FAA DID NOT ENSURE REVENUE WAS MAXIMIZED AT DENVER INTERNATIONAL AIRPORT

Federal Aviation Administration

Report Number: AV-2011-057

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Memorandum

U.S. Department of Transportation
Office of the Secretary of Transportation
Office of Inspector General

Subject: ACTION: FAA Did Not Ensure That Revenue Was Maximized at Denver International Airport
Federal Aviation Administration
Report Number AV-2011-057

Date: February 28, 2011

From: Jeffrey B. Guzzetti
Assistant Inspector General
for Aviation and Special Program Audits

Reply to Attn. of: JA-10

To: Federal Aviation Administrator

Federal law[1] requires that airport sponsors receiving Federal grant funds establish an airport facility fee and rental structure[2] to make the airport as self-sustaining as possible. Also, sponsors must use airport revenues only for airport capital and operating costs. Use of airport revenue contrary to Federal law is a revenue diversion. Since 1991, the Office of Inspector General has identified over $375 million in airport revenues that airport sponsors improperly used or did not collect. In 1999,[3] we identified over $2.4 million in diversions and uncollected airport revenues at Denver International Airport.

For fiscal years 2006 through 2008, the Federal Aviation Administration (FAA) awarded the Denver airport sponsor $40.5 million in Airport Improvement Program (AIP) grants. In fiscal year 2009, the airport was awarded $12 million in American Recovery and Reinvestment Act funding. The objective of this review was to assess the effectiveness of FAA's oversight in ensuring (1) the airport is as self-sustaining as possible and obtains fair market value for land sales and (2) the sponsor uses airport revenues only for airport purposes in accordance with Federal law. These revenues include those from the sale of the Stapleton International Airport (Stapleton) property. The Stapleton airport was closed and replaced by the Denver airport in February 1995. We conducted this review between July 2008

[1] The Airport and Airway Improvement Act of 1982, as amended and codified in Title 49 United States Code Section 47107(b).

[2] Airports can charge landing fees, rental charges, and other service fees for use of airport facilities.

[3] OIG Report Number AV-1999-052, "Use of Airport Revenue, Denver International Airport," January 27, 1999. OIG reports are available on our website at www.oig.dot.gov.

and November 2010 in accordance with generally accepted government auditing standards prescribed by the Comptroller General of the United States. Exhibit A details our objectives, scope and methodology, and related audits. Exhibit B lists the stakeholders visited or contacted.

RESULTS IN BRIEF

While FAA is responsible for the effective oversight of airport revenues, it has allowed the City's property manager to dispose of Stapleton land at an estimated loss of at least $71 million in revenue that would have greatly increased the airport's self-sustainability. FAA grant agreements, Federal law, and a Stipulated Agreement between the City and airlines[4] require fair market value for Stapleton property. However, FAA allowed the purchase price of land parcels to be determined based on appraised values established in 1999,[5] despite evidence of increasing property values. If the parcels had been sold for their fair market value at the time of transfer the City's property manager would have received considerably more for each sale. For example, in 2004, the City's property manager provided one parcel to the developer for $385,684 even though the land was actually worth $3 million according to the deed issued at the time.

FAA oversight was not effective in ensuring proper use of airport revenues. Specifically, the 1999 appraisal reduced the Stapleton land value by more than 50 percent to offset (1) district fees[6] that the developer agreed to pay for redevelopment and (2) funding the City anticipated it would need to build infrastructure, which the developer agreed to cover up front with reimbursement plus 10 percent interest. By reducing the land value, the City, in effect, diverted airport revenue to fund redevelopment, parks, and infrastructure—a federally prohibited non-airport purpose. We estimate that $40.5 million of the $71 million in lost revenue was the result of diverted funds from Stapleton property sales for non-airport purposes. While FAA questioned the appropriateness of the reductions, it accepted the appraisal. This contradicted FAA grant conditions requiring that revenues from land sales be used to pay Denver airport's outstanding bond debt, which was approximately $4.1 billion in 2009.

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[4] In 2000, the City and airlines entered into an agreement stipulating terms for the disposition of Stapleton. The Stipulated Agreement contains provisions requiring fair market value according to Federal law. Signatory airlines to the Stipulated Agreement included American Airlines, American Trans Air, Continental Airlines, Delta Air Lines, Federal Express Corporation, Northwest Airlines, Trans World Airlines, United Air Lines, and US Airways.

[5] The appraisal report was issued in 2000 by the City's appraiser, but the appraisal determined the value of Stapleton land as of December 1999. We refer to the appraisal as the 1999 appraisal in this report.

[6] These fees are known as "impact fees" paid to a Title 32 district. This is a special district (created pursuant to Title 32 of the Colorado Revised Statutes) for the purpose of funding and carrying out the design, development, construction, and maintenance of the infrastructure.

We are recommending that FAA redirect its oversight and take specific actions to ensure the Denver airport receives fair market value for Stapleton property, is reimbursed for lost revenue, and uses revenue in accordance with Federal law.

BACKGROUND

On February 28, 1995, Stapleton International Airport closed due to capacity constraints and was replaced by the Denver International Airport. With the closure of Stapleton, the City was charged with disposing of more than 4,000 acres of land by either redeveloping the site or having a bulk land and improvements sale. The City chose to redevelop the property. The City began planning for Stapleton's redevelopment in the late 1980s and finalized its Stapleton Development Plan in March 1995. The plan provides for a 30- to 40-year conversion of the property to a series of mixed-use communities connected by an extensive system of open space and transportation improvements. To facilitate the disposal and redevelopment of the Stapleton site, the plan recommended that the city create a non-profit entity to provide management, sales, leasing, and contracting functions. In July 1995, the City created the Stapleton Development Corporation (SDC) to fill this role.

In 1998, SDC selected Forest City Enterprises as master developer for the project, awarding it the exclusive right to negotiate the purchase of Stapleton property. Under SDC's written agreement with the City, SDC is selling Stapleton property at the 1999 baseline appraisal value, adjusted every 6 months using the Consumer Price Index (CPI).[7] Since 2001, Forest City has acquired more than 1,400 of the total 2,935 developable acres. Forest City has until December 2025 to obtain the remaining developable property.

Generally, Forest City acquires the property, installs the infrastructure, and then sells it to a homebuilder or commercial developer. In addition to the 2,935 developable acres, 1,116 acres will be converted into parks and open space. Forest City is not responsible for developing the parks and open space; instead, it provides the funding for this development through payment of an impact fee to a Title 32 district, which was created to fund and carry out the design, development, construction, and maintenance of infrastructure.

The redevelopment of Stapleton was not without controversy. In 1995, the airlines filed a formal complaint with FAA alleging the City intended to divert millions of airport revenue to finance Stapleton's redevelopment. Subsequently, the City filed suit to require three airlines—United, Delta, and Continental—to remediate environmental contamination of Stapleton property. In 2000, to resolve these issues, the City and airlines entered into an agreement stipulating terms for the

[7] The Consumer Price Index is developed by the U.S. Department of Labor's Bureau of Labor Statistics.

disposition of Stapleton (Stipulated Agreement). The City and airlines agreed that Stapleton remediation would be paid for with $15 million from the three airlines named in the City's suits and $105 million from airport revenues. Upon execution of the Stipulated Agreement, the City and the airlines jointly moved to dismiss the complaint before FAA. FAA then dismissed the complaint. Table 1 shows an abbreviated timeline of events associated with land sales at Stapleton (see exhibit C for a more expansive timeline).

Table 1. Timeline of Major Events

Event	Date
Stapleton International Airport closes and Denver International Airport opens.	February 1995
City finalizes Stapleton Redevelopment Plan	March 1995
City creates SDC	July 1995
Forest City selected as Master Developer for Stapleton	November 1998
Effective date of Stipulated Agreement between Airlines and the City which set terms and conditions for using airport revenue for disposal of Stapleton land	January 1999
Stapleton appraisal performed (valuing the land as of December 1999)	January 2000
FAA accepts the appraisal	April 2000
First sale of property from SDC to Forest City	April 2001

Source: OIG analysis of various airport, City, and FAA documents.

FAA DID NOT ENSURE OPTIMAL VALUE WAS OBTAINED FOR STAPLETON PROPERTY

We estimate that the Denver airport has lost at least $71 million in revenues due to ineffective FAA oversight of the Stapleton disposition. Even though the City planned to transfer the property and receive payment over a 25-year period, FAA allowed the City to sell Stapleton property based on values established in a 1999 appraisal without the option to take advantage of any potential increases in real estate prices. Despite indications that prices on land parcels did not represent their true value, FAA has not revisited how the Stapleton land is priced. Property tax assessments, Stapleton sales transactions, and sales of comparable properties have shown that the appraisal significantly underestimated Stapleton land appreciation.

FAA Did Not Exercise Effective Oversight of Land Sales, Resulting in Lost Airport Revenue

FAA's ineffective oversight allowed Stapleton land to be sold for less than fair market value. This is despite multiple Federal requirements, legal agreement provisions, and FAA guidance that applied to the Stapleton land disposition. Specifically:

- Grant agreements between the City and the FAA require that the City should dispose of all Stapleton International Airport property at fair market value.

- Federal law (Public Law 100-223, 1987) requires that the City receive fair market value for the sale of Stapleton property.

- The Stipulated Agreement between the City and the Airlines requires, "that the sale of Stapleton property shall be for not less than the appraised fair market value, including any price adjustment mechanism…." Although FAA is not a party to the Stipulated Agreement and not legally bound to enforce it, FAA stated that it used the agreement to guide its efforts in place of its own policies in overseeing the disposition of Stapleton. FAA regional policy[8] was developed early in Stapleton's redevelopment and disposition timeline in anticipation of the high visibility of the redevelopment project. The policy outlined the roles and responsibilities of the FAA Airport District Office and reiterated the requirements set forth in the grant agreements relating specifically to Stapleton. The policy states that the grant assurances require Stapleton to be disposed of at the fair market value and charges the Airport District Office with ensuring this is done.

- FAA Order 5190.6A, or the FAA Airport Compliance Requirements dated October 2, 1989, provides guidance to FAA personnel to ensure airport sponsors' compliance with Federal obligations such as grant assurances and other Federal law. The FAA Order stated that the sponsor will dispose of land at fair market value when no longer needed for airport purposes.

  In September 2009, FAA revised its Order which now states that ". . . the airport account must receive fair market value (FMV) compensation for all deletions of airport real property from the airport . . . even if the sponsor does not sell the property or sells the property below fair market value." Thus, even if the City, as airport sponsor, does not receive fair market value from the sale of Stapleton land to the developer, the City should provide fair market value to the Denver airport (the current airport account). The City does not have to modify its agreements with the developer in order to pay the airport fair market value.

Although many definitions of fair market value exist, the one used by the City's appraiser for Stapleton defined it as:

> the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair

[8] Compliance Policy 95-04 was the initial version of the policy that was issued in July 1995 but was later updated and replaced by Compliance Policy 99-02 in April 1999.

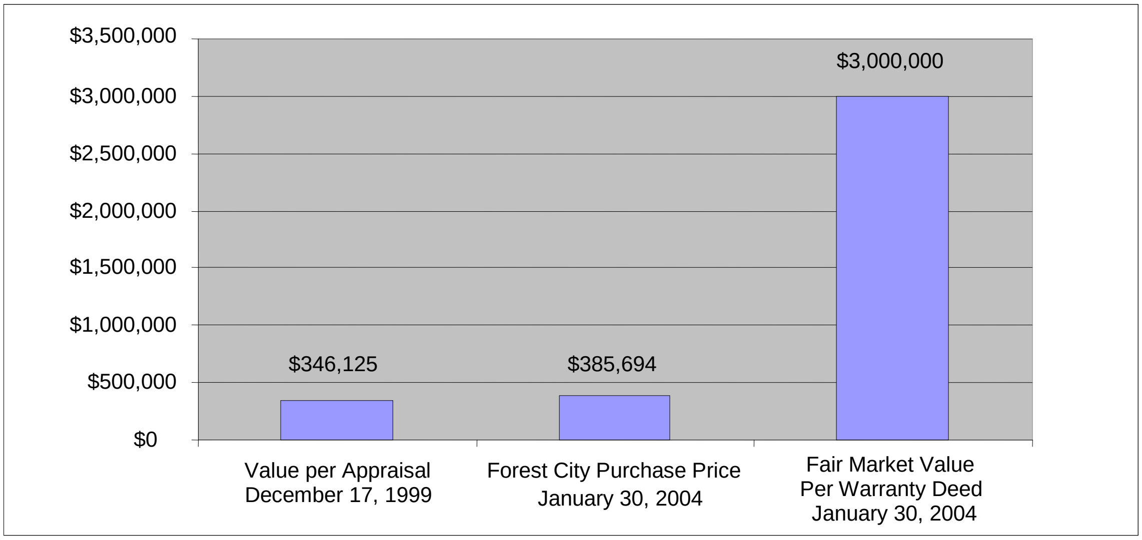
> sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is that the consummation of a sale is at a specified date and the passing of title from seller to buyer.[9]

All of Stapleton's property was last appraised in 1999 after SDC selected Forest City Enterprises as its development partner. As directed by the airport, the company that appraised Stapleton land applied questionable deductions that reduced the value of the entire Stapleton property of 4,051 acres (2,935 acres of developable land and 1,116 acres of open space) by more than 50 percent—from $162 million to $76 million—and affected the Denver airport's ability to collect the revenue it should have from the land sales. For this reason, we do not believe that the 1999 appraisal represents true fair market value. The property was then divided up into districts based on "highest and best use" (i.e., industrial, commercial, retail, and residential) with different appraised values per acre for each district.

Because FAA accepted the 1999 appraisal of Stapleton and did not enforce the above requirements, the price Forest City paid for the property was still well below fair market value. For example, on January 30, 2004, Forest City obtained a 10.65-acre land parcel for $385,694. The price was calculated using the December 1999 baseline value plus the applicable CPI adjustment (for this parcel, 11.4 percent). We compared the price that Forest City paid for the parcel and the actual fair market value recorded in the 2004 warranty deed and found that the parcel was actually worth $3 million—or 678 percent more than what Forest City paid (see figure below).

[9] This definition is contained in Federal Register Volume 55, No. 163, or "Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989."

Figure. Example of a Parcel of Stapleton Property Purchased Well Below the Fair Market Value



Source: OIG analysis of December 17, 1999, appraisal and January 30, 2004, land sale and warranty deed.

Since 1999 the City Has Not Received Fair Market Value for the Sales of Stapleton Property

FAA's oversight of Stapleton property focused on monitoring land sales to ensure that land parcels were not sold twice and did not include any determination of whether the airport received fair market value for the property. As agreed to with the City, SDC has sold the Stapleton property at the 1999 baseline appraisal value, adjusted every 6 months using the CPI. When the Purchase Agreement between Forest City and SDC was amended in February 2000, no adequate mechanism was included to consider the likely increases in real estate values over time. While adjustments based on the CPI reflect changes in the value of a dollar, they neither accurately indicate price swings in real estate nor represent fair market value. The CPI simply measures the changes in the price of goods and services purchased for consumption by urban households but does not include real estate.

Also, officials in the City's Assessors Office stated that the CPI had not kept up with the appreciation values of Stapleton's property based on the Office's property tax assessments of Stapleton land. Airport officials contend that this fixed-price structure, based on the 1999 appraisal, was necessary to sell the land because a redevelopment of this magnitude was unprecedented and presented "high risk" to the airport. While we agree that there were risks involved in redeveloping Stapleton, we would not characterize the redevelopment as unprecedented or high risk for the following reasons:

- First, a development the size of Stapleton is not unprecedented. Since the first Base Realignment and Closure in 1988, military installations transferred to local governments have undergone redevelopments the size and scope of

Stapleton. For example, Mather Air Force Base, a 5,700 acre plus piece of property located 12 miles east of downtown Sacramento, CA, was closed in 1993 and transferred to the County of Sacramento in 1996 and has since become a thriving cargo airport, commerce center, and upscale residential area and parklands. A few years later, McClellan Air Force Base, a nearly 3,500-acre piece of property also located about 12 miles from downtown Sacramento, was closed in 2001 and has since become a vibrant mixed-use redevelopment area.

- Second, Stapleton is in a prime location in Denver's metropolitan area, and early in Stapleton's development timeline (before SDC began managing the redevelopment) there were indications that Stapleton's value would appreciate significantly. For example, the first sale of Stapleton property occurred in March 1995; approximately 28 acres were sold for $350,000, and the purchaser immediately resold 18.6 acres for $410,000. We spoke with realtors who all agreed that the first sale is the most difficult, but the value of subsequent sales would increase with demand.

- Third, the potential for increased value was also evident when SDC began accepting proposals to find a master developer for the property. SDC received interest from 20 companies and 11 formal proposals, suggesting that the rewards of Stapleton redevelopment were considered worth the risk.

- Fourth, all of Forest City's trunk infrastructure costs[10] for Stapleton have been reimbursed, with 10-percent interest, by the City, relieving Forest City of the biggest risk it would face with a redevelopment of this size—not being able to recoup the cost of infrastructure through future sales of developed property. In effect, Forest City is rewarded twice under this arrangement: first, by paying a reduced price for the property based on the expectation that it would pay for the funding shortfall and second, by the City absorbing all trunk infrastructure costs. The only remaining risk to Forest City was to sell its property, which it has been successful in doing.

- Finally, the Stapleton developer, Forest City, has continually resold land parcels for significantly more than it paid to SDC. For example, from April 2001 to May 2008, SDC provided 1,416 acres to Forest City for $45.6 million. After building the infrastructure, Forest City resold only a portion of these 1,416 acres for more than $300 million during the same period. Although infrastructure added value to the land, it does not justify the disparity between

[10] Forest City constructed "trunk infrastructure," which is defined as improvements that are constructed and installed over multiple land parcels. Examples of trunk infrastructure include public schools, police stations, water distribution lines, and storm water collection lines.

the sales price to Forest City and the amount that Forest City received through re-sale of the property.

Yet, despite all of these indications that Stapleton land was being disposed of for less than its value, FAA did not ensure maximum revenue for Stapleton land sales. Table 2 below shows the disparity between the purchase price of Stapleton land and the comparable value of undeveloped land in the Denver metropolitan area between April 2001 and August 2008.[11]

Table 2. Stapleton Land Sales vs. Comparable Land Sales

Year	Number of Stapleton Acres Transferred to Developer	Value of Comparable Property	Stapleton Purchase Price	Revenue Lost On Stapleton Land
2008	45.4	$4,575,804	$1,045,034	**($3,530,769)**
2007	107.9	$15,918,545	$3,059,155	**($12,859,390)**
2006	124.3	$9,009,765	$3,354,047	**($5,655,719)**
2005	47.6	$8,303,295	$1,721,529	**($6,581,766)**
2004	317.7	$39,523,087	$10,041,864	**($29,481,224)**
2003	215.9	$17,774,592	$7,270,196	**($10,504,396)**
2002	16.5	$2,866,277	$583,910	**($2,282,367)**
2001	75.0	$1,667,167	$1,800,372	**$133,205**
Totals	**950.4**	**$99,638,532**	**$28,876,107**	**($70,762,425)**

Source: OIG analysis of Stapleton property sales to Forest City and comparable property sales provided by an independent Denver metropolitan area consultant specializing in real estate development.

Our estimate of lost revenue shown in the table is for only 950 of the 1,400 acres sold to the developer below fair market value. Therefore, we estimate that the total dollar amount of lost revenue, as of August 2008, actually exceeds $71 million (see exhibit D for full analysis of lost revenue as a result of sales below fair market value). Specifically, using the City's price structure (1999 appraisal price plus the CPI adjustment), sales of the entire 2,935 acres of developable Stapleton property would have amounted to $91 million in August 2008. Yet, the comparable property sales information we obtained for only 950 acres of the property Forest City received from April 2001 to August 2008 showed that portion alone was worth $99.6 million.

While FAA officials state that they took steps consistent with applicable laws, regulations, and FAA policies, they recognize the need to reexamine how the land disposal was conducted and agree that there may be lessons learned. Nevertheless, if FAA continues to allow land to be sold pursuant to the 1999 agreement through 2025, the airport will continue to lose tens of millions of dollars in future revenues.

[11] We obtained these comparables from an independent consultant, specializing in real estate development in the Denver metropolitan area.

FAA DID NOT EFFECTIVELY OVERSEE AND ENFORCE SPECIFIC AIRPORT REVENUE USE REQUIREMENTS

FAA oversight was not effective in ensuring proper use of airport revenues. Specifically, FAA permitted the City to reduce the value of Stapleton land by 50 percent in the 1999 appraisal. The deductions were applied to offset impact fees and financing costs that the developer would pay for parks, open space, and infrastructure—a federally prohibited purpose for airport revenues. As a result, we estimate that $40.5 million was diverted from airport use to fund Stapleton's redevelopment between April 2001 and May 2008.

The company that appraised the Stapleton land in 1999 was directed by the airport to apply the following questionable deductions to the land value.

- **Impact Fees:** Per the February 2000 Purchase Agreement between Forest City and SDC, Forest City pays an *impact fee* of $15,000 per acre of developable land to Park Creek Metropolitan District. The district uses those funds to develop parks and open space. The total value of the impact fee—$44 million—was deducted from the fair market value of the Stapleton property.

- **Infrastructure Costs:** The City anticipated a shortfall would occur in its infrastructure funding during the first 4 years of Stapleton's redevelopment. The shortfall would be covered by developer advances in the form of loans to the City, for which the developer would be reimbursed plus 10 percent interest. Even though the City planned to reimburse the developer, the projected shortfall amount was still deducted from the appraised land value to offset the developer advances; we estimate these deductions totaled about $40 million. To date, all developer advances have been reimbursed. (Exhibit E contains our calculations of deductions and the appraiser's determination of Stapleton's value as well as calculations of current and projected revenue diversions.)

FAA initially questioned the appropriateness of these deductions but still accepted the appraisal. The sum of the deductions from impact fees ($44 million) and infrastructure costs ($40 million) illustrates that if the remainder of the land is transferred pursuant to the agreement with Forest City, revenue diversions as a result of these deductions will total $84 million.

Further, the deduction for the infrastructure funding shortfall not only allows the City to use Stapleton revenue to develop parks and open space, which is prohibited, it also allows the developer to (1) obtain property at a reduced price, (2) earn additional revenue, and (3) resell the property for significantly more than it paid. The only party not benefiting from this arrangement is the Denver airport, which has lost millions in potential revenue on the discounted sale of Stapleton property. According to FAA grant conditions, this revenue should have been used to pay Denver airport's outstanding bond debt, which was approximately $4.1 billion as of December 31, 2009, with a total annual debt service (principal and interest) of about $348.5 million. Grant conditions between the City and FAA that apply specifically to the Denver airport also state that Stapleton proceeds must be used to fund the airport's development costs.

Moreover, in a 1995 letter to the airport, FAA explicitly prohibited the use of Stapleton's revenues to fund the redevelopment costs of parks and open space. FAA further advised that discussions regarding how to handle infrastructure investments should occur among the City and County of Denver, FAA, and the airlines.

Revenue diversions had been a contentious issue between the airlines and City in 1995 and continued to be until 2000 when the airlines and City entered into the Stipulated Agreement. The agreement details amounts and purposes for which airport revenue can be expended at Stapleton and specifically addresses impact fees by stating that "any impact fee imposed be *over and above the appraised fair market value, including any adjustments. [emphasis added]"* According to a major airline's legal counsel, who was also one of the principal authors of the Stipulated Agreement, the intent of this provision was to prevent any impact fee from being deducted from the appraised fair market value.

In our 1999 report, we also cautioned FAA against allowing airport revenue to be used for Stapleton's redevelopment. Specifically, we stated, "FAA needs to establish controls over the amount of Airport revenues being expended for Stapleton's disposal and ensure that Airport revenues are not diverted to the sponsor's urban renewal program." In response, FAA stated it would take action to better monitor Denver airport revenue expenditures related to Stapleton and limit the use of that revenue to eligible airport costs. FAA also stated it would accomplish this through an agreement with the City, as sponsor, and the carriers, if possible. In its August 2000 follow-up letter, FAA noted that the signed Stipulated Agreement was "a significant step towards answering the OIG's concerns about the timeliness of the disposition process and the use of airport funds at the Stapleton site."

It is evident that FAA has neither strictly followed its own guidance nor ensured that the City abided by the Stipulated Agreement, which set clear limitations on the City's use of airport revenue to develop Stapleton.

CONCLUSION

The budget constraints now facing FAA and the financial strains on the Nation's airlines and airports underscore the need for vigilant oversight of revenue use.

Because FAA did not effectively oversee the sale of Stapleton land, the airport has lost and will continue to lose revenues that could be used to reduce its reliance on Federal funding and lower its debt from the issuance of bonds. If these practices continue until the developer acquires all of the Stapleton property, airport revenue diversions from the deductions of land value in the 1999 appraisal will total about $84 million. Given the magnitude of lost revenues to the Denver airport, FAA should act quickly to ensure the City provides fair market value to the airport for the remaining Stapleton property, reimburses the airport for lost revenue, and uses revenue in accordance with Federal law.

RECOMMENDATIONS

We recommend that FAA's Acting Assistant Administrator for Airports:

1. For future airport closures, require more than one appraisal, use of indices other than CPI, and/or other methods to determine fair market value of large land sales when the land is transferred from the airport sponsor to the buyer over an extended period of time.

2. Evaluate the current funding of the development of parks, open space, infrastructure, or any other federally prohibited diversions associated with Denver airport revenue and take action to cease such funding.

3. Assess the revenue diversions identified in our analysis of the sale of Stapleton property and seek full recovery as necessary, plus interest, of those diversions and any others identified by FAA.

4. Assess the difference between the amount that the Denver airport will receive from future sales of Stapleton property and the fair market value at the time of the sales and explore ways the City can provide the difference.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We discussed the results of our review with FAA's Director, Office of Compliance and Field Operations on May 26, 2010, and provided FAA with our draft report on August 3, 2010. After issuing our draft report, we met with FAA's Acting Associate Administrator for Airports and staff on September 8, 2010, to discuss their concerns with the results of our review. Based on that meeting, we made changes, where appropriate, to the draft report to address FAA's comments and provided FAA with our revised draft report on November 28, 2010. We received the Agency's formal response on January 6, 2011, which is included in its entirety at the appendix. FAA nonconcurred with our findings and all four recommendations. Therefore, we consider them as open and unresolved and request that FAA reconsider its responses to the findings and recommendations and provide a course of action that would meet the intent of the recommendations, as discussed below.

As stated in our report, FAA allowed the City to lock into a long-term agreement that did not maximize airport revenue. While we acknowledge that changes in the real estate market cannot be predicted with certainty, the volatility of this market is well known. Yet, the agreement—that FAA allowed—permits the developer, not the airport, to reap the potential benefits of the changing market while the airport incurs the risks. The agreement freezes the base price for the property at 1999 values for 25 years and provides an adjustment only for inflation with the use of the CPI as a price escalator. However, the CPI only measures the changes in the price of goods and services purchased for consumption by urban households but does not include real estate. Consequently, if real estate prices dramatically increase, as they did in Denver, the City must still sell land parcels at the 1999 price and therefore receives far less than the fair market value at the actual time of sale. On the other hand, during periods where the market remains flat, the developer can protect itself by timing purchases over 5-year intervals. The agreement also benefits the developer through a reduced land price for its loans to the City to develop trunk infrastructure, through the City's repayments of those loans plus interest, and through an additional land price reduction to offset an impact fee of $15,000 per acre to develop parks and open space.

We contend that FAA's oversight was not adequate to ensure that the airport fully benefited from the sale of Stapleton property. We also note that while FAA nonconcurred with our findings and recommendations, its response indicated an acknowledgement that the guidance and processes regarding these types of large-scale land disposals should be reexamined to maximize airport revenue.

Recommendation 1: FAA stated there was no need to require multiple appraisals on all future airport closures as the results could be the same as at Stapleton. FAA also stated that it was proper to permit the use of CPI as an escalator in determining the value of each parcel of Stapleton property purchased by the developer. In future sales of this nature, FAA stated it would evaluate which price escalator to use and recommend the one most appropriate depending on the circumstances of the disposal.

Our recommendation did not require multiple appraisals in all cases as FAA's comments suggest. The recommendation states that "more than one appraisal" is an option to determine fair market value but not the only option. The recommendation also includes "use of indices other than the CPI **and/or** other methods to determine fair market value." Further, as stated previously, CPI does not measure changes in real estate prices, and we disagree that its use was appropriate to compensate for the shortcomings of an agreement that locked the City into a 25-year deal that froze the value of the land at 1999 prices.

Recommendation 2: FAA states that the development of parks and open space is not a revenue diversion but rather a requirement under existing City ordinances and therefore a matter of following the law. We understand that the development of parks and open space is required per City ordinance and the cost should be borne by the project developer. However, we question the decision to reduce Stapleton's fair market value, per acre, per district, to fund this development and conclude that by doing so $84 million in revenue that should have gone to Denver International Airport to pay down bond debt will instead be used to develop the Stapleton property.

Finally, FAA has taken liberty in how it assigns infrastructure costs (trunk infrastructure plus impact fees) to Forest City. FAA states Forest City is obliged to independently fund $294 million in infrastructure costs and, in fact, has already done so. We disagree. There is no question that Forest City is to pay an impact fee of $15,000 per acre at time of purchase or $44 million in total at the completion of the project. However, the fair market value of each acre was reduced by the same amount in the appraisal. So, in effect, the payment and reduction offset one another. The remaining trunk infrastructure cost is being funded from another source (the Denver Urban Renewal Authority), and our review indicated that Forest City has been reimbursed, with interest, for all advances. Additionally, FAA states that trunk infrastructure costs are independent of the $79 million purchase price of Stapleton property. We disagree. Stapleton's fair market value per acre, per district was reduced by trunk infrastructure costs of about $84 million.

Recommendation 3: FAA states that no revenue diversions occurred as a result of the sale of Stapleton property and any attempt to seek full recovery of the diversions would be unlawful. FAA notes that it would be impractical to attempt to seek full recovery on the sale of Stapleton property and likened it to a seller of a residence asking the buyer for more money 10 years after the sale because the residence had increased in value. However, this scenario does not apply to Stapleton. Unlike a house sale, individual parcels of Stapleton property were transferred over time with the fair market value being determined by the 1999 appraised value plus CPI at the time of transfer. Our analysis of *comparable properties sold during that time* as well as discussions with the City Assessors Office show that this pricing method did not reflect fair market value. We do not state in the report that the City must go back to the buyer (the developer) and ask for more money as FAA's comments suggest. Rather, as FAA's own guidance states, an airport sponsor is responsible for paying fair market value to an airport, regardless of the amount of money the airport sponsor receives from the sale of land from a buyer or developer. As stated in our report, the City does not have to modify its agreements with the developer in order to pay the airport fair market value.

Further, FAA's response did not address the source of the revenue diversions we identified. Those revenue diversions related directly to the deductions in fair market value of Stapleton that were applied to offset impact fees and financing costs that Forest City would pay for open space, parks, and infrastructure—a federally prohibited purpose for airport revenue. This occurred regardless of other comparable land sales at the time. Moreover, the Stipulated Agreement, which FAA maintains it conformed to, is explicit on what airport revenues can be expended at Stapleton and specifically addresses impact fees by stating that "any impact fee imposed [must] be *over and above the appraised fair market value, including any adjustments. [emphasis added]"*

Recommendation 4: FAA states that all parties entered into the sale of Stapleton property based on the best information available at the time of the sale on February 15, 2000, and there are neither differences to explore nor any future compensation due from the City. We disagree. Sales of Stapleton property prior to the execution of the Amended and Restated Stapleton Purchase Agreement between SDC and Forest City clearly demonstrate that real estate values were increasing and would increase subsequent to the February 2000 Agreement. In fact, the City was aware of this condition as indicated by the example we provided in the report regarding the first sale of Stapleton property in 1995. This was one of many examples of land sales that we reviewed during our work that supports our analysis of fair market value.

ACTION REQUIRED

We consider all four recommendations open and unresolved and request that FAA reconsider its responses to the findings and recommendations and provide a course of action within 30 days that would meet the intent of the recommendations.

We appreciate the courtesies and cooperation of FAA and representatives of the City and airport during this audit. If you have any questions concerning this report, please contact me at (202) 366-0500 or Scott Macey, Program Director, at (415) 744-0434.

#

cc: FAA Chief of Staff
Acting Associate Administrator for Airports
Anthony Williams, AAE-001
Martin Gertel, M-1

EXHIBIT A. OBJECTIVES, SCOPE, METHODOLOGY, AND PRIOR AUDIT COVERAGE

We conducted this performance audit from July 2008 to November 2010 in accordance with generally accepted government auditing standards prescribed by the Comptroller General of the United States. The audit steps were designed and completed to provide reasonable assurance of detecting abuse or illegal acts.

Objective:

The objective of this review was to assess the effectiveness of FAA's oversight in ensuring (1) the airport is as self-sustaining as possible and obtains fair market value for land sales and (2) the sponsor uses airport revenues only for airport purposes in accordance with Federal law. These revenues include those from the sale of the Stapleton International Airport (Stapleton) property.

Scope and Methodology:

To achieve our audit objective, we reviewed Denver International Airport transactions. Those transactions also included the transactions resulting from the disposition of Stapleton International Airport (Stapleton), which was closed and replaced by the Denver International Airport on February 28, 1995. Specifically, the audit team:

1) Identified and analyzed the laws and regulations regarding proper use of airport revenue, airport disposal, and fair market value concepts.

2) Obtained and analyzed key legal documentation, contracts, appraisal reports, and other correspondence and documentation pertaining to the Stapleton redevelopment and disposition.

3) Interviewed the FAA Airport District Office personnel, FAA Headquarters personnel, Denver airport accounting and legal staff, City & County of Denver personnel, local Denver real estate experts, and airline trade groups.

4) Toured the Denver airport property to identify companies with non-aeronautical leases at the airport. Of the 20 entities identified, we randomly selected 9 entities with such leases as of July 2008 and reviewed each lease to determine whether the airport was receiving fair rental value.

5) Reviewed and analyzed all Stapleton property sales that occurred from March 1995 through August 2008. We conducted an analysis of Stapleton property sales to Forest City and comparable property sales between April 2001 and August 2008 provided by an independent consultant who

specializes in real estate development in the Denver metropolitan area. Of the approximately 1,400 acres of land sold between April 2001 and August 2008, the consultant provided us comparable unimproved land sales corresponding to 950 acres of Stapleton land sales that we used to make our comparison. In order to make a direct comparison between Stapleton and the comparables, we chose only those sales of unimproved land.

6) Conducted transaction testing of select payments of shared services between the City and County of Denver and the airport for 2006, 2007, and 2008. We selected 10 of 14 departments to review, generally including those departments with larger dollar payments. Of the more than $82 million in payments from 2006 through 2008, the payments we selected for review totaled more than $49 million.

7) Conducted testing of selected cost items allocated to the Denver airport per the City's 2006 cost allocation plan. We examined the following cost categories: Legal Services, Auditors Office, Career Service Training, Small Business Opportunities, Public Works (Fleet Maintenance), Technology Services, Central Services (Office Services), Police Department, and Fire Department. We selected these categories to review for the following reasons: (1) 100 percent of the costs were allocated to the airport; (2) payments for direct costs were used to offset indirect costs; and/or (3) direct costs were not captured to show how they were offsetting indirect costs. Of the $36.1 million allocated to the airport per the cost allocation plan, we examined over $32 million of these costs.

8) Reviewed the working papers of the CPA firm, BKD, LLP, for their coverage of the Denver airport in the 2006 and 2007 single audit.

Prior Audit Coverage:

Office of Inspector General Report AV-1999-052, "Use of Airport Revenue, Denver International Airport," January 27, 1999. This report found that the sponsor (1) used airport revenues to develop Stapleton property beyond that necessary to dispose of the property, (2) used airport revenues for prohibited purposes, and (3) did not maintain a fee and rental structure sufficient to make the airport as self-sustaining as possible. All of our recommendations were closed by November 29, 2000.

EXHIBIT B. STAKEHOLDERS VISITED OR CONTACTED

FAA

- FAA Headquarters, Washington, DC
- Northwest-Mountain Region
- Airport District Office, Denver, Colorado

City and County of Denver

- Department of Law
- Assessor’s Office
- Stapleton Development Corporation

Denver Airport

- Department of Law
- Internal Audit
- Division of Business and Technology

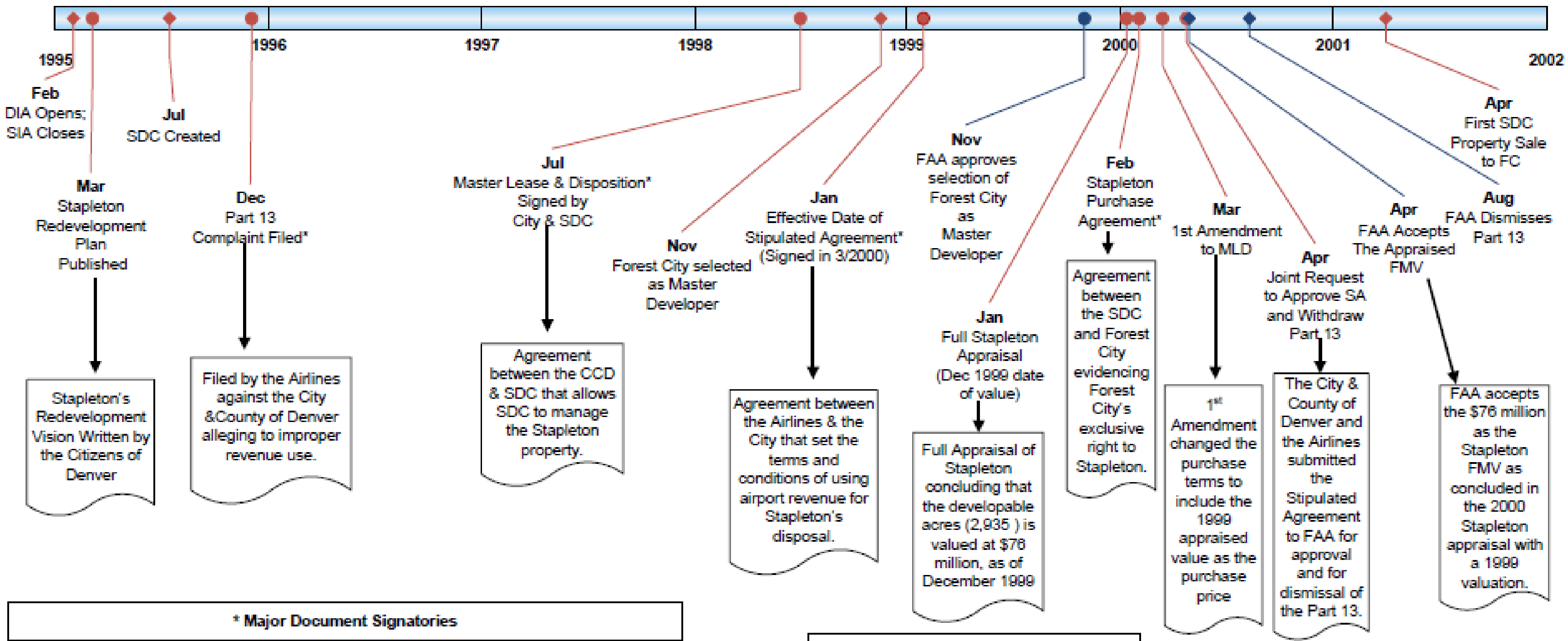
Denver Real Estate Groups

- Transwestern
- Bowes & Company

Industry/Airline Groups

- Air Transport Association
- Denver Airport Airlines Affairs Committee

EXHIBIT C. TIMELINE OF SIGNIFICANT EVENTS AND DOCUMENTS



* Major Document Signatories					
Document	**City**	**SDC**	**Airlines**	**FAA**	**Forest City**
Part 13 Complaint	X		X		
Stipulated Agreement	X		X		
Master Lease & Disposition	X	X			
Purchase Agreement		X			X

Abbreviations	
DIA	Denver International Airport
SIA	Stapleton International Airport
FAA	Federal Aviation Administration
SDC	Stapleton Development Corporation
CCD	City & County of Denver
MLD	Master Lease & Disposition document
SA	Stipulated Agreement
FMV	Fair Market Value
FC	Forest City

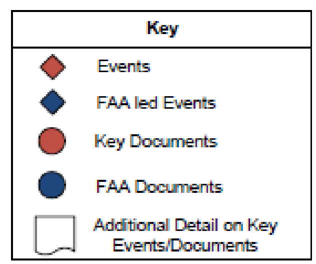


Exhibit C. Timeline of Significant Events and Documents

EXHIBIT D. AMOUNT OF LOST REVENUE FROM THE DISPOSITION OF STAPLETON PROPERTY FOR LESS THAN FAIR MARKET VALUE, APRIL 2001 THROUGH AUGUST 2008

YEAR LAND TRANSFERRED TO DEVELOPER (Stapleton)	COST PER ACRE Stapleton	Comparable	COST PER ACRE DIFFERENCE (Stapleton Price minus Comparable Price)	**REVENUE LOST ON STAPLETON PARCEL**	ACRES SOLD (Stapleton)
2008	$17,961	$42,708	($24,747)	**($261,328)**	10.56
2008	$27,540	$52,569	($25,029)	**($359,542)**	14.365
2008	$27,366	$150,214	($122,848)	**($1,216,318)**	9.901
2008	$17,847	$177,936	($160,089)	**($1,693,582)**	10.579
2007	$38,669	$116,000	($77,331)	**($309,324)**	4
2007	$27,366	$142,727	($115,361)	**($647,983)**	5.617
2007	$38,669	$181,347	($142,678)	**($177,063)**	1.241
2007	$27,366	$83,273	($55,907)	**($3,134,258)**	56.062
2007	$27,057	$366,013	($338,956)	**($1,272,780)**	3.755
2007	$27,057	$380,000	($352,943)	**($1,953,187)**	5.534
2007	$37,734	$80,048	($42,314)	**($273,814)**	6.471
2007	$26,704	$228,687	($201,983)	**($5,090,982)**	25.205
2006	$37,338	$285,395	($248,057)	**($2,212,420)**	8.919
2006	$26,421	$64,725	($38,304)	**($463,249)**	12.094
2006	$26,421	$130,679	($104,258)	**($727,304)**	6.976
2006	$37,334	$197,378	($160,044)	**($252,709)**	1.579
2006	$25,940	$47,045	($21,105)	**($2,000,036)**	94.766
2005	$36,655	$228,681	($192,026)	**($1,153,692)**	6.008
2005	$25,940	$154,640	($128,700)	**($284,774)**	2.2127
2005	$25,940	$130,000	($104,060)	**($313,012)**	3.008
2005	$36,655	$188,193	($151,538)	**($4,616,454)**	30.464
2005	$42,134	$78,285	($36,151)	**($213,833)**	5.915
2004	$36,036	$89,501	($53,465)	**($763,106)**	14.273
2004	$42,279	$47,000	($4,721)	**($15,046)**	3.187
2004	$42,143	$73,169	($31,026)	**($2,871,363)**	92.547
2004	$16,549	$7,789	$8,760	**$211,405**	24.133
2004	$16,549	$43,328	($26,779)	**($612,061)**	22.856
2004	$16,535	$86,108	($69,573)	**($2,163,999)**	31.104
2004	$16,715	$439,270	($422,555)	**($21,217,332)**	50.212
2004	$42,344	$68,165	($25,821)	**($2,049,723)**	79.382
2003	$36,215	$50,014	($13,799)	**($433,744)**	31.433
2003	$25,276	$455,466	($430,190)	**($7,297,743)**	16.964
2003	$25,276	$162,602	($137,326)	**($2,310,373)**	16.824
2003	$25,769	$33,229	($7,460)	**($240,891)**	32.291
2003	$41,760	$42,000	($240)	**($8,615)**	35.894
2003	$35,716	$38,298	($2,582)	**($213,030)**	82.506
2002	$35,576	$174,892	($139,316)	**($977,998)**	7.02
2002	$35,117	$172,191	($137,074)	**($1,304,369)**	9.5158
2001	$24,004	$22,228	$1,776	**$133,205**	75.003
REVENUE LOST ON STAPLETON SALES				**($70,762,425)**	

Exhibit D. Amount of Lost Revenue From the Disposition of Stapleton Property for Less Than Fair Market Value, April 2001 Through August 2008

EXHIBIT E. DEDUCTIONS FROM STAPLETON LAND VALUE AND AIRPORT REVENUE DIVERSIONS

The final appraised value of Stapleton was derived by using questionable deductions that decreased the fair market value by more than 50 percent. Table E-1 below shows the two different approaches the appraiser used to calculate the value of Stapleton land. The *sales comparison approach* is based on sales of comparable properties, and the *development approach* uses future cash flows (i.e., estimated revenues and expenses generated by the development) to determine the property value.

With both approaches, the land value was about $162 million prior to deductions for impact fees and infrastructure costs. After the deductions were taken, the appraiser concluded the final value of the land was $76 million. In both valuation approaches, at least $84 million was subtracted from Stapleton's value.

Table E-1. Calculation of Deductions and Appraiser's Determination of Stapleton's Value

Adjustments	Sales Comparison Approach	Development Approach
Fair Market Value	$162,000,000	$161,500,000
Less: *Impact Fee* *Infrastructure* *Total Adjustments*	($44,000,000) ($45,000,000) ($89,000,000)	($44,000,000) ($40,000,000) ($84,000,000)
Reduced Fair Market Value	**$73,000,000**	**$77,500,000**
The company performing the appraisal concluded the value should fall somewhere between the two approaches and set the value at **$76,000,000**.		

Source: OIG analysis of final appraisal report dated January 27, 2000

As shown in table E-2 below, revenue diversions totaled $40.5 million from April 2001 to May 2008 from impact fees and infrastructure costs. The City Attorney's Office provided documentation showing the developer purchased 1,416 acres of Stapleton property and paid $21.2 million (1,416 x $15,000) in impact fees during this time period. This represents the portion of the impact fee deduction shown in table E-1 that is attributable to actual sales. We calculated the rate of infrastructure cost attributable to each acre of land by dividing the infrastructure deduction by the total number of acres the developer is expected to purchase ($40 million[12]/2,935 acres = $13,629[13]). By applying this rate to the number of acres purchased by the developer, we calculated as of May 2008, $19.3 million ($13,629 x 1,416 acres) was diverted for infrastructure costs.

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[12] The two appraisal methods reduced the fair market value by $40 million and $45 million. Consistent with principles of conservative estimates, we used the lesser amount in our calculation.

[13] $13,628.62 was rounded to $13,629.

Table E-2. Revenue Diversions April 2001 to May 2008 From the Sale of Stapleton Property

Total Acres of Stapleton Property Purchased by Forest City as of May 2008:	1,416 acres
Multiplied by:	
Impact Fee Rate of $15,000 per acre	$21,200,000
Infrastructure Cost Rate of $13,629 per acre	$19,300,000
Total Amount of Revenue Diversions for Non-Airport Use	**$40,500,000**

Source: OIG calculations based on sales of Stapleton property to Forest City.
Note: Totals are rounded.

While table E-2 above shows revenue diversions based on actual property sales, table E-3 shows the potential total revenue diversions resulting from impact fee and infrastructure deductions, from April 2001 through December 2025, after all the property has been sold to the developer. The developer is expected to purchase a total of 2,935 acres. By multiplying the per acre rates for the impact fee ($15,000) and infrastructure cost ($13,629) by 2,935 we determined that total revenue diversions will exceed $84 million, if the remainder of the land is transferred pursuant to the agreement with Forest City.

Table E-3. Potential Revenue Diversions From the Sale of All Stapleton Property

Total Acres of Stapleton Property Available for Purchase by Forest City through 2025	2,935 acres
Multiplied by:	
Impact Fee Rate of $15,000 per acre	$44,025,000
Infrastructure Cost Rate of $13,629 per acre	$40,000,000
Total Amount of Potential Revenue Diversions From the Sale of Stapleton Property	**$84,025,000**

Source: OIG calculations based on final appraisal report dated January 27, 2000.
Note: Totals are rounded.

APPENDIX. AGENCY COMMENTS

Federal Aviation Administration

Memorandum

Date: Jan 6, 2011

To: Lou E. Dixon,
Principle Assistant Inspector General for Audit and Evaluation

From: Clay Foushee, ~~Director, Audit and Evaluation,~~ AAE-1

Prepared by: Randall Fiertz, Director of Airport Compliance and Field Operations, ACO-1

Subject: FAA Response to OIG Report: Use of Airport Revenue at Denver International Airport, Project No. 08A3007 AOOO

While the OIG report presents an extensive review of issues and offers considerable opinion on the sale of land that once comprised Denver's Stapleton International Airport, it is fundamentally flawed in its opinions relating to the sale and its proceeds. The transaction was complex in its execution, as one might expect in a sale of over 4,000 acres of land, some of which had considerable environmental remediation issues. However, in simple terms, the land was indeed sold in 2000, based on market prices and expectations at that time. Under the terms of the sale, the price was set in full compliance with applicable FAA guidance, regulation, Federal, state and local law, and based upon professional appraisal at the time. Ten years after the sales agreement was executed, the OIG concluded that proceeds should have been greater. This is not reasonable as this conclusion is based largely on land sales that transpired in more recent years under entirely different circumstances. The criticism of the sales price for a 10 year-old transaction, as asserted in the OIG report, is analogous to selling one's house and 10 years later returning to the purchaser with demands for additional funds, armed with the clarity of hindsight for a period of time in which prices appreciated considerably.

During the course of the OIG's efforts we met to convey our concerns from a legal and programmatic basis. During those discussions, we offered considerable documentation of the legal and programmatic bases of the sale. We appreciate the OIG's consideration and participation in those meetings, and are grateful for those areas of the report where these efforts helped to achieve a meeting of the minds. We remain willing to continue a dialogue with the OIG if it could be constructive in achieving a better understanding of the subject land sale and its basis.

Recommendation 1. *For future airport closures, require more than one appraisal, use of indices other than CPI, and/or other methods to determine fair market value of large land sales, when the land is transferred from the airport sponsor to the buyer over an extended period of time.*

The FAA does not concur that the OIG report demonstrates sufficient rationale for FAA to create the recommended blanket requirement for multiple appraisals. The specific aspects of FAA's handling of the Stapleton disposition, which were in accord with all requirements in place at the time, do not provide a sufficient basis for creating this requirement. Further, there is no evidence presented that would indicate that the outcome would be any different 10 years later with such a requirement in place.

The FAA acknowledges that large complex land disposals are worthy of careful consideration, especially those airport closures associated with an AIP-funded replacement airport. Therefore, the FAA will examine its guidance and processes with regard to these types of large scale land disposals and ensure that it reflects best management practices with regard to the valuation of closed and replaced airport property. FAA will ensure its guidance provides clear direction as to when a second appraisal should be performed, and identify what if any other actions should be performed to determine the fair value for this kind of large complex disposal. We will circulate draft guidance for review within one year of the OIG's issuance of its report.

With specific regard to Stapleton, the issues that the OIG finds with the appraisal (including the timing of development drawdowns, the use of Consumer Price Index (CPI) to value those drawdowns, and allowance for open space and infrastructure costs) would have been common conditions included in any second appraisal of this sale. Open space and infrastructure were specific terms of the sale and were integral in assessing the fair market value (FMV) of the property. The City of Denver (City) and the FAA insisted that these terms be addressed in the appraisal. The City of Denver selected Bowes and Company because they were well qualified to conduct such an appraisal, and the FAA concurred with the selection.

Due to the structure of the Stapleton disposal, which included individual parcel draw downs over a period of years, the airport sponsor and FAA recognized the need to include a logical and reasonable price escalator in the contract. The February 15, 2000 contract with the purchaser, Forest City Development, applied the CPI to the price of future property draw downs. The agreement provides for the value of the property to be escalated by the CPI at the time Forest City takes possession. The parties to the contract agreed to use the CPI because it protects the February 15,2000 sales price from inflation, while not penalizing the developer for adding value as it develops the site with office buildings, retail shops and residences. This development will add value to the adjoining vacant parcels awaiting disposal under the contract by virtue of their proximity to developed sites. In addition, Forest City's risks were and still are significant. The developer must invest its own funds up front which it cannot recoup until it sells the site.

Since it was proper for all parties to the contract to consider the value gained from entrepreneurial risk, it was proper for the FAA to permit the use of the CPI.

With regard to escalator clauses for future airport disposals, FAA endeavors to ensure that the airport sponsor achieves the full benefit from the sale consistent with all applicable requirements, while retaining the flexibility to structure the transaction to attract private investment. As a result, there is a continuing need to use appropriate price escalators. In any future sales of this nature, FAA will evaluate which price escalators to use and recommend the one most appropriate depending on the specific circumstances of a project.

Recommendation 2. *Evaluate the current funding of the development of parks, open space, infrastructure, or any other federally prohibited diversions, associated with Denver airport revenue, and take action to cease such funding.*

The FAA does not concur with this recommendation as FAA does not agree that the set-aside of acreage for parks and open space, and the development of this space is unlawful revenue diversion. Set-aside of acreage for parks and open space was necessary for the contract to comply with City ordinances in place at the time of the sale. Consequently, the set-aside was a matter of following the law, not a revenue diversion as the report indicates. As such, it was appropriate for the February 15, 2000 Stapleton Purchase Agreement to include provisions that ensure the agreement is in accord with the law.

The appraisal shows the land set-aside is proportionate to similar projects in the Denver area. The Stapleton set-aside is .11 acres per residential unit, Highlands Ranch is .34 acres per residential unit, and the former Lowry Air Base is .19 acres per residential unit. In addition, the appraisal presents a national survey that shows .12 acres per residential unit. Furthermore, the OIG did not take into account the geography of the set aside land, which includes lakes and streams. Such land is not suitable for development and is appropriate for including in a set-aside.

The funding for the development of parks and open space was laid out in the purchase agreement. The agreement requires Forest City to pay $294,000,000 upfront for trunk infrastructure costs (see table). That amount is made up of two components-the system development fee of $44,025,000 and local tax increment financing $249,975,000. The system development fee is not subject to rebate, so Forest City must pay that entire amount. Forest City will be eligible for a rebate of a portion of the local tax increment financing, after the property is developed, sold, and on the tax rolls. Forest City will be responsible for independently funding $90,000,000 of those costs. So, Forest City's nonreimbursed portion of the trunk infrastructure cost is the $44,025,000 plus the $90,000,000 for a total of $134,025,000.

In addition, trunk infrastructure costs are independent of the purchase price of the property, which was $79,400,000, and the purchase price is the only funding which the FAA should be monitoring. The $79,400,000 is airport revenue and is placed in the account of the Denver International Airport. The $294,000,000 that Forest City expended for trunk infrastructure as part of the sales agreement is not airport revenue, so there would be no reason for the FAA to evaluate the use of that money. Since those funds are outside of the regulatory authority, the FAA would be acting outside of its authority to conduct a review of those funds.

Recommendation 3. *Assess the revenue diversions identified in our analysis of the sale o/Stapleton property and seek full recovery as necessary, plus interest, of those diversions and any other identified by FAA.*

The FAA does not concur that revenue diversions occurred as a result of the sale of the Stapleton property. The price increases identified in the OIG report are transactions that took place after the contract of sale to Forest City, which was executed on February 15, 2000. Asking the City to recoup funds based on price escalations after the sale is like the seller of a residence asking the buyer for more money ten years after the sale because the residence has increased in value over that time. Such a request would neither be lawful for the seller of a residence, nor would it be lawful for the City to apply that condition to the Stapleton transactions.

While not fully recognized in the report, the sale was completed on that date in full accordance with laws and requirements. The OIG draft report fails to acknowledge the binding nature of the sale. The appraisal preceding the sale established the FMV, which the City adjusts by the CPI as the parcels are taken down for development by Forest City. The City uses CPI as the escalator to ensure the sales price is adjusted by the general rise in prices. Prior to the completion of the sale, all parties to the contract agreed that new appraisals for each parcel would not be appropriate because the new appraised value would reflect increased value from Forest City's surrounding developments and infrastructure improvements. The FAA agreed that Forest City was entitled to those increased values, since they were the result of Forest City's efforts.

The sale also conformed to the Stipulated Agreement between the City and the air carriers. The Stipulated Agreement required the City to obtain FMV from the sale of the property and for the proceeds from the sale to be credited to the airport account. The City did receive FMV at the time of sale, February 15, 2000, which was $79,400,000 and based on the January 27, 2000 appraisal. The City receives payment, plus CPI, as Forest City draws down tracts for development. The City credits the proceeds from the draw downs to the airport account. The OIG however focused on trunk infrastructure investments and called those investments revenue diversion, citing in particular the $42,025,000 for parks and wetland development. Infrastructure development however is independent of the purchase price. It is not airport revenue and is outside of the FAA's regulatory authority.

Also, the OIG does not address the reason for the development draw downs. With the closing of Stapleton International Airport, the City had to determine the best way to develop the 4,051 acre site. One alternative would have been for the City to assume the role of developer and sell parcels to contractors, who would then develop their sites in accordance with their individual strategies. The second alternative was to sell the entire site to one developer and have it developed in accordance with a coherent master plan. The City, with FAA's approval, chose the second option because it did not have the expertise or resources to develop the entire site. It concluded that a single developer would bring a greater overall sales price and a more balanced development. When the City chose the second option, it created the need for the draw downs because the acreage was too large to develop at one time.

The appraisal was conducted by a qualified appraiser who established the raw land value of the Stapleton property, which the FAA reviewed and found to be satisfactory. The draft OIG report asks that we ignore the purchase agreement and treat each drawdown as though it were a new sale using a current FMV. Since subsequent transactions are outside FAA's regulatory authority, there is no way for the FAA to invoke the revenue-use statute for these transactions.

If prices had unexpectedly fallen after February 15, 2000, and had Forest City invested in infrastructure, this seemingly lucrative investment could have resulted in a loss. The potential for declining real estate values is real and has been demonstrated over the last few years. When the City sold the land in February 15, 2000, it opted out of the risk of real estate price fluctuations. Forest City assumed the risks in return for gaining the potential reward (or loss). The FAA concurred with the $79,400,000 sales price as the current FMV of the land, which the CPI protects from general price increases. Consequently, there is no revenue diversion and no funds to recoup.

Recommendation 4. *Assess the difference between the amount that the Denver airport will receive from future sales of Stapleton property and the fair market value at the time of the sales and explore ways the City can provide the difference.*

The FAA does not concur with this recommendation. As discussed in response to the previous recommendations, the sale of the Denver Stapleton property was completed on February 15, 2000. Prior to the sale, an expert appraisal established FMV and all parties agreed to this value in the binding contract. The sale agreement included provisions for future land draw downs by the developer at an inflation adjusted price. There is no difference to make up and there are no further sales planned. As discussed above, the FAA does not have the authority to apply the revenue diversion statutes to the increases in property values that occur after the date of sale, which is the date that Forest City assumed the risk of its capital investment succeeding, or failing.

Also, on February 15, 2000, the Denver Airport account took the capital to invest in its new airport, while ceding the risks associated with the Stapleton parcel to Forest City. Finally, we note that the FAA, any airport sponsor, nor any professional appraiser can foresee future fluctuations in the economy or any specific real estate market. As is clear from recent economic developments, many parties entered into transactions to acquire and hold land that have not been successful investments. All parties entered into the sale of the Stapleton property based on the best information available at the time of the sale on February 15, 2000, and there is neither difference to explore, nor any future compensation due from the City of Denver, nor other parties to the sales contract.

Cost to Develop the Stapleton Site For Residential and Business Use

	Developer's Upfront Costs	Tax Increment Financing and Special Tax Districts	Developer's Cost After Tax Rebates*
Forest City Purchase Price	$79,400,000	$0	$79,400,000
Trunk Infrastructure-major arterials, park and open space improvements, the proposed interchange, and major utilities, to be paid for with a combination of System Development Fees and Tax Increment Financing.			
System Development Fee-Also called the Impact Fee	$44,025,000	$0	$44,025,000
Tax Increment Financing	$249,975,000	$159,975,000	$90,000,000
Total Trunk Infrastructure	$294,000,000	$159,975,000	$134,025,000
In-Tract Infrastructure-the cost for neighborhood streets, alleys, and extension of utilities to individual sites to be paid with taxes raised from special tax districts and by the developer picking up the expected shortfall.			
Special Tax Districts	$225,000,000	$225,000,000	$0
Expected Shortfall	$110,000,000	$0	$110,000,000
Total In-Tract Infrastructure	$335,000,000	$225,000,000	$110,000,000
Total-Purchase Price, Trunk Infrastructure, and In-Tract Infrastructure	$708,400,000	$384,975,000	$323,425,000
Developable Acres	2,935	2,935	2,935
Cost Per Developable Acre	$241,363	$131,167	$110,196

*The Developer must initially pay the total cost ($241,363) per acre. Later after the property is developed and on the tax rolls, the Developer will be eligible for rebates ($131,167 per acre) from tax increment financing and special tax districts. However the tax increment financing and the special tax districts will not cover all the infrastructure costs. The cost to the Developer after rebates will be $110,196 per acre.