

Lafayette Airport Commission Legal Committee Meeting April 30, 2018

Legal Committee:

Chairman:	Paul A. Guilbeau
Vice Chairman:	Timothy L. Skinner
Member:	Paul Segura
Member:	John E. Hebert (Alternate)
Ex-Officio Member:	Valerie C. Garrett

Absent:
Paul Segura (Member)

Also Present:
Steven Picou – Executive Director
Todd Swartzendruber – Legal Counsel
Daniel Elsea – Deputy Director
Jennifer Comeaux – Asst. Properties Administrator
Catina Theriot – Secretary
Robert Callahan – Sides and Associates
Terry Crownover–MSTC
Pearly Lemaire – MSTC

This meeting was recorded and is on file and available for review in the Lafayette Airport Commission office.

At 4:03 p.m., with all three (3) committee members in attendance. Chairman Guilbeau called the Lafayette Airport Commission Legal Committee to order.

Pledge of Allegiance was recited.

Roll Call was taken.

Scheduled Business – Discussion Items

1. Lease Policy – Review and Discussion

[Discussion]

Executive Director Picou stated there has been a lot of discussion back and forth over this item regarding the Lease Policy. Executive Director Picou stated now that it is coming to the legal part of the policy he turned over the discussion to Mr. Swartzendruber, Legal Counsel, to discuss the modifications that have gone back and forth.

Mr. Swartzendruber, Legal Counsel, stated the Legal Committee met earlier in the month of April and the committee went over the original draft that was sent out in January. The committee gave instructions on changes to be made to the policy. Those changes were made and a red-lined version and a clean version were sent out to staff and committee

members on April 16, 2018. This version with changes is before the committee members and Mr. Swartzendruber received another version of the lease policy on Friday, April 27, 2018 from Chairperson Garrett. Mr. Swartzendruber stated there are a couple of different versions of the lease policy and there were questions about some of the language he wrote.

Chairperson Guilbeau stated the committee should start with the draft version that includes the changes from the earlier meeting in April. Mr. Swartzendruber, Legal Counsel, went over the first item with changes on draft one which read *Fair market rental value of all leased properties will be determined by reference to negotiated fees charged for similar uses of the airport or by appraisal of comparable properties.* The new changes proposes the item to read *Fair market rental value of all leases properties shall be determined by an appraisal initiated by LAC. Once the appraisal is secured, then it provides LAC with a marker to negotiate further with the tenant.* Commissioner Skinner stated the first version was based on the FAA order. Mr. Swartzendruber stated from the last meeting there was some question on the FAA meaning and now it reads word for word from the FAA order. According to state law the airport needs to get a fair market value. Chairperson Garrett asked how the airport can make it fair for different tenants. Commissioner Hebert stated the airport can establish a threshold and if the amount is over then an appraisal is ordered. The committee members discussed a threshold of \$50K. The committee members went back and forth on the discussion over what is considered fair market value. A base line needs to be set to start negotiations for any tenant/lessee. Chairperson Garrett stated an appraisal be done to start the amount for negotiations. Commissioner Skinner stated he would not want to see an appraisal be done on every property when it isn't necessary. The committee stated this is the same item that was talked about at the last meeting in great detail. Chairperson Garrett stated if a threshold is set then an appraisal would not be needed every time for each tenant/lessee. Executive Director Picou stated any property over five years is long-term and will get an appraisal no matter the threshold amount. Commissioner Skinner stated he thinks the time duration should be left off but have the threshold. Mr. Swartzendruber, Legal Counsel, will work on the wording of the item for fair market value with a threshold and no time duration. Mr. Swartzendruber read what he thought was the way the committee was heading but there were some issues. The amount of the threshold needs to be determined and Executive Director Picou asked Mrs. Comeaux to put all the abstracts of the airport properties in a spreadsheet with the square footage of the property, the term of the lease, and the annual amount of the lease. The committee members decided on setting a threshold now and change it at a later date after Mrs. Comeaux's abstract property information is reviewed. A threshold of \$50K on improved property with a five (5) year term was set as a baseline for appraisals.

Mr. Swartzendruber, Legal Counsel, went over the changes that were included from the committee meeting in early April. Under appraisals item 1a. identifies LAC's appraisal shall be paid by the LAC. Item 1b. When an appraisal is obtained for property currently under lease and the lessee intends to execute a new lease for the same property, LAC shall submit the appraisal to the lessee upon receipt and review, but in no event less than ninety (90) calendar days prior to the date the lease will terminate. Lessee/applicant shall have fifteen (15) calendar days from receipt of LAC's appraisal to either accept the appraisal or notify LAC in writing of its disagreement with the appraisal, lessee/applicant may, but will not be required to submit its own appraisal to LAC, at lessee's/applicant's cost, no later than forty-five (45) days after LAC receives the notice.

Draft one's copy had item 1d. In the event lessee/applicant submits written notice of disagreement with LAC's appraisal, with or without its own appraisal, LAC may negotiate with the lessee/applicant to attempt to reach a fair market rental amount agreeable to both parties. Mrs. Garrett's draft copy stated in the event lessee/applicant submits written notice of disagreement with LAC's appraisal, with or without its own appraisal, LAC may negotiate

with the lessee/applicant to attempt to reach a fair market rental amount agreeable to both parties not to exceed more than 10% of the difference between the two appraisals, if the appraisal is lower than LAC's appraisal. Commissioner Skinner asked what if the two appraisals are wrong and there are excruciating circumstances. If there are differences Chairperson Garrett states the difference would go to the Chair or the Executive Director and staff for a recommendation. A back and forth discussion on the negotiations of 10% of the difference between two appraisals went on with no settlement. If there is a difference the tenant will have the option to get an appraisal and plead their argument as to why he/she feels the appraisal is wrong. With further discussion, the committee members, Executive Director Picou, and Deputy Director Elsea stated the appraisal difference should be 10% less than the higher appraisal.

MOTION: Accept Changes to the Lease Policy

Commissioner Hebert motioned to incorporate all the changes discussed and approved by the committee. The motion dies for a lack of a second.

MOTION:

Commissioner Skinner motioned to accept the changes for Item 3 under Rentals and Item 1d. under Appraisals to leave it the way it was. Commissioner Hebert's recommendation was to let Commissioner Skinner's motion die.

Chairman Guilbeau suggested Mr. Swartzendruber, Legal Counsel, submit to Executive Director Picou the two drafts of the lease policy. Executive Director Picou will disseminate the two drafts of the lease policy to the full Commission for the policy to be on the May agenda at the Regular Commission meeting.

Other Business- None

Public Comments - None

MOTION: Adjourn

Commissioner Skinner moved to adjourn the Legal Committee Meeting of April 30, 2018. Commissioner Hebert seconded the motion.

AYES: Skinner, Hebert, Guilbeau

NAYS: None

ABSENT: Segura

MOTION CARRIES

The meeting Adjourned at 5:40 p.m.