



Internal Audit Department

Audit Report 2012-1

Collier County Airport Authority

**Marco Island Executive Airport
Limited Scope: Marco Island Parallel
Taxiway Expansion-Property Ownership
and Zoning**

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The files and draft versions of audit reports remain confidential and protected from public records requests during an active audit under Nicolai v. Baldwin (Aug. 28, 1998 DCA of FL, 5th District) and Florida Statute 119.0713. Workpapers supporting the observations noted within this report are public record and can be made available upon request once the final audit report has been issued.

BACKGROUND

The audit of the Marco Island Executive Airport for the Marco Island Parallel Taxiway Expansion was requested based on a report of concern regarding improper zoning and land ownership. While the parties (Collier County Airport Authority, The Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, The Conservancy of Southwest Florida, The National Audubon Society, Florida Audubon Society, Environmental Defense Fund, Izaak Walton League – Florida Division, Florida Department of Environmental Protection, South Florida Water Management District, Florida Department of Community Affairs, The Deltona Corporation, and Collier County Board of County Commissioners) agreed, in a Memorandum of Understanding dated September 11, 2001, that the expansion could occur, the land does not appear to be properly zoned for airport use.

The Deltona Settlement Agreement dated August 8, 1980, provided the State of Florida, Deltona, and parties to the agreement, vested rights for specific Deltona properties. The document stipulates that certain development activities are permitted subject to conditions within the agreement. The conditions state “The County shall expeditiously process all applications made in conformity with the Comprehensive Plan provided, however, nothing herein shall exempt Deltona from compliance with Collier County zoning, subdivision and building regulations and other requirements applicable to the development described herein. Nothing in this Stipulation and Agreement shall be construed as an advance approval by Collier County of the development contemplated hereby.” The Deltona Settlement Agreement acknowledged that a portion of the Deltona property was being used as an airport. The Marco Island Executive Airport was constructed in the 1960’s.

The Board of County Commissioners Resolution 82-86 acknowledged the intent to transfer ownership of the airport property from Deltona to The State of Florida. The Resolution states “the County is not in any manner abrogating its duty and authority to administer and enforce the County Comprehensive Land Use Plan, zoning and subdivision regulations.” It further states “Neither the execution of the Marco Settlement Agreement on behalf of the County nor this Resolution shall exempt Deltona from complying with the County Comprehensive Land Use Plan, all subdivision and zoning regulations and other applicable County requirements with respect to development in accordance with the Marco Settlement Agreement.”

On March 14, 1985, a warranty deed was recorded transferring ownership of the Marco Shores Air Terminal from Deltona’s Mackle-Built Construction Company, Inc., to The State of Florida Board of Trustees of the Internal Improvement Trust Fund (IITF). The warranty deed states the property is subject to zoning ordinances of Collier County and restrictions, reservations, easements, and leases of record.

In 1991, the bulk of the property comprising of the Marco Island Executive Airport was rezoned from the “A-ST” (Agricultural) zoning district to the “P” (Public Use) zoning district.

On December 31, 1993, a Quit Claim Deed was recorded conveying ownership of the Marco Island Executive Airport from the IITF to Collier County, with the stipulation that if the real property ever ceased to be an airport, the title of the property would automatically revert to the State.

On February 22, 1995, Collier County entered into a Memorandum of Agreement with the Department of Environmental Protection (DEP). The DEP on behalf of IITF provided a deed of conveyance for land title known as the Marco Island Airport in mutual consideration for a 99 year lease for W.J. Janes Memorial Scenic Drive Park.

On January 17, 1996, the DEP and Collier County Airport Authority entered into an Inter-local Ingress/Egress Agreement (original). The agreement recognized the Memorandum of Agreement from February 22, 1995 and granted the right to use the land as long as the land remains an airport (includes exhibits detailing the area provided). The agreement states “However, this Agreement does not authorize the Airport Authority, its successors or assigns, to conduct any activity on any part of the access, ingress and egress area which may require a permit, exemption or other form of authorization from any entity having jurisdiction.”

On August 28, 2000, the First Amendment to the Inter-local Ingress/Egress Agreement replaced Exhibit A, Land Access Agreement, from the original January 17, 1996, Inter-local Ingress/Egress Agreement.

On September 11, 2001, a Memorandum of Understanding was entered into by multiple organizations providing for the following projects: parallel taxiway on the west side of the existing runway, apron hangar area and Federal Aviation Regulations (FAR) part 77 Vegetation Management Program. The BCC enacted Resolution 2001-345 stating that the development at the Marco Island Executive Airport will not occur outside of the geographic confines of the development footprint under the "Limits of Development" map.

The Marco Island Executive Airport submitted the initial permitting application for the Parallel Taxiway expansion project to Collier County Growth Management Division on April 30, 2010. The application is for the construction of a parallel taxiway to increase the width of the current taxiway from approximately 435 feet to approximately 600 feet. The application for expansion and proposed land clearing was rejected multiple times by Growth Management. Growth Management's Additional Comments for the Permit Application include:

- "It appears that part of the proposed development (clearing) occurs outside of the parcel limits. Please indicate the ability to clear outside parcel limits"
- "Per the Deltona Settlement Agreement on page 12, 'No dredging, filling, drainage, or destruction of vegetation in areas outside the Development Areas is permitted under the terms of this Stipulation and Agreement.' Provide an exhibit showing the clearing and work is being done within the designated Development Areas."

The Growth Management Division completed the Zoning Review on September 14, 2010 based on documents provided by the applicant. The expansion was approved by the department based on the Inter-local Ingress / Egress Agreement that provided for the use of the land; however, the land does not appear to be properly zoned for airport use.

SUMMARY

The following audit observations were generated during the review:

- The land upon which the expansion has occurred does not appear to be properly zoned for the airport use.
- It does not appear that proper zoning was in place prior to starting the construction for the Marco Island Parallel Taxiway Expansion Project.

Land needs to be properly zoned with the appropriate zoning district prior to construction for projects to ensure the Clerk has the legal authority to pay the contractor.

Prior to the notification of this concern as of February 17, 2012 the Clerk's Office had made construction payments exceeding \$4,000,000 based upon invoices submitted and approved by Collier County Airport Director. The total construction contract was \$5,959,000, with a revised construction contract amount of \$5,885,965.26. The work complete to date is \$4,837,430.72 (paid to date \$4,353,687.65 and retainage held \$483,743.07). The total amount not paid is \$1,532,277.61 (retainage held \$483,743.07, gross pay application 9 \$997,901.76, and remaining contract balance \$50,632.78).

OBJECTIVE

The objective of the audit was to determine whether proper zoning and ownership had been obtained for the Marco Island Executive Airport Parallel Taxiway expansion to ensure the Clerk is making legal and valid payments related to the expansion project.

SCOPE

The audit consisted of, but was not limited to review of the following:

- Deltona Settlement Agreement dated August 8, 1980 and easements;
- Warranty Deed dated March 14, 1985;
- Quit Claim Deed dated December 31, 1993;
- Ordinance 81-6, Resolution 82-86, Ordinance 85-56, Ordinance 95-145, Resolution 2001-345;
- Marco Shores PUD and PLAT;
- Collier County Land Development Code and zoning maps;
- Engineer Designs;
- Environmental Permit from Department of Environmental Protection;
- Memorandum of Agreement dated February 22, 1995;
- Inter-local Ingress / Egress Agreement (original) dated January 17, 1996;
- First Amendment to Inter-local Ingress / Egress Agreement including Exhibit A dated August 28, 2000;
- Memorandum of Understanding including Exhibit B dated September 11, 2001;
- Collier County Property Appraiser Aerial Maps and Geographic Information Sheets; and
- Collier County Growth Management Division – Planning and Regulation permitting documents.

SCOPE LIMITATION

The scope of the audit was limited to review of ownership and zoning of the Marco Island Executive Airport's Marco Island Parallel Taxiway expansion project.

OBSERVATION

1) It does not appear that proper zoning was in place prior to starting the construction for the Marco Island Parallel Taxiway Expansion Project.

The Official Zoning Map for the property owned by Collier County including the Marco Island Executive Airport shows that the property is zoned both "P" (Public Use) and "CON-ST" (Conservation). While the taxiway before the construction is zoned "P", the area surrounding the taxiway area before the construction is zoned "CON-ST". The map includes approximately 435 feet as zoned airport "P". The expansion increases the width of the taxiway to approximately 600 feet. Approximately 165 feet of the expanded parallel taxiway is in "CON-ST" land. Conservation District "CON" has the purpose and intent to conserve, protect and maintain vital natural resource lands within unincorporated Collier County. LDC Section 2.01.03.G.2 states CON allows Conditional Uses for essential services, but does not include airports.

On January 17, 1996 the DEP and Collier County Airport Authority entered into an Inter-local Ingress/Egress Agreement (original). The agreement states "However, this Agreement does not authorize the Airport Authority, its successors or assigns, to conduct any activity on any part of the access, ingress and egress area which may require a permit, exemption or other form of authorization from any entity having jurisdiction." This indicates that Collier County zoning would need to be obtained for any expansion projects that enter into the surrounding CON-ST lands.

The Growth Management Division relied upon the First Amendment to the Inter-local Ingress / Egress Agreement provided for the use of the property for the parallel taxiway project. However, this agreement does not change the zoning district and the agreement with another agency is only one component of the approvals and requirements necessary for the construction project. The proper zoning would also need to be in place. It does not appear that the proper zoning is in place.

Florida State exemptions do not appear to apply to airport zoning, which would require the CON-ST land being used for the expansion project to be rezoned "P."

Recommendations:

- Proper zoning should be obtained for the parallel taxiway expansion project.
- Land needs to be properly zoned with the appropriate zoning district prior to beginning construction.

CONCLUSION

BCC Ordinances, BCC Resolutions, and agreements need to be followed to ensure compliance with zoning requirements and land use requirements prior to allowing construction projects to commence. It does not appear that proper zoning was in place prior to starting the construction for the Marco Island Parallel Taxiway Expansion Project. Land needs to be properly zoned with the appropriate zoning district prior to construction for projects to ensure the Clerk has the legal authority to pay the contractor.

It is the ultimate responsibility of management to understand and implement the proper processes to comply with the Land Development Code and agreements. The Clerk's Office may suggest recommendations in audit reports, but it is the duty and decision of management to formulate processes to ensure compliance.