IN THE

COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2005
No. 494

SANFORD KRAMER et al.,

Appellants

v.

MONTGOMERY COUNTY REVENUE AUTHORITY,

Appellee

On Appeal from the Circuit Court for Montgomery County, Maryland
(Joseph A. Dugan, Jr., Judge)

BRIEF OF APPELLEE

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases (cont'd.) Page

Cases (cont'd.) Page

Statutes — Page

STATEMENT OF THE CASE

The Montgomery County Revenue Authority filed this action in the Circuit Court for Montgomery County to condemn property located at 7407 Lindbergh Drive in Gaithersburg, Maryland, owned by Sanford and Heidi Kramer. (E. 28-35) Initially, the Revenue Authority filed a motion for preliminary injunction to prevent the Kramers from obtaining a building permit and developing the property during the pendency of the case. (E. 36-43) When the court denied the motion, the parties engaged in discovery, after which the Revenue Authority requested partial summary judgment on the issue of public purpose. (E. 201; 334-456) The circuit court determined that the case was not appropriate for summary judgment and set the matter for trial. (E. 984)

At the request of the parties, the trial court bifurcated the public purpose issue from the determination of just compensation and conducted a non-jury trial to decide the initial issue of whether the Revenue Authority had established a public purpose for the acquisition. (E. 12) After finding that the Revenue Authority had shown that a public purpose would be served by the condemnation, the court planned to hold a trial to determine the appropriate compensation. (E. 16-17; 2021-2022; App. 20-21) Before that occurred, the parties resolved the compensation issue, and this appeal ensued in which the Kramers challenge the conclusion that a public purpose existed for the condemnation. (E. 19; 833-839)

QUESTION PRESENTED

Did the Revenue Authority exercise valid authority granted by the State to condemn property for the public purpose of clearing the area within the runway protection zone for the airpark?

STATUTES, ORDINANCES, AND CONSTITUTIONAL PROVISIONS

The full text of all relevant statutes, ordinances, and constitutional provisions appears in the appendix to the Kramers' brief or in the appendix to this brief.

STATEMENT OF ADDITIONAL FACTS

While the Kramers' statement of facts addresses their actions in seeking buildng permits for their property, they omit several key facts that pertain to the underlying issue of whether the condemnation action served a public purpose. These important facts appear below and additional details appear in the argument.

The Revenue Authority owns the Montgomery County Airpark, a public general aviation airport. (E. 1263, 1266, 1404) The Airport Layout Plan (ALP) submitted to the Federal Aviation Administration (FAA) requires the Revenue Authority to acquire fee simple title to all properties located within the airport's runway protection zone, which includes the bulk of the Kramer property. (E. 1084, 1280, 1283, 2041, 2652-2653) The runway protection zone (RPZ) is a trapezoidal area located "off the runway end to enhance the protection of people and property on the ground." (E. 2655) The Revenue Authority must adhere to the ALP and acquire the Kramers' property—failure to do so may lead to the loss of federal funding and also can trigger repayment provisions for grants already received by the Revenue Authority. (E. 1286-1287, 2027-2028)

The Kramers purchased the property in 2001, and it is located across the street from the Airpark, near the intersection of Woodfield Road (MD 124) and Lindbergh Drive and off the end of runway 32. (E. 32-33, 86, 806) The RPZ extending from runway 32 measures 1,000 feet long and starts 200 feet beyond the runway end. The narrower, inner width of the trapezoid (closest to the runway end) measures 500 feet, while the wider, outer width of the trapezoid (farthest from the runway end) measures 700 feet. (E. 400, 2725-2727)

The Revenue Authority presented evidence during the trial that most off-runway accidents occur during take-off and landing, principally because there is less room below the aircraft for the pilot to maneuver in case of an emergency, making these the least forgiving portions of aircraft operations. (E. 1090-1091) This danger places people and property at greater risk from overruns and undershoots in the RPZ area than people and property located elsewhere near the airpark. (E. 405) By restricting development within the RPZ and keeping it clear, the danger is reduced. (E. 248)

The FAA issues the Airport Design Advisory Circular,[1] which contains the standards and recommendations for airport design that apply to general aviation airports and are mandatory for airports that receive federal funds. (E. 237, 2630, 2700) Among the recommendations, the Advisory Circular encourages airports to own all the land within the RPZ and to clear all objects from the RPZ:

[1]Portions of the Advisory Circular appear in numerous locations throughout the record extract. This brief will cite only one location for ease of reference.

> The RPZ's function is to enhance the protection of people and property on the ground. This is achieved through airport owner control over RPZs. Such control includes clearing RPZ areas (and maintaining them clear) of incompatible objects and activities. Control is preferably exercised through the acquisition of sufficient property interest in the RPZ.

(E. 2655) The appendix to the circular further emphasizes the need for the airport to own the area within the RPZ:

> Where practical, airport owners should own the property under the runway approach and departure areas to at least the limits of the RPZ. It is desirable to clear the entire RPZ of all aboveground objects.

(E. 613) A graphic in the appendix also reflects that 90% of the airplanes that overshoot and overrun the runway land within 1,000 feet of the runway end, which coincides with the RPZ and explains why the FAA recommends maintaining the RPZ clear of all objects. (E. 405)

Based on this potential danger, when the Kramers inquired about developing the property two months after purchasing it, the Revenue Authority advised them that their property was located within the RPZ and that the Revenue Authority would seek to purchase or to condemn the property. (E. 57-58) On at least three occasions prior to construction, the FAA regional office also objected to the Kramers' proposal to construct a building in the RPZ. (265-268) Despite these communications, the Kramers proceeded to apply for building permits and to construct a building on the site. (E. 60, 63-65) During the permit application process, the FAA regional office indicated that, although the building technically would not create a hazard to air navigation, it should not be located within the RPZ. (E. 61, 87, 264-268)

ARGUMENT

The power of eminent domain derives from the State. In Maryland, the State Constitution specifies that no property may be taken for public use without just compensation:

> The General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation.

Md. Const., art. III, § 40. The State shares its authority with local governments and certain agencies through legislative enactments. Both Montgomery County and the Revenue Authority have condemnation powers granted directly by the State. *See* Md. Ann. Code art. 25A, § 5(B) (grant to charter counties); 1957 Md. Laws ch. 446 and 1992 Md. Laws ch. 601 (grant to Montgomery County Revenue Authority). The sole criterion for exercising condemnation authority is that the acquisition serves a public purpose. The Revenue Authority established the public purpose of enhancing the safety of the area within the RPZ, which was a reasonable means of complying with FAA regulations.

The Revenue Authority exercised valid condemnation authority granted by the State and established a public purpose for acquiring the Kramers' property based on FAA grant assurances and Advisory Circular requirements for enhancing the safety and protection of people and property within the runway protection zone.

Although the main focus of the Kramers' brief is on whether the Revenue Authority has the power to exercise condemnation authority, the applicable law reflects that the real issue before this Court is whether the Revenue Authority established a public purpose for the condemnation action. Not only does the Revenue Authority have specific power to condemn private property to carry out its duties, but nothing in state or federal law preempts the exercise of that condemnation authority. Rather, the Revenue Authority acted in compliance with federal aviation requirements, and the exercise of its condemnation power raises no conflict with state law.

The State granted the Revenue Authority condemnation power as a mechanism to fulfill its corporate purposes.

The Revenue Authority is a body corporate and politic and is an instrumentality of the County. Montg. Co. Code § 42-3(a) (2004). The Maryland General Assembly created the Montgomery County Revenue Authority in 1957 and granted it extensive powers, among which were the construction, acquisition, and operation of a variety of projects that would be devoted entirely or partly to public uses. 1957 Md. Laws ch. 446. The legislative grant of authority included a list of public uses encompassing airports, public housing projects, parks and recreational facilities, and even bridges. (Apx. 17) To achieve these purposes, the

Revenue Authority also received the ability to issue revenue bonds in addition to acquiring land through purchase, lease, or condemnation. (Apx. 18-19)

In 1992, the General Assembly transferred authority to the County Council to enact and amend the law governing the Revenue Authority. 1992 Md. Laws ch. 558 and 1992 Md. Laws ch. 601. The Council exercised this power and codified the law reiterating that the Revenue Authority was created for a variety of purposes and including virtually the same powers and duties originally granted by the State. (Apx. 36-37; App. 47-48) The maintenance and operation of "airports and landing fields" remains one of the projects that the Revenue Authority can pursue using its power "to construct, improve, equip, furnish, maintain, acquire, operate, and finance projects to be devoted wholly or partially for public uses, good or general welfare." Montg. Co. Code § 42-4(b). To perform these responsibilities, the Revenue Authority may exercise many powers, including the condemnation authority that the Revenue Authority has had since its creation by the State:

> The Authority may exercise all powers necessary or convenient for carrying out its purposes.
>
> These powers include:
>
> ***
>
> (p) power to acquire in its own name, by condemnation under the State condemnation law, real property, rights, or easements, franchises, and licenses convenient for its corporate purposes.

Montg. Co. Code § 42-10.

This authority remains unhampered by the provisions of state aviation law mentioned by the Kramers. *See* Md. Code Ann., Transp. § 5-417(b) and § 5-616(b) (2005). Neither

section addresses the present situation—the first applies to political subdivisions, and the second involves regulations and zoning ordinances. The Revenue Authority is not a political subdivision and it does not enact regulations or zoning provisions. Even where the sections apply, they simply require that an entity comply with the state law governing its condemnation authority.[2]

The Revenue Authority did not have to present evidence on this pure issue of law. The clear statutory authority of the Revenue Authority to condemn land remains consistent with other grants of power by the State. Although ordinarily a State, County, or City exercises condemnation authority, certain agencies have received condemnation authority from the State for specific purposes. *See, e.g.,* Md. Ann. Code art. 29, § 3-106 (2003) (Washington Suburban Sanitary Commission); Md. Ann. Code art. 28, § 5-105 (2003) (Maryland-National Capital Park and Planning Commission); Md. Code Ann., Pub. Util. Co. § 5-401 through § 5-411 (1998) (gas companies, oil pipeline corporations, railroad companies, telephone and telegraph companies, and water companies). In each instance, the exercise of condemnation authority requires only that the entity furthers a public purpose in doing so.

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[2]The general provisions for condemnation appear in the Real Property Article. *See* Md. Code Ann., Real Prop. § 12-201 et seq. (2003).

Federal conditions for airport safety and funding reflect a public purpose that justifies the exercise of condemnation authority by the Revenue Authority.

To maintain a safe and efficient nationwide system of public-use airports, federal law authorizes the Secretary of Transportation to make project grants to airports for planning and development under the Airport Improvement Program (AIP). 49 U.S.C. § 47104 (2005). As an arm of the Department of Transportation, the Federal Aviation Administration oversees the safe and effective use of the nation's airways and airports. 49 U.S.C. § 40103. Entities that operate airports and that receive federal financial assistance are subject to FAA regulation of their airport operations. *See Alphin v. Henson*, 392 F. Supp. 813 (D. Md. 1975), *aff'd,* 538 F.2d 85 (4th Cir.), *cert. denied*, 429 U.S. 960 (1976). The FAA also administers the AIP and awards monetary grants to airports for improvement projects. 49 U.S.C. § 47107 and § 47108. The Revenue Authority has the authority to apply for and receive airpark improvement grants as owner of the Montgomery County Airpark. (E. 1263, 1280-1281, 1283, 1308, 1391-1393, 2027, 2693)

Accompanying the monetary grants are requirements that the Revenue Authority adhere to specified terms and conditions (also called grant assurances). 49 U.S.C. § 47107. Failure to do so authorizes the FAA to rescind the grant and to recover any grant monies previously paid to the Revenue Authority. (E. 1286-1287, 1390, 2027-2048) The Secretary also may withhold approval of a grant application or hold back future payments under an existing grant agreement if the airport has violated one of the grant assurances. *See, e.g., Arapahoe County Public Airport Authority v. FAA*, 242 F.3d 1213 (10th Cir.), *cert. denied*,

534 U.S. 1064 (2001) (court upheld FAA's decision to suspend airport's grant eligibility based upon violations of federal law and grant provisions); *San Francisco v. FAA*, 942 F.2d 1391 (9th Cir. 1991), *cert. denied*, 503 U.S. 983 (1992) (court upheld FAA's denial of San Francisco's grant applications until it cured default under grant assurances). And the FAA may rely upon its own Advisory Circulars to determine whether an airport has violated a grant assurance. *See Penobscot Air Services, Ltd. v. FAA*, 164 F.3d 713, 725-726 (1st Cir. 1999) (FAA's decision that an airport did not violate grant assurances barring "unjust discrimination" and the award of an "exclusive right" to use the airport was supported by one of its advisory circulars).

The grant assurances for the Montgomery County Airpark require the Revenue Authority to develop, maintain, and adhere to an approved Airport Layout Plan that shows the present airport boundaries and proposed development plans. (E. 2041, 2698) Any material changes must be approved by the Secretary. (E. 2043, 2699) The grant assurances also require the Airpark to comply with FAA advisory circulars, including one governing airport design:

> The standards and recommendations contained in this advisory circular are recommended by the Federal Aviation Administration for use in the design of civil airports. For airport projects receiving Federal grant-in-aid assistance, the use of these standards is mandatory.

(E. 237, 2700)

The acquisition of the Kramers' property is supported by the FAA grant assurances and also the Airport Design Advisory Circular recommendation that airports own all the land within the runway protection zone and clear all objects from the zone:

> Where practical, airport owners should own the property under the runway approach and departure areas to at least the limits of the RPZ. It is desirable to clear the entire RPZ of all aboveground objects.

(E. 613) The circular recognizes that acquisition by the airport owner may not be practical, but even then requires that the owner "maintain the RPZ clear of all facilities supporting incompatible activities." (E. 613) The FAA circular describes inappropriate activities as including, "those which lead to an assembly of people", but it does not limit incompatibility to these places. (E. 613) And the FAA's "Discussion Paper on Runway Protection Zones for Airports" again directs airport owners to address the known safety hazards to people and property in the zone by acquiring all of the land in the RPZ:

> Sufficient interest in the Runway Protection Zones can be accomplished in three primary ways. The first and the preferred method is for the airport to purchase the approach areas in fee. . . . Ownership in fee is preferred because it provides the maximum control for the airport.

(E. 332)

Despite the Kramers' continued misinterpretation of the language in the advisory circular, the clearing of the RPZ is not limited to places of public assembly. Both at trial and in this Court, the Kramers have resorted to faulty logic to narrow the area within the RPZ that must be cleared of all objects. During trial, they proffered several statutes defining a place of public assembly, which the court excluded because they had no effect on the evidence of

public purpose required for condemnation. In their brief before this Court, the Kramers contend that the "assembly of people" language limits the clearance of the RPZ to "places of public assembly" and then narrow the prohibition of objects in the RPZ to places of public assembly only. (Kramer brief, p. 10-12) Yet, the plain language of the advisory circular reflects that the recommendation simply states in another way the continuing goal of the FAA to keep the RPZ clear of all objects and, when fee simple ownership is not possible, the minimum requirement is to prevent incompatible uses. (E. 613, 2655)[3] By its terms, the provision does not limit incompatible uses only to those that lead to public assembly, and the Kramers' brief suggesting a contrary interpretation has no basis in fact.[4]

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[3]Although the Kramers offered the airport accident summary for the Frederick County Municipal Airport from 1982 to 2004 into evidence at trial and included it in the record extract before this Court, the brief does not argue that the item was wrongly excluded from the record. (E. 2442-2618) The circuit court properly excluded the exhibit, because it did not bear on the requirements imposed on the Montgomery County Revenue Authority in exercising its condemnation authority and adhering to its ALP. (E. 1763-1764) The types of accidents occurring elsewhere and the location of buildings in relation to another airport's RPZ had no bearing on the language of the advisory circular and the need for the Revenue Authority to comply with the terms and conditions set forth in the grant assurances. At best, the evidence may have reflected an alternate approach, but the law does not require the court to consider alternatives when evaluating whether a condemnation promotes a public purpose. Moreover, absent argument in the Kramers' initial brief, this document should be stricken from the record extract and may not be considered by this Court. Md. Rule 8-131; *Beck v. Mangels*, 100 Md. App. 144, 149, 640 A.2d 236, 239 (1994), *cert. dismissed*, 337 Md. 580, 655 A.2d 379 (1995).

[4]The statutes the Kramers offered into evidence had no bearing on the issue of public purpose, but only perpetuated the misinterpretation of the FAA requirements. (E. 2295-2304, 2308-2315) In addition, a court may consider statutes at any time without admitting them as factual evidence. For these reasons, the circuit court did not err when it excluded copies of the statutes from evidence. Md. Rules 5-401 and 5-402.

In the present case, the Revenue Authority had received grants from the FAA and prepared an Airport Layout Plan (ALP) for approval by the FAA. Among the items in the ALP was the acquisition of the land within the RPZ, which included the Kramers' property. (E. 2652) By seeking to acquire the property in fee simple, the Revenue Authority complied with the applicable Advisory Circular and FAA requirements. (E. 749-751, 790, 2654-2655, 2697-2705) The Revenue Authority acted in accordance with its corporate purposes while promoting the dual goals of safety for persons and property on the ground and compliance with the federal grant assurances to continue to operate the airpark.

Funding requirements serve as a valid basis for condemnation of land by airport owners.

The Kramers try to diminish the significance of the RPZ and grant assurances, but these grounds for condemnation are not unusual in aviation circles. Other jurisdictions have concurred that a condemnation can be supported by demonstrating that the taking is required for funding. In *Highland Realty, Inc. v. Indianapolis Airport Authority*, the airport authority made a sufficient showing of public necessity because "[o]ne of the requirements imposed by the FAA in granting funds for airport development is the acquisition of a 'clear zone' at the end of the runway." 182 Ind. App. 439, 458, 395 N.E.2d 1259, 1271 (1979). Even differential treatment of adjacent property owners based upon funding considerations under somewhat similar circumstances does not reflect an abuse of discretion that overcomes the condemning authority's determination that the condemnation is appropriate.

In one case, the airport authority sought to condemn a fee simple interest in the landowner's unimproved property located in the airport's clear zone (former term for runway protection zone). *Erie-Ottawa-Sandusky Regional Airport Authority v. Orris*, 1991 Ohio App. LEXIS 4259 (Ohio Ct. App. 1991). The trial court determined that the airport authority abused its discretion in determining that the condemnation was necessary because of its differential treatment of adjacent property owners:

> [A]lthough the most critical safety area is the clear zone, [the authority] seeks to appropriate all of Parcel 5 and 5A [the landowner's property] in fee simple, even though these parcels are unimproved land and partially outside the clear zone, and only an avigation easement as to Parcel 6E, which has structures on it and falls entirely within the clear zone.

Id. at *6-7. The appellate court reversed, noting that the only reason for the differential treatment was the lack of sufficient funds to acquire the fee simple interest in Parcel 6E. *Id*. at *10-11. Support for this reasoning appeared in the record through the airport authority's engineer, who stated that he would recommend the fee simple purchase of Parcel 6E as well as other parcels in the clear zone when funding was available. *Id.*

The Revenue Authority recognizes its role in the aviation arena and exhibited no ulterior motive in seeking to condemn the Kramers' property. The General Assembly granted the Revenue Authority the ability to condemn property for airport operations, and the protection of the RPZ falls within that power. The Revenue Authority acted in accordance with its statutory powers in seeking to establish control over all properties within the RPZ and enhance the safety of people and property within that zone. The Kramers'

argument that the condemnation authority must be limited only to places of public assembly defies logic and is contrary to the policies endorsed and applied by the FAA.

The Revenue Authority was not preempted by state law from exercising its condemnation authority.[5]

Not only did the Revenue Authority act in accordance with federal law, but the condemnation of the Kramers' property also complied with state law. The Kramers contend that state law preempts the Revenue Authority's power to condemn property, because the state has acted with the intent to occupy the field of aviation. This position ignores the scope of the law.

This Court well knows that "state law may preempt local law in one of three ways: (1) preemption by conflict, (2) express preemption, or (3) implied preemption." *Talbot County v. Skipper*, 329 Md. 481, 487-488, 620 A.2d 880, 883 (1993) (footnotes omitted). There is no claim of express preemption in this case. Rather, the Kramers rely on preemption by conflict or by implication.

To determine whether local regulation is impliedly preempted, the appellate courts usually consider the comprehensiveness of the state law, the existence of local laws prior to the state enactment, whether the area traditionally is subject to local regulation, and whether chaos would result from permitting both regulatory schemes. *Allied Vending, Inc. v. Bowie*,

[5]Although the record extract does not reflect where this issue was raised and preserved in the trial court, which ordinarily precludes review by this Court on appeal, the Revenue Authority provides the following discussion in the event that the Court chooses to consider this theory. Md. Rule 8-131.

332 Md. 279, 299-300, 631 A.2d 77, 87 (1993). In this instance, the state law is limited and does not suggest an intent by the Legislature to establish comprehensive regulation of the field. Moreover, the statute specifically recognizes that local governments retain the authority to enact zoning ordinances that govern areas affecting airports. Md. Code Ann., Transp. § 5-604. And it regulates only those areas that are not preempted by federal law. *See* Md. Code Ann., Transp. § 5-602.

Similarly, "preemption by conflict exists if a local ordinance 'prohibits an activity which is intended to be permitted by state law, or permits an activity which is intended to be prohibited by state law.'" *Talbot County v. Skipper*, 329 Md. at 487 n.4, 620 A.2d at 882-883 n.4. This Court has declined to find a conflict when the permission or prohibition occurs based upon a separate aspect of regulation. *Hamdan v. Klimovitz*, 124 Md. App. 314, 327-328, 722 A.2d 86, 92-93 (1998).

In fact, the Revenue Authority's actions follow each of the provisions in state law. The purpose of the state law is to promote cooperation and to declare the action under the law to be a governmental function. Md. Code Ann., Transp. § 5-102. Regulations enacted by political subdivisions must satisfy certain restrictions. *Id.* at § 5-606. And the acquisition of property through condemnation is specifically permitted "under the law by which the political subdivision may condemn property for public purposes . . . ." *Id.* at § 5-417(b) and § 5-616(b).

Not only is the state law very limited in its impact on aviation, but the preemptive scope of the federal law has even greater significance, as is made manifest by the United

States Congress' declaration that the "United States Government has exclusive sovereignty of airspace of the United States." 49 U.S.C. § 40103(a). Congress created the FAA to regulate the use of airspace and "prescribe air traffic regulations on the flight of aircraft" so as to protect "individuals and property on the ground." 49 U.S.C. § 40103(b). The FAA may promulgate "regulations and minimum standards for other practices, methods, and procedures [that the FAA's] Administrator finds necessary for safety in air commerce and national security." 49 U.S.C. § 44701(a)(5). A "State [and a] political subdivision of a State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1).

The foregoing provisions, among others, have led the courts to conclude that Congress "has preempted the area of aviation." *World Airways, Inc. v. International Brotherhood of Teamsters*, 578 F.2d 800, 803 (9th Cir. 1978); *see also City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 638-639 (1973); *Harrison v. Schwartz*, 319 Md. 360, 572 A.2d 528, *cert. denied*, 498 U.S. 851 (1990). The scope of preemption extends to the "entire field of aviation safety." *Abdullah v. American Airlines, Inc.*, 181 F.3d 363, 365 (3rd Cir. 1999). While federal law may not preempt local zoning laws that touch upon aviation, a local ordinance that regulates the construction of runways and interferes with aircraft operations is preempted. *See Faux-Burhans v. County Commissioners of Frederick County*, 674 F. Supp. 1172, 1174 (D. Md. 1987), *aff'd*, 859 F.2d 149 (4th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), and *Burbank-Glendale-Pasadena Airport Authority v. City of Los Angeles*, 979 F.2d 1338, 1340-1341 (9th Cir. 1992), respectively.

Safety issues remain within the sole jurisdiction of the FAA, which has made clear its view of the runway protection zone for the Montgomery County Airpark. (E. 2652-2653) The FAA has charged the Revenue Authority with seeking ownership of the fee interest in the properties that lie within the RPZ, and neither the State nor the Revenue Authority are in a position to second-guess the federal agency's determination. Entities that operate airports and that receive federal financial assistance are subject to FAA regulation of their airport operations. *See Alphin v. Henson*, *supra*; *City of Pompano Beach v. FAA*, 774 F.2d 1529 (11th Cir. 1985).

The Revenue Authority filed the condemnation action to comply with the requirements imposed by the FAA. This furtherance of federal law, along with the exercise of powers specifically bestowed upon it by the State to condemn property for a public purpose, shows that no preemption principle affected the Revenue Authority's excercise of its authority.

Condemnation of property must serve a public purpose.

Under fundamental constitutional principles, "the power of eminent domain adheres to sovereignty and requires no constitutional authority for its existence." *Lore v. Board of Public Works*, 277 Md. 356, 358, 354 A.2d 812, 814 (1976) (citation omitted). The Maryland Constitution reflects the mandate of the Fifth and Fourteenth Amendments to the United States Constitution that a taking of private property be for a public use and that just compensation be paid. Md. Const. art. III, § 40. The right to exercise eminent domain is limited by the requirement that private property be taken "for public use" or "public purpose"

as opposed to a private use. *See Zografos v. Mayor and City Council of Baltimore*, 2005 Md. App. LEXIS 259, *12 (filed October 7, 2005) (citing *J. L. Matthews, Inc. v. Maryland-National Capital Park & Planning Commission*, 368 Md. 71, 87, 792 A.2d 288, 297 (2002)). Occasionally, an additional requirement may be imposed by statute or the eminent domain statute may limit the power bestowed on a condemning authority by providing that there be a necessity for the taking. *J. L. Matthews, Inc.*, 368 Md. at 87-88, 92 A.2d at 297. The Revenue Authority's condemnation power does not include a statutory requirement that the property taken be "necessary" or "required," but only that it serves a public purpose "convenient for its corporate purposes." Montg. Co. Code § 42-10(p).

The determination of whether a proposed condemnation meets the constitutional requirement of a public purpose remains a judicial decision, rather than one for the jury to decide. *Utilities, Inc. v. Washington Suburban Sanitary Commission*, 362 Md. 37, 48, 763 A.2d 129, 135 (2000); *Master Royalties Corp. v. Mayor and Council of Baltimore*, 235 Md. 74, 95-96, 200 A.2d 652, 664 (1964). The court often defers to the decision of the condemning authority that an acquisition serves a public purpose:

> When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings—no less than debates over the wisdom of other kinds of socioeconomic legislation—are not to be carried out in the . . . courts.

County Commissioners of Frederick County v. Schrodel, 320 Md. 202, 217, 577 A.2d 39, 47 (1990) (quoting *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 242-43 (1984)); *see also Green v. High Ridge Association*, 346 Md. 65, 73, 695 A.2d 125, 128-29 (1997).

In most instances, the government has the right to condemn property for its stated purpose. For example, the government may do so for an industrial park where "in the judgment of the State Legislature and the County officials, [it will] provide employment opportunities as well as general economic benefit for the residents of Prince George's County." *Prince George's County v. Collington Crossroads, Inc.*, 275 Md. 171, 190, 339 A.2d 278, 288 (1975). Similarly, where the construction of an expressway would be completed in the distant future and would inflict hardships upon many individuals, the Court upheld the condemnation action and characterized those problems as legislative, not judicial. *See State Roads Commission v. Franklin*, 201 Md. 549, 561, 95 A.2d 99, 105 (1953). Likewise, great deference was extended to the Washington Suburban Sanitary Commission's decision to condemn an easement for construction of a sewer line, even though it could have constructed the sewer line in the roadway with equal efficiency. *Washington Suburban Sanitary Commission v. Santorios*, 234 Md. 342, 346, 199 A.2d 206, 208 (1964).

More than two centuries of takings jurisprudence has yielded fewer than half a dozen cases in which a Maryland court addressed the absence of a public purpose. In *Green v. High Ridge Association*, the Court of Appeals described the exceptionally limited circumstances in which a government did not have a public purpose for exercising its condemnation authority:

> The only circumstance in which this Court has taken the position that a governmental condemnation was not for a public use has involved the condemnation of a public easement in a road and a closing of that road for the sole benefit of one particular adjacent property owner, resulting in other

> property owners and the general public being deprived of their pre-existing entitlement to use the road.

346 Md. at 78, 695 A.2d at 131 (citations omitted). Maryland courts typically dismiss a landowner's claims that the condemnor's decision "is so oppressive, arbitrary or unreasonable as to suggest bad faith" absent a clear showing of unreasonableness. 346 Md. at 80, 695 A.2d at 132.

To avoid condemnation, the property owner must allege sufficient facts to meet the bad-faith standard. *Schrodel*, 320 Md. at 217, 577 A.2d at 46; *Anne Arundel County v. Burnopp*, 300 Md. 343, 349, 478 A.2d 315, 318 (1984). And the record must allege or at least imply an improper motive or purpose on the part of the condemning authority. *Free State Realty Company v. Mayor and Council of Baltimore*, 279 Md. 550, 560, 369 A.2d 1030, 1035 (1977); *Davis v. Montgomery County*, 267 Md. 456, 471-472, 298 A.2d 178, 187 (1972). Where "[t]here is not even the slightest intimation that the discretion . . . was not honestly exercised," the appellate court will reverse a trial court's conclusion that the condemnation was unnecessary or arbitrary. *Department of Forests and Parks v. Oliver Beach Improvement Association*, 259 Md. 183, 191, 269 A.2d 615, 619 (1970). The records must support an inference that the decision to condemn was oppressive, arbitrary, or unreasonable to show bad faith. *See Kline v. Mayor and Council of Rockville*, 245 Md. 625, 630, 227 A.2d 217, 219 (1967); *State Roads Commission v. Franklin*, 201 Md. at 561, 95 A.2d at 105. Absent the required level of specificity to show unreasonableness or bad faith, the condemnation will proceed.

In the present case, the Revenue Authority repeatedly explained the purpose for the condemnation action—to comply with federal grant assurances and regulations and to protect persons and property by obtaining ownership of land located within the RPZ. (E. 57-59, 1283-1287) The Revenue Authority repeatedly sought to acquire the property before the Kramers developed it. (E. 63-64, 1288-1290, 1308-1309, 1314-1315, 1625-1627, 2281-2282, 2675-2687) The Kramers focused on whether their building intruded upon airspace or was a place of public assembly, but none of their evidence showed that the Revenue Authority's adoption of the FAA's position that the public is safer when no development occurs in the RPZ was arbitrary or unreasonable. (E. 1590, 1593, 1640) The circuit court, therefore, properly deferred to the Revenue Authority's decision to exercise its condemnation authority in furtherance of its corporate purpose of ensuring the operation and maintenance of the airpark in accordance with federal regulations and recommendations.

The need to clear the runway protection zone established a public purpose for the condemnation, making the Kramers' alternate theories irrelevant.

Not only did the Kramers try to limit the application of the RPZ to places of public assembly, but they also challenged the condemnation based on the determination by the FAA that the proposed construction would not be a hazard to air navigation. This contention did not override the reasonable public purpose already shown by the Revenue Authority, nor did the absence of an impact on air navigation preclude the need to clear the runway protection zone.

In the context of eminent domain, the condemning authority need only present debatable evidence that demonstrates a rational basis for acquiring the property. *Washington Suburban Sanitary Commission v. Utilities, Inc.*, 365 Md. 1, 17, 775 A.2d 1178, 1187 (2001). The focus of the evidence is on a public purpose, and it becomes irrelevant whether the condemnor considered alternatives that might have obviated the need for the condemnation or whether the same goal could have been achieved through other methods. Nor does it matter that the condemnation may not achieve the stated goal completely or that the court has no control over whether funding and permits for the project can be obtained. Instead, the condemning authority decides these matters and the court will not second guess the decision to exercise eminent domain.

Even the "question of whether there is a 'necessity' for a particular condemnation is primarily for the legislative and/or executive branches of government." *Green v. High Ridge Association*, 346 Md. at 79, 695 A.2d at 132 (citations omitted); *see also WSSC v. Santorios*,

234 Md. at 346, 199 A.2d at 208. As long as "the land is of some use to [the government] in carrying out its public object, the degree of necessity is its own affair." *Johnson v. Consolidated Gas, Electric Light and Power Company,* 187 Md. 454, 461, 50 A.2d 918, 921-922 (1947) (citation omitted). The key factor considered is whether the condemning authority exercised its power honestly.

From this perspective, the difference between the RPZ and a hazard to air navigation is significant. The RPZ addresses the "protection of people and property on the ground." (E. 791) Even when a structure does not create a hazard to air navigation, it remains inadvisable to place any structure within the RPZ, as it will still affect the safety of people and property. (E. 749, 2245, 2247) The Kramers' own expert conceded that the RPZ focuses on people and property on the ground where there is a greater risk of overshoots and undershoots. (E. 1909) And the FAA representative explained the distinction between the RPZ and a hazard to air navigation—the RPZ follows the ground to promote safety to people and property on the ground, while the determination of "no hazard to air navigation" considers an area that slopes upward off the ground. The latter area focuses less on the ground and more on keeping surfaces clear for airplanes to depart and land. (E. 1089-1091)

While the Kramers may prefer that their property not be condemned, the Revenue Authority retained the discretion to pursue the condemnation instead of other alternatives:

> Landowners when faced with a proposed acquisition of their land for public improvements, whether by way of easement or in fee simple, have often suggested to the courts that they saw a better way to do the improvement than that proposed by the condemning authority. . . . They have been uniformly unsuccessful in this Court.

Levitsky v. Prince George's County, 50 Md. App. 484, 489, 439 A.2d 600, 603 (1982) (quoting *Boswell v. Prince George's County*, 273 Md. 522, 523-524, 330 A.2d 663, 664-665 (1975)). Similarly, the decision to acquire a fee interest rather than a mere easement rests in the sound discretion of the condemnor:

> [PEPCO] was influenced to some extent by its desire to avoid possible complications, such as extinguishment of an easement by tax sale, and possible additions and changes in the structures. Apparently the company had decided as a matter of policy that the rights of way for the whole line should be acquired in fee. Upon this record, we think there was no showing that the condemner's choice was so arbitrary or unreasonable as to require that it be set aside.

Ligon v. Potomac Electric Power Company, 219 Md. 438, 440, 149 A.2d 376, 377-378 (1959). The condemnor is not limited to its immediate needs, but may give consideration to future needs as well. *Canton Company v. Baltimore & Ohio Railroad Company*, 99 Md. 202, 217-218, 57 A. 637, 638-639 (1904). Even achieving the ultimate goal and approval of funding do not matter when deciding that condemnation meets a public purpose.

The Resolution issued by the Revenue Authority to initiate condemnation proceedings complied with these principles. (E. 2693) The document summarized the location of the property and its proximity to the airpark, including its location within the RPZ and FAA objections to the development of the site. Because the property owners had filed a notice of proposed construction with the FAA and had applied for a building permit with the County, the Revenue Authority had a reasonable basis for filing its condemnation action "to ensure [the property] is not developed in a manner inconsistent with FAA guidelines." (E. 2693) Although the Resolution recognized that the acquisition could be by "purchase,

condemnation or any other means", it became apparent that the clearing of the RPZ could occur only through condemnation of the fee simple ownership of the site.

The approach applied by the circuit court is consistent with the analysis used in other jurisdictions.

Other jurisdictions follow a similar interpretation of public purpose and support using condemnation authority in relation to a public airport. In North Carolina, "[i]t is . . . clearly established by judicial decisions that the taking of land for the establishment and maintenance of a municipal airport is for a public purpose." *Greensboro-High Point Airport Authority v. Irvin*, 36 N.C. App. 662, 664, 245 S.E.2d 390, 392 (1978). As long as the condemning authority acquires the land it reasonably expects to need for its project, it may take more than it actually uses, because it can only act on probabilities and reasonable predictions. *New Windsor v. Ronan*, 329 F. Supp. 1286, 1291-1292 (S.D.N.Y. 1971). The mere possibility that the Secretary of Transportation would not authorize or fund the planned airport development did not impact the exercise of condemnation authority. 329 F. Supp. at 1291. And where necessity is an element of a condemnation, the city should consider both the present needs and the fairly anticipated future needs of the public. *Chicago v. Vaccarro*, 408 Ill. 587, 597, 97 N.E.2d 766, 772 (1951) (condemnation of land to provide parking facilities at the airport).

In Indiana, land located within an airport's runway protection zone presented a basis for the exercise of condemnation authority by a governmental agency for safety reasons. In at least one case, the airport authority filed suit to condemn land at the end of a runway for

a "clear zone," the precursor to the runway protection zone. *Highland Realty, Inc. v. Indianapolis Airport Authority*, *supra*. Highland Realty had operated a trailer park on the land since 1936 and housed approximately 1,000 people. The court considered the broad statutory power of the airport authority to condemn land "for use or in connection with . . . the airport" and for "restricted zones adjoining the same." 182 Ind. App. at 449, 395 N.E.2d at 1266. Recognizing the clear zone as a critical safety factor in light of tragic crashes of aircraft at major airports in urban areas, the court did not hesitate to declare the condemnation of land within the clear zone to be a public use:

> The obvious overriding purpose of the safety of occupants of aircraft involved in overshoots and undershoots is more than justification for a public acquisition of Highland's property.

Highland Realty, Inc., 182 Ind. App. at 457, 395 N.E.2d at 1271. The fact that the airport authority did not acquire a commercial structure that also existed within the clear zone did not diminish the public purpose. *Id*.

A decision to condemn residential, as opposed to commercial, property in Florida also withstood judicial review. Broward County had become concerned about unacceptable noise levels surrounding an airport and did not want residents living in the area for their own safety. By condemning the property for future expansion, the County maintained flexibility in continuing development of an airport. *Test v. Broward County*, 616 So. 2d 111 (Fla. App. 1993). The court emphasized that an immediate need for the land was not required, explaining that the "[f]unds need not be on hand, nor do plans and specifications need be prepared for a condemnor to determine the necessity of a taking; in fact, it is the duty of

public officials to look to the future and plan for the future." *Test v. Broward County*, 616 So. 2d at 113.

Clearly, a broad range of factors are relevant to a condemning authority's decision to acquire property. No one detail overrides or precludes another, but rather, the central theme involves whether the condemnation action reasonably serves a public purpose. Once a public purpose has been shown, the condemnation must be upheld.

CONCLUSION

As with any condemnation action, the issue before the court is whether the condemning authority showed a public purpose for acquiring private property. In this case, the Revenue Authority established a public purpose by proving that it acted in accordance with federal dictates regarding aviation safety and the need to protect persons and properties

on the ground surrounding the airport. This Court should affirm the circuit court's conclusion that the Revenue Authority has condemnation authority regarding its airpark operations and that the condemnation of the Kramers' property served a public purpose.

Respectfully submitted,

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APPENDIX

Maryland Constitution, Art. III, § 40. Eminent Domain.

The General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation.

Excerpts from United States Code, Title 49.

§ 40103. Sovereignty and use of airspace.

(a) Sovereignty and public right of transit.

(1) The United States Government has exclusive sovereignty of airspace of the United States.

(2) A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.

(b) Use of airspace.

(1) The Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The Administrator may modify or revoke an assignment when required in the public interest.

(2) The Administrator shall prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for--

(A) navigating, protecting, and identifying aircraft;

(B) protecting individuals and property on the ground;

(C) using the navigable airspace efficiently; and

(D) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

(3) To establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security, the Administrator, in consultation with the Secretary of Defense, shall--

(A) establish areas in the airspace the Administrator decides are necessary in the interest of national defense; and

(B) by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate, and control with available facilities in those areas.

(4) Notwithstanding the military exception in section 553(a)(1) of title 5, subchapter II of

chapter 5 of title 5 applies to a regulation prescribed under this subsection.

(c) Foreign aircraft. A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States as provided in section 41703 of this title.

(d) Aircraft of armed forces of foreign countries. Aircraft of the armed forces of a foreign country may be navigated in the United States only when authorized by the Secretary of State.

(e) No exclusive rights at certain facilities. A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if--

(1) it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and

(2) allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

* * *

§ 41713. Preemption of authority over prices, routes, and service.

(a) Definition. In this section, "State" means a State, the District of Columbia, and a territory or possession of the United States.

(b) Preemption.

(1) Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart.

(2) Paragraphs (1) and (4) of this subsection do not apply to air transportation provided entirely in Alaska unless the transportation is air transportation (except charter air transportation) provided under a certificate issued under section 41102 of this title.

(3) This subsection does not limit a State, political subdivision of a State, or political authority of at least 2 States that owns or operates an airport served by an air carrier holding a certificate issued by the Secretary of Transportation from carrying out its proprietary powers and rights.

(4) Transportation by air carrier or carrier affiliated with a direct air carrier.

(A) General rule. Except as provided in subparagraph (B), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier or carrier affiliated with a direct air carrier through common

controlling ownership when such carrier is transporting property by aircraft or by motor vehicle (whether or not such property has had or will have a prior or subsequent air movement).

(B) Matters not covered. Subparagraph (A)--

(i) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization; and

(ii) does not apply to the transportation of household goods, as defined in section 13102 of this title.

(C) Applicability of paragraph (1). This paragraph shall not limit the applicability of paragraph (1).

* * *

§ 44701. General requirements.

(a) Promoting safety. The Administrator of the Federal Aviation Administration shall promote safe flight of civil aircraft in air commerce by prescribing--

(1) minimum standards required in the interest of safety for appliances and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers;

(2) regulations and minimum standards in the interest of safety for--

(A) inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances;

(B) equipment and facilities for, and the timing and manner of, the inspecting, servicing, and overhauling; and

(C) a qualified private person, instead of an officer or employee of the Administration, to examine and report on the inspecting, servicing, and overhauling;

(3) regulations required in the interest of safety for the reserve supply of aircraft, aircraft engines, propellers, appliances, and aircraft fuel and oil, including the reserve supply of fuel and oil carried in flight;

(4) regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers; and

(5) regulations and minimum standards for other practices, methods, and procedure the Administrator finds necessary for safety in air commerce and national security.

(b) Prescribing minimum safety standards. The Administrator may prescribe minimum safety standards for--

(1) an air carrier to whom a certificate is issued under section 44705 of this; and

(2) operating an airport serving any passenger operation of air carrier aircraft designed for at least 31 passenger seats.

(c) Reducing and eliminating accidents. The Administrator shall carry out this chapter in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation. However, the Administrator is not required to give preference either to air transportation or to other air commerce in carrying out this chapter.

* * *

§ 47104. Project grant authority.

(a) General authority. To maintain a safe and efficient nationwide system of public-use airports that meets the present and future needs of civil aeronautics, the Secretary of Transportation may make project grants under this subchapter from the Airport and Airway Trust Fund.

(b) Incurring obligations. The Secretary may incur obligations to make grants from amounts made available under section 48103 of this title as soon as the amounts are apportioned under section 47114(c) and (d)(2) of this title.

(c) Expiration of authority. After September 30, 2007, the Secretary may not incur obligations under subsection (b) of this section, except for obligations of amounts--
(1) remaining available after that date under section 47117(b) of this title ; or
(2) recovered by the United States Government from grants made under this chapter if the amounts are obligated only for increases under section 47108(b)(2) and (3) of this title in the maximum amount of obligations of the Government for any other grant made under this title.

* * *

§ 47107. Project grant application approval conditioned on assurances about airport operations.

(a) General written assurances. The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that--

(1) the airport will be available for public use on reasonable conditions and without unjust discrimination;

(2) air carriers making similar use of the airport will be subject to substantially comparable charges--

(A) for facilities directly and substantially related to providing air transportation; and

(B) regulations and conditions, except for differences based on reasonable classifications, such as between--

(i) tenants and nontenants; and

(ii) signatory and nonsignatory carriers;

(3) the airport operator will not withhold unreasonably the classification or status of tenant or signatory from an air carrier that assumes obligations substantially similar to those already imposed on air carriers of that classification or status;

(4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if--

(A) the right would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and

(B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;

(5) fixed-base operators similarly using the airport will be subject to the same charges;

(6) an air carrier using the airport may service itself or use any fixed-base operator allowed by the airport operator to service any carrier at the airport;

(7) the airport and facilities on or connected with the airport will be operated and maintained suitably, with consideration given to climatic and flood conditions;

(8) a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary;

(9) appropriate action will be taken to ensure that terminal airspace required to protect instrument and visual operations to the airport (including operations at established minimum flight altitudes) will be cleared and protected by mitigating existing, and preventing future, airport hazards;

(10) appropriate action, including the adoption of zoning laws, has been or will be taken to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations;

(11) each of the airport's facilities developed with financial assistance from the United States Government and each of the airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by Government aircraft in common with other aircraft, except that if the use is substantial, the Government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used;

(12) the airport owner or operator will provide, without charge to the Government, property interests of the sponsor in land or water areas or buildings that the Secretary decides are desirable for, and that will be used for, constructing at Government expense, facilities for carrying out activities related to air traffic control or navigation;

(13) the airport owner or operator will maintain a schedule of charges for use of facilities and services at the airport--

(A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection; and

(B) without including in the rate base used for the charges the Government's share of costs for any project for which a grant is made under this subchapter or was made under the Federal Airport Act or the Airport and Airway Development Act of 1970;

(14) the project accounts and records will be kept using a standard system of accounting that the Secretary, after consulting with appropriate public agencies, prescribes;

(15) the airport owner or operator will submit any annual or special airport financial and operations reports to the Secretary that the Secretary reasonably requests and make such reports available to the public;

(16) the airport owner or operator will maintain a current layout plan of the airport that meets the following requirements:

(A) the plan will be in a form the Secretary prescribes;

(B) the Secretary will approve the plan and any revision or modification before the plan, revision, or modification takes effect;

(C) the owner or operator will not make or allow any alteration in the airport or any of its facilities if the alteration does not comply with the plan the Secretary approves, and the Secretary is of the opinion that the alteration may affect adversely the safety, utility, or efficiency of the airport; and

(D) when an alteration in the airport or its facility is made that does not conform to the approved plan and that the Secretary decides adversely affects the safety, utility, or efficiency of any property on or off the airport that is owned, leased, or financed by the Government, the owner or operator, if requested by the Secretary, will--

(i) eliminate the adverse effect in a way the Secretary approves; or

(ii) bear all cost of relocating the property or its replacement to a site acceptable to the Secretary and of restoring the property or its replacement to the level of safety, utility, efficiency, and cost of operation that existed before the alteration was made;

(17) each contract and subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and related services will be awarded in the same way that a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent qualifications-based requirement prescribed for or by the sponsor;

(18) the airport and each airport record will be available for inspection by the Secretary on reasonable request, and a report of the airport budget will be available to the public at reasonable times and places;

(19) the airport owner or operator will submit to the Secretary and make available to the public an annual report listing in detail--

(A) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

(B) all services and property provided to other units of government and the amount of compensation received for provision of each such service and property;

(20) the airport owner or operator will permit, to the maximum extent practicable,

intercity buses or other modes of transportation to have access to the airport, but the sponsor does not have any obligation under this paragraph, or because of it, to fund special facilities for intercity bus service or for other modes of transportation; and

(21) if the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long-term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

(b) Written assurances on use of revenue.

(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that 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--

(A) the airport;

(B) the local airport system; or

(C) 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.

(2) Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

(3) This subsection does not prevent the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.

(c) Written assurances on acquiring land.

(1) In this subsection, land is needed for an airport purpose (except a noise compatibility purpose) if--

(A) (i) the land may be needed for an aeronautical purpose (including runway protection zone) or serves as noise buffer land; and

(ii) revenue from interim uses of the land contributes to the financial self-sufficiency of the airport; and

(B) for land purchased with a grant the owner or operator received not later than December 30, 1987, the Secretary of Transportation or the department, agency, or instrumentality of the Government that made the grant was notified by the owner or operator of the use of the land and did not object to the use and the land is still being used for that purpose.

(2) The Secretary of Transportation may approve an application under this subchapter for an airport development project grant only if the Secretary receives written assurances, satisfactory to the Secretary, that if an airport owner or operator has received or will receive a grant for acquiring land and--

(A) if the land was or will be acquired for a noise compatibility purpose--

(i) the owner or operator will dispose of the land at fair market value at the earliest practicable time after the land no longer is needed for a noise compatibility purpose;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be paid to the Secretary for deposit in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) or, as the Secretary prescribes, reinvested in an approved noise compatibility project, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program; or

(B) if the land was or will be acquired for an airport purpose (except a noise compatibility purpose)--

(i) the owner or operator, when the land no longer is needed for an airport purpose, will dispose of the land at fair market value or make available to the Secretary an amount equal to the Government's proportional share of the fair market value;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested, on application to the Secretary, in another eligible airport development project the Secretary approves under this subchapter or paid to the Secretary for deposit in the Fund if another eligible project does not exist.

(3) Proceeds referred to in paragraph (2)(A)(iii) and (B)(iii) of this subsection and deposited in the Airport and Airway Trust Fund are available as provided in subsection (f) of this section.

(d) Assurances of continuation as public-use airport. The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a privately owned public-use airport only if the Secretary receives appropriate assurances that the airport will continue to function as a public-use airport during the economic life (that must be at least 10 years) of any facility at the airport that was developed with Government financial assistance under this subchapter.

(e) Written assurances of opportunities for small business concerns.

(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of this title) or qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act).

(2) An airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including any business operated through a management contract or subcontract. The dollar amount of a management contract or subcontract with a disadvantaged business enterprise shall be added to the total participation by disadvantaged business enterprises in airport concessions and to the base from which the airport's percentage goal is calculated. The dollar amount of a management contract or subcontract with a non-disadvantaged business enterprise and the gross revenue of business activities to which the management contract or subcontract pertains may not be added to this base.

(3) Except as provided in paragraph (4) of this subsection, an airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including the purchase from disadvantaged business enterprises of goods and services used in businesses conducted at the airport, but the owner or operator and the businesses conducted at the airport shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises.

(4) (A) In complying with paragraph (1) of this subsection, an airport owner or operator shall include the revenues of car rental firms at the airport in the base from which the percentage goal in paragraph (1) is calculated.

(B) An airport owner or operator may require a car rental firm to meet a requirement under paragraph (1) of this subsection by purchasing or leasing goods or services from a disadvantaged business enterprise. If an owner or operator requires such a purchase or lease, a car rental firm shall be permitted to meet the requirement by including purchases or leases of vehicles from any vendor that qualifies as a small business concern owned and controlled by a socially and economically disadvantaged individual or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act).

(C) This subsection does not require a car rental firm to change its corporate structure to provide for direct ownership arrangements to meet the requirements of this subsection.

(5) This subsection does not preempt--

(A) a State or local law, regulation, or policy enacted by the governing body of an airport owner or operator; or

(B) the authority of a State or local government or airport owner or operator

to adopt or enforce a law, regulation, or policy related to disadvantaged business enterprises.

(6) An airport owner or operator may provide opportunities for a small business concern owned and controlled by a socially and economically disadvantaged individual or a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act) to participate through direct contractual agreement with that concern.

(7) An air carrier that provides passenger or property-carrying services or another business that conducts aeronautical activities at an airport may not be included in the percentage goal of paragraph (1) of this subsection for participation of small business concerns at the airport.

(8) Not later than April 29, 1993, the Secretary of Transportation shall prescribe regulations to carry out this subsection.

(f) Availability of amounts. An amount deposited in the Airport and Airway Trust Fund under--

(1) subsection (c)(2)(A)(iii) of this section is available to the Secretary of Transportation to make a grant for airport development or airport planning under section 47104 of this title;

(2) subsection (c)(2)(B)(iii) of this section is available to the Secretary--

(A) to make a grant for a purpose described in section 47115(b) of this title ; and

(B) for use under section 47114(d)(2) of this title at another airport in the State in which the land was disposed of under subsection (c)(2)(B)(ii) of this section; and

(3) subsection (c)(2)(B)(iii) of this section is in addition to an amount made available to the Secretary under section 48103 of this title and not subject to apportionment under section 47114 of this title.

(g) Ensuring compliance.

(1) To ensure compliance with this section, the Secretary of Transportation--

(A) shall prescribe requirements for sponsors that the Secretary considers necessary; and

(B) may make a contract with a public agency.

(2) The Secretary of Transportation may approve an application for a project grant only if the Secretary is satisfied that the requirements prescribed under paragraph (1)(A) of this subsection have been or will be met.

(h) Modifying assurances and requiring compliance with additional assurances.

(1) In general. Subject to paragraph (2), before modifying an assurance required of a person receiving a grant under this subchapter and in effect after December 29, 1987, or to require compliance with an additional assurance from the person, the Secretary of Transportation must--

(A) publish notice of the proposed modification in the Federal Register; and

(B) provide an opportunity for comment on the proposal.

(2) Public notice before waiver of aeronautical land-use assurance. Before modifying an assurance under subsection (c)(2)(B) that requires any property to be used for an aeronautical purpose, the Secretary must provide notice to the public not less than 30 days before making such modification.

(i) Relief from obligation to provide free space. When a sponsor provides a property interest in a land or water area or a building that the Secretary of Transportation uses to construct a facility at Government expense, the Secretary may relieve the sponsor from an obligation in a contract made under this chapter, the Airport and Airway Development Act of 1970, or the Federal Airport Act to provide free space to the Government in an airport building, to the extent the Secretary finds that the free space no longer is needed to carry out activities related to air traffic control or navigation.

* * *

§ 47108. Project grant agreements.

(a) Offer and acceptance. On approving a project grant application under this subchapter, the Secretary of Transportation shall offer the sponsor a grant to pay the United States Government's share of the project costs allowable under section 47110 of this title. The Secretary may impose terms on the offer that the Secretary considers necessary to carry out this subchapter and regulations prescribed under this subchapter. An offer shall state the obligations to be assumed by the sponsor and the maximum amount the Government will pay for the project from the amounts authorized under chapter 481 of this title (except sections 48102(e), 48106, 48107, and 48110). At the request of the sponsor, an offer of a grant for a project that will not be completed in one fiscal year shall provide for the obligation of amounts apportioned or to be apportioned to a sponsor under section 47114(c) or 47114(d)(3)(A) of this title for the fiscal years necessary to pay the Government's share of the cost of the project. An offer that is accepted in writing by the sponsor is an agreement binding on the Government and the sponsor. The Government may pay or be obligated to pay a project cost only after a grant agreement for the project is signed.

(b) Increasing Government's share under this subchapter or chapter 475.

(1) When an offer has been accepted in writing, the amount stated in the offer as the maximum amount the Government will pay may be increased only as provided in paragraphs (2) and (3) of this subsection.

(2) (A) For a project receiving assistance under a grant approved under the Airport and Airway Improvement Act of 1982 before October 1, 1987, the amount may be increased by not more than--

(i) 10 percent for an airport development project, except a project for acquiring an interest in land; and

(ii) 50 percent of the total increase in allowable project costs attributable to acquiring an interest in land, based on current creditable appraisals.

(B) An increase under subparagraph (A) of this paragraph may be paid only from amounts the Government recovers from other grants made under this subchapter.

(3) For a project receiving assistance under a grant approved under the Act, this subchapter, or chapter 475 of this title after September 30, 1987, the amount may be increased--

(A) for an airport development project, by not more than 15 percent; and

(B) for a grant after September 30, 1992, to acquire an interest in land for an airport (except a primary airport), by not more than the greater of the following, based on current creditable appraisals or a court award in a condemnation proceeding:

(i) 15 percent; or

(ii) 25 percent of the total increase in allowable project costs attributable to acquiring an interest in land.

(c) Increasing Government's share under Airport and Airway Development Act of 1970. For a project receiving assistance under a grant made under the Airport and Airway Development Act of 1970, the maximum amount the Government will pay may be increased by not more than 10 percent. An increase under this subsection may be paid only from amounts the Government recovers from other grants made under the Act.

(d) Changing workscope. With the consent of the sponsor, the Secretary may amend a grant agreement made under this subchapter to change the workscope of a project financed under the grant if the amendment does not result in an increase in the maximum amount the Government may pay under subsection (b) of this section.

(e) Change in airport status.

(1) Changes to nonprimary airport status. If the status of a primary airport changes to a nonprimary airport at a time when a development project under a multiyear agreement under subsection (a) is not yet completed, the project shall remain eligible for funding from discretionary funds under section 47115 at the funding level and under the terms provided by the agreement, subject to the availability of funds.

(2) Changes to noncommercial service airport status. If the status of a commercial service airport changes to a noncommercial service airport at a time when a terminal development project under a phased-funding arrangement is not yet completed, the project shall remain eligible for funding from discretionary funds under section 47115 at the funding level and under the terms provided by the arrangement subject to the availability of funds.

Excerpts from Maryland Annotated Code

Art. 28, § 5-105. Acquisition of property by condemnation. (2003)

Whenever it is deemed necessary by the Commission to take or acquire any lands, water rights, structures, or buildings, either in fee or as an easement, for parks, parkways, forests, roads, streets, boulevards, or highways, ground or spaces, or for the purposes of recreation, the Commission may purchase them from the owner or owners; or, failing to agree with the owner or owners thereof, may condemn the same by proceedings in the circuit court for the county in which the land, water rights, structures, or buildings are located. The procedure shall be that applying to the condemnation of land by public service corporations in Title 12 of the Real Property Article of the Code of Public General Laws of Maryland. At the same time, the Commission may condemn the interest of any tenant, lessee, or other person having an interest in the land or other property. At any time after ten days after the return and recordation of the verdict or award in the proceedings, the Commission may enter and take possession of the property so condemned, upon first paying to the clerk of the court the amount of the award and all costs taxed to date, notwithstanding any appeal or further proceedings on the part of the defendant. At the time of this payment, however, the Commission shall give its corporate undertaking to abide by and fulfill any judgment on such appeal, or on the expiration of the appeal time limit if there be no appeal.

Art. 29, § 3-106. Acquisition of private or municipal water or sewerage system — Generally. (2003)

(a) *Acquisition.* If the WSSC extends its general water supply or sewerage system to a municipally or privately owned water supply or sewerage system and the WSSC is ready to connect with the system, or if the WSSC considers such action to be expedient, advisable, and proper for the adequate operation of the system under the WSSC's jurisdiction, the WSSC may purchase the system.

(b) *Purchase price; condemnation.* If the WSSC and the owner fail to agree to the purchase price or conditions of purchase of the water or sewerage system, the WSSC may acquire the system by condemnation, as provided in this article.

Maryland Rules

Rule 5-401. Definition of "relevant evidence."

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 5-402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible.

Rule 8-131. Scope of review.

(a) **Generally.** The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court. Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

* * *

Montgomery County Code (2004)

Sec. 42-3. Creation; Composition; Appointment; Terms and Qualifications; Chair.

(a) The Montgomery County Revenue Authority is established as a body corporate and politic, and is an instrumentality of the County and a public corporation. The Authority is a continuous body with the Montgomery County Revenue Authority established under Chapter 446 of the 1957 Laws of Maryland, as amended.

(b) The Authority has 5 voting members appointed by the Executive and confirmed by the Council. In addition, the Chief Administrative Officer, or the Chief Administrative Officer's designee, serves as an ex-officio, non-voting member. Each voting member must reside in Montgomery County.

(c) Each member of the Authority must be a person of ability, experience, and integrity, and must not be selected based on a special interest.

(d) The term of a voting member is 5 years, and the term of one member expires each year. Each member is eligible for reappointment.

(e) The Executive must designate the chair of the Authority.