

**Commonwealth Of Massachusetts
County Of Dukes County, S.S.
MARTHA'S VINEYARD AIRPORT COMMISSION MEETING**

**February 2, 2005 at 5:00 pm
Martha's Vineyard Airport**

Notice of Such Meeting having been Posted as Required by Law.

Present:

Airport Commissioners: Chair Jesse B. (Jack) Law, Vice Chair John Alley, Frank Daly,
T. J. Hegarty, Leslie Leland, William (Bill) Mill, Norman Perry
Airport Staff: Bill Weibrecht - Manager, Sean Flynn - Assistant Manager,
Dukes County: E. Winn Davis- County Manager;
Others: Chip De Witt – Palmer & Dodge; Marni Lipke – Recorder;
Larry Kiely - MVTV

* Late arrival or early departure (see * in text)

The meeting was called to order at 5:11PM.

1. Assignment of Value to Lot 31 A (Cornerstone/Propane Continental).

Assistant Airport Manager Mr. Sean Flynn reported that as the Martha's Vineyard Airport Commission (MVAC) knew Propane Continental / Cornerstone Propane occupied this piece of property. The corporation declared bankruptcy and the Airport had the portion of the lot with an expired lease removed from the bankruptcy (see 10/6/04 Minutes p.1 #1). At the last meeting Mr. Flynn informed the MVAC that the lot would be put out to bid and he was now asking for the MVAC vote. Mr. Flynn suggested a value of 90¢ per square foot. **MR. JOHN ALLEY MOVED TO PUT LOT 31 A OUT TO BID AT THE RECOMMENDED PRICE OF \$.90 (90¢) PER SQUARE FOOT; MR. MILL SECONDED.**

- Mr. Leslie Leland asked how the 90¢ value had been set. Mr. Flynn answered that an appraisal had been done a few years back which put the property value at \$1.25 per square foot. It was the MVAC's feeling that this was still a little high. A Request For Proposal (RFP) was put out for a single small lot (18,750 sq. ft.) (see 11/3/04 Minutes p21-22 #4) and one proposal was returned at slightly more than 90¢ per sq. ft. – although the bid proposed a building too large for the lot. So the MVAC correctly determined at that time that 90¢ was probably the market value.

- Mr. Leland asked if Lot 31 A was an empty lot. Mr. Flynn responded that no, there were two propane tanks on it but no buildings. Chair Jack Law asked what would happen to the tanks if Propane Continental / Cornerstone Propane lost the bid. Airport Manager Mr. Bill Weibrecht responded that the tanks would have to be removed. Mr. Law asked if Management would allow them to go on another lot. Mr. Flynn responded that this would be at the will of the MVAC.

- Mr. Hegarty asked who would have to remove them and Mr. Flynn responded that Propane Continental / Cornerstone Propane would have to remove them. This was a stipulation which the company had agreed to through the bankruptcy proceedings. Mr. Law did not see anybody doing this but he was just curious.

- Mr. Hegarty asked if they had propane stored in the tanks right now, at this moment. Mr. Flynn responded that yes, they were a tenant-at-will at this time. Mr. Hegarty asked if they were paying rent. Mr. Flynn replied that they were.

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- Mr. Daly asked if the tanks could be used for anything except propane if they were taken to another lot for re-placement. Mr. Flynn did not think propane tanks could be used for anything other than propane that he was aware of. Mr. Weibrecht continued that the re-use of the tanks on some other lot or on Propane Continental / Cornerstone Propane's other lot would have to be by plan and design and then approved and to code, in essence the company would have to give the Airport a new plan.
- Mr. Leland stated that the Commissioner's concern was that if someone else bid on the lot and Propane Continental / Cornerstone Propane was told to remove the tanks it would be their issue and they would be off the property. Mr. Weibrecht agreed that if Propane Continental / Cornerstone Propane were not selected Management would issue the notifications and the mechanics of the removal would be their problem.

- Mr. Hegarty asked again for the size of the lot. Mr. Flynn did not have it off the top of his head. Mr. Hegarty verified that this was the lot between...Mr. Flynn responded it was between Amerigas and the Vineyard Propane building where Mr. Hegarty would see two small 30,000 tanks. Chair Law noted this was the area that Cliff owned. Mr. Hegarty asked if it was the area that was not paved between the two buildings. Mr. Flynn replied that none of that area was paved at all. There was the Amerigas lot and then a large gravel lot that was the Vineyard Propane lot—which was divided into two lots by lease, Lot A and Lot B. A was the larger of the two pieces and if Mr. Flynn remembered correctly was about 40,000 sq. ft. Mr. Hegarty asked if fencing was involved and would have to be moved. Mr. Flynn replied that that was correct.

- Mr. Perry asked if there were utilities to the lot. Management replied that there was some electric which was needed to run the pumps.
- Mr. Perry asked if the 90¢ was also because it was a prime property at a more desirable location. Mr. Flynn replied that 90¢ per square foot was based on highest best use and on the utilities that currently existed at that location which were water, sewer, and underground electric.

- Mr. Hegarty's last question was to ask if the new bidder would have to bring the buffer back into code. Mr. Flynn replied that there was not a buffer there. This was what Mr. Hegarty meant would they have to bring the buffer back into code. Mr. Flynn replied that no, the only regulation was that the buffer that was in place must be left as is. Mr. Hegarty submitted that the MVAC could stipulate in the RFP that the buffer would have to be brought back into what it was prior to them destroying it in the first place. Mr. Flynn could not, in fact tell if the roadway had not removed the buffer to begin with. The pre-existing conditions through the development of the Park were not known. Mr. Flynn suggested that this could be done through the lot development process so that when the bidder came before the MVAC with their plan to develop the lot the MVAC could then request that their landscape plan be improved, if it was the will of the Commission.

- Mr. Alley remembered that this was the first lot in the Business Park and was developed before there were any rules and regulations requiring set backs, etc. because there was nothing else there. The essential regulations were arrived at through a market study which the MVAC accepted.

- Mr. Hegarty objected that the MVAC was now at a point where they could rectify past mistakes, so that everyone would be on the same playing field instead of creating irregularities and special situations. He considered that this might as well be put in the RFP today to reinstate the buffer zone consistent with original vegetation. The Airport had a list of that vegetation. Mr. Flynn did not disagree

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he just thought this would best be done through the development process rather than the RFP process. The MVAC had the power to make those decisions when the tenant submitted their plan for improvement.

- Mr. Weibrecht also noted that there might be some issues associated with the storage of the fuel as to whether or not the bidder could actually comply as putting a buffer back might depend on the distance to the tanks; so there might some other issues too. There was a minimum clear zone where usually no vegetation was allowed. Mr. Weibrecht was trying to think about the lot where the tanks were fairly close to the line because of the delivery lane and—as Mr. Flynn inserted—to the trucks. However it was an issue that could be addressed.

- But Mr. Hegarty maintained that the Airport was not anticipating renting to the same people. Mr. Weibrecht replied that he did not know, but that he was sure they were interested in it. Mr. Flynn noted that Mr. Hegarty's statement could not be assumed since the Airport had agreed to a stipulation in the bankruptcy that Propane Continental/Cornerstone Propane would be fully considered as a bidder.

- Mr. Alley thought that the winning bidder could be made aware that now buffer zones had been established in the Park and asked to bring this lot into compliance depending on what they would bid. Mr. Flynn explained that the Business Park Rules and Regulations were part of the bid. Mr. Alley then understood that this was already in the RFP and the bidder would understand it. Mr. Flynn repeated that the actual Rules and Regulations were part of the package. But Mr. Hegarty insisted that these same Rules stipulated that if it was not there it did not have to be put back so that essentially although it was in the RFP it was also in there that it did not have to be done. The MVAC was trying to get consistency throughout the Park and he thought that RFP should go out with that stipulation that a buffer zone be put back in the lot.

- Chair Law asked if there was a second. It was clarified that there was a motion on the floor. Chair Law asked if Mr. Hegarty was amending the motion. As the current RFP mitigated this issue **MR. HEGARTY MOVED TO ADD TO THE RFP THAT A BUFFER ZONE BE PUT BACK INTO PLACE BY THE WINNING BIDDER OF THE LOT; MR. LELAND SECONDED.**

- Mr. Perry asked if documentation went out with the RFP. Chair Law corrected him that the RFP had not gone out yet. Mr. Perry understood this but noted that is was part of a standard procedure. Mr. Hegarty said yeah, but that the Rules and Regulations went out saying that if the buffer did not exist the tenant did not have to deal with it. Mr. Weibrecht quoted as closely as he could remember “to be replaced or preserved”. Mr. Hegarty explained that just to make it very clear he was trying to put into the RFP that just because it was destroyed on day one when there were not rules the person who won the lease could not say that since the lot did not have anything on it nothing had to be done now. What Mr. Hegarty's amendment said was that, hey, the tenant had a lot but they had to put a buffer zone on it. Mr. Perry asked if the Airport had exposure with other properties that were equally as old and had become available to have to add that each time. He asked if it would not be better to just put it in the documents the RFP referred to. Mr. Hegarty stated this was what the motion was for.

- Mr. Law asked what would happen if the same tenant was awarded the lot and did not want anything to change. They might have to move their tank or do whatever to conform. Mr. Law did not see the current tenant leaving. There was a shortage of propane and Mr. Law did not see either the tanks or the people going anywhere; so, for instance, this might mean the tanks might have to be moved or the

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truck parking might have to be changed or whatever. Mr. Hegarty maintained that he thought the tanks were set to code at this time with the setbacks from the fence and that if one measured from the side of the existing tanks to the tree line to the right or behind it, it would be seen that there was ample space, more than twice as much space as there was to the road.

- Mr. Weibrecht asked if Mr. Hegarty was worried about the front of the lot, i.e. was that his issue. Mr. Hegarty concurred that of course, along the roadside, and repeated that he was just saying the buffer should be re-established. Mr. Weibrecht had not been sure which buffer Mr. Hegarty was referring to because there was a big difference, since buffer also meant sidelines, rear and front. Mr. Hegarty clarified that he was just concerned about the roadside because the MVAC had already discussed how the people got in destroyed it as there was nothing to stop them, etc. Mr. Weibrecht maintained that there was no buffer in many of those cases—and perhaps some of the Commissioners remembered what the lot had looked like that to begin with— due to pre-existing use even before the first tenant was in the Park, as with Clark for example. Mr. Hegarty however noted that the Airport did not have to live with this since it was a whole new lease, and the Airport could get everyone on the same playing field and beautify the Park. Mr. Leland joked it would be a beautification program so to speak.

- Mr. Frank Daly asked if the new tenant was required to submit a re-vegetation plan. Mr. Flynn replied that they were required to submit a development plan, which would later be approved by the MVAC. Mr. Weibrecht listed: parking, layout, structures, future expansion. So, Mr. Daly concluded that the MVAC would still have to approve what the tenant did with that piece of land. Mr. Flynn stated this was correct.

- Mr. Hegarty stated his amendment was to add language on day one that would not come as a surprise or an added expense or burden when the tenant did the development plan. Mr. Daly restated that Mr. Hegarty wanted the bidders to know up front that this was going to have to happen. Mr. Hegarty stated this was only ethical. Mr. Daly asked if what Mr. Hegarty was proposing would do that. Mr. Hegarty thought that yeah, he considered that it did, because as it existed now it was not there, so the MVAC should put into the RFP that whoever won the lot would have to put in the street-side vegetation zone. Mr. Daly asked if it would say re-build or build? Mr. Hegarty replied build.

- Mr. Law asked how long the tenant would have to do this. Mr. Hegarty would have to say before the new tenant opened for business. Mr. Daly noted that as part of the development plan the vegetation plan would have to come before the MVAC. Mr. Hegarty agreed, there was some vegetation that already existed. Mr. Law speculated that the same tenant (Propane Continental / Cornerstone Propane) might win the lot, they would not be able to open before the buffer was in existence. Mr. Hegarty thought that, depending on the time of the year, if the RFP went out this month and was awarded next month, than the tenant should have three or four months.

- Mr. Flynn warned that there might not be much to the buffer as there was a 60 ft. driveway but he would agree that the street side could be dealt with. Mr. Law also did not realize that Mr. Hegarty was only talking about the street side as he thought Mr. Hegarty had been referring to all the lot lines. Mr. Hegarty agreed that no, no the tanks had to be enclosed in a fence by zoning and code that had to be free from obstruction but there was tons of space between the street and where the fence began.

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- Mr. Alley stated that the correct language terminology was for a buffer on Northline Road. Mr. Flynn said this was perfect. There was a general discussion about the buffer meeting replanting plan requirements of the Business Park. Mr. Hegarty agreed. He realized that some of the places were already cheek by jowl and had already destroyed some of the buffer zones and the sides.

- Mr. Alley just interrupting for a second confirmed with Mr. Hegarty that basically the amendment only had to say the buffer on Northline Road.

- Ms. Lipke restated the amendment **MR. HEGARTY MOVED TO ADD TO THE RFP THAT THE BUFFER ZONE ON NORTHLINE ROAD BE VEGETATED BY THE WINNING BIDDER OF THE LOT IN ACCORDANCE WITH THE INDIGENOUS VEGETATION GUIDELINES OF THE BUSINESS PARK RULES AND REGULATIONS; MR. LELAND SECONDED; AMENDMENT PASSED UNANIMOUSLY: 7 AYES, 0 NAYS, 0 ABSTENTIONS.** Chair Law called the amended motion. **AMENDED MOTION PASSED UNANIMOUSLY: 7 AYES, 0 NAYS, 0 ABSTENTIONS.**

2. New Business / Old Business

Chair Law asked if there was any new business and there being none called for an Executive Session.

3. Executive Session to Discuss Ongoing Litigation

MR. ALLEY MOVED TO ENTER EXECUTIVE SESSION AT 5:30PM (NOT TO RETURN TO REGULAR SESSION) UNDER MASS. GENERAL LAW CHAPTER 39 SECTION 23 NO. (3), - I.E. FOR THE PURPOSE OF DISCUSSING STRATEGY WITH RESPECT TO LITIGATION; AND TO INVITE COUNSEL CHIP DE WITT, AND COUNTY MANAGER WINN DAVIS AND RECORDER MS. MARNI LIPKE TO BE PRESENT THROUGHOUT AND AIRPORT MANAGER MR. BILL WEIBRECHT, ASSISTANT MANAGER MR. SEAN FLYNN AS ATTEND AS APPROPRIATE; MR. HEGARTY SECONDED; MOTION PASSED UNANIMOUSLY: MR. MILL AYE, MR. ALLEY AYE, MR. HEGARTY AYE, MR. LELAND AYE, MR. DALY AYE, MR. PERRY AYE, MR. LAW AYE.

*There was a break. Mr. Weibrecht and Mr. Flynn left the meeting and the session began at 5:38PM.

* There was a break from 6:59 PM to 7:14 PM and Mr. Weibrecht and Mr. Flynn entered the meeting.

It was agreed that the next meeting be changed to February 9, 2005 at 5:00PM.

4. Adjournment

MR. ALLEY MOVED TO ADJOURN AT 8:51PM; MR. MILL SECONDED; MOTION PASSED UNANIMOUSLY: MR. MILL AYE, MR. ALLEY AYE, MR. HEGARTY, MR. LELAND AYE, MR. DALY AYE, MR. PERRY AYE, MR. LAW AYE.

Chair Law thanked Management for the snow removal.

Documents on File:

Agenda 2/2/05