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BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU

BILL GISSEL,  
  
Appellant,  
vs.  
CBJ AIRPORT BOARD,  
  
Appellee,  
and  
PETRO MARINE, INC.,  
  
Appellee/Intervenor.

Case No. 2006-02

**ORDER ON APPEAL**

This appeal was brought by Mr. Gissel, a neighbor of the Airport, challenging a decision by the Airport Board to lease certain property to Petro Marine, Inc., to place fuel tanks on the west side of the Airport.<sup>1</sup> Petro Marine was allowed to intervene as an appellee. The appeal was filed timely, the parties met for a pre-hearing conference, the issues were briefed, and a hearing was held at which the parties argued their positions. The Assembly, having considered the facts and arguments, denies the appeal for the reasons outlined below.

***Background.***

In this appeal, and in other ways for more than ten years, Mr. Gissel and his neighbors have sought to protect the stand of trees on the edge of the Airport property that serve as a buffer between the Airport and the adjacent Berner's Avenue residential neighborhood. From the Airport's perspective, the property along Berner's Avenue is one of the very few parcels on the

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<sup>1</sup> Specifically, Lots 5 and 6, Block J, Juneau International Airport Subdivision, located on the Airport adjacent to Berner's Avenue.

1 airport that could be available to lease to Petro Marine to gain lease revenue for the Airport and  
2 serve the Airport's fuel needs. The Airport has unsuccessfully investigated locating the tank farm  
3 on Lot 10, near the lots on Berner's Avenue, but found that that location is precluded by a sewer  
4 line running under the lot, and it has also looked in the area now occupied by the police impound  
5 lot. The Airport is also concerned with security in this area, and with implementation of the  
6 Airport Master Plan, which must be approved by the FAA. The neighbors have worked with past  
7 Airport managers regarding the location of the security fence, protection of the trees, and related  
8 issues. When the Airport Board adopted a motion to authorize leasing the lots on Berner's Avenue  
9 to Petro Marine, Mr. Gissel appealed.

10  
11 ***Discussion.***

12 Appellant's main argument is that CBJ Ordinance 96-26 designated the stand of trees as a  
13 natural area park, and that this prohibited establishment of a tank farm.

14 Ordinance 96-26, "An Ordinance Reestablishing the Juneau Parks System," adopted a list of  
15 parcels proposed by the City Manager, the Planning Commission, and the Parks and Recreation  
16 Advisory Committee. The ordinance placed each parcel in the table, attached to the ordinance as  
17 Appendix 1, in one of three categories. Each parcel was designated 1) "Existing CBJ Developed  
18 Parks," 2) "Open Space Park System Ordinance Lands," or 3) "Other CBJ Parcels Recommended  
19 for Dedication." The parcel at issue in this appeal, CBJ parcel #0653, entitled "Duck Creek Area  
20 South of Berner's Avenue" is in the third category, "recommended for dedication." In the  
21 "Comments" column of the table, the ordinance provides, "Parcel size to be determined by Airport  
22 Master Plan for greenbelt area." The parcel is listed as two acres of Airport property. It is  
23 undisputed that natural area park status for this property was never actually included in the  
24 Airport Master Plan.

1 Ordinance 96-26 is part of the overall CBJ Land Management Plan. It appears that parts of  
2 it are primarily a planning document, expressing the Assembly's intent for future action. This  
3 interpretation is consistent with the use of other parcels in the "recommended" category, for  
4 example, the parcel listed at Amalga Harbor. The ordinance anticipated future action by the  
5 Airport in the Airport Master Plan setting the boundaries of a greenbelt buffer along Berner's  
6 Avenue.

7 Appellant also refers to various understandings and discussions between former Airport  
8 Managers and the neighborhood regarding the trees, berm, and the location of the security fence.  
9 None of these discussions and understandings, however, has the force of law; none of these can  
10 supercede the Airport Master Plan. The Airport Manager would not have authority to act contrary  
11 to the Airport Master Plan regarding the dedication of property, as at least one former Airport  
12 Manager informed the neighbors.

13 Use of Airport property is established through the Airport Master Plan, which must be  
14 approved by the FAA. The Airport argues on appeal that dedicating these parcels as a natural  
15 area park in perpetuity would not be consistent with its Master Plan, and might jeopardize its  
16 FAA approval and discretionary grant funding. The Master Plan, which does not include park  
17 status for these parcels, is signed off by the FAA, and remaining in compliance with FAA direction  
18 is a fundamental requirement of operating the Airport. FAA approval would have to be sought to  
19 designate these parcels as a natural area park in perpetuity. Any expectation the neighbors may  
20 have held contrary to this is not reasonable under the circumstances; Airport property has to be  
21 used for Airport purposes; accommodations can be made to minimize impacts on the Airport's  
22 neighbors, but not when doing so directly conflicts with the Airport's need to use its property. The  
23 lots in question are, since 1999, platted and designated for use in the Airport Master Plan. A  
24 greenbelt can be left to provide a buffer, and many of the large trees can be protected consistent  
25 with Airport development, but putting virtually all of these two lots completely off limits for the

1 indefinite future goes too far. The Assembly expresses no opinion as to whether this is the best  
2 site for a new tank farm, and the parties are encouraged to work toward alternative solutions, but  
3 such use is not prohibited.

4 Appellee/Intervenor Petro Marine argues that FAA grant assurances require the Airport to  
5 lease property to them for a tank farm, and points to limitations in the original deed establishing  
6 Airport property use.

7 Appellant also argues that the proposed tank farm is sized beyond the needs of the Airport  
8 and accordingly is not allowed under the Airport management ordinance. Petro Marine responds,  
9 however, that the tanks would be “dedicated to serving the aviation community” and the Assembly  
10 accepts this pledge as resolving that issue.

11 The Assembly, like the Berner’s Avenue neighbors, is concerned about the trees, but this  
12 concern does not trump the Airport’s ability to lease its property to serve its needs. The Airport  
13 Board Chair has reiterated at oral argument in this appeal that at least a fifty-foot greenbelt  
14 buffer of trees would remain. The Assembly asks the Board to find a way to minimize tree cutting  
15 while still going forward with leasing as necessary. The Assembly also asks the Airport to  
16 continue working with its neighbors to minimize the impact of Airport development in general.

17 The Assembly understands that Petro Marine is in the process of obtaining a Conditional Use  
18 Permit through the Planning Commission; while denying this appeal, the Assembly expresses no  
19 view as to the merits of that permit or any appeal that may arise out of it.

20  
21 ***Conclusion.***

22 The appeal is denied. Mr. Gissel has failed to meet the burden of proof. In essence, neither  
23 the past discussions and understandings with prior Airport Managers, nor Ordinance 96-26,  
24 supercede the Airport’s basic authority to manage its own property as necessary to accomplish its  
25 goals established by the Airport Master Plan.


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In implementing this decision, the Airport Board should approve a plan which protects the trees and buffer to the maximum extent practicable while meeting its leasing needs.

IT IS SO ORDERED.

Dated this 11<sup>th</sup> day of September, 2006.

ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

  
By: Bruce Botelho, Presiding Officer on Appeal