

Airport Advisory Committee
Meeting Minutes

11/23/2010

- I. Call to Order: The Bolivar Airport Advisory Committee was called into session by Chairman Steve Marshall at 6:36 pm, Tuesday, November 23, 2010. Present were Mr. Marshall, Vice Chairman Brian Burchett, Secretary Jim Shawley. Also present were City Manager Ron Mersch and FostAir owner/operator, Mr. Jay Foster; Mayor Charles Ealy was unable to be present.
 - a. Statement of Purpose was reiterated by Mr. Marshall.
 - b. There were no opening remarks.
- II. Adoption of Agenda: The Agenda was adopted as presented, with no changes.
- III. Approval of minutes: The October minutes were approved with no addenda or errata.
- IV. Old Business:
 - a. Rules and Regulations, Through the Fence issues:
 - i. Mr. Marshall stated that he had, since the previous Committee meeting, discussed this issue with Mr. Don Baker
 - ii. Mr. Baker, of the Audience, had some information to present.
 1. This information is included as Attachment 1 to these minutes.
 2. After listening to Mr. Baker, Brian Burchett moved, and Mr. Shawley seconded, that the prohibition of trailered aircraft operations be removed from the draft copy of the proposed Rules and Regulations.
 - iii. Mr. Mersch explained that part of the discussion of this issue had originated with Alderman Darren Crowder regarding the assessing of an access fee for such trailering operations.
 - iv. Mr. Marshall inquired as to the purpose of the fee.
 - v. Mr. Mersch replied that it goes back to have some access control—to have skin in the game for the cost of upkeep.
 - vi. Mr. Burchett inquired whether to have a fee—even a small fee—to control access, will be reassessed in the future.
 - vii. Mr. Mersch noted that the issue is framing a clause in the Rules and Regulations in a way such that an “experimental aircraft” would be an aircraft that is transported on a trailer with no width restrictions on the highway.

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- viii. Mr. Burchett pressed, that he was not hearing from Mr. Mersch any objection to the trailering in of aircraft...
- ix. Mr. Mersch responded that no, such a fee would be merely to control access to the airport's area of operations.
- x. Mr. Burchett wondered about the usefulness of a motion from the Committee, regarding this issue.
- xi. Mr. Mersch responded that the trailering issue will be addressed in the next working session, but if the Committee wished to make a motion regarding the trailering issue he would not have a problem.
- xii. Mr. Burchett: Will some of the proposals the Committee has made be discussed at the next City Council meeting? This was answered in the affirmative.
- xiii. From the audience, Councilman Arleen Ferguson suggested a work session with just the Airport Advisory Committee and City Council be held.
- xiv. Mr. Baker reiterated the importance of keeping in mind the perception issue, whether the airport is perceived to be friendly or unfriendly.
- xv. Mr. Marshall wondered if the Committee should move to recommend Don's letter be sent to the City Council/work session.
- xvi. Mr. Shawley suggested that the Committee let this upcoming work session go forward, but recommend an Airport Advisory Committee/City Council work session be planned.
- xvii. Mrs. Ferguson emphasized the need of the Aldermen of our input and expertise in matters pertaining to the airport.
- xviii. Mr. Burchett concurred, but suggested the Committee would be more comfortable seeing a revised set of documents which we could then scrutinize, and on which the Committee could provide input.
- xix. Mr. Marshall stressed that trailering of aircraft is technically not "Through the Fence Operations" as defined by the FAA, but it was included in draft copy of the City's proposed Rules and Regulations.
- xx. Mr. Baker noted that the FAA sees "Through the Fence" and trailering operations as two separate issues; the FAA is scheduled to propose some guidelines regarding trailering of aircraft into public-use airports in the summer of 2011.
- xxi. Mr. Baker wondered if the Committee had reviewed the proposed Rules and Regulations draft and the Minimum Standards for Airport Operations drafts, and made forwarded any recommendations; the Committee members answered in the affirmative.
- xxii. Mr. Shawley noted that the Airplane Owners and Pilots Association have provided resources for public airports regarding these kinds of documents.

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- xxiii. Mrs. Ferguson asked if the West Plains documents were the only source used by the City.
- xxiv. Mr. Mersch replied that West Plains is the most similar airport and town to Bolivar; in addition, Mr. Baker has been looking at other examples, including FAA.
- xxv. Mr. Baker then reiterated that a “reasonable” fee may be appropriate, but a suggested fee to any patron of the airport of an equivalent of hangar rental (\$175.00) would create a perception concern.
- xxvi. The motion entered in III. a. ii. 2. above was left standing, and will be considered at the next meeting.

V. New Business: There was no new business.

VI. Questions from the Audience:

- a. All questions from the audience were rendered during the course of the meeting.
- b. There was a series of correspondence between former lessee Mr. Duane Smith and the City regarding his contract. That correspondence is attached, and listed as Attachment 2

VII. Adjournment: Upon a motion by Mr. Burchett and a second by Mr. Shawley, the meeting was adjourned.

VIII. Contact Information:

- a. Committee Chairman: Steve Marshall; address: stmarsh@windstream.net
- b. Committee Vice-Chairman: Brian Burchett; address: trans4md@gmail.com
- c. Committee secretary: Jim Shawley; address: jshawley@earthlink.net
- d. Committee member: Andy Spear; address: aspear@windsteam.net
- e. Committee member: Jim Walter; address: jim@icefog.com

Respectfully submitted,

Jim Shawley
Secretary, Airport Advisory Committee

Attachments:

Attachment 1: Letter of clarification regarding “Through the Fence Operations” by Mr. Baker

Attachment 2: Letters of correspondence between Mr. Duane Smith and the City of Bolivar

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Attachment 1: Letter of clarification regarding “Through the Fence Operations” by Mr. Baker

11-23-10

I want to thank Ron Mersch, Bill Jones, and Darren Crowder for meeting with me last Thursday to discuss the matter of hauling experimental airplanes to and from the airport. There was agreement that new information shows the FAA approves this kind of activity. No conclusion was reached about a fee that might be charged for this activity if the matter is pursued further. This note is being written to help clarify the issue.

SECURITY is not the issue. New through-the-fence rules were written after 9-11 to keep terrorists away from airplanes. Bolivar pilots are not a threat to national security.

FAA is not the issue. I contacted Randy Hansen at the Experimental Aircraft Association in Oshkosh Wisconsin. He contacted Randy Fiertz who is the FAA’s Director of Airport Compliance and Field Operations Branch at FAA HQ’s. In an email on October 28 Hansen said “I must assume that the airport sponsor is receiving this incorrect information from either the geographically responsible ADO or a contractor hired to rewrite the document for the city/airport. In either case the position is wrong.” Later that day he wrote that Fiertz “does agree 100% with your rights to access the airport.”

HISTORY is not the issue. When the airport was first opened, I kept my plane at home and transported it to and from the airport. Pro Flight Air was the FBO and my plane was enthusiastically welcomed. Ann said, “We want as much activity as we can get with all kinds of airplanes.”

MONEY is not the issue. A small gate fee collected a few times a year will have almost no impact on the airport budget.

PRECEDENT is not the issue. Welcoming experimental airplanes through the main gate should not invite abuse. The airport has had an unwritten open gate policy for thirteen years and no one has abused the privilege. If abuse were to occur in the future, it could be addressed at that time.

So, what is the issue?

PERCEPTION is the issue. Jonathan Remington has reminded us that “perception is everything in advertising.” Welcoming experimental airplane will advertise the airport as a warm and friendly place where everyone is welcome. To discourage access either by rules or by a substantial gate fee will create a negative perception.

So, what is the solution?

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My suggestion is that the Airport Advisory Committee vote tonight to ask Don Brown and Ron Mersch to remove all reference to this matter from the proposed rules and regulations document. New information shows that the FFA has no problem with someone hauling an experimental airplane to and from the airport, therefore we do not need a new rule.

Don Baker

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Attachment 2: Letters of correspondence between Mr. Duane Smith and the City of Bolivar



345 S. MAIN AVENUE • BOLIVAR, MISSOURI 65613 • Office (417)326-2489
Fax (417)777-3212

October 8, 2010

Mr. Duane Smith
4402 East Farm Road 64
Fair Grove, MO 65648

RE: Breach of Contract Notice

Mr. Smith,

This letter is to serve notice of your breach of contract with the City of Bolivar in reference to item #9 of your hangar lease agreement.

I noted five days prior to the recent hangar inspections that were conducted, that hangar #22 lockset was not the original lockset installed. Then, two days prior to the inspection, the original lockset was noted by me as present on hangar #22. After a recent drive thru inspection, I have noted that the original lockset is again not installed on hangar #22 and the prior non-conforming lockset has reappeared.

Under the terms of your hangar lease, you have ten days from the date of this letter to return the hangar and lockset to its original condition. Failure to comply will result in the City declaring you in default and your lease will be terminated immediately. You will be held responsible for all costs incurred by the City, including labor and parts, and costs of those contracted by the City to return the hangar to its proper condition.

Your attention to this matter is appreciated.

Respectfully,

Ronald L. Mersch
City Administrator

cc: Honorable Charles L. Ealy, Mayor
Ms. Darla Langford, City Clerk
Mr. Kerry Douglas, City Attorney

OUR VISION STATEMENT

"Bolivar is a community - one of neighbors, character, identity, strong heritage and faith. We are a community of enterprise, rich with opportunities in healthcare, education and business. Now and in the future, we are committed to being a hub of economic growth and diversity with a high quality of life for all."

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Attachment 2: Letters of correspondence between Mr. Duane Smith and the City of Bolivar
(continued)

October 15, 2010

Mr. Ronald L. Mersch

City Administrator – Bolivar, MO

RE: Breach of Contract Notice

Mr. Mersch,

It is my earnest opinion that the changing of the lockset on hanger #22 is a “stretch” of item #9 of the hanger lease as being a Breach of Contract! As you stated in your Breach of Contract Notice letter, dated October 8, 2010, the original lockset has the potential of being installed when necessary as you and others conducted an inspection of hanger #22 using the “Master Key” for that section of hangers.

I’m sure it’s totally coincidental that since the current FBO has been at Bolivar, myself and two other aircraft owners hangered at M17 have had log books mysteriously disappear from our aircraft. As you are well aware, I put up a motion-detecting camera in my hanger and after having individuals enter my hanger on two different occasions I decided to change the lockset in order to protect my personal belongings in hanger #22.

Unfortunately, the camera is rather inexpensive and quality is very poor as it designed to put on a tree and capture game movement, not quality, but it has served my purpose. Since the original lockset was replaced with a “non-conforming” lockset, I have not seen any evidence of unauthorized entry.

Since you did not ask why the lockset was changed, it is fair to believe that you, as the landlord, feel you or your agent have the right to enter my rented space without my prior knowledge and with no regard of my right to privacy nor the protection of my property.

With this said, this is my written notice that I am terminating my month to month lease of hanger #22 effective October 31, 2010 and the original lockset will be installed and the hanger returned to its proper condition so no costs will be incurred by the City, including labor and parts, and costs of those contracted by the City to return the hanger to its proper condition. I’m confident you will find justification for the retention on the \$60 deposit.

You’ve done well sir, Kelly Grant’s two hangers and now mine. Let’s see, that is \$525 a month or \$6,300 annually of lost revenue.

Sincerely,

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Duane Smith

cc: Honorable Charles L. Ealy, Mayor

Ms. Darla Langford, City Clerk

Mr. Kerry Douglas, City Attorney

Mr. Steve Marshall, Airport Advisory Committee

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Attachment 2: Letters of correspondence between Mr. Duane Smith and the City of Bolivar
(continued)

AIRPLANE HANGAR LEASE AGREEMENT

This Agreement is made and entered into the 1st day of March, 2008, between the City of Bolivar, Missouri ("City") and Duane Smith ("Lessee"), Wisconsin:

1. **Facility.** Lessee owns and operates a municipal airport intended for general aviation use. As a part of the airport facilities, City owns and has available for lease multiple hangars. Lessee owns, has an interest in, or leases a general aviation aircraft and desires to lease a hangar from City within which to house the aircraft. This Lease is intended to set forth the term and conditions of such rental.
2. **Lease of Hangar.** City hereby leases to Lessee, and Lessee hereby leases and takes from City, airport hangar number 22 at the Bolivar Municipal Airport for the term and rental payments, and on the terms, provisions and conditions set forth herein.
3. **Commencement Date and Term.** The commencement date of this Lease shall be March 1, 2008. The Lease term shall be month to month, with either party to have the right to terminate the lease by giving the other party written notice of termination by not later than the first day of the calendar month that immediately precedes the month during which the lease is to terminate.
4. **Rent.** The initial rent during the lease term shall be \$ 100.00 per month, payable on the 1st day of each month (except rent for the initial partial or full month, which shall be due and payable upon the signing of this Agreement). Rent shall be delinquent if not paid by the 7th day of each month. All rent shall be payable to the City of Bolivar, Missouri, and may be delivered to the Mayor, City Clerk or Chairman of the Airport Committee of the Board of Aldermen, or mailed to City's mailing address set forth below.
5. **Adjustment to Rent.** City may increase the rent of a month-to-month lease by giving Lessee no less than two months written notice of the proposed increase. Lessee may exercise Lessee's right to terminate the lease in the manner provided in Section 3, but if no such notice of termination is given, the rental increase shall become effective on the date stated in the notice of increase. For example, if the City proposes an increase in the rent for April 1, notice of the increase must be given by no later than February 1; and the Lessee shall thereafter have until the first day of March to exercise Lessee's right to terminate by giving at least one month's notice.
6. **Late Payment Penalty.** If the rental is not paid by the delinquent date, Lessee will pay City a late payment penalty equal to 3% of the amount of the past due rent.
7. **Deposit.** Lessee shall pay City a deposit of \$ 500.00 upon the signing of this Lease to be retained by the City as partial assurance for the performance by Lessee of Lessee's obligations under this Agreement. If Lessee shall duly pay all rent when due, and shall otherwise perform all of Lessee's obligations hereunder, City will return the deposit (without interest) upon the termination of this Lease and surrender of the hangar in good condition and repair. If, however, the Lessee is delinquent in the payment of any rent or penalty, or otherwise violates any of the terms, provisions or covenants of this Agreement, City may apply the rent deposit to any past rent or penalty, or to any other damage that it

may incur. Retention of the deposit shall in no manner effect the City's rights to seek full redress, except that the deposit so applied shall be deducted from the amounts due the City.

8. **Utilities.** City will pay all electrical costs used at the hangar, but this shall not include any electrical devices used to control the temperature within the hangar. If Lessee desires to install any temperature control devices, Lessee shall submit full plans and specifications to the City for approval prior to installing any such devices, including plans for the metering of energy usage; the charges for which shall be the sole responsibility of Lessee.
9. **Maintenance.** City will maintain the hangar during the lease term in good condition and repair, except that Lessee shall reimburse to City all costs related to repairs necessitated by Lessee's negligence or neglect, or that of their authorized agents or employees, but only to the extent that such damages are not covered by insurance. Lessee will take good care of the hangar, will not alter or attempt to "improve" it, and will return possession thereof upon lease termination in the same condition as at the lease commencement date, usual and normal wear and tear excepted.
10. **Insurance.** City will carry property insurance on the hangar for its full insurable value, and in the event of loss by fire, windstorm or other insured causes, will cause the hangar to be repaired or replaced to at least its condition prior to the damage. During the period of such repairs or replacement, rent shall abate to the extent, and during the period, that the hangar is not usable, or is not fully usable, for its intended purposes.
11. **Fuel Purchases.** During the continuation of the lease term, Lessee will purchase all aviation fuel required for the operation of their Lessee's aircraft from City or City's fixed base operator, except for such fuel as is required when the aircraft is away from its base. Lessee will be excused from complying with the provisions of this Section if the retail cost of aviation fuel available from City or its fixed base operator is not competitive with the cost of such fuel at other area airports that offers to sell fuel of the same or similar type on a regular basis. Lessee's fuel purchase agreement is an integral part of this Agreement.
12. **Regulations for Use.** Lessee shall not:
 - a. Sub-lease the hangar or any space therein, nor assign this lease, without the express written consent of City, which consent may be withheld for any or no reason.
 - b. Use the hangar for any purpose other than the storage of Lessee's aircraft and accessories that are normally used in connection with the use of the aircraft.
 - c. Conduct any commercial business from the hangar.
 - d. Permit the hangar to become dirty or unkempt; nor permit any trash or debris to accumulate in or around the hangar.
 - e. Damage or deface the hangar either intentionally, negligently or carelessly, nor permit any family member, agent, permittee or agent to do so; and shall reimburse and hold City harmless from all costs or expenses that are not paid by insurance that may be incurred as a result of any such damage or defacement.
 - f. Store explosives or flammable liquids in or around the hangar, excepting only fuel that is in the fuel tank of aircraft.

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Attachment 2: Letters of correspondence between Mr. Duane Smith and the City of Bolivar (continued)

18. Notices: All notices required or authorized to be given hereunder may be personally delivered to the City's Mayor, Clerk or Chairman of the Airport Committee of the Board of Aldermen, or to any Lessee. If notice is mailed, and if intended for the City, it shall be mailed to:

City Clerk
City Hall
P.O. Box 9
Bolivar, Missouri 65613.

If notice is mailed, and if intended for the Lessee, it shall be mailed to:

Bolivar

All mailed notices shall be sent to the required address (or to such other address as may be provided by written notice) ordinary or certified mail, with postage fully prepaid, if properly addressed and posted, all notices shall conclusively be presumed to have been delivered on the date shown in the delivery notice, if any, or if none, on the second day after posting.

In Witness Whereof, this Agreement has been signed this _____ day of _____, 20____

City of Bolivar, Missouri

By _____ Mayor

ATTEST:

City Clerk

LESSEE

Duane Smith

Address:

4407 E. Farm Road 64

Fair Grove, MO 65648

Box 477 233-6886

Cell 417 838-3987

Contact #:

g. Permit the hangar to remain vacant or owned, co-owned or leased aircraft except for temporary periods during the aircraft's use, service or repair; provided, that the hangar shall not be left vacant for more than 30 days for service or repair except for good cause and with the prior written consent of City.

h. Permit any maintenance to be conducted in the hangar other than preventative maintenance consistent with the rules and regulations of the Federal Aviation Commission.

i. Have not assert any claim against the City, its officers, agents or employees, nor against its fixed based operator, for loss, injury or damage to person or property by fire, windstorm or other act of God, theft, vandalism or other cause beyond the City's reasonable control, or that of its fixed based operator.

j. Paint any aircraft, aircraft part or other accessory, in or around the hangar, it being understood and agreed that all painting may only be conducted in such locations, if any, as the City may authorize from time to time, or off premises.

k. All aircraft must be flyable.

13. **Binding Effect:** This Agreement shall be binding upon Lessee, and upon Lessee's heirs, successors and assigns; and shall be binding upon the City and its successors and assigns.

14. **Assignment by City:** City may assign the benefits of this Agreement to secure loans for airport improvements, including additional hangars.

15. **Remedies for Lessee's Default:** In the event Lessee shall fail to pay the rent due hereunder before the delinquent date, or otherwise breach the provisions hereof, and such breach shall continue for a period of ten (10) days following written notice, City may declare Lessee in default. Upon the declaration of a default, City may terminate this Agreement immediately. Upon termination, Lessee will promptly and peacefully vacate the space. If Lessee shall fail to do so within five days following notice of termination, City may re-take possession by any means available to it, including locking all doors and excluding all entrance thereto except by authorized agents of the City. If City shall exercise its right to re-take possession, it have no duty or obligation to provide Lessee with access to the hangar to remove Lessee's aircraft or aircraft accessories unless Lessee shall pay City all past due rent and penalties, rent through the date the hangar is fully vacated on a per diem basis, and damages due City for damages to the hangar or otherwise resulting under this Agreement. City shall have no liability for conversion or other legal theory for having exercised the rights granted to it under this Section. Notwithstanding that the City shall exercise its right to terminate the Lease upon the Lessee's default, the obligation of the Lessee to pay rent shall continue until (i) city re-leases the hangar, or (ii) the last day of the first month after the date that the Lessee was declared in default, whichever is the shorter period.

16. **Remedies for City Default:** In the event City shall breach its obligations hereunder, and such breach shall continue for a period of (10) days following written notice, Lessee may perform any act that it is the duty of City to perform, and withhold the reasonable costs of performance from their rental payment until such costs are recouped.

17. **Legal Fees and Costs:** A party that is in default hereunder shall, in addition to all other damages or payment due hereunder, pay to the party not in default all costs of remedying or seeking to remedy the default, including reasonable attorneys fees.