

To: Carson City Airport Authority
From: Steve Tackes, Airport Counsel
Date: Dec 19, 2016
Re: Airport Counsel briefing for Dec 21, 2016 CCAA meeting

1. FOR POSSIBLE ACTION: TO APPROVE THE REQUEST BY CARSON CITY FIRE DEPARTMENT AND THE CARSON CITY PUBLIC WORKS DEPARTMENT to operate UNMANNED AERIAL VEHICLES (aka Unmanned Aircraft Systems, or “DRONES”; UNDER 55 LBS) WITHIN 5 MILES OF THE CARSON CITY AIRPORT. (S. Tackes)

Staff Summary: The CARSON CITY FIRE DEPARTMENT and the CARSON CITY PUBLIC WORKS DEPARTMENT have acquired drones to be used for purposes related to their operations. NRS 493.109 prohibits operations of an unmanned aerial vehicle within 5 miles of an airport unless the operator obtains consent of the Airport Authority. The CARSON CITY FIRE DEPARTMENT AND CARSON CITY PUBLIC WORKS DEPARTMENT have requested that consent. Consistent with other such approvals, consent should be conditioned on notice to the Airport Manager in the event that CARSON CITY FIRE DEPARTMENT or CARSON CITY PUBLIC WORKS DEPARTMENT intends to operate within 1 mile of the Airport so that a NOTAM or other decision can be made as to the safety of ongoing Airport operations.

Background. Regulation of UAS (unmanned aircraft systems, sometimes call unmanned aerial vehicle, or drones) is generally done by the FAA. However, in 2015, the Nevada Legislature adopted laws governing safety and other local issues arising from the operation of drones. Among those requirements is the following

NRS 493.109 Unmanned aerial vehicles: Operation near critical facility or within 5 miles of airport prohibited; exceptions; penalty.

1. A person shall not operate an unmanned aerial vehicle within:
 - (a) A horizontal distance of 500 feet or a vertical distance of 250 feet from a critical facility without the written consent of the owner of the critical facility.
 - (b) Except as otherwise provided in subsection 2, 5 miles of an airport.
2. A person may operate an unmanned aerial vehicle within 5 miles of an airport only if the person obtains the consent of the airport authority or the operator of the airport, or if the person has otherwise obtained a waiver, exemption or other authorization for such operation pursuant to any rule or regulation of the Federal Aviation Administration. A person who is authorized to operate an unmanned aerial vehicle within 5 miles of an airport pursuant to this subsection shall, at all times during such operation, maintain on his or her person documentation of any waiver, exemption, authorization or consent permitting such operation.
3. A person who violates this section is guilty of a misdemeanor.
4. As used in this section, “airport” means any area of land or water owned, operated or maintained by or on behalf of a city, county, town, municipal corporation or airport authority that is designed and set aside for the landing and taking off of aircraft and that is utilized in the interest of the public for such purposes.

The Airport authority has approved other drone operators (eg. Robison Engineering; surveying pit areas north side of hills north of the Airport; Great Images; aerial photography). The Applicants have provided the details on the drones they will be flying and their qualifications. Similar to other approvals, the Authority should ask for notification prior to flights that are within 1 mile of the Airport so that the Airport Manager can determine whether the Airport should be closed, or a NOTAM issued, or if no additional action is needed as regard Airport

operations.

Proposed Motion: I move that we approve the requests of the CARSON CITY FIRE DEPARTMENT and the CARSON CITY PUBLIC WORKS DEPARTMENT to operate their UAVs within 5 miles of the Carson City Airport, so long as they comply fully with FAA Part 107, and that they notify the Airport Manager at least 24 hours (if possible) prior to operations that are within 1 mile of the Carson City Airport.

2. FOR POSSIBLE ACTION: BRIEFING AND COMMENTS REGARDING THE PROPOSED RV PARK RESORT ON THE WESTERN INSURANCE PROPERTY WEST OF THE CARSON CITY AIRPORT; DETERMINATION BY AUTHORITY OF WHETHER TO SUPPORT THE APPEAL. (P. Ware, J. Lubich)

Staff Summary: Mr. Ware will make a brief statement about the associated risks with the proposed high density RV resort on Western Insurance Property on the west side of Airport Property and brief the Authority of a petition attempting to block the project. Depending on the airport issues, the Authority may vote to participate in and support the appeal.

Tim will need to brief you on what happened at the Planning Commission hearing.

If you want us to participate in the appeal of that decision being sought by the neighbors, then you should consider the following Motion.

Potential Motion: I move we authorize the Airport Manager and Airport Counsel to participate in the appeal by supporting the position advanced by the neighborhood group.

3. FOR POSSIBLE ACTION: REGARDING THE REQUEST BY DEAN DUNCAN TO LEASE A PORTION OF LEASE PARCEL 219B OF AIRPORT LAND FOR THE CONSTRUCTION OF THREE HANGARS; DETERMINE PROPOSED USE AND PROCEED WITH APPRAISAL; AND RECOVERY OF THE COST OF APPRAISAL. (D. Duncan)

Staff Summary: Dean Duncan is requesting a land lease of Parcel 219B in order to construct three 50X50 foot hangars to the east of the Heritage Hangars Condo Association for the purpose of aircraft storage. The Authority may decide to proceed with an appraisal of the parcel and consider reimbursement of the cost of the appraisal. On April 15, 2015, the Airport Authority approved “in principle” to create parcel 219B to accommodate a similar proposed hangar development.

This is Tim’s item. I do not have any information on the request.

If the Authority is interested in leasing additional land for hangar construction, then the proper procedure is to:

1. Obtain an appraisal on the land to be offered for lease. (Note: the lot referenced is not part of the recent appraisal, and is expected to appraise for considerably more since the lot has full utility infrastructure installed and owned by the Airport Authority).
2. Adopt a resolution identifying the land for lease, the uses permitted, the minimum rental rate, the terms on which it will be offered for rent, a deadline for submission of sealed bids and a date on which the bids will be opened and the lease awarded.

3. Then follow the procedure and timing in para 2.

As set forth in the Staff summary, the Airport Authority should require the interested person to advance the funds to pay for the appraisal. (typically about \$5,000)

I would note that the Airport Authority has taken a lease approach where the Authority leases a large parcel with a requirement that the Tenant fund and build hangars. This is to minimize Airport Authority risk and to minimize rent collection work. This proposal is far smaller than any other the Authority has approved.

Additionally, KCXP Investments has a parcel to the west of this area that has been leased for construction of hangars but no hangars have been built. If Mr. Duncan is interested in a newly constructed hangar, Mr. Duncan may want to contact them to see when those hangars will be constructed.

Potential Motion (if you even want to proceed with this): I move we authorize the Airport Manager to arrange for the appraisal upon receipt of the funds advanced by Mr. Duncan.

4.FOR POSSIBLE ACTION: APPROVAL OF THE REQUEST BY SIERRA MOUNTAIN AIR PARK SOUTH, LLC FOR AN EXTENSION OF THEIR AIRCRAFT STORAGE ONLY LEASE FOR 22 YEARS UPON RAISING THEIR RENT TO THE APPRAISED CURRENT VALUE AND MAKING A FINANCIAL CONTRIBUTION TO THE TERMINAL RENOVATION PROJECT. (S. Tackes)

Staff Summary: In April, 2016, the Authority approved exploration of an extension of the aircraft-storage only hangars as permitted by NRS 496.080. Per that action, a group of tenants paid for an MAI appraisal of the lease rates. At the November 16, 2016, Authority meeting, the Authority approved lease extensions for 4 leases based on the appraisal and a contribution to the Terminal renovation project. The proposed action for this meeting is to grant an extension of the remaining lease executed with the others in 1994 on the same terms as approved for the other 4 leases. The rent will be increased on the basis of the appraisal (\$0.12/sq. ft./yr.) plus a single payment to the Authority toward the Terminal renovation project in the approximate amount of \$24,449.38. The action by the Authority would extend the term of the lease by approximately 22 years.

THIS ITEM SHOULD TRAIL ITEM 5.

Background. This item follows from the last meeting during which the Airport Authority approved lease extensions for 4 of 5 leases executed in 1994 in return for an increase of rent to the current appraised level (\$0.12/sqft/yr) and a lump sum contribution to the Terminal renovation project.

This request is for the lease that was left out of that action due to delays in getting approvals from the individual subtenants (ie., owners of Sierra Mountain Air Park South, LLC.).

Just to recap the relevant portions of the briefing last month, the tenant as asked to extend their lease such that it is reset to a 50 yr term.

Leases are generally governed by NRS 244.281 which requires appraisals, public notice, sealed bids, and an auction. However, extension of aircraft storage only lease is permitted by statute under a more simple process:

NRS 496.080 Sale, lease or other disposal of municipal airports and related facilities and property.

1. Except as otherwise provided in subsection 2 or as may be limited by the terms and conditions of any grant, loan or agreement pursuant to [NRS 496.180](#), every municipality may, by sale, lease or otherwise, dispose of any airport, air navigation facility or other property, or portion thereof or interest therein, acquired pursuant to this chapter.
2. The disposal by sale, lease or otherwise must be:
 - (a) Except as otherwise provided in subsections 3 and 4, made by public auction; and
 - (b) In accordance with the laws of this State, or provisions of the charter of the municipality, governing the disposition of other property of the municipality, except that in the case of disposal to another municipality or agency of the State or Federal Government for aeronautical purposes incident thereto, the sale, lease or other disposal may be effected in such manner and upon such terms as the governing body of the municipality may deem in the best interest of the municipality, and except as otherwise provided in subsections 3, 4 and 5 of [NRS 496.090](#).
3. A board of county commissioners of a county whose population is 55,000 or more may rent or lease to a person, or renew the rental or lease to a person of, a space for the parking or storage of aircraft, including, without limitation, a hangar, on the grounds of a municipal airport that is owned or operated by the county without conducting a public auction and at a price at least equal to the fair market rental or lease value of the space based on an independent appraisal conducted within 6 months before the rental or lease.
4. The governing body of a city whose population is less than 25,000 may rent or lease to a person a space that is less than one-half of an acre for the parking or storage of aircraft on the grounds of a municipal airport that is owned or operated by the city without conducting or causing to be conducted an appraisal or a public auction.

So the lease rate for any extension needs to be based on an appraisal. We have received an appraisal from William Kimmel, MAI, in which he determined that the fair market lease rate is \$0.12/sqft/yr.

To come up with a calculation of the opportunity cost, we went back to the original assumption that the appraisal would have come in higher. I indicated that if the appraisal had come in at \$0.14/sqft/yr or more, that I would have supported the extension in return for the increased rent. (ie. no opportunity cost payment since a win-win for both parties as the Authority anticipated when considering this in April).

To calculate a surrogate for the opportunity cost, we calculated the effect on the leases of a 2 cent increase over and above the \$0.12sqft/yr appraisal rate, calculated for the next 28 years remaining on the lease. If you look at the tabs on the attached spreadsheet, you will see the calculation of additional rent that would be produced by adding \$0.02sqft/yr on each lease. End result is that the tenant has paid an opportunity cost via the payment to our Terminal work, and the tenant gets a revision to the lease term resetting his lease term to 50 yrs.

The Sierra Mountain Air Park LLC lease is currently at \$0.10/sqft/yr. and has 28 years left. Thus the rent would increase to \$0.12/sqft/yr and the lease would be extended for 22yrs. The lease is 56,550 sq ft. The contribution payment to the Terminal renovation would be \$24,449.38. To be clear, the \$24,449.38 is not a prepayment of rent and thus will not be amortized over the length of the lease (as we do with real prepaid leases). It is a contribution to defray the costs of the Terminal renovation.

During the last meeting, 2 persons spoke against the prior lease extensions on the basis that (1) the FAA requires under AC 150/5100-17 that lease rates be determined by comparing the rates to other airports, and (2) that the lease rates at the Minden airport are currently \$0.24/sqft/yr. Both of those claims are false.

- 1- FAA AC 150/5100-17 does NOT require comparisons of lease values by using other airports. Common sense should alert you that location is a critical factor on appraisals and that it would be unlikely that the FAA would adopt a circular that conflicts with basic rules of appraisal. The AC does NOT state that other airports lease (or even land) values be compared. The AC does not address lease rates at all. The AC applies to “land acquisition and relocation” using federal AIP funds. The only reference to comparing anything from other airports is found under “Appraisal of Noise Avigation Easements”, eg. if we wanted to acquire an avigation easement over someone else’s property. And even if that applied to us, the language is clear that the review of other airports would only be to determine how the noise avigation easement impacted the adjacent properties. It simply has nothing to do with lease rate appraisals. The full AC can be found here: https://www.faa.gov/documentLibrary/media/advisory_circular/150-5100-17/150_5100_17_chg6.pdf The person who pointed us to the FAA AC has since directed us to an academic paper that essentially says you should look at all available information, including surrounding airports. I don’t think anyone would argue with that, but it is important to know when you are comparing apples with apples. In addition, it is an academic paper, it is not a certified appraisal which is what the law requires.
- 2- The lease rates at Minden. These are irrelevant but after the meeting, I checked with the Airport Manager at that Airport. She informed me that yes, Minden does have developed property leases at \$0.20 and 0.25/sqft/yr, but those lot rates include full FBO rights and the cost of bringing utilities to the lot boundary. The lots at issue at the Carson City Airport are restricted to aircraft storage only and the tenants were required to pay the Airport \$12,000 per lot for the utilities to the lot border.

The Carson City Airport does have lots that may be comparable to the Minden lots. We appraised the lot on College Parkway to be \$0.36/sq ft/yr, and the lot that Airport Structures (DiLoreto) turned back to the Airport would likely appraise in the range of the Minden lots. It has the utility infrastructure already built and just needs slabs and hangars. .

Proposed Motion: I move we approve the request for the extension of lease as presented and subject to the terms agreed to for the other leases in this group.

5. FOR POSSIBLE ACTION: FURTHER REVIEW AND APPROVAL OF THE REQUEST BY JOHN MAYES, LUDD CORRAO FAMILY REVOCABLE LIVING TRUST, SEIBOLD/TRI-MOTOR,LLC, AND SIERRA MOUNTAIN AIR PARK NORTH, LLC FOR AN EXTENSION OF THEIR AIRCRAFT STORAGE ONLY LEASES FOR 22 YEARS UPON RAISING THEIR RENT TO THE APPRAISED CURRENT VALUE AND MAKING A FINANCIAL CONTRIBUTION TO THE TERMINAL RENOVATION PROJECT; AND AS DIRECTED FURTHER AMENDMENTS FOLLOWING CARSON CITY BOARD OF SUPERVISORS REQUIREMENTS AT MEETING HELD DECEMBER 15, 2016. (S. Tackes)

Staff Summary: In November 2016, the Authority approved an extension of the aircraft-storage only hangars as permitted by NRS 496.080. The proposed action for this meeting is to review the extension of the leases for the above tenants on the basis of the appraisal (\$0.12/sq. ft./yr.) plus a single payment to the Authority toward the Terminal renovation project in the approximate amount of \$86,000. As per direction of the Carson City Board of Supervisors further amendments are to be discussed for action.

Background: At the Dec 15, 2016, Board of Supervisors meeting to approve the underlying item, they raised 3 items that they would like to see added to the lease extensions before they are comfortable approving them.

1. Some level of continued investment in the hangars/improvements, ie. justify the term of the lease beyond the first 50 years (or 39.5 years per Brad B)
2. Re-valuation of rental rate to market on 10 yr anniversaries
3. Limitation on change of use during the term of the lease since it is based on aircraft storage only.

After consulting with the Chairman, Vice Chair and Airport Manager, I initiated negotiations with the tenants on these points. I asked for input from the Vice Chair and the Airport Manager, in light of both speaking to the Board of Supervisors against the position of the majority of the Authority.

We were able to obtain all 3 of the items requested by the Board of Supervisors. Copies of the proposed Amendments are attached. The key language added is the following:

2. RENT. Tenant shall pay to Landlord a new base rental amount of \$0.12/sqft/yr commencing on January 1, 2017 and subject to the CPI increases set forth in the lease occurring on 2 year anniversaries of the new lease term.

A. At the option of the Landlord, the rent rate may be adjusted to the appraised rate on January 1 of each 10 year anniversary of the new lease term. If the Landlord chooses to exercise the option, Landlord shall, at its expense, use an MAI certified appraiser, selected by the Landlord and Tenant from the Carson City Board of Supervisors' approved list of appraisers.

B. Tenant has invested funds for improvement and maintenance expenditures over term of the lease. Tenant shall continue to maintain and improve the property at a similar or greater rate, approximated as \$0.03/sqft/yr, averaged over a 10 year period. (56,550 sqft x .03 x 10= \$16,965). Upon each 10 year anniversary of January 1, 2017, the Tenant shall report on its improvements to, and maintenance on, the leasehold made during the 10 year period. Upon request, Tenant shall provide supporting documentation of such Tenant expenditures to ensure that the facility is being maintained in the same fashion, i.e. same good condition as currently held, normal wear and tear excepted.

C. In the event that the leasehold use is modified to allow for FBO use beyond aircraft storage, then the lease rate shall convert to the most recently appraised lease rate for full FBO lots.

D. All other lease terms remain unchanged.

On item A, you will have the option of deciding whether to re-set the lease rate. This is better than making it mandatory since you may not want to spend the money on an appraisal, and/or you may be satisfied that the CPI adjusted rate is keeping up. History supports the latter. These leases were entered into in 1994 at a base rate of \$0.075/sqft/yr. The CPI brought them up to \$0.11. Given that the appraisal indicates their market value is \$0.12, the CPI did not do a bad job of tracking value. That said, under the new terms, you would have the right to reset the rate every 10 years.

On item B, we struggled to find an objective way to be sure that the Tenant continues to take good care of the hangars. The solution we came up with sets a minimum amount. This tracks the expenses to date for re-paving and other amounts expended to keep the hangars in good condition.

On item C, instead of restricting the use for all time (or effectively so, since a deed restriction would be very difficult to change, we put a trigger in so that the rate would jump up to the full FBO rate if the use ever changed. The concern expressed by the Board was that we may be locking in a low rate and giving the Tenant some ability to have a higher use at the low rate. This provision prevents that while keeping the Authority in the best position to determine best use for a parcel. That said, there are other barriers to changing the use, so that change would be considered by you (or later members of the Authority) when the right case presents itself.

If you have any questions, please do not hesitate to contact me.

Proposed Motion: I move we approve the modified request for the extension of leases as presented and subject to the prior and additional terms set forth.

6. FOR POSSIBLE ACTION: APPROVAL OF A THROUGH-THE-FENCE PERMIT FOR MUSTANG MANUFACTURING, INC., LOCATED AT 2401 LOCKHEED WAY, CARSON CITY WITH EXISTING AIRCRAFT ACCESS ADJACENT TO TAXIWAY C. (S.Tackes)

Staff Summary: Mustang Manufacturing has held through the fence access pursuant to the Carson City Municipal Code (CCMC 19.03 “Through the Fence Aircraft Operation”) for approximately 30 years. During the recent FAA land use audit, a copy of the actual through-the-fence permit could not be located. This permit is proposed as a documentary replacement for the permit so that Authority records are complete. Mustang Manufacturing improved the access with paving approximately 30 years ago, and did so with specifications suitable to support a B-25. They regularly maintain and have use of the access pursuant to CCMC 19.03.

Background. This item follows from the FAA land use audit. The Auditor requested copies of the Through-the-Fence (TTF) permits. We could not locate one for Mustang Manufacturing, even though we know that they have had the access for approximately 30 years. Upon discussion with the FAA auditor, we offered to replace the lost document with a current one, and he found that acceptable.

As a result, attached is our standard TTF permit to replace the one previously held by Mustang Manufacturing.

Proposed Motion: I move we approve the Through-the-Fence permit to Mustang Manufacturing Inc., as presented.

AIRPORT COUNSEL BRIEFING:

1. The Nevada Legislative Session begins Feb 6, 2017. If the Authority has any issues to pursue, we should do so sooner than later. If requested, I will track the aviation legislation and report on it.
2. Early reminder of budget requirements under Nevada law. Budgets track the State fiscal calendar. As a result, the Authority budget runs from July 1, 2016 to June 30, 2017. The Airport Authority is required to develop a tentative budget for the fiscal year 2017-2018 and file that with the Nevada Dept of Tax by April 15, 2017. This is typically prepared by the Treasurer. Per NRS 354.598, the Authority must approve a final budget no later than May 31, 2017. A notice must be published in the newspaper of that meeting.
3. Ethics and Open Meeting Law. The short version on Ethics is that you need to disclose any conflicts of interest and abstain from voting on matters for which a conflict exists. The short version on the Open Meeting Law is that only matters noticed to the Public at least 3 days prior to the meeting may be acted upon. Additionally, you cannot have meetings outside the public meeting to deliberate such issues, with limited exceptions. Of course this is oversimplified, and I urge all members of the Authority to watch the DA's video on compliance with the Ethics and Open Meeting laws. <http://www.carsonTV.org/da-training-march-26-2015/> Feel free to ask me any questions you may have.