

**CITY OF PARK RAPIDS
AIRPORT COMMISSION
SPECIAL MEETING
JANUARY 15, 2014, 9:00 A.M.
Airport Conference Room
Park Rapids, Minnesota**

1. CALL TO ORDER: The January 15, 2014, Special Airport Commission Meeting was called to order at 9:03 a.m. by Don Douglas.

2. ROLL CALL: Present: Commissioners Donald Douglas, Dan Dyre, Dave Konshok, Thom Peterson and Councilmember David W. Konshok (arrived at 9:06). Staff present: John McKinney, Scott Burlingame and Carmen L. Lockhart. Absent: Noel Allard and Dan Walker. Others Present: John DeCoster.

3. ADOPT AGENDA: A motion was made by Konshok, seconded by Dyre, and unanimously carried to adopt the Agenda as presented.

4. GENERAL BUSINESS:

A. REVIEW OF DRAFT LEASE TEMPLATE AND MINIMUM STANDARDS FOR HANGARS: McKinney explained we have been working on this by way of process with a meeting in the fall when we went through this conceptually and DeCoster put together something that we've looked at and commented on which he adapted into a later version and then met with the lawyers in St. Paul for their input and he and I went through that and shared some of it with you last week.

DeCoster advised he talked to the lawyers again about the revised draft we had provided for them and they had some differences of opinion on a few of the items and I will let you know what those were. DeCoster said as he explained to them the context, they admitted that while they do some of this work they don't do it extensively and once I explained to them the context that we were doing it under, they actually agreed and we incorporated a couple of their changes that were good suggestions and then they pretty much adopted what we had proposed in the draft documents. DeCoster said he would go so far as to say that the lawyers and City Attorney is in sync with this also.

McKinney explained what we have in front of us now as a result of those various tasks that everybody seems to be supportive of the concept, I think in large measure we separated the legal ease from the operational ease and we asserted our interests in respect to operational and they concurred essentially. DeCoster agreed. McKinney said now to hopefully be approved by this group and will be sent to the City Council at the January 28th meeting if it is agreeable and that gets us in a position where we can send DeCoster out to do the necessary negotiations with the people that will actually sign on as a tenant or whatever. McKinney said the thing he really likes about it is that we have had operational understandings with our present tenants but it hasn't been sufficiently memorialized so that everybody is on the same page. McKinney advised that DeCoster

will go through this with us and if we could get your concurrence on these as documents we will take your recommendation to the City Council and make them aware of what we are doing exactly as they are relying on the Airport Commission's opinion. Once the Council has approved it we will be talking with DeCoster about meeting with tenants and I think there are some private citizens who have indicated an interest and as soon as you are ready to talk to them, so that is the format of where we are.

DeCoster said by means of background, when I came on board there were two things you were a little deficient on and wanted to address. One is the minimum standards which really define the operating and business relationship that ends of happening working on the airport. Most airports have minimum standards and from a commercial standpoint it is becoming more important that general aviation airports include those especially when you have 3M and such that fly in here. Again, they really define the business terms under which you operate on the airport and are a way of protecting the tenants on the airport from keeping off airport people from coming in and cannibalizing the business and they also set a level playing field for those that really do operate on the airport so that you don't have people pointing fingers at each other. DeCoster said McKinney hit on something that is very important to realize. You've had a good relationship between your primary tenants and Park Rapids but you know people sell businesses and people change and things happen outside of the work place that end up affecting relationships and I've too often seen where someone gets mad at somebody and they want to find a way to get them and they usually look to contractual ways of doing it because that's the one that hurts in the pocketbook and the minimum standards are really one way to protect that from happening.

DeCoster explained he used a template of a comparable airport and tried to adapt it to Park Rapids because I think it has a lot of similarity to it and also for the process of adopting minimum standards is an input gaining session, we did meet with the FBO and the aeronautics group and shared with them a copy of the agreement and sat down and met with each one of them and thought they were actually appreciative that we were going through this process and saw it as a way of protecting their interests on the airport so you don't just have somebody coming in or selling fuel or doing whatever it is they do, which a lot of times happens. They didn't have any substantive comments and thought it was consistent. Burlingame said Voigt is going through this process in Brainerd. DeCoster said yes they are starting this process in Brainerd and have alluded to that they have some problems down there that I think that looking at this can be a positive so again, we brought to them as draft forms seeking input as you do as part of this process so that hopefully when it gets to the City Council there should not be anybody standing up and crying foul. I would be very surprised and shocked if that were to happen.

DeCoster said we will do the minimum standards first as they are the bible of how we operate on the airport and again, I think a very smart move on behalf of the City and the Airport Commission to implement these just because aviation is changing on a daily basis. Fueling is a big issue for FBO's and making sure we have protective rights in there for our tenants who have made a commitment to us is very good. We are not looking at these as economic in nature, they really kind of defining what is the level playing field. With that background I just want to make sure since it's been awhile that we've talked about that as a big group and I want to make sure that everybody is on the same page.

DeCoster said he used a document that was from another Minnesota Airport and was already drafted that had been reviewed numerous times so this was not reinventing the wheel. DeCoster stated the first section is really definitions that define all the various issue that could potentially happen on the airport and making sure from a legal standpoint we have everything in the right box. DeCoster said there is a requirement that once these are adopted, that all the tenants on the airport need to conform with the minimum standards. For people like FBO's it's got a minimum space requirement here, minimal services that need to be provided, which is very standard stuff and not real inclusive so it's not prohibitive, but yet it also positions you so that if another FBO were to be interested in Park Rapids that they would have to comply with this just as Voigt does and I think that keeps us from getting what they call Part 16 Complaints filed which can affect grants. If you are found in violation of a grant assurance it can affect our ability to get federal money and that's not a good thing. This is a way to make sure we are clean. They will be required to comply as this will be the backstop that we look at each time a new business were to come on the airport as to whether they were an FBO or a specialized business that is called a SASO in this agreement. That's really what the aeronautics group is even though they've been considered under the category of FBO, technically under this agreement they will not qualify as an FBO but they do qualify as a SASO so their status will be protected under these agreements. DeCoster said uniformity is an issue we are doing so we stay in compliance with the federal grant assurances which allow you to get money.

DeCoster said one of the things where there was a little bit of a difference between the attorneys and ourselves and actually McKinney and I might have had a difference of opinion when we started this discussion but since the client is always right, I conformed to McKinney but actually I agree with it and after reviewing it. DeCoster said he is working on other projects and it is something that is cropping up more and more and when you get into bigger airports there is a lot of regulation done through the minimum standards and in other words they will say you have to be open from 6 in the morning to 10 at night, seven days a week, holiday, and that sort of stuff, and in a big airport where you have a signature flight support or someone who is effectively running a 24-7 operation anyway, it is not a big deal. Working on some similar projects to Park Rapids where you aren't open 24-7 and there are seasons and you've got different levels of activity going on at the airport and when I first drafted these I had some of those regulations like 8 to 5 and 7 days a week and one or two people here, etc. and as we talked about it and McKinney suggested it initially and the more I thought about it I'm absolutely a firm believer and am steering these other conversations in the same direction. Not having those in this document really helps from an administrative stand point. Those are issues that you really will be covering in the individual leases that tenant will have with the airport. In the earlier draft we had hours, number of employees, etc. and you will see those numbers have now been removed and we will be dealing with those in the actual contract with each tenant and it is a much more enforceable situation in that contract instead of generalities and one of the things, the more I thought about it that I liked about it is that way somebody cannot come in and see at 6:05 in the morning that somebody is not here and take a picture and say they are in violation of grant assurances and I'm going to file a complaint. Unfortunately things like that do happen, whereas if it is a contractual matter, then you can deal with it in the contract. The only numbers you'll find in here are the limited amount of square footage numbers on page

7 as far as what is required in order to become an FBO here and these numbers are still very basic. It's not onerous for somebody, we don't want to have somebody come out and say I'm Joe's FBO and be working out of his truck and by the same token we don't want to have an FBO having to make multimillion dollar investments in order to qualify. In looking at some of the other projects we've done at comparable airports, these numbers are probably on the low end of what's required in order to qualify as an FBO but I think they also represent a significant enough investment that the FBO will be able to conduct a business that is anticipated as far as the core services with the square footage.

DeCoster said the next section is hours of operation, personnel which is what I talked about before, where we got away from having legislated numbers and really just talked about having sufficient hours and sufficient personnel to meet the demand. I think that's something that if 3M is coming in and we need to have people here, we're going to have people here, that's the bottom line, so we tried to deal with it from a customer service standpoint instead of from a legislated standpoint.

DeCoster said the next section is the minimum service requirements which are really important. This is what an FBO must offer in order to qualify as an FBO. They need to fuel, which frankly from an economic standpoint is the way they make money. They need to have everybody trained, they need to have sufficient hours of operation, provide line services in other words they need to take care of airplanes when they come into the airport which is a very basic function for them. They need to be able to provide aircraft and power maintenance, a&p maintenance, fixing airplanes. We don't get into whether it is contracted employees or whatever because different FBO's have different models and we don't want to constrict that as long as it is being provided. Storage of aircraft, which we do have here, we have the ability to store airplanes and then pilot services and concessions which are primarily operated out of this building. One of the context I have to change in this agreement is usually the FBO actually the "terminal" is part of their leasehold and in the case of Park Rapids, it is a city asset so we changed the context to make sure that they were using the city asset and didn't have to duplicate that. Then you get into the optional services of retail fueling and some of the other things like flight training and such. These are not required to qualify for an FBO but if they were to offer them they would fall into the FBO umbrella.

DeCoster said the next group is called the Specialized Aviation Service Operators or SASOs I mentioned before. This would be your avionics group, people that have aviation related businesses on the airport. They don't get into commercial fueling, they can fuel themselves, they can take care of their own business, they take care of a business component of aviation on the airfield but they aren't the full service fueling, line services and group like that. This will protect our avionics group and there will be a qualified SASO and this will give him some protection on the field so that people can't come in and cherrypick business from them and this will give us that enforcement right to keep those people off the field like a guy working out of his truck, flight training or a charter service trying to cherrypick charters off the field. Konshok said he would like having that in this document so we know how to address it if it comes up. DeCoster said this gives us a basic level of protection. There was discussions concerning other people wanting to give lessons at the airport.

McKinney stated this is not only so that we can force somebody to do something or not do something, it also protects us against challenges that we aren't doing our job as the FAA requires us to and the state, so it behooves us to put this together. DeCoster stated the FAA does not require an airport to have minimum standards nor does the state, they strongly encourage it and more and more because of some of the instances I've talked about today, more and more airports regardless of size are getting into this arena.

DeCoster explained another discussion with the lawyer was about being able to grandfather variances in, because our contractual situation at the airport is not real deep, some of the contracts have either expired or some contracts don't exist or some contracts are old documents that don't have a lot of detail into them. One thing we did not want to do was to cause harm to any of our good current tenants and so we added in the right, for instance, square footage, if somebody only had 480 square feet instead of 500 we have the right to grandfather them in because that has really been an existing condition that would be in effect and could be dealt with. Going forward we have also added in a standard provision that there is a right of challenge or appeal or request for variance that if they come in and they have some compelling reason, they can come to the airport manager which would then come to the commission which would then go to the city council and be able to say I know your minimum standards say x, but my situation is a little bit different and I don't need this or this because I offer it this way, that would always give you the right to be able to allow variances from the minimum standards and allow a business to go on. While these are there, there is still the right for somebody to ask for some special handling.

DeCoster said there are some Minnesota laws that apply to aviation and airports which is legal boiler plate. The biggest issues raised by the attorneys were the hours of operation which I talked you through; the issue of variances and the grandfathering which at first they assumed that there were a lot of contracts and if we already had a contract why would we have to have a grandfather right and I told them that some of the contracts were a little vague in some of the areas so we might have a situation where there may need to be a grandfathered variance allowed. Again, with the idea that we don't want to negatively impact our two very valuable FBO and avionics tenants. Once I talked them through the reasons for the big differences of opinion they actually agreed with me and said yes, that does make sense. McKinney said there is another use of that tool and that is we have standards today and let's assume our FBO complies with them, but in a few years we want to change that standard for any additional new users, this allows us to let the guy that is already here stay here without having to upgrade. We aren't prohibited from having new standards because he has the old standards, it's a flex tool. DeCoster said ultimately the process will always be to approach the airport manager, the airport manager will come to the commission and the commission would go to the city council.

There was discussion about the process and the city council choosing not to agree with the recommendation.

Peterson said as the airport continues to grow and going to some other small airports where there are multiple businesses on the airport besides the two that we have,

and you commented about other businesses coming in and cannibalizing the businesses that are here, how do you merge those two where we get new businesses coming into the airport and they are doing aviation business and the two we have are doing everything there is that needs to be done for aviation so if some other company wants to come in and do their business? DeCoster said as long as they are in compliance with this, when I use the word cannibalization I was thinking more of somebody who doesn't have any investment in the airport and has not applied to live by the rules of the airport comes in and tries to take business away from people that are playing by the rules.

DeCoster said what this document does allow and we've got to be very candid about it is if somebody wants to come in and start a second avionics business, as long as they are in compliance with the minimum standards, they are authorized to be on the airport. Legally, we cannot have exclusive relationships with the FBO or any tenant on the airport, that's a complete violation of the grant assurances so this document is trying to level that playing field so if somebody wants to come in and start an avionics business they've got to meet the same SASO requirements that our current tenant does. We legally cannot get into playing the field and saying I want Joe instead of John, as long as they are meeting it, we've got to be able to allow them access to the airport as a public facility.

Konshok said that is a very important point because in the past it used to be that the FBO was exclusive and nobody else could come in and where it really caused a problem is where six or seven FBO's back was when they would sell the FBO then when sold you got all the rights and everything with it. Well, as DeCoster is pointing out here, we can't do it, we can't give an exclusive now and we've had the equivalent of an exclusive where we've provided a couple hundred thousand dollars worth of fueling facility and nobody is going to walk in here and produce that and we're not going to produce another set, so you sort of have control, but bottom line is extremely important what he is saying here, because of all the federal and state funding, we cannot give an exclusive right. This is at the heart of what we are getting into on land lease, that was the problem many years back was the difficulty when they got to build a building, they wanted title to the land and we could not give that. Konshok said the bottom line is it is a land lease, there is no transfer of ownership there of the land.

DeCoster commented there is only one scenario where you can have an exclusive FBO is if the FBO is staffed by fulltime city employees, so if you took it over and they worked for Burlingame and the payroll was coming out of the City of Park Rapids instead, you can have an exclusive FBO under that scenario, very few of those exist.

Peterson inquired about flying clubs? DeCoster said a number of airports have flying clubs which are almost a little consortium and the biggest thing we have to try to prevent is that flying club from becoming a business where the flying club tries to sell flight lessons, fuel, maintenance, etc. So they do exist and are usually a social network more than anything else, but what this is doing is defining their roles and responsibilities so they don't become competing businesses. Peterson asked if a flying club gets started and want to do some of their own maintenance, that's fine? DeCoster said that is within their purview, but if they want to go down to t-hangar row and do maintenance for everybody else, that is not allowed. DeCoster said with some of the airports he works with flying

clubs are starting to come back a little bit. Peterson said his first lesson was through a flying club in Arizona. DeCoster said they have value and we want to make sure we define the value and contain the value with what the historical intent was of a flying club and not let that become a business.

There was further discussion concerning FBO businesses being sold, being family businesses with changing dynamics and this gives the city good rules to prevail in the event of change.

DeCoster said a caveat on the ground lease is that contracts are contracts and there is usually general terms and conditions that are included in many contracts, what got us going in this direction of looking at it is the third party development agreement is the potential of getting a hangar built out here by Rydell. The intent of this though is there are also other tenants and we will be taking this basic document, which are the terms and conditions and modifying that for just regular tenant leases. There are some development things sprinkled in here which is the more complex of the tool and what we will end up doing is just striping that out for things like t-hangar leases or the avionics lease, the FBO lease, but will use the basic terms and conditions and legal terms that are in here as the base document for that, so while it says third party development, this will be the template I recommend we use for all our leasing activities on the airport. I just wanted to make sure there is that overriding thought on the front end.

DeCoster explained he used a document that has been used in other airports and every deal will be a little bit different, there will be nuances to each deal we want to incorporate in here, but the basic thing is that the land cannot be conveyed to the tenant, it has to be a land lease, this is FAA land being controlled by the city that you have to maintain ownership of it and that alone may cause some people not to be interested. If they are using that as an excuse it is smokescreen because there is a process you can go through at the FAA to have land taken out of the asset and deed it outside of the airport and it's a costly laborious process and the FAA is not real excited about doing it, so if somebody is so committed to doing that and they can find an airport that will do it for them, it probably wasn't a good deal for us to get into anyway. This was done under the premise that the land is retained by the city and the other issue is in olden days a lot of old FBO agreements were 99 year deals effectively their ownership, but you just call it a lease which is long beyond the useful life of the assets and in the last five years, the FAA has come down pretty hard on that, about what is an acceptable lease term and there is no defined exact number. Generally what we're seeing is the FAA tries to equate what's an acceptable lease term to what the investment is in the asset. So let's say if Rydell does come in and builds a hangar, in all honesty, they probably need a 25 to 30 year lease in order to get bank financing or if they are self-financing, to make it a reasonable investment on their part. The FAA has not, although the guy that is there now says 20 years is the cap, he has no jurisdiction to do that and we've got enough history to show that 30 years for a new investment is a very reasonable term, so in all likelihood for Rydell, I would recommend that we look at something like a 30 year deal which should be appealing to them for the amortization of their investment. It is also, in many cases, the useful life of the major component of the asset and after 30 years, concrete and roofs and doors are in tough shape, so it's kind of that thing. We have a provision at the end of that lease then,

this is one of the lawyer suggestions that was really good, we had before that the asset was reverted automatically to the city at the end of the lease which is a pretty customary term, we added a provision that at the city's discretion that if the building is not a useable asset going forward that the city has the right to require them to remove that asset and restore the grounds to it's previous condition, that was a good catch by them and is something that I overlooked.

Peterson inquired what if the guy has been taking care of it and at the end of the 30 years he wants to renew his lease, does he have that option? DeCoster stated the city has that option. Peterson said what if Rydell wants to? DeCoster said unless we have the option built into his agreement, which is not unusual, what I've seen is the 25 to 30 year basis with maybe two tens, which is kind of getting out to that 50 year timeframe, but some people like Rydell who is a family not a corporation, they may not want to have that commitment for 50 years so that is something that would be part of that individual negotiation. Usually they will, if they are making the investment, they will ask for options.

McKinney asked what do we do about assignability of that lease? DeCoster said the city has the right to accept assignees. McKinney said they do not have the unabridged right to assign without our permission? DeCoster said only if they are doing it from like one brother to another brother within the same unit, if you would, but if Rydell wanted to assign to another company, that would have to come to the city for approval. McKinney said do we have language in that like "shall not unreasonably be withheld"? DeCoster said I think we do and will double check on that. DeCoster said what we don't have to have happen is take Rydell and they want to assign it to someone with no credit history or has a history of bankruptcies and such which is just building a problem for the city going forward, the city is able to step in and say I don't think so.

DeCoster said a lot of this is legal ease terms and if it is a straight t-hanger for instances, I think we would be looking at annual, 3-5 year whatever that person would want to do and usually they aren't interested in long, long terms, but I guess again, depending on their commitment to the airport and the city, we would entertain anything within a reasonable time frame and I think that question came up last week also and we would look at, especially for our good and stable tenants, trying to lock them in for as long as we possibly could to give good financial stability to the airport and give them the stability as to how they want to run their lives. The term will be variable based on each individual situation.

McKinney asked if we have the right to buy them out? DeCoster said no. McKinney asked what happens if we have a t-hanger that is a little older and there is a ten year lease and five years into it we want to tear it down and build a new one, how do we deal with the tenants? DeCoster said that is a good question and I've seen that in actually a lot of airline leases where if the airport wants to go and renovate that they will go and find comparable space for them. Peterson said if they've made an investment they really can't kick them out if they are performing according to their contract. McKinney said that's true but we don't want to have to condemn them in court to get it. McKinney said say you've got 15 hangars and one guy has been there for 50 years and we want to redo the building

we've got to have some way to do that. Peterson said oh so they didn't build their building they are just a tenant.

Konshok said all kinds of things can happen, bankruptcies, so we need some kind of provision to take care of that.

There was discussion on the size of hangars for individual deals, city approval of all plans, coordinating building footprint, the apron and taxiway funding.

David W. Konshok commented on item 25 – subleasing – you may want to review it as all it says is lessee has the right to sublease any and all premises however lessee must ensure that any sub-lessee abide by the terms and conditions of the agreement. DeCoster clarified that is not an assignment, that is sublease. There was discussion on subleasing as they contain the economic deal between them and the sub-lessee, and once it gets approved by the city it becomes public knowledge and generally that is a show stopper for a tenant, especially an FBO as they don't want to have every sublease agreement brought to the city council because Joe's going to hear what John's got and people are going to say you are making \$2,000 per month on leasing and it only costs you a \$1,000 a month for your mortgage, etc.

Konshok said Allard couldn't be here and he went over this pretty carefully and there is a bit of confusion about where they can't put fuel in there or do all kinds of things, do they even have to keep an airplane in there? Konshok said we're changing the system, now all the regulations apply to our t-hangars and that is what Burlingame is responsible for is to see that they only put aviation stuff in the hangar and as a matter of fact that there is no tax on them is because we agreed they would be used specifically for aviation purposes only. There was discussion concerning aviation related uses. McKinney said when we sit down with Rydell that's where we plug in these specifics and the reason we put it there is that it differs so much that standards don't mean anything.

Konshok commented on the t-hangar funding and controlling the use of them. McKinney said the thing you are looking at in the third party development document isn't what t-hangars are covered under, it will be the basis upon what those leases will be developed and we haven't done that yet.

DeCoster said on page 3 #9 you will see a blank line in there and that is where we would find out exactly what their uses are and elaborate on that section.

There was discussion concerning storage certain items along with the airplane. DeCoster said this is the FAA, technically if you read the document it has to be for aviation purposes, now if you have a an airplane in there and you just happen to have a Harley or a four-wheeler or whatever or jet ski or whatever you have unfortunately what happens is, because if you have land rented at an airport, considering a commercial storage, which is pretty cheap and what they are trying to prevent and this actually in my past life have first hand knowledge of this, you go to Eden Prairie and there are yachts in there, that is a violation of FAA guidelines and it has to technically be there for aviation purposes. Peterson said you can have a vehicle in there though. DeCoster agreed I don't think

anyone is going to quival if you're using the additional space but if you're using that as a storage locker for all the boy toys and that kind of stuff, then it does cause some problems. McKinney commented it you ride your Harley to the airport to get into your airplane you've got no problem.

There was discussion about violations at other airports and the funding of the t-hangars built by the city and the state not funding any corporate hangars and taxation issues.

McKinney explained that there are some on the ground deals right now with the t-hangars that we're going to have to develop another level of documents to deal with and that is not intended in these documents. This is really fostered to have the third party developer come in and build something and there the restrictions are different, but it is implied but we also want to put in there if we need to a reference to the fact that all these leases have to be compliant with FAA regulations. DeCoster said that is a level of protection for the city. Konshok said we may not pay any money for corporate but we still own the land under them and we have control over them.

DeCoster commented that the minimum standards are adopted and are specific and this document which is really a template for a lease agreement with the city will change depending upon who the tenant is, the use, the investment, so this one is really to understand the base terms and conditions and if someone is likely to assign, we would beef up the assignment language even more, we will go through the terms and conditions based on each deal and modify, enhance, subtract, whatever it might be, based on the specifics of that deal.

There was further discussions on assignments, uses, minimum standards, tax exemption issues and statutes, paving, taxiways, ramp and changes based on the nature of the business and tenant.

A motion was made Konshok, seconded by Douglas and unanimously carried to recommend to the City Council approval of the Minimum Standards for General Aviation and Aeronautical Operations and the template for the Third Party Development and Ground Lease at the Park Rapids Municipal-Konshok Field Airport.

8. ADJOURNMENT: A motion was made by Konshok, seconded by Dyre and unanimously carried to adjourn the meeting at 10:02 a.m.

Don Douglas, Chairperson

Carmen L. Lockhart
Recording Clerk