




**CITY MANAGER'S OFFICE
M E M O R A N D U M**

October 6, 2013

TO: Mayor and City Council
FROM: Ron Carlee, City Manager 
SUBJECT: Update on Use of Airport Property by Other City and County Departments

The purpose of this memorandum is to inform you that our on-going review of airport operations has revealed concerns about three properties at the airport used for public, non-aviation purposes: the Animal Care and Control Facility, Police Helicopter Hangar, and Fire Station 30.

We have discovered missing, incomplete, inconsistent and/or inaccurate documentation regarding the terms for the use of these three properties. It also appears that reporting to the Federal Aviation Administration (FAA) has not always been complete or accurate. While we have found no evidence of intentional wrongdoing, these transactions appear to not comply fully with FAA regulations and could be deemed as revenue diversion. Given the concerns identified in these public-use leases, I have directed that a similar review be conducted of all airport leases.

Reviews of these properties continue, as the documentation on some is quite old, dating back to the 1970s. All of these transactions pre-date the current Mayor and Council. Under the guidance of Brent Cagle, Interim Aviation Director, we will assess the extent of any potential revenue diversion issues and prepare a self-disclosure memo to the FAA with recommendations for resolving the issue(s) in an expedient manner that meets FAA requirements. To assist us, we have obtained outside expertise from the firm Anderson Kreiger, national experts on FAA matters. All city agencies are fully cooperating with this effort.

My directive as City Manager is that all transactions will be brought into full FAA compliance, that best practices procedures will be implemented to ensure full compliance in the future, and that there will be full disclosure and transparency in airport operations.

Background

The review of these properties is part of a much wider review of all properties, policies, and procedures at the airport as directed by the City Council in its June 10th Resolution. These specific reviews were accelerated based on specific concerns raised by Senior Assistant City Attorney Leila Lahbabi.

Five properties used for public purposes were reviewed. In addition to the three noted above, we examined the auto impound lot and the County's mulch and compost facility. No significant issues have been identified with these two properties.

It is neither illegal nor inappropriate for properties at the airport to be used for non-aviation purposes; however, all use of airport properties must comply with federal regulations. Primarily, the FAA requires airports that have received federal assistance to maintain rate and fee structures that insure that the airport is financially self-sustaining. This requirement means that airports should charge non-aviation users fair market value rent for ground leases and facility rent for airport-owned facilities. The FAA also allows airports to acknowledge in-kind benefits that may be received from other governmental entities' use of airport properties, and provide a credit toward the rent associated with the cost of the lease.

The Aviation Department, generally, leases property for commercial and non-aviation purposes in essentially two ways:

- The user pays a fair-market ground lease for the acreage associated with the leased property. The lessee may make improvements to the property, however, the airport retains the land and all improvements will vest back to the airport at the conclusion of the ground lease.
- The airport has a facility that it leases to a tenant for a fair market value facility rent. Facility rents are usually expressed as a rate per square foot – not based on the acreage of the associated property.

In some cases, the airport may seek input from the FAA before entering into a lease. In all cases, the lease arrangements with other governmental entities should be appropriately reported in the City's annual financial report and FAA financial filings. In regard to the FAA financial filings, if the airport receives an airport related benefit from the user and/or its facilities, the airport must document the in-kind benefit and may then discount the rent accordingly.

It appears, based on work to date, that there are issues with how the airport has calculated land and facility rents, calculated the amount of land being used, and completed FAA reporting documents. Again, there is no evidence of intentional wrongdoing. There is, however, a clear need to modernize systems, structures, and policies to meet the demands for an airport of size and complexity that Charlotte-Douglas International has become. This includes the creation of internal checks and attention to documentation. The various best practice studies that we have launched in response to the Council mandate will provide the foundation to make these improvements.

Summary of Public-Use Properties

The following are summaries of the properties reviewed based on the best information we have at this time. Staff continues to research several items. More details will emerge as the research continues and the details as they are known now may change.

1. Animal Care and Control Facility: In 1991, several City Departments agreed to relocate the Animal Care and Control Facility to Aviation Department owned property. There are contradictory documents and differing interpretations about the terms for this use. Some documents, including action by the City Council, indicate that the Aviation Department would loan \$3,000,000 for the construction of the facility and would charge the facility ground rent for 2 acres of land. The Aviation Department specified that the annual fair market value rental rate of the ground lease would be set at \$3,500 per acre. Some documents, however, indicate that the Aviation Department recorded the facility as an asset of the Aviation Department and that it was intended that the Aviation Department own the facility. Regardless it appears that the City has paid the Aviation Department approximately \$2.3 million.

A further issue associated with this property is the stated acreage of the site. The Aviation Department has reviewed the site using GIS drawings and estimates that the facility site is actually 5.9 acres rather than 2 acres.

2. CMPD Helicopter Hangar: In the mid-1970's, a hangar for the Charlotte Police Department police helicopter was constructed on Aviation Department land. Records indicate that the original hangar was constructed by the Charlotte Police Department.

On July 26, 1999, Council approved construction of an expansion to the existing helicopter hangar. The Council action indicates that the \$425,000 in construction cost would be funded from the Aviation Fund and repaid from the General Fund two years later in 2001. Additional details are being researched.

An issue associated with this property is the stated acreage of the site. The Aviation Department has visually reviewed the site and estimates the site acreage as 2 to 2.5 acres, although financial documents show the acreage at .25 acre.

3. Fire Station 30: The property and building that the Charlotte Fire Department (CFD) is currently using for Fire Station 30 is Aviation Department property that the Aviation Department acquired under the Part 150 noise abatement program. CFD uses this property for a fire station that serves the general community surrounding the station. Under the existing agreement between CFD and the Aviation Department, CFD also uses Station 30 as backup support to the firefighters dedicated to the airport. The Aviation Department has always believed that this commitment for support justifies the Aviation Department's policy of offsetting annual rent from CFD in exchange for the in-kind contribution of emergency response support. The Aviation Department has no documentation from the FAA supporting the Aviation Department's decision to credit CFD with in-kind services or the value of the services.
4. Police Impound Lot: In 2007, the Aviation Department and Charlotte-Mecklenburg Police Department (CMPD) entered into an agreement allowing the use of 3.03 acres of Aviation Department land for a vehicle impound lot. The Aviation Department collects ground rent on the property in the amount of \$5,900 per acre annually (or \$17,877) for use of the property, which appears to be an accurate fair market value. To the Aviation Department's knowledge, the Department has always charged fair market value ground rent for the use of the property. There appear to be no issues with this property.
5. Mecklenburg County Mulch and Compost Facility: In 2001 the Aviation Department entered into a five year lease with Mecklenburg County to utilize 85.99 acres of property for a mulch facility. The lease also contained a second 5 year option that would extend the lease through 2011. At the time of the original lease the Aviation Department sought and received verification from the FAA regarding the Aviation Department's desire to offer the property for \$1.00 per year for the 5 year lease term. The FAA agreed that the lease term and rent amount was acceptable. At the conclusion of the first five year term, the Aviation Department sought approval from the FAA to exercise the second five year option under the same terms as the original lease. The FAA did not agree that \$1.00 per year for rent was adequate and requested the Department to alter the rental rate to reflect fair market value. The Aviation Department submitted to the FAA an alternate proposal to charge the Facility \$43,369 in ground rent and allow the Aviation Department to receive in-kind contributions from the Mulch Facility of \$17,800 to offset a portion of the ground rent resulting in a net annual ground rent of \$25,569. The FAA agreed that the \$25,569 net annual rent was adequate. At the conclusion of the second five year option the Aviation Department did not extend or renegotiate the lease terms – instead the Aviation Department allowed the lease to move to a “month-to-month” status under the

same lease terms contained in the second five year lease option. The Mulch Facility has been utilizing the property under the “month-to-month” arrangement since 2011. The County is now in the process of relocating this facility off of this site by 2016.

Conclusion

Reviews of these properties continue. As noted, given the concerns identified in these public-use leases, I have directed that a similar review be conducted of all airport leases. Under the guidance of the Interim Aviation Director, we will work with our outside expert to fully complete and document our research and to determine the appropriate steps to take. It is important to remember that the research is not complete at this time. Ultimately, all transactions will fully comply with FAA regulations, best practices procedures will be implemented to ensure full compliance in the future, and there will be full disclosure and transparency in airport operations.