TOWN OF ERIE

645 Holbrook Street
Erie, CO 80516

Meeting Minutes

Airport Economic Development Advisory Board

Thursday, March 19, 2025 | **6:30 PM** | **In-Person**

1. Meeting Called to Order at 6:30

Duration: 2:39

2. Roll Call and Quorum

A. *Michael Bowden – In attendance*
B. *Kevin Cain – Not present*
C. *Emmet Dowling – In attendance*
D. *Paul Houghtaling – In attendance*
E. *Lyle Martin – In attendance*
F. *Andrew McLean – In attendance*
G. *Jennifer Webb – In attendance*

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H. *Julian Jacquin – In attendance*
I. *Jason Hurd – In attendance*
J. *Brandon Bell – Not Present*
K. *Anil Pesaramelli – Not Present*

3. Pledge of Allegiance

4. Approval of Meeting Minutes

A. *Feb 2026 Agenda*

5. Public Comment

A. *None*

6. General Business

A. *Officer Reports*
   1. *Chair Houghtaling – None*
   2. *Vice Chair Dowling – Review of Centennial Airport's recent fee changes and Part 13 complaint*
   3. *Secretary Bowden – None*

B. Committee Reports

1. Airport Fund Report
1. None

2. Hangar Committee
1. There were 4 respondents to the new hanger development RFP/RFQ

7. New Business

A. White Paper on AirPark Property Easements to be packaged with minutes
B. Miguel – Transportation Division presentation
1. Discussion of AirPark N/S Connectivity Study
C. Review and make recommendations for open seats on Airport Advisory Board

8. Adjournment at 9:09 PM

Next regular meeting – March 19, 2026

WHITE PAPER MEMORANDUM

TO: **The Town of Erie**

FROM: **Frascona, Joiner, Goodman and Greenstein, P.C. on behalf of the Erie Air Park Subdivision Home Owner's Association**

RE: **Through-the-Fence Access**

DATE: **April 15, 2012**

This white paper concerns the through-the-fence rights certain lot owners in the Erie Air Park Subdivision own as the result of an easement. This easement is valid and enforceable and gives the lot owners who are party to the easement a right to use the Erie Municipal Airport taxiways and runways. The Town of Erie has not upheld its obligations under the terms of the easement regarding the through-the-fence access it creates because the town fears that, if it does, the Federal Aviation Administration will cease funding the Erie Municipal Airport. The Town of Erie's position is not supported by applicable case law or recent Federal Aviation Administration policy. Under Colorado and federal law, the easement is valid and the lot owners who are party to it have the right to enforce it. Therefore, a Fifth Amendment Taking would occur if the Town of Erie refuses to recognize and honor the easement. Moreover, recent court decisions have held that municipalities are not excused from performance of contractual obligations on the grounds that those obligations would violate grant assurances. The Federal Aviation Administration's recent policy and authorization bill reflects a renewed desire to work with federally funded airports to support residential through-the-fence agreements. To that extent, the lot owners who are parties to the easement are eager to work with the Town of Erie to create a plan that will enable the lot owners to access the runway and will keep the Town of Erie in compliance with its grant assurances.

I. BACKGROUND

A. 1978

The Erie Air Park Subdivision (the "Subdivision") and was first developed by Erie Air Park Company and Reynolds Properties (the "Developers"). In connection with the Subdivision, the Developers constructed a privately owned public use airport which was intended to be used by the Subdivision's residences (the "Airport"). In 1979 both Developers sold their interest in the Subdivision and Airport to Skies Unlimited, Inc. ("Skies"). Section 28 of Article III of the initial 1978 covenants and declarations for the Subdivision (the "Initial Covenants") stated that all runway abutting lots in the Subdivision shall pay an annual fee of one hundred dollars in exchange for use of the runways and taxiways.

B. 1987

In 1987 Skies drafted an easement agreement (the "Easement Grant") whereby it conveyed a perpetual, non-exclusive easement (the "Easement") for ingress and egress by aircraft across the Airport's runways and taxiways. *See* Easement Grant attached hereto as Exhibit A. All owners of lots "now or hereafter adjacent to or having access to" the runway have the option to sign the Easement Grant and thereby become a dominant estate (the lot owners who have signed the Easement Grant are hereinafter referred to as the "Grantees"). *See* Exhibit A. The Easement is appurtenant to the land. The Easement Grant waives the annual one hundred dollar fee set forth in the Initial Covenants and replaces it with a one hundred and eighty-seven dollar annual fee that can be increased each year.

Two lot owners signed the Easement Grant and became dominant estates. Since the execution of the Easement Grant, several Amendments to Easement (the "Amendments") were

executed and recorded. The Amendments added additional dominant estates but did not change any other aspect of the Easement Grant. *See* Amendments attached hereto as Exhibit B.

C. 1992

In 1992 Skies declared bankruptcy. The Town of Erie ("Erie") purchased the Airport by Bankruptcy Trustee's Deed (the "Bankruptcy Deed") in 1994. *See* Bankruptcy Deed attached hereto as Exhibit C. The Easement was not set aside by the Bankruptcy Deed and, in fact, the Purchase and Sales Agreement between the bankruptcy trustee and Erie states that Erie purchased the Airport subject to all "easements, restrictions, covenants and conditions now of record." *See* Purchase and Sales Agreement attached hereto as Exhibit D. Therefore, Erie acquired the Airport subject to the Easement. The Federal Aviation Administration (the "FAA") aided Erie in purchasing the Airport. The Airport then became a federally funded airport subject to FAA rules and regulations and grant assurances.

II. THE EASEMENT

A. The Easement is Valid and Enforceable as an Express Easement

The Easement in question is valid and enforceable. The documents that created and amended the Easement create a valid property interest under Colorado law. The Easement was created by an express grant. Under Colorado law, "no particular words are necessary for the grant of an easement, but the instrument must identify with reasonable certainty the easement created and the dominant and servient tenements. Words which clearly show the intention to give an easement are adequate to demonstrate its creation, provided the language in the instrument is sufficiently definite and certain in its terms. The writing must contain a description of the land that is to be subjected to the easement with sufficient clarity to locate it with reasonable certainty." *Hornsilver Circle, Ltd. v. Trope*, 904 P.2d 1353, 1356 (Colo. App. 1995). "In

construing a deed, the preferred construction is that which renders all provisions of the instrument operative and effective and which carries out the intentions of the parties." *Id.* at 1357 citing *First National Bank v. Allard*, 506 P.2d 405 (Colo. App. 1972). "We first attempt to ascertain the meaning of a document granting an easement from the words used and the circumstances surrounding the grant." *Bolinger v. Neal*, 259 P.3d 1259, 1263 (Colo. App. 2010).

In this case, the Easement Grant clearly manifests the intent to create an easement. It states, in relevant part, "Grantor desires to convey to the Grantees, on the terms hereinafter set forth, a perpetual non-exclusive easement." Furthermore, the language is sufficiently definite and certain as to convey a valid easement. The servient tenement is clearly identified by its legal description, Tract H, Erie Air Park Subdivision, County of Weld, State of Colorado in Book 380, Reception No. 1752380 of the records of the Clerk and Recorder of Weld County, Colorado. A legal description fulfills the requirement that the servient tenement can be determined with reasonable certainty. The description of the servient tenement is the most important aspect of an express easement. *See Hornsilver Circle, Ltd.*, 904 P.2d at 1356 (Colo. App. 1995) ("an easement is valid provided the servient tenement is accurately identified").

The Easement itself is also identified with sufficient clarity. The Easement exists for ingress and egress by airplane across "all runways and taxiways now or hereafter existing." It is not essential to the validity of the grant of an easement "that it be described by metes and bounds or by figures giving definite dimensions of the easement." *Bolinger*, 259 P.3d at 1264; *see also Stevens v. Mannix*, 77 P.3d 931, 932 (Colo. 2003) ("a lack of specificity in describing an easement's location will ordinarily not invalidate it"); *Isenberg v. Woitchek*, 356 P.2d 904, 907 (Colo. 1960) ("the instrument does not have to describe the width, exact course or other such details regarding an easement"). When specific details relating to an easement are not present in

a grant, the conduct of parties determines the location. *Steve*ns, 77 P.3d at 933. "When an easement is granted in general terms, its location may be subsequently fixed by an implied agreement arising out of its use and the grantor's acquiescence therein. A grant of a right of way over adjoining land of a common grantor should not be so construed as to rob it of all meaning." *Isenberg*, 456 P.2d at 907. The servient estate is clearly identified and therefore the description of the Easement as "all runways and taxiways now or hereafter existing" is sufficiently descriptive that it is not invalid because of vagueness.

B. Additional Legal Support for the Validity of the Easement

The fact that additional dominate estates are able to opt into the Easement does not invalidate it. In a case involving an express easement, the Colorado court of appeals held that improvements and changes to an easement "constructed by the owner of the dominate estate must not unreasonably increase the burden on the servient estate and must have been reasonably foreseeable by the parties at the time the easement was established." *Riddell v. Ewell*, 929 P.2d 30, 32 (Colo. App. 1996). "Parties to a grant of an easement can be assumed to have contemplated a normal development of the use of the dominant tenement." *Wright v. Horse Creek Ranches*, 697 P.2d 384, 387 (Colo. 1985). The addition of more dominant estates in the future was reasonably foreseeable at the time the Easement was created. The Easement Grant clearly establishes the right of any lot owner, with access to the runway, in the Subdivision to become a dominant estate at any time. Thus an increase in the number of dominant estates was foreseeable. Moreover, in the context of general plan development or common interest community which are subject to recorded declarations of servitudes for community, "the dominant estate need not be specifically described. Each lot included within the general plan is the implied beneficiary of all express and implied servitudes imposed to carry out the general

plan." *Bolinger*, 259 P.3d at 1265. The situation at bar is very similar. Although the Easement Grant is not a part of the covenants or declarations that automatically apply to every lot in the Subdivision, it is available to every lot that abuts the Airport. Whenever a lot chooses to become party to the Easement a new Amendment is recorded that identifies the new dominant estate. Therefore, the original Easement is still valid despite the fact that it does not identify all of the dominant estates.

Additionally, the Easement is valid in perpetuity. Under Colorado law, "there is nothing either improper or unusual about an easement's being of a perpetual duration." *Carlson v. Bold Petroleum, Inc.,* 996 P.2d 751, 753 (Colo. App. 2000). Additionally, the Rule against Perpetuities does not invalidate the Easement. The Rule against Perpetuities "simply invalidates any interest which *vests* too remotely, 'it does not invalidate every perpetual interest.'" *Id.* (emphasis in the original) (*quoting Cloud v. Association of Owners, Satellite Apartment Bldg., Inc.*, 857 P.2d 435, 438 (Colo. App. 1992)). The Easement does not vest too remotely. The Easement grant clearly states that "the parties do not intend by the foregoing provisions of this paragraph 11 to create any interest subject to the rule against perpetuities. However, if it is determined that the rule against perpetuities must be applied, then the applicable perpetuities period during which the foregoing rights of this paragraph 11 shall be exercisable shall be twenty-one (21) years after the last to die of the following named individuals (who are grantees named herein): Ronald R. Keith, Ray Lentz and Beverly Cameron." This provision ensures that the interest will not vest later than lives in being plus twenty-one years.

When the Town of Erie acquired the Airport in 1994 the Easement continued to burden the property. "The purchaser of a servient tenement, with actual or constructive notice that it is burdened with an easement in favor of other property, ordinarily takes the estate subject to the

easement." *Hornsilver Circle, Ltd.*, 904 P.2d at 1356. Erie was on notice of the Easement at the time it acquired the Airport. Erie was on constructive notice because the Easement Grant and Amendments had been recorded. "When a party properly records his interest in property with the appropriate clerk and recorder, he constructively notifies "all the world" as to his claim. The recording acts operate to alert all future grantees as to the rights of the recorder, as the law assumes such grantee will search the index and discover the claim." *Franklin Bank, N.A. v. Bowling*, 74 P.3d 308, 313 (Colo. 2003). Moreover, the Purchase and Sales Agreement entered into the bankruptcy trustee for Skies Unlimited, Inc. and Erie specifically states that "the easements, restrictions, covenants and conditions now of record and that run with the land will be exceptions to the title." *See* Exhibit D.

III. APPLICABLE CASE LAW

If Erie fails to recognize the Easement and extinguishes the through-the-fence access, the Grantees will assert a claim for condemnation pursuant to Colo. Const. art. II, § 15 and USCA CONST Amend. V as well as a claim for breach of contract. Courts have held that easements constitute sufficient property interests as to give rise to a Fifth Amendment Taking. A California court has addressed an issue very similar to the one at hand and held that violations of grant assurances do not excuse a federally funded airport from performing its other contractual obligations. Pursuant to the applicable case law, Erie would be required to pay significant damages to the Grantees under both of these claims as well as the Grantee's attorney's fees under Section 14 of the Easement Grant.

A. Eminent Domain

If Erie were to cease recognizing the rights established by the Easement, that action would constitute a Fifth Amendment Taking and the owners of the dominant tenements would be

entitled to just compensation. This concept was clearly demonstrated in *City of Steamboat Springs v. Johnson*, wherein the City of Steamboat Springs sought to condemn a greenbelt in which adjacent property owners held a negative easement appurtenant to the land. 252 P.3d 1142, 1146 (Colo. App. 2010). The negative easement was a right held by neighboring land owners that ensure that the greenbelt would only be used for greenbelt purposes. *Id.* The City of Steamboat Springs condemned the greenbelt and constructed a highway over the land. *Id.* The Colorado court of appeals held that the negative easement was a property interest and therefore the City's actions constituted a taking and the landowners were entitled to compensation. *Id.* The court specifically noted that affirmative easements are "of course" protected property interests that would entitle the owners to just compensation. *Id.* (*citing United States v. Welch*, 217 U.S. 333, 339 (1910); *White Horse Creek Ranches*, 697 P.2d 384, 387 (Colo. 1985)).

A taking occurs when property rights connected to a government owned airport are not honored. *See Love Terminal Partners v. United States*, 97 Fed.Cl. 355 (Fed. Cl. Feb. 11, 2011) (discussing a leasehold interest at a city-owned airport). The FAA has recognized that federally-obligated airports cannot cease recognizing through-the-fence agreements without being subjected to this type of lawsuit; "where access could be terminated, property owners have claimed that termination could have substantial adverse effects on their property value and investment, and airport sponsors seeking to terminate this access could be exposed to costly lawsuits." *See* Federal Aviation Administration Airport Improvement Program (AIP): Interim Policy Regarding Access to Airports from Residential Property (the "Interim Policy") attached hereto as Exhibit E and discussed in detail below. This recognition is part of what has led the FAA to adopt the policy that the mere existence of a through-the-fence agreement does not result in an airport sponsor being out of compliance with its grant assurances.

B. Breach of Contract

The California courts addressed this issue in *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes*, 191 Cal.App.4th 435 (Cal. Ct. App. 2010). This case also concerned a municipally owned airport funded by the FAA. The town of Mammoth Lakes (the "Town") acquired the airport in 1991; in 1992 the Town entered into an agreement with the FAA. *Id.* at 444. In exchange for funding from the FAA, the Town agreed to meet any and all grant assurances placed on the funding by the FAA. *Id.* In 1997 the town entered into a development contract with Mammoth Lake Land Acquisition's predecessor in interest (the "Developer") for a hotel and condominium project. *Id.* The FAA objected to the hotel and condominium project on the grounds that it violated the grant assurances. *Id.* at 448. The Town refused to proceed with the contract citing the FAA grant assurances. *Id.* at 451. The court rejected the Town's arguments that refusal to violate the FAA grant assurances served as an excuse for failure to perform. *Id.* at 458-460.

First, the Town attempted to argue that it was not in breach of the contract by virtue of a provision stating that neither party would be in default for a cause beyond the reasonable control of the parties. *Id.* at 458. The Court rejected this argument on the grounds that the FAA restrictions were within the control of the Town. *Id.* at 459. The court stated, "if the Town had not made grant assurances in the first place and later encouraged the FAA to help the Town "get rid of" the hotel/condominium project, there would have been no impediment to the Town's performance." *Id.* Second, the Town attempted to rely on a provision in its contract with the Developer that required both parties to comply with the FAA rules and regulations. *Id.* The court held that, as a matter of law, grant assurances are not FAA rules or regulations, rather they are contractual promises. *Id.* at 460. The court went on to hold that even if grant assurances were to

be considered FAA rules or regulations, at the time the contract was entered into the parties did not intend grant assurances to be considered FAA rules and regulations. *Id.* The Developer was awarded thirty million dollars in damages.

As demonstrated by the *Mammoth Lakes* case, concern about potential violations of grant assurances does not serve as a legally cognizable basis for non-performance of contractual obligations. Similarly, in the case at hand, Erie knew the Airport was subject to the Easement when it acquired it and made grant assurances to the FAA. Erie cannot simply free itself of its obligations under the Easement by citing conflicting grant assurances.

IV. FAA POLICY

The FAA has had ongoing concerns regarding through-the-fence agreements. The FAA has argued against through-the-fence agreements in position papers, policy statements, and court cases. However, the FAA's position regarding residential through-the-fence agreement is rapidly changing to reflect the FAA's support of these agreements. The FAA is now expressing a desire to work with federally funded airports to ensure that the airports can honor residential through-the-fence agreements without the risk of losing federal funding.

Sponsors of federally funded airports are required to make the airport available for the use and benefit of the public. However, this does not create a requirement that the sponsors permit through-the-fence access. FAA Order 5190.6B, Section 12.7. A sponsor may choose to enter into a through-the-fence agreement for either commercial or residential access so long as the agreement does not cause the airport to be in violation of its grant assurances.

A. The FAA's Primary Concerns of Economic Discrimination and Residential Development are not Present at the Airport

In regards to through-the-fence agreements and the violations of grant assurances, the FAA has expressed two primary concerns. The first is that these agreements could result in

economic discrimination. The FAA is concerned that off-airport commercial enterprises with through-the-fence access are at an economic advantage because they may pay less for through-the-fence access than other companies pay to rent space on the airport property. *See e.g.* 1989 FAA Position Paper regarding Through-the-Fence-Operations attached hereto as Exhibit F, "the development of aeronautical enterprises on land uncontrolled by the owner of the public airport cannot but result in a competitive advantage to the detriment of on-base operators on whom the airport owner relies for service to the flying public." This concern continued to be expressed by the FAA in several recent lawsuits, including the Colorado case of *Jetaway Aviation, Inc. v. Montrose County, Colorado and the Montrose County Building Authority*, 2009 WL 2136622 (F.A.A. 2009). The issue in this case was whether an off-airport fixed based operation ("FBO") caused a federally funded airport to be out of compliance with its grant assurances. The FAA reiterated its concern that the existence of the off-airport FBO was problematic because it could result in an "economic competitive advantage" for the off-airport operator to the detriment of on-airport tenants. The FAA's second major concern is that airport property itself cannot be used for residential development. FAA Airport Sponsors Assurances Section 5(b). This rule ensures that the airport property itself will not be sold for residential airpark development as it would conflict with the airport's ability to expand in the future.

Neither of the FAA's two main concerns are present in this matter. The Easement grants only residential through-the-fence access and does not support commercial operations. Economic discrimination is much less of a concern for residential access. The Grantees are not providing aeronautical services to the public; rather, they are only storing their airplanes on their property. This case does not present a risk of new residential construction occurring on airport

property. The Grantees' residences were constructed years ago and no new development is proposed.

B. FAA's Airport Improvement Program (AIP): Interim Policy Regarding Access to Airports from Residential Property Supports Through-the-Fence Agreements

Effective March 18, 2011 the FAA adopted the Airport Improvement Program (AIP): Interim Policy Regarding Access to Airports from Residential Property (the "Interim Policy"). *See* Exhibit E. The Interim Policy is the most recent policy delineated by the FAA regarding through-the-fence access from residential property. It is therefore the policy that governs the issue at hand. The Interim Policy demonstrates that the FAA has shifted its position significantly regarding residential through-the-fence access.

The Interim Policy is directly applicable to the Easement and the Airport. The policy applies to federally-obligated airports, including those with existing residential through-the-fence access. "Existing access" is defined as "any through-the-fence access that meets one or more of the following conditions (1) there was a legal right of access from the property to the airport (e.g., by easement or contract) in existence as of September 9, 2010." Residential property is defined as "a piece of real property used for single- or multi-family dwellings; duplexes; apartments; primary or secondary residences even when co-located with a hangar, aeronautical facility, or business; hangers that incorporate living quarters for permanent or long-term use and time-share hangers with living quarters for variable occupancy of any term." Existing access exists by virtue of the Easement and the Easement benefits residential property.

The purpose behind the policy is to limit new through-the-fence agreements but allow those in existence to continue. The FAA's position is that it wants to work with federally obligated airport sponsors to honor existing through-the-fence agreements while mitigating the adverse effects of through-the-fence access. The FAA believes that this approach will

"adequately protect the government's investment in the airports while avoiding unnecessary hardship on residential owners who are currently party to through-the-fence agreements." The FAA, after conducting a tour of federally-obligated airports with existing through-the-fence agreements, including Erie, concluded that "it is neither feasible nor necessary to eliminate existing residential through-the-fence arrangements." To the contrary, the Interim Policy "would allow virtually all existing through-the-fence access to continue."

i. Requirements of the Interim Policy

The Interim Policy states that it is the FAA's position that the existence of a through-the-fence agreement will not be considered, in and of itself, to be a violation of any grant assurances. Airports with existing residential through-the-fence agreements will be considered in compliance with their grant assurances if the airport "depicts the access on its airport layout plan and meets certain standards for safety, efficiency, ability to generate revenue to recover airport costs and mitigation of potential noncompatible land uses." The certain standards that an airport must meet are: 1) general authority for control of airport land and access; 2) safety of airport operations; 3) recovery of costs of operating the airport; 4) protection of airport airspace; and 5) compatible land use.

The FAA will require that each airport adopt reasonable rules and measures to meet these standards. The rules and measures will be specific to each airport's needs and existing through-the-fence access; the FAA is not promulgating universal regulations to which every federally-obligated airport must adhere. This reflects the general tone of the Interim Policy, which is that the FAA wants to work with the airports to honor existing through-the-fence agreements.

ii. The Interim Policy Requirements are Sufficiently Met at the Airport

The Easement Grant itself addresses several of the FAA's concerns. First is the issue of fees. The Easement, originally granted in 1987 called for an annual fee of $187.00; however, the Easement grant includes a provision that allows the amount of the fee to increase every year by the amount of increase in the the U.S. City Average CPI for all Urban Consumers. Additionally, the Easement Grant provides for detailed procedures that allow the Town of Erie to collect unpaid fees. Section 5 of the Easement Grant provides that, in the event a fee is not paid, Erie may exercise any or all of the following remedies: deny the defaulting lot owner use and access to the runway; charge interest of 18% and collect legal fees in the event of a collection action; record a lien against the defaulting lot for every missed payment; or exercise any other remedies available at law or in equity. The various FAA policy statements, orders and rules as well as the case law concerning through-the-fence access have all made clear that fees, or a lack thereof, are one of the most fundamental problems with through-the-fence agreements. More specifically, the FAA has historically concerned that those who access airports by virtue of through-the-fence agreements may do so by paying little to no money; whereas those who do not have such access rights must pay substantial fees to use the airport. *See* Exhibit F. According to the FAA, this is problematic for two reasons. The first is the FAA is concerned about potential discrimination. This is of particular concern with regards to commercial activities, but the FAA believes that residential use may also present this problem. It could be deemed discrimination on the part of an airport to favor through-the-fence access users by charging substantially lower rates. Second, the failure to charge fees can impact a sponsor's ability to maintain the airport. The fee provision of the Easement, and the powerful tools granted to Erie to collect the fees, eliminate this concern.

The other significant concern, as made clear through various FAA documents, is that an airport sponsor must be able to pass rules and regulations to ensure that the airport is safe. The Easement Grant also addresses this concern. Section 6 of the Easement Grant titled "Rules and Regulations" states that "Grantor may from time to time promulgate and public rules and regulations regarding the use and operation of aircraft or other vehicles on Grantor's Property." Additionally the FAA had stated that all through-the-fence agreements should specify that they are subordinate to the FAA. Section 6 also addresses that concern by stating, in relevant part, "Grantees shall also comply with all laws and governmental or quasi-governmental rules and regulations applicable to the use and operation of aircraft on Grantor's Property."

In regards to the FAA's concern about compatible land use, the Interim Policy states that the FAA will take into consider the fact that "through-the-fence residents utilizing this access, by avigation easement; deed covenants, conditions or restrictions; or other agreement, have acknowledged that the property will be affected by aircraft noise and emissions." The FAA has been concerned that residential neighborhoods are incompatible with airports because homeowners will want to place restrictions on airport use to eliminate noise and disturbances. FAA Order 5190.6B, Section 20.2. The Interim Policy demonstrates that the FAA has changed its position regarding this issue and recognizes that those who purchase hanger-homes in airpark neighbors are already aware of the noise and disturbances caused by an airport and will not seek to restrict use of the airport.

C. The 2012 FAA Authorization Bill Further Supports Through-the-Fence Agreements

The Interim Policy is reflected and codified in the 2012 FAA Authorization Bill (the "Authorization Bill") attached hereto as Exhibit F. Section 136 of the Authorization Bill amends 49 U.S.C. § 47107 to state that the existence of a through-the-fence agreement at a federally

to determine what fee would be comparable to the fee paid by a monthly tie-down renter. The cost of building and maintenance is also a non-issue at the Airport. With the exception of the actual runways, Erie is not required to do any maintenance of the taxiways or ramp areas. The Grantees pay for maintenance and the clearing of the taxiways they use to access the runways. Moreover, due to the nature of the Easement Grant and the Subdivision, there is no risk that the Easement will benefit commercial aviation operations.

V. CONCLUSION

The Grantees are entitled to through-the-fence access to the Airport by virtue of the valid and enforceable Easement. The Grantees have a vested property interest and Erie cannot refuse to honor the Easement without severe repercussions. The FAA now supports residential through-the-fence agreements and Erie is not at risk of losing federal funding by recognizing the Easement and allowing the through-the-fence access to continue. The Grantees wish to work with Erie and the FAA to establish appropriate rules and fee schedules that will simultaneously allow the Airport to continue to receive federal funding and allow the Grantees continued access to the Airport. The Grantees look forward to productive future discussion that will benefit all parties involved.