

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

December 5, 2019, 5:00PM

Airport Rescue and Firefighting Building Conference Room

Notice of Such Meeting Having Been Posted as Required by Law

Present:

Subcommittee: Chair – Peter Wharton, Don Ogilvie, Geoff Wheeler

Airport Staff: Kevin Brennan, Airport Properties Manager (recorder); Edward Christofono, Financial Controller; Cindi Martin, Airport Director

Public Signed in: Ann Osterholm (Hartel Realty), David Schwab (BP36-Schwab Electric), Fred Fournier (BP16-Landscape Inc.), Ted Rosbeck (BP37-Island Pool and Spa), Helen Schaeffer (AR23-Island Professional Realty), David Braga (BP11-12-DMB Realty Trust).

Public NOT Signed in: Paul J. Hartel (Appraisal Company of New England)

I CALL TO ORDER by Chair Peter Wharton – 17:02hrs.

II MINUTES:

APPROVE THE MINUTES FROM THE NOVEMBER 7, 2019 LAND USE SUBCOMMITTEE MEETING – Motion by Mr. Wheeler, 2nd by Mr. Ogilvie to approve minutes. Unanimously approved - 3-0-0.

III OLD BUSINESS

- a. Chairperson Wharton asked to rearrange the agenda in order to discuss the Lease Renewal Process. He provided an overview of events leading up to our current status.
 - a. Mr. Wharton stated that he understands that all leases contain renewal language which provides that the tenant may renew *“on the same covenants and conditions contained in this lease agreement, except as modified by this provision.... The parties shall agree in writing on the rent to be paid during such renewal term.”* Typically Section 1.2
 - b. He noted that all leases also contain a subordination provision which requires the tenant to *“reasonably abide by requirements of agreements entered into between the Commission and the United States, and shall consent to amendments and modifications of this Agreement if required by such agreement or if required as a condition of the Commission’s entry into such agreements.”*
 - c. As the recipient of federal grants, the Airport is required to set its fees and rents at a level which will make it as self-sustaining as possible and the Airport is required to charge fair market rent for non-aeronautical leases. Specifically, the FAA’s Policy and Procedures concerning the use of Airport Revenue, *“require[s] that the airport receive fair market value for the provision of non-aeronautical facilities and services....”* and requires that *“rates charged for non-aeronautical use (e.g., concessions) of the airport must be based on fair market value (e.g., lease of land at fair market rent subject to the specific exceptions listed in this chapter).”* Furthermore, *“Sponsors (airports) are encouraged to undertake reasonable efforts to make their particular airports as self-sustaining as possible when entering into new or revised agreements or when otherwise establishing rates, charges, and fees.”* He noted that the Lease renewal is the time to adjust the rents to FMV and bring the agreement into compliance with the Airport’s self-sustaining obligations.
 - d. As a result of several months of collaboration with the Tenant’s Association, in March 2018 the MVAC approved a FMV Policy and began to apply the policy to renewing leases.
 - e. In early 2019, a tenant challenged the policy, and, subsequently so, tenants have not signed First Amendments which complied with the FMV Policy.

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- f. The Land Use Subcommittee listened to feedback from several tenants over the past 9 months and asked Kevin Brennan to review the most recent proposed amendment to our Fair Market Value Policy to members of the Tenants association on a one-on-one basis. During November, 2019, Mr. Brennan reviewed the proposal with 4 tenant's who's leases expired in 2019. This proposal would phase in FMV rent over the first 5 years of the renewal term and provides some relief to the tenant while allowing the Airport to undertake reasonable efforts to become as self-sustaining as possible.

Mr. Wharton then opened the floor for comment. Mr. Fred Fournier of Landscape Inc, who leads the Tenant's Association requested 15 minutes to address the Subcommittee. Once granted, Mr. Fournier introduced Paul J. Hartel, Principal, Appraisal Company of New England and Hartel Real Estate who reviewed a 35-minute powerpoint (paper) presentation related to theories in land leases (presentation attached to minutes). In conclusion, Mr. Hartel suggested that the airport "should consider leasing land in perpetuity". Mr. Rosbeck suggested that the Subcommittee disregard the final analogy presented by Mr. Hartel related to car leasing. Mr. Wheeler stated that he "understood the car rental analogy, but did not believe it was relevant." Mr. Rosbeck stated that he was "frustrated by the FAA being used (by the Airport) to stand by" movement to the Fair Market Value requirement, and recounted how the airport had slimly avoided a lawsuit from the Tenants Association, a suit avoided by spending money to design the current FMV process. Mr. Rosbeck also stated that the Airport had no right to make changes to the leases. Mr. Wharton thanked everyone for presenting and for the subsequent feedback.

17:54hrs. – all tenants left the meeting room.

- b. **Award of MVY-RFP 2019-02 – Terminal Restaurant Concession** – Mr. Wharton reviewed the highlights of the submission presented. Plane View Restaurant's proposal is the minimally acceptable MAG \$36,065.12, with 4% increase for 5 years. The agreement covers the term February 1, 2020 to January 31, 2025 and contains one option to renew for five (5) additional years. Mr. Ogilvie motioned that the LUS support approval by MVAC at their next meeting. Motioned seconded by Mr. Wheeler. Unanimously approved – 3-0-0.

Forward to MVAC.

IV ONGOING BUSINESS

- a. **Tenant Aging Report** – Mr. Christofono presented report which indicated 5 most overdue accounts owe ~\$20,000. Mr. Christofono has issued 30-60-90 letters and payments are being received as a result of this effort. Mr. Christofono noted that over the past several years, the Airport had somehow initiated the practice of invoicing subtenants directly for water and wastewater. Recently, one subtenant had not paid water/wastewater for 9 months. Invoices were then sent to tenant who still had not paid water and wastewater invoices. Discussion led to Land Use Sub Committee instructing staff to invoice ONLY tenants and to communicate this change to all affected tenants ASAP.

b. Airport Properties Manager Report

1. **BP14 – MV Lot 14, LLC** – Refuse remains on loading dock and must be removed before Assumption of Lease is approved. Disabled front end loader blocking garage door for three+ weeks (was to have been there 1-2 days). Tenant's Property Manager working with her subtenant to move. No SDS or clean-up plan has been presented by the Tenant.
2. **BP28 – T Ford** – MVAC copied on letter from tenant to customers asking them to removed property from unapproved PODS which tenant had committed to remove in 2010. Tenant has committed in writing to remove unapproved PODS by January 2020.

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3. **AR 27 - MV Investment Properties(Floorstile, Inc.)** – 90 days have passed since initial communication with tenant regarding removal of 3 uninspected, unroadworthy, and therefore abandoned vehicles and 1 abandoned boat. September verbal agreement to remove vehicles made by an agent (daughter) of the tenant has not been kept. Formal letter was sent October 21. Outstanding water and wastewater invoices will be resent to leaseholder for payment. There has been no progress since initial letter in August 2019. Staff will recommend next steps at January 2020 LUS meeting.
4. **Annual Inspections are scheduled to begin in December.** Team, including Edgartown Fire Inspector and Airport Water Department has scheduled expired lease properties for December and soon-to-expire properties for January 2020. All forms used in the inspection are forward to leaseholders at scheduling to enable them to be prepared.
5. **County Emergency Management Junkyard** – County Manager and Emergency Management Deputy Director for Administration and Finance Martina Thornton left a phone message stating that the County did not have the means to pay rent for the property. Emergency Management Director Gotnoir committed via email to remove at least 10 (50%) vehicles currently on the property. Deputy Airport Director Geoff Freeman and Airport Properties Manager Kevin Brennan toured the property with Director Gotnoir. We clarified specific vehicles and other stored materials and equipment that Director Gotnoir would remove which would bring the property closer to revenue-producing status. Subcommittee asked Brennan to clarify rentability as soon as possible and then create timetable towards revenue production.
6. **Future Issues** – Taxi Agreements, Off-site Car Rentals Agreements, Lyft/Uber Agreements

V. NEW BUSINESS

- a. **RFP-2019-03 – Cell Tower #1** – Mr. Wheeler motioned to recommend that the MVAC approve the RFP as presented 2nd by Mr. Ogilvie. Unanimously approved 3-0-0. **Forward to MVAC**
- b. **RFP 2019-04 – Cell Tower #2** - Mr. Wheeler motioned to recommend that the MVAC approve the RFP as presented 2nd by Mr. Ogilvie. Unanimously approved 3-0-0. **Forward to MVAC**

IV. ITEMS NOT REASONABLY ANTICIPATED BY CHAIR

- a. NONE.

VI. ADJOURNMENT

**MR. OGILVIE MOVED TO ADJOURN AT 18:35hrs; MR. WHEELER SECONDED;
MOTION UNANIMOUSLY APPROVED 3-0-0.**

Next meeting – Scheduled for 5:00PM, Thursday, January 2, 2020