

DRAFT SUMMARY MINUTES OF THE REGULAR MEETING OF THE COTTONWOOD AIRPORT COMMISSION OF THE CITY OF COTTONWOOD, ARIZONA, HELD JULY 7, 2008 AT THE CITY COUNCIL CHAMBERS BUILDING, 826 NORTH MAIN STREET, COTTONWOOD, ARIZONA.

Chairman Gradijan called the meeting to order at 6:00 p.m.

Roll call was taken as follows:

Commission Members Present

Aleck Gradijan, Chairman
Lawrence Minch, Vice Chairman
John Altizer, Commission Member
Margaret Austell, Commission Member
James Moeny, Commission Member
Bill Tinnin, Commission Member
Allyson Waak, Commission Member

Commission Members Absent

Staff Members Present

Douglas Bartosh, City Manager
Tim Costello, Public Works Director
Barb Herrick, Administrative Coordinator
Casey Rooney, Economic Development Director
Steve Horton, City Attorney

PLEDGE OF ALLEGIANCE TO THE FLAG

Chairman Gradijan led the Pledge of Allegiance.

ELECT A CHAIRMAN FOR NEXT ONE-YEAR TERM

Mr. Gradijan noted that the first order of business would be to elect a chairman for the upcoming year. He then asked for nominations. Mr. Altizer nominated Mr. Gradijan and Mr. Minch seconded the motion. There were no other nominations. A vote was taken and it was unanimous in favor. Mr. Gradijan was elected to serve as chairman for the next year.

ELECT A VICE-CHAIRMAN FOR NEXT ONE –YEAR TERM

Mr. Gradijan asked for nominations for the vice-chairman. Mr. Altizer nominated Mr. Minch for vice-chairman. Mr. Moeny seconded the nomination. Mr. Gradijan asked for any other nominations. Mr. Tinnin nominated Mr. Altizer. Mr. Altizer responded by stating that he would like to decline the nomination. A vote was taken for the nomination of Mr. Minch as vice-chairman and it was unanimous.

APPROVAL OF MINUTES

Mr. Gradijan asked for comments and approval of the minutes of the regular meeting of the Airport Commission held on June 2, 2008. There were no comments. Mr. Moeny moved to approve the minutes of June 2 and Ms. Austell seconded the motion. The vote was in favor of the approval of the minutes.

BRIEF SUMMARY OF CURRENT EVENTS

Mr. Costello addressed the commission with an update on the current events at the airport. He informed the commission that the city council awarded the Electrical Upgrade Project to Rural Electric. Mr. Costello stated that the contract documents are being processed at this time. A pre-construction meeting has not taken place yet, but it is possible to see them mobilizing in about a month to do the work. Mr. Costello stated that they do not anticipate any closures of the airport or runway. In addition to seeing the workers at the airport, equipment will probably be stored in the vicinity of the FBO hangar.

Mr. Minch inquired as to the dollar amount of the contract. Mr. Costello stated that the amount was around \$177,000.

Mr. Altizer asked if they would be using copper wire. Mr. Costello was not sure without looking at the specifications. Mr. Altizer was concerned about the theft of the copper wire if stored at the airport. Mr. Costello stated that he would bring the issue up at the pre-construction meeting.

Regarding the GPS approach, the city sent a letter to the FAA in response to their letter regarding environmental issues with a response of no impact. The city will also need a ground survey and we will have to hire Z & H to have it done. It would be approximately six months to get it done.

Mr. Costello stated that the request for a sunshade at the fueling station has been completed. Mr. Gradijan suggested that a sign on the vertical space next to where you get the receipt might be necessary to remind users to "please close the blue vinyl cover". Mr. Gradijan also commended Mr. Costello and his employees for the clean-up job at the airport.

Ms. Austell stated that a sign is also needed for the handling of the fuel hose.

Mr. Altizer noted that something should be done about the tires because of water accumulating in them during rainy season and the threat of West Niles virus. Mr. Luna stated that if there were any tires behind the hangar, they would be gone.

CALL TO THE PUBLIC

There were no comments from the public.

UNFINISHED BUSINESS

Date and time change for the monthly meeting

In consideration of another date and time for the monthly meeting, Mr. Gradijan indicated that Ms. Austell would not be available on Monday and Wednesday and Tuesday's are reserved for council. Mr. Altizer also requested that the date not be at the beginning of the month, to give the Finance Department time to compile the previous month's expenses and revenues. Mr. Altizer made the motion to move the date and time to the third Thursday of each month at 6 p.m. The motion was seconded and the vote carried unanimously.

Mr. Gradijan stated that the next commission meeting would be the third Thursday in August, which would be August 21.

Zoning in the vicinity of the airport

Mr. Gradijan informed the commission that he met with Mr. Costello and George Gehlert and talked about zoning issues that might pertain to the airport. It was discussed that maybe some zoning ordinances might need to be adjusted. Keeping the Airport Commission in the loop was also discussed.

Mr. Costello indicated that the issues would be rezoning that would be incompatible with the airport, and tall structures. The city zoning code limits all structures to 35 feet right now. Mr. Costello noted that Mr. Gehlert would be going to city council on September 9 to discuss the revision of the zoning ordinance to better protect the airport. At this time, the zoning code does not mention the airport. Mr. Costello felt that if there is a change it should mention the airport and if needed, should be sent to the Airport Commission for comments.

Mr. Horton also added that many of the FAA Grant agreements already contain restrictive covenants that would bar the city from rezoning in any way that would be incompatible with airport use.

Ms. Austell questioned whether aviation easements fall into the zoning issues, and noted that it is a way to put on property titles nearby that there will be air traffic over the property. Ms. Austell provided Mr. Costello with two examples of the aviation easements.

Mr. Costello informed the commission that Tierra Verde II subdivision has an avigation easement. He stated that if a property touches the boundary of the airport we would require the avigation easement.

Ordinance for fees

Mr. Minch opened the discussion about whether or not the whole book of the Operations and Procedures Manual should be adopted as an ordinance or take selected items out of it for adoption. He stated that the manual was recognized as a draft to be changed.

Mr. Gradijan commented that it is always good to revisit the mandate and he stated that the first duty for the commission in Ordinance 505 was to develop an operations and procedures manual. Mr. Gradijan followed up by stating that in his opinion the commission was charged with developing an operations and procedures manual and that was done. When the document was created, the commission tried to not be too forceful. The commission was also told that in regards to fees, they would need an ordinance. It has been recommended by staff and legal counsel that the whole manual be made an ordinance.

Mr. Altizer gave a brief history of the creation of the commission and stated that at that time there were no requirements or desires indicated that these mandates would be sent to council for approval. Mr. Altizer stated that he did not see any benefit in sending it to council except for the items that have fees.

Mr. Horton addressed the commission and stated that he felt the Operations and Procedures Manual was a very thoughtful document and was written carefully over a long period of time by experts. He went on to say that under Arizona law the commission has the legal jurisdiction to advise, but not the authority to regulate. Mr. Horton stated that if the commission wants the manual to be an advisory document than you can leave it at the commission level. If the commission wants it to carry the force of law, it must be adopted by city council. The consequences of not giving the council a chance to adopt it, is that you cannot make anybody do anything.

Ms. Austell asked if it was possible to make just the paragraphs with the fees an ordinance outside of the Procedures Manual.

Mr. Horton stated that he had comments about this. First, it seems awkward and a little incoherent. He said if he was on the city council he might reasonably question why we are getting these provisions that might appear out of context.

Mr. Altizer agreed with Mr. Horton but stated that the document was written not for 100% enforcement. He also stated that he felt the city police have no authority to do anything about a lot of stuff in the manual because it is in the FAA domain. He noted that they are also worried about getting some manager or

enforcement person to come in and want to inspect their airplane. Mr. Altizer felt that, except for the items that involve fees, it is the consensus of some that they prefer to leave out of that domain.

Mr. Minch stated that he felt that the Operations and Procedures Manual is one of the most important things that the commission has done. Mr. Minch added that when he came into the meeting he wanted to propose two motions. The first motion was to vote on a delegation to go to council to present the manual to them. Along with the delegation would be the recommendation of what we vote on tonight, and that would be to make the full Ops Manual an ordinance or recommend the six items that are called out as an ordinance. Mr. Minch went on to say that there are two parts that might need to be defined. The first part is mandatory and should be backed up penalties. Mr. Minch also stated that the remaining parts are desired procedures that are good operating practices, and they were not intended to be law. Mr. Minch remarked that he felt it should be rewritten in some way that the items that are not going to be law should be recommended to council just as an observation. The items that are going to be a law should be pulled out and then re-word them. Mr. Minch indicated that of the two motions that he planned on presenting, he still felt that when this does make the council agenda the commission is present at the meeting.

Mr. Minch proceeded to discuss the six items that would require an ordinance. He felt an obvious omission is the speed limit, which had been discussed to be 15 MPH. Mr. Minch went to say that he takes great issue with the "Appeals" section. If it is a law, how could it be appealed? After reading each of the items, Mr. Minch noted that the reference to "Airport Manager" should be changed to "City".

Mr. Horton addressed the commission and stated that in the city code there is not an office of Airport Manager. Mr. Costello is acting as the Airport Manager as Mr. Mickelsen did before him. In order for the Airport Manager to have any authority to deprive anyone of a property right or liberty interest, he would have to be authorized by the legal authority of the city.

Mr. Bartosh remarked that he felt that there might be too much emphasis on law. It is an ordinance, and it is a mandate by the city council but it doesn't mean the police department will come in to enforce it or go to a court.

Mr. Minch felt it would be cleaner if the items that need to be an ordinance were written and let the rest remain as advisory.

Mr. Bartosh presented a perspective and stated that he has the same boss as the commission members in terms of their roll on the airport commission. He went on to say that when he puts something together that would establish the law for the city it would be good to have the boss know what is going on. Mr. Bartosh also noted that he does not completely understand why there is so much resistance in bringing this to the council.

Mr. Minch commented that one of the points he made when he wanted to make the two motions was to take it to council and present it. At the same time, also present the items that need enforcement as a separate document. Mr. Minch stated that his suggestion is to not make it a law.

Mr. Altizer stated that the reporting to council was through the minutes. Mr. Altizer suggested that we report to the city council quarterly or bi-annually through Mr. Costello any ordinance proposals or changes. Mr. Altizer made a motion to report to council at least twice a year or more often if necessary.

Mr. Tinnin indicated that he would like to get back to the original subject at hand. He asked Mr. Horton which way does the Operations Manual have more teeth?

Mr. Horton answered by saying that right now the Operations Manual has no teeth. If you want it to have teeth, it has to go to council. He went on to say that they have a good document written by experts. He also stated that Mr. Minch's points are very well taken. Mr. Horton commented that he might take general exception with the worry about heavy-handed enforcement. Law enforcement would be a last resort for resolution.

Mr. Tinnin asked that in order for the manual to maintain its integrity, how is it affected if the ordinances are separate.

Mr. Horton stated that the proposal is not unlawful. You will have requirements and potential consequences based on common sense enforcement for the violation of those requirements or prohibition. The other document will be your best practices.

General discussion took place regarding the changes to be made and previous comments made were reiterated regarding motions to be made.

Mr. Altizer withdrew his motion.

Mr. Gradijan stated that there was very good dialog tonight, and what we might want to do is re-address the manual from two perspectives and take another look at it.

Mr. Minch stated that we should change a few things, mainly the six or seven items, but before the committee can change anything there needs to be direction.

Mr. Minch made a motion to send it back to committee to address the seven items, re-word them and present them as a separate document from the manual. Mr. Tinnin seconded the motion. The motion passed.

Mr. Tinnin stated that if the wording needs to be changed, city council should have control of it. They should know if they want to make the whole document an ordinance or portions of it an ordinance. Mr. Tinnin stated that he felt it should go from the commission to city council and let them look at it.

Mr. Gradijan explained that what we are going to do now is to clean it up for the council, because some things need clarifying.

Mr. Horton stated that the commission could package the information any way it wants for presentation to council. The council will chose how they want to accept it.

After discussion, the subcommittee determined that they would meet on July 24 at 8 a.m.

It was requested that legal counsel be present at the subcommittee, but after discussion it was determined not to be necessary.

Mr. Minch made a motion that when it is finished it is taken to council in two pieces, the part that is the Operations and Procedures Manual and the part that will be an ordinance, and we name a delegation to go to council on the night that it is scheduled.

Mr. Gradijan asked Mr. Minch if he could modify the motion, and he agreed. Mr. Gradijan indicated that he would rather stay away from the statement about two pieces because we are going to subcommittee and we don't know what will be decided in the subcommittee. Mr. Gradijan stated that he understands the motion to be "in whatever form that it is" somebody makes a presentation to the council. Mr. Moeny seconded the motion. The motion passed with a show of hands.

Financial Report

Mr. Gradijan noted that Mr. Altizer had been our financial subcommittee and he made the motion that now that Mr. Altizer is a commission member he continue to be our financial subcommittee. The motion was seconded by Mr. Moeny. The vote was unanimous.

Mr. Altizer provided a written report to commission members and staff. In summary, Mr. Altizer stated that the only information available for the meeting related to the FY 08/09 budget. Mr. Altizer received a copy around June 20, 2008 of the projected budget and after reviewing it presented Rudy with questions. On July 3 he received a revised budget and noted that after revisions were made, the year-end reserves were shown to be \$8,025, up from \$2,640. Mr. Altizer stated that changes in the reserves were due to fuel sale revenue and

expenses. Mr. Altizer stated that an in depth review of the budget will be provided at the next meeting, or sooner if necessary.

Mr. Costello commented that the self-serve fueling at the airport has only been available for a couple of months and the fuel sales have shown that in June 5000 gallons were sold.

Mr. Altizer noted that as long as we keep our prices attractive, we would have the fuel sales. Mr. Altizer stated that this morning there was a backup of three waiting for fuel.

NEW BUSINESS

Status of FBO/Aerobear Contract

Mr. Costello noted that the FBO contract was attached and it was a one-year contract and executed on February 8, 2008 by the mayor and it will expire on February 8, 2009. The monies owed to the city will be paid up this month due to increased fuel sales and tie-down rents. Mr. Altizer stated that he had talked to Rudy Rodriguez today and was told the debt was paid in full.

Mr. Costello also noted that in other areas of concern that the commissioners have had, Mr. Luna has done a good job in cleaning up the area and removing cars and trailers.

Mr. Gradijan questioned why any vehicles are left. Mr. Costello stated that there was one trailer that belongs to Clarkdale and they will move it out. Otherwise, the vehicles that are there are operable.

Mr. Altizer presented commissioners and staff members with four pages that included two pages of his analysis and two motions regarding the Amended Operations Agreement. Mr. Altizer stated in his analysis that he has arrived at his conclusion that once the debt associated with this agreement is satisfied, that event terminates the agreement and it is no longer operative between the FBO and the city. The prepared document indicated when the document was signed and by what parties. Mr. Altizer proceeded to read his prepared document. Mr. Altizer analyzed paragraph 4, page 4, "TERM" which was described as:

The terms of this Operation Agreement shall commence upon the date of final execution by the parties and end after one year or until such time that the debt of Aerobear to the City under the hangar lease has been repaid in full whichever comes first. At the conclusion of the one-year term and upon mutual consent, the term maybe extended to the end of the original term of December 31, 2009.

Mr. Altizer stated that in summary, his analysis is that early (prior to one year after the agreement becomes operative) satisfaction of the debt terminates the agreement. He went on to say that in his opinion that the debt which is the heart of the amended agreement has been satisfied there is no operative agreement in force for FBO services at the Cottonwood Municipal Airport.

Mr. Horton addressed the commission and stated that if he speaks to Mr. Altizer's interpretation he will be rendering legal advice in open session that might not be in the city or commission's best interest. He went on to say that he was happy to do so, because he had consulted with the Airport Manager about this language and the ambiguity. Mr. Horton also stated that the commission has the ability to adjourn to executive session or question him in public.

Mr. Gradijan stated that he does not prefer the executive session and the meeting is a public forum and we prefer to have everything in the public. Mr. Gradijan went on to say that he would appreciate the comments of Mr. Horton.

Mr. Horton stated that the term provision is ambiguous, as Mr. Altizer has articulated. Mr. Horton went on to say that the context in which this term was drafted and executed becomes relevant. Mr. Horton then stated that given that context and given rules of contract interpretation his opinion is that the term of this contract is through the end of one year after it was executed and then subject to renewal.

Mr. Altizer stated that he is a lawyer, but he was not offering legal advice. He felt that the ambiguity is really irrelevant because there is certainty on the second provision. Payment on a debt terminates the contract. Mr. Altizer then proceeded to make the following motion:

Because of my interpretation which is set forth above, I make the following motion. The Cottonwood Airport Commission adopts the following interpretation of "TERM" as set forth in paragraph 4, page 4, of the AMENDED OPERATIONS AGREEMENT between the City of Cottonwood, Arizona and Aerobear, LLC which was executed on February 8, 2008.

- A. The agreement was signed by Aerobear, LLC. And the City of Cottonwood, Arizona and became operative on February 8, 2008.
- B. Pursuant to the terms set forth in paragraph 4 of page 4 of the Amended operations Agreement the term end ". . . after one year or until such time that the debt of Aerobear to the City under the hangar lease has been repaid in full whichever comes first," the amended agreement automatically ceases to be operative upon satisfaction (payment in full) of the debt.

- C. The first paragraph of the amended agreement states that the amended agreement supersedes and replaces the original operations agreement which had become operative January 1, 2005.
- D. Satisfaction of the debt at any time prior to one year subsequent to execution of the amended agreement automatically terminates this agreement.

Mr. Altizer then asked if there was a second to the motion.

Mr. Minch asked how you could have a motion that terminates an agreement. Mr. Altizer responded by saying that a motion would indicate that you agree with his interpretation of the contract.

Ms. Waak asked what would be the purpose. Mr. Altizer answered by saying the purpose is to say that we have a problem and that the problem can be remedied.

Mr. Gradijan stated that we do have a problem with the wording and even Mr. Horton agrees with that.

Mr. Minch believed he was the one that made the original motion. Based on Mr. Minch's recollection the motion was that Aerobear was going to pay so much a month and if they got behind then we would take other action. If they continued to pay and were paid up at the end of one year we would continue with the original agreement.

After conversation, Mr. Altizer stated that he will withdraw the motion and noted that everyone did hear it. Mr. Altizer then stated that he would like to present a second motion for information only, and then a resolution to a possible dilemma. This item was in reference to the absence or the imminent absence of an operating agreement with an FBO, and request that council recognize the urgency in resolving the dilemma. Assuming the motion passed, Mr. Altizer went on to suggest a continuing resolution would be a solution.

Mr. Bartosh commented that the staff has already responded to this. We have an opinion from our city attorney that because of the ambiguity that we would interpret that the agreement ends on February 8, 2009.

Mr. Horton agreed with Mr. Bartosh regarding the terms of the contract. He went on to say that if the commission wants to adopt a contrary view and present it to the city council that can be done. In turn, the council will probably turn to the city attorney and ask for his opinion.

Mr. Altizer agreed with Mr. Horton, but stated that he wanted the commission members to know there is a way to resolve the dilemma.

Mr. Bartosh appreciated the feedback and said it would be helpful when we rewrite the contract so that the terms are clear as well as the termination stipulations are also noted.

Define airport chain of responsibility

Mr. Minch stated that this item is addressed to Mr. Costello regarding people that abuse the gate passage. Mr. Minch wanted to know who is responsible for letting people know that they are abusing the gate pass.

Mr. Costello stated that it would fit in the rulebook, and a letter can be sent from the Airport Manager to those that abuse it. It would also be appropriate for even commission members to mention it to the abusers.

Formation of committee to promote the airport

Mr. Gradijan opened the conversation by stating that the desire to promote the airport has always been there, but there have been other priorities. Mr. Altizer mentioned that he is in favor of it, because there are great opportunities for our airport especially with the gas situation as a big inducement. By getting the word out to restaurants, motels and hotels, it could bring in a lot of revenue.

Mr. Gradijan asked for volunteers for the committee. Mr. Moeny, Mr. Altizer, Mr. Casey Rooney, Ms. Austell and Tom Joseph will form the committee to promote the airport.

Relocation of terminal ramp

Mr. Gradijan mentioned that there is a situation where the maintenance facility has airplanes parked in front of his facility and sometimes the taxiway is blocked. To create more space in front of the Mr. Luna's hangar, Mr. Gradijan suggested removal of the tie-downs at the end of the covered tie-down area and then create a different radius on the taxiway or create maintenance tie-down space on the side of the hangar.

Due to the length of the meeting, Mr. Gradijan has requested that this item be tabled to a future time.

Mr. Tinnin questioned as to who owns the tie-down spaces? Mr. Costello indicated on a map the dedicated spaces used by Mr. Luna. Mr. Minch inquired if there was a time limit on how long a plane could be parked and worked on.

Security of Skydive (west) gate

Mr. Minch questioned why the skydive gate is open a lot of the time. Mr. Costello addressed the issue and stated that the protocol is that the gate is open only when Red Rock Skydive is expecting customers.

Mr. Minch asked if the gate could be opened remotely. Mr. Luna stated that the range is not very long. For security reasons, Mr. Minch suggested that we should keep this in mind, and look for a future solution.

Commission's annual goal

Mr. Gradijan noted that his primary goal for the commission is getting the GPS approach and the other goal is to acquire another 300 to 400 feet of runway. Mr. Gradijan stated that the three things that would make our airport move into the corporate world are a runway, GPS approach and jet fuel.

Mr. Tinnin suggested that an AWOS system should be considered, and it is in the Master Plan. Mr. Gradijan stated that he had found information about a better and cheaper AWOS system. Mr. Costello informed the commission that they have requested information about the SUPERAWOS and we received it today. We are still checking out the information.

FUTURE AGENDA ITEMS

No new agenda items were mentioned at this time.

ADJOURNMENT

Ms. Austell made a motion to adjourn the meeting.
Ms. Waak seconded the motion. The motion passed unanimously.
The meeting was adjourned at 8:07 p.m.