



August 26, 2013

Via E-mail and Federal Express

Kyle C. Wanner, Airport Planner
North Dakota Aeronautics Commission
PO Box 5020
Bismarck, ND 58502-5020

Re: August 13, 2013 Telephone Conference Concerning Letter to the North Dakota Public Service Commission Regarding Sprague Airstrip

Dear Mr. Wanner:

Thank you for taking the time on August 13, 2013 to discuss with us your letter to the North Dakota Public Service Commission (“PSC”) regarding Courtenay Wind Farm, LLC’s (“Courtenay”) Application for a Certificate of Site Compatibility (“Application”) for the Courtenay Wind Farm (“Project”). This letter summarizes key points discussed during our call, including clarifications made with respect to your July 23, 2013 letter to the PSC concerning the Sprague airstrip.

The telephone conference began with a discussion of prior correspondence between Courtenay and the NDAC. Courtenay noted that, prior to submitting its Application to the PSC, it provided information to and requested input from the North Dakota Aeronautics Commission (“NDAC”) regarding the Project, and that no issues were identified.¹ You explained that when the NDAC reviews a proposed project, such as Courtenay’s Project, it does not take into consideration private airstrips because private airstrips are not protected by either the Federal Aviation Administration’s (“FAA”) regulations or North Dakota’s aeronautics statutes and rules. In this case, no public airports will be impacted by the Project, which was the reason the NDAC did not identify any issues with the Project in its prior communications.

We next discussed the differences in airspace protections for public airports versus private airstrips. You explained that, for public airports, the public entity responsible for the airport, such as a municipality or a county, enacts zoning regulations and/or acquires property rights from the landowners in the vicinity of the airport in order to protect airspace rights. For private airstrips, however, it is up to the owner to protect the airspace around his/her airstrip, such as by acquiring airspace rights from his/her neighbors.

The discussion next turned to your July 23, 2013 letter to the PSC regarding the Sprague

¹ For your convenience, a copy of the pre-application correspondence between Courtenay and NDAC, as well as our notes from our August 13, 2013 call, are enclosed.



airstrip. You explained that the letter was prompted by communications between Mr. Sprague and one of the NDAC Commissioners. You also provided some important clarifications regarding the letter:

- NDAC requested that you prepare a letter to the PSC outlining the concerns the NDAC would have if the Sprague airstrip were a public airport. However, you confirmed that the Sprague airstrip is a private airstrip, rather than a public airport.
- Since the Sprague airstrip is private, the airstrip is not subject to or protected by FAA or NDAC aviation regulations. As such, the FAA regulations regarding obstructions and conical airspace cited in the letter do not apply to the Sprague airstrip.
- Since the Sprague airstrip is private, Mr. Sprague, rather than the NDAC or the FAA, is responsible for taking the steps necessary to protect the airspace surrounding his airstrip.

We also discussed the fact that, even if the Sprague airstrip were a public airport (which it is not), the airstrip would not qualify for the FAA protections outlined in the letter because of the length of the runway. Those protections are given to public airports with runways greater than 3200 feet in length, but the Sprague runway is only 2700 feet long.²

Although the Sprague airstrip is not subject to state or federal protection, and, to our knowledge, Mr. Sprague has not acquired the private property rights from his neighbors necessary for him to control airspace use on their properties, a simple solution was identified during our call that would accommodate both the Project and Mr. Sprague's use of his airstrip. Specifically, Mr. Sprague could modify his takeoff and landing procedures so that he always turns to the west – away from the Project – rather than to the east. Although the safety standards for public airports are not applicable in this situation, such a modification would be acceptable to meet such standards if they did apply. The modification would not only accommodate Mr. Sprague's continued use of his private airstrip, but would also ensure that his neighbors' are able to fully enjoy their rights to use their property without interference. You agreed that this could be a solution and recommended that Courtenay discuss the modification with Mr. Sprague.

In summary:

- The Sprague airstrip is a private airstrip, and not a public airport;
- As a private airstrip, the Sprague airstrip is not subject to or protected by either state or federal aviation regulations;

² This analysis was provided by Federal Airways and Airspace, a firm specializing in aeronautics that was retained by Courtenay to evaluate the issues raised by the NDAC concerning the Sprague airstrip. A copy of the report prepared by Federal Airways and Airspace summarizing its analysis is enclosed.



- Mr. Sprague is responsible for taking the steps necessary to protect the airspace around his private airstrip, which could include acquiring airspace rights from neighboring landowners;
- Even if the Sprague airstrip were a public airport, its runway length falls below the threshold for protection under FAA Part 77 outlined in your letter;
- A takeoff/landing modification is available that addresses the NDAC's concerns, without interfering with Project development or adjacent landowners' rights.

Thank you again for talking with us regarding your letter to the PSC and related aeronautics issues. Courtenay sought input from the NDAC back in February 2013 in order to obtain the information necessary to develop its Project in a manner that is compatible with aviation use in the area, and it is unfortunate that concerns regarding the Sprague airstrip were not raised at that time. However, Courtenay's correspondence to-date with the NDAC and the FAA, including the call with you regarding your recent letter to the PSC, have confirmed that Courtenay's Project, as currently designed, will comply with both state and federal aviation regulations.

Although the Sprague airstrip is not entitled to legal protection, and Courtenay is under no legal obligation to do so, Courtenay contacted Mr. Sprague to share with him the takeoff/landing modification discussed above in an effort to address any potential concerns regarding use of the airstrip in proximity to Courtenay's Project. Although Mr. Sprague indicated that it would be an inconvenience to employ the takeoff/landing modification, he acknowledged that it resolved his potential safety concerns.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Patrick Smith
Development Services

Enclosures

cc: Jerry Lein, North Dakota Public Service Commission (via E-mail)