

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FRANK J. DREWNIAKY, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO. 89-4314  
 )  
 DEPARTMENT OF TRANSPORTATION, )  
 )  
 Respondent, )  
 and )  
 )  
 THOMAS J. HIRT and )  
 ALFRED and JUNE PRITCHARD, )  
 )  
 Intervenor. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a public hearing was held in the above-styled case on October 12, 1989, at Haines City, Florida, before K. N. Ayers, duly designated Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Roger W. Sims, Esquire  
Post Office Box 1526  
Orlando, Florida 32802  
and  
Thomas J. Patka, Esquire  
Post Office Box 1288  
Tampa, Florida 33601

For Respondent: Vernon L. Whittier, Jr., Esquire  
605 Suwannee Street  
Tallahassee, Florida 32399-0458

For Intervenor: Thomas J. Hirt, pro se  
1 Cypress Run  
Sun Air Country Club  
Haines City, Florida 33844

STATEMENT OF THE ISSUES

Whether Petitioner should be granted a license for a private airport some four miles east of Dundee, Florida.

## PRELIMINARY STATEMENT

Following completion of inspections of the site and a public hearing, the Department of Transportation issued Site Approval Order 89-13 to Frank J. Drewniany to operate a private airport at Latitude 28 -00'-40" North, Longitude 81 -31'-40" West, and published notice of this approval and intent to issue a license. Intervenor's Pritchard and Hirt, by letters dated June 30 and July 6, 1989, protested the granting of the site permit and license and requested a hearing. This request was forwarded to the Division of Administrative Hearings, and these proceedings followed.

At the hearing, the Applicant called two witnesses, Respondent called no additional witnesses, Intervenor called one witness and 9 exhibits were admitted into evidence.

Proposed findings have been submitted by Petitioner. As there is no basic dispute as to the operative facts here involved, those proposed findings are accepted. Those not included in the findings below were deemed unnecessary to the conclusions reached.

## FINDINGS OF FACT

1. Frank J. Drewniany, Petitioner, is the owner of 153 acres of undeveloped land some 4 miles east of Dundee, Florida, which he proposes to develop and on which he proposes to operate a private airport.
2. On October 28, 1988, Petitioner applied for a site permit and license for a private airport (Exhibit 1). The application provided the information required by statute and the rules of the Department of Transportation (DOT), Respondent. This information included evidence of Applicant's right to so use the property, a list of airports within 15 miles of the proposed facility, mailing addresses of all landowners within 1000 feet of the proposed facility, FAA airspace approval and the prescribed fees.
3. The proposed site was inspected by John Roeller, the Florida DOT airport program administrator in the district office having jurisdiction over the area. This inspection revealed the site to be adequate for the proposed airport; the airport, if constructed, would conform to minimum standards of safety; the local zoning was appropriate for the airport; the Applicant had provided a list of all airports and municipalities within 15 miles of the proposed airport and all property owners within 1000 feet of the proposed airport; and that safe air traffic patterns can be worked out for the proposed airport.
4. Following this inspection Roeller, on October 31, 1988, executed the prescribed certification that the site is feasible for the proposed use and can meet the requirements set forth in Chapter 14-60, Florida Administrative Code (Exhibit 5).
5. By letter dated August 22, 1988, the Federal Aviation Administration (Exhibit 6) determined the proposed airport would not adversely affect the safe and efficient use of airspace by aircraft if operations are conducted in VFR weather conditions and the landing area is limited to private use.

6. By Notice of Intent to issue site approval dated March 22, 1989 (Exhibit 7), the DOT published the intent to issue the requested permit and advised protestors would be allowed to air their views at a public meeting on May 10, 1989.

7. Following this public meeting, Site Approval Order 89-13 (Exhibit 8) was issued, a hearing was requested to contest the issuance of the requested license and these proceedings followed.

8. Intervenors presented evidence of a general concern for the safety of residents living in the vicinity of the airport and hearsay evidence regarding crashes of private planes in various areas of the United States. No evidence was presented by Intervenors to rebut the evidence that the Applicant had complied with the requirements for site approval and licensure contained in Chapter 14-60, Florida Administrative Code.

#### CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

10. Chapter 330, Florida Statutes (1987), provides, inter alia, for the regulation of airports by DOT. Section 330.29(2) directs the department to establish minimum standards for airport sites and airports under its licensing jurisdiction.

11. These DOT rules are contained in Chapter 14-60, Florida Administrative Code. Rule 14-60.005 establishes rules for airport site approval and general licensing requirements. Subsection (8) provides in part:

(a) Prior to receiving site approval, an applicant shall:

1. Demonstrate that the site is adequate for the proposed airport.

2. Demonstrate that the proposed airport, if constructed and established, will conform to minimum standards of safety.

3. Include documentation evidencing local zoning approval by the appropriate governmental agency. Where there is no local zoning, a statement to that fact from an official of the appropriate governmental agency shall be submitted.

4. Provide the Department a list of all airports and municipalities within 15 miles of the proposed airport and all property owners within 1000 feet of the proposed airport.

5. Demonstrate that safe air traffic patterns could be worked out for the proposed airport.

(b) All airport sites must be inspected by a representative of the Department and a written report containing a recommendation filed with the Department.

1. If the inspection shows that the site is feasible and can meet the requirements set forth in Rule 14-60.005(8)(a) 1-5 above, the Department shall issue a notice of intent. (emphasis supplied)

12. Subsection (8) goes on to provide for the public meeting that was held and if, after the public meeting, the Department determines that the proposed airport can comply with the standards set forth in Rule 14-60.005(8)(a) 1-5 and if the Applicant has obtained airspace approval from FAA, the Department shall issue a site approval order.

13. Here the Applicant has met all of the requirements established by Chapter 14-60, Florida Administrative Code, for site approval for a private airport.

14. Rule 14-60.006(1), Florida Administrative Code, provides:

Upon compliance with all conditions enumerated in the site approval order, a satisfactory final inspection by a representative of the Department, and payment of the required license fee, an airport license shall be issued subject to any conditions deemed necessary to protect the public health, safety, or welfare. (emphasis added)

15. Petitioner has met all of these requirements.

#### RECOMMENDATION

It is recommended that a Final Order be entered granting Frank J. Drewniany a license to operate a private airport at Latitude 28 -00'-40" North and Longitude 81 -31'40" West, subject to restrictions established by the FAA and DOT to insure safe air patterns are established for the proposed private airport.

ENTERED this 27th day of November, 1989, in Tallahassee, Florida.

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K. N. AYERS  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of November, 1989.

COPIES FURNISHED:

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