

November 17, 2011
2:00 P.M.
Newport, Oregon

DRAFT

The City of Newport Airport Committee met on the above date in the City Manager's Conference Room of the Newport City Hall. In attendance were Jim Churchwell, Jim Hawley, and Ralph Busby, Mark Watkins and Curt Fewkes. Also in attendance were Mayor Mark McConnell, Council Liaison Jeff Bertuleit, Airport Director Cossey, and City Recorder/Special Projects Director Peggy Hawker.

ENTRANCE SIGN - CONTINUED DISCUSSION

Watkins distributed copies of a suggested sign for the airport entrance. The Committee supported the concept. Cossey reported that the idea is to mirror the city's logo as closely as possible, and he will work on this in addition to obtaining information on sign production.

GRANT UPDATE

Cossey reported that the engineers have developed preliminary budgets for airport grant work, and the work cost will be between 5.5 and 9 million dollars. Cossey also noted that the ConnectOregon IV grant application is for the full five percent match for the previously noted work. A discussion ensued regarding narrowing the runway to 100 feet.

CONTINUED DISCUSSION REGARDING QUARTERLY EVENTS

Cossey suggested holding a meeting of a working group on the Tuesday after Thanksgiving. The Committee was cautioned to avoid having a quorum of Committee members participate in this working group.

DIRECTOR'S REPORT

Busby asked for a status report on moving the NOAA sand pile to the airport. Cossey stated that talks continue with the Port, and issues to be resolved include responsibility for the grading permit, the development of the scope of work by the Port, and whether city staff has the manpower and time to perform the work.

Cossey reported that he believes that the Tillamook Air Museum wants to relocate to Newport, but is waiting for Tillamook to make an offer on land development. He noted that he continues to be optimistic. McConnell noted that there is an educational component that could complement the marine science component.

A discussion ensued regarding a proposed sample hangar lease form. Busby prepared written comments on the draft lease agreement. A copy of his comments is attached to

these minutes. McConnell noted that the city's legal team will draft the agreement to accomplish these requests if they fall within regulations.

ADJOURNMENT

Having no further business, the meeting adjourned at 4:05 P.M.

COMMENTS ON THE DRAFT ONP HANGAR SITE LEASE AGREEMENT

The following comments are based on my review of the draft lease agreement provided by Gene Cossey on November 8th. It would be beneficial if the Airport Committee, and any other interested parties, could meet and discuss the draft, item by item, to better understand the benefits to the City, and to the airport users.

The lease should be a balance between the needs of the airport owner (City of Newport) and the lessee (aircraft owner). While all of the needs aren't necessarily in opposition, some are, and need to be approached in a spirit of compromise. I hope we have a chance to better understand the draft lease and reach those compromises.

General Questions & Comments

- What is the City attempting to accomplish by rewriting the lease form? We need to understand the goals of the rewrite, and what are the problems that are being resolved.
- Are individual site leases the only, and best, way to provide hangars? What about the alternatives of group leases, city ownership/leaseback etc.? This isn't an endorsement of those methods, just a recommendation that they be thought through, and perhaps be made available as options.
- The City must recognize the importance of maintaining asset (hangar structure) value on the part of the hangar investors. This is critical to keep and grow the tenant base, which increases airport income and tax revenue. Restrictions that limit usability, and overly restrict asset life/value will, in turn, negatively impact airport income. Each term or condition in the lease that may have a restrictive impact on commerce should be seriously looked at, and if not required for safety, security, or mandated by law, be removed. How has the City taken this into consideration?
- We all recognize that the FAA imposes certain restrictions as a part of grant assurances, and in some cases, regulation. However the "FAA" is sometimes used as a crutch to justify positions that aren't necessarily federal mandates. I hope the authors of the new lease prepare a document that is best suited for the City of Newport, and its aviation community, rather than what they perceive to be the FAA's desires. Nevertheless, is the City willing to sit down with the FAA representative(s) in a meeting/teleconference that includes the user community, and discuss any issues causing concern?

Questions by Section

1. Lease

Exactly what land will be leased for a hangar? Is it just the building footprint, or "X" amount of space surrounding? The document refers to taxiways and approaches external to the structure both as lessor and lessee controlled in subsequent sections. Clarification needed.

2. Initial Term for a New Lease

If this is to be a variable number, then the criteria for term selection needs to be defined based on investment, size, location, or some other tangible measure. What is the City's plan?

3. Extension Term

If the initial term is to be variable, then the options should be so also, as regards number and duration. Would the City consider this?

While I appreciate the City's (and FAA's) desire to control open ended, or extremely long term leases, the document should nevertheless address lease renewal beyond the option periods. There is a strong possibility that the City would not want to take possession of the improvements at the end of a lease term, and should include a renegotiated renewal as an option. The document should also give the existing lessee first right of refusal on a renewal process. Would the City include these items?

3.1

Why restrict the exercise period to 360 – 180 days?

3.2 - 3.3

Which "code"? The one in effect at construction, or current? How about fire codes? Etc.
The use of the word "recommended" connotes "optional". Was that the intent?

4. Basic Rent

While the specifics of duration and cost aren't included in the draft, some indexed relationship to the City's owned hangars and parking would be appropriate. Currently, the city is renting "T" Hangars for less than ½ of the cost of leasing the ground, and owning/maintaining one of the small box hangars!
Will the City conduct a cost analysis of all storage options available on the airport in determining the fee structure?

Rent should be paid annually, or at least discounted for advance payment to lessen administrative costs. Will the City entertain this?

4.2

Define what late is. Also, make provisions for escrow payment for disputed amounts. Will the City include this?

5. Adjustments to Basic Rent

5.1

This should be removed. We all recognize that the City has the right to assess, tax, etc. Nevertheless an unbounded capability for fee establishment should not be included as part of a lease contract. If additional funding is required then it should proceed through the Council as would any other revenue generating measure. Will the City remove same and request additional funding through Council?

5.2

The use of an indexed rate is good for leases, but it should be applied uniformly to all airport storage/parking fees. Also, it should have a cap per annum (+-3%) and the prohibition against reduction removed. Will the City incorporate the above?

6. Taxes

Currently taxes are only levied on improvements. I suspect taxing leased public property may be illegal in Oregon. If the City really does want to take immediate possession of the improvements (see item 8) they may well eliminate all property tax income. Can the paragraph be rewritten to accurately reflect the intent and law?

7. Pre-Approval of Plans

The document is written as if it was to be used for the construction of a new hangar and its subsequent use. Provision should be included to address the assumption of an existing structure through a new lease. Can the City make appropriate changes to differentiate between existing structures and new construction?

There are references in this paragraph and others to "Airport Manger" as well as "Lessor" and "Building Inspector". The document needs to have a section describing who, by City granted title, has authority to do what. Would the City add a section or appendix defining specific responsibilities?

8. Construction Improvements

This paragraph could be construed to imply that all improvements become property of the Lessor upon completion *of construction*. I assume, or at least hope, the intent was upon completion *of the lease*. If that is in fact, not true, then there are significant implications that make this document basically unviable (as well as inconsistent internally). Please clarify. If the intent was truly the former, then please rewrite the sections referring to Lessee controlled improvements.

8.1 – 8.2

This is confusing as it depends on what land is actually under lease (re: section 1). It appears that the Lessor is expecting the Lessee to perform work on premise under the Lessor's control. That is a flawed concept. Having the Lessee pay for same is one thing, having them do construction on public taxiways, roadways etc. shouldn't be allowed. The Lessor should be responsible for all improvements needed up to the boundaries of the leasehold. If there is a cost, then it should be included in the lease fees or paid separately. Would the City please clarify?

9. Use of Leased Premises

This section should be rewritten to state something similar to: To be used for the primary purpose of aircraft storage, non-commercial use only. Would the City please remove the restrictions and simplify, perhaps using the old lease as an example?

9.1 – 9.2

The wording, as presented, would prevent the use of a facility for the storage of aircraft not owned by the Lessee. (Which is probably more than half of the aircraft currently stored at ONP). It would also prohibit the construction of experimental aircraft, and the storage of incidental equipment and items. Would the City remove, or provide adequate justification for its inclusion?

9.3

Why should the City authorize who works on a Lessee's aircraft? Why on the aircraft, and not the Hangar? What are the alternatives when authorized entities are not available? What are the criteria for authorization? While not defined herein, the concept of an "authorized" entity is an implied endorsement of capability which brings additional liability to the approver. The City would have to maintain and provide a list of "approved" practitioners to the Hangar Lessees as this data would be otherwise unavailable. Is this something the City wishes to take on? Would the City consider addressing this issue in the rules and regulations and eliminating it as an item within the lease?

10. Lessee's Additional Use Rights

There needs to be included verbiage providing for the Lessee's right to unrestricted pedestrian and vehicular access to the lease premise 24 per day. This is standard in many leases; would the city include it within this one?

11. Restriction on Assignment and Sublease

The document should be amended to state that the Lessee has the right to sublet the premise providing the party is subject to the same restrictions, rules, and regulations as the Lessee. Also stipulating the Lessor to be notified, and provided contact information for the sublet tenant. The original Lessee is still responsible to the City for all payment and compliance matters, so what is the City's concern? Will it make the amendment?

As to reassignment, the document needs to be specific about the process, and what is required for approval. The steps should be defined so the parties know how to proceed when the occasion arises. Also, if fees are appropriate, let them be established by Council, and published within the lease. Don't leave an open ended potential cost item. The environmental assessment should also be defined as to its specific trigger items, and to its particular costs. This is critical because the Lessee's value is tied to the ability to transfer ownership of the leasehold and improvements. Would the City consider rewriting the above section to clarify, and clearly identify the process and costs associated with a reassignment of lease?

12. Specific Obligations of Lessee

The Lessor should be required to provide adequate waste disposal for liquid and solid materials. The draft lease shows a great concern for environmental issues while the airport currently has no means for the Lessees to dispose of waste. Will the City provide the necessary environmental waste material handling containers?

12.3

This is redundant with other sections and subject to the same comments about who works on whose premise.

12.4

This section closes with "deemed a violation of this Lease". So, what's the consequence? This question applies to some other sections such as 12.2 as well. Can the City provide a remedy for violations and other non-compliance issues identified in the document?

12.6

This section levies potential costs on the Lessee based on discretionary decisions of the Lessor which lack engineered constraints. Will the City provide specific measures for compliance with this section and others in the document where vague statements exist as to costs being levied at the Lessor's discretion?

12.6.3

Means for a release from the obligation should be provided for. Will the City provide for this?

15. Cessation of Airport Operation

Lessor should be obligated to provide Lessee with fair market value as stipulated in Sections 16 & 17. Fair market value defined as the value prior to the decision to cease operation as an airport. Will the City include this in the section?

18. Removal of Personal Property and Fixtures

18.2

Abandonment should be defined not as failure to occupy alone, but rather failure to occupy *and pay*. Why does the City care if someone pays for an empty hangar? Does the City agree?

19. Default

19.4

Remove, other provisions cover and the penalties are excessive as stated.

1) & 3) Insolvency and possible bankruptcy shouldn't be an unqualified cause for default

Will the City incorporate the above changes?

20. Inspections

Given the nature of the occupancy of the premises, 1 week is a more acceptable notification period. Does the City agree, if not, why? Will the change be made?

21. Remedies on Default

21.3

This is beyond the scope of the lease itself and should be removed.

21.5

Use the existing rate, not 150%. Will the City change the rate, or at least lower same to a more reasonable value?

23. Arbitration

Regardless of where the lawyers live, we're in Lincoln County. So change Lane to Lincoln.