

From: [Hatsy Moore](#)
To: [Jason Parker](#)
Subject: AHA
Date: Monday, July 18, 2016 7:47:38 AM
Attachments: [FAA and RIAC no authority of airport.docx](#)
[RIAC and FAA Grant Assurances for AHA regs.docx](#)
[Critical RIAC and FAA Arguments to know.docx](#)

July 18, 2016

Jay,

I'm passing on to you my VERY objective opinions and wisdom gained from 12 31/2 inch jammed packed red binders crammed with you name it—airport stuff.

I'm concerned about your ordinance.

Hatsy

APRIL 22, 2016

File Massad; FAA and RIAC no Authority off airport property

FAA and RIAC have no authority off airport property.

- A. **“RIAC has no jurisdiction to impose land use restrictions on local communities.”**
(6/18/02 RIAC letter to the Westerly Planning Board).
- B. **Neither the FAA nor RIAC has the authority to prevent development that may be a hazard to air navigation.**
(6/18/02 RIAC letter to the Westerly Planning Board).
1. **The same would apply to growth of trees.**
- C. **Primary responsibility for preventing hazardous obstructions to airport airspace rests with state and local governments.**
(Rhode Island Compatibility Guidebook, April 2013)
- D. **FAA Section 44718 does not provide specific authority for the FAA to regulate or control off airport real property.**
(Federal Aviation regulations).
- E. **If new obstructions are created, Federal action is primarily limited to:**
1. **Reduce Instrument Approach Minimums:** i.e. modification to one or more of the Approach Procedures (greater visibility, cloud ceiling minimums) or even require elimination of an Approach Procedure.
2. **Reduce runway length** such as displacement of the landing threshold.
3. **Reduce federal aid:** RIAC could be found to be in noncompliance with conditions agreed to upon receipt of FAA grant assurances.
- F. **FAA has no authority to prevent off airport incompatible land uses.**
- G. **FAA cannot mandate appropriate land uses around airports.**
- H. **Where compatible land is unavailable, RIAC must be prepared to purchase in fee simple.**
1. **Without compatible zoning, the FAA and RIAC must reduce airport operations.**
- I. **The primary responsibility for preventing hazardous obstructions to airport airspace rests with state and local government (RIGL § 1-3-5).**
- J. **The federal airspace review process (FAA Form 7460) does NOT preclude construction of facilities incompatible with airports—it is only advisory**
(FAA Form 7460 – Notice of Proposed Construction or Alteration and RIAC Technical Meeting Minutes 10/23/10, p.4)
- K. **Federal airspace review process is only advisory in nature. It is ultimately up to RIAC and the municipality to enforce compatible land uses around airports**
(Technical Advisory Committee Minutes, 11/23/10, p.4).
- L. **The FAA can only ADVISE on potential noise impacts and LAND USE**
(TAC Minutes 11/23/10, p.4).
- M. **“FAA does not regulate local land use. It’s up to RIAC and local planning to work together.”**
(Dan Porter, RIAC to Planning Board, 12/15/15).

N. FAA not authorized to regulate land use. FAA acknowledges that State and local authorities control the appropriate use of property beneath an airport's airspace. While RIGLs require communities containing a Hazard Area to incorporate Part 77—Objects Affecting Navigable Airspace-- into its local zoning, the zoning authority shall (just) consider it. (RIAC Guidebook, 2013, p. 35).

O. "It is important to understand that the FAA does NOT have authority to prevent or remediate off airport incompatible uses."

R.I. Airport Land Use Compatibility Guidebook, 2013 Appendix C FAA

P. FAA criteria apply only to **property controlled by RIAC**. The FAA has no authority over off-airport land uses. (California Airport Land Use Planning Handbook. 3.2.3 Safety p. 3-11)

Q. The FAA's only leverage for promoting compatible land use planning is through grant assurances that **RIAC must adhere to in order to obtain** federal funding for airport improvements. (California Airport Land Use Planning Handbook. 3.2.3 Safety p. 3-11)

R. The FAA is not authorized to regulate local land use under Part 77 (Part 77)

S. This determination in no way preempts or waives any ordinances, laws or regulations of any other governmental body or agency. (FAA Aeronautical Determination, per the 2009 Westerly Airport Layout Plan, 8/31, 2007, Gail Lattrell).

T. This determination is not meant to imply the clearing has been found to be environmentally acceptable in accordance with existing national environmental policies and objectives (FAA Aeronautical Determination, per the 2009 Westerly Airport Layout Plan, 8/31, 2007, Gail Lattrell).

U. "While the federal government has no jurisdiction over local or state land use decisions (i.e. zoning), the FAA can and does influence compatible land use planning. (Guidelines for Airport Sound. Airport Cooperative Research Program. Sponsored by the FAA).

July 15, 2016

RIAC Recommendation and FAA Grant Assurances for the Westerly AHA Ordinance

**RIACRECOMMENDATIONAND FAA GRANT ASSURANCES REQUIREDFOR DEVELOPING
THE WESTERLY AIRPORT HAZARD AREA ORDINANCE.**

I. Three critical components:

- A. The Westerly Airport,located in the middle of Town, is surrounded primarily by Medium and High-density Residential Neighborhoods and some Commercial and Industrial uses.
- B. **The Federal Aviation Administration** and**RIAC** have NO jurisdiction, whatsoever, over what happens off airport property.
- C. The Town of Westerly and its residents alone determine how it shall control and regulate its airspace.

II. RI Airport Land Use Compatibility Guidebook, 2013

3.2 **Step one:** Getting Started and Gathering Data (page 31)

"Step one lays the foundation for airport land use compatibility planning by:

- 1. **Identifying the relevant airport stakeholders and their roles in an airport land use study committee and an active advisory committee.**
- 2. Collecting relevant data to conduct this effort.
- 3. Identify applicable state laws.

The Town's **Development Services Department****does NOT meet requirements** to satisfy Step One!

III. Order 5100.38D, FAA Airport Improvement Program Handbook, 9/30/2014

Table 5-3b Important Potential Projects for ADO/Sponsor Discussion

b. Compatible Land Use Issues. Per Title USC §47107(a)(10): The Secretary of Transportation may approve a project grant application...for an airport development project only if the Secretary receives written assurances satisfactory to the Secretary if:

- (a)(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,

Chapter 20, 20.1 Background, page 20-1 of FAA Order 5190.6B Compliance Manual, 9/30/2009, continues: "including landing and takeoff of aircraft."

5-3b: If there are**residential uses surrounding the airport:**

- 1. **ACQUISITION OF THE PROPERTIES** or
- 2. **SOUNDPROOFING OF THE HOUSES MAY BE APPROPRIATE.**

IV. Defining: "**Extent Reasonable**"

FAA Fall Seminar October 10/11, 2012

- A. Take action on items reasonably within RIAC's span of control:
 - 1. Possible funding to own RPZs.
 - 2. Monitoring community development.

3. **Keeping the ALP current** to know what to protect?.

V. FAA Order 5190.6B Compliance Manual, 9/30/2009.
Chapter 20, 20.1 Background, page 20-1.

Incompatible land use at or near airports may result in the creation of hazards to air navigation that **require a reduction in airport operations** due to long established residential development adjacent to the airport.

Concerns must be addressed in community planning, to the extent reasonable, to address flight safety **as well as the quality of life expected by long established residential developments and neighborhoods.**

Westerly Airport must be returned to its original use:

1. **Providing air service to and from Block Island,**
2. **Use by local pilots using single and double engine aircraft,**
3. **Visual flight approach procedures only on all four runways.**

The FAA expects **RIAC** to take appropriate actions **to the extent reasonably possible** to minimize incompatible land.

The FAA expects **RIAC** to address **the quality of life expected by community residents.**

Incompatible land uses surrounding the airport may require RIAC and the FAA to reduce airport operations.

VI. Airport Improvement Program (AIP) Grant Assurances (Obligations), Updated 6/25/14

RIAC must agree to certain obligations when it accepts funds from FAA-administered airport financial assistance programs.

FAA Grant Assurance: The terms and conditions of accepting Airport Improvement Program (AIP) grants from the FAA for carrying out provisions of Title 49 of the USC. The terms and conditions become applicable when RIAC accepts a grant offer from the FAA.

A. Grant Assurance 6 Consistency with Local Plans.

The project is **consistent with plans** of public agencies...to plan for the development of the area surrounding the airport.

B. Grant Assurance 7 Consideration of Local Interest.

It has given **fair consideration to the interest of communities** in or near where the project may be located.

The Westerly Airport, located in the MIDDLE of Town, is completely surrounded by:

1. **Medium and High-density Residential Development,**
2. **Commercial uses,**
3. **Industrial uses.**

C. Grant Assurance 20 Hazard Removal and Mitigation.

RIAC will take appropriate action to assure that such Terminal Airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected...

Per Exhibit 'A' of the 4/24/2009 Updated Airport Layout Plan

The Rhode Island Department of Transportation, Division of Airports and the Rhode Island Airport Corporation (RIAC), created in 1992, made NO attempt to take appropriate action to assure that such terminal airspace will be adequately cleared and protected until November 1999.

RIAC acquired four (4) parcels to protect the terminal airspace of Runway 32.

The terminal airspace at the end of Runway 32 is still not protected.

The terminal airspace to protect the ends of Runway 14, and 25 have NOT been protected.

Runway 7 falls within the property of the airport.

Now, in April 2016, RIAC expects to take by Eminent Domain approximately 484 properties lying partially or totally within the terminal airspace at the end of each runway.

And, you wondered what project that \$ 9 million dollars is for?

D. Grant Assurance 21 Compatible Land Use.

RIAC will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft.

Now, in April 2016, there is NO consideration for "to the extent reasonable" per the proposed Ordinance.

RIAC now expects to take by Eminent Domain 484 properties lying partially or totally within the terminal airspace of three runways whose terminal airspace extends 5,000 ft. from the ends of those runways and one runway whose terminal airspace extends 10,000 ft. (two miles plus) from the end of that runway.

This action is way above and beyond Grant Assurance 21 recommendation of "adjacent to or in the immediate vicinity of the airport."

1. The Town of Westerly's Zoning Inspector indicated to H. Moore, in his call to her on 4/4/16 that § 260-76(C) Airports and heliports of the Westerly Zoning Ordinance of October 1999, is no longer valid because it has not been enforced.

C. Approach areas. No approach areas shall be permitted over existing residential areas or over vacant areas zoned for residential development.

2. Questions:

- a. What is the purpose of an adopted ordinance if not to protect the health, safety and welfare of the residents of Westerly?
- b. Should the residents of Westerly sue the Town for NOT protecting their health, safety and welfare?

VII. In an effort to make the "airport safe for public use," the Town has:

- A. Fallen prey to the whims of RIAC
- B. Ignored the fact that neither RIAC nor the FAA has **one iota of jurisdiction off airport property nor the right to dictate what can and cannot occur off airport property.**
- C. Ignored the residents of Westerly.
- D. Blighted four extensive neighborhoods of the Town.

June 5, 2016
Massad

ESSENTIAL RIAC AND FAAISSUES TO UNDERSTAND.

I. Let me be the first, last and continuing one to shout from the rooftops for the umpteenth time that neither the FAA, nor RIAC are authorized to regulate land off airport property. The FAA acknowledges that state or local authorities control the appropriate use of property beneath an airport's airspace despite the requirement in RIGL § 1-3-5 Zoning Powers of Political Subdivisions that the Town shall adopt in full or by reference the provisions of Part 77 of Title 14 of the Code of Federal Regulations, titled "Objects Affecting Navigable Airspace, which it must consider in its airport zoning determinations (§ 1-3-5 on page C-10 RI Land Use Compatibility Guidebook, April 2013) Classic examples of that lack of jurisdiction include Stop and Shop and the Chamber of Commerce Building, both of which are located in Runway 14's and Runway's 25's Runway Protection Zones (RPZs).

II. Those wishing to oblige or fall prey to RIAC's very aggressive and persuasive want lists, must understand, first and foremost, that RIAC exists solely for the best interests of the airport, despite FAA grant assurances 6, 7 and 8 that require its projects to be consistent with local plans, be considerate of local interests and be respectful of consultations with users, respectfully, in adjacent and near vicinity developments and neighborhoods.

To that end, thirty (30) years ago at the time of the creation of the airport's 1987 Master Plan, there were serious concerns "that the expanding residential and industrial development around the airport was already straining the State's ability to maintain the current usable length of the two runways. Runway 32's usable length has, since that time, been shortened by 750 ft. due to the terrain and residential development along Tom Harvey Road, Links Passage and others. Any future airport development is out of the question, being constrained by surrounding roads and residential development. We never have referred to physical expansion—that is out of the mouths of RIAC! We ARE talking about exponential expansion of use.

III. Don't allow RIAC tell you otherwise. There is absolutely no compatible land left for airport purposes. The Town long ago developed its land up to the airport boundary, adopted ordinances §171-1 to quell noise and §260-76 to prohibit aircraft approaches and departures over residentially zoned areas and undeveloped areas zoned residential.

The Town must remain extremely vigilant and diligent not to allow RIAC to expand airport use. Let our guard down and we will be wearing earmuffs to bed to ward off the ever increasing number of helicopters ferrying guests to the Ocean House. Go to the website--\$ 5,000 bucks will get you from NYC to the OH. East Hampton, Long Island, NY took back their airport for that very reason. I have all the data on how they did it. Because there is no way the Town can meet the FAA and RIAC's expectations, the time has come for the Town to put its foot down and demand that RIAC to back off and reduce airport operations in the name of a pleasant, peaceful and healthy quality of life for us. Some is better than none, they say.

- IV. Remember too, that FAA regulations will forever become more and more restrictive. In other words, there will be no end to RIAC's insistent demand more takings by eminent domain of residential airspace i.e. land with every ongoing FAA restriction. RIAC will try to foist upon us many more property takings and with it increasing disruptions and blighting of long established neighborhoods. As Nancy Reagan said, the Town must learn "To JUST say NO!"
- V. RIAC may claim to have an approved 4/24/2009 Airport Layout Plan but it is incomplete and loaded with errors...and the Town has yet to approve and adopt it. Be aware that RIAC is not permitted to go forward with any project where federal funds are required until the Town's Airport Layout Plan is current and adopted. RIAC presented a public hearing in December 2008 to present its draft Plan. With so many years having transpired since that date, several workshops and public presentations will be necessary before there is any consideration for adopting the Plan. I requested Chapter 9-Zoning- from the 1987 Airport Master Plan because it was missing from my copy. Dan Porter can't locate RIAC's Plan.
- VI. It seems somewhat irresponsible having one person designated as the decision maker for the many most affected. It is a grave mistake for officials to bury their heads in the sand in the name of expediency or noninterference or, "no more committees," as one Councilor ranted. He lives about as far away from the airport as one can get.
- VII. This Airport Hazard Area zone is not a Federal Aviation Administration (FAA) requirement. It is a creation by RIAC then made part of Rhode Island General Laws § 1-3-2 Airport Zoning. RIAC formulated airport hazard areas for all RI airports. It must be adopted by the Town, but need only be considered in zoning or development determinations.
- VIII. I've only briefly perused the proposed Airport Hazard Area Ordinance.
- A. RIGL law says only that the Town
 1. Must adopt by reference or in full the Part 77-Obstructions to Navigable Airspace.
 2. Adopt Airport Hazard Area regulations.
 3. After that we need only to "consider" them when making our determinations.
 - B. The Zoning Official said the biggest challenge will be trying to comply with RIAC's aggressive tactics (my words, not yours). The Town has long established neighborhoods adjacent to and surrounding the airport. No way are we obligated to comply and frankly people are no longer going to be bullied by RIAC. The Town never viewed the airport as anything more than providing air transport to Block Island and use by local pilots.
 1. RIAC is **obligated, if it wants a penny of federal funding**, to respect our community situation, which it very definitely has not.
 - C. In serious ways your ordinance is a textbook example of falling prey to RIAC's demands: and well it should after ongoing conference calls befitting RIAC but **nothing** of the residents' perspective and those most affected.
 - D. **More importantly, it fails completely to recognize that neither RIAC nor the FAA have control or jurisdiction of any land off airport property.**
 - E. Only the Town shall determine what happens in its airspace.

- F. Some 930 plus parcels have been identified in or partially in Zones A, B, and C.
It is way past due that all those parcels be identified in the newspaper as long as hyou have identified them. That is the least that can be done to alert these people about what you are proposing.
- G. Very troubling will be the effect of the Ordinance on people's property values. RIAC would dearly love to have those in the AHA zones sign disclosures but something about RI law not requiring it. However, real estate people do **require** it. A 1000 plus properties is scary.