

1994

Larry Patterson v. Utah County Board of Adjustment : Brief of Appellee

Utah Court of Appeals

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IN THE COURT OF APPEALS OF THE
STATE OF UTAH

LARRY PATTERSON,	:	
	:	
Plaintiff-Appellee,	:	
	:	
vs.	:	
	:	
UTAH COUNTY BOARD OF ADJUSTMENT,	:	Case No. 940014-CA
GLENN B. SMITH, MARIANNE M. SMITH,	:	
W. GREG BUTTARS, and LESLIE E.	:	
BUTTARS,	:	
	:	
Defendants-Appellants.	:	Priority No. 15

BRIEF OF APPELLEE LARRY PATTERSON

APPEAL FROM A DECISION BY THE FOURTH DISTRICT COURT
OF UTAH COUNTY REGARDING A UTAH COUNTY BOARD OF ADJUSTMENT'S
DECISION TO APPROVE APPELLANTS' REQUEST FOR SPECIAL EXCEPTION,
APPEAL NUMBER 1030, ENTERED APRIL 20, 1993,
BY THE HONORABLE RAY M. HARDING, DISTRICT COURT JUDGE

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JURISDICTION

The Court of Appeals has jurisdiction in the appeal from the Fourth District Court's review of a decision of the Utah County Board of Adjustment pursuant to Utah Code Ann. Sec. 78-2a-3(2).

STATEMENT OF THE ISSUES

The following issues are presented for review:

1. Where the Board violated specific standards and rules relative to public health, safety and welfare, where the Board interpreted the verb "promote" to mean "does not diminish" (public health, safety and welfare) and where the Board violated specific standards relative to airport approval, intent of airport ordinance, and airport use restrictions, was Board's decision to permit a proposed airstrip approximately one mile from an existing airport arbitrary, capricious or illegal?

2. Where the Board was presented with only biased and incomplete information by the airstrip applicants, where the Board gave inadequate consideration to the hazards of permitting construction of an airstrip at the base of a mountain as well as inadequate consideration to the hazards of two airstrips in close proximity, where the Board lacked any experience or knowledge of flying or airport safety, and where the Board lacked any previous experience in approving an airstrip, was the Board's approval of the proposed airstrip supported by substantial evidence in the record?

Standard of Review

The standard of review of the Board's action by the district court is set out in Utah Code Ann. Sections 17-27-708(2) and (6):

- (2) In the petition, the plaintiff may only allege that the board of adjustment's decision was arbitrary, capricious, or illegal.
- (6) The court shall affirm the decision of the board of adjustment if the decision is supported by substantial evidence in the record.

The Court of Appeals reviews the decision of the district court as if the appeal had come directly from the Board. Kline By and Through Kline v. Utah Dept. of Health, 776 P.2d 57, 60 (Utah App. 1980).

STATEMENT OF THE CASE

Nature of the Case:

Plaintiff-Appellee, Larry Patterson, owns and operates an airport known as Cedar Valley Airport in Cedar Valley, Utah County, Utah. The airport has been in existence prior to World War II. Mr. Patterson purchased the airport in 1973. In 1991, the Utah County Board of Adjustment ("Board") approved a special exception filed by Defendants-Appellants Mr. and Mrs. Smith and Mr. and Mrs. Buttars for construction of an airstrip to be located approximately one mile from Mr. Patterson's airport. The matter before this Court concerns the review of the appropriateness of the Board's action.

Course of Proceedings:

When Mr. Patterson discovered that the Board had approved

this airstrip so close to his airport, Mr. Patterson, on April 3, 1991, petitioned the Fourth District Court for judicial intervention. (R.14). Among other issues, Mr. Patterson protested that the Board failed to meet three specific prerequisites for granting a special exception in its approval of the proposed airstrip, that the Board violated its own standards and rules relating to the approval of airports, and that the Board's action will diminish his land value, including the interference with a then-pending negotiation of the sale of his airport. Most importantly, however, Mr. Patterson cited the heavy use and activity at the Cedar Valley Airport and the threat and danger posed to the users of his airport and the increased hazard to public safety due to the possibility of mid-air collisions.

Disposition Below:

Fourth District Court Judge Ray M. Harding found that the Smith and Buttars airstrip with its proposed location "against" the west slope of Lake Mountain, and within two miles of the existing Cedar Valley Airport, presents an inherently unsafe situation in contravention of the intent of Utah County Ordinance Section 3-34 which is "to avoid or lessen hazards resulting from the operation of aircraft, to avoid creation of new hazards, and to protect the lives of people who use aircraft facilities." Judge Harding ruled that the Board violated the requirements of the ordinance because the proposed location would not allow for an adequate turning radius. Judge Harding even refused to approve or accept any stipulation purporting to resolve this case by way of compromise

because the "Court will simply not allow the safety of the public to be compromised." Judge Harding also found that the Board acted arbitrarily, capriciously and illegally in approving the proposed airstrip and that the Board acted arbitrarily in finding that the proposed airstrip would promote public health, safety and welfare. (Memorandum Decision, R.142)

Statement of Facts:¹

On or about February 15, 1991, the proposed airstrip applicants² submitted an Application for a Special Exception for a "private flying field" in Cedar Valley, Utah, styled Appeal 1030. (R.113) Airstrip applicants attached to the application six maps or diagrams along with an additional page of information. (R.104-110) Within the 3-page application and the 7 attachments, the singular reference to the nearby Cedar Valley Airport is the word "airport" on one of the maps. (R.110)

The following question appears on the second page of the special exception application at No. 2. with the answer of the airstrip applicants (in italics):

Will granting this appeal promote the public health, safety, and welfare? *Yes. Provides for emergency landing for aircraft in distress and staging for disaster*

¹ Because the Court's review must address the "substantial evidence in the record," we necessarily cite heavily to the record, especially the hearing transcript.

² To promote clarity in references to the parties pursuant to Utah R. App. P. 24(d), references to Plaintiff-Appellee Larry Patterson, who purchased the Cedar Valley Airport over twenty years ago (R. 162), and/or his airport are designated as "existing" airport. References to Defendants-Appellants Mr. and Mrs. Smith (residents of California) and Mr. and Mrs. Buttars (daughter and son-in-law of the Smiths), who requested a permit for their own airport/landing strip from Utah County, and/or their airport are designated as "airstrip applicants" or "proposed" airstrip.

operations. (R.112)

At No. 3.:

Does this appeal conform to the "characteristics and purposes" stated for the zoning district involved and the adopted county master plan? *Yes. Conforms to item 5 under M&G-1, zone's legislative intent to permit the location of activities not appropriate or compatible with urban development.* (R.112)

At No. 4:

Is this appeal compatible with the public interest and with the characteristics of the surrounding area? *Yes. As a sparsely populated farming area, the nature of a private airstrip activity would not be contrary to the public interest, but would be compatible with public support for diversity, individual freedoms and existing planning.* (R.112)

At No. 5.:

Will granting this appeal adversely affect local property values? *No. A private airstrip does not change the present land uses approved for this zone, and since all other parcels in the area are large as opposed to typical residential zones, their value would not be based on airstrip activity.* (R.112)

At No. 9 on the second page of the application:

State any other details about this appeal which you want the Board to be aware of: *It would not be cost effective to pave the strip nor practical to keep it in anything other than seasonal grass, its use would be far less than the county graded road generates.* (R.111)

All four airstrip applicants signed the application under No. 10 that "[t]o the best of [their] knowledge, the above information is accurate and complete." (R.111) [Emphasis added.] The topographical map attached to the application shows the proposed airstrip drawn in at the base of what is known as Lake Mountain. (R.109)

The airstrip applicants submitted a diagram showing the

two-mile turning radius for the proposed airstrip. (R.105) The diagram does not show, however, that the entire, existing Cedar Valley airstrip falls within this two-mile radius. Nor does it show that the proposed airstrip's northern approach zone and transition zone intersect with the Cedar Valley airstrip, or that the proposed airstrip's northern approach and transition zones converge with the southern approach and transition zones of the Cedar Valley airstrip. (R.66)

Airport applicants submitted a plot plan with the following note: "Adjoining properties have no buildings with no recent farming activity, nearest structures two miles away." (R.104)³

On or about February 21, 1991, notice of the appeal was sent to five adjoining property owners with addresses in Salt Lake City, Utah; Lehi, Utah; and Costa Mesa, California. (R.115-118) Although the Notice to Property Owners states, "If you know of any interested property owner, who for any reason has not received a copy of this notice, would you please advise them of the time and place of the hearing" (R.118), none of the adjoining property owners, nor the county, nor the airstrip applicants informed the existing airport owner of the hearing he definitely would have attended.

³ Although the existing airport does not adjoin the airport applicants' property, airstrip applicants omit any reference to nearby airport activity or airport structures within the two miles. Airstrip applicants submitted a revised plot plan which, again, does not make any reference to the Cedar Valley Airport activity or structures (or airstrip) within the two miles. (R. 119)

A "Public Notice" which may have been published,⁴ reads in pertinent part, "Appeal No. 1030 - Glen [sic] Smith is requesting a special exception to approve an airport/landing strip at 6104 North Lake Mountain Road, in the M&G-1 Zone." (R.114) This notice appears to be defective in that the address does not indicate any city or town or nearby location where the airstrip would be located. (The Notice to Property Owners, on the other hand, does include "Cedar Valley." (R.118)) If, in fact, the defective notice had been published on the indicated date of February 26, 1991, the existing airport owner did not see it.

On or about March 5, 1991, a report was generated entitled, "Report from the Zoning Administrator's Staff to the Utah County Board of Adjustment for Appeal No. 1030." (R.124) This report indicates that "the land is on the east side of the valley adjoining Lake Mountain," and that "Mr. Smith lives in California, is a pilot, and would make extensive use of the landing strip. His son-in-law, Mr. Buttars, does not presently have a pilot's license, but has plans to obtain one in the future." (R.124) [Emphasis added.] (R.124) At No. 4. the report states:

In general, the planning issues which cause these to be a conditional use are: (a) noise and traffic, which may negatively impact neighboring property owners; and (b) safety design, such as the takeoff and landing zones, which must be free from obstructions (see Section 3-34, "Airports", pages 55-56 of the Zoning Ordinance). (R.124) [Emphasis added.]

At No. 5:

⁴ The record does not designate in which publication notice was to have been published.

Staff found that the site is located a few miles from the nearest dwelling or other building; (R.124)
[Emphasis added.]

At No. 6:

The site abuts Lake Mountain and would not be suitable for approach or turning on its east side. (R.123)
[Emphasis added.]

At No. 7:

The property owner, upon culmination of the land purchase, would control the entire landing strip site, but not all of the approach zone and turning zone. This means that they could not guarantee that no one will place structures within these safety areas. If approval is granted, it should be made on the condition that the approval expires at such time as the approach zone, turning zone, or transition zone are breached by buildings or structures. (R.123) [Emphasis added.]

At No. 9:

In addition to the safety issues just mentioned, the appeal appears to meet the standards of the ordinance, as follows (citation omitted):

* * *

c. The landing strip is in accord with the intent of the M&G-1 Zone ... which designate[s] the outlying areas of the ... Zone as suitable to noisy or other uses which conflict with dense residential development.

d. The landing strip is in accord with the low-intensity use of the surrounding area, which does not have other buildings but is used for livestock grazing. (R.123) [Emphasis added.]

At No. 2 on page 3 of the report under Ordinance Summary:

Zoning Section 3-34 (pages 55-56) states the special regulations for airports and flying fields. (R.122)
[Emphasis added.]

At 1. on page 3 of the report under Recommendation:

It is the recommendation of the zoning administrator's staff, that, in general, the standards for obtaining a special exception have been met, (R.122)
[Emphasis added.]

The seemingly comprehensive report and attached diagram

(R.121), similar to the proposed airstrip application, fail to even mention the existence of the nearby Cedar Valley Airport. The report lists the ordinance germane to "special regulations for airports and flying fields," but neglects to review those special regulations and mentions only "obstructions." The report addresses some airport safety issues, which beg a discussion of corresponding safety issues relative to the existing airport, but the single most important aspect, that of the hazard of existing, heavy, local air traffic and recreational flying activities, is totally ignored.

On March 5, 1991, the Board met to consider the airstrip application.⁵ A Utah County Planner (the "Planner") presented the recommendation of the County Planning Board saying, "Cedar Valley is fairly empty and this part of Cedar Valley is no exception. [The airstrip applicants' property is] on the east side of Cedar Valley against Lake Mountain, and south of the subject property there are three homes...." (T.1) The Planner then presented a video of the applicants' property from a northern position looking toward the south of the applicants' property. (T.2)⁶

Contrary to the Planner's characterization, that part of Cedar Valley is an "exception." The Cedar Valley Airport is the predominant operation (if not the only operation outside farming and cattle grazing), in all of Cedar Valley. The airport consists

⁵ The front of the official transcript of this hearing is paginated in the record as 256, however, all page citations to the transcript in this brief are referenced as "T.")

⁶ No video has been made available to Plaintiff-Appellee. Cedar Valley Airport, however, is located to the north of the applicants' property and would be behind the Planner's back, excluded from view, in the video.

of five airplane hangars (the largest of which is approximately 100 feet by 80 feet), a dwelling, and an airstrip approximately 85 feet wide and nearly a mile long.

The existing airport is finally brought to the attention of the Board by the Planner in summary fashion:

I found that the other airport was far enough away, there is an airport in Cedar Valley, so I do not see a conflict between the two. And certainly the degree of flying would be very small, and this one would be very small indeed compared to the one where they go up in Cedar Valley and sky dive and some of the other things they do. I understand that the other airport may by ultimately be used by the army reserve unit there in Camp Williams. That has been an on again and off again affair, I think right now [Camp Williams] only occasionally use[s] it under a lease agreement. (T.3) [Emphasis added.]

The Planner simply concluded to the Board, with no supporting facts or information, that the Cedar Valley Airport "was far enough away" and that he does "not see a conflict." His input regarding the frequency of takeoffs and landings of the proposed airport compared to or in relation to the existing airport "would be very small." Period.

From this unsupported assertion, the Planner continued with a discussion of other county services which would need to be provided to the airstrip applicants. When the Board⁷ asked if the mountain interferes with the two-mile turning radius requirement, the eventual response from the Deputy County Attorney is, "I don't know." (T.4-5)

The Board asked if Cedar Valley Airport were municipal or

⁷ Unless otherwise designated, individual Board members are also collectively designated as the "Board."

private. The Planner responded that "It is a private airport, but it is used much more broadly. This one would be very private. That one is a commercial airport and they run that for profit." (T.7) No description of this commercial airport's activity is provided by the Planner.

Next there was a discussion about Federal Aviation Administration ("FAA") regulation. The airstrip applicant's response is discussed in Section II. below. (T.7-8)

The Board went on to discuss possible interference with commercial flights into Salt Lake City and a proposed pipeline. (T.8-10) It is then disclosed to the Board that the airstrip applicants are not the owners of the property in Cedar Valley, but have a conditional purchase agreement based on the applicants' "ability to get to get county approval for an airstrip." (T.11)

The applicant discussed the traffic pattern diagram attached to the application. He proffered reasons why only one side of an airstrip might be used, e.g, congested areas, housing, or noise abatement programs, in rationalizing the applicants' utilization of only one side of their landing strip since the other side has a mountain on it. (T.12) He also comments that "a long approach into the airstrip or actually using or needing a full two mile radius circle doesn't really fit to what would be the use or application of flying in and out of this airstrip." (T.12) The Board commented that it's "interesting that they use the terminology radius instead of diameter in the knowledge that they're dealing with some cases where there's only a half-side use

of an airfield. (T.15)

The Board asked about applicants' response to the application question of how granting this appeal will promote the public health, safety and welfare. The applicant responded:

It's kind of words that I pulled out of the AOK, that the Aircraft Owners Pilots Association. They try to look at the community value of any kind of development like this and how it might contribute to disasters. Frankly, I didn't have a very long list of how good this was for the public, but I do know that if there was something that occurred in the general area of Orem, Provo or American Fork, whatever in that valley, we have an area aside from that to shuttle people in and out, it would probably be in helicopters, but shuttle people in and out and set up a first-aid station. Any area that is open and somewhat improved, rather than county road where there would be other traffic, is a good place for firemen, paramedics, and others that they might select. There might be an open field, too, but an improved area is a first choice. Probably Cedar Valley Airport would be a real major choice, but having a second choice within three miles or whatever it is there,⁸ would be really an advantage if we ever did have the kind of disaster where we had to bring people out of the congested area into a rural area. (T.14) [Emphasis added.]⁹

The applicant admitted that he "talked with people at the

⁸ A clarification of different distances used in the record relative to the existing airport and the proposed airstrip follows: The distance from the general "airport to airport" is less than 5 nautical miles (R.10); the distance from the center point of the existing airstrip to the center point of the proposed airstrip is approximately 3 miles, as is the driving distance by roadway from one location to the other (T.21); however, the distance from the south end of the existing airstrip to the northern-most end of the proposed airstrip is approximately one mile. (R.10; and Appellants' Docketing Statement R. 252)

⁹ The owner of the existing airport at Cedar Valley is a Sergeant at the Utah County Sheriff's Office, Emergency Management Division. He believes applicant's response to "how good this [proposed airstrip] is for the public" is nonsense. The existing airport owner's professional training and experience in preparing for disasters (including flood, earthquake, nerve gas leaks, and nuclear attack) do not lead him to believe there will ever be a time when people will need to be shuttled to and from the base of Lake Mountain by helicopter.

little airport nearby, Cedar Valley Airport, and got an idea of winds and conditions and such there." (T.16) Thus, proposed airstrip applicants had actual knowledge of the "little" Cedar Valley Airport, its size, location, hangars, number of planes, airstrip, and some idea of its use and activity. Yet they somehow managed to avoid including any of this information in their application and attachments.¹⁰

The Board asked about fencing the property to keep deer off the airstrip and about possible noise problems from applicants' takeoffs and landings. (T.16)

The Board inquired,

My real concern is that what's going to coordinate between the airstrip that's there, the small engine guide-flightler [sic] type things, the people that hang glide in that area, and the people that come in from parachutes in there. That was my concern, if that's going to be coordinated at all. Is that mainly a visual rather than coordinating over a radio or that type of thing. (T.19) [Emphasis added.]

Applicant responded:

You can do that over radio, but it is an area that, on the jump situation, that is out and to the west of the Cedar Valley Airport and it's designated on charts and they're complying to their operations to that area. That doesn't mean that access can't occur, but it does mean that it's been a very workable system up-to-date and there are airplanes that travel to and from Salt Lake that cut across that area and that's just a designated thing. (T.19)

Applicant provided no source to his knowledge of Cedar Valley Airport's compliance of operations, or the workable system.

Cedar Valley's mainly recreational flying activities

¹⁰ Applicants did not disclose to the Cedar Valley Airport owner or manager their intention to build an airstrip nearby.

include sailplanes, hang gliders, parachuting, hot air balloonists, and ultra light aircraft. (R.9) They are not confined "out to the west" of the existing airport, nor do they have radio equipment with which they can communicate with aircraft in the area.

Applicant explained his desire for his own airstrip as a "little dream thing" and a "quality situation to be able to control his own environment, and part of that is having his own plane there to work on and to control cost for one thing, but it's a convenience that you can't imagine." (T.21)

When a Board member queried what the Board were to do if everybody wanted their own landing strip, the Planner replied,

I don't recall another private airstrip that's been approved since I've worked here.¹¹ I can't remember driving across any in my travels in the county. Relative to the special privilege, that's one reason why the name of this type of approval is special exception. You really are granting someone a special privilege.....(Side 2) [sic] So long as it meets the requirements of safety and not interfering with the rights of others. If we were to find that this would inhibit other people's use of their land, I believe that what the general rules in Section 7-21 say is you shouldn't grant it. But so long as it can be granted and not harm other's rights, then it is a special privilege that you're entitled to grant. (T.23) [Emphasis added.]

The Planner continued:

[I]t can't devalue the other property values. It has to meet the characteristics of the zone of the surrounding area. You really can't be stepping on other people's rights when you grant one of these. That's part of the reasons why they don't let me do it. But they require the Board of Adjustment to do it. It's possible to hurt someone else's use of their property, if this is not studied correctly and granted properly. (T.23) [Emphasis added.]

¹¹ The Planner has been employed by Utah County for 13 years, but it is unknown if he has worked in planning and zoning this entire time.

When questioned about the county's responsibility in approving an airstrip there, the Deputy Attorney opined:

I assume you're referring to the liability, if there was an accident or problem. I think that as long as you follow the zoning requirements and review the guidelines and make a finding that is not erroneous, as relation to these conditions, that the county would not have a liability there. (T.20-21) [Emphasis added.]

He also commented:

I think this is a little bit unique in the regards that an airstrip is something that, well I guess the fact that this is the only one we will have, if we have this one. (T.40-41) [Emphasis added.]

The Board questioned the applicants about notification of homeowners over which the applicants might fly and might distract due to airplane noise. The Planner answered that notice to those homeowners consisted only of the general notice in the paper. (T.25) When pressed further by the Board who, if anyone, he contacted, the applicant admitted he contacted only one nearby resident in person regarding the proposed airstrip. (T.26)

A statement contrary to the "low intensity use" of the area in the Planner's report came from the applicant when he described the activity at Cedar Valley Airport "when they're doing their parachute thing on weekends they're just constantly up and down." ¹² (T.27)

There was a discussion of the limitation of the proposed airstrip to personal use, not commercial use. The Planner told the Board that he collects a business license fee from Cedar Valley

¹² The Cedar Valley Airport is open year-round with a full time manager living on site nine months of the year. Parachuting activity, as well as other flying activities, are not limited to weekend.

Airport. (T.32)

Finally, the Board¹³ pointed out that the approval of an airstrip is a question that goes to "whether it promotes the public health, safety and welfare" pursuant to Utah County Ordinance 7-21. (T.32) He continued:

"I'm sympathetic with their reason and why they want to do it and how that would benefit them personally, but I'm not sure it's in the public interest. Under 7-21, there are six findings that this Board has to make in order to grant a special exception We have to make those findings as to each one. I think that there is non-sufficient evidence to support that it promotes the public health, safety and welfare, which is a first condition. ... This is more a gentleman's ranch and retirement area or a cabin site or however he wants to characterize it. I think the landing strip does not foster agriculture, mining or industry within that area, so we can't find in number two. Three is public interest. ... My primary concern is that it doesn't promote the public health, safety, and welfare and it is not necessary nor does it promote the intent of the M&G-1 Zone. (T.32-33) [Emphasis added.]

The Planner commented:

I don't think it has to meet all of those sections. I think it has to meet some or one of them, ... but I felt it did meet the intent of the mining and grazing zone because its the outlying area. (T.33-34) [Emphasis added.]

Another Board member:

I'm going to agree ... on the fact that I don't think the reasons given promote the general welfare in any way, shape or form. ... I'm having trouble seeing how any private airstrip ... could promote the general welfare. ... So, do we have to meet that requirement? You've kind of alluded, Buck, that we don't have to meet all of them. (T.34) [Emphasis added.]

Planner:

¹³ This Board member is a practicing attorney who cast the only non-approving vote. (T.47)

You have to meet that requirement number one. (T.34)

Board:

The promoting the general welfare? ... Anything this would promote, we'd already have one there. Either if you're going to use it as an emergency way-station, you already have one. (T.35)

The Planner gave the example that a design of an airstrip along the base of the mountain rather than running at right angles to the mountain range is favorable to the health, safety and welfare. (T.35)

Board:

I don't think that's what the word promote means. ... [P]romote is something that happens and it does to help. (T.35) [Emphasis added.]

The Deputy Attorney provided the following direction:

As you look at each of these conditions, ... if anyone else meets those under due process of the law and pursuant to your oath of office and whatever else, you would have an obligation to allow that. ... [Y]ou are the judge and the finder of fact in this case. You have a right to weigh these conditions and make your findings. I have always been troubled with number one - it shall promote the public health, safety and welfare. I don't think that most of what you do promotes the public health, safety and welfare, as it has not been interpreted. I think the way this has been applied and the way I think it should be implied, and this is just a personal opinion, would be it does not diminish from the public health. ... Basically if you have to find a public finding on this, you're putting a burden on people that would eliminate 90 percent of what you do, I believe. You're free to make your own interpretation on it, I'm not telling you you can't do that. (T.36-37) [Emphasis added.]

After a discussion on public interest, the Board asked:

Can we rule that we interpret their intent to be different than their technical wording? Can we rule that we think they intend to use the words, not diminish the public interest? (T.37) [Emphasis added.]

Deputy Attorney replied:

I think you have a right to use common sense. I think if your interpretation of this, based on your past performance, I wouldn't be troubled if you said, "I am not convinced that this promotes the public health, safety and welfare, but I'll vote for it." I wouldn't legally say that I have a problem with what you're doing. (T. 38) [Emphasis added.]

Approval of the proposed airstrip passed by a vote of four to one. (T.47)

On March 8, 1991, an Action by the Board of Adjustment was filed in the Office of the Utah County Attorney Board of Adjustment on March 8, 1991, relative to the action taken by the Board's approval of the airstrip application. (R.127 and reverse side) It outlines the Rules for Hearings and Deciding Appeals for Special Exceptions and that "the Board shall comply with all of the following rules and standards:

- A. The appellant shall have submitted a properly completed application for hearing.
* * *
- C. The following standards shall be met as a prerequisite to approving any special exception:
 - 1. It shall promote the public health, safety and welfare.
 - 2. It shall conform to the "characteristics and purposes stated for the zoning district involved and the adopted county master plan.
 - 3. It shall be compatible with the public interest and with the characteristics of the surrounding area.
 - 4. It shall not adversely affect local property values.
 - 5. Any standards ... which apply to a specific special exception shall be met: 3-34.
* * *

This approval is based on the following findings.

- a. The appeal application was complete.
* * *
- c. The landing strip is in accord with the intent of

the M&G-1 Zone ... and the master plan, which designate the outlying areas of the M&G-1 Zone as suitable for noisy or other uses which conflict with dense residential development.

- d. The landing strip is compatible with the low-intensity use of the surrounding area, which does not have other buildings but is used for grazing.
- e. There appears to be no impact, either negative or positive, to the surrounding property values, due to the nature of the land use (grazing).
- f. The submitted landing strip design will be in accord with all setback, supplementary, or other regulations of the zoning ordinance.
- * * *
- h. The landing strip doesn't diminish the public health, safety and welfare.

[Emphasis added.]

On April 3, 1991, after the existing airport owner discovered that the Board had approved this airstrip so close to his airport, he petitioned the Fourth District Court for judicial intervention. (R.1-14). Among other issues, he protested that the Board failed to meet three specific prerequisites for granting a special exception in its approval of the proposed airstrip, that the Board violated its own standards and rules relating to the approval of airports, and that the Board's action will diminish his land value, including the interference with a then-pending negotiation of the sale of his airport. Most importantly, however, he cited the heavy use and activity at the Cedar Valley Airport and the threat and danger posed to the users of his airport and the increased hazard to public safety due to the possibility of mid-air collisions.

Attached to the Complaint was information from the Wasatch Front Regional Council relative to the estimated total aircraft activity counts for the ten busiest airports in the State

of Utah. Cedar Valley Airport activity totals for 1987, 1988 and 1989 were 13,858, 29,078, and 15,155, respectively, with rankings of 5th, 5th, and 7th busiest airport in the State, for those respective years. (R.1-3)

On April 23, 1991, the same Planner who presented airstrip applicants' proposal to the Board, sent to the owner of the existing Cedar Valley Airport a "Notice to Comply." This notice cited the lack of a current business license for Cedar Valley Airport. In order to obtain a business license, Planner required the owner "get the necessary prior approvals of the Utah County Board of Adjustment, Health Department, Fire Marshall, Building Inspector and the Zoning Administrator. (R.172)

On or about May 15, 1991, the owner of the existing Cedar Valley Airport submitted an Application for a Special Exception to the Planner. (R.156-158)

A hearing was set for June 4, 1991, and a Report from the Zoning Administration's Staff to the Utah County Board of Adjustment for Appeal No. 1036 was prepared. (R.159-162)

On June 4, 1991, the Board granted the owner of Cedar Valley Airport a special exception. However, the Board limited the scope of the approval by its findings of:

2. The airfield be limited in use to include no more than twin-piston engine planes.
* * *
4. That the operation of Mr. Patterson's airport not interfere with the turning patterns or landing patterns of the previously approved Smith airport.
(R.153) [Emphasis added.]

SUMMARY OF ARGUMENTS

The Utah Court of Appeals should affirm the decision of the Fourth District Court's reversal of the Board's approval of airstrip applicants' request to allow an airstrip approximately one mile from an existing airport. The Board's approval of the proposed airstrip is arbitrary, capricious and illegal and the Board's approval is unsupported by substantial evidence in the record for the following reasons:

1. Approval of the proposed airport/landing strip presents an inherently unsafe condition which violates the intent of Utah County Zoning Ordinance 3-34:

It is the intent of this section to avoid or lessen hazards resulting from the operation of aircraft, to avoid creation of new hazards, and to protect the lives of people who use aircraft facilities. [Emphasis added.]

2. Approval of the proposed airstrip violates the two-mile turning radius requirement of Utah County Zoning Ordinance Sec. 3-34. This requirement requires a two-mile turning radius from the each of a landing strip. With two airstrips in close proximity, each landing strip requires a two-mile turning radius. Thus, to comply with the ordinance, the proposed airstrip should not have been allowed to be located less than four miles from the existing landing strip. Approval of the proposed airstrip also violates the approach and transition zone requirements of 3-34 because they overlap and converge with the approach and turning approach zones of the existing Cedar Valley Airport.

3. The Board failed to meet three of six specific standards as prerequisites to approving any special exception (such

as construction of an airport) pursuant to Utah County Ordinance 7-21, relative to the promotion of the public health, safety and welfare, compatibility with the public interest and with the characteristics of the surrounding area, and adverse effect on local property values. The Board arbitrarily interpreted the word "promote" to connote "does not diminish" public safety, health or welfare.

4. The Board's decision was based upon incomplete and inaccurate information submitted by the airstrip applicants. Only unsubstantiated and general information regarding the use or activity of the Cedar Valley Airport was presented to the Board. Although the airstrip applicants contacted a nearby homeowner about the proposed airstrip, they did not contact the owner of the nearby airport relative to their airstrip proposal. The existing airport owner had no knowledge of the hearing.

5. The Board admits in the hearing transcript that it had never before approved an airstrip. None of the Board members professed any knowledge of flying or airport safety.

Although there may be substantial information in the record, the Board's decision is not supported by substantial evidence of specific information in the record relative to the activities and dangers of the two airstrips operating in close proximity.

ARGUMENT

I. BY APPROVING AN AIRSTRIP APPROXIMATELY ONE MILE FROM AN EXISTING AIRPORT, THE BOARD OF ADJUSTMENT INTENTIONALLY AND ARBITRARILY VIOLATED SEVERAL OF THE COUNTY'S ZONING RULES AND STANDARDS PROMULGATED TO PROMOTE PUBLIC SAFETY.

A. The Board Violated County Requirements Regulating the Intent and Use Restrictions for Airports and Airport Safety.

The Board was referred to Utah County Ordinance 3-34 regarding approval of airports. The intent of this specific section for airports follows:

It is the intent of this section to avoid or lessen hazards resulting from the operation of aircraft, to avoid creation of new hazards, and to protect the lives of people who use aircraft facilities. (R.64) [Emphasis added.]

By approving an airstrip approximately one mile from an existing airport, without consideration of any supporting facts or information as to the use and activity of the existing airport: the Board has increased the hazards resulting from the operation of aircraft; it has created new hazards; and its action does not protect, but jeopardizes, the lives of people who use aircraft facilities in Cedar Valley, Utah. This Court should rule that the record does not substantially support a finding that the Board complied with the intent of Section 3-34.

Section 3-34 defines the following terms:

1. Airport Approach Zone

An area at each end of an airport landing strip or take-off strip, broadening from a width of one thousand (1,000) feet at the end of the strip to a width of four thousand (4,000) feet at the distance of seven thousand five hundred (7,500) feet from the end of such strip, its centerline being a continuation of the centerline of the

strip;

2. Airport Transition Zone

A triangular area adjacent to each side of an airport approach zone located with reference thereto as follows: One corner of said transition zone shall be identical with the corner of the approach zone nearest to the landing strip; a second corner shall be located at the end of a line, said line extending from the end of the landing strip to a point one thousand five hundred fifty (1,550) feet from the cornerline of said landing strip and at right angles thereto; a third corner shall be located at a point along said approach zone boundary line, which point is seven thousand five hundred (7,500) feet distance from the first corner above-mentioned;

3. Airport Turning Zone

A circular area surrounding an airport encompassing all of the land lying within a radius of two (2) miles distance from the landing strip of a airport, except that area covered by the airport, the transition zones, and the approach zone.

The applicants presented a diagram of the two-mile turning radius and turning and approach zones with their application. (R.105) The Planner's report discussed the approach zones required and possible interference by land obstructions. (R.123-124) The Board questioned whether the location at the base of Lake Mountain interferes inappropriately with the two-mile radius requirement and the answer was "I don't know." (T.4-5) The applicant indicated he didn't need a two-mile radius and he offered justification why pilots might use only one side of an airstrip. (T.12)

However, the applicants' diagram of the proposed airstrip does not show that the entire, existing Cedar Valley airstrip falls within this two-mile radius. Nor does it show that the proposed

airstrip's northern approach zone and transition zone intersect with the Cedar Valley airstrip, or that the proposed airstrip's northern approach and transition zones converge with the southern approach and transition zones of the Cedar Valley airstrip. (R.66) The record does not include any evidence that the Board took into consideration the hazards posed by intersecting or overlapping transition zones, approach zones, or the two-mile turning radius. (R.66)

The airport "Use Restrictions" of Section 3-34 follow:

Notwithstanding any other provision of this ordinance, no uses may be made of land within Utah County which will: create electrical interference with radio communication between airports and aircraft; make it difficult for flyers to distinguish between airport lights and others; result in glare in the eyes of flyers using the airport; impair visibility in the vicinity of an airport; or endanger the landing or taking off of aircraft. [Emphasis added.]

The Planner's introduction, support and conclusion of "evidence" to the Board regarding the "safety" or lack of hazard or danger caused by the airplanes using the Cedar Valley Airport in close proximity to the proposed airstrip are apparently contained in his statement to the Board:

I found that the other airport was far enough away, there is an airport in Cedar Valley, so I do not see a conflict between the two. (T.3) [Emphasis added.]

The Planner's report does not even cite to Cedar Valley Airport or its flight activity. The Planner only indicates that "[t]he landing strip is in accord with the low-intensity use of the surrounding area, which does not have other buildings but is used for livestock grazing." (R.123) [Emphasis added.] A

contradictory statement from the applicant which does not appear to be taken into consideration by the Board relative to its consideration of any safety issue is his description of activity at Cedar Valley Airport "when they're doing their parachute thing on weekends they're just constantly up and down."¹⁴ (T.27) [Emphasis added.] The Planner's report cites to "extensive use" anticipated by the airstrip applicants, but does not relate it to the extensive use of the Cedar Valley Airport. (R.124)

- B. The Board Arbitrarily Redefined the Word "Promote" [Public Safety] by Ratifying Its Interpretation to Connote "Not to Diminish."

Utah County Ordinance Section 7-21 sets out the "Rules for Hearings and Deciding Appeals for Special Exceptions."

When the Board of Adjustment acts under its power to hear and decide requests for special exceptions [which include airports], the Board shall comply with all of the following rules and standards:

- A. The appellant shall have submitted a properly completed application for hearing.
* * *
- C. The following standards shall be met as a prerequisite to approving any special exception:
1. It shall promote the public health, safety and welfare.
 2. It shall conform to the "characteristics and purposes stated for the zoning district involved and the adopted county master plan.
 3. It shall be compatible with the public interest and with the characteristics of the surrounding area.
 4. It shall not adversely affect local property values.
 5. Any standards ... which apply to a specific special exception shall be met: 3-34.
- * * *

¹⁴ The Cedar Valley Airport is open year-round with a full time manager living on site nine months of the year. Parachuting activity, as well as other flying activities, are not limited to weekends.

[Emphasis added.]

There was quite a discussion on whether or not the Board had to find that approval of the proposed airstrip must promote the public health, safety and welfare. (T.32-38) The language of the ordinance is clear and unambiguous, "The Board shall comply with all the following rules and standards. The following standards shall be met as a prerequisite to approving any special exception," the first of which is that it "shall promote the public health, safety and welfare."

The airstrip applicants responded to the question regarding this prerequisite in their application with, "Provides for emergency landing for aircraft in distress and staging for disaster operations." (R.112) When questioned by the Board at the hearing as to the meaning of the response, applicant presented a rather far-fetched disaster-assistance rationale after he admitted, "Frankly, I didn't have a very long list of how good this was for the public." (T.14) With the assistance of counsel, the Board finally decided they could interpret the word "promote" to mean "does not diminish" public health, safety or welfare. (T.36-38)

Promote means to contribute to growth, enlargement, or prosperity of; to forward; to further; to encourage to advance. Black's Law Dictionary 1093 (5th ed. 1979) The Board didn't think it could comply with the language of the ordinance as it stood, so it changed the meaning of it.

Although one Board member didn't agree that the proposed airstrip conformed with the mining and agriculture use, the Board

determined that this standard had been met. (T.32-33)

The Board found that the proposed airstrip was compatible with the public interest and with the characteristics of the surrounding area. However, it looked only to the surrounding land use of farming and grazing, rather than the land and air use of the nearby existing airport. The record does not substantially support that the Board considered all relevant factors in making this "compatibility" determination.

Finally, the Planner mentioned a business relationship the existing airport had with Camp Williams and the possible future of that relationship. (T.3) However, there is no evidence in the record that the Board considered any effect the proposed airstrip might have on the property values of the Cedar Valley Airport.

The Board incorrectly took upon itself to redefine the work promote. Statutory construction is a judicial function required when a statute is invoked and different interpretations are in contention. Statutory construction on which the Board's experience and expertise will be of no assistance should be reviewed as a question of law with no deference to the Board. Zissi v. State Tax Comm'r, 842 P.2d 848 (Utah 1992).

- C. No Deference Should Be Given by the Reviewing Court to the Board's Decision Because the Board Lacks Any Knowledge or Previous Experience in Approving an Airstrip.

A correction of error standard could be applied to the Board's approval of the proposed airstrip because the Board had never before approved an airstrip or professed to any flying or airport experience.

As the Utah Court of Appeals noted, in Taylor v. Utah State Training School, 775 P.2d 432, 433 (Utah Ct. App. 1989):

The more likely it is that agency expertise will assist in resolving an issue, the more deference courts should give to the agency's resolution. The less pertinent agency insight is - or the more likely it is that judicial expertise will be most helpful - the less deference need be paid by reviewing courts to the agency's disposition.

Taylor, 775 P.2d at 434 ("no substantial expertise in the area of personnel management, nor had the Board considered the matter before." Id.).

The Board had no "expertise, gleaned from its first-hand experience with the subject matter." Bennett v. Industrial Comm'n, 726 P.2d 427, 429 (Utah 1986). The Board was not in a "superior position by virtue of its expertise" to reach the finding it did, in clear contravention of its own ordinances. Big K Corp. v. Public Serv. Comm'n, 689 P.2d 1349 (Utah 1984). The Court should take into account the Board's lack of "expertise developed from its practical, firsthand, experience with the subject matter." Chris & Dicks v. Tax Comm'n, 791 P.2 511 (Utah 1990).

Even with an intermediate standard of review applied to a mixed question of law and fact, the Court can review the Board's "interpretation with only moderate deference." Allen v. Depart. of Employment Security, 781 P.2d 888, 890 (Utah App. 1989), citing Hurley v. Board of Review, 767 P.2d 524, 527 (Utah 1988). Davis Co. v. Clearfield City, 756 P.2d 707, 710 & n. 8 (Utah Ct. App. 1988) (city's reasons for denying conditional use permit were without factual basis in record and therefore city acted

arbitrarily and capriciously in denying conditional use permit).
Xanthos v. Board of Adjustment, 685 P.2d 1032 (Utah 1984).

Vali Convalescent and Care Institutions v. Division of Health Care Financing, 797 P.2 438 (Utah App. 1990). Whether the Board violated its own standards and rules is a questions of law. The court need not accord any particular deference to the decisions below but review them for legal correctness. Id. at 444, citing Hurley v. Board of Review, 767 P.2d 524, 526-27 (Utah 1988) and Scharf v. BMG Corp., 700 P.2d 1068, 1070 (Utah 1985) (trial court decision).

The approval of an airstrip is a matter involving an hazardous activity, a matter of grave public safety. The Board's finding was not supported by "substantial evidence" because the Board was presented with only limited, unspecific, incorrect and self-serving information from the airstrip applicants. No information regarding the airstrip's true distance from the existing airport was presented to the Board. Misinformation as to the actual activity of the existing airport (between 13,000 and 28,000 take-offs and landings annually, one of the top ten busiest airports in the State of Utah) was presented to the Board. Generally, safety issues were considered independently of each airstrip. No input from the owner of the airport which has been in existence for fifty years was requested or received by the Board. Grace Drilling Co. v. Board of Review, 776 P.2d 63 (Utah Ct. App. 1989).

The agency also changed the meaning of Ordinance 7-21 by

determining that the verb "promote" when used with public health, safety and welfare could be interpreted to mean "does not diminish." The Board's determination of general law, is to be reviewed giving no deference to the agency's decision, but reviewed for correctness. Utah Dept. of Admin. Serv. v. Public Serv. Comm'n, 658 P.2d 601 (Utah 1983).

The Board violated not one or two, but perhaps three or four of its standards, rules and prerequisites.

II.

THE FEDERAL AVIATION ADMINISTRATION DID NOT "VALIDATE" THE BOARD'S DECISION BECAUSE IT DOES NOT WAIVE THE REQUIREMENTS OF ANY OTHER GOVERNMENTAL AGENCY AND BECAUSE IT REQUIRES ONLY NOTIFICATION OF A PRIVATE LANDING AREA.

Airstrip applicants present an impressive Federal pre-emption argument in their brief to this court. However, when asked by the Board at the hearing if there were any requirement or necessity of approaching the FAA or Air Authority to receive approval for the proposed airstrip, the applicant sang a different tune:

No, the FAA designates that we can make application, we are not required to, and they're not required to respond in a positive or negative manner. What they do though, is they put it on their file so that it goes on the charts as restricted, because it's private, ... as a restricted airstrip. But it's in their records so that all airstrips are accounted for But it's not a requirement and they're not empowered to make a regulation. ... [B]ut they are not entitled to make a regulation as to what we would do, which would supersede a county or state authority. (T.7-9) [Emphasis added.]

So which is it? Applicant's hearing testimony is correct. 49 App. Sec. 1350 states:

In order to assure conformity to plans and policies for, and allocations of, airspace by the Secretary of Transportation under section 1348 of this title, no airport or landing area not involving expenditure of Federal funds shall be established, or constructed or any runway layout substantially altered unless reasonable prior notice thereof is given the Secretary of Transportation [Emphasis added.]

Because no federal funds are expended for the proposed airstrip, applicants only need to give notice to the FAA. The notice which airstrip applicant is required to complete, the "Notice of Landing Area Proposal" clearly states, "Notification to the FAA does not waive the requirements of any other governmental agency."

Airstrip applicants' pre-emption discussion might mislead the court. Only to the extent that state law conflicts with Federal law is state law pre-empted under Congress' power to regulate interstate commerce. Feldman v. Philadelphia Nat. Bank, 408 F. Supp. 24 (D.C. Pa. 1976). Federal law did not pre-empt county zoning ordinance insofar as it regulated private airfield; ordinance did not regulate noise emissions or actual conduct of flight operation within navigable air space, but rather regulated intensity of use, type of aircraft that could use airfield, clear zone at runway ends, locale of operation, and type of aircraft operations. Faux-Burhans v. County Com'rs of Frederick County, 674 F. Supp. 1172 (D.Md. 1987), aff'd 859 F.2d 149, cert. denied 488 U.S. 1042, 109 S.Ct. 869., 102 L.Ed.2d 992. Applicants cite no Federal law which conflicts with the Utah County Ordinance 3-34.

Applicants present a letter from the Denver Regional

Office of the FAA to "validate" the Board's decision. The letter, simply put, is only a form-type letter issued in response to the applicants' notification procedure. The "analysis" was performed in Seattle, Washington with no contact with the local FAA office, the Utah Airport Authority, or the Wasatch Front Regional Council. This letter was not presented to the Board at the hearing and was not relied upon by the Board in its consideration of the proposed airstrip. The Planner received a copy of this letter on May 10, 1991. (R. 129) A current analysis of the Cedar Valley Airport was conducted by the Wasatch Front Regional Council. A copy of this analysis is included in the Addendum.

III.

THE NON-CONFORMING USE DESIGNATION OF THE AIRPORT WHICH HAS BEEN IN EXISTENCE OVER FIFTY YEARS ATTACHES TO THE LAND AND DOES NOT TERMINATE FOR LACK OF A BUSINESS LICENSE.

On April 3, 1991, the existing airport owner filed suit against the Board for its approval of the proposed airstrip.¹⁵ On April 23, 1991, the same Planner who presented airstrip applicants' proposal to the Board, sent to the owner of the existing Cedar Valley Airport a "Notice to Comply." This notice cited the lack of a current business license for Cedar Valley Airport. In order to obtain a business license, however, Planner

¹⁵ With the suit against the county to set aside the Board's action, the Board might be faced with litigation by the proposed airstrip applicants because they conditioned the purchase of the Cedar Valley land on the Board's approval of the airstrip.

required the owner to "get the necessary prior approvals of the Utah County Board of Adjustment, Health Department, Fire Marshall, Building Inspector and the Zoning Administrator. (R.172) [Emphasis added.] In order to get approval from the Board of Adjustment, the Planner made the airport owner apply for an airport special exception.

The Cedar Valley Airport has been in existence prior to World War II and prior to the Utah County Zoning Ordinance. Because the airport property has been in continuous use and operation as an airport prior to the adoption of the Ordinance, it holds a non-conforming use designation as an airport pursuant to Utah County Ordinance Section 1-6, Nonconforming Building and Uses:

B. Continuation

Except as provided below, a nonconforming building or use of land may be continued to the same extent and character as that which was legally existing and permitted on the effective date of the ordinance provision(s) causing nonconformity if:

1. No increase or expansion is made; and
2. The lot on which the building or use lies is unchanged.

The Board and the Planner had prior knowledge of the existence of the Cedar Valley Airport. They acknowledged the location and use of the owner's property as an airport at the hearing for the proposed airstrip. The owner did not increase or expand the use of the land, nor did he change the lot. Thus, there was no valid reason for the existing airport owner to apply for a special exception to be able to continue using his property as an airport. He believes it to be harassment. He but had no choice

but to comply with the demands of the Planner to get a special exception in order to get a business license. The special exception was granted on June 4, 1991, with the following findings:

2. That the airfield be limited in use to include no more than twin-piston engine planes.

* * *

4. That the operation of Mr. Patterson's airport not interfere with the turning patterns or landing patterns of the previously approved Smith airport. (R.153) [Emphasis added.]

There was a discussion at the hearing for the proposed airstrip as to whether the applicants would be using the proposed airstrip for commercial use. The Planner indicated that he collected a business license fee from the owner of Cedar Valley Airport. There was no other discussion that a business license was a condition of a special exception or vice versa. There was a discussion, however, as to the liability of the county if the Board improperly approved a special exception:

I think that as long as you follow the zoning requirements and review the guidelines and make a finding that is not erroneous, as relation to these conditions, that the county would not have a liability there. (T.20-21) [Emphasis added.]

The Planner and the proposed airstrip applicants had a "basis" for clearing up the conflict caused by the Board's approval of the proposed airstrip. The proposed airstrip applicants now had a "first in time" argument which they present in their appellate brief. The owner might have some type of civil liability for not having a current business license, but that fact does not terminate the nonconforming use status of his airport property or grant the

airstrip applicants some type of prior claim on the legitimate use of the airport Cedar Valley Airport property. Also, if the existing owner no conducted any commercial flight activity for which he might need a license, but was operating a private, personal airport, the Planner would have no grounds on which to demand a special exception.


The Board's position is especially weak in light of the Board's explanation of the reasons it might want to grant the applicants' special exception with conditions:

As we grant this special exception, this special exception is granted not only to you, it's granted to the property from this point on. Therefore, we have to protect, in essence, the community from future owners who may purchase the property from you and use the strip. Whereas, you might tell us this is you intent, we take that in good faith, we also have an obligation to look at what may happen to that airstrip thirty or forty years from now, and by attaching the condition to it, we attach the condition not to you but to the property and that takes care of that problem. (T.29)

CONCLUSION

Plaintiff-Appellee Larry Patterson respectfully requests this Court to affirm the decision of the District Court and to set aside the action of the Utah County Board of Adjustment in granting a special exception to the airstrip applicants.

DATED this 25th day of May, 1994.



GEORGE E. BROWN, JR.
Attorney for Plaintiff-Appellee
Larry Patterson

CERTIFICATE OF MAILING

I hereby certify that I mailed postage prepaid, this 25th day of May, 1994, two (2) copies of the foregoing Brief of Appellee Larry Patterson to:

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Provo, UT, 84603-0200



APR 22 10 08 AM '93

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

LARRY PATTERSON,

Plaintiff,

CASE NUMBER: 910400188

vs.

UTAH COUNTY BOARD OF
ADJUSTMENT, et al.,

MEMORANDUM DECISION

Defendants.

This case comes before the Court on appeal from a decision of the Utah County Board of Adjustment pursuant to § 17-27-708 U.C.A.. Because a transcript of the proceedings before the Board of Adjustment exists and has been provided to the Court, the Court's review is limited to the record and a hearing in this matter is unnecessary. § 17-27-708(5)(a) U.C.A. After full consideration of the record, including the aforementioned transcript and plaintiff's Memorandum in Support of Motion for Summary Judgement, the Court hereby reverses the decision of the Board of Adjustment. The Court finds that the Board acted in an arbitrary, capricious and illegal manner in granting defendants Smith and Buttars' application for a special exception to the zoning ordinances of Utah County.

First, the Court notes that while plaintiff appears to have standing to bring this action in that he is an individual "aggrieved" by the Board's decision, he did not attend the hearing

of this matter before the Board. As a result, his factual allegations and protests are not part of the record for purposes of the present plenary review. Further, while plaintiff complains that he was given no personal notice of the hearing, he does not contend that the board failed to give public notice as is statutorily required. Therefore, the Court cannot find that plaintiff's due process right to notification has been violated, and the Court must therefore limit its review to those facts contained in the record.

Nevertheless, the evidence contained in the record is sufficient to establish that the Board acted arbitrarily, capriciously and illegally in approving the private airport at issue. It is clear from the transcript of the Board's proceedings that the proposed air strip would be located on the east side of Cedar Valley, "against" the west slope of Lake Mountain (Transcript at 1), making aircraft approach from the East impossible. It is also clear from the record that the proposed airstrip would be within two miles of the existing Cedar Valley Airport. (Transcript at 21). The placement of the airstrip at the proposed location would not allow for an adequate turning radius (two miles) as defined under section 3-34 of the Utah County Zoning Ordinance. Given the close proximity of the mountain and the possibility of overlapping and converging flight patterns with aircraft utilizing the nearby Cedar Valley Airport, the Court must find that the Board violated section 3-34, and that it acted arbitrarily in finding that the proposed airstrip would promote public health, safety, and welfare. The Court finds that the location of the proposed airstrip presents an inherently unsafe situation in contravention of the intent of the Zoning Ordinance:

It is the intent of this section to avoid or lessen hazards resulting from the operation of aircraft, to avoid creation of new hazards, and to protect the lives of people who use aircraft facilities.

Utah County Zoning Ordinance § 3-34.

In making the present ruling, the Court denies defendants Smith and Buttars' Motion to Dismiss. Because this case impacts on public safety, rather than the mere interests of the parties, the Court cannot approve or accept the parties' alleged stipulation purporting to resolve this case by way of compromise. The Court will simply not allow the safety of the public to be compromised in the way that the parties have suggested.

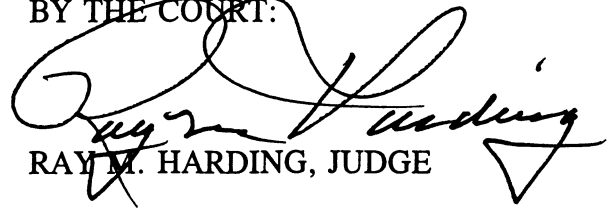
The Court also denies Utah County's motion to dismiss, finding it to be without merit. The Court finds that the reasons set forth in plaintiff's Response in Opposition to Motion to Dismiss constitute "good cause" for failure to file a certificate of readiness within 180 days as required under Rule 4-103(2) of the Rules of Judicial Administration. Furthermore, it is evident from plaintiff's pleadings that the present action is in the form of an appeal seeking plenary review of a decision of the Utah County Board of Adjustment pursuant to § 7-24 of the zoning ordinance. Accordingly, as defendant should be well aware, the undertaking and notice requirements cited by defendant are inapplicable, and the plaintiff's action is in no way barred by principles of governmental immunity.

Finally, the Court finds that plaintiff's Motion for Summary Judgement is moot and inappropriate in that the Court's plenary review pursuant to § 17-27-708 U.C.A. has required full consideration of the evidence presented to the Board.

Counsel for plaintiff is to prepare an order within 15 days of this decision consistent with the terms of this memorandum and submit it to opposing counsel for approval as to form prior to submission to the Court for signature. This memorandum decision has no effect until such order is signed by the Court.

Dated this 20th day of April, 1993.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Ray M. Harding". The signature is fluid and cursive, with a large initial "R" and "H".

RAY M. HARDING, JUDGE

cc: George E. Brown, Jr., Esq.
Mark Brady, Esq.
Gary H. Weight, Esq.

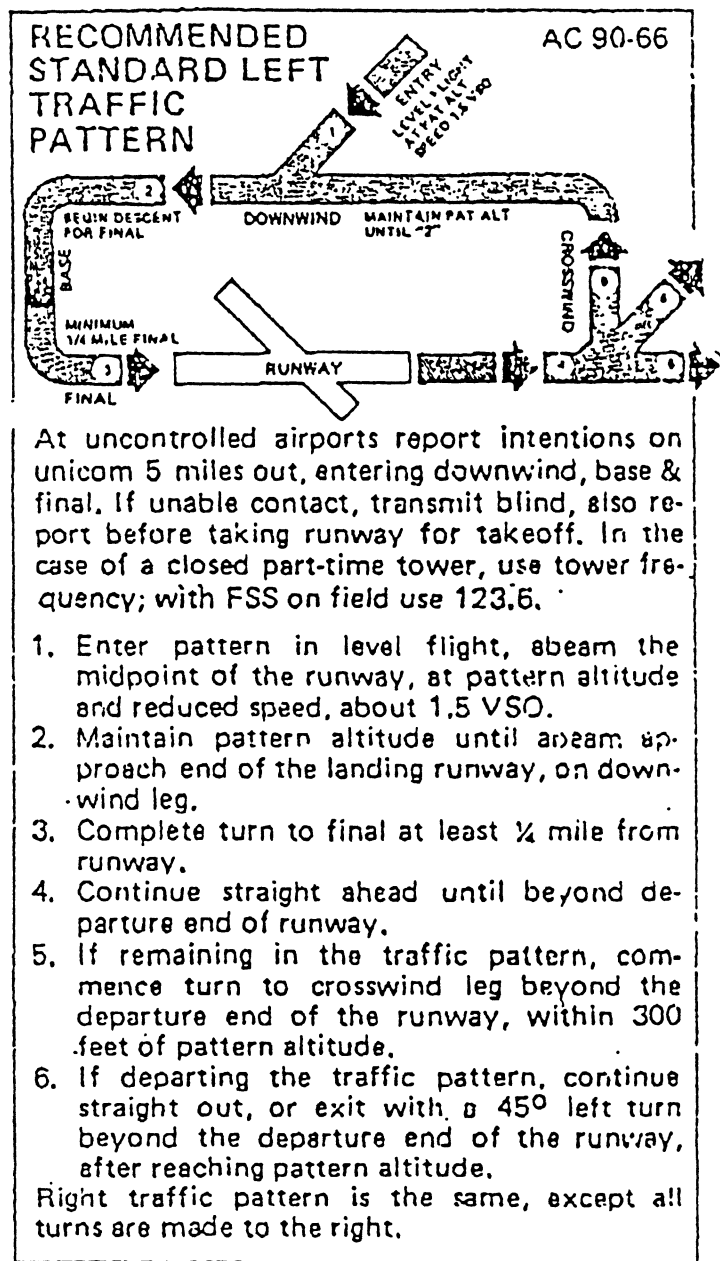


EXHIBIT "B"

- B. The Zoning Administrator, or other official charged with an error, has been given an opportunity to submit a written response to the charges.
- C. A ruling in favor of the appellant is consistent with the intent of the Legislative Body when delineating the boundaries in question.
- D. A ruling in favor of the appellant would not conflict with the expressed "characteristics and purposes" of the zones in question.
- E. The appellant's proposed location of the zone boundary line(s) is apparently consistent with the officially adopted zone map, the written description, or both.
- F. The Board of Adjustment feels the facts presented at the hearing, other than mere expressions of protest or support, warrant granting the appeal.

7-21: RULES FOR HEARING AND DECIDING APPEALS FOR SPECIAL EXCEPTIONS

When the Board of Adjustment acts under its power to hear and decide requests for special exceptions, the board shall comply with all the following rules and standards.

- A. The appellant shall have submitted a properly completed application for hearing.
- B. The zoning ordinance specifically identifies the special exception in question as one which the board is empowered to approve.
- C. The following standards shall be met as a prerequisite to approving any special exception.
 - 1. It shall promote the public health, safety, and welfare.
 - 2. It shall conform to the "characteristics and purposes" stated for the zoning district involved and the adopted county master plan.
 - 3. It shall be compatible with the public interest and with the characteristics of the surrounding area.
 - 4. It shall not adversely affect local property values.
 - 5. Any standards stated in Chapter 3, Supplementary Regulations, or Chapter 5, Regulations Within Zones, which apply to a specific special exception shall be met.
 - 6. It shall not result in a situation which is cost ineffective, administratively infeasible, or unduly difficult for the provision of essential services, including, but not limited to: roads and access for emergency vehicles and residents; fire protection; police protection; schools and school busing; healthful water, sewer, and storm water facilities; and garbage removal.

in the revocation of the building permit or revocation of the business license.

3-34: AIRPORTS

A. INTENT

It is the intent of this section to avoid or lessen hazards resulting from the operation of aircraft, to avoid creation of new hazards, and to protect the lives of people who use aircraft facilities.

B. MEANING OF TERMS

For the purpose of this section and this ordinance, the following terms shall have the following meanings:

1. Airport Approach Zone

An area at each end of an airport landing strip or take-off strip, broadening from a width of one thousand (1,000) feet at the end of the strip to a width of four thousand (4,000) feet at a distance of seven thousand five hundred (7,500) feet from the end of such strip, its centerline being a continuation of the centerline of the strip;

2. Airport Transition Zone

A triangular area adjacent to each side of an airport approach zone located with reference thereto as follows: One corner of said transition zone shall be identical with the corner of the approach zone nearest to the landing strip; a second corner shall be located at the end of a line, said line extending from the end of the landing strip to a point one thousand five hundred fifty (1,550) feet from the centerline of said landing strip and at right angles thereto; a third corner shall be located at a point along said approach zone boundary line, which point is seven thousand five hundred (7,500) feet distance from the first corner above-mentioned;

3. Airport Turning Zone

A circular area surrounding an airport encompassing all of the land lying within a radius of two (2) miles distance from the landing strip of an airport, except that area covered by the airport, the transition zones, and the approach zones.

C. SCOPE

The Board of Adjustment, as a special exception granted under the terms of Section 7-21 of this ordinance, may authorize an airport, flying field, or helicopter pad, with their related terminal and aircraft storage facilities in the A-1, M&G-1 or I-1 Zones, provided the following provisions are met.

D. AIRPORT REGULATIONS

1. Height Limits Near Airports

- a. In any airport approach zone, no building or structure shall be erected which is more than one (1) foot in height for each fifty (50) feet said building or structure is distant from the end of the landing or take-off strip.
- b. In any airport transition zone, no building or structure shall be erected which is more than one (1) foot in height for each seven (7) feet said building or structure is distant from the inside airport approach zone boundary.
- c. In any airport turning zone, no building or structure shall be erected to a height greater than one hundred fifty (150) feet.

2. Use Restrictions

Notwithstanding any other provision of this ordinance, no uses may be made of land within Utah County which will: create electrical interference with radio communication between airports and aircraft; make it difficult for flyers to distinguish between airport lights and others; result in glare in the eyes of flyers using the airport; impair visibility in the vicinity of an airport; or endanger the landing or taking off of aircraft.

3-35: EXPLOSIVES PLANTS AND STORAGE FACILITIES

A. INTENT

It is the intent of this section to permit the operations of the explosive industry, but only in settings where personal safety and the property of the neighbors may be protected.

B. STANDARDS

The Board of Adjustment, as a special exception granted under the terms of Section 7-21 of this ordinance, may authorize an explosives manufacturing, storage, or testing facility, provided the following provisions are met.

1. Such uses are permitted in the zoning district;
2. The subject lot is sufficiently large to provide a safe buffer distance between the explosives facility and adjacent parcels of land;
3. The design of the facilities and operations plan are safe and are consistently followed;
4. Standards of the current fire codes of Utah County are met, as certified by the Utah County fire marshal;
5. An inventory of hazardous materials, a drawn-to-scale plot plan of their locations, and a brief explanation of the hazards involved, are submitted for use by public safety officials;

17-27-708. District court review of board of adjustment decision [Effective July 1, 1992].

- (1) Any person adversely affected by any decision of a board of adjustment may petition the district court for a review of the decision.
- (2) In the petition, the plaintiff may only allege that the board of adjustment's decision was arbitrary, capricious, or illegal.
- (3) The petition is barred unless it is filed within 30 days after the board of adjustment's decision is final.
- (4) (a) The board of adjustment shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.
(b) If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.
- (5) (a) (i) If there is a record, the district court's review is limited to the record provided by the board of adjustment.
(ii) The court may not accept or consider any evidence outside the board of adjustment's record unless that evidence was offered to the board of adjustment and the court determines that it was improperly excluded by the board of adjustment.
(b) If there is no record, the court may call witnesses and take evidence.
- (6) The court shall affirm the decision of the board of adjustment if the decision is supported by substantial evidence in the record.
- (7) (a) The filing of a petition does not stay the decision of the board of adjustment.
(b) (i) Before filing the petition, the aggrieved party may petition the board of adjustment to stay its decision.
(ii) Upon receipt of a petition to stay, the board of adjustment may order its decision stayed pending district court review if the board of adjustment finds it to be in the best interest of the county.
(iii) After the petition is filed the petitioner may seek an injunction staying the board of adjustment's decision.

History: C. 1953, 17-27-708, enacted by L. 1991, ch. 235, § 93.

Effective Dates. — Laws 1991, ch. 235, § 110 makes the act effective on July 1, 1992.

78-2a-2. Number of judges — Terms — Functions — Filing fees.

(1) The Court of Appeals consists of seven judges. The term of appointment to office as a judge of the Court of Appeals is until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office of a judge of the Court of Appeals is six years and commences on the first Monday in January, next following the date of election. A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified. The presiding judge of the Court of Appeals shall receive as additional compensation \$1,000 per annum or fraction thereof for the period served.

(2) The Court of Appeals shall sit and render judgment in panels of three judges. Assignment to panels shall be by random rotation of all judges of the Court of Appeals. The Court of Appeals by rule shall provide for the selection of a chair for each panel. The Court of Appeals may not sit en banc.

(3) The judges of the Court of Appeals shall elect a presiding judge from among the members of the court by majority vote of all judges. The term of office of the presiding judge is two years and until a successor is elected. A presiding judge of the Court of Appeals may serve in that office no more than two successive terms. The Court of Appeals may by rule provide for an acting presiding judge to serve in the absence or incapacity of the presiding judge.

(4) The presiding judge may be removed from the office of presiding judge by majority vote of all judges of the Court of Appeals. In addition to the duties of a judge of the Court of Appeals, the presiding judge shall:

- (a) administer the rotation and scheduling of panels;
- (b) act as liaison with the Supreme Court;
- (c) call and preside over the meetings of the Court of Appeals; and
- (d) carry out duties prescribed by the Supreme Court and the Judicial Council.

(5) Filing fees for the Court of Appeals are the same as for the Supreme Court.

History: C. 1953, 78-2a-2, enacted by L. 1986, ch. 47, § 45; 1988, ch. 248, § 7.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, in Subsection (1), divided and rewrote the former third sentence, which read "Thereafter, the term of of-

fice of a judge of the Court of Appeals is 6 years and until a successor is appointed and approved under Section 20-1-7.1," into the present third and fourth sentences and made minor stylistic changes.

78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, Board of State Lands, Board of Oil, Gas, and Mining, and the state engineer;

- (b) appeals from the district court review of:
 - (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
 - (ii) a challenge to agency action under Section 63-46a-12.1;
 - (c) appeals from the juvenile courts;
 - (d) appeals from the circuit courts, except those from the small claims department of a circuit court;
 - (e) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;
 - (f) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;
 - (g) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;
 - (h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;
 - (i) appeals from the Utah Military Court; and
 - (j) cases transferred to the Court of Appeals from the Supreme Court.
- (3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.
- (4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, in its review of agency adjudicative proceedings.

History: C. 1953, 78-2a-3, enacted by L. 1986, ch. 47, § 46; 1987, ch. 161, § 304; 1988, ch. 73, § 1; 1988, ch. 210, § 141; 1988, ch. 248, § 8; 1990, ch. 80, § 5; 1990, ch. 224, § 3; 1991, ch. 268, § 22.

Amendment Notes. — The 1988 amendment by ch. 73, effective April 25, 1988, inserted subsection designations (a) and (b) in Subsection (1); inserted "resulting from formal adjudicative proceedings" in Subsection (2)(a); substituted "state agencies" for "state and local agencies" in Subsection (2)(a); substituted "informal adjudicative proceedings of the agencies" for "them" in Subsection (2)(a); deleted "notwithstanding any other provision of law" at the end of Subsection (2)(a); inserted Subsection (b); redesignated former Subsections (2)(b) to (2)(h) as Subsections (2)(c) to (2)(i); added "except those from the small claims department of a circuit court" at the end of Subsection (2)(d); and made minor stylistic changes.

The 1988 amendment by ch. 210, effective April 25, 1988, added Subsection (2)(h) and redesignated former Subsection (2)(h) as Subsection (2)(i).

The 1988 amendment by ch. 248, effective April 25, 1988, in Subsection (2)(a), rewrote the phrase before "except" which had read "the

final orders and decrees of state and local agencies or appeals from the district court review of them"; deleted "notwithstanding any other provision of law" at the end of Subsection (2)(a); inserted present Subsection (2)(b); designated former Subsections (2)(b) to (2)(h) as Subsections (2)(c) to (2)(i); and substituted "first degree or capital felony" for "first or capital degree felony" in present Subsection (2)(f).

The 1990 amendment by ch. 80, effective April 23, 1990, rewrote Subsection (2)(g), which read "appeals from orders on petitions for extraordinary writs involving a criminal conviction, except those involving a first degree or capital felony" and made punctuation changes in Subsections (2)(h) and (3).

The 1990 amendment by ch. 224, effective April 23, 1990, inserted the subdivision designation (i) in Subsection (2)(b) and added Subsection (2)(b)(ii), and made related stylistic changes.

The 1991 amendment, effective January 1, 1992, substituted "a court of record" for "district court" in Subsection (2)(f).

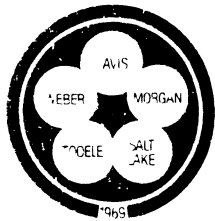
Cross-References. — Composition and jurisdiction of military court, §§ 39-6-15, 39-6-16.

SALT LAKE CITY METROPOLITAN AIRPORTS SYSTEM

CEDAR VALLEY AIRPORT

GENERAL AVIATION ACTIVITY STUDY

1993



WASATCH FRONT REGIONAL COUNCIL

SALT LAKE CITY METROPOLITAN AIRPORTS SYSTEM

CEDAR VALLEY AIRPORT GENERAL AVIATION ACTIVITY STUDY

Prepared By The
Wasatch Front Regional Council
420 West 1500 South
Bountiful, Utah 84010

March 20, 1994

This Study was financed, in part, through a planning grant from the Federal Aviation Administration, as provided under the Airport and Airway Improvement Act of 1982 (amended). This plan reflects the views of the Wasatch Front Regional Council and Mountainland Association of Governments, who are responsible for the facts and accuracy of the data presented herein. The contents do not, necessarily, reflect the official views or policies of the FAA. Acceptance of this report by the FAA does not, in any way, constitute a commitment on the part of the United States to participate in any project, nor does it indicate that any recommendations are environmentally acceptable in accordance with applicable Public Laws.

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SECTION I

PURPOSE, BACKGROUND AND SCOPE

STATEMENT OF PURPOSE

This report was prepared to document flight activity and the role of the Cedar Valley Airport in the Metropolitan Salt Lake City Airports System. Cedar Valley Airport is a key general aviation facility in the System, because it provides a safe and relatively remote location for VFR recreational flying, flight instruction, sailplanes, hang gliders and skydiving. Most of these activities are incompatible with Class B airspace surrounding Salt Lake City International Airport (SLCIA), yet are very popular. The Cedar Valley Airport is located close enough to the Salt Lake City and Provo Metropolitan Areas to be convenient, yet far enough from SLCIA so that activity is largely unconstrained by IFR traffic.

No prior studies have been conducted of this private airport. Therefore, most of the information in this report becomes original source data for planning. The facts, conclusions and recommendations in this study will be used to identify operational and facilities improvements needed.

BACKGROUND AND SCOPE

This Study was conducted by the Wasatch Front Regional Council staff as a Special Study under the Fiscal Year 1993 (MA) Work Program. Its preparation was financed through a Federal Aviation Administration (FAA) planning grant, with matching State and local contributions. The cognizant federal agency is the Denver Airports District Office of the FAA.

Originally, this study was proposed to document activity at Cedar Valley Airport which would have to be moved if the Utah National Guard purchased the airport for military use. Subsequently, the Utah National Guard elected not to purchase the airport. Despite this, the data in this report is essential to better understand activities at Cedar Valley. This could become more important if the owners decide to close the airport in the future.

The scope of this study was relatively narrow. Work Element 5. c. of the 1992-93 WFRC Work Program (MA) called for the following:

This study will determine the type and home station of aircraft using the airport. This data cannot be determined from acoustical counter data and must be gathered manually. The survey will also indicate the volume and character of activity which must be absorbed by the System if the airport is closed to non-military traffic. The results of this study will be reported independently and in the System Plan, via update.

We elected to expand this scope, slightly, to provide data on the facility. Since the Utah National Guard no longer has interest in Cedar Valley, it appears it will continue to operate as a private

airport for some time. We were interested in determining the adequacy of facilities and the surrounding airspace to accommodate future operations. Also, we wished to determine whether improvements were needed to bring the airport into compliance with minimum design or safety standards. This information could prove useful to the owners and users. It is also of value to the State of Utah, Department of Transportation, Division of Aeronautical Operations, which has oversight.

METHODOLOGY

Data for this study was gathered from a variety of original sources, including:

- visits to the airport, observation of activity and survey of based airplanes.
- interviews with users, including pilots with various ratings and skydivers
- interviews with flight instructors (various ratings), skydiving instructors and riggers
- map and photographic analysis/correlation using USGS maps and aerial photography
- airspace analysis, including interviews with users and FAA Air Traffic Control supervisors
- original measurements of airport layout

Interview data was collected and correlated with previous WFRC surveys. Analysis of these interviews is presented in the following section.

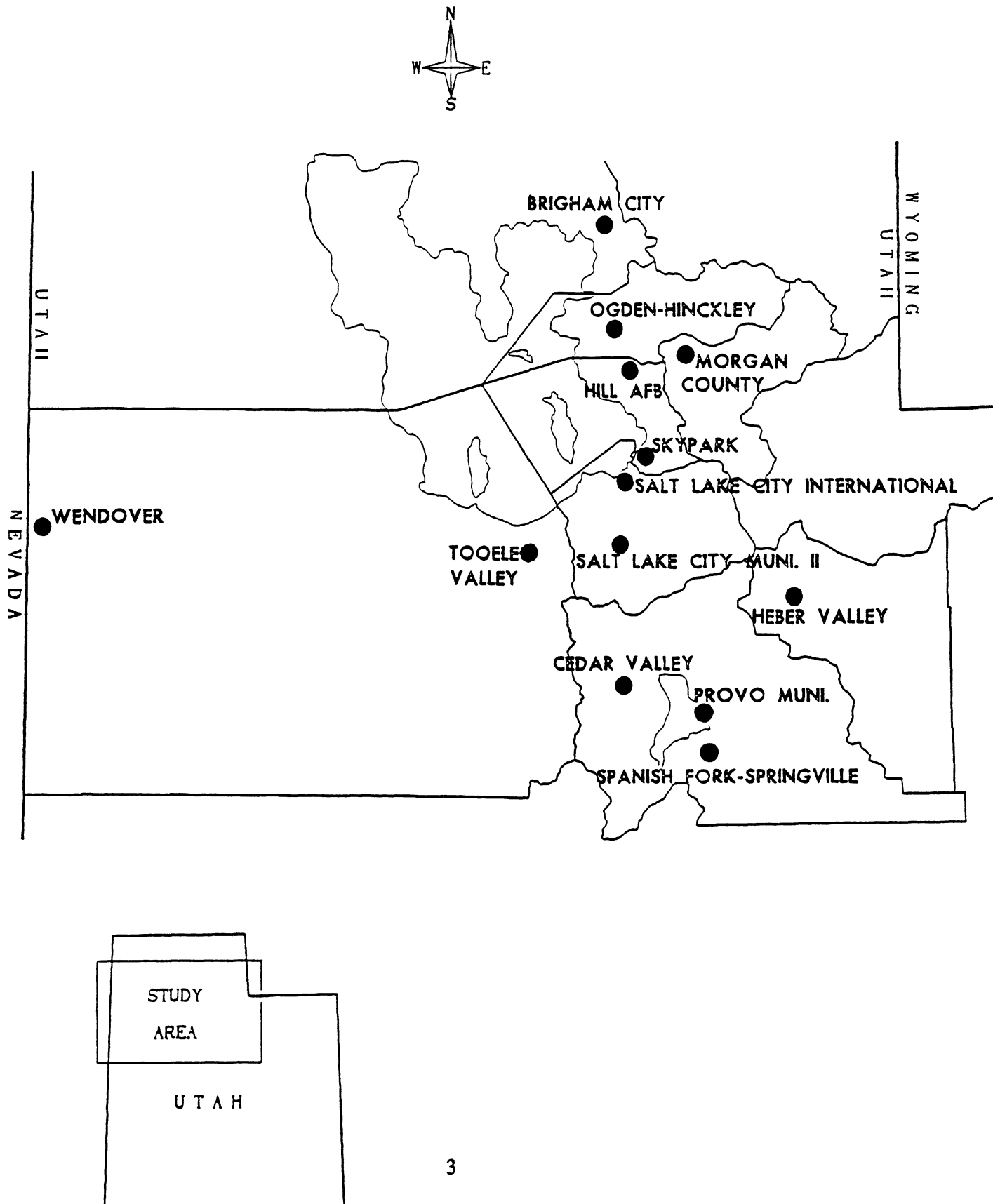
Overhead photography of the area was obtained from the Utah National Guard, and this permitted, for the first time, accurate sighting of the Airport and a cursory airport layout sketch. Photography was correlated with USGS 12,500 maps, allowing transfer of photographic information to the map sheets. Maps were then scaled to permit airspace drawings (1:12,500 scale).

The airport layout sketch is based on photographic and map analysis and limited ground survey to fix objects on the Airport more accurately. Elevation data is estimated, based on elevation data from the USGS map sheets. No attempt was made to achieve the accuracy needed for an Airport Layout Plan. However, we felt it important to verify runway orientation, length and width, and basic safety standards. The Airport Layout Sketch was prepared from the above data, using Generic CAD.

The airspace surrounding Cedar Valley Airport was studied from two perspectives. First, the FAR Part 77 analysis was of interest to determine if any of the imaginary surfaces were obstructed. Second, airspace was evaluated from an operational perspective to determine how well Cedar Valley fit into the Salt Lake City Terminal Control Airspace. Although the Airport is located just outside Class B Airspace, it is within the 30 NM veil, is directly underneath a low altitude airway, and is near three primary arrival and departure gates. Ultimately, Cedar Valley Airport's long term future depends more on how well it "fits" in the Salt Lake City Terminal Airspace than its ownership.

Figure 1, which follows, shows the general location of Metropolitan Salt Lake City Airports.

SALT LAKE CITY METROPOLITAN AIRPORTS - GENERAL LOCATION



SECTION II

SURVEY RESULTS AND ANALYSIS

AIRPORT SURVEY

General Location

Cedar Valley Airport is located 167° at 30 NM from the SLC VORTAC and 305° at 6.5 NM from the FFU VORTAC. The Airport is situated at the northern end of a valley formed by the Oquirrah, Traverse and Lake Mountains and is approximately one mile south of Utah Route 73, midway between Lehi and Cedar Fort, Utah. See the Cedar Valley Airport General Location Map, Section IV, page 19. The basic map is the Salt Lake City VFR Terminal Area Chart. The dark lined overlay shows airspace assigned to Salt Lake City Terminal Radar Approach Control (TRACON) and the arrival and departure "gates" used to coordinate traffic.

Airport Layout

Please refer to the Cedar Valley Airport Layout Sketch, Section IV, page 21. Although this is not a scale drawing of the Airport, it correctly represents the general layout. The Airport property consists of 93 acres in a rectangular shape, which just encompasses the runways and extends westward to the Airport Road. We were unable to verify the property line for the airport beyond this description. One of the main objectives of the survey was to improve the existing drawing through on-site measurement, and to verify the length and location of auxiliary runways. Since this is a private airport, and no formal Airport Layout Plan exists, this drawing is the sole source of airport layout data. We were also able to accurately fix the runway end coordinates, and these are shown on the drawing

Runway 17-35 is the primary runway. It is 5100' x 80' and is gravel-surfaced. Two auxiliary runways are also provided. Runway 08-26 is 1100' x 40 and is gravel surfaced. It is used for extreme crosswinds, glider landings and hang glider operations. Runway 18-36 is a small grass strip 1004' x 60' almost parallel to the primary runway at mid-field. It is used as an auxiliary to the primary runway for glider landings. The primary runway has an asphalt pad 300' x 25' located at mid-field, which is used for run-ups. While no wind data exists for this location, the primary runway orientation is consistent with other airports in the area and the prevailing SSE winds.

The hangar and ramp areas are located to the west of the primary runway. Four medium-sized hangars and two tie-down lines are located in the ramp area. The airport administration building houses the airport manager, flight school and skydiving school. This building is located at the southwest corner of the building complex. A large grassy area immediately to the east of this building is used for skydiver training. Extensive automobile parking is provided along the entire west side of the complex. Overflow parking is along the airport access road.

We made no attempt to determine compliance with FAA design standards for Cedar Valley Airport during this project. However, we note that Runway Safety Areas and runway end Object-Free Areas do not exist. Other than this obvious discrepancy, the airport appears reasonably compliant with "general utility" standards for ARC B-I. We believe that a design compliance inventory should be completed in the future, mainly for the benefit of the owners in planning improvements.

Based Airplanes

We completed an inventory of based airplanes during a visit to the site on July 23 and 24, 1993. We counted 10 single-engine and 4 twin engine airplanes, plus four itinerant twins. The itinerant airplanes were at Cedar Valley for a skydiving meet. We also noted 7 gliders and 16 hang gliders, most housed in the hangar row to the north and the large hangar just east of the administration building. All of the airplanes we saw appeared to be in flying condition except one Cessna 411 which had suffered strike damage. Three of the itinerant twins were based at Eloy, Arizona, and one was based at Salt Lake City No. 2 Airport. A complete listing of airplanes noted in the inventory is provided in the Aircraft and Facilities Inventory, Section IV, page 23.

Facilities

The following chart displays general data on the facility.

CEDAR VALLEY GENERAL FACILITIES DATA

Airport Name: Cedar Valley	Design type: Basic Utility	FAA Site No: None	NPIAS: Not included
Location: Cedar Fort Utah County Utah	Service level: General Aviation Instrument approach: None	Geographical coordinates: N 40° 21' 41" W 112° 00' 57"W Elevation: 5002' MSL	On-airport businesses: Cedar Valley Airport, Inc. (801) 768-9327 Skydiving (801) 768-0999
Ownership: Private-Restricted Owner: Cedar Valley Airport, Inc.	Based GA aircraft: 22 (1992) GA basing capacity: 45	Total Acreage: 93 Mean Temperature: 95° -19° F	
Management: Cedar Valley Airport, Inc. P.O. Box 403 Cedar Fort, UT 84013 (801) 768-9327	Annual operations: 13,000 (1991) Local Operations: 10,500 Itinerant operations: 2,500	Current Plans: None required	
Airport Manager: Larry Patterson (801) 756-5344	Traffic Pattern: Standard, left-hand 6000' MSL		
Attended: Daily sunrise-sunset	NAVAID: VORTAC (FFU) 115° 6 NM from airport		

The following lists auxiliary services at the Cedar Valley Airport:

Windsock: Located atop the middle hangar in the north row

Segmented circle: none

UNICOM: none

CTAF: yes (122.9 MHz)

Fuel: 100 octane AVGAS

Aircraft Maintenance: Minor

Flight Service Station: Via Cedar City FSS

Fire Department: Lehi, Utah (12 miles)

Terminal: none

Ground Transportation: none

Auto Parking: extensive

Public Telephone: yes

We found these services to be adequate for the type of activity. In general, the airport is well-maintained and presents a good impression to a visitor.

The land surrounding the Airport is one of the greatest assets. For several miles in all directions, the land is farmed, generally in feed crops. The land near the airport is relatively flat, and this provides an excellent safety factor for skydiving and gliding. Arrangements have been made with nearby land owners to use their fields, whenever necessary, for skydiving landing sites. On July 23, 1993, we observed one jump involving over 50 skydivers. At the conclusion, skydivers landed in fields as far away as 1.5 miles from the facility.

Airport Management

The Airport is owned by the Cedar Valley Airport Corporation. The principal owner is Larry Patterson, who is also a Utah County Sheriff. Mr. Patterson is a licensed pilot and CFI for airplanes and gliders. Although the partners in the business have changed over the years, Mr. Patterson has remained a principal owner since the airport was constructed in 1985. Although Mr. Patterson expressed a desire to sell the airport to the Utah National Guard, he indicated that he recognized the need for such a facility in the Metropolitan Area, and he might be interested in constructing a new airport in Utah County with the proceeds.

The on-site manager is Brent Davis. He resides at the airport and provides after-hours security as well as services during operating hours. Mr. Davis was most helpful in allowing us to visit the airport on several occasions.

Flight Instruction and Schools

As noted in the general survey, there are at least three types of schools offered at Cedar Valley. First, there is general flight instruction, which is offered by individual CFI's who have aircraft based at Cedar Valley or who lease there. Secondly, there is extensive instruction in skydiving offered by Skydive Utah. Thirdly, in 1993 the Airport established a Part 141 Certified Glider School. In addition to this training, there is a variety of individual instruction conducted by certified instructors in ultralight flying and hang gliding. Although other airports in the Metropolitan Area offer some of this instruction, Cedar Valley may be unique in offering comprehensive instruction in all "air sports".

AIRSPACE ANALYSIS

Two of the most important aspects of this study were to document the FAR Part 77 airspace occupied by Cedar Valley Airport and identify operational airspace conflicts in the vicinity.

FAR Part 77 Analysis

The Part 77 Airspace Drawing for the Airport was prepared using a USGS 1:12,500 topographical map of the area and aerial photography to orient the primary runway. The two auxiliary runways are not shown since the primary surface defined by Runway 17-35 encompasses them. The FAR Part 77 Airspace Drawing is presented in Section IV, page 25. It depicts the horizontal surface for the airport, based on the designation of Runway 17-35 as a "utility runway". The conical surface emanating from the horizontal surface is also shown, with conical rings indicating the clearance required.

The horizontal surface is penetrated 4' by hill 5156, located 3540' due east of the approach end of Runway 35. A second penetration (70' maximum) occurs approximately 4720' due east of the main runway center point.

The conical surface is penetrated in three locations:

Hill 5299 penetrates the surface a maximum of 105' at a point approximately 5460' due east of the primary runway center point.

Hill 5261 penetrates the surface a maximum of 40' at a point approximately 5930' due east of the approach end of Runway 35.

Hill 5479 penetrates the surface a maximum of 125' at a point approximately 8815' southeast of the approach end of Runway 35.

The 20:1 approach surfaces for both runways are clear of obstructions. The approach surface for

Runway 17 clears State Road 73 by approximately 45:1, and the Runway 35 approach surface clears the Airport Road by greater than 50:1.

Operational Airspace Analysis

We began this part of the study by surveying users of the Airport and asking what problems they might have had with airspace or air traffic control. See the "User Survey", which follows for the comments received. We were somewhat surprised by the high degree of satisfaction by users. Since Salt Lake City TRACON has so many diverse responsibilities, we were concerned that skydiving and other operations at Cedar Valley might receive "back burner" treatment. What we found was just the opposite.

Following tabulation of the users survey, we contacted Salt Lake City ATCT and asked how Cedar Valley operations were going from their standpoint. What we received was a "business as usual" reply, indicating a high degree of understanding of operations there and a high level of cooperation.

We were able to establish the following facts through discussions with the staff at Salt Lake City Air Traffic Control Tower:

Although Cedar Valley is outside Class B airspace, it is inside the 30 mile "veil", and transponders are required to operate there. Gliders and ultralights are exempt. Apparently, there have been no difficulties with this requirement. Occasionally, a glider will request clearance into Class B airspace, and traffic permitting, he will be accommodated.

Most coordination involving skydiving operations at Cedar Valley is accomplished by Salt Lake City TRACON. This is frequent, and is routinely without incident or difficulty. Occasionally, jump aircraft need clearance above 16,000' MSL, and this is coordinated with Salt Lake City Center.

Although Cedar Valley is near two of the main arrival/departure gates for SLCIA (see Section IV, page 19), there is adequate room for controllers to route the arrival or departure "stream" around Cedar Valley if skydiving is planned.

The V-200 Low Altitude Airway which passes over Cedar Valley is seldom used and rarely is ever conflicts with operations at Cedar Valley. Pilots using this airway must check NOTAMs and would see that jumping is planned. They could delay or reroute if a conflict was possible.

The NOTAM system is working well for skydiving at Cedar Valley. When jumps are planned, a NOTAM is issued by Cedar City FSS. This system is working for Salt Lake TRACON, and no special coordination is needed.

One of the recommendations from the skydiver survey was that TRACON broadcast a "1-minute" warning for skydiving at Cedar Valley every time, not just when "traffic permits". TRACON must preserve the "traffic permitting" caveat, but will emphasize this in controller coordination and training.

Salt Lake TRACON feels that Cedar Valley is an excellent location for skydiving and gliding and will work with users to accommodate any reasonable request.

USER SURVEY

We were very interested in getting opinions from users on the facility and their activity there. During June and July, 1993, we interviewed pilots, skydivers, instructors and students to determine their opinions. For pilots, we used the same form used for the 1990 WFRC System-wide pilot's survey. We prepared a special survey form for skydivers since none existed. The results of these surveys are presented in Section IV, pages. The analysis of these comments and correlation with past surveys follows.

Pilot Survey and Analysis

Four pilots who use Cedar Valley extensively completed standard WFRC Pilot Surveys. Two reside in Davis County and two in Utah County. The four respondents averaged 140 flight hours in the year preceding the survey and used virtually all Metropolitan Airports. Three of the four had multi-engine and instrument ratings and, as a group they accounted for 475 commercial and instructor flight hours in the last year. The airports used most frequently in the past year were:

Cedar Valley -	65%	Tooele Valley -	4%
Ogden-Hinckley -	8%	Spanish Fork -	2%
Salt Lake City 2 -	6%	Hill AFB -	1%
Provo -	4%	Skypark -	1%
SLCIA -	4%	Wendover -	1%
Other Utah Airports -	4%		

Two pilots indicated they used Ogden-Hinckley frequently, and two indicated they used Cedar Valley most often. Location/convenience (near residence) and availability of VFR airspace were given as reasons for choosing an airport.

Pilots were asked to rate facilities at each airport. Facilities at Ogden were rated "good" by both users, except for the terminal which was rated "fair". Facilities at Cedar Valley were generally rated "good" to "fair" by the two pilots using it most often. Runway length was rated "fair" and management was rated "good" by both. One respondent rated taxiways, service and parking as "poor". Paving the runway and taxiways were recommended by both to improve the airport. Both also said, "Continue support for gliding and skydiving here.".

Three of the pilots commented favorably on their experience with Salt Lake Approach Control in Class B Airspace. One pilot felt that it was not needed at all. All reported some concern with traffic near SLCIA and the difficulty of general aviation access to that airport.

In general, these comments were consistent with responses to the 1990 WFRC Pilot's Survey. A summary of the Pilot Survey Results is included in Section IV, on pages 27-30.

Skydiver Survey and Analysis

One of the most interesting aspects of the site visit on July 23-24, 1993, was the opportunity to interview a large number of skydivers. The Cedar Valley Airport hosted a fly-in and attempt at a record link-up of 50 skydivers, and this attracted skydiving enthusiasts from a large area. Surveys were completed by 25 skydivers, with experience ranging from 1-20+ years in the sport. Eleven (44%) were professionally involved in the sport and all were members of the U. S. Parachute Association (USPA). None had been military parachutists. Experience ranged from 50-100 lifetime jumps (8%) to a high of over 2000 jumps (20%). These statistics indicate a generally high level of experience for the group surveyed.

Respondents were asked where they jumped most often in the past 12 months. Half (50%) reported Cedar Valley, and half elsewhere. Only 8% had jumped at SLC No. 2 and 4% had jumped at Ogden in the past 12 months. Remaining jumps were conducted outside the Salt Lake City Area.

Respondents were asked what type of airplane they jumped from most often, with the following replies:

Cessna-182	22%	DC-3	8%
Cessna-411	22%	Beech King Air	5%
Beech Queen Air	20%	Other	5%
DHC Twin Otter	18%		

When asked where the airplane they jumped from most often was based, they replied:

Cedar Valley	60%	Ogden	2%
Out of State	28%	Other SLC Metro	0%
Salt Lake City No. 2	10%	Other Utah	0%

Questions 9 and 10 of the survey asked if improvements in local airspace/air traffic or FAR Part 105 were needed. Since the group surveyed was very experienced, we received a number of interesting comments and recommendations. The reader will find these and a summary of the survey results in Section IV, pages 31-34.

Most of the respondents felt that no changes were needed locally to improve airspace and air traffic control for skydiving. This indicates a high degree of satisfaction with Salt Lake City Air Traffic Control Tower's handling of skydiving operations. Six (24%) commented that AT controllers needed a better understanding of skydiving and suggested free demo jumps for AT controllers. Four respondents felt that "better air traffic advisories" were needed, and several of the other comments

related to keeping airplanes away from jump areas where NOTAMs had been issued.

Thirteen respondents (52%) felt that no changes were needed to FAR Part 105. While no attempt was made to correlate experience with this group, generally, they were less experienced than those recommending changes. Five respondents (25%) recommended that FAR Part 105 be modified to allow tandem skydiving with out a waiver. Four comments were received regarding the reserve chute repacking requirements in FAR Part 105.43 (a). Two believe that the repack interval should be increased from 120 days to 180 days, and one recommended 360 days. One respondent commented that assigning responsibility for reserve chute repack interval to the pilot in command was unnecessary and that the jumper should bear the responsibility, totally. This respondent also felt that jumpers, not pilots, should have the responsibility to remain clear of clouds. One respondent felt that all skydivers above USPA "novice" status should pack their own reserves, but riggers should still pack reserves for student and novice skydivers. One respondent suggested deleting references to "drift" in Part 105.15 (a), since all sport parachutes are steerable.

Virtually all skydivers surveyed felt the USPA (rather than the FAA) was the primary regulating body for the sport. When asked if new federal or state rules were needed, all felt that the USPA was doing a good job, and other than the above recommendations, no new rules were needed

SECTION III CONCLUSIONS AND RECOMMENDATIONS

AIRPORT SURVEY

- Cedar Valley Airport is an optimum location for general aviation and "air sports". The agricultural areas near the airport allow forced or emergency landings in a wide area and provide additional margin of safety for skydiving, and glider and hang glider flying.
- The primary runway is 5100' in length, which is sufficient for 75% of small airplanes with less than 10 passenger seats. This length is considered satisfactory for the current service level.
- There are no safety areas nor object-free areas at the ends of the primary runway.
- The auxiliary runways give the airport added utility and an additional safety margin for glider operations.
- We recommend that an ALP be prepared for this airport to assist the owners in planning improvements.
- The airport management has established good relations with farmers, so that use of nearby fields for skydiver landings is not a problem.
- We noted 21 based airplanes during our count on July 23, 1993. This compares closely with our previous counts and indicates stability. In addition, there were 16 hang gliders.
- We have revised the geographical coordinates for the airport based on our photographic and map analysis. The corrected coordinates are shown on pages 7 and 21.
- The airport is under excellent management and is financially stable. Both businesses on the airport are doing well.
- The Utah Army National Guard has withdrawn its interest in purchasing Cedar Valley. The airport is needed in the Metropolitan System for the role it is currently serving. Future emphasis should be placed on preserving it for this role.
- Instruction is available at Cedar Valley in a wide range of aviation disciplines. Certified instructors are available for private pilot training, gliding and skydiving.

AIRSPACE SURVEY

- The Far Part 77 Horizontal and Conical Surfaces are penetrated by obstructions to the East. None of these is considered significant to VFR operations at the Airport.

- The approach surfaces for the primary runway are clear of obstructions.
- Although Cedar Valley Airport is near Class B Airspace and arrival/departure gates for the Terminal Area, operations there appear compatible with IFR traffic.
- Salt Lake City TRACON manages airspace used for skydiving operations at Cedar Valley. TRACON feels the operations are being coordinated well and sees no need for special measures.

USER SURVEY

- Pilots who use Cedar Valley frequently appear generally satisfied with the Airport. Some indicated the desire for primary runway and ramp improvements, such as paving.
- Pilots who use the airport accept its shortcomings in facilities for the ability to fly VFR in a wide area nearby.
- Despite the availability of jump zones at SLC No.2 and Ogden-Hinckley, Cedar Valley remains the most active location for skydiving in the Salt Lake City Metropolitan Area.
- The most common airplanes used for skydiving at Cedar Valley are the based Cessna-182, Cessna-411 and Beech Queen Air, in that order.
- Skydivers are, generally, very satisfied with TRACON's handling. Some feel that air Traffic controllers need more familiarity with skydiving. This is consistent with comments from general aviation pilots.
- Twelve of the most experienced skydivers indicated some minor changes were needed to FAR Part 105, as follows:
 - Allow tandem jumping without a waiver.
 - Increase the repack interval for reserve parachutes from 120 to at least 180 days.
 - Pilots should not be required to verify reserve chute repacking intervals for skydivers.
 - Delete reference to "drift" in Part 105.15 (a), since all sport parachutes are steerable.
 - Allow skydivers above USPA "Novice" to repack their own reserve parachutes.
- All skydivers surveyed were members of the U.S. Parachute Association. They felt the USPA was the main force behind the sport and should be the primary regulating agency.

**SECTION IV
ATTACHMENTS**

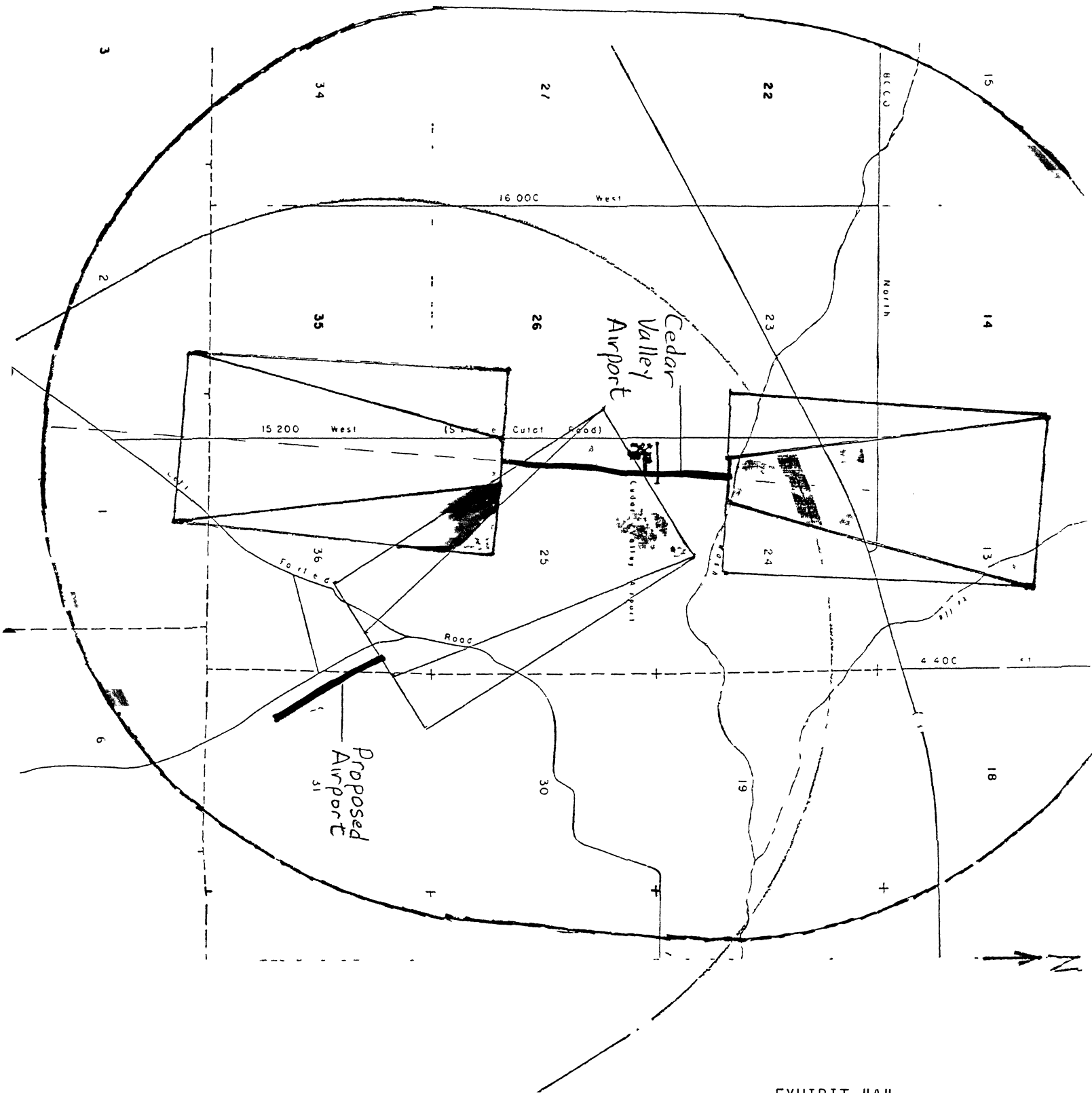


EXHIBIT "A"