



421 Aviation Way  
Frederick, Maryland 21701

T. 301-695-2000  
F. 301-695-2375

[www.aopa.org](http://www.aopa.org)

March 11, 2011

Mr. Tom Surgalski, Chairman  
Airport Authority Boro of Zelenople  
1857 Route 588  
Zelenople, PA 16063

Dear Chairman Surgalski:

The Aircraft Owners and Pilots Association (AOPA) represents the general aviation interests of 412,000 members, more than two-thirds of the nation's pilots, including over 13,000 in the Commonwealth of Pennsylvania. AOPA is committed to ensuring the future viability and economic development of general aviation airports and their facilities as a vital part of a state and national transportation system without unjust discrimination to tenants and users of the airport.

We are writing to express our strong opposition to the lease that is being forced on existing tenants to execute or be removed from the Zelenople Municipal Airport (PJC). Our reasons for opposing this document are detailed below.

We also wish to express our opposition to requirement 4 detailed in the "Zelenople Tenant Leases, Time Line of Events" document which requires tenants to provide quarterly reports of their activity to the Airport manager. We have never seen such a requirement placed on tenants in any of our dealings with any publicly owned, public use airport. Keeping track of aircraft operations is the responsibility of the airport sponsor, FAA or the Department of Transportation and not the tenant. The FAA requires aircraft operators to maintain flight logs but there is no federal or Commonwealth requirement to provide this information to the airport sponsor; in this case the Authority. If the Authority is interested in determining airport operations counts, there are a number of automated solutions available that should be pursued rather than placing an undue burden on tenants.

As to the actual lease document, we object to the following conditions by section number:

**7. PRIOR CLAIMS WAIVED.** Both Tenant and ZAA waive any prior duties and claims they may have to and against each other, including ZAA's predecessors in interest.

While we are unaware whether or not there are currently any actions underway against the Authority, we do not believe that it is appropriate for any existing tenant to be required to abandon their rights to due process in return for issuance of a new lease. If indeed there are claims against the authority, those claims should continue to a satisfactory resolution without coercion to withdraw an action.

**11. RULES AND REGULATIONS-CHANGES.** ZAA Rules and Regulations for the airport may be changed at any time by the Board of ZAA or its successor. Rules and regulations issued by PA or FAA may have the effect of modifying terms and conditions of this lease.

It is not unusual for an airport to include a requirement in the lease to abide by airport rules and regulations. However, there is no mention in this section how tenants or perspective tenants obtain a copy of those rules and regulations. Additionally, in most instances, when rules and regulations are modified, it is not in a unilateral manner. Rather, the airport governing body holds public meetings with proposed changes, the reasons for those changes and the ability for the public to provide input and comment.

**13. LAW ENFORCEMENT AGENCY ACCESS & INSPECTIONS.** Should any law enforcement agency ask or compel ZAA to open the hangar so that they can inspect it and its contents, ZAA will grant such permission, even without the existence of a Court Order or subpoena, without notice before or afterwards, to Tenant. As a result of such inspection, ZAA reserves the right to exclude Tenant from the hangar without notice and terminate the lease immediately, and ZAA will comply with any court order or similar directive to impound the contents of the hangar. Tenant acknowledges that the property of others stored or left in the hangar is also subject to this paragraph.

It is our opinion that this provision amounts to an unlawful search and seizure. When tenants enter into a lease agreement, they are afforded a certain level of property rights. This provision negates any rights a tenant may have. While the Authority is entitled to inspect their property to ensure that usage is within rules and regulations, any entry by law enforcement must be accompanied with reasonable probable cause and a duly issued search warrant. Unless an emergency situation exists that requires immediate entry by members or employees of the Airport Authority, the tenant should receive advance notice of a pending inspection and the opportunity to be present during the inspection. In our experience, other airport leases provide such a provision with a 24 to 48 hour advance notice.

**14. IMPOUNDMENT AND SALE BY LAW ENFORCEMENT AGENCIES.** Tenant acknowledges right of state and federal law enforcement agencies to impound and sell the aircraft and any personal contents stored therein or in the hangar under certain circumstances. ZAA will cooperate fully with all law enforcement agencies.

While it may be possible for State and Federal law enforcement to impound property under certain circumstances, such actions must be met with a number of legal provisions including but not limited to Court orders. The Authority should only cooperate with such demands when appropriate legal processes have been followed by the parties involved.

**31. GENERAL LIABILITY INSURANCE.** Tenant is responsible for obtaining, and paying for, insurance should someone be injured in or around his hangar, or should someone else's property be damaged in or around his hangar. The policy limits shall be ONE MILLION (\$1,000,000) DOLLARS and proof of insurance must be provided, naming ZAA as an additional insured, when Tenant signs this lease.

General Liability Insurance is customarily a requirement for commercial business operations and not applicable to individual personal rentals or leases. Additionally, Item 15 of the lease document "Limitations on Liability of ZAA for Personal Injury and Property Damage" claims

coverage under Statutory and case law of Pennsylvania, including the Political Subdivision Tort Claims Act. As such, there is no logical requirement for a tenant to obtain this insurance which may not be available to individuals or which may not be available at a reasonable cost. Requiring insurance that is either not available or unavailable at reasonable cost would be a violation of Federal Aviation Administration federal Grant Assurances.

**32. UNPAID DAMAGES.** ZAA may file a lawsuit or place a lien against the aircraft Tenant for damages or unpaid fees for which the Tenant is legally responsible. Tenant agrees to execute any and all documents required to create and perfect this lien. Tenant agrees that, in addition, his signature on this lease is intended to be his power of attorney to ZAA to sign his name on any and all documents required to create and perfect this lien and that the lien will thereby be created and perfected. Tenant also acknowledges right of state and federal law enforcement agencies to impound and sell the aircraft and its content under certain circumstances. ZAA will cooperate fully with all law enforcement agencies.

AOPA objects strongly to the granting of a Power of Attorney to the Authority as a condition of issuing a lease. There should be no reason that the Authority would need such power to execute a lease with a prospective tenant. The granting of and perfecting a lien against property owned by a tenant is a legal process that should be followed if implemented. Having a tenant agree "ahead of time" to granting of such lien circumvents Due Process of law to the tenant.

**53. TERMINATION-TENANT UNSAFE OR UNBECOMING CONDUCT.** ZAA may terminate this lease immediately should Tenant engage in unsafe conduct at the Airport or willful violation of Airport rules, or any conduct which is unbecoming to general aviation or to the reputation of the Airport, including but not limited to being charged with any crime or misdemeanor, regardless whether or not convicted, before, during or after a trial. Such a determination shall be made by ZAA.

We can understand a requirement to follow duly adopted rules and regulations and such a requirement is reasonable provided that the rules and regulations are known to all involved. However, certain provisions of this section are vague and ambiguous. What else constitutes "unbecoming conduct"? We are concerned that far too much discretionary authority is ceded to the management by the provision which states that the lease may be terminated by ZAA by any actions of tenant that may be "unbecoming" or charged with "any crime or misdemeanor whether or not convicted." We are also concerned that the phrase "whether or not convicted, before, during or after a trial" again is counter to the due process rights of citizens. What has happened to innocent until proven guilty premise of the judicial system?

**62. MAINTENANCE/DAMAGE/ACTS OF GOD** Tenant has the duty, at his sole expense, to maintain the hangar and to keep it in as least as good condition, inside and out, as it was at the inception of this lease, normal wear and tear excepted. Damage caused by acts of God or crimes by others or damage by others are excepted from Tenant's duty, assuming Tenant has committed no default or breach of this lease which contributed to the damage.

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As the owner of the hangar building, we believe it is unreasonable to require a tenant to maintain ZAA property. Clearly, it is appropriate to require the tenant to maintain the property in an uncluttered and safe condition. However, any repairs to the structure should be the responsibility of ZAA. The tenant is paying a fee to ZAA to occupy the property and it is the landlord's responsibility to maintain that property in a safe and operational manner.

**69. UNSAFE CONDITIONS.** Except as otherwise required by federal or state law or regulations, Tenant shall immediately report any conditions thought to be potentially hazardous to flyers or occupants of the airport to the Airport Manager and also to the Chairperson of ZAA and shall make no report to any other person or entity for 24 hours thereafter. The notice shall be by email and telephone to the Airport Manager and Chairperson. ZAA reserves the right not only to terminate this lease without advance notice and to change the locks on the hangar (giving the tenant 10 calendar days thereafter for arrange for removal of his aircraft and personal property) but also to sue for money damages any Tenant who knowingly violates this provision. The purpose of this provision is to balance genuine safety concerns with baseless efforts to inconvenience other users of the airport or malign the airport's reputation over matters that can be cured immediately once brought to the attention of Airport officials.

This provision is of great concern to us in that it not only prohibits tenants from reporting potentially unsafe conditions directly to the agency responsible and may have an impact on safety of flight issues for operation at the airport but strips the tenant of their First Amendment Constitutional rights. Under certain circumstances, pilots are required to notify the FAA of safety of flight issues and there should be no restrictions by ZAA in an aircraft operator reporting these conditions to both ZAA and the appropriate state and federal agency. Additionally, there is no mention of any procedure or contact information for 24 hour per day contact in this provision to report any issues to ZAA. Threatening litigation against a tenant who reports safety issues to the appropriate state or federal agency is unreasonable and quite frankly could lead to potential liability against ZAA should the issue cause injury or damage to someone operating or occupying the airport.

In closing, we would like to note that in our extensive experience with issues such as this and our review of numerous lease documents, we believe this document is significantly flawed and injurious to the reasonable right of tenants. On behalf of the pilot community, we encourage ZAA to stop presenting this lease agreement to tenants until it has been significantly modified. AOPA would be happy to provide you with a number of standard sample leases that would better reflect the relationship that should exist between an airport management and its tenants.

We appreciate your review and attention to our comments.

Sincerely,



Bill Dunn  
Vice President  
Airport Advocacy