs, Department of Labor v. Greenwich Collieries*, 512 US 267, 272 (1994); *Air Canada et al. v. Department of Transportation*, 148 F3d 1142, 1155 (DC Cir, 1998).] Title 14 CFR § 16.229(b) is consistent with 14 CFR § 16.23, which requires that the complainant submit all documents then available to support his or her complaint. Similarly, 14 CFR § 16.29 states that “[e]ach party shall file documents that it considers sufficient to present all relevant facts and argument necessary for the FAA to determine whether the sponsor is in compliance.”

In accordance with 14 CFR § 16.109, if the Director in his determination proposed to issue an order withholding approval of an application for a grant apportioned under 49 U.S.C. § 47114 (c) and (e), or a cease and desist order, or any other compliance order issued by the Administrator to carry out the provisions of a statute listed in 14 CFR § 16.1, and required to be issued after notice and opportunity for a hearing, then a respondent will have the opportunity for a hearing at which the complainant will be a party. [See 49 U.S.C. § 47106(d).] Courts have held that the Part 16 hearing rules are consistent with 49 U.S.C. § 46101. [See e.g., *Penobscot Air Services LTD v FAA*, 164 F3d 713, 720 (1st Cir., 1999); *Lange v FAA*, 208 F3d, 389, 391 (2nd Cir., 2000); *Wilson Air Center v FAA*, 372 F3d 807 (6th Cir., 2004).]

2. Right to Appeal the Director’s Determination

A party to this Complaint adversely affected by the Director’s Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination. If no appeal is filed within the time period specified, the Director’s Determination becomes the final decision and order of the FAA without further action. A

Director's Determination that becomes final because there is no administrative appeal is not judicially reviewable. [14 CFR, Part 16, § 16.33]

Part 16 requires all relevant facts to be presented in the complaint documents. [14 CFR, Part 16, § 16.23(b)(3).] New allegations or issues should not be presented on appeal unless the movant can show that the materials were not available prior to the time the Director's Determination was made and that the newly discovered materials are relevant. Review by the Associate Administrator is limited to an examination of the Director's Determination and the Administrative Record upon which such determination was based. 14 CFR §16.241(c). Under Part 16, Complainants are required to provide with the complaint and reply all supporting documentation upon which it relied to substantiate its claims. 14 CFR §16.23(b)(2) and (g). Failure to raise all issues and allegations in the original complaint documents may be cause for such issues and allegations to be deemed waived and not reviewable upon appeal. Rick Aviation v. Peninsula Airport Commission, FAA Docket No. 16-05-18 (November 6, 2007) (Final Decision and Order), page 8. This is consistent with the Supreme Court's recognition that courts may require administrative issue exhaustion as a general rule because it is usually appropriate under an [administrative] agency's practice for contestants in an adversarial proceeding before it to develop fully all issues there. The Court concluded that where parties are expected to develop the issues in an adversarial administrative proceeding, the rationale for requiring issue exhaustion is at its greatest. [See Sims v. Apfel, 530 US 103, 108-110 (2000) citing Hormel v. Helvering, 312 US 552 (1941) and U.S. v. LA Tucker Truck Lines, 344 US 33, (1952).]

3. FAA's Responsibility with Regard to an Appeal

Pursuant to 14 CFR, Part 16, § 16.33, the Associate Administrator will issue a final decision on appeal from the Director's Determination, without a hearing, where the complaint is dismissed after investigation.

In such cases, it is the Associate Administrator's responsibility to determine whether (a) the findings of fact made by the Director are supported by a preponderance of reliable, probative, and substantial evidence, and (b) each conclusion of law is made in accordance with applicable law, precedent, and public policy. [See e.g. Ricks v Millington Municipal Airport, FAA Docket No. 16-98-19, (December 30, 1999) (Final Decision and Order) page 21 and 14 CFR, Part 16, § 16.227.]

It is well established that in an agency's appeal process new evidence need not be admitted unless the new evidence was not available and could not have been discovered or presented at the prior proceeding. Charles H. Koch, Jr. Administrative Law and Practice, Vol. 1, § 6.76. A party may not correct a mistake in its original selection of evidence by then compelling the agency to consider it on appeal. Koch, supra, § 6.76.

VI. ANALYSIS AND DISCUSSION

In the Director's Determination, the Director concluded:

1. The Respondent did not apply the Airport's Minimum Standards in a way to unjustly discriminate against the Complainant, and is not currently in violation of

49 U.S.C. § 47107(a)(1), and Federal Grant Assurance 22, *Economic Nondiscrimination*.

2. The Respondent's failure to grant the Complainant an agreement to operate an aeronautical service does not constitute an unreasonable denial of access in violation of 49 U.S.C. § 47107(a)(1), and Grant Assurance 22, *Economic Nondiscrimination*.
3. The Respondent has not limited the provision of specific aeronautical services at the Airport to a single provider, and is not in violation of 49 U.S.C. § 47107(a)(4), and Grant Assurance 23, *Exclusive Rights*.
4. The Respondent's processes and procedures for reviewing the Complainant's request to provide an aeronautical service lack transparency and documentation making them confusing in nature. These incoherent, ad hoc practices cede the Respondent's ability to adhere to the Grant Assurances which constitutes a violation of 49 U.S.C. § 47107(a) and Grant Assurance 5, *Preserving Rights and Powers*.

The Director found the Sumner County Regional Airport Authority (SCRAA) in violation of 49 U.S.C. § 47107(a) and Grant Assurance 5, *Preserving Rights and Powers*. The Respondent was given 30 days to submit a corrective action plan that (1) proposes how the SCRAA will develop a process or procedure for clarifying expectations vaguely defined in its Minimum Standards to potential aeronautical business proponents before decisions on such proposals are voted on by the SCRAA; (2) establishes a procedure to document and uniformly review on an ongoing basis all aeronautical leases and subleases for space on the Airport in order to be responsive to requests for space by aeronautical users; (3) identifies any expired CASP agreements and establishes a timetable to negotiate any new agreements or replacement agreements as necessary; (4) removes the non-compete clause from Jet Harbor's lease/CASP agreement at the first available opportunity; and (5) develops a process to improve communication between the SCRAA and aeronautical tenants at the Airport.

On June 8, 2009, the Director accepted the SCRAA's corrective action plan. SCRAA was instructed to remove the non-compete clause from Jet Harbor's lease/CASP agreement at the first available opportunity.

A. Complainant's Appeal

In a 54-page document dated March 25, 2009, containing 30 attachments, the Complainant appealed the Director's Determination. However, nowhere in the Appeal does the Complainant allege that the Director's Determination was not supported by a preponderance of reliable, probative, and substantial evidence. Further, the Complainant has not alleged that any of the Determination's conclusions of law were incorrect according to applicable law, precedent, and public policy. Complainant does not argue that the Director's Determination should be reversed but simply submits several "motions" asking that the Respondent be made to comply with certain requirements.

The Complainant, in essence, has simply restated in the Appeal the arguments made in the Complaint. As previously stated, such an argument cannot provide an acceptable basis for an

appeal. However, because the Complainant re-argues the merits of the case, it must be concluded that the Complainant interprets the record differently than the Director. The issue before the Associate Administrator, then, is whether there was substantial evidence in the record to allow the Director to reach the conclusions contained in the Determination. Accordingly, the Associate Administrator will address herein each of the issues contained in the Appeal to analyze whether the evidence is substantial to meet the burden of proof required for a party to prevail. See, Boca Airport, Inc., v. FAA, 389 F.3d 185, 189 (D.C. Cir., 2004). To arrive at a final decision on this appeal, the Associate Administrator will determine whether (a) the findings of fact made by the Director are supported by a preponderance of reliable, probative, and substantial evidence, and (b) each conclusion of law is made in accordance with applicable law, precedent, and public policy. See e.g. Ricks v. Millington Municipal Airport, FAA Docket No. 16-98-19 (December 30, 1999) (Final Decision and Order), page 21, and 14 CFR § 16.227.

1. Allegations Outside the Part 16 Purview

a. Complainant alleges:

“Sumner County Regional Airport Authority violated my Civil Rights”

The Complainant asserts the Respondent violated her civil rights.

Federal Grant Assurance 30, *Civil Rights*, prohibits an airports sponsor from excluding an aeronautical user based on the grounds of race, creed, color, national origin, sex, age, or handicap. The statement above is the Complainant’s first and only mention of this alleged violation; none of the evidence submitted by the Complainant further states or develops this allegation, nor does Complainant provide any evidence with how race, creed, color, national origin, sex, age, or handicap has resulted in disparate treatment.

The Director’s Determination did not address issues concerning Federal Grant Assurance 30 because the Complainant did not raise the issue in its Complaint or Reply. The Complainant raises these issues concerning her civil rights for the first time in this appeal. As previously stated, failure to raise all issues and allegations in the original complaint documents may be cause for such issues and allegations to be deemed waived and not reviewable upon appeal. Sims, supra, at 108-110, Charles H. Koch, Jr. *Administrative Law and Practice*, vol. 1, § 6.76.

Further reasons for excluding this issue are addressed by examining the Complainant’s argument as follows:

On appeal, the Complainant indicates that she was treated differently because of her gender and the Respondent made false accusations about her. The Complainant indicates that “others users of the airport park their airplanes and their vehicles with no scrutiny.” The Complainant appears to believe she is being held to a different standard based on her gender regarding accusations involving her dogs running unleashed on the Airport, parking her aircraft and her motor home to block access for other airport users, even though she has been made aware of the Respondent’s concerns regarding these practices. The Complainant believes that she was not afforded an opportunity to challenge her accusers in the Airport’s complaint process identified in the

Minimum Standards. A statement by a Mr. Jonathan Kyle Crabtree, an employee at the Airport who has worked for several commercial operators indicates that several aircraft owners at the Airport left their aircraft unattended on the ramp. [FAA Exhibit 1, Item 23, exhibit 29] Complainant also indicates the Respondent parks school buses and vehicles in the obstacle free zone while she does not.¹⁴ [FAA Exhibit 1, Item 23, exhibit 30]

The Associate Administrator declines to make a finding on the allegation. The Complainant has not submitted factual information to indicate that her inability to meet airport requirements was the result of discriminatory action on the part of Respondent denying her access to the Airport based on the grounds of race, creed, color, national origin, sex, age, or handicap. The happenstance of different genders among the CASP operators is not sufficient grounds for a violation of Grant Assurance 30.

To establish a civil rights violation, the Complainant must submit evidence to the Record detailing how her race, creed, color, national origin, sex, age, or handicap resulted in discriminatory treatment. Instead, the Administrative Record simply illustrates that the Complainant did lack control of her dogs and did block taxiway access for other airport users. It did not support her claim that her lack of compliance with the Minimum Standards was due to her race, creed, color, national origin, sex, age, or handicap. Furthermore, Mr. Crabtree's statement regarding parking problems on the Airport does not merit a finding of a civil rights violation either. The Associate Administrator cannot equate the issue of several aircraft owners leaving their aircraft unattended on the ramp to a violation of Complainant's civil rights.

Finally, on appeal, the Complainant believes that she was not afforded an opportunity to challenge her accusers in the Airport's complaint process identified in the Minimum Standards.

Part 16 requires all relevant facts to be presented in the complaint documents. [14 CFR, Part 16, §16.23(b)(3).] New allegations or issues should not be presented on appeal. Review by the Associate Administrator is limited to an examination of the Director's Determination and the Administrative Record upon which such determination is based. Under Part 16, Complainants are required to provide with the complaint and reply all supporting documentation upon which it relied to substantiate its claims.

b. Complainant alleges:

“Sumner County Regional Airport Authority violated 49 USC 47107(b).”

Title 49 USC § 47107(b) requires revenue generated on the airport must be used for the airport, an airport system or property owned by the airport. Section 47107(b) requires:

¹⁴ The Associate Administrator will request the FAA Memphis Airports District Office to investigate the parking of school buses on airport property to ensure this practice conforms to Grant Assurance 25 *Airport Revenue*. An airport sponsor is required to obtain fair market rental for the use of aeronautical property for nonaeronautical purposes. The FAA Memphis Airports District Office will also ensure that needed aircraft parking isn't being displaced to accommodate bus parking.

local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of the airport, the local airport system or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

The Director declined to make a finding on the allegation because the Complainant failed to explain or substantiate the claim.

On appeal, the Complainant alleges SCRAA Officials violated Title 49 USC § 47107(b) when it issued a \$20,000 contract for the construction of a retaining wall on the Airport without subjecting the contract to competitive bid. Complainant further alleges that a personal relationship exists between the selected contractor and SCRAA officials.

During the informal complaint proceedings, the State of Tennessee Department of Transportation, Aeronautics Division, investigated the allegation. In an April 26, 2007 letter to the Complainant, state officials wrote,

“ Our review has led us to determine that this does not appear to be a federal grant assurance compliance matter. It appears that the matter was handled expeditiously as warranted by the urgency of the situation to prevent further damage to airport and private property.” [FAA Exhibit 1, Item 23, exhibit 13]

In a conversation with state officials, the Complainant was informed that the work was done under an emergency change order. [FAA Exhibit 1, Item 23]

Complainant further claims:

I did not submit my concerns for not bidding a job under the provision of a Federal Grant Assurance. I submitted my concerns because of the obvious unethical business practice of not placing a job for bid to the public. [FAA Exhibit 1, Item 23]

The Associate Administrator notes federal aviation law does not requires airport sponsors to competitively bid construction projects funded with airport revenue. Laws and regulations governing municipal procurement fall within the province of state and local government. Since this work was performed on Airport property for airport purposes, there is no violation of Title 49 U.S.C 47107(b). Moreover, this complaint was investigated by State of Tennessee Aviation officials. In response to the Complainant’s inquiry during the informal complaint, the State Aeronautics Budget and Grants Manager indicated,

Since this project [retaining wall] was funded with state funds, not federal funds, local procedures would be utilized... [FAA Exhibit 1, Item 23, exhibit 19]

The Associate Administrator finds no merit in the allegation and declines to make a finding on the allegation.

c. Complainant alleges:

“Sumner County Regional Airport Authority violated Airport Sponsor Assurances Paragraphs C.1. General Federal Requirements and C.2. Responsibility and Authority of the Sponsor (a) Public Agency Sponsor[.]”

The General Federal Requirements (C.1) found in Sponsor Assurances, under the heading of “Sponsor Certification,” requires an airport sponsor to assure and certify that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for grant projects.¹⁵

This requirement is pursuant to 49 U.S.C. § 47105(d), which authorizes the Secretary of Transportation to require the sponsor to certify it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP).

Responsibility and Authority of the Sponsor (a) Public Agency Sponsor (C.2) requires a public agency sponsor to demonstrate it:

“has the legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant’s governing body authorizing the filing of the application...”
[Airport Sponsor Assurances, paragraph C.2 (a), March 2005]

This grant assurance is applicable to airport sponsors as defined at 49 U.S.C. 47102(24)(a) and applicable to grant applicants pursuant to section 47106(a).

The Complainant made this allegation in response to the Respondent’s Motion to Dismiss, which states “Respondent is not properly named in that the quasi-governmental board established pursuant to T.C.A. §42-3-103(a) is the SUMNER COUNTY REGIONAL AIRPORT AUTHORITY and not Sumner County Airport Authority. [FAA Exhibit 1, Item 5, p.1]

On appeal of C.1., General Federal Requirements, and C.2., Responsibility and Authority of the Sponsor, the Complainant alleges that the Respondent has violated Grant Assurance 4, Good Title, by not owning the airport property and pretending to be a regional airport to solicit federal funds. Grant Assurance 4, *Good Title*, and referenced by Title 49 U.S.C. 47106(b)(1), requires that either a public agency or the Federal Government *holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary to the Secretary that good title will be acquired.*

Complainant’s claim is based upon Respondent’s statement in an unrelated legal dispute with Northstar Environmental Group, Inc., a third party. In Respondent’s Answer to proceedings before the Chancery Court for Sumner County in Northstar Environmental Group, Inc., Plaintiff, v. Sumner County Regional Airport Authority, Defendant, Respondent states:

¹⁵ 49 U.S.C. § 47107.

The allegations of paragraph 13 of the Complaint are denied in as much as the Authority has no ownership interest in the real estate in question and the fee simple title to the improved real estate in question is vested exclusively in Sumner County, Tennessee and the Defendant has no legal authority to contractually bind Sumner County, Tennessee.

[FAA Exhibit 1, Item 23, exhibit 24]

Part 16 requires all relevant facts to be presented in the complaint documents. [14 CFR, Part 16, §16.23(b)(3).] New allegations or issues should not be presented on appeal. Review by the Associate Administrator is limited to an examination of the Director's Determination and the Administrative Record upon which such determination is based.

As noted above, under Part 16, Complainants are required to provide with the complaint and reply all supporting documentation upon which it relied to substantiate its claims. In its appeal, the Complainant now alleges for the first time that the Respondent violated Grant Assurance 4, *Good Title* because of a statement Respondent made in another legal proceeding unrelated to this complaint. [FAA Exhibit 1, Item 23, page 48] Failure to raise all issues and allegations in the original complaint documents may be cause for such issues and allegations to be deemed waived and not reviewable upon appeal.

Each time an airport sponsor receives a Federal grant, it must certify good title to the airport property satisfactory to the Secretary. Good title can be in the form of fee simple or a lease; direct ownership is not a requirement. Furthermore, this is a new allegation that was not presented in the original formal complaint. Furthermore, the FAA will not consider this allegation because it has no bearing on the issue of whether the Complainant was denied access to the Airport for the purpose of conducting an aeronautical activity. The Associate Administrator dismisses the allegations relating to C.1 and C.2 on procedural ground and declines to make a finding on the allegations.

d. Complainant alleges:

SCRAA has violated C. 26(a), Reports and Inspections

Grant Assurance 26, Reports and Inspections, requires an airport sponsor to "submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary."

The Director indicated that Complainant had an opportunity to file a motion under 14 CFR Section 16.19, seeking access to documents in the possession of the Respondent. However, Complainant failed to do so.

The Director declined to make a finding on the allegation.

On appeal, the Complainant filed the following motion:

I make a motion the Respondent provide normal business hours for the public to have access to records as indicated in the Public Records Act and Grant Assurance Reports and Inspections. [FAA Exhibit 1, Item 23, page 53]

Complainant states that she is being sued by the Respondent over the issue of access to records. However, the Complainant's request for record access lacks precision; the Complainant fails to identify specific documents she requested and was denied access. Furthermore, the FAA will not consider this request because it has no bearing on the issue of whether the Complainant was denied access to the Airport for the purpose of conducting an aeronautical activity. As noted, Complainant had the opportunity during the Part 16 process to request documents. The Associate Administrator affirms the Director's Determination and declines to make a finding in reference to this allegation.

2. *Alleged Grant Assurance Violations*

a. Issue 1: Whether the Respondent applied the Airport's Minimum Standards in a way to unjustly discriminate against Complainant, and is in violation of 49 U.S.C. §47107(a)(1), and Federal Grant Assurance 22(h), Economic Nondiscrimination.

Complainant believes that the Director erred in concluding the Respondent is not currently in violation of Grant Assurance 22, *Economic Nondiscrimination*, by failing to consider the Complainant's ability to comply with the requirements for Minimum Standards, specifically for (a) insurance, (b) adequate space for aircraft storage and use of common areas, (c) an executed lease agreement, and (d) disparate treatment of Complainant.

Respondent argues the Record supports the Director's Determination and it has revised its process and procedures to ensure consistency with Federal law and policy.

Insurance Requirements

Complainant originally alleged that it was required to provide insurance coverage of \$ 3 million when the minimum required amount is \$ 1 million.

The Respondent did not provide information to determine what level of insurance was acceptable for this limited CASP. In the absence of the Respondent requiring a specific dollar amount of coverage, the Director reviewed insurance requirements of the two existing FBOs. Jet Harbor, a full service CASP had insurance coverage of \$5 million per occurrence according to its December 2007 certificate of liability insurance. [FAA Exhibit 1, Item 18, exhibit 16] Flight Solutions, a limited CASP had insurance coverage of \$2 million per occurrence according to its October 2008 certificate. [FAA Exhibit 1, Item 18, exhibit 17]

The Complainant carries insurance coverage of \$1 million per occurrence and \$2 million in the aggregate for its existing business according to its March 2007 certificate of insurance. The amount of coverage has not changed since the Complainant executed her CASP agreement on June 26, 2001 [FAA Exhibit 1, Item 23, exhibit 2]. The Director found it is plausible given the

amount of time and the Complainant's desire to provide additional services that her insurance coverage would increase. [FAA Exhibit 1, Item 22] The Complainant provided no evidence to indicate the amount was unreasonable.

The Director found that while the insurance requirements are vague, the Complainant has not sufficiently demonstrated how the Respondent's requirement for additional insurance coverage, for a new aeronautical activity, constitutes unjust discrimination.

On appeal, the Complainant argues that it is being required to provide insurance coverage of \$3 million when the minimum required amount is \$1 million. Complainant submits a two-page document, labeled "Exhibit C", to Flight Solution's lease agreement; the document dated May 30, 2001, from Aviation Insurance Managers, Inc., the Airport's insurance consultant, addressed to the Respondent recommends \$1 million insurance coverage for *all* fixed base operators. According to the Complainant, the document was attached to the 2002 lease agreement for Flight Solutions, another limited CASP. This document was not available to the Director. [FAA Exhibit 1, Item 22]

Complainant claims "Exhibit C" indicates a limited CASP is only required to provide acceptable insurance limits of \$1 million per each occurrence. Complainant argues that the Respondent violated Grant Assurance 22, *Economic Nondiscrimination*, by requiring the Complainant to carry \$3 million liability insurance for each occurrence when the acceptable amount for Jet Harbor, a full service CASP, and Flight Solutions, a limited CASP was \$1 million per occurrence.

The Complainant alleges Respondent's actions violate Grant Assurance 22. Economic Nondiscrimination because she is allegedly being assessed a higher insurance rate of \$3 million while Jet Harbor and Flight Solutions, the other two FBOs are only required to provide \$1 million. We note that both Flight Solutions and Jet Harbor have coverage well above the \$1 million minimum requirement. The Administrative Record shows that both FBOs exceeded the \$1 million minimum requirement; Flight Solutions, a limited CASP, provides \$2 million per occurrence and Jet Harbor, a full service CASP, provides \$5 million per occurrence. Complainant's existing business provides \$1 million per occurrence. Complainant submits an email from Bob Cannon, her insurance broker indicating

"...that higher limits for a repair shop above \$1,000,000.00 per occurrence/\$2,000,000 Aggregate are not available, especially for piston warbird repair and service. The marketplace is very limited for this class of business."

[FAA Exhibit 1, Item 23, exhibit 4]

However, the Complainant's business was more than just a repair shop. Her existing business, instructional hands-on flying of World War II vintage aircraft, had insurance coverage with liability limits of \$1,000,000.00 per occurrence and \$2,000,000 aggregate. Since the Complainant failed to submit a business plan for aircraft maintenance repair service, it is unclear as to what type of aircraft she proposed to serve, the type of maintenance and repair service the Complainant proposed to provide.

The Director found that it was reasonable to assume the proposed \$3 million requirement could reflect an additional \$ 2 million for the maintenance and repair CASP in addition to the \$1 million the Complainant was required to carry for her existing business. The other two operators were providing insurance well above the 2001 requirement for \$1 million identified in Exhibit C. Furthermore, the Airport's Minimum Standards makes no reference to Exhibit C, and it in fact implies an obligation for a CASP operator to provide insurance coverage above the minimum requirement.

Section 9. *Commercial Aeronautical Service Providers, paragraph k.* of the Minimum Standards requiring:

Such [insurance] policies shall be in an amount and equal to or greater than that minimum set by the Authority and shall be placed with a reputable company approved by the Authority...The amounts of said insurance shall not be deemed a limitation of the CASP's liability to the Authority and if the Authority or any of its authorized agents, officers, representatives, or employees become liable for an amount in excess of the insurance, the CASP agrees to indemnify, defend, save, and hold harmless the Authority, its agents, officers, representatives, and employees for the whole thereof.

[FAA Exhibit 1, Item 5, exhibit 2]

It is the duty for a CASP to procure insurance coverage above the minimum requirement, for among other reasons, to protect itself against exposure to risk. In the absence of evidence to the contrary, it is reasonable for the Director to assume that the Respondent's insurance coverage limits would increase since 2001, and because of the Complainant's desire to expand its services to provide aircraft maintenance.

The Complainant has not identified another maintenance CASP or CASP applicant having \$1 million (or less) insurance coverage that was approved by the Respondent. It appears that the Respondent has required insurance coverage in the amount of \$2 million to \$5 million since the other two maintenance CASP's have this amount of insurance. The Complainant argues that she cannot obtain insurance above the \$1 million limit, but the insurer's e-mail states that the limit applies to "warbird repair and service." (Emphasis added). There is no evidence in the record that shows Complainant would be unable to obtain insurance in the amount of \$2 million or \$5 million if the insurance were to cover the repairs and service of general and commercial aviation activities such as that conducted by Flight Solutions and/or Jet Harbor, as opposed to specialized aircraft such as warbirds. The Complainant has not sufficiently demonstrated the Respondent's requirement for additional insurance coverage for a new aeronautical activity constitutes unjust discrimination. There is no basis for a violation of Grant Assurance 22, *Economic Nondiscrimination*.

Adequate Space for Aircraft Storage and Use of Common Areas

The Complainant proposes to operate an aircraft maintenance and repair shop along with its existing business out of its leasehold, a 4,800 square foot hangar.

Respondent instructed the Complainant to lease additional ramp space to accommodate aircraft parking associated with her aircraft repair service. The Respondent believed there was insufficient ramp space to accommodate her proposed business. As the Director noted, the Airport Authority meeting minutes are well documented about a discussion of the Complainant's parking of a motor home and an aircraft obstructing a taxiway, and having unleashed dogs on the Airport even though the Complainant denies that problems existed and claims the problems are unfounded. The Complainant did not object to the Respondent's request to secure additional parking space when she believed her CASP request had been approved. The Record indicates that the Complainant made no attempt to secure additional space. Furthermore, the Record indicates the Complainant did not object to the Respondent's request until she was evicted from her hangar by her landlord, the Wilson Family Partnership.

The Director indicated that it is not unreasonable or discriminatory for the Respondent to require the Complainant to lease additional space for her business activity given her existing space constraints. The Director said,

“When proposing a new aeronautical activity on an airfield, the proponent of such a plan is responsible for demonstrating how its proposal will meet an Airport's Minimum Standards.”

[FAA Exhibit 1, Item 22]

On appeal, the Complainant believes that adequate ramp space is not a requirement of the Airport's Minimum Standards, and Respondent imposed a different standard on her than other users. Furthermore, Complainant argues that it is unreasonable to require her to secure additional ramp space when her existing hangar can accommodate her needs and a standard measurement for space is not identified in the Airport's Minimum Standards.

The Associate Administrator disagrees with the Complainant's conclusions. The Respondent did define sufficient space by requiring the Complainant to secure additional ramp space for aircraft storage. The Complainant accepted this decision until her landlord evicted her from the hangar. The Administrative Record indicates that Complainant was aware of the Respondent's concerns regarding her operational problems. As the airport operator and proprietor, the Respondent has an obligation to ensure the safe and efficient operation of the Airport. Grant Assurance 19. *Operations and Maintenance requires:*

The airport and all facilities which are necessary to serve the aeronautical users of the airport,...shall be operated at all times in a safe and serviceable condition and in accordance federal, state, and local standards for maintenance and operation.

FAA Grant Assurance 5, *Preserving Rights and Powers* requires:

An airport sponsor will not take or permit 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 the grant agreement...

As the airport proprietor, the Respondent has an obligation to ensure access to the Airport for all airport users. Whether or not the Complainant believes she can conduct her operation out of existing leasehold is immaterial, if Respondent, the airport proprietor, believes that her operation will deprive other users from unobstructed access to the Airport. The Record clearly shows that the Complainant often blocked the free use of taxiways by the parking of her vehicles and aircraft. The Respondent is well within its rights and powers to take appropriate action to ensure access for all users.

The Associate Administrator also notes that by failing to submit a business plan, the Complainant missed the opportunity for the Respondent to properly evaluate her proposal.

The Associate Administrator concurs with the Director's findings.

Requirement for an Executed Lease Agreement Approved by the Authority

Complainant alleges that the requirement for an executed lease agreement approved by the Authority unjustly discriminated against her.

The Director noted the Airport's Minimum Standards clearly state, "No person shall use the Airport as a CASP until such person has executed a lease agreement approved by the Authority." The Record does not contain a current executed lease agreement for the Complainant's proposed aircraft maintenance repair shop. Complainant compares her proposed business to the extension of the operator's lease/CASP agreement. The Director disagreed and did not find these two situations similar. At the time the Complainant proposed to establish new service, she was renegotiating her hangar sublease with a third party. The Respondent voted to rescind its conditional approval of her proposed CASP agreement prior to the Complainant raising this allegation.

The Record indicates there is no evidence the Complainant executed a written lease agreement with Gallatin Flying Service, Global Air Services, Inc., or that the Complainant executed its lease agreement with Wilson Family Partnership for its 2007 lease extension.

The Director found that the Respondent did not apply its requirement for an executed lease agreement in a way that unjustly discriminated against the Complainant.

On appeal, the Complainant argues that her agreement was on a month-to-month basis pending outcomes of her lease revisions by her landlord. Complainant also argues that her request for a lease extension is similar to any other business on the Airport seeking an extension. Complainant argues that the Airport Minimum Standards do not address a time limit for lease negotiations.

There is nothing in the CASP Agreement and there is no evidence in the record that would have allowed the parties to extend the lease on a month-to-month basis. FAA Exhibit 1, Item 18, Exhibit 8. The Agreement appears to have expired on June 26, 2004, and the events complaint of occurred subsequent to this date. There is no evidence to support the claim.

There is no evidence to support the claim that the Complainant was in negotiations for a lease extension or that an existing FBO business seeking a lease extension is similar to a business seeking a new agreement to provide new service. The Record demonstrates that the Complainant's lease agreement was terminated by its landlord and its CASP agreement was revoked by the Authority. Since the Complainant did not have a CASP/Lease agreement, in accordance with the minimum standards, it could not conduct business on the Airport.

The Associate Administrator concurs with the Director's finding that the Complainant was not subject to unjust discrimination. The Complainant did not comply with the requirement to have an executed lease agreement approved by the Authority.

SCRAA's Treatment of Complainant Compared to Other CASP Requests

Complainant contends that other similarly-situated fixed base operators¹⁶ on the Airport received preferential treatment and that the complainant requested similar treatment and was denied. Complainant alleges:

Flight Solutions provided aircraft repair services without a maintenance CASP agreement. The Director found that Flight Solutions and the Respondent signed a lease/CASP agreement on January 10, 2002.

Complainant alleges Roger Richardson, a Maintenance CASP on the Airport, was never subjected to the same level of scrutiny as her. Complainant provided no information on Mr. Richardson's insurance requirements or lease duration. Furthermore, the Respondent did not list Mr. Richardson as having a Maintenance CASP agreement.

Complainant alleges in 1999, the Respondent granted five waivers to the Minimum Standards for Mr. Ed Herricks to operate a Maintenance CASP. Complainant contends that the Respondent's willingness to consider granting the five waivers demonstrates preferential treatment. The Director found the Complainant did not substantiate the claim. The Complainant failed to elaborate on how Mr. Herrick's application was similar to the Complainant; the Complainant also failed to identify the five waivers in question or the final disposition of the request. The Complainant did not indicate she requested a waiver and was denied one where another tenant was granted a waiver.

The Director found that the Complainant did not substantiate her claim of disparate treatment by the Respondent.

On appeal, Complainant alleges Flight Solutions is operating without an agreement approved by the Authority. Complainant alleges the Flight Solutions agreement expired in January 2007. The Associate Administrator does not concur with the Complainant's allegation that Flight Solutions is operating without a lease agreement. According to the Flight Solutions January 2002 lease

¹⁶ 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 5190.6B, Airport Compliance Manual, Appendix Z.

agreement, Flight Solutions is operating in its second five-year option due to expire in 2012. [FAA Exhibit 1, Item 18, exhibit 17]

Complainant makes this allegation based on the fact she was not able to obtain a copy of the agreement from the Respondent. Complainant indicates:

I am currently being sued by the Sumner County Regional Airport Authority because I asked to have access to records. The Ombudsman instructed me that I am the only citizen in the State of Tennessee to ever be sued by a government entity for requesting access to [public] records.

[FAA Exhibit 1, Item 23, page 40]

Complainant argues the Flight Solutions is receiving preferential treatment because it plans to build new facilities and invest \$25,000 for improvements. Complainant argues the Airport's Minimum Standards contains no provisions for tenant improvements. The Associate Administrator disagrees with the Complainant's assertion. The Airport Minimum Standards, Chapter III, Section 7. *Approval of Construction*, contains provisions for the SCRAA's approval of tenant improvements. [FAA Exhibit 1, Item 7, exhibit 19] Complainant provides no evidence that it is willing to make an investment on the Airport or that it has offered to make an investment and its request has been rejected by the Authority.

Complainant contends she is similarly situated to the other CASPs on the Airport. However, this argument has no merit. The Complainant is not a limited or full-service CASP operator on the Airport. The Complainant does not have a lease for hangar and ramp space; she did not submit a business plan for a new service; she does not have a limited CASP agreement approved by the Authority; she refused to obtain a written lease for additional space when requested by the Authority; and she refused to address ongoing operational problems with her existing operation when requested to do so. Complainant believes that she was treated differently as a business seeking to provide aeronautical service on the Airport based on unsubstantiated claims about what others were offered without providing evidence or proof to support her allegations.

The Associate Administrator concurs with the Director's finding the CASPs on the Airport have not received preferential treatment.

b. Issue 2: Whether the Respondent's failure to grant the Complainant an agreement to operate an aeronautical service constitutes an unreasonable denial of access in violation of 49 U.S.C. §47107(a)(1), and Grant Assurance 22, Economic Nondiscrimination (a).

The Complainant requested a limited CASP agreement to provide aircraft maintenance repair service. The Respondent approved Complainant's request and a month later rescinded its approval. Complainant's landlord evicted her from its business maintenance hangar.

The Director found the Respondent did not apply the Airport's Minimum Standards in a way to unjustly discriminate against Complainant, and is not in violation of 49 U.S.C. §47107(a)(1), and Federal Grant Assurance 22, Economic Nondiscrimination (h). The Complainant did not meet

the requirements for a limited CASP agreement. The Complainant has an obligation to understand and comply with reasonable business practices established by the SCRAA. This includes, but is not limited to reading, and understanding and complying with the Airport's Minimum Standards, and cooperating with reasonable requests from airport management to comply with the Airport Minimum Standards. The Administrative Record indicates a pattern of the Complainant's disregard of the Airport's Minimum Standards. It is reasonable for the SCRAA to require aeronautical service providers seeking to expand their services to be in compliance with the Airport's Minimum Standards.

On appeal, the Complainant argues the Respondent's violation of Grant Assurance 5, *Rights and Powers*, indicates that the Respondent's business practices were not reasonable. Complainant argues that the Respondent understood her business proposal and rescinded its approval not because she did not comply with the Airport Minimum Standards, but because her business would be a potential competitor with the full service FBO.

The Complainant argues she was never given an opportunity to confront her accusers of violations of the Minimum Standards as permitted in the Standard's procedures. She argues the Respondent acted upon unfounded allegations.

The Director found that the Complainant did not comply with the requirements of the Airport's Minimum Standards to conduct business on the Airport. The Complainant assumes in error that her ability to conduct business on the Airport is a right. Rather, it is a privilege extended to commercial users subject to complying with certain requirements as identified in the Airport Minimum Standards.

In Penobscot Air Service v. Knox County, FAA Docket No. 16-97-04 (September 25, 1997) (Director's Determination), the FAA stated: " *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....*" [Penobscot at page 24; decision upheld on appeal, Penobscot Air Service v. FAA, 164 F3d 713 (1st Cir., 1999)]

FAA Advisory Circular 150/5190-7. *Minimum Standards for Commercial Aeronautical Activities*, attempts to balance the sponsor's Federal obligations under the grant assurances with the commercial aeronautical provider's desire to operate a commercial airport business and airport management's responsibility to ensure an adequate level of service to the public. The policy requires:

The airport sponsor of a federally obligated airport agrees to make available the opportunity to engage in commercial aeronautical activities by persons, firms or corporations that meet reasonable minimum standards established by the airport sponsor. The airport sponsor's purpose in imposing standards is to ensure a safe, efficient and adequate level of operation and services is offered to the public. Such standards must be reasonable and not unjustly discriminatory. In exchange for the opportunity to engage in a commercial aeronautical activity, an aeronautical service

provider engaged in an aeronautical activity agrees to comply with the minimum standards developed by the airport sponsor.

As early as June 11, 2001, the Respondent wrote the Complainant advising her of the importance of complying with the Airport Minimum Standards. The Respondent required the Complainant, to enter into a sublease agreement to conduct business on the Airport and all operations must comply with the Airport's Minimum Standards.

An airport sponsor, when approving a commercial aeronautical service provider to conduct business on an airport wants certain assurances from the provider. These would generally include (1) a provider will be an ongoing business concern on the airport – this includes sufficient financial resources to sustain its business; (2) a reasonable lease term longer than a month or year to convey a reasonable level of availability to the public; (3) adequate staffing and resources to maintain the business and (4) adequate space to conduct its business without infringing on the space of other commercial aeronautical service providers.

The Record indicates the Complainant, through her actions, disregarded the Airport's Minimum Standards and did not take note of the minimum standard requirements until after her eviction. Only then did she challenge the Respondent's right to manage the Airport and require compliance with certain standards of business practice. While the Director noted that the Airport's minimum standards were vague in their treatment of CASP insurance requirements, making it difficult for the Airport to uniformly apply its standards, the Airport's corrective action plan as set forth in the Director's Determination addressed those deficiencies.

For these reasons, the Associate Administrator concurs with the Director's finding.

c. Issue 3: Whether the Respondent has limited the provisions of specific aeronautical services at the airport to a single provider, and is in violation of 49 U.S.C. §47107(a)(4), and Grant Assurance 23, Exclusive Rights.

Complainant alleges the Respondent violated 49 U.S.C. §47107(a)(4), and Grant Assurance 23, Exclusive Rights by forcing her to lease tiedown space and hangar space from another CASP operator.

The Director found due to a shortage of space on the Airport, it is reasonable to require the Complainant to lease space either through another CASP operator or the owner of a business maintenance type hangar. This is not discriminatory or unreasonable. The Director did raise concerns about the non-compete clause in Jet Harbor's lease. The clause states:

It is expressly understood between the parties that these activities **shall not** be exclusive rights of the LESSEE, however LESSOR shall not attempt to start, engage in or assist with any business that may be in direct competition with LESSEE's business on the airport. [FAA Exhibit 1, Item 18, exhibit 16, p.1] [Emphasis original].

The Director found the competition clause inconsistent with Respondent's Federal obligations. The Respondent was ordered to remove the no compete clause from Jet Harbor's lease/CASP

agreement at the first available opportunity. The Respondent was also instructed to identify any expired CASP agreements and establish a timetable to negotiate new or replacement agreements as necessary.

On appeal, the Complainant made several new allegations of exclusive rights violation:

The Complainant alleges that Chapter II, Section 2, Parked Aircraft and Aircraft Owner Self-Maintenance, paragraph d. of the Airport Minimum Standards violates 49 U.S.C. §47107(a)(4), and Grant Assurance 23, Exclusive Rights. The pertinent part reads as follows:

*...No person shall allow a person who is not his employee onto the Airport to perform maintenance on his owned or operated aircraft unless the aircraft requires repairs which cannot be adequately performed by an authorized **full service CASP** providing aircraft maintenance and repair services on the Airport. (Emphasis by Complainant)*

The Complainant also made unsubstantiated and imprecise claims that the Respondent granted an exclusive right to Gallatin Flying Service, Global Air Service, and Jet Harbor. The lack of clarity of the allegation and the fact Gallatin Flying Service and Global Air Service are no longer tenants on the Airport prevent us from examining these specific incidents.

We previously indicated Part 16 requires the Complainant to present all relevant facts upon submission of the formal complaint. 14 CFR, Part 16, §16.23(b)(3). New allegations or issues should not be presented on appeal. Review by the Associate Administrator is limited to an examination of the Director's Determination and the Administrative Record upon which such determination is based. Under Part 16, Complainants are required to provide with the complaint and reply all supporting documentation upon which it relied to substantiate its claims.

In its entirety, Chapter II, section 2, paragraph (d), "Parked Aircraft and Aircraft Owner Self-Maintenance," reads as follows:

Repairs to aircraft or engines shall be made in the areas designated for this purpose by the Authority, and not on any part of the landing area, taxiways, ramps or fueling service areas. No person shall allow a person who is not his employee onto the Airport to perform maintenance on his owned or operated aircraft unless the aircraft requires repairs which cannot be adequately performed by an authorized full service CASP providing aircraft maintenance and repair services on the Airport.

An aircraft owner shall not contract with a second party, such as an aircraft maintenance company or contractor, to perform "scheduled" maintenance on his aircraft at the Airport unless said company or contractor is recognized by the Authority as an authorized maintenance CASP as defined in these regulations and standards.

"Unscheduled" maintenance is limited to the following:

- 1. Warranted maintenance work that requires repair or additional attention by the warranting company.*

2. *A malfunction that prevents the aircraft from being taken to another airport for maintenance.*
3. *maintenance work that requires a specialty service that is not being provided by an existing CASP operating at the airport.*

Airport Minimum Standards established two classes of commercial operators: a full service CASP operator and a maintenance CASP operator. A full service CASP operator must provide retail aviation fuel and oil sales, and aircraft maintenance services. A maintenance CASP operator provides specialty maintenance services such as aircraft engine, airframe, and accessory sales, maintenance and repair. An aircraft owner must use either its own employees or a full service CASP operator to perform scheduled aircraft maintenance unless the repairs are of such a nature that cannot be performed by the full service CASP operator. Both a full service CASP operator and a maintenance CASP operator can perform unscheduled maintenance.

Scheduled maintenance services are bundled with aircraft fuel and oil sales under the full service CASP operator. This is a reasonable bundling of services. Consequently, a commercial operator, interested in providing scheduled maintenance, must also provide retail aviation fuel and oil sales, and comply with the Airport Minimum Standards to become a full service CASP operator.

Grant Assurance 23. *Exclusive Rights* states:

An airport sponsor will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.

Complainant cannot claim an exclusive right has been granted to CASP operators because the Complainant failed to comply with the Airport Minimum Standards. Furthermore, it is within an airport operator's proprietary right to determine the requirements for these services and the manner in which they will be made available to the public. The Airport sponsor requires all maintenance operators providing maintenance service on the Airport to comply with the Airport Minimum Standards. This is reasonable and appropriate, and we see no reason to examine this issue further.

Equally important, the Director required that the Respondent's Corrective Action Plan include a provision "remove[ing] the non-compete clause from Jet Harbor's lease/CASP agreement at the first available opportunity." Exhibit 1, Item 22, p. 46. The FAA also instructed the Respondent to review all expiring CASP agreements to ensure all expiring agreements are kept current. The Associate Administrator concurs with the Director Determination and the Respondent's corrective action plan.

VII. CONCLUSION

In arriving at a final decision on this appeal, the Associate Administrator has reexamined the Record, including the Director's Determination, and the appeal and reply submitted by the parties, in light of applicable law and policy. Based on this reexamination, the Associate Administrator concludes that the Director's Determination is supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent,

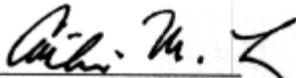
and FAA policy. The appeal does not contain persuasive arguments sufficient to reverse any portion of the Director's Determination. The Associate Administrator affirms the Director's Determination. This decision constitutes the final decision of the Associate Administrator for Airports pursuant to 14 CFR § 16.33(a).

ORDER

ACCORDINGLY, it is hereby ORDERED that (1) the Director's Determination is affirmed, and (2) the Appeal is dismissed, pursuant to 14 CFR § 16.33. All pending motions not addressed herein are dismissed.

RIGHT OF APPEAL

A party to this decision disclosing a substantial interest in the final decision and order of the Federal Aviation Administration may file a petition for review pursuant to 49 U.S.C. § 46110, in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the Circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after a Final Decision and Order has been served on the party. [14 CFR, Part 16, § 16.247(a).]


Catherine M. Lang
Acting Associate Administrator
for Airports

Date **July 13, 2010**