

BOULDER CITY AERO CLUB, INC.

IBLA 75-377

Decided August 18, 1975

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting airport lease application N-7480.

Affirmed.

1. Airports -- Administrative Authority: Generally -- Applications and Entries: Generally -- Public Lands: Leases and Permits

The issuance of a public airport lease on the public domain lies within the discretion of the Secretary of the Interior. A decision rejecting an airport lease application in the exercise of that discretion will be affirmed when, even though the Board differs in its opinion of the importance of some of the factors recited as grounds for the rejection, the record shows the decision to be a reasoned analysis of the factors involved, and no sufficient basis to disturb the decision is shown.

APPEARANCES: A. W. Brothers, President, Boulder City Aero Club, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Boulder City Aero Club, Inc., has appealed from the decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting its application for an airport lease on part of sec. 14, T. 23 S., R. 63 E., M.D.M., Clark County, Nevada. The application was filed under the Act of May 24, 1928, as amended, 49 U.S.C. §§ 211-214 (1970), which authorizes the Secretary of the Interior, in his discretion and under such regulations as he may prescribe, to lease unreserved and unappropriated public land for use as a public airport.

The BLM referred the application to the Federal Aviation Administration (FAA), which reported that the site, the portion of section 14 west of U.S. Hwy. 95, was acceptable as far as airspace utilization. The FAA noted that the land slope, between three and five percent, was greater than the FAA's recommended maximum runway gradient, but concluded that it did not object to the proposal, as flatter land in the vicinity was apparently not available for various reasons.

BLM received an objection to the proposal from the City of Boulder City, whose airport appellant had operated under contract. Boulder City, in its letter of May 13, 1974, stated that it had canceled its contract with appellant because of dissatisfaction with appellant's operation of the City's airport. The City noted that there was adequate tiedown space at its airport, it intended to construct a new airport that would compete with appellant's strip, and that the proposed site was outside the Boulder City limits and thus could receive no city utility services or fire and police protection.

BLM also received objections from a sand and gravel operation south of the proposed site, which objected to any change in drainage or flood danger from the washes to the north, and from the Bureau of Reclamation, which has plans to build a 750 kilovolt direct current power line about three-quarters of a mile to the south.

In March 1974, the Environmental Analysis Record (EAR) and Land Report were submitted. The reports indicated these problems with the proposal: the runway was 40-70 degrees off the generally-prevailing wind direction; the runway was not useable from the north because of low mountains there; the area is prone to sheet flooding from the mountains to the northwest; the site and its airspace conflict with one of the proposed sites for Boulder City's new airport; the land was not currently zoned for airport use; current improvements would make future expansion impossible; existing utility poles and lines create a situation which is hazardous even if not in violation of FAA requirements; and the 'neighbors' had objected.

The reports indicated the following favorable features: the site applied for is one of the very few parcels of vacant, unappropriated and unreserved public land available for airport use in the immediate area; the demand for an airport in the area is great enough so that the Boulder City airport, closed partially because it too has runway slopes greater than the FAA recommended maximum, had to be reopened; and utilities are available at the site.

In conclusion, the land report recommended that the application be rejected, since lease issuance is discretionary. After additional communications with applicant, including further material on the applicant's long-standing dispute with Boulder City over its airport, the State Office issued its decision rejecting the application. The decision recited that the following adverse conditions required rejection of the application: 1) the 3.6 percent runway slope exceeding the 2.0 percent maximum recommended by the FAA; 2) the runway alignment too far from the prevailing wind direction; 3) the physical limitations on use of the site, specifically, no use from the north and no potential for future expansion due to existing development to the south; 4) the prohibition in E.O. 11296, 31 F.R. 10663 (1966), against federally-assisted development of land in floodplains, including airport use; and 5) the problems presented by local governmental activities, including zoning requirements, Boulder City's proposed new airport nearby, and the lack of services from Boulder City.

In its appeal, Boulder City Aero Club disputes the relevance or importance of each factor listed in the State Office decision, and emphasizes those favorable factors indicated in the BLM staff reports. Appellant argues, respectively: 1) the Boulder City airport has as great a slope as the proposed site in its runways and it is safely used; 2) the wind-runway alignment is much closer than the State Office found it; 3) many strips are one-way only, and density-altitude conditions indicate the strip sometimes could be used from the north, although generally planes would land to the north and take off going south; 4) no flood damage will occur because any run-off has become sheet flow by the time it reaches the runway-improvements area; and 5) zoning can be obtained, and the Club expected no utilities or services from Boulder City but preferred Clark County services.

[1] The record discloses that the District and State Offices gave full consideration to appellant's proposal and carefully weighed the various factors set out in the land and environmental analysis reports. The officers involved properly exercised the discretion granted the Secretary by the Act. 49 U.S.C. § 211 (1970); 43 CFR 2911.0-3.

We might disagree with the State Office's assessment of the importance of some of the factors recited. For instance, the map (A #9) in the EAR describing a nearby, comparable area's flood-prone slopes and drainages indicates that a comparable flood danger line drawn for the range to the west of the proposed site would exclude the proposed runway and improvements. Similarly, the wind direction data set out (A #'s 4-7) in the EAR do not indicate the

location the data represents, and the discussion does not treat the possibility, argued by appellant, that the wind is more north-south because the site is in close to the mountains to the west. Appellant's position on this matter is supported by the FAS's report of June 12, 1973, which concludes, "the proposed strip is apparently aligned with prevailing winds which funnel through Railroad Pass." The FAA report recommended no change in the N 10 degrees E bearing proposed for the runway.

However, taken as a whole the reports and the decision based thereon represent a reasoned analysis made in the discharge of the District and State Office's discretionary authority. BLM officials consulted with local governmental officials. Clark County would make no statements for or against the site, but Boulder City was against the proposed site. Weighing all of the factors present in this case, we find no sufficient basis to disturb the conclusion that the application should be rejected. See Apache Oro Co., 16 IBLA 281, 283 (1974); Vern A. Venable, 9 IBLA 294 (1973). Cf. A. W. Brothers, 19 IBLA 144 (1975).

In a submission following his appeal, appellant notes that a portion of U.S. Hwy. 95 is being re-routed, which will leave an already-paved strip in the vicinity of the currently proposed site, farther away from potential flood danger. Also, appellant in its statement of reasons indicates that it could solve both the runway slope and wind direction problems by setting the runway more in a northeast-southwest direction on the same site. Our affirmance of the State Office's rejection of the current proposal is not to prejudice appellant's opportunity to submit a new, different airport lease application.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

