

**Boca Raton Airport Authority
Meeting Minutes
October 19, 2022
Boca Raton Airport Authority Administration Building**

Mr. Nau called the meeting to order at 5:00 p.m.

BOARD MEMBERS

James R. Nau	Chair
Robert Tucker	Vice-Chair
Randy Nobles	Secretary/Treasurer - ABSENT
Cheryl Budd	Board Member
Mitchell Fogel	Board Member – Attended Telephonically
Gene Folden	Board Member
Melvin Pollack	Board Member

COUNSEL

Amy Petrick, Esquire – Lewis Longman Walker

STAFF

Clara Bennett, Executive Director
Scott Kohut, Deputy Director
Christine Landers, Office Manager
Robert Abbott, Finance and Administration Manager
Hannah Oakland, Operations Coordinator
Juan Amaya, Operations Intern

APPROVAL OF MINUTES

A MOTION to approve the minutes of the September 21, 2022 Regular Meeting was made by Mr. Tucker and seconded by Mr. Folden. The Motion carried unanimously.

AGENDA CHANGES

There were no agenda changes.

PUBLIC REQUESTS

There were no public requests.

CONSENT AGENDA

There were no items on the consent agenda.

FEDERAL, STATE AND MUNICIPAL INPUT

There was no Federal, State or Municipal Input.

FINANCIAL REPORT

Mr. Abbott presented the Financial Report for September 2022.

Mr. Pollack asked for an update on the replacement windows for the Air Traffic Control Tower. Ms. Bennett advised the Board that the Authority is looking into an out-of-state contractor and the project is being pursued.

A MOTION to approve the Financial Report for September 2022 was made by Ms. Budd and seconded by Mr. Pollock. The Motion carried unanimously.

TENANT REPORTS AND REQUESTS

Mr. Nau reminded the Board that the Airport Bylaws require disclosures of lobbyist contacts and stated he had met with Mr. Milledge and Mr. Hashemi.

Mr. Folden stated that he had a conversation with Mr. Milledge.

Ms. Budd stated that she also had a conversation with Mr. Milledge.

Ms. Bennett advised the Board that Mr. Fogel was having some technical difficulties but he wanted the Board to know that he also spoke with Mr. Milledge.

Ms. Bennett stated that Mr. Milledge had registered as a lobbyist, however, there are other provisions in the Bylaws that were not followed.

Ms. Budd asked if there was a form the Board members need to complete. Ms. Bennett stated that the Board Members are in compliance, but there are additional items that Mr. Milledge needed to do prior to meeting with Board members that were not done.

Turning to the agenda item, Ms. Bennett summarized the agenda memo and documents that Airport Management and Legal Counsel reviewed. Based on the information provided, Airport Management and Legal Counsel recommended that the request from Premier Aviation be denied.

Ms. Petrick outlined the memorandum received from Seth Behn, Esquire evaluating the permit process for Premier Aviation with the City of Boca Raton and the recommendations from the City.

Ms. Budd asked for an explanation as to why there is a recommendation to not approve the request from Premier Aviation.

Ms. Petrick stated that the lease in its current state does not allow for retail use. There was discussion regarding this use, but currently, there is no retail use authorized in the lease. The Eleventh Amendment was the result of negotiations between the Airport Authority and Premier to address what it would take to make the Authority whole in

anticipation of the possible breach based on office use, not retail. Ms. Petrick stated that, when Premier made their current request, the Authority asked if they could provide numbers for fair market value for retail. This information has not been provided. Ms. Petrick reminded the Board they are being asked to add a new usage to the lease and it contemplates negotiating fair market value for the lease.

Ms. Budd asked Premier to speak to those two issues outlined by Ms. Petrick.

Mr. Folden reminded the Board that Premier was supposed to keep Airport Management informed of every step in the permit process and asked if this was being done. Ms. Petrick responded that there would be periods when there were no updates but when asked they were provided.

Mr. Hamid Hashemi, Premier Aviation of Boca Raton, LLC, thanked the Board for listening to their request and advised the Board that they are not asking for exceptions. Mr. Hashemi stated they have a presentation that addresses all the concerns outlined in Ms. Petrick's letter.

Mr. Hashemi stated that they are asking for approval of an assignment of lease. Mr. Hashemi introduced Mr. David Milledge, Esquire, Dunway, Miskel, & Backman, LLP.

Mr. Milledge advised the Board that in December 2021, Premier submitted a request for approval of an office and/or wholesale showroom to the City of Boca Raton. The narrative submitted discussed how the use would be a combination of both or a showroom. Mr. Milledge stated that on August 31st, all comments related to the application were satisfied and, because the use was always going to be an office or furniture store, Premier agreed to a condition of approval to limit any type of retail to a furniture store. Mr. Milledge stated that Premier anticipates going before the City Planning and Zoning Review board in December.

Ms. Budd asked Legal Counsel how this aligns with the Airport's concerns. Ms. Petrick replied that what was presented only applied to the City of Boca Raton, not the Airport.

Mr. Milledge provided some history on previous amendments and emails regarding the usage of Phase III. Mr. Milledge reminded the Board that, back in 2020, Premier asked for a request to sublease to City Furniture which is similar to what they are asking today. Mr. Milledge stated due to the delay in the appraisal process City Furniture changed its mind.

Ms. Petrick clarified what was allowed in the Third Amendment and reminded the Board that a minimum of 49% of Phase III use would be reserved for aviation use.

A discussion ensued.

Ms. Petrick reminded the Board that the use language in the lease has never been changed.

Mr. Folden clarified that a car dealership was never approved in the past, only a car agency. Mr. Folden asked what Premier planned on taking to the City for approval.

Mr. Howard Dubosar, Attorney, Weiss Serota Helfman Cole Bierman stated that Premier is not saying the Airport does not have the authority to approve the use even if the City of Boca Raton approves of the use. Mr. Dubosar added that Premier had done an analysis for retail and the results were the same and Premier is willing to pay what was agreed to in the Eleventh Amendment.

Ms. Budd reminded the Board of their obligation to renegotiate the lease.

Mr. Hashemi stated that they will be paying fixed base rent even if the building is not built and explained their interpretation of how rent should be calculated. Mr. Hashemi stated there is no reason to renegotiate the rent.

Ms. Petrick added that, after the Eleventh Amendment was approved, it was sent to the FAA for approval. In their response, the FAA asked whether the ground rent would be adjusted to Fair Market Value as a result of the Eleventh Amendment. This was sent to Premier and as of this date, no answer has been given.

Mr. Nau added that the Eleventh Amendment rent applies to the building, not the ground rent.

Mr. Hashemi stated that ground lease has never been a discussion before, and there was never an issue in the past regarding rent calculations and they believe they are offering over what fair market rent should be.

A discussion ensued.

Ms. Petrick presented the third appraiser's determination of fair market rent on the ground and building, adding that the FAA is expecting a response to their question regarding Fair Market Value. Premier has been asked to provide input and they have not.

Ms. Bennett reminded the Board that this came about in March 2022 because Premier was required to provide the Airport with permits, due to their site plan being expired and all the discussions between March and July were the result of the Airport Authority's good faith effort to work with Premier regarding the breach.

Mr. Hashemi stated that he has a lease with the Airport Authority, not the FAA and he is asking the Authority to allow a sublease to City Furniture. The FAA only wants to know if it is a fair number and they feel it is a fair number.

Ms. Bennett added that the Amendment requires FAA approval and, since the FAA is asking the question, the Airport has no option but to respond no.

Ms. Bennett asked Premier to state what they are requesting.

Mr. Dubosar stated that the Board was given documents to approve a sublease, consent and recognition agreement, assignment of development rights and change in usage.

A MOTION to approve the request made by Premier for discussion was made by Mr. Folden and seconded by Mr. Pollack.

Ms. Budd asked what would need to happen to approve the transaction with City Furniture while satisfying the two concerns with the lease and Fair Market Value.

Ms. Petrick advised that the lease currently does not allow Premier to do what they are requesting, however, Premier has stated that they are not interested in renegotiating the lease.

A discussion ensued.

Mr. Folden asked what percentage of the project is office and what percentage would be retail. Ms. Petrick responded that the current proposal is 100% City Furniture while the original proposal was 100% office.

Mr. Pollack asked what the response from the FAA might be.

Ms. Petrick responded if the Eleventh Amendment is not approved, the Lease reverts back to the Tenth Amendment and Premier would be in breach at that time.

Mr. Pollack asked what the Authority's next step should be.

Ms. Bennett responded that the Authority can answer the FAA's email and wait for their response or present a new request to the FAA.

Mr. Nau asked if the Motion does not pass, would Premier be in breach and would they be under the Eleventh Amendment.

Ms. Petrick responded that, if the Eleventh Amendment were in effect, Premier would not be in breach, but at this time the FAA has not approved the Amendment.

Ms. Petrick stated that there has been a lot of discussion on the fair market issue but not the usage issue. Ms. Petrick shared that Premier's legal counsel just told her that if the Board is willing to agree to the Phase III usage, they will assist in drafting a response to the FAA but are not open to changing the financial terms of the lease.

A MOTION to approve the request made by Premier for discussion was made by Mr. Folden and seconded by Mr. Pollack. A roll call vote was taken and the Motion failed unanimously.

Ms. Budd stated that the Board wants the City Furniture deal to happen but there needs to be a way to get there.

Mr. Tucker thanked Ms. Bennett and Legal Counsel for all their work on this issue.

EXECUTIVE DIRECTOR AND STAFF REPORT

Mr. Bryan presented the Noise Abatement/Operations Summary for the Month of September.

Mr. Pollack commented that only receiving calls from five households is not bad.

AUTHORITY MEMBERS REQUESTS AND REPORTS

Mr. Nau presented the 2023 Board Meeting schedule.

Mr. Fogel recommended moving the December 21, 2022 meeting to December 14, 2022. The Board agreed unanimously to move the meeting.

Mr. Fogel recommended moving the December 20, 2023 meeting to December 13, 2023. The Board agreed unanimously to move the meeting.

PUBLIC INPUT

There was no public input.

OTHER BUSINESS

MISCELLANEOUS

The next regular meeting is scheduled for November 16, 2022 at 5:00 p.m. in the main conference room at the Boca Raton Airport Authority Administration Building.

ADJOURNMENT

Meeting adjourned at 6:40 p.m.

 11/16/2022
James R. Nau, Chair Date