

Commonwealth Of Massachusetts
MARTHA'S VINEYARD AIRPORT COMMISSION
LAND USE SUBCOMMITTEE MINUTES

March 1, 2019, 4:00PM

MVAC Chambers

Notice of Such Meeting Having Been Posted as Required by Law

Present:

Subcommittee: Chair – Peter Wharton, Trip Barnes, Don Oglivie, Geoff Wheeler (first meeting)

Airport Staff: Ann Richart, Airport Director; Kevin Brennan, Property Manager (recorder)

Public Signed in: Harry Beach, Esq. (Counsel of MVBPTA); Jeff Donaroma (Donaroma's Nursery and Landscaping Services, Inc.); Angie Grant (VTA);

Via Phone: Mark Baumhofer (Osprey Trades, LLC); Jennifer C. Platt, Esq (Counsel at Anderson & Kreiger LLP)

- I. **CALL TO ORDER by Chair Peter Wharton – 16:00hrs.**

- II. **MINUTES: APPROVE THE MINUTES FROM THE FEBRUARY 13, 2019 LAND USE SUBCOMMITTEE MEETING –** Motion by Mr. Oglivie to approve minutes as distributed, 2nd Mr. Barnes, approved: 3-0-1. Mr. Wheeler abstained as he had not attended the February 13th meeting as a subcommittee member.

- III. **OLD BUSINESS**

Chairperson Wharton stated that we would answer questions and address the requests made to change MVAC policies. Ms. Richart stated that this special meeting had been called in response to requests from three tenants.

 1. **Discuss Lease Renewal of BP07-Osprey Trades, LLC.** Mr. Wharton proceeded to read questions presented by Mr. Baumhofer and then to read responses to the questions. Ms. Platt was asked for comment/clarification on some items. Overall, the LUS agreed with the contents of the proposed First Amendments of Lease.
 1. Leases contain 20-year renewals. No further renewal options will be considered.
 2. CPI adjustments are calculated and applied in the same manner as they have been for the past 20 years.
 3. **CORRECTION** - The Property Manager had already corrected Osprey Trades, LLC's rent rate to reflect \$1.06SF/ \$3,312.50/mth.
 4. The MVAC will continue to apply the Fair Market Value Rent Policy adopted on March 28, 2018.

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5. Future rent would be determined as the greater of the PCU and FMV determination and would not decrease as a result of the decline of either factor.
6. Continue the established policy through the approval of lease documents of charging an additional fee for subleases, which is not inconsistent with FMV Rent Policy. This practice takes into account the additional use of the business park facilities and additional staff time required to manage leaseholders with subleases.
7. **CORRECTION**-Agree to the lease amendment proposed "*The Lease as amended by this First Amendment represents the entire agreement of the parties hereto with respect to the issues addressed herein.*"
8. **CORRECTION**-Agreed to the lease amendment proposed "*the First Amendment that the Tenant is Osprey Trades LLC, approved successor/assignee of the original Tenant (John Vogel, Gregory Willet and Mark Baumhofer).*"

Mr. Beach asked to speak for Osprey Trades, LLC and clarified several of the points above. In particular, Mr. Beach stated the FMV "...is not a one-way ratchet after 20 years." Ms. Platt "that is not correct. MVAC must follow FAA Policy regarding FMV". Mr. Baumhofer stated that all he was looking for was "fair". Mr. Beach "The amendment must contain the same covenants as the original".

Mr. Wharton restated the motion by Mr. Ogilvie to recommend to the MVAC that the points summarized in A to H above be made to the First Amendment. 2nd by Mr. Wheeler. Mr. Wheeler then presented an alternative to the rolling 12-month CPI calculation. Mr. Baumhofer "all this does not make a difference". 3-1(Mr. Barnes)-0.

1. **Update on BP27 - Donaroma's Nursery and Landscaping Services, Inc. Lease.** Ms. Richart reporting that this lease was the same as the First Amendment prepared for Osprey Trades LLC, based on the required appraisal. \$1.06/SF. The MVAC will continue to apply the Fair Market Value Rent Policy adopted on March 28, 2018.
2. The appraisal report contains comparable properties used to make the determination on this property."
3. **CORRECTION** - Property Manager responded on 2/21/19 via email with explanation and correction plan. 2018 CPI increase had been processed incorrectly by Mr. Brennan's predecessor. Mr. Beach acknowledged that the correction has been received on a timely basis.

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4. CPI adjustments are calculated and applied in the same manner as they have been for the past 20 years.
5. Leases contain 20-year renewals. No further renewal options will be considered.
6. The lease contains no Cost of Living Adjustment (COLA).
7. The MVAC will continue to apply the Fair Market Value Rent Policy adopted on March 28, 2018.
8. Continue the established policy through the approval of lease documents of charging an additional fee for subleases, which is not inconsistent with FMV Rent Policy. This practice takes into account the additional use of the business park facilities and additional staff time required to manage leaseholders with subleases.
9. Although the 5-year FMV assessment was not mentioned in the past 20 years, the FAA now requires this.

Mr. Oglivie motioned, 2nd by Mr. Wheeler, Unanimous approval of the First Amendment to Donaroma's as noted above. **3-1(Mr. Barnes)-0**

IV. NEW BUSINESS

a. Request of BP3/8/9/10 – Martha's Vineyard Transit Authority to review lease early.

Mr. Wharton announced that Ms. Grant was here to prepay her rent as permitted by her lease in return for changes to the standard First Amendment to Lease being used. Ms. Grant stated that solar developers and their private investors have requested a letter from the MVAC that made them feel comfortable that her lease would be renewed by the MVAC. Ms. Grant stated that as public servants we all need to work together for our community, including the lease renewal process. She stated that she had few demands and is worried that long-term we needed to have a process that made sense. Mr. Wharton stated that he considered this conversation as 180-Day notification of the VTA's intent to renew their lease (current lease expires March 31, 2020). He recommended honoring the VTA's proposal to renew their lease under the "same conditions" as most recently-renewed leases (including amendments to Term, Base Rent Adjustment, late Payments, Five-Year Appraisal Requirement, Notices, Capitalized Terms, Entire Agreement/Ratification, Counterparts).

Ms. Grant stated "I am continuing towards an amendment to the lease "exercising renewal options" which will include no CPI increase in return for prepayment of our lease."

Mr. Wheeler motioned to accept the VTA's offer to prepay on their current lease and start to negotiate their lease renewal to include the MVAC's new requirements discussed today. 2nd by Mr. Oglivie and unanimously approved. 4-0-0

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V. ITEMS NOT REASONABLY ANTICIPATED BY CHAIR

- a. There were none.

VI. PUBLIC COMMENT

- a. No other public comment was offered.

VIII. ADJOURNMENT

**MR. OLGILVIE MOVED TO ADJOURN AT 17:02hrs; MR. WHEELER SECONDED;
MOTION UNANIMOUSLY APPROVED.**

Next meeting–tentatively scheduled for 5:00PM, Thursday, March 7, 2019

Approved March 7, 2019 - LUS