

March 7, 2022

131 Luce Road
136 Luce Road
141 Luce Road
149 Luce Road
156 Luce Road
Williamstown, MA 01267

North Adams Airport Commission
c/o North Adams City Hall
10 Main Street
North Adams, MA 01247

Honorable Jennifer Macksey, Mayor
City of North Adams, Massachusetts
10 Main Street
North Adams, MA 01247

Ms. Colleen D'Allesandro, Regional Administrator
Federal Aviation Administration
1200 District Avenue
Burlington, MA

Selectboard Town of Williamstown, MA
Town Hall
31 North Street
Williamstown, MA 01267

To All Parties:

We, the undersigned property owners residing at various addresses on Luce Road, Williamstown, Massachusetts, hereby give notice to the City of North Adams, Massachusetts, the North Adams Airport Commission, and the Federal Aviation Administration of our intent to extinguish the avigation easements issued on July 21, 1964 on the below listed properties. The extinguishments are for cause and are lawful in accordance with both federal and state laws and court opinions.

Our reasoning is sound and based upon the following facts:

- 1) On December 27, 1963, then Massachusetts Attorney General, Ed Brooks, issued notice and guidance to all public entities within the Commonwealth of Massachusetts that the taking of easements on any property for a nominal payment without an assessment and negotiation was not legal.
- 2) The easements taken by the City of North Adams were taken on July 21, 1964, nearly seven (7) months after receipt of the guidance from Attorney General Brooks' office. These easements were essentially takings by eminent domain with a nominal payment

of \$1 to each homeowner, for which the City of North Adams has never been able to demonstrate proof of payment.

- 3) 1) and 2) immediately bring into question the legality of the easements from the onset. At a minimum, they are now, and have always been defective. That which is illegal at the onset cannot be made legal in the future.
- 4) When the easements were originally taken, the North Adams Airport's primary use was for recreational flights by small single engine planes. The easements at that time had little impact upon the affected property owners' ability to use and enjoy their properties.
- 5) For over 30 years from the issuance of the 1964 easements, the airport, North Adams Airport Commission, and the City of North Adams did nothing to maintain the illegal easements, thereby essentially abandoning them.
- 6) There are significant questions not only of the legality of the 1964 easements, but also whether or not the westward runway expansions were legal.

With the expansion and tree cutting in the early 2000s, the North Adams Airport has expanded significantly with multiple runway and use expansions and it is now used by larger, jet-propelled private and commercial aircraft as well as large helicopters. This expanded use has diminished the ability of the affected property owners ability to effectively use and enjoy their properties due to lower flying aircraft, significantly louder noise, as well as fumes and other environmental exposures. In addition, large helicopters pummel the properties with the downdraft from their rotors when either taking off or landing. In addition, the airport went from limited daytime hours use in 1964 to 24 hour per day use at the present time. As a result, the affected property owners are subject to disturbed sleep patterns, respiratory issues, noise and vibrations, all of which have been scientifically identified as detriments to health. The changes in airport use have modified the servitude of the listed properties. Further, the significant and ongoing expansion of the airport over the years have resulted in overburdening of us as property owners. The following information supports the fact that overburdening of the easements has indeed occurred:

In 1964, the airport settled with Albert Bachand (original owner of The Spruces) and gave him rights to the water west of the runway in perpetuity. The Airport had taken his land and the water easement was part of the settlement he made. When the Luce Road easements were taken, the airport could never move west in perpetuity because Bachand had rights to the water. To claim that a \$1 easement would not be overburdened when the airport moved the runway 100 feet west, and then added an additional 200 to 300 feet allegedly clearing for safety while destroying the wetlands is problematic. This extension could only occur if an agreement in perpetuity that was a contemporary agreement to the 1964 easements was extinguished. . Bachand made the agreement before the easements were taken. The Northern Berkshire Registry of Deeds still listed the easement given to Bachand as active as of

Summer 2021 (Bachand died in 2003). The easement is mislabeled on airport property maps and the airport filled in the wetlands to expand in the early 2000s. Luce Road property owners don't own those water rights, but if there is a contemporary agreement in perpetuity that forbids any expansion west, it is logical to assume that any expansion west would overburden the agreements made especially in consideration that it was impossible to do so legally. The mislabeled maps hiding this agreement are problematic for the airport.

There is also evidence that in 1964, when confronted by lawyers, the airport made additional payments, concessions and modifications to at least one Luce Road easement.

- 7) The North Adams Airport Commission was well-aware of the need to renegotiate the existing 1964 easements with the residents of Luce Road in Williamstown when it expanded the runway and removed trees in the early 2000s.

The North Adams Airport Commission and the City of North Adams renegotiated the 1964 easements with property owners residing in North Adams on the Eastside of the airport as evidenced by recordings at the Northern Berkshire Registry of Deeds. The North Adams Airport Commission and the City of North Adams knowingly concealed the renegotiations while threatening legal action against the easement holders of Luce Road, all while dealing with the Town of Williamstown by providing false and/or incomplete information in a disingenuous manner. These actions clearly support that the City of North Adams and the Airport Commission were modifying the servitude of our properties with full realization of the overburdening that would occur for us as property owners. The threatened legal action over illegal easements was in fact an unenforceable threat.

- 8) Various federal court decisions and appeals have ruled in favor of property owners in similar circumstances. The legal basis of these decisions was if the use changed or expanded, that is, the servitude was modified or overburdening occurred, the easements could be extinguished. The actions by the City of North Adams and the Airport Commission as the holders of the servitude did precisely what the courts have ruled as grounds for extinguishment.
- 9) The City and Airport Commission were burdened with negotiating new easements with Luce Road residents as they had with the easement properties in North Adams. That did not occur. They failed to do so.

As a result of the above referenced information as supported by a dearth of accumulated documentation within our possession, we, the following property owners, hereby give notice of our intent to extinguish our 1964 aviation easements:

Patricia S. Malanga, 131 Luce Road, Williamstown, MA 01267

Gerrit & Courtney Blauvelt, 136 Luce Road, Williamstown, MA 01267

David & Anne Leja, 141 Luce Road, Williamstown, MA 01267

Carmella Scarselletta, 149 Luce Road, Williamstown, MA 01267

Wade and Crystal Hasty, 156 Luce Road, Williamstown, MA 01267

These recissions will take immediate effect 30 days from the date of this notice.

As resolution, we ask that new easements are to be negotiated with all property owners of Luce Road who are overburdened by the illegal 1964 easements. That in accordance with current standards and the guidelines issued in 1963 our properties be assessed and that we receive fair and equitable compensation in exchange for new easements.

Respectfully

,

Patricia Malanga, Owner
131 Luce Road, Williamstown, MA

Gerrit & Courtney Blauvelt
136 Luce Road, Williamstown, MA

David & Anne Leja
141 Luce Road, Williamstown, MA

Carmella Scarselletta
149 Luce Road, Williamstown, MA

Wade & Crystal Hasty
156 Luce Road, Williamstown, MA