

The North Little Rock Airport Commission Meeting was held at noon on Thursday, October 17, 2019 at the NLR City Services building, planning department conference room.

Chairman Mark Halter called the meeting to order.

The roll being called, the following Commissioners attended: Mark Halter, Brad Hughes, Mark Bentley, Jim Julian, Don Blakey, and Adrienne Smith.

Also Present: Clay Rogers, Marie Miller- City Attorney's Office

Minutes

Mr. Julian moves to approve the August 15 meeting minutes, Mr. Hughes seconds, the motion carries unanimously. Mr. Julian moves to approve the August 30th special call meeting, Mr. Bentley seconds. The motion carries unanimously.

Financial Report

Mr. Rogers goes the budget statement through September. Mr. Bentley moves to approve the financial report, Mr. Blakey seconds. The motion carries unanimously.

Old Business

Deer Maintenance- Mr. Rogers updates the commission on progress made on deer maintenance, and efforts he's making with Lt. Honeycutt. Mr. Rogers says the land clearing was done in areas that aren't wetlands, and that the area they cleared looks good. Mr. Rogers says we will use the same bow hunter again this year.

Expansion Project- Mr. Rogers says there aren't any major updates here, but the lease related questions with a bond funded project are still being worked out.

New Business

Public Comment- Bill Schlatterer speaks about the proposed resolution, the bond issue, and leases. Mr. Schlatterer talks about the resolution to forgive the CPI adjustment that wasn't applied to NLR Jet Center, and that the justification about tornado damage shouldn't have been a factor because the CPI had already not been applied. Mr. Schlatterer talks about the bond issue, and he thinks that you can't use bond issued money to least to a private entity. Mr. Schlatterer says he has problems with the proposed lease, with the assignment clause, and thinks they commission should table this lease discussion and spend more time on it.

Tommy Murchison says there was a decision made after the tornado to not apply the CPI. He doesn't remember exactly who said it, but there was a discussion and a decision made. He said there were also other factors during his time of his lease, like the roof leaking to the point customers were complaining, the office facility has been a mess from the beginning with ceiling tiles falling down, the roof leaking, the carpet being soaking wet every time it rained, and he said all that is prior to the tornado. Then when the tornado hit, it did severe damage, and there was a decision made to not apply his CPI to help alleviate some of those issues. He said there were several discussions about it at the commission level, and a decision was made at some point. He says as far as the lease is concerned, he's ready to sign the lease that was approved at the last commission meeting.

Resolution regarding decision not to collect CPI increase with NLR Jet Center- Mr. Rogers says this resolution is what he is proposing to resolve the issue of the CPI adjustment never being applied. He developed this resolution based on conversations with the city attorney's office, Chairman Halter and other commissioners, Mr. Murchison, former commissioners, and by looking at minutes from meetings over the years trying to figure out what happened and why, and what to do moving forward. Marie Miller from the City Attorney's office talks about the process of investigating why the CPI was not applied, first during the time of the tornado, and then realizing it had not been applied before that period in 2006 also. The resolution was written based on the information she has been given by Mr. Rogers, and it's up to the commission to decide how they want to handle it. This resolution has not been approved, it's just a draft written to discuss and amend if necessary. Mr. Blakey says he thinks there should be some repayment by the Jet Center, either through the lease rate in the new lease or a payment. Mr. Bentley says he's a new commissioner and has no knowledge of what happened, but he has no reason not to believe Mr. Murchison, but he asks if anyone has reached out to former commissioners about what was discussed at the time. Mr. Rogers says minutes from the 06 meetings were wiped out in a flood at city hall. Mr. Rogers says he's reached out to people who were commissioners at the time of the tornado, and they remember conversations about it at the time, but don't remember any specific decisions made. Mr. Rogers says he has a lease term sheet he works off of and on that sheet there is no mention of CPI for the Jet Center, and there is CPI adjustment language for the other leases, and that the Barrett Aviation lease doesn't have a CPI adjustment, so when he looked at all of the information and factors together, it seemed like there could have been a specific decision made at some point to not have a CPI adjustment. Mr. Halter says there was a period when he started on the commission that there wasn't an airport manager. He says he remembers several discussions around the time of the tornado, but doesn't remember any specific decisions one way or the other. Mr. Blakey says he doesn't remember any decisions made at that time. Mr. Julian remembers when he joined the commission around 2008 seeing the Jet Center hangar at some point and seeing all the problems it had with leaks and

faulty doors and being told the commission was going to have to spend some money to get it up to standard. He remembers discussions with Skipper Polk that might have been one on one, or might have been in commission meetings, but he remembers several discussions about the Jet Center hangar and all the problems it had, the economic problems of 2008, the tornado damage, and the impact all that had on the Jet Center. He doesn't remember any specific decision made, but in his mind there had been some sort of agreement reached to accommodate the Jet Center with the lease. Mr. Julian says moving forward, there should be recorded minutes and recorded votes of any decisions made. Mr. Julian says his feelings on this are that for whatever the reason, this commission has never taken the position that the Jet Center lease is in default, and the commission has never said the Jet Center needs to be paying more in rent, and in contrast, the airport commission has been accepting the rent paid by Mr. Murchison each and every month. Mr. Julian says he is not the attorney for the commission and he tries to separate his law practice from his position on the commission, but he thinks the commission would be ill-advised if we don't consider two legal doctrines of waiver and estoppel. He says you can waive your legal rights in some circumstances by your conduct, such as standing by and not asserting that someone is in breach of their lease, and continuing to accept the rental rate as it's paid. And estoppel means you are kept from enforcing your legal rights when you have induced someone's behavior by your actions, and that's what the commission has done here by not enforcing the CPI adjustment. He says if we have the legal right to enforce that rental adjustment, we have the legal obligation to let the tenant know that it is not being paid and that we are enforcing that by increasing the rent being paid. Since the commission never applied that adjustment or informed the tenant, he doesn't think the commission can go back 12 or 13 years to enforce it. He says that's an equitable concept, and that equity demands the commission take certain actions we might not want to take. We're all stewards of the city's property and airport, and he doesn't want to walk away from money we're entitled to, but at the same time he doesn't want to go after someone to pay money that we have induced to act in the manner that he has by our actions. For that reason, Mr. Julian moves to approve the resolution as presented. Mr. Halter seconds. Mr. Halter asks Ms. Miller if she agrees that there are legal issues with trying to collect whatever number has been suggested as the amount owed. Ms. Miller says yes, the city attorney agrees with Mr. Julian's analysis. Ms. Miller says there is a time lapse that has gone by that the city has failed to make a demand for payment, and in addition to waiver and estoppel, there's also a statute of limitations that Ms. Miller doesn't believe any court would allow the city to capture amounts owed from 13 years ago. Ms. Miller says there is usually a 5 year statute of limitations. Ms. Miller says there's also a concept of laches which is similar to estoppel that says the commission has basically slept on its rights to demand repayment of this money after all of these years. Ms. Miller says the city attorney isn't saying the commission can't do anything to try and collect some of this money, but the likelihood that the amount of money being discussed would be

awarded is very slim, so she agrees with Mr. Julian's analysis. Mr. Halter says he's a lawyer also, and he agrees with Mr. Julian's assessment. He says you never know what would happen in court, but he agrees with the legal assessment. Mr. Blakey says he still thinks there should be some money paid back, even if we go back just 5 years. Mr. Bentley asks if they can be addressed with the new lease terms. Mr. Halter says he'd rather those be separate. Mr. Blakey would like to have more time with this issue and bring it up again next month. Ms. Smith says she'd like more time also. Mr. Halter says based on Robert's Rules of Order, there could be a motion to table the discussion that overrides the motion on the table. Mr. Blakey moves to table the motion that's been made on the resolution and postpone the discussion to next month, Ms. Smith seconds. Mr. Bentley votes no, Mr. Hughes votes no, Ms. Smith votes yes, Mr. Julian votes no, Mr. Blakey votes yes. The motion to table the resolution vote until next month fails. Back to the motion on the resolution, Mr. Rogers says this is a complicated issue for sure, but that what he's proposing he feels is in the best interest of the airport, and there might not be a definitive right or wrong answer on this, but he's doing what he feels is best for moving forward and avoiding any lawsuits that will hurt the airport. Mr. Blakey asks Mr. Rogers how long he's been at the airport, and if ever realized any of the CPI issues. Mr. Rogers says he's been here 7 or 8 years, and he hasn't read the Jet Center lease that closely until this came up. He says he's been going by the list given to him by Skipper Polk when he was director before retiring, but acknowledges that he missed the CPI increases since he's taken over. Mr. Rogers says he has also learned lessons from all of this, and he'll work with the city on improving the system for lease payments and invoicing to make it more professional and detailed. Mr. Halter calls for a vote on the resolution as presented. Mr. Bentley votes yes, Mr. Hughes votes yes, Ms. Smith votes yes, Mr. Julian votes yes, Mr. Blakey votes no, Mr. Halter votes yes. The motion carries.

NLR Jet Center Lease- Mr. Rogers says what he has presented is the original lease with the NLR Jet Center, with the changes notated based on what was voted on in the August meeting, and then a couple of other changes he thinks need to be discussed and voted on in addition to what was already agreed on. He says he only has two changes to what was already agreed and voted on in August, one is the fuel language. Mr. Rogers says based on his research on the FAA compliance manual, and his discussions with the FAA compliance director for our region on the fuel sales language regarding exclusive rights or other issues, he recommends we change the fuel language. He says the FAA compliance director has concerns with this clause because it could limit the control the airport commission has on the airport, and there is a grant assurance that says the airport commission must maintain control of the airport to be eligible for grant funding. Mr. Rogers says the concern is that there are scenarios that could play out where the airport would be in jeopardy of losing grant funding because the commission is not in control of the airport. Mr. Rogers says saying that the airport won't sell fuel would not immediately

be a violation of our grant assurances, but there are situations that could come about during the term of the lease that could lead to the commission not being in control of the airport, and then that would be an issue. Mr. Rogers has proposed new language to the lease regarding the fuel sales that would keep control of the airport to the commission, but that if the airport decides it wants to sell fuel, the Jet Center would have 9 months to decide if they want to continue doing business at the airport, and if Mr. Murchison decides that would detrimentally affect his business, he would have 9 months to decide if he wants to get out of his lease without penalties. Mr. Rogers says Mr. Murchison would rather have a full year. Mr. Rogers says the language he's presenting states that if the airport wants to sell fuel, it can sell fuel, and then Mr. Murchison can decide if he wants to continue his business at the airport, or not. Mr. Rogers says he made this language as a compromise that if the airport decides to sell fuel and compete against the Jet Center, it gives the Jet Center a way out if he thinks it will hurt his business, while also maintaining full control of the airport to the airport commission. Mr. Blakey has some things he'd like to discuss on the lease and changes he'd like to see. He'd like the fuel tank area of the Jet Center to be added to the square footage that rent is paid on. He'd also like for the Jet Center to have to pay for tie-down fees, comparable to what is in Barrett Aviation's lease. Mr. Blakey says on the rental increase, he'd rather it be a CPI adjustment every 5 years instead of a 5% increase every five years. Mr. Rogers says 5% is what was other leases have, but what was voted on in August was a CPI adjustment every 5 years. There is discussion on the procedure of approving the lease or making changes. Mr. Julian makes a motion to approve the lease, Mr. Halter seconds the motion. Now, a discussion can happen on proposed changes. Mr. Blakey moves to amend the rental adjustment to a CPI adjustment every 5 years, Mr. Hughes seconds. Mr. Bentley votes yes, Mr. Hughes votes yes, Ms. Smith votes yes, Mr. Julian votes no, Mr. Blakey votes yes, Mr. Halter votes yes. The amendment passes. Mr. Blakey makes a motion to amend the lease to add in the square footage of the fuel tank area into the total square footage that rent is paid on, Mr. Julian seconds. Mr. Bentley votes yes, Mr. Hughes votes yes, Ms. Smith votes yes, Mr. Julian votes yes, Mr. Blakey votes yes, Mr. Halter votes yes. The motion carries. Mr. Blakey makes a motion to amend the lease to have the tie-down rental language the same as what's in Barrett Aviation's lease, Mr. Hughes seconds. Mr. Bentley votes yes, Mr. Hughes votes yes, Ms. Smith votes yes, Mr. Julian votes yes, Mr. Blakey votes yes, Mr. Halter votes no. The motion carries. Mr. Rogers suggests a change to the assignment language based on discussions with the FAA, and shows the change he suggests on taking out the language that adds ambiguity. Mr. Rogers says we as a government entity have an obligation to be fair and unbiased anyway. Mr. Rogers also points out changes he added to the assignment and sublease, saying it was addressing a concern brought up last time about allowing Mr. Murchison to rent or sublease individual spots for customers in his hangar, but not subleasing or assign the whole lease itself. Mr. Julian makes a motion to add in commas or clarify the language to reflect that intent, Mr. Bentley seconds, the motion carries

unanimously. Mr. Blakey asks about the proposed changes to 11a, the utilization of leased premises. Ms. Miller explains why that language is added in, and that the concern was that if there are changes to the rules and regulations, that could impact an existing lease and cause them to have to change their operations. Ms. Miller says if any standard is changed that has to do with safety, that rule would have to be followed. Mr. Halter asks if this language should be put in all form leases moving forward, Ms. Miller says yes. Ms. Miller says the language can be tweaked to make that more clear because it needs to be understood when someone reads it. Mr. Blakey would like to discuss the rental payment amount of the new lease. He says because he didn't know about the CPI adjustment issue, that we should charge more in rent to compensate for that. There is a discussion on the procedure of these votes since the lease was agreed on and voted on at the last meeting. Ms. Miller says there might should have been a vote to rescind the vote from last meeting on the lease that was approved and voted on. There is more discussion on the parliamentary procedure. Mr. Hughes moves to rescind the original vote to approve the lease from the August Special call meeting, Mr. Bentley seconds. Mr. Bentley votes yes, Mr. Hughes votes yes, Ms. Smith votes yes, Mr. Julian votes no, Mr. Blakey votes yes, Mr. Halter votes yes. The motion carries. Mr. Hughes moves to approve the new lease as amended, including the amendments already voted on and approved today, Mr. Bentley seconds. Now discussion resumes. Mr. Blakey would like to discuss the lease rate again, and thinks the amount should be raised. Mr. Blakey hands the commissioners documents showing what the Jet Center would be paying if the CPI had been applied when it was supposed to, and what the shortfall was. Mr. Blakey would like some of that recouped through the rental rate moving forward. Mr. Blakey makes a motion to increase the rental rate to \$35,557 to start, and the CPI adjustments on top of that every five years. Mr. Halter says we've voted to add in the fuel tank areas, so you'd have to consider that and back your way into the \$35,557 he's suggesting. Mr. Blakey says that's his motion. Mr. Halter says in his mind, the dollar a square foot rate is fair and is settled, and the commission voted to not collect the missed CPI adjustments, so we shouldn't add it in through rental rate increase. Mr. Bentley says the rental rate increase as voted on is fair. Ms. Smith seconds Mr. Blakey's motion. There is discussion about the amount missed from the CPI not being applied. On the motion, Mr. Bentley votes no, Mr. Hughes votes no, Ms. Smith votes yes, Mr. Julian votes no, Mr. Blakey votes yes, Mr. Halter votes no. The motion fails. Mr. Rogers brings the next issue, he wants to take out the language saying the tenant has to pay a grant match if a grant is used to fix a hangar. Mr. Rogers doesn't think a tenant should have to do that. Mr. Rogers brings up the next issue Mr. Murchison does not want to be responsible to replace the expensive doors or roof if the commission decides they need to be replaced. Mr. Bentley says there's usually something that says the tenant won't be responsible unless the tenant did something that caused them to break. Mr. Murchison is okay with that language being added. Mr. Bentley votes yes, Mr. Hughes yes, Ms. Smith yes, Mr. Julian yes, Mr. Blakey yes, Mr. Halter yes. Mr. Rogers says the next change should

be taking out 11.h about the leaseholder's leasehold interest by deed of trust or mortgage, and that since we own the building and land that language is unnecessary and doesn't apply. The next change was added in by Ms. Miller regarding hazardous materials to better protect the airport. Mr. Blakey would like to discuss another amendment. He makes a motion to change the lease length from a 10 year lease with a 10 year option and another 5 year option, to just a 10 year lease and 10 year option for a total of 20 years. Mr. Bentley seconds. Mr. Rogers says this tenant is important to the airport and to the city as a whole in terms of business and economic development. He says this is the city's airport, and this tenant is an important piece of that puzzle, and so that's why he is comfortable with the lease terms he has proposed including the 25 year length. Mr. Halter says he agrees with that, and that's what we agreed on last time. On the motion, Mr. Bentley votes yes, Mr. Hughes votes no, Ms. Smith votes yes, Mr. Julian votes no, Mr. Blakey votes yes, Mr. Halter votes no. The motion fails. Mr. Julian says the reason he's been voting no on most of these amendments is because he thinks it's important for there to be finality when the commission votes on something and that should be the end of it, and he doesn't think it's fair to vote on something, only to come back the next month and rehash it all out and vote again. He thinks once the commission votes, that should be the final decision, and he thinks we should just go with what was agreed on and voted on last meeting. Mr. Halter calls for a vote on the lease as a whole with the changes made and amendments voted on today; Mr. Bentley votes yes, Mr. Hughes votes yes, Ms. Smith votes yes, Mr. Julian votes no, Mr. Blakey votes yes, Mr. Halter votes yes. The motion carries.

2020 CIP- Mr. Rogers says we update this every year and it's our 5 year plan for grant funded projects, specifically for the FAA grant money. Mr. Rogers goes through the plan and explains the projects we've discussed and when we'll be able to apply for grants for those projects. Mr. Julian moves to approve the CIP, Mr. Blakey seconds. The motion carries unanimously.

Engineer's Report

No engineers are present.

Directors Report

Mr. Rogers announces that this is Chairman Halter's last meeting as he is moving to Little Rock. Mr. Rogers thanks Mr. Halter for all of his time and service, and gives him a print of the Old Mill on behalf of the Mayor's Office, who thanks him for his service.

Public Comment

Mr. Hughes moves to adjourn, Mr. Blakey seconds.

The meeting is adjourned.