

PENINSULA AIRPORT COMMISSION

MINUTES

September 28, 2017

PRESIDED: George Wallace

The regularly scheduled meeting of the Peninsula Airport Commission was held on Thursday, September 28, 2017 at 8:00 a.m. in the Airport Commission Room at the Newport News/Williamsburg International Airport.

Commissioners present were:

Rob Coleman, Walter Jubien, Jr., Steve Mallon, Sharon Scott, George Wallace and David Wasson.

Interim Executive Director

Mr. Sanford Wanner

Assistant Executive Director

Ms. Melissa Cheaney

Director of Air Service, Marketing and P.R.

Ms. Jessica Wharton

Director, Finance and Administration

Ms. Renee Ford

Legal Counsel

Mr. James S. McNider, III

Executive Assistant

Ms. Rhonda Wissinger

Public in Attendance

Larry Ramsey-Hourigan Construction
Chris Brandt-Hourigan Construction
Tyler Park-Hourigan Construction
Jeff Wellman-Talbert & Bright
Jeff Tarkington-Talbert & Bright
Jared Alexander-PAC Operations Supervisor
John Borden-PAC Facilities Manager
Alvin Dimaiuat-PAC Food and Beverage Manager
Dave Ress-The Daily Press
Kristen Bell-York County Resident
Kevin McDermott-Newport News Resident
Nick Patterson-RS&H (through conference call)

COMMENTS FROM THE PUBLIC

Mr. Chris Brandt, Hourigan Construction reported that he was here to discuss change orders that Hourigan Construction did for work performed for the new Security Checkpoint. Some change orders had been submitted to the Airport late last year and some early this year. Of the \$111,000 in change orders submitted, \$85,000 was approved by the FAA. Mr. Brandt is here to request the approval of the balance of the \$25,000. Of the \$25,000 that is to be approved, all change orders were design modifications or unknown conditions. Mr. Brandt stated that all work was performed with the full knowledge of the project team, was performed promptly and were fairly priced in accordance with the contract with the Airport.

Commissioner Mallon stated that this was a line item on the agenda under the Assistant Executive Director's report and suggested that staff give their report first and then we would decide on how to proceed. Chairman Wallace stated that the Commission would hear staff's report first and then make a decision.

APPROVAL OF MINUTES OF COMMISSION MEETING HELD AUGUST 24, 2017

RESOLVED, that the Peninsula Airport Commission approve the minutes of the Commission meeting held August 24, 2017.

Commissioner Steve Mallon made the motion to adopt the August 24, 2017 minutes and Commissioner Sharon Scott seconded the motion.

Voting yes were:

Walter Jubien, Jr., Steve Mallon, Sharon Scott and George Wallace

Abstaining were:

Rob Coleman and David Wasson

ASSISTANT EXECUTIVE DIRECTOR

Ms. Cheaney, Assistant Executive Director, gave the following report:

About 2 weeks ago, Ms. Cheaney was contacted by the Southeast Airports Disaster Operations Group (SEADOG) stating that the Port Authority of the Virgin Islands was requesting supplies due to the devastation Hurricane Irma. Ms. Cheaney put out an email to all staff asking that supplies be brought in to help with the devastation. She is happy to report that staff collected 150 pounds of supplies and the supplies were shipped to the Virgin Islands. She is very proud of the team for coming together to show support. Chairman Wallace asked to convey to staff the profound appreciation of the Commission for their efforts.

SECURITY CONSOLIDATED CHECK POINT (SCCP) CHANGE ORDER ITEMS

Hourigan Construction requested that the Commission reconsider an additional 8 change order items. Staff agreed to reconsider these items and worked with RS&H and the FAA for their input. After extensive dialogue between Hourigan, RS&H and the FAA, the FAA and RS&H recommended that some items were eligible or partially eligible for funding. One item was deemed ineligible.

Ms. Cheaney reported that she had Nick Patterson from RS&H on the phone, and she briefly discussed the Executive Summary about the change order items submitted by Hourigan Construction. The FAA and RS&H's review recommended that \$85,000 worth of the items be approved and that the other \$25,000 worth of items was only partially eligible or not eligible at all. Ms. Cheaney explained the cost detail was in the Executive Summary and asked Mr. Patterson if he could give some background information and explain why the change orders were partially eligible or not eligible for reimbursement. Mr. Patterson stated that the FAA in general deemed materials purchased for the change orders as eligible for reimbursement but not additional labor costs for these change orders. Typically the labor involved with the change order should have already been accounted for in the original contract price. Mr. Patterson also noted, that materials purchased as part of the change order could not be a duplication of original materials purchased as part of the original contract price.

For example, the column encasement change order is an area where the FAA would pay for extra materials needed, but they would not pay for labor. The labor should have been already accounted for in the original contract price.

Also, there was a manhole on-site to be installed in a particular location on the apron and Hourigan wanted to install a different type of manhole once they saw what the existing conditions were. FAA said they would pay for any new materials associated with it, but there was already an existing manhole cover on-site, therefore, they were not going to pay a manhole twice.

As to pavement thickness, there is correspondence that Hourigan was going to remove this change order from the record. However, it was then submitted and again the FAA said they would pay for the additional material, but the labor should have already been accounted for in the original contract price.

There was another instance of replacing metal panels on the bridge, and the FAA stated that there was a lot of information shown on the plans and specifications and the contractor had the opportunity to investigate throughout the design process before giving a final guaranteed maximum price. The contractor chose a means and methods to complete this part of the project in the original contract price, and that the cost of this part of the project should have been included in that price, and therefore was not eligible for reimbursement in a change order.

Ms. Cheaney recommends that we approve the change order items deemed eligible by

the FAA and RS&H. Commissioner Mallon said he would like to hear a response from the Hourigan team.

Tyler Park from Hourigan Construction stated he would like to explain how these changes came about. The metal panels that were on the bridge structure had to be removed and replaced, and the plans and specifications did not call for removal. The need to remove the panels was not discovered until they got into construction, at which point they had to be removed to place piping and materials behind them, and therefore it was considered a change.

For the manhole configuration, they had a custom-built manhole that was on site already and there was an unforeseen condition on the ground that didn't allow them to use this manhole. A new one had to be ordered because the original one wouldn't work. Commissioner Scott asked why there was an unforeseen condition. Mr. Park explained that there was an existing unsatisfactory sewage pipe. It was 16 ft. deep in the ground so they were not able to investigate that ahead of time. Mr. Patterson, from RS&H, stated that RS&H disagreed that the original manhole wouldn't work, they felt it would have worked but have taken just a slightly longer time to install. Mr. Park stated they were afraid this would undermine the building because it was located so closely to the building structure and needed to act. Ms. Cheaney stated that there should have been additional dialogue with RS&H before the decision was made to move forward with this.

Commissioner Scott asked how come they didn't know the metal panels on the bridge needed to be replaced. Mr. Parks stated it was not shown in the plans. Mr. Mallon stated that RS&H developed these plans, and Mr. Parks said yes, the civil engineers. Ms. Scott then asked why Hourigan did not investigate this matter on site. Mr. Coleman stated the pipes were behind the panels, and Ms. Scott stated she was just trying to understand the process.

In regards to the column encasement, Mr. Park said there was a discrepancy between the structural plan and the architectural plan. There was difference of about 2" on the drawings of the column encasement enlargements.

In regards to pavement thickness, some of the foundations were not as expected, and once the ground was excavated some of those foundations were higher. The additional pavement thickness was needed so that the airfield pavement that was being placed would come all the way up to the column foundations. Hourigan and RS&H had extensive dialogue on the process. The FAA approved the materials but was not willing to pay for the labor for this item.

Commissioner Mallon asked what process Hourigan Construction went through for their change orders. Typically Mr. Mallon stated that change orders are not acted on unless approved. Mr. Parks stated that the change orders were written and submitted for review, discussion, and approval. Mr. Patterson said in each of these cases RS&H did respond to the change orders and could not recommend payment.

Since the Contract was with PAC and not the FAA, Commissioner Mallon thought we would need a legal opinion to make sure the changes are reasonable and acceptable. Commissioner Mallon would like to defer action to next month's meeting to get a legal opinion on unforeseen conditions and the change order process and see what PAC is obligated to pay. Mr. Patterson wants to provide the written correspondence between Hourigan Construction and RS&H to Ms. Cheaney. Commissioner Coleman thought this was important so we could have all of the information needed to make an educated decision.

Commissioner Mallon made the motion to approve the change order items deemed eligible by the FAA and RS&H in the amount of \$85,670.34. Staff will continue to work with Hourigan Construction and RS&H on the outstanding items.

RESOLVED, that the Peninsula Airport Commission approve the the change order items deemed eligible by the FAA and RS&H in the amount of \$85,670.34 of which \$72,207.25 will be paid for by the FAA and staff will continue to work with Hourigan Construction and RS&H on the outstanding items.

Commissioner Steve Mallon made the motion and Commissioner Rob Coleman seconded the motion.

Voting yes were:

Rob Coleman, Walter Jubien, Jr., Steve Mallon, Sharon Scott, George Wallace and David Wasson.

DIRECTOR OF AIR SERVICE, MARKETING AND PUBLIC RELATIONS

Ms. Jessica Wharton, Director of Air Service, Marketing and Public Relations, gave the following report:

- Passenger numbers for the month of July were increased by 4.5%. Richmond passenger numbers were increased 4.17% for the month and Norfolk passenger numbers were increased by 6.58%.
- Events for October- we are finalizing events with the City of Newport News and we will be attending the Hampton University Vendor fair. Once the events are finalized, the information will be sent out to the Commission. Commissioner Scott asked about the Newport News Fall Festival and said it's a great opportunity for exposure as about 10,000 people attend. Ms. Wharton said she is checking into this.

DIRECTOR OF FINANCE & ADMINISTRATION

Ms. Renee Ford, Director of Finance & Administration gave the following report:

Ms. Ford reported that back in July, Secretary Aubrey Layne spoke to us about the

inappropriate use of the \$3.5 million in State entitlement funds and the things we would need to have done or established before getting any money from the State. The board has completed all requirements. In addition, the Department of Aviation also reviewed fiscal year 15, 16 and 17 EUR's. The State communicated that there were 3 projects in question regarding the use of State Entitlement Funds. Ms. Ford has spoken to the Chairman and Vice Chairman and they are working on a response. We received our first installment back from the State this month. We will receive \$1 million this year, and received \$333,000 as the first installment. The Department of Aviation has also hired an audit firm to audit all airports across the State. Last week, our Airport was audited. Ms. Ford answered all questions and once they formalize their report, we will receive it back from them.

Ms. Ford reported the Airport's revenues were 4% below August 2016. Our expenditures for August 2017 totaled 5% more than budget and 14.7% above August 2017.

We received some FAA reimbursements. We won't get the remaining reimbursements until the Security Consolidated Check Point (SCCP) is closed out.

Mr. Sanford Wanner, Interim Executive Director reported that the State commended us for working with them and improving our transparency.

CLOSED MEETING

BE IT RESOLVED, that the Commission enter into a Closed Meeting pursuant to the Virginia Freedom of Information Act; Section 2.2-3711.A. pertaining to:

Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel.

Specifically, the closed meeting shall be held to discuss legal issues relating to the VDOT audit, the People Express Airlines, Inc. loan, and the New Dominion Clubs litigation.

Commissioner Steve Mallon made the motion, seconded by Commissioner Rob Coleman to hold a closed meeting.

Voting yes were:

Rob Coleman, Walter Jubien, Jr., Steve Mallon, Sharon Scott, George Wallace and David Wasson.

The Commission entered into a Closed Meeting at 8:38 a.m. and reconvened in Open

meeting at 10:49 a.m. Upon reconvening, it was

RESOLVED, that to the best of the Commission's knowledge, only public business matters lawfully exempt from open meeting requirements, and only such public business matters as were identified in the motion by which the Closed Meeting was convened, were heard, discussed or considered in Closed Meeting.

Voting yes were:

Rob Coleman, Walter Jubien, Jr., Steve Mallon, Sharon Scott, George Wallace and David Wasson.

INTERIM EXECUTIVE DIRECTOR 'S REPORT

Mr. Sanford Wanner, Interim Executive Director, gave the following report:

DOMINION ENERGY VIRGINIA ROW AGREEMENT

Mr. Wanner reported that we are still in dialogue with Dominion Energy to come into an agreement to authorize Chairman Wallace to sign once we obtain FAA approval.

RECESS

The recess was not needed.

CLOSED MEETING

BE IT RESOLVED, that the Commission enter into a Closed Meeting pursuant to the Virginia Freedom of Information Act; Section 2.2-3711.A. pertaining to:

Discussion, consideration or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of any public body.

Specifically, the closed meeting shall be held to interview candidates for the position of Executive Director of the Peninsula Airport Commission.

Commissioner Steve Mallon made the motion, seconded by Commissioner Walter Jubien, Jr. to hold a closed meeting.

Voting yes were:

Rob Coleman, Walter Jubien, Jr., Steve Mallon, Sharon Scott, George Wallace and David Wasson.

The Commission entered into a Closed Meeting at 10:54 a.m. and reconvened in Open

meeting at 3:00 p.m. Upon reconvening, it was

RESOLVED, that to the best of the Commission's knowledge, only public business matters lawfully exempt from open meeting requirements, and only such public business matters as were identified in the motion by which the Closed Meeting was convened, were heard, discussed or considered in Closed Meeting.

Voting yes were:

Rob Coleman, Walter Jubien, Jr., Steve Mallon, Sharon Scott, George Wallace and David Wasson.

Mr. Wanner reported that he had received a September 26, 2017 letter from the FAA Office of Airport Compliance on revenue diversion reported in the June 2, 2017 VDOT Assurance and Compliance Office report. Staff is preparing a response. Chairman Wallace stated, we will look it over and submit our response. The FAA letter is attached.

Commissioner Scott thanked everyone for their expression of sympathy and condolences on the loss of her sister.

Mr. Wanner reported that Commissioner Scott had challenged him to reduce the cost for the ADK Executive Search firm and that he is happy to report that the contract cost was \$11,665.

ADJOURNED

There being no further business, the meeting was adjourned at 3:03 p.m.

NEXT MEETING

The next regular meeting of the Peninsula Airport Commission will be held on Thursday, October 26, 2017 at 8:00 a.m. in the Commission Room.



September 26, 2017

Mr. George Wallace, Chair
Peninsula Airport Commission
900 Bland Boulevard
Newport News, Virginia 23602

Dear Mr. Wallace:

Re: Special Review Report - Peninsula Airport Commission dated June 2, 2017

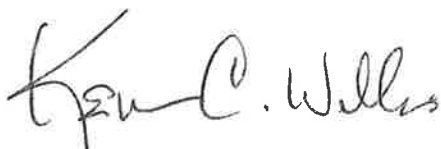
The purpose of this letter is to notify you that the FAA has been alerted to possible airport revenue diversion based on the findings of the Special Review Report, Peninsula Airport Commission (PAC), and Report Number 2017-165 dated June 2, 2017, prepared by the Assurance and Compliance Office, Department of Transportation, Commonwealth of Virginia (VDOT). This notification is being issued in accordance with title 49 U.S.C., § 47133 and the requirements set forth in Grant Assurance 25, *Airport Revenues* and the *FAA Policy and Procedures Concerning the Use of Airport Revenues*. Federal law requires that Passenger Facilities Charges (PFCs) are restricted to fund FAA-approved projects, airlines cannot be subsidized by the airport, and any revenues generated by the airport must be expended for the capital or operating costs of the airport. The FAA's specific concerns, as identified in the VDOT report, include:

1. Legal costs incurred to obtain the line-of-credit were \$43,208.73, which appears to be airline subsidization.
2. Peoples Express Airlines (PEX) was forced to vacate their offices at the airport due to non-payment of PFCs collected for July and August 2014. It appears PEX kept the PFCs funds collected, which could be a misuse of restricted PFC funds.
3. PAC appears to have made interest payments on the line-of-credit guaranty in the amounts of \$13,996, \$11,917, and \$12,972 (totaling \$38,885). It appears that airport revenues were used to pay these interest payments as no other source of revenue was identified by the review. If this is the case, airport expenditures may not have been used for capital or operating costs for the airport, and there could be airline subsidization.

4. PAC Account #10200 Operating Cash and PAC Account #10300 Capital Cash contained cash that PAC appears to have determined was available and used to underwrite the \$5M line-of-credit guaranty to PEX. The amounts were \$565,311 and \$385,177, respectively, or a total of \$950,488. These accounts are generally observed by VDOT to be an account consisting of airport revenues. It appears that there was airline subsidization and the expenditures may not have been used for capital or operating costs for the airport.
5. It appears that at least \$358,000 (and as much as \$916,516) in passenger facility charges (PFCs) may have been allocated as part of the line-of-credit guaranty, which may be a misuse of restricted PFC funds.
6. The Executive Director may have used his airport credit card improperly, since there were few internal controls to prevent unlawful expenditures. It appears that there may be expenditures that were not used for capital or operating costs for the airport.

Please respond to our concerns no later than 30 days from the date of this letter. If you have any questions, please contact Mr. Michael Price at Michael.B.Price@faa.gov or Mr. Burton Marshall at Burton.Marshall@faa.gov.

Sincerely,



Kevin C. Willis, Director
Office of Airport Compliance
and Management Analysis