

**MINUTES OF THE CITY OF WICHITA**  
**WICHITA AIRPORT ADVISORY BOARD**

**Monday, January 6, 2011**

Present: Steve Dunne, Ron Estes, Charles Fletcher, U.L. Gooch, Dwight Greenlee, Willis Heck, Kevin Myles, Thomas Pryor, Bill Ward, Brent Wooten

Absent: John Hennessy, Dr. Thom Rosenberg, Rebecca Pilshaw

Airport Staff: Victor White, Brad Christopher, Mike Boes, Kelly Fabrizius, Traci Nichols, John Oswald, Valerie Wise, Jean Zoglman

City Staff: Brian McLeod, Deputy City Attorney  
Branden Hall, Budget Analyst, Finance Department

Others: Michael Carter, AECOM

Chairman Greenlee called the meeting to order at 2:30 p.m.

**Approval of Minutes**

*Motion by Fletcher to approve the minutes of the December 6, 2010, Wichita Airport Advisory Board meeting. Motion carried unanimously.*

**Director's Report**

Victor White, Director of Airports, advised the Board of several items.

As mentioned previously, Staff is in the process of lease negotiations with FlightSafety for development of new facilities. Part of the transaction involves what used to be the Wichita Area Technical College campus that was vacated the first of November when they moved to the new campus at Jabara Airport. The buildings will be demolished by FlightSafety during construction, however the hangar is still in good shape and staff has decided to dispose of it through an online auction at *PurpleWave.com*. Purple Wave also does governmental auctions for various other City agencies. After it is sold, the hangar can then be dismantled and relocated. Mr. White passed out photographs to the Board of the approximately 9,000 square foot hangar. It is an adequate facility, although it is probably more than 25 years old and is just not what FlightSafety currently needs for their purposes. Staff and FlightSafety are targeting a lease start date around April of this year. Staff has begun an environmental assessment of the existing site to obtain a baseline condition prior to FlightSafety moving in.

The President has signed another short-term FAA funding extension. It is only a three-month extension that will go through March 31<sup>st</sup> of this year. The new Congress was sworn in yesterday, and Congressman Mica from Orlando is the new Chairman of the House

Transportation and Infrastructure Committee. That Committee has jurisdiction over the FAA and all aviation matters, and Congressman Mica has announced that his top priority is to get the full FAA reauthorization bill passed through Congress as soon as possible.

Chairman Greenlee presented certificates from the League of Kansas Municipalities to Traci Nichols, Interim Contracts & Properties Manager, and Jean Zoglman, Finance Manager, honoring them for twenty years of loyal and dedicated service.

Mike Boes, Environmental Services Manager, was honored for fifteen years of loyal and dedicated service.

Mr. White informed the Board that Kelly Fabrizius, Board Secretary and his Administrative Assistant, has been promoted and will be taking a position as the Assistant to the Chief of Public Safety.

Mr. White announced that this afternoon the South Central Legislative Delegation for Kansas is meeting in Wichita and will be briefed by various government agencies regarding their legislative priorities. The Mayor and the Vice Mayor will be presenting what the City's legislative priorities are and one of them is the continuation of the Affordable Airfares Program. Included in the Board Packets are two editorials published this week supporting the continuation of the program. One was from *The Hutchinson News* and the other was from *The Topeka Capital-Journal*. The Chamber, REAP, the City, and the County are all working on a joint lobbying effort to ensure the continuation of the program.

Valerie Wise provided the Board with an air service update. Ms. Wise mentioned that part of what is going on in the airline industry as a whole is that the airlines have begun consolidating due to what has happened with fuel prices and the economy. There are fewer airlines and they are also starting to phase out the smaller aircraft that seat 50 passengers or less, which are typically regional jets. As a result, Delta is phasing out approximately 25% of those from their fleet and as of January 4<sup>th</sup> we have lost Delta's non-stop service to Detroit. Detroit was a good connecting point and Delta feels that passengers that were connecting through Detroit can connect from Minneapolis, Memphis, or Atlanta. Small markets such as ours are in jeopardy of losing service because regional jets are not economically feasible and we need to be aware of that and do all we can to make sure that we keep the airlines and service that we have.

The continuation of the State's Affordable Air Fares program in some fashion is essential in order to make sure that our airport maintains and preserves airline service by our current carriers. With the airline business evolving in order to adapt itself to new economic realities, the maintenance of low cost service shouldn't be our only priority. Keeping the legacy network carriers, such as American, United and Delta is critical for us to have service throughout the world. The low cost carriers just don't fly internationally, so we need to ensure a balanced group of airlines flying here.

Mr. White reported that the Airport Authority has not updated its written leasing policies in quite some time. By practice and custom we have adopted a lot of policies that have been followed by

action of both this Board and the Airport Authority over the entire history of the organization. What we would like to do is look at all of the policies individually and make sure they are current as well as that they are all in one place and properly documented. Mr. White said he is suggesting reviewing very specific items such as how real estate, buildings, and facilities are priced, how adjustments are made to the rates during the term of a lease agreement, and how long the lease agreements are. Mr. White said he would like to make sure that our leasing policies keep the airport system competitive with other airports because we are always in a competitive situation with a prospective tenant that is considering where they are going to build a hangar or set up an aviation business. We are also competing with airports in other states when companies plan to build a large development such as an aircraft manufacturing or maintenance facility. We need to make sure that we are not doing something that is putting the airport at a competitive disadvantage, although at the same time, as stewards of this organization we want to make sure that we make money and that we continue to be self-sufficient and do not ever have to rely on the taxpayers to support the operation of our airport system. It is a balancing act and we are going to be working on all of those things and we will consult this Board often as we consider new concepts to get your suggestions and thoughts.

Mr. Dunne said from his personal experience with being a pilot he has witnessed the Benton Airport grow exponentially over the last several years. Millions of dollars are being spent building hangars at that airport and the reason people are choosing to build there is because they have private ownership of the structure, not just of the ground.

Mr. White said that is a great topic that you brought up and that is one of the main items that we will be reviewing. One of the things that he has always been told is that the primary benefit of having it that way is because when the Airport owns it, you do not have to pay property taxes on that facility and you don't have to pay sales taxes for the construction. So over the twenty to thirty years of a lease, more is saved in property taxes than would have been gained by owning it yourself. Mr. Estes said, but it also goes back to an individual owning an asset. You may pay more in property tax along the way, however you have an asset that that you can sell or becomes part of your estate. Mr. Estes suggested that perhaps we could look at allowing both options.

There was discussion regarding the competitiveness of local airports and the various options that may be available.

### **Real Estate Brokerage Policy**

Mr. White passed out to the Board a draft of the Real Estate Broker Compensation Policy. Mr. White said this is an example of one of the first things that we have already started to tackle on this leasing policy change. The Airport Authority is a member of an Airport Properties Group of 100 plus airports across the country of a variety of sizes and locations that can pose questions to the group regarding properties and leasing matters. Traci Nichols did a survey twice in the last year asking the members of the Airport Properties Group if they pay real estate brokerage commissions for leasing of properties at their respective airports. Of the airports in the Airport Properties Group, only two pay real estate brokerage commissions. So, based on the survey responses, we believe we are in line with what the rest of the industry is doing because the policy

of the Airport Authority has always been to never pay a real estate brokerage commission for any leasing activities. Now, if a property is sold, which rarely happens, we would pay the standard commission. The Airport Properties Group was surveyed again just a couple of weeks ago to update the responses and there were a few more airports that identified that they do pay some sort of brokerage fee. Mr. White estimated that of the 100 members, the total is about five. Mr. White asked the Board to review the draft policy so that it can be finalized and presented to the Airport Authority for approval to become the official written policy regarding leasing practices with respect to brokerage commissions.

Mr. White explained that the Airport Authority has never had to pay real estate brokerage commissions in the past, primarily because business has been good, and people are always looking to lease our land or our buildings, so we have maintained full occupancy for decades. The current economic situation has resulted in some vacant facilities. Cessna moved out of an 8,000 square foot office building last year, and we have been attempting to market the building ourselves with signs and online listings. We show it frequently, but have yet to sign anyone to lease the building. Occasionally a broker will contact the Airport for an interested client and ask if we pay commissions. We always say that we have never paid and our policy is we cannot pay brokerage commissions. The draft policy proposes that if the Airport needs a broker to market a facility or land then the broker should be paid to help find a tenant. On the other hand, if a tenant or a prospective tenant hires a broker to negotiate a lease, the broker should not be paid if his services were initiated by the tenant. The policy regarding brokers hired by prospective tenants is one issue that must be resolved. There has been discussion that the City procurement policy would not allow us to pay a vendor or consultant not selected by the City. If a prospective tenant wants to negotiate through a consultant, current City procurement policies may not allow payment to be made to the consultant. The legal counselor for the Airport will be researching that policy and what other options may exist.

Mr. White provided an example of a current situation that supports the proposed broker compensation policy. An existing tenant, that is the WAA's lessee of its building, has subleased 90% of the building to another tenant. The original tenant has decided to reverse its roles and let the sub-tenant be the lessee under the agreement with the Airport. The current sub-tenant has hired a broker and the broker has asked the Airport for a commission of 5% of the lease value over 10 years as a representative of the sub-tenant negotiating the lease. The broker has not brought us a new tenant. The broker is simply representing a tenant that is already here, and has been here for years. Staff feels it is highly inappropriate to pay a commission under these kinds of circumstances. By adopting a policy, we hope to prevent these kinds of circumstances by creating a known set of ground rules.

Mr. White asked the Board to provide feedback on the policy and the principles involved. One of the main concerns is that this policy involves issues of competition. Some real estate brokers are making claims that the Airport is not being reasonable, or competitive, in comparison with private industry that pays commissions. Mr. White said that does not necessarily mean that we should pay commissions. Standard airport industry practice indicates that very few pay commissions. The surveyed airports that do pay brokerage fees are all independent airport authorities that are not strictly governed by city procurement laws.

Mr. Estes said he thought there were too many options in the proposed policy. He agreed with the concept of soliciting a broker if necessary to market a particular property. In that case the Airport would pay the broker, otherwise it is an agent whose services are initiated by the tenant or prospective tenant and is protecting the interests of a client. Mr. White said that is exactly like the case we are dealing with right now. We would be paying the agent to negotiate against the Airport.

Mr. Dunne said he thinks what Mr. White is saying is the Airport has the authority to hire a broker to represent you to find a tenant. Mr. White said we have not done so in the past, but he would like to have that option. Mr. Dunne said the other side of the issue is being able to use your discretion to refuse to pay a broker. Mr. Dunne said he does not think there necessarily has to be a policy to say that we are not going to do that when the broker is soliciting you. Mr. White said he agreed with Mr. Dunne, but there is pressure to produce a written policy that says we do not pay a broker who contacts us on behalf of a client so that everyone is clear about the Airport's brokerage policy.

Mr. Myles said with the interpretation presented so far, he does not know how you could pay a broker representing a prospective tenant. For example, Mr. Gooch brings in his own broker. The broker hasn't been vetted. We do not know if his prices are competitive with the other brokers in the area. We just know that Mr. Gooch initiated his services and that he wants 10%. Mr. Myles said he does not know how the City as a municipal agency could enter into any fiduciary agreement with the broker.

Chairman Greenlee said the other thing you have to look at is value received under federal grant assurances, and under the cases Mr. Myles just talked about there was no value received, so there would be a violation of the grant assurances.

Mr. Estes said the difference may be between municipal regulations and what happens in the private world among two private companies that are creating a transaction. Private companies have the choice to do whatever they want.

Mr. Dunne said he does not know how someone can demand that you pay them for a service that was not asked for, and that is in essence what we are discussing.

Mr. White said he remembered a situation two years ago when a broker called the Airport and said he had a client that wanted to rent a building, and he asked if the Airport would pay him. When we told him we would not, he said he would take that client and go somewhere else to rent. Since the Airport is the only venue in town offering its unique service, that client ultimately came directly to the Airport and leased the space without using a broker. So in these situations where we have a vacant building and a broker approaches us with a client, should he be paid or not? We have never had to do that in the past. We have always maintained full occupancy, but as buildings sit vacant, the longer they sit vacant, the more we want to consider it. Another suggested option in these cases is to announce to all commercial brokers the

availability of a property and that a commission will be awarded to the first broker that brings us a tenant for that property and a lease is executed.

Mr. Estes said he thinks the main consideration is what offers you want to put on the table. Do you want to hire someone to act on the Airport's behalf, or do you want to make it an open-ended, first-come-first-serve situation. If we hire someone to find a tenant, we wouldn't also pay a broker representing a prospective tenant in that negotiation. In a situation where any broker can approach us with a tenant, we also need to be clear about our obligations. Mr. White said, regarding the current situation mentioned earlier where a potential tenant's broker approached the Airport about a commission, he feels we may lose that tenant because the broker expects to be paid, so the broker may steer that tenant somewhere else where he will receive a commission.

Mr. Dunne said that it comes down to looking at the situation from the bottom line. If I have a \$10 million cash flow stream, am I willing to discount that 5% to keep a tenant at the Airport versus him going across the street and paying 5% less? If the lease agreement is \$100,000, and you have to pay the broker \$5,000 every month, that is no different than just getting \$95,000 in. Mr. Dunne said does it matter who gets the \$5,000, if the alternative is for the tenant to move across the street?

Mr. White said 99% of the tenants on our airports have negotiated their leases themselves without bringing in a third party. They may have a lawyer or a CPA present, but they do not bring in a real estate broker to negotiate the deal and if the tenant chooses to bring in a lawyer or a real estate broker, they have always paid any fees themselves and they have never asked us to do that. This is just kind of a new phenomenon that is coming to the surface.

Mr. Ward said he would rather be up front and if you are going to allow payments to brokers in the policy, then the fee should be added to what the rental costs are, so it is known upfront what the broker fee is and how it will be paid.

Mr. White said he spoke with one airport that automatically increases the rental rate by whatever the amount of the commission is. Another airport said everyone's rate is automatically increased whether there is or is not a broker because they want to protect themselves in the event a broker is involved. That would penalize everyone by making all rental rates go higher for no reason and we would not want to do that. Then, the third facet is that you do not want to lower rents just because a potential tenant does not have a broker. The rent is standardized, based upon whatever cost or market-related values that we have already factored in, using formulas to figure out what the rent needs to be.

Chairman Greenlee said that goes back to grant assurances as well. If you are making deals you have to make sure that the rates are basically the same for all tenants.

Mr. Christopher compared the issue to a homeowner marketing the sale of his home by himself. You wind up getting more calls from brokers that want to sell it to you than people that want to look at the house. It is the same in our situation. For example, a broker calls about the old Honeywell building and says he has a prospective tenant, asking for a commission to complete

the deal with that tenant. At that point we have a choice to make, either to refuse the deal, or to decide that maybe it is worth paying the commission to find an occupant for a building that has been vacant for a while. We would have to consider the value of the deal, and maybe the price is worth it and maybe it is not. Mr. Christopher said he assumed we would have the ability to make that choice if we wanted to do that.

Mr. Estes said then we are faced with our obligation to lease at the fair market rate, and if you have two of the exact same buildings and one person who is a tenant comes to you and one a broker comes to you, you are charging different rates for the exact same square footage. Chairman Greenlee said we would be in violation of the federal grant assurances if we charged two different rates for the exact same facility. Mr. White agreed and said we have to maintain a non-discriminatory fee structure as a government agency that is ruled by federal aviation regulations. The privately owned industrial park can charge anybody anything it wants to. We are ruled by laws that say we have to charge the same thing for similarly-situated persons.

Chairman Greenlee asked for a deadline for feedback on the policy. Mr. White said he would like to hear from the Board in the next couple of weeks if possible. Then we can do more research on the policy and plan to have another draft completed by the February or March Board meeting. There is no urgency, as it does not apply to any negotiations that are in process.

Mr. Dunne said he thought Mr. Ward's suggestion for handling the issue of broker commissions was good. First, present the set lease rate to the tenant, for example \$50,000 per year. Then, if a broker brought in by that tenant is asking for a 5% commission for the life of the agreement, let the tenant know we would pay that, but it would be added to the lease rate. If the tenant agrees to the deal, then there is not a problem. If the tenant does not want to add the commission to the set lease rate, then we need to say we are not willing to negotiate with the broker. Chairman Greenlee said, but if the tenant is willing to pay the extra 5% for the commission, that is an indication that the lease rate is below current market values. Mr. Dunne said he feels the best option is to present the lease rate and commission conditions to the tenant and let him make the decision if he is willing to rent given those conditions. Then the tenant knows what return we need on the property and we do not have to spend time conjecturing about the motives of the tenant.

Mr. White said another possible scenario is a broker wanting to be paid 100% of his fee up front. Mr. White said he would be fearful of a tenant moving out after a couple of years and terminating his lease. The broker has already been paid, say, a \$100,000 commission, but the lease only goes for a couple years. So, the proposed policy includes an option of paying 50% of the commission upon lease execution and the remaining 50% prorated monthly for three years. If the lease is terminated before all of the commission has been paid, then the broker forfeits the remaining commission. Mr. White said he did not know if brokers were willing to accept such commission terms.

## **2011 Schedule of Fees and Charges**

Jean Zoglman passed out the 2011 Schedule of Fees and Charges as well as a Summary Chart Comparison showing the items that have been changed from 2010.

The Landing Fee changed based on the calculations in the airline contracts along with the Terminal Space Rentals. Both of those items increased by approximately 2%. That increase has been accepted by the signatory air carriers.

The Fuel Farm is owned by the Airport Authority and the agreement that we have with the users is that it is cost recovery. Whatever it costs to run the facility is the amount that they will be charged. This fee has gone up by 5%, although it is based on the fact that our cost of running it increased by 5%. Part of that can be attributed to the fact that we are planning to do significant improvements to that facility and there is a lot of study and design that is currently taking place. That fee started three months ago and has been accepted by the carriers that pay it.

For the Land Rental Rates we have a Land Rental Policy that establishes what the rate is and it escalates by 5% per year at Mid-Continent Airport and 3% at Jabara. These rates changed based on the adopted policy.

The two new items called Self-Fueling Facilities Flowage Fee and Self-Fueling Permit are based on the Minimum Standards that were adopted. That document addressed our policy in the case of an entity putting in their own fuel facility and not using an FBO for their fueling. A rate structure addressing such a situation was not in place and since the Minimum Standards spoke to it those rates need to be defined. The rates of 15 cents for Mid-Continent and 10 cents for Jabara were chosen which is a 25% upcharge from what the users of the bulk fuel plant currently pay, which is 12 cents on a retail basis. The people that do not use the FBOs have a huge economic benefit of being able to have their own fuel storage facilities and operation so there is a slight upcharge to offset for that economic benefit. The Permit Fee is simply a fee that once per year a permit has to be issued and this is simply the administrative cost of processing that permit.

Ms. Zoglman reported that those are the changes we are anticipating and the plan is to take this to the City Council/Airport Authority on January 25<sup>th</sup>.

*Motion by Ward to recommend the Airport Authority adopt the 2011 Schedule of Fees and Charges. Motion carried unanimously.*

Mr. Estes asked about the Airport Bonds that were recently published in the paper and asked if that was for something in particular. Ms. Zoglman reported that the bonds are for specific projects that we have done because we have not issued any bonds since 2000. The big items are the Cargo Building and the Landside Utilities Project. There is also the U.S. Customs project where we moved them from the old Cargo Building to Hangar 16. There were a series of projects that have come through as capital projects over the past two to three years and we needed to make sure they were bonded within a certain amount of time. They are big enough items that we did not want to pay for them entirely with cash and then not have that cash available for the terminal project as we anticipated. Chairman Greenlee asked if they were

temporary or permanent bonds. Ms. Zoglman said we did finance a couple of the items under temporary notes and then the rest were bonds. The full term of the bond issue is 30 years, although each project was looked at on an individual basis. We worked with Springsted, who is the financial advisor for the City of Wichita, and each project was individually looked at to make sure we were not paying for a snow plow over thirty years if it is only going to last fifteen. If you look at the term of the bond issuance, it says 30 years; however, if you look at when the principal payments come due, it is based on that structure.

### **ACT 3 Project Update**

Michael Carter, AECOM, presented to the Board a PowerPoint presentation providing an update on the current schedule and upcoming meetings.

The program coordination meetings have been continuing and we are looking at the sustainability requirements for LEED certification. We are also looking at the various packages to determine if any could potentially be consolidated. Yesterday we had a tour of the new National Center for Aviation Training facility to look at the lessons that were learned over the design and construction of their project. We also have an upcoming status meeting with the Design Team.

Mr. Carter provided a summary of the various packages and where they stand at the present time. The terminal building will be advertised for bids upon approval. Many of the packages are dependent on that start date and will be scheduled after it is determined what the date for advertising will be. Although some of the packages, such as the Security and Surveillance Equipment package, are proceeding down a different line. The schedule remains virtually unchanged since the last Board update.

Mr. Fletcher asked what the status is regarding the City Council making a decision on whether to move forward with the project. Mr. White said he does not have an update. In October the City Council said they would prefer to wait until January to make a decision and that decision has not yet been made. Mr. White added that so far construction costs and bond interest rates have appeared to remain fairly stable.

Mr. Fletcher said he thought the construction prices were starting to show a trend to go up. Mr. Carter said yes, the Turner Price Index for the first time last month went up 0.45%. The last quarter was totally flat and that was the first increase. Chairman Greenlee asked if there were going to be any major projects in this region that would be starting in the near future. Mr. White suggested that perhaps the casino would be if the project gets started on time. Mr. Greenlee asked about the City bonds which will be sold on the 11<sup>th</sup>, and asked what the previous rate was for the sale of bonds so we could determine if the rates are going up or down. Ms. Zoglman said she could provide that information for the February Board meeting, although it will not be completely comparable because these are 30 years and are for airport improvements.

## **Other Business**

Mr. White said he has another item for the Board's review. When the Minimum Standards were adopted last year by this Board in May and the City Council as the Airport Authority in June, one of the items put into the document called for review of the Standards by the Airport Board at least annually for revisions and updates. We now have something that has come to our attention just within the last week by our attorney, Jay Hinkel. As we prepared a draft lease agreement, Jay has been working on reviewing the Non-Commercial Fractional Private Hangar Operator section and has identified some language that needs to be added. Mr. White passed out to the Board a handout showing the Section with the added language.

*Motion by Fletcher to approve the language as stated in the handout. Motion carried unanimously.*

Mr. White said there is an additional change to the Minimum Standards that he is recommending. In multiple places throughout the document the phrase "self-service fueling" was used when the term "self-fueling" was what was intended and there is an FAA definition distinction between the two phrases.

*Motion by Chairman Greenlee to approve the change to the Minimum Standards. Motion carried unanimously.*

Mr. White will work with Legal Counsel to finalize the language of these proposed changes and present them to the WAA at a future meeting.

Mr. Dunne asked who determines how long the lights stay on at Jabara Airport. It is especially acute in the winter because at 6:00 p.m. it is already pitch black and there is a fair amount of activity until about 10:00 p.m. and this can become a safety issue. Mr. White said that the airfield lights at Jabara have a pilot-controlled on-off feature managed by the aircraft radio. Following a pilot's activation of the system, there is a timer on the device that turns the lights off after about 20 minutes, although the system sometimes experiences mechanical problems and the lights have to be switched on and off manually by the personnel at Midwest Corporate Aviation's customer service counter. Mr. Dunne asked who determines the times that the pilot controlled lighting (PCL) feature is activated and who sets those times and if it is a function of a budget issue. The use of pilot controlled lighting is a common feature at airports all over the country as a means to control costs. Mr. White said he will look into it and review the issue. He said that the FBO personnel always have the ability to manually activate the lights if needed. Mr. White also mentioned that the FAA is really close to approving LED runway lights for general aviation airports and someday we hope to replace the runway lights with an LED system, which would theoretically permit the lights to be left on all night long with minimal cost, which would possibly eliminate the need for PCL.

Mr. Estes advised that this will be his last meeting before going to Topeka and he has thoroughly enjoyed his time on the Board. Mr. White said speaking on behalf of the staff we have very

much enjoyed his tenure as a Board Member and we wish him the best of luck in his new job as State Treasurer.

Mr. White reported that he and Mr. Fletcher will be traveling to Washington, D.C. for the annual Airport Legislative Conference at the beginning of February and they plan to meet with our Kansas delegation as well as Congressman Mica if they can get an appointment. Chairman Greenlee asked how Congressman Mica was doing with his recent TSA proposal. Mr. White said there is still a lot of skepticism in the airport community on the value of switching over to private screeners. There was considerable discussion amongst the Board regarding the issue of TSA versus private security screeners.

The next WAAB meeting will be Monday, February 7, 2011, at 2:30 p.m.

Meeting adjourned at 4:55 p.m.

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Kelly Fabrizius, Clerk