

# **PENINSULA AIRPORT COMMISSION**

## **MINUTES**

February 27, 2017

PRESIDED: George Wallace

The special meeting of the Peninsula Airport Commission was held on Monday, February 27, 2017 at 8:00 a.m. in the Airport Banquet Room at the Newport News/Williamsburg International Airport.

### **Commissioners present were:**

James Bourey, Rob Coleman, Aubrey Fitzgerald, Steve Mallon, Sharon Scott and George Wallace.

### **Executive Director**

Mr. Ken Spirito

### **Assistant Executive Director**

Ms. Melissa Cheaney

### **Director, Finance and Administration**

Ms. Renee Ford

### **Legal Counsel**

Mr. Herbert V. Kelly, Jr.

Ms. Robyn Hansen

### **Executive Assistant**

Ms. Rhonda Wissinger

### **Public in Attendance**

Dave Ress-The Daily Press

Marc Wilcer-RS&H through conference call

Ryan Hall-RS&H through conference call

Brittany Stellute-New Dominion Clubs

Kevin McDermott-New Dominion Clubs

Tom McDermott-New Dominion Clubs

Patricia McDermott

Pete Paine-Public

Lynn Stivers-Public

M. Stellute-Public

D. Scott Glenn-Public

Selene Glenn-Public

## **COMMENTS FROM THE PUBLIC**

Mr. Tom McDermott, owner and operator of New Dominion Clubs and the food and beverage concessions at the airport spoke to the Commission about the accuracy of the court case between New Dominion Clubs and the Peninsula Airport Commission. He stated that he was not arguing with the judge's ruling because it was legitimate but wanted to explain how the Commission won the case. He provided relevant court documents through a binder to all Commissioners from the court proceedings that he stated would show that Executive Director, Mr. Spirito and attorney, Mr. Kelly were dishonest. Mr. McDermott stated Mr. Spirito testified that the Airport had decided during its October meeting to run the restaurant, for an airport purpose, to make money. Mr. McDermott felt that the Airport Commission had done nothing wrong and had been misled. He also stated that he thinks that the Airport running the restaurant had been a sham and their lease was terminated due to a personal dispute with Executive Director, Ken Spirito. Brittany Stellute stated that the Judge ruled that the Airport had the right to terminate their lease because of paragraph 21C in their lease, but the Airport was not required to terminate their lease. Mr. McDermott stated that they record their meetings. Mr. McDermott stated that Mr. Kelly testified that Mr. Spirito and Ms. Cheaney have no authority in the Airport and that they cannot make a single decision. Chairman Wallace stated that the Commission would take the information under advisement.

Mr. Pete Paine from Newport News is a citizen that came before the Commission to discuss an Editorial he read from Sunday's paper. He stated that we all know what the Daily Press has been reporting. He is concerned there will be no action taken by the Commission and feels there must be consequences concerning the \$4.5 million loan. Mr. Paine also discussed a story published last year concerning a Wegman's deal and the impact on traffic at the intersection of I-64 and Jefferson Avenue. Mr. Paine questioned the decision to expend \$400,000 for airport equipment needed for the operations of Elite Airways. He is asking that the Commission take responsibility and is asking for Mr. Ken Spirito, Executive Director's termination and asking for Mr. Bourey's resignation from the Commission. He is also asking for an independent forensic audit of all financial transactions for as far back as prudent. Mr. Bourey stated Mr. Paine's facts are not correct and refers to numerous articles in the Daily Press about Wegman's that preceded the articles Mr. Paine referenced.

Ms. Lynn Stivers from Hampton, VA is a citizen that came before the Commission to say that if it had not been for Mr. McDermott's lease termination, it would not have come out to the public that the Commission had taken out a \$4.5 million loan for PEOPLExpress. She also asked why we did not check with the State first before using State entitlement funds for this loan. She is asking for Mr. Spirito, Mr. Bourey and Mr. Kelly to step down.

## **EXECUTIVE DIRECTOR 'S REPORT**

Mr. Ken Spirito, Executive Director, gave the following report:

- Commission Meeting date and time change-currently we meet the fourth Thursday of each month. We had discussed the possibility of changing the day and time of the meeting to make it more accessible to the public. Also, some Commissioners have conflicts with other meetings on Thursdays. So far, we have not been able to come to an agreement on an alternate date and time to meet. We will send out an email to try to figure out what will work with everyone's schedule.

Mr. Spirito addressed the Commission and wanted the Commission to know that he has been truthful to the Commission and has always provided the facts since he started in January 2009. He stated that he respects everyone's opinion and he has always done everything the board has asked him to do.

Mr. Spirito stated that the organization internally is a better organization today than it's ever been. He stated that the Airport and Community have been a victim of extreme consolidation in the airline industry. This community has benefited from an airline, AirTran, which was brought in under incentives. He stated that we received the benefit of services by Delta Airlines only because AirTran was at the airport. Delta and American airlines are both still present and doing very well in the market. We have brought in more airlines than anyone. He stated that to say that the Board acted unethically or dishonorably is not correct. Information was presented in open session and the Board voted in open session. He stated that the community aggressively went after ValuJet back in the early 90's, which became AirTran. When AirTran left our market, we lost 61% of our traffic and 40% of revenue. We have been able to weather that for the last 5 years and keep the airport moving forward. He stated that the FAA tells airports that they have to do everything they can to be financially self-sustaining, including the ability to maintain the assets that are in this airport. Mrs. McDermott asked about what Mr. Spirito meant when stating the organization has been internally better than it's ever been. Mr. Spirito stated it was employee morale. That when he started it was a volatile workplace and some changes needed to be made internally to strengthen employee morale. Chairman Wallace stated it is the responsibility of the Commission to do an assessment on the effectiveness of Mr. Spirito's services and the effectiveness of our operations. He also said that Ms. McDermott could submit any requests she had in writing to the Commission. She stated she just wanted to know how the organization was better. Chairman Wallace said we would get the information to her in writing.

Commissioner Mallon said that attracting airlines to small airports had become increasingly challenging and that he commended Mr. Spirito for thinking outside of the box even though he didn't agree with this particular incentive package. Chairman Wallace stated that in order for airlines to come into smaller airports there needs to be some sort of subsidies and guarantees as part of that process. It's a similar situation for cities that are trying to attract new businesses into the area.

There was extensive discussion between and among Commissioner Mallon and legal counsel dealing with differing legal interpretations. Commissioner Mallon also stated that Mr. McDermott had nine years left on his lease and that we were not required to terminate his lease and we are not doing RFP's so if there is an opportunity moving forward to re-open discussions between this body and staff, it should be considered. Chairman Wallace stated that this body will need to deliberate it and it will.

### **DISCUSS AND CONSIDER CHANGE ORDERS TO SECURITY CHECKPOINT PROJECT**

Ms. Cheaney, Assistant Executive Director, reported that Airport staff, Airport consultants (RS&H), the contractor (Hourigan), and the FAA have worked diligently to analyze and examine the unforeseen issues that have arisen for construction of the new checkpoint. All items in the change order list have been deemed valid and necessary by all parties. The largest change order items include the following:

1. Restore underground piping-During the excavation of the ramp, several sewer lines were exposed and a significant deterioration of the piping was discovered. Further investigation of the sewer piping system through video analysis exposed additional deterioration of other piping. This change order will sleeve and repair these issues extending the life of the pipes significantly.
2. Heat valve re-piping-One hundred and twenty-five heat valves were identified to be replaced as part of the project. Upon further investigation, the heat valves originally installed were piped incorrectly. As a result, the piping to the valves will also need to be replaced to insure the most efficient distribution of heat to the terminal.
3. Information Display System (FIDS) monitors were programmed to be installed. However, the existing FIDS software and hardware system has exceeded its useful life and no additional parts are available to support it. As a result, it would be prudent to include a software and hardware upgrade to the system as part of this project. Additionally, as part of this change order item, an upgrade to the specified access control hardware had to be completed to ensure its compatibility with existing software.

The change order items will result in an overall project cost increase of \$350,500.74. The FAA will fund \$295,420 and \$55,080.74 will come from airport contingency funds already budgeted for this project.

**RESOLVED**, that the Peninsula Airport Commission approve the change order for the Security Consolidated Checkpoint Project.

Commissioner James Bourey made the motion to approve the change order for the Security Consolidated Checkpoint Project and Commissioner Aubrey Fitzgerald

seconded the motion.

Voting yes were:

James Bourey, Rob Coleman, Aubrey Fitzgerald, Steve Mallon, Sharon Scott and George Wallace

Mr. Spirito reported that Airport staff, Airport consultants (MSE and RS&H) and the contractor (Hourigan), have been working throughout the project to create a plan for the build out of the restaurant and kitchen area in the new security consolidated checkpoint space. This build out would be sufficient to operate at current passenger levels and have the flexibility for expansion to meet future needs. Mr. Spirito presented a proposal that includes the initial buildout of a food preparation and storage area, a bar and seating area for the traveling public, and a “grab and go” retail area for the sale of various food and beverage items.

The total cost of the project build out will be \$581,136.00. The cost of this project will be part of the contingency (\$100,000) and the remaining cost will come from Airport cash. Mr. Spirito stated the build-out of restaurants are not FAA eligible but the infrastructure beneath the restaurant was eligible under the initial contract.

Mr. Spirito stated that the Airport would have to build out the restaurant regardless of whether the Airport did or did not operate it. Mr. Spirito further stated that if the Airport were to assume the costs of the build out they then would effectively have to pass those costs on to the existing concessioner within the terms of an agreement, which would have triggered a new agreement. However, if the concessioner would have chosen to pay the costs directly then the Airport, assuming discussions with legal counsel, would have considered whether it was permissible under the existing terms of the existing contract.

Commissioner Mallon felt a business plan was warranted before making a final decision to operate the restaurant. Mr. Spirito stated the cost for the project build out provides a shell for someone to operate the restaurant, whether or not that is the Airport or is a third-party. Mr. Wallace stated that he had understood from Mr. Spirito that the Airport was going to operate the restaurant and he did not have the impression that using a third-party was under consideration. Mr. Spirito explained that the discussion was that, once the Board made the decision to cancel the lease, the Airport would take it over. He stated that operating the restaurant was the original direction that we were going in, because the construction of the security checkpoint was eliminating all the food and beverage spaces essentially and that we were building a new restaurant, bar, and kitchen. Mr. Kelly stated that the issue of the airport’s operation or not operation of the restaurant was not germane-or the issue. The Airport Purpose was the adoption of the Consolidation Security Checkpoint Plan, which necessitated the removal and demolition of the premises that was leased to New Dominion.

Commissioner Mallon stated that the purpose of terminating the lease with New

Dominion was to operate the restaurant. Mr. Spirito stated that was not the reason for terminating the lease, it was the result of terminating the lease. Commissioner Mallon felt it was incumbent upon the Board to fully understand the economic expense, the economic return, and the risks associated with operations. Mr. Mallon was concerned that an additional \$100,000 from Airport cash might be necessary if the contingencies that remained for the project were expended. Extensive discussions ensued about the costs of not leaving the change order completed before the contractor finished its other work and left the airport (costs of remobilization, etc.). Mr. Spirito agreed that he would return to the Board with a business plan for the operation of the restaurant the following week.

**RESOLVED**, that the Peninsula Airport Commission approve the change order for the Security Consolidated Checkpoint Project-Restaurant Buildout.

Commissioner Rob Coleman made the motion to approve the change order for the Security Consolidated Checkpoint Project-Restaurant Buildout and Commissioner Aubrey Fitzgerald seconded the motion.

Voting yes were:

James Bourey, Rob Coleman, Aubrey Fitzgerald, Steve Mallon, Sharon Scott and George Wallace

### **CLOSED MEETING**

**BE IT RESOLVED**, that the Commission entered 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, to discuss personnel performance.

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, to consult with counsel in regards to compliance with lease terms by an existing Airport tenant, the pending declaratory judgment action involving New Dominion Clubs, Inc., the ongoing Department of Aviation Audit and to discuss legal issues related to the issuance of an ABC license for the new restaurant.

Commissioner Aubrey Fitzgerald made the motion, seconded by Commissioner Rob Coleman to hold a closed meeting.

Voting yes were:

James Bourey, Rob Coleman, Aubrey Fitzgerald, Steve Mallon, Sharon Scott and George Wallace.

The Commission entered into a Closed Meeting at 9:50 a.m. and reconvened in Open meeting at 12:11 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, Aubrey Fitzgerald, Steve Mallon, Sharon Scott and George Wallace.

(Commissioner Jim Bourey left at 12:05 p.m.)

Commissioner Sharon Scott asked Mr. Spirito, Executive Director, if New Dominion Clubs is gone March 1<sup>st</sup>, do we have a plan to provide refreshments to the public. Mr. Spirito stated that we do have an internal plan to provide some level of service to the passengers. Mr. Spirito will email the details of the plan to the Commissioners. Commissioner Sharon Scott also asked if Mr. Spirito could share with the board the cost for Mr. Kelly's legal services provided over the last 3 years.

### **ADJOURNED**

There being no further business, the meeting was adjourned at 12:14 p.m.

### **NEXT MEETING**

The next meeting of the Peninsula Airport Commission will be held on Thursday, March 23, 2017 at 8:00 a.m. in the Banquet Room.