

**Commonwealth Of Massachusetts
County Of Dukes County, S.S.
MARTHA'S VINEYARD AIRPORT COMMISSION
In a Joint Meeting with the
DUKES COUNTY COMMISSION**

April 19, 2006 5:30PM

VTA Building 2nd Floor Conference Room

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

Present: Airport Commissioners: Chair Norman Perry, Vice Chair John Alley,
Fred Condon, John W. Coskie, James Craig,
Francis E. Gildea, Connie Teixeira

Airport Staff: Sean Flynn - Manager,

Dukes County: Chair – John Alley, Leonard Jason, Les Leland Robert Sawyer,
Paul Strauss, - Commissioners;
E. Winn Davis- County Manager;
Noreen Flanders - Treasurer; Deborah Potter – Admin. Asst.

Others: Marni Lipke - Recorder

Press: Jim Hickey - Vineyard Gazette,
Joanie Ames - MVTV

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

Dukes County Commission Chair and Martha's Vineyard Airport Commission (MVAC) Vice Chair John Alley opened the joint meeting at 5:37PM. He considered it was a good idea to have a joint meeting from time to time.

1. Discussion of County Occupation of Airport Land. (See documents on file.)

Note Bene: A large part of this meeting involved explanation of a complex situation. The minutes reflect the explanation grouped for clarity and out of the chronological order of the meeting. A summary of the discussion then follows. (As always a tape of the meeting is available.)

Airport Manager Mr. Sean Flynn thanked everyone for coming and gave a brief history of the situation.

- The United States Navy deeded the Airport land to the County of Dukes County with the restriction that it be used for airport purposes only. This placed the land under Federal Aviation Administration (FAA) rules and regulations. Two of these regulations were relevant to the current County / Airport negotiations.

1) It was strict FAA policy that all Airport land be leased at fair market value, even to Airport sponsors (in this case the County).

- The only exemption was land deemed to be used for the public good, defined by the FAA as mostly for parks and recreation used by the entire public (in the MV Airport case the bicycle path and possibly the Dare Ropes Course).

MARTHA'S VINEYARD AIRPORT COMMISSION MEETING
April 19, 2006

2

- Land used for community services could only be exempted for that portion of services used directly by the airport.
- This FAA policy of fair market value for community services had been tested across the country the key case being Los Angeles International Airport (LAX). The City of Los Angeles had argued for complete rent abatement for police, fire and other services placed at LAX as benefiting the public good, but FAA policy was upheld and rent was abated only by that proportion of police, fire, etc. services specifically used by LAX.
- 2) FAA policy stated that allocated costs for services must be charged to all entities using those services. For example, the County could not single out the Airport in charging for the Treasurer's services but must also charge all other departments and/or towns similarly for the same service.
- This policy also applied to rent abatement so that if the County charged the Airport (in the form of rent abatement) for the services of the Communications Center all other entities using the services of the Communications Center must also pay allocation costs.
- In 2001 Former Dukes County Manager Carol Borer put forward a plan for the Airport to pay the County:
 - for the services of the Treasurer (overhead cost allocation plan) as well as
 - for prior years when the County subsidized the Airport shortfalls which came to \$108,000—going back 6 years plus the then current year as allowed.
- The Airport had accordingly submitted the request to the FAA which sent a letter in June, 2001.
 - The allocation for services provided by the County Treasurer was approved.
 - Consequently the auditor and FAA approved overhead cost allocation plan was now in place and being paid by all Departments. The FAA monitored the payments as part of the Airport budget.
 - However the FAA could not resolve reimbursement for prior year subsidies without correcting the issue of County occupation of Airport land. Since the County Administration Building, the Communication Center, the DARE Ropes Course and the Corrections Building had all been occupying Airport land without a lease and without paying rent the FAA requested the Airport have its land appraised to fix fair market value rent so that County back rent could be offset against the prior year subsidies reimbursement.
 - Consequently \$108,000 was put in escrow until this issue was resolved.
- The issue was somewhat dormant until 2002 when Ms. Borer requested the release of the moneys and the FAA again requested an appraisal, sending letters to her and to the then MVAC Chair.
- An appraisal was performed and fair market value was set at 90¢ per sq. ft. (see 1/8/03 Minutes p.2 #2).
- A joint MVAC / DCC meeting with Mr. Vince Scarano and Ms. Donna Witte of the FAA focused on the issue of the placement of a jail on Airport property. The issue of community services and fair market value was discussed at some length and the FAA representatives made it clear there would be no release/approval without the resolution of the rental issue (see 6/23/03 Minutes).

MARTHA'S VINEYARD AIRPORT COMMISSION MEETING
April 19, 2006

3

- The FAA sent another letter in 2005 requesting the resolution of the issue and subsequently Mr. Alley proposed a settlement plan which was approved by the MVAC (see 5/4/05 Minutes p.1-2 #2) and then by the DCC who submitted it to the FAA.
- This plan proposed and (against advice of Counsel) was accompanied by a letter from the Sheriff's Office that requested that the Communications Center be charged no rent as it provided services to the Airport and the community.
- Airport Counsel Palmer & Dodge successfully cited case law to the FAA that the land be assessed at the value at the time of original occupation rather than the value at the time of the appraisal. As it was not possible to accurately calculate a recessive appraisal, the Airport worked with the then current rent rates. The plan then allowed for an annual Consumer Price Index (CPI) increase as with any other lease.
- If calculated by the proposed plan (without Communications Center rent) total back rent was estimated at \$42,000.
- This proposal was the only plan under discussion.
- Due largely to the lack of resolution of this issue the FAA refused a grant application and the Airport was reported to the Inspector General's Office as not in compliance.
- This meant that the next MV Airport grant application would go through a more complex process involving the New England Region and then Washington approval.
- On March 7, 2006 a letter was received from Ms. Laverne Read, who had replaced Mr. Scarano at the FAA, requesting clarification on a number of points in the plan.
- In addition the FAA stated it would only approve a reduction in rent for the Communication Center for that portion of the services used by the Airport—provided that all other towns and entities using the Communications Center were paying similar cost allocation—and they therefore requested that the Airport portion of the Communications Center Service be quantified.
- On March 16, 2006 Mr. Flynn and County Manager Winn Davis had a good meeting with the Ms. Reade and Ms. Witte of the FAA on the specifics of Ms. Reade's requests.
- Some of the requests were answered and clarified.
- The FAA granted a 30 day extension until May 7, 2006 to respond to its questions.
- In turn Mr. Flynn and Mr. Davis asked the FAA to answer three questions in order to establish accuracy in responding.
 - 1) How should interest be calculated on the prior year's subsidies (\$108,000) and on the back rent?
 - 2) How many years back should the Airport recoup in County rent? (Mr. Flynn and Mr. Davis proposed that the Airport charge back rent only as far back as the County charged for prior year subsidy reimbursement.)
 - 3) Could the County assessment paid by the Towns be considered allocation for the services of the Communications Center?
- The FAA was primarily interested in methodology and policy rather than in the amount of dollars involved so the answers to these three questions had broad implications for the settlement.

MARTHA'S VINEYARD AIRPORT COMMISSION MEETING
April 19, 2006

4

- The FAA had not yet responded to these questions and it was important to respond to the FAA requests by May 7th so as not to miss another deadline.
- The next grant application cycle was due October 1, 2006 and it was hoped that the FAA would take into account that the settlement was making good progress.

- Everyone remarked on how very complicated the situation was.
- Mr. Davis felt a tentative agreement had been reached, and he along with Mr. Flynn and the DCC noted the progress towards a resolution. They asked the current MVAC for their reactions and for a vote to support Mr. Alley's plan.
- Several Airport Commissioners stated that they had only received the supporting documents the day before and had not had time to digest the material. A strong wish was expressed for this new MVAC to go forward rightly and understand each situation before voting.
- Mr. Flynn suggested that the MVAC vote to endorse Mr. Alley's plan with the caveat that it was approved only in so far as it was in agreement with FAA regulations.
- A number of different rent figures as well as interest and principal figures had been calculated. However all these figures were incomplete due to changes in the plan (such as the inclusion of the Communications Center) or the need for FAA responses (such as the on the calculation of interest).
- For example, back rent could be calculated from a number of different starting points:
 - from the County occupation of the land – County Administration Building in 1998, Communication Center in 1988, etc.,
 - from the time the Airport started paying the County Treasurer cost allocation overhead (1996),
 - from the year 2000 – which proposal the FAA rejected.
- Going forward it would be argued that rent value be based on the fact that without the Communication Center the Airport would have to pay for its own emergency system.
- There was a difference of opinion as to whether the County or the Airport owned the Communications Center Building.
- County Commissioner Sawyer felt a vote of the joint Commissions supporting the plan might accelerate the process.
- It was suggested that the MVAC and the DCC meet again in two weeks after the Airport Commissioners had a chance to review the material.
- Although everything was above board it was difficult to respond to the FAA questions without the FAA's answers. Although the FAA's interpretation would likely be in keeping with its national policy trends the MVAC and the County did not want to agree to anything that was still open to interpretation. The answers would effect the subsequent bargaining and considerably effect the dollars being exchanged, the bulk of the burden being born by the County.

MARTHA'S VINEYARD AIRPORT COMMISSION MEETING
April 19, 2006

5

- IT WAS THE CONSENSUS OF THE MVAC THAT AIRPORT MANAGER MR. FLYNN WRITE A LETTER TO THE FAA IMMEDIATELY, REQUESTING A RESPONSE TO THE THREE QUESTIONS AND STATING THE MARTHA'S VINEYARD AIRPORT WOULD RESPOND TO ALL FAA CONCERNS WITHIN X NUMBER OF DAYS FROM THE RECEIPT OF THE FAA'S ANSWERS.
- If there was no response from the FAA before the deadline the Airport and County would respond to as many FAA concerns as possible without diminishing their position.
- Mr. Flynn and Mr. Davis were asked to calculate the Communication Center rent going forward and backward as well as possible. Treasurer Noreen Flanders was asked to calculate interest compounded quarterly rather than monthly.
- Eventually the MVAC would consider and vote on the final agreement.

7. Adjournment

MR. CONDON MOVED TO ADJOURN AT 6:36PM; MR. FRANK GILDEA SECONDED; MOTION PASSED UNANIMOUSLY.

Documents on File:

Agenda 4/19/06

Sign-in Sheet 4/19/06

MV Airport Staff Summary re: County Occupation of Airport Land (2 p.) 4/18/06

MV Airport letter to FAA, re: 3/16/06 Meeting 3/20/06

FAA letter re: receipt of letter 3/29/06

FAA letter to MV Airport re: reimbursement to County 6/13/01

Dukes County letter re: follow up to phone conversation 1/25/02

FAA letter to Dukes County re: reimbursement to County 2/11/02

FAA letter to MVAC re: unauthorized use of Airport land by Dukes County (3 p.) 12/13/02

FAA letter to MVAC re: overturning MVAC decision on use of Airport land (3 p.) 5/28/03

Copy of FAA letter to MVAC re: unauthorized use Airport land by Dukes County (3 p.) 12/13/02

John S. Alley proposal for Settling Rent Issues at the MV Airport (2 p.) 5/4/05

Dukes County letter to FAA re: Agreement to Settle Rent Issues at the MV Airport (6 p.) 2/13/06

MVAC Minutes (4 p.) 5/4/05

John S. Alley proposal for Settling Rent Issues at the MV Airport (2 p.) 5/4/05

DCC Minutes (3 p.) 5/4/05

Non-Aviation Properties rent charts (3 p.)

Office of Sheriff letter to MVAC re: Request for Exemption (2 p.) 4/29/05

MV Airport Staff Summary re: Standing Airport Committees (2 p.) 4/19/06

MV Airport FY 2007 Revenue Projections (7 p.)

Proposed FY 2007 Expenses (7 p.) 4/19/06