

# 2019 ANNUAL MEETING OF THE AERO VALLEY PROPERTY OWNERS ASSOCIATION

December 5, 2019

Presented by Mitch Whatley, president



# CALL TO ORDER

62 property owners present with 22 proxies = 84 total  
(43 needed for quorum)

- ▶ Roll Call – Quorum?
- ▶ Approve Last Year's Minutes
- ▶ Review Financial Report
- ▶ Review & Approve 2020 Budget
- ▶ Review 2019 Accomplishments
- ▶ Ratify Board Actions
- ▶ Elect four board members
- ▶ Change Name Back to Aero Valley POA
- ▶ Review FAQ
- ▶ Set 2020 Priorities
- ▶ Answer Questions
- ▶ Adjourn

# AGENDA

- ▶ Silence cell phones
- ▶ No sidebar discussions
- ▶ Introduce yourself before speaking
- ▶ Open and respectful discussion
- ▶ Robert's Rules apply - no speaking until given the floor
- ▶ No more than three minutes per question
- ▶ If the issue requires a vote, voting will be by number if the result is uncertain

## CODE OF CONDUCT

- ▶ Sergeant at Arms
  - ▶ Carey Sharp
- ▶ Timekeeper
  - ▶ Doug Reeves
- ▶ Parliamentarian
  - ▶ Bob Smith

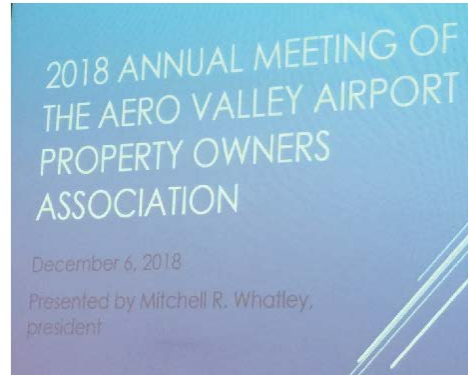
ROLES

52F

## POA Annual Meeting Minutes

6 December 2018 / 7pm-9pm

CEATL Building, Tarrant County College, 2301 Horizon Dr. Fort Worth, TX 76177



### NEW BUSINESS

- Meeting called to order 7:05pm
- Darrell Irby talked about the Tarrant County College
- Mitch explained how he came back on as board president. Thanked Monica Randolph Graham for being interim president for past eight months.

**Vote: Approved  
unanimously**

# APPROVE MINUTES OF 2018 ANNUAL MEETING





# WHAT COMMITTED OWNERS CAN ACCOMPLISH

1984 – New runway financed by donations





# WHAT COMMITTED OWNERS CAN ACCOMPLISH

1984 – New runway financed by donations



33 YEARS LATER ...







35 YEARS LATER ...

What committed owners can accomplish.

- ▶ \$0.28 per square foot for developed properties (967,809 sq ft = \$270,986);
- ▶ Undeveloped lots assessed at 10% of developed rate (560,315 sq ft = \$15,689)
- ▶ **Total \$286,675**

## 2020 ASSESSMENT INCOME BASIS



|                            |   | <b>Actual</b>  | <b>Budget</b>  |
|----------------------------|---|----------------|----------------|
| <b>Income</b>              |   | <b>2019</b>    | <b>2020</b>    |
|                            | Annual Assessments                          | 164,265        | 286,675        |
|                            |   |                |                |
| <b>Expenses</b>            |   |                |                |
|                            | Note Payments                               | 130,450        | 130,450        |
|                            | Airport Manager                             | 24,000         | 24,000         |
|                            | Office Rent                                 | 3,600          | 3,600          |
|                            | Accounting                                  | 2,376          | 1,800          |
|                            | QuickBooks Subscription                     | 378            | 756            |
|                            | Bank Fees                                   | 400            | 600            |
|                            | Insurance                                   | 3,408          | 3,500          |
|                            | Maintenance                                 | 484            | 3,000          |
|                            | Mowing/Equip Repair                         | 2,251          | 2,500          |
|                            | Mowing - Contracted                         | -              | -              |
|                            | Office Supplies/Postage                     | 1,567          | 1,500          |
|                            | Legal                                       | 67,614         | 50,000         |
|                            | Capital Improvements                        | -              | 30,000         |
|                            | Promotion & Community                       | -              | 5,000          |
|                            | Information Technology                      | 504            | 550            |
|                            | Electricity - Rwy<br>Lights/Rotating Beacon |                |                |
|                            | PAPI  |                |                |
|                            | Ramp Repair                                 |                |                |
|                            |   |                |                |
| <b>Total Expenses</b>      |   | <b>237,032</b> | <b>257,256</b> |
|                            |   |                |                |
| <b>Budget (Over)/Under</b> |   | <b>-72,767</b> | <b>29,419</b>  |
|                            |   |                |                |
| Cash @ 1/1                 |   | 98,852         | 36,565         |
| Cash @ 12/31               |   | 36,565         | 71,883         |

# BUDGET ITEMS

**Vote: Approved by  
clear majority**

| Year | Assessed | Collected | %    | Owners Paid | %2  | Total Owners |
|------|----------|-----------|------|-------------|-----|--------------|
| 2016 | 261,198  | 176,192   | 67%  | 196         | 92% | 214          |
| 2017 | 273,346  | 264,422   | 97%* | 195         | 91% | 214          |
| 2018 | 269,987  | 209,192   | 77%  | 192         | 90% | 214          |
| 2019 | 278,340  | 162,325   | 58%  | 163         | 76% | 214          |

\*some owners prepaid several years in advance

# YEARLY MAINTENANCE ASSESSMENT ANALYSIS

|                              |                   |
|------------------------------|-------------------|
|                              |                   |
| <b>169 properties</b>        | <b>\$ 240,829</b> |
|                              |                   |
| Glen Hyde & his entities     | \$ 65,061         |
| Bobby Hawk (rwy note holder) | \$ 25,868         |
| John Shackelford             | \$ 25,342         |
| <b>Total</b>                 | <b>\$116,271</b>  |
|                              |                   |
| <b>Percent of total</b>      | <b>48%</b>        |

## OUTSTANDING ASSESSMENTS



- ▶ Northwest Development deed restrictions amended
- ▶ All seven members of POA board elected to fill the ACC's seven seats
- ▶ ACC delegated its authority to POA board
- ▶ Consolidated and re-recorded all amendable AVDCO deed restrictions with historical background
- ▶ Accounting transitioned to QuickBooks online (online payment now available)

## 2019 ACCOMPLISHMENTS

- ▶ Property clean-up
- ▶ Southeast Drainage Repair
- ▶ Others TBD

PROJECTS IN PROGRESS

RESOLVED, that all proceedings of the Board of Directors and all operations and actions taken by members of the Board of Directors and officers of this Association are approved and ratified as being actions taken by this Association, on behalf of this Association, and for the benefit of this Association.

**Vote results: approved by clear majority**

RATIFICATION



# ELECTIONS

## 2019 Board of Directors

- ▶ Terms Expiring
  - ▶ Mitch Whatley
  - ▶ Steve Whatley
  - ▶ Gary Platner
  - ▶ Carey Sharp
- ▶ One year remaining
  - ▶ Doug Reeves
  - ▶ Larry Martin, CPA
  - ▶ Eric Branyan

## Qualifications

- ▶ Time available
- ▶ Four directors must be active pilots
- ▶ Executive-level business experience
- ▶ Proficient with MS Office applications & modern technology
- ▶ Self starter
- ▶ Team player

ELECTIONS

- ▶ **Nominations:** All four of those with expiring terms were nominated. Scott Daum nominated himself.
- ▶ Bob Smith moved to have Mitch Whatley, Steve Whatley, Carey Sharp, and Gary Platner run as a slate rather than individually. Motion seconded and passed.
- ▶ Vote
- ▶ **Results: All four re-elected to the board by clear majority (one nay).**

# ELECTIONS

- ▶ POA incorporated as Aero Valley Property Owners Association in 1985
- ▶ In March 1990, the Board changed the name to Northwest Regional Airport Property Owners Association
- ▶ Reason for change unclear
- ▶ Recommend returning to our original name

## ASSOCIATION NAME CHANGE



**ARTICLES OF AMENDMENT  
TO THE ARTICLES OF INCORPORATION OF**

**AERO VALLEY PROPERTY OWNERS ASSOCIATION, INC.**

SECRETARY OF THE STATE OF TEXAS  
MAR 14 1990  
CORPORATIONS SECTION

Pursuant to the provisions of Article 4.03 of the Texas Non-Profit Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation, which amend the name of the corporation, requirements for membership in the Corporation, and more particularly define the functions of the corporation.

**ARTICLE ONE**

The name of the corporation is Northwest Regional Airport Property Owners Association.

**ARTICLE TWO**

The following amendments to the Articles of Incorporation were adopted by the corporation on March 5, 1990.

Article I of the Articles of Incorporation is hereby amended so as to read as follows:

"The name of the corporation is Northwest Regional Airport Property Owners Association."

### ARTICLE THREE

These amendments were adopted in a meeting of the Board of Directors held on March 5, 1990, and received a vote of a majority of the Directors in office, there being no members having voting rights in respect thereof.

**DATED:** March 5, 1990.

NORTHWEST REGIONAL AIRPORT  
PROPERTY OWNERS ASSOCIATION

BY: *Alan W. Perry*  
President

The record does not reveal why there were no members with voting rights or what prompted the name change.

- ▶ **Vote: Approved by clear majority**

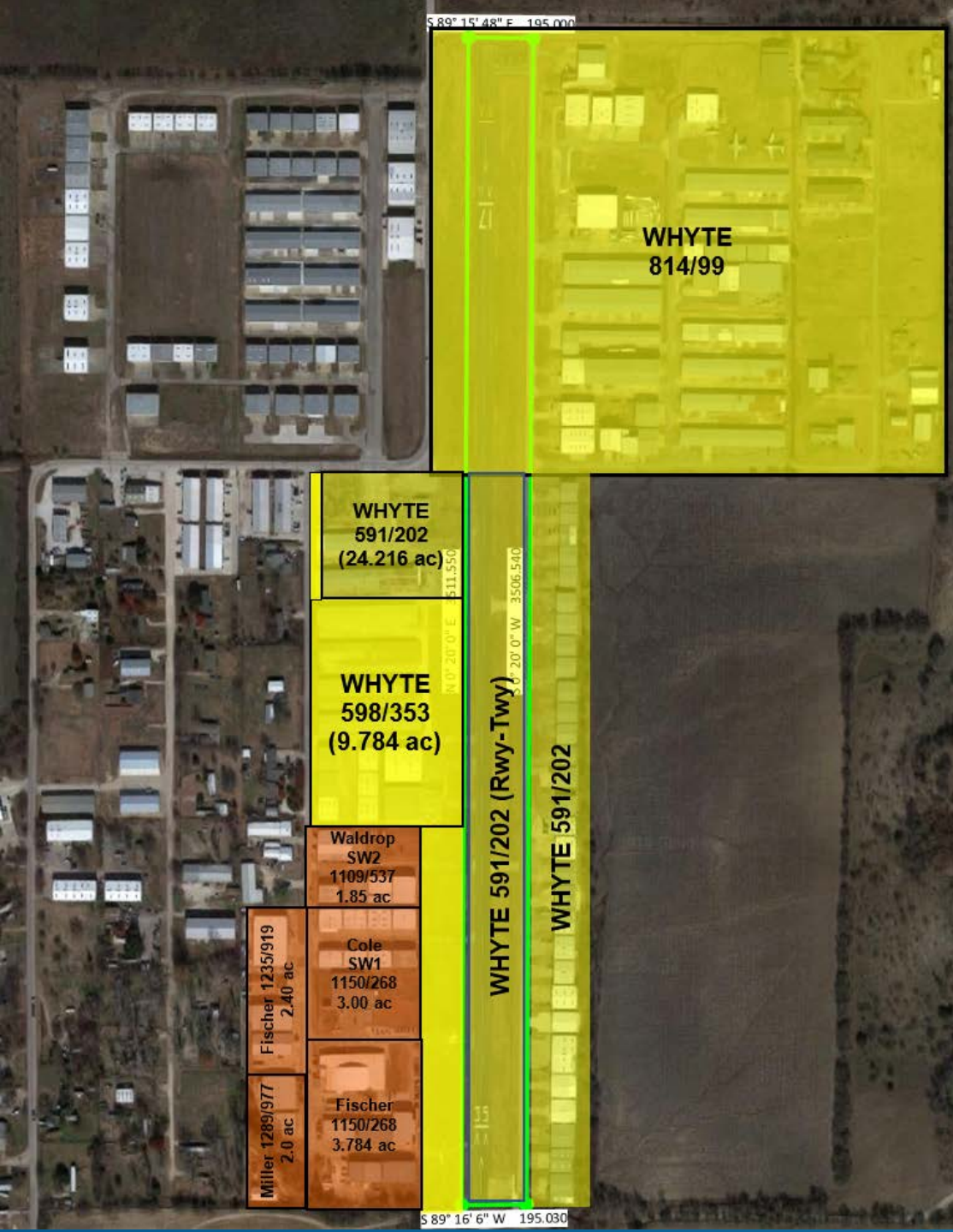
RETURN ASSOCIATION NAME TO  
AERO VALLEY POA?

1. What did the Court of Appeals decide?
2. How did the POA neutralize the effects of the Court's opinion?
3. Hyde says he won. Is that true?
4. Hyde says the Texas Supreme Court ruled in his favor. Is that true?
5. What about Hyde's runway access license?

FAQ REVIEW



6. Hyde claims his restrictions cannot be amended for 99 years. Is that true?
7. Hyde claims he governs the airport. Is that true?
8. Hyde claims he owns the airport. Is that true?
9. Doesn't ownership of the runway carry special rights?
10. What about airport operation and maintenance?



# Airport Property 1969 to 1982

# 1. WHAT DID THE COURT OF APPEALS DECIDE?

**Answer:** The Court invalidated the Integrated Deed Restrictions (“IDRs”) because Justice Meyer disagreed with how the trial court interpreted a “set” of deed restrictions. Under his interpretation, a majority of the then property owners alleged to be *subject to each set of preexisting deed restrictions* did not, in fact, approve the IDRs.

This raises an obvious question: **How did that happen?**

# THE COURT'S RATIONALE FOR INVALIDATING THE IDRs

We knew that many of the license agreements Hyde attempted to impose on properties outside the Northwest Development were void because all these properties already had easements for runway access and use. We also knew that Hyde's restrictions on many of these same properties were also void because the property was already restricted under the original Aero Valley Development Company ("AVDCO") deed restrictions.



# THE COURT'S RATIONALE FOR INVALIDATING THE IDRs (cont'd)

But rather than take the time and space in our pleadings to identify these properties one by one, we believed we could accomplish the same goal by separating the restrictions into general groups (AVDCO and Hyde) and development areas.

The trial court agreed, but Justice Meyer disagreed. Fortunately, the POA and the property owners responded quickly and rendered the court's opinion moot. It no longer has any effect at all.

## 2. HOW DID THE POA NEUTRALIZE THE COURT'S OPINION?

**ANSWER:** We merely followed the roadmap the Court gave us:

(1) Northwest Development property owners amended their restrictions to (a) designate the POA's board of directors as the governing body and (b) eliminate any reference to a runway access license;

(2) Property owners outside the Northwest Development elected the POA's board of directors to serve as the governing body; and

(3) the POA consolidated all amendable AVDCO restrictions and amended Northwest Development restrictions into one document to clarify their scope and purpose for the convenience of all property owners.

# NORTHWEST DEVELOPMENT

The Court agreed that the NW Development was burdened by a single set of restrictions and that “over 50% of the owners subject to that set of deed restrictions approved the IDRs.” But because we did not get signatures on all 30 different sets of restrictions that Hyde applied to various tracts outside the Northwest Development, the Court invalidated the IDRs in their entirety.

### 3. HYDE SAYS HE WON. IS THAT TRUE?

**Answer:** Hyde won nothing. Invalidating the IDRs did not grant Hyde anything. All he did was delay the inevitable and waste more time and resources in the process. The court of appeals disagreed with the trial court's method of determining a majority. Property owners promptly addressed that issue by re-amending the Northwest Development restrictions independently and leaving the AVDCO restrictions as they were. Hyde is now in the same position he was in after the trial court ruled in the POA's favor.

A better question is how much time and money we've wasted on legal fees and court costs that should have been spent to maintain and improve our airport. From that perspective, we all lost.

# WHAT ABOUT THE "CEASE & DESIST" LETTER?

As Paul Harvey famously said, "And now for the rest of the story." Mr. Hyde apparently did not reveal to his attorney the actions property owners took after the appellate court published its opinion. Mr. Hyde also did not reveal to you the letter the POA's counsel sent to Mr. Henry in response to his letter. In that letter, Jeff Springer informed Mr. Henry that, because of the actions the POA had taken subsequent to the Court's opinion, the POA had no intention of ceasing its activities.



## 4. HYDE SAYS THE TEXAS SUPREME COURT RULED IN HIS FAVOR. IS THAT TRUE?

**Answer:** No. The Supreme Court declined to hear our case. Whether the Texas Supreme Court hears a case is discretionary. In our situation, we rendered the appellate court's decision moot; thus, leaving the Supreme Court nothing to decide.

## 5. WHAT ABOUT HYDE'S RUNWAY ACCESS LICENSE?

**Answer:** It's gone and never should have existed. The general problem with most Hyde restrictions was the runway and taxiway license addendum rather than the restrictions themselves (they mirrored the AVDCO restrictions in most respects). A property owner can usually restrict his property however he wants, unless it's already restricted, or his restrictions conflict with pre-existing rights. Thus, Hyde had the authority to restrict NW Development property, but he never had the authority to grant runway access via license or easement. Why?

# PRE-EXISTING EASEMENTS

The runway-east taxiway and ramp area tracts were burdened by easements long before Hyde arrived. Nobody has the right to increase the burden on an easement beyond what was contemplated by the original parties without the consent of the existing easement holders. The original grantors of these easements were Edna Whyte, John Everett, Michael O'Brien, and Gene Varner. Only the properties shown in yellow and orange above were contemplated to be included within airport boundaries. Ironically, Hyde was among the first generation of these easement grantees.

# HYDE ACQUIRES LAND BURDENED BY EASEMENTS

Hyde was the third owner of the runway-east taxiway and ramp area tracts. Whyte, AVDCO, and Gene Varner had already established the scope of the easements burdening these tracts. These easement holders did not consent to the additional burden imposed by Hyde's NW addition.

# NW DEVELOPMENT EASEMENTS

Owners of property in Northwest Development Phases 1 and 2 nevertheless acquired easements for runway access and use by either one of two means:

- (1) Texas courts hold that Hyde's license is an easement, and
- (2) Hyde had to grant easements to all properties he lost to First Interstate Bank after a Dallas district court held him liable for fraud and awarded a \$1.68 million judgment against him.



# NW DEVELOPMENT EASEMENTS

In both cases, consent from the previous easement holders was still required. Consent came in the form of implied consent because property owners in other development areas did not object to including these properties within airport boundaries.

# ELIMINATE LICENSE FICTION

Eliminating even the pretense of a runway access license was always our goal. This so-called license is a provision of Hyde's deed restrictions.

According to the Court, "Appropriately construed, the deed restrictions are amendable by a majority of the then record property owners who are subject to each set of preexisting deed restrictions." Thus, property owners could eliminate the license provision by amendment.

# ELIMINATE LICENSE FICTION

Even though a majority in the Northwest Development had adopted the IDRs, the court's invalidation of them required Northwest Development owners to amend their restrictions again to eliminate the license agreement independently from other development areas. Property owners did not hesitate. Over 60% of Northwest Development property owners signed the amended restrictions and we promptly recorded them.

## 6. HYDE CLAIMS HIS RESTRICTIONS CANNOT BE AMENDED FOR 99 YEARS. IS THAT TRUE?

**Answer:** No. By stating “the deed restrictions are amendable by a majority” and the Court’s acknowledgment that over 50% of those in the Northwest Development had approved the IDRs, the Court necessarily rejected the argument that the restrictions could not be amended for 99 years. If the Court would have found that argument persuasive, the opinion would have stated, “Appropriately construed, the deed restrictions cannot be amended for 99 years”; thus, eliminating any need to determine whether a majority amended them.

# IF NOT AMENDMENT, WHAT DOES 99 YEARS PERTAIN TO?

**Answer:** The beginning of 10-year automatic extensions.

The AVDCO-Hyde restrictions do not specify an amendment window. Thus, Texas courts interpret the duration and amendment language to mean the restrictions can be amended at any time. Because of the historical preference to limit the duration of land use restrictions, the 30-year initial term originally identified the period before the restrictions expired. Property owners had to take affirmative action to amend or extend them. This led to restrictions terminating when property owners still wanted them. To avoid automatic termination, lawyers replaced expiration with 10-year automatic extensions. Thus, the 30-year term merely marks the beginning of 10-year automatic extensions rather than expiration. The initial term—whether 30 years or 99 years or any other number of years—is unrelated to amendment. (Some Hyde restrictions retained 30-year initial terms, which destroys the “can’t amend for 99 years” argument from the outset.)



## 7. HYDE CLAIMS HE GOVERNS THE AIRPORT. IS THAT TRUE?

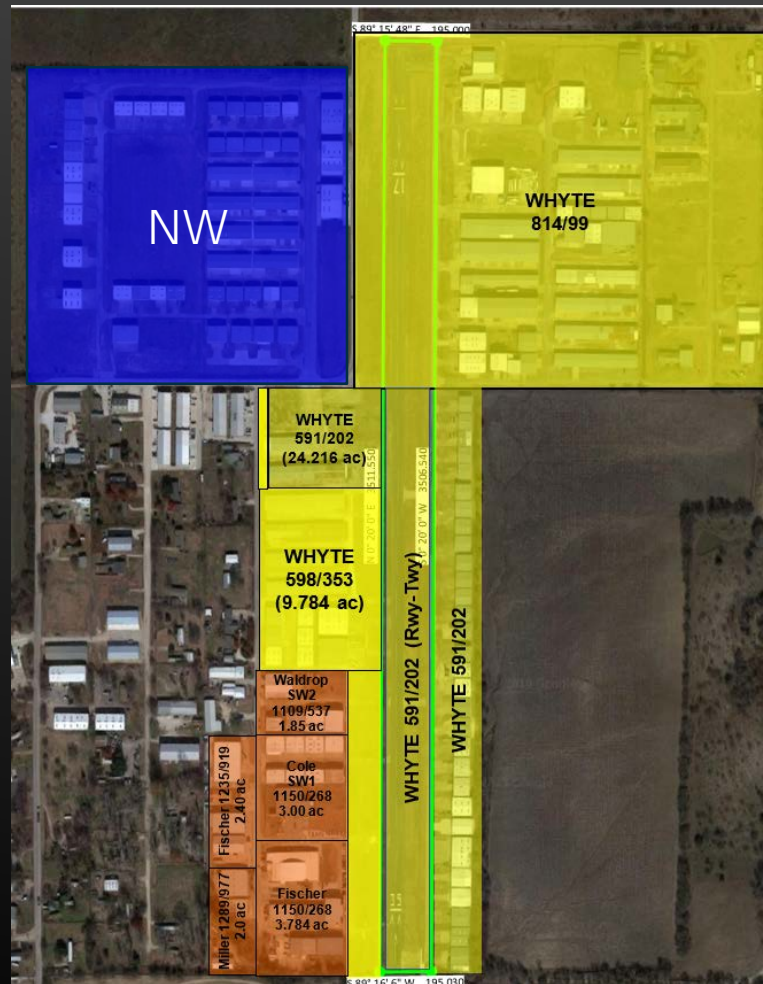
**Answer:** No. If you're a property owner, the AVDCO restrictions require seven property owners elected by their peers to govern the airport. No property owner has any more governing authority than any other. Which property you own or the amount of property you own is irrelevant to governance. You elected the POA's board of directors to represent you. Thus, the POA's board of directors governs the airport.

## 8. HYDE CLAIMS HE OWNS THE AIRPORT. IS THAT TRUE?

**Answer:** This question turns on the definition of an airport, specifically "airport property." Airport property is real property designed to be used or is used for airport purposes, including the landing, parking, shelter, or takeoff of aircraft and the accommodation of individuals engaged in the operation, maintenance, or navigation of aircraft or of aircraft passengers in connection with their use of aircraft or airport property. - Tex. Tax Code Ann. § 23.91(1).

An area of land or water which is used, or intended to be used, for the aircraft takeoff and landing. It includes any appurtenant areas used, or intended to be used, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. - FAA Doc 5190.6B, Appendix Z.

# AERO VALLEY AIRPORT



# WE ALL SHARE AIRPORT OWNERSHIP

With that definition in mind, Hyde owns part of the airport just like you do. If you own property within airport boundaries, you share airport ownership with your neighbors and fellow property owners. Ownership and governance are two different propositions. You must own airport property before you can participate in airport governance. The airport's governing body was established long before Mr. Hyde arrived. Like any other property owner, he can participate in airport governance, but he has no authority to dictate airport governance.

## 9. DOESN'T OWNERSHIP OF THE RUNWAY CARRY SPECIAL RIGHTS?

**Answer:** This question is based on the false assumption that Hyde, in fact, owns the runway. Hyde does not own the runway any more than you do. He owns the dirt on which the runway sits. Imagine the runway as a pipeline. If you had a natural gas pipeline easement running through your property, would you think you owned the pipeline itself? Would you try to sell a license to someone so they could use the pipeline, too? Of course not. It's not your easement and not your pipeline. When viewed from this perspective, the whole idea of selling a pipeline access license is absurd. The same goes for a runway access license.



# WHEN SOMEONE ACQUIRES A TRACT OF LAND BURDENED BY EASEMENTS, WHAT EXACTLY DO THEY ACQUIRE?

**Answer:** In this case, only the rights of shared use as a runway and shared expense to operate and maintain it.

In 1978, Whyte and her partners platted the runway as an easement. By doing so, they ensured that the right to access the runway, if granted at all, would have to be by easement. But even that right is conditioned on the consent of the easement holders. Why? Because the burden on an easement cannot be increased beyond the use contemplated at the time the easement was granted. Whyte and her AVDCO partners had defined the scope of all runway access easements by 1982. Thus, any further burden on the runway would require the consent of the easement holders.

# 10. WHAT ABOUT AIRPORT OPERATION & MAINTENANCE?

**Answer:** Along with the right of use associated with easement ownership comes the duty to maintain those easements and liability for any injuries sustained due to a failure to maintain them. The owner of the servient estates—specifically the runway-east taxiway and ramp area tracts—has only one duty: not to interfere with the rights and duties of the dominant estates, i.e., the hangar owners. If the owner of the servient estates (Hyde, in this case) shares in their use, however, he is liable for his share of their operation and maintenance costs.

# AERO VALLEY AIRPORT: A COMMON INTEREST DEVELOPMENT

Our airport is known as a common-interest development. Its common interest is the runway and all facilities necessary or desired to operate an airport. In a common-interest development, the duty to maintain these common-interest areas exists regardless of use. And if you gain access to your hangar via any of these private easements, in addition to liability for operation and maintenance costs, failure to pay your share of maintenance costs can result in denial of access. Whether you use the runway is irrelevant. If you don't want to pay airport operation and maintenance costs, don't buy airport property. The fundamental fairness of these rules should be obvious.

- ▶ Collections - If you haven't paid your assessment, what can you expect?
  - ▶ Contact by Sawko & Burroughs Law Firm in the form of a 30-day letter. If no response, then
  - ▶ 10-day demand letter. If no response, then
  - ▶ Lawsuit
- ▶ Collection Costs
  - ▶ Texas Property Code Sec. 5.006. ATTORNEY'S FEES IN BREACH OF RESTRICTIVE COVENANT ACTION. (a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow to a prevailing party who asserted the action reasonable attorney's fees in addition to the party's costs and claim.

PRIORITIES: WHAT TO EXPECT  
FOR 2020

- ▶ Repave Kelly Drive - \$150,000
- ▶ Pave NW Development perimeter access easement - \$300,000
- ▶ Provide runway access and runup area on northwest side of runway from northeast corner of NW Development after Cleveland-Gibbs moved

## PRIORITIES: POTENTIAL CAPITAL PROJECTS

▶ Your top three priorities:

1. ?

2. ?

3. ?

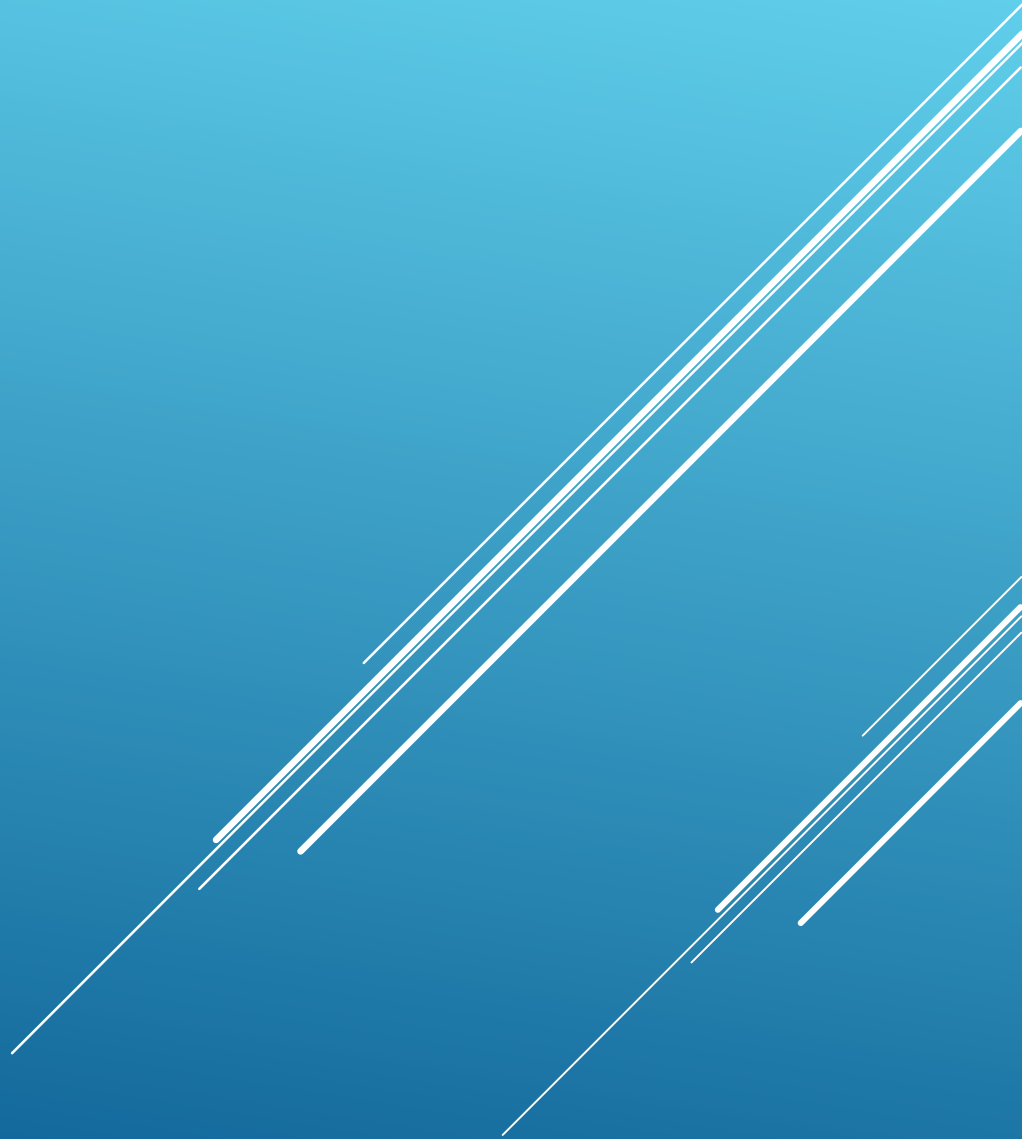
2020 PRIORITIES

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A decorative graphic in the bottom right corner consisting of several parallel white lines of varying lengths and orientations, creating a sense of movement and depth.



QUESTIONS?



Final words:

**“Characterize people by their actions, and you will [rarely]\* be fooled by their words.”**

- ▶ Thank you for coming! We have a VERY bright future ahead of us.

MOVE TO ADJOURN

\*The original quote uses the word “never.”