

# County of Monroe

## The Florida Keys



### **BOARD OF COUNTY COMMISSIONERS**

Mayor George Neugent, District 2  
Mayor Pro Tem David Rice, District 4  
Danny L. Kolhage, District 1  
Heather Carruthers, District 3  
Sylvia J. Murphy, District 5

**Robert B. Shillinger, County Attorney\*\***  
Pedro J. Mercado, Assistant County Attorney \*\*  
Cynthia L. Hall, Assistant County Attorney \*\*  
Christine Limbert-Barrows, Assistant County Attorney \*\*  
Derek V. Howard, Assistant County Attorney\*\*  
Steven T. Williams, Assistant County Attorney\*\*  
Peter H. Morris, Assistant County Attorney  
Patricia Eables, Assistant County Attorney  
Chris Ambrosio, Assistant County Attorney

### **Office of the County Attorney**

1111 12<sup>th</sup> Street, Suite 408  
Key West, FL 33040  
(305) 292-3470 – Phone  
(305) 292-3516 – Fax

\*\* Board Certified in City, County & Local Govt. Law

November 20, 2017

Ms. Heather Haney  
Airport Compliance Specialist  
Airports Division  
1701 Columbia Avenue  
Suite 540  
Atlanta, Ga. 30337

### Part 13.1 – County Response

KWIA is situated on approximately 255 acres of useable land area with the remainder of the airport property being environmentally sensitive wetlands. The land area surrounding the airport property is also categorized as environmentally sensitive wetlands which have acted as a de-facto moratorium on any airport expansion. The land area not used by the Airport for commercial aeronautical activity is leased to two different private general aviation commercial entities. One is Signature Flight Support which acts as the F.B.O., leases ramp space, provides fueling and repair, among other services and also sublets commercial office space to Island Aeroplane Tours. The second entity, which built and leases 20 G.A. hangars at KWIA, is KWIA Hangar Corporation.

Signature Flight Support became the owner of the FBO when signature acquired Landmark Aviation in February of 2016. Landmark Aviation purchased the FBO from Island City Flying Services (ICFS) and became the FBO leaseholder through a Lease Assignment, Assumption and Consent dated January 21, 2015. ICFS was awarded the lease under which Signature currently operates on January 20, 1994. In 2001 ICFS was also leased additional ramp space in order to provide additional G.A. parking and tie down services as well as air cargo services. Due to the limited land available at KWIA and

the growth needs of the FBO to meet the demand for parking and tie down services, KWIA has historically had only a single FBO. Unfortunately this fact has twice previously given rise to allegations of exclusive rights violation, notwithstanding the fact that such growth by the FBO is permissible in accordance with A.C. 150/5190-6, Section 1. Although not dispositive, the most recent allegation was lodged by a helicopter tour operation – Chesapeake Bay Helicopters Inc., alleging, among other things, an exclusive rights violation. Following a finding of no exclusive rights violation by the Orlando ADO Chesapeake Bay Helicopters Inc. then filed a formal Part 16 complaint. The Director's Determination issued on September 11, 2008 also concluded that there was no exclusive rights violation by virtue of the fact that the airport had a single FBO. During 2003, a similar complaint was lodged by Walter Talbert of Southernmost Aviation, Inc. and again a finding was made that there was no Exclusive Rights violation. The land and space limitations in existence at the time of those findings have not changed since those findings and have in fact been exacerbated by the growth in air traffic KWIA has experienced since those findings. Nor have the lease hold conditions at the airport changed. Then, as now, no single entity controls the ramp and hangar space at KWIA. It is also important to note that following the expiration of a previous lease in 2010 the county issued an RFP seeking proposals for 2 parcels that totaled 33,000 sq. ft. in size. The county was seeking proposals to develop the site as either a car rental preparation activity area or *any aeronautical activity*. The county did not place any limitations on the type of aeronautical activity/service that an individual or entity could propose to develop on the site. There were no proposals received in response to that original solicitation. Approximately a year later, in 2011, the county again issued the RFP seeking proposals for development of the site without limiting the type of aeronautical activity/service that an individual or entity could propose to develop on the site. The county received one response to the solicitation from Hertz Rent a Car.

The county would respectfully argue that the part 13 complaint should be dismissed and would cite the guidance provided in CGL 2014 -01 as well as FAA guidance provided in the FAA's Airport Sponsor and User Rights Brochure. The county would argue that the complainant failed to follow FAA guidance in that the complainant has failed to "include a summary of the actions you have taken to bring the perceived violation(s) to the attention of the airport sponsor and any efforts to resolve the issues directly with the airport sponsor."

The county would further aver that the airport sponsor did not receive any notification of the perceived violations that form the basis of the complaint. The fact of the matter is that the airport sponsor was not given an opportunity to address the complaint or any perceived violations prior to the filing of the part 13 complaint. The first time the airport

sponsor was made aware of the complaint was on August 28th through a conference call arranged by AOPA to inform the county that AOPA would be filing the complaint the next day and directing the county to an article on AOPA's website for information on the complaint. The article did not include a copy of the complaint and identified pricing issues as the reason for the filing of the complaint as well as the airport sponsor's obligation to ensure reasonable and nondiscriminatory pricing. There is no mention of an exclusive rights issue. The article also erroneously states that the move came after "months" of attempting to work with local airport sponsors notwithstanding the fact that the county first learned of the complaint AOPA has on August 28th. Additionally CGL 2014-01 states that "Complainants should be discouraged from filing complaints on behalf of another party. The complaint should come from the person directly affected by the airport sponsor's action/inaction. Only third-party complaints alleging violations of 49 CFR §§ 23 and 26, related to civil rights cases may be pursued under the formal complaint process outlined under 14 CFR Part 16. Third-party complaints alleging any other violations are automatically dismissed under 14 CFR Part 16." Although AOPA is an advocacy group AOPA is not a "person" directly affected by the sponsor's action/inaction therefore the complaint should be dismissed.

Notwithstanding the procedural infirmities and the county's request to dismiss the petitioner's complaint the county is compelled to respond to several matters raised in the complaint.

The petitioner includes a table of fuel prices listing the price of fuel at KWIA in comparison to 4 other airports in support of his argument that the FBO fees are not reasonable. However the table fails to provide any data on the metrics that drive the rates and prices in a given market and does not provide information to conduct a meaningful comparison. Delivery costs, labor costs and other local metrics – many of which are substantially higher in Key West, all factor into the cost of service provided. As an example of just one metric, the median price of a home in Homestead is \$177,400, Everglades City is \$238,200, Naples \$328,900, Marco Island \$523,900, Marathon \$478,500, Key West \$ 620,700. Any comparison of fuel or service prices that does not include the local metrics that drive pricing at profit-motivated private enterprises that best serve aeronautical services would simply be unsound.

While the petitioner states that "Signature's fees must bear a causal relationship to the cost of the services rendered" and cites to the FAA Policy Regarding Airport Rates and Charges found in the Federal Register Volume 78 at page 55334 the policy actually requires that the "fees be set according to a residual or compensatory rate setting

methodology or any combination of the two so long as the methodology used is consistently applied to similarly situated aeronautical users.” (Id at 55333) This methodology is again restated in Chapter 18 of the AIP Grant Compliance Manual and includes several categories of permissible costs that may be used in calculating fair and reasonable rates. These costs include factors such as the lease structure, capital expenditures (many of which revert to the airport sponsor at the end of the lease), the cost and source of fuel, what services are provided, what services were required by the lease, and what limitations or requirements are imposed by law (such as those that attach to Part 139 airports, such as Key West).

In conclusion, the county would request that the complaint be dismissed in its entirety based on AOPA’s status as a third party and not an actual person affected by the complaint and AOPA’S failure to notify the county of the basis for the complaint and attempt to resolve the complaint prior to filing its part 13 action. In the alternative, the County respectfully requests that based on the facts stated above, and consistent with previous findings, the county be found to not be in violation of grant assurance 23, Exclusive Rights. The County would also respectfully that the allegation of violation of grant assurance 22 be held in abeyance and the petitioners be directed to meet with the county to attempt to resolve the matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Pedro J. Mercado". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Pedro J. Mercado,  
County Attorney

Cc: Don Degraw, Director of Airports