

Town of Nantucket
NANTUCKET MEMORIAL AIRPORT
14 Airport Road
Nantucket Island, Massachusetts 02554

Alfred G. Peterson, Airport Manager
Phone: (508) 325-5300
Fax: (508) 325-5306



Commissioners
E. Foley Vaughan, Chairman
Sheila O'Brien Egan, Vice Chair
Carl D. England, Jr.
Arthur Gasbarro
David C. Gray, Sr.

AIRPORT COMMISSION MEETING
August 16, 2011

The meeting was called to order at 5:05 PM by Chairman E. Foley Vaughan with the following Commissioners present: Vice Chair Sheila O'Brien Egan, Arthur Gasbarro, and David C. Gray, Sr. Commissioner Carl D. England, Jr. was absent.

Also present were Airport Manager Al Peterson, Airfield Supervisor Jeff Marks, Finance Director Tina Smith and Administrative Assistant to the Airport Manager Janine Torres.

The Meeting took place in the SRE Building at 13 New South Rd.

Chairman Vaughan introduced John Giorgio of Kopelman and Paige, Town Legal Counsel, who was asked to talk to the Commission about procurement practices and contract issues.

Procurement Practices

Mr. Giorgio explained he was asked by Town Administration to provide comments on several specific procurements done by the Airport and he had three issues is reporting on.

The first issue is the Airport isn't following a consistent practice for contracts entered into with vendors. Any purchase of \$5,000 requires a formal contract that sets forth a scope of services, price, responsibilities, insurances, etc. Any contract made without the proper bidding is invalid. A signed purchase order does not constitute a contract. Additionally, some procurement did not follow the proper procurement practice. For example, the Airport issued a Request for Proposal (RFP) for some landscaping procurement. Landscaping is considered a public works, (non-building) construction project and therefore, the proper procurement practice should have been an Invitation for Bid (IFB). There are different requirements for each type of procurement practice.

Mr. Giorgio explained he held a procurement seminar several weeks ago with key airport personnel and reviewed the different types of procurement practices and relative requirements. In addition, he has been working closely with airport personnel on recent purchases.

The law is very clear that the town accountant must approve all vendor payments, including those of an enterprise fund, and are required to ensure proper bidding procedure has been followed.

Mr. Giorgio recommends at least one person from the Airport attend a week-long training session given by the IG on procurement.

The second issue is that both the Attorney General's (AG) office and the Inspector General's (IG) office are now involved in investigating the Airport's procurement due to recent publicity. In addition the AG Bid Protest Division, are highly concerned over several complaints received and have requested a meeting, scheduled for September 14th, 10:30 AM, with Town officials to talk about procurement practices specifically as it relates to the Airport. He has recommended a representative of the

Airport Commission should be there. The AG will be looking for assurances from both Town Administration and the Commission that Airport procurements will be done properly going forward.

Chairman Vaughan stated the Airport wants to comply and will strive to comply and feels personally that if the airport has not met the requirements it was inadvertent, not advertant.

Commissioner Gasbarro inquired about consequences or penalties. Mr. Giorgio responded the Attorney General has very significant enforcement powers. No mention of penalties so far, most likely that decision will be made after the meeting on the 14th.

The third issue was aviation fuel and the interpretation of an exemption in Chapter 30B for "sale of aviation fuel". The first interpretation from the IG's office was that the purchase of aviation fuel by the airport was not exempt. Mr. Giorgio stated he very much disagrees with this ruling as well as previous Town Counsel and Brian O'Donnell from the AG's office. Mr. Peterson interjected MassDOT-Aeronautics attorney disagrees with the IG's office as well.

Mr. Gasbarro asked for any recommended actions other than the training due to the other contracts that are under investigation. Mr. Giorgio noted once a service has been provided and paid, it's done. The Commission needs to look forward.

Mr. Giorgio added the only bill he is aware of that remains unpaid is approximately \$8,000 for landscaping. He has recommended this bill does not get paid due to the incorrect procurement practice performed. The only way to get this bill paid is through special legislation which requires going to town meeting and obtaining approval for home rule petition.

Mr. Gray asked if the IG can go after the contractors who performed work without the proper contract with prevailing wage requirements. Mr. Giorgio responded, yes, both the airport and the contractor can be held liable for not paying prevailing wage.

Mr. Gray asked for clarification on amounts for services per job or per invoice. Mr. Giorgio explained you cannot knowingly bid split. Using IT services as an example, an RFP should be issued for a specific period of time with an estimated quantity of services. Mr. Giorgio also noted the airport can piggyback on an established Town Contract.

The subject of emergency procurement was discussed with Mr. Giorgio noting you cannot over abuse the emergency provision. Three quotes should still be sought and if an emergency on a building project, must seek DCAM approval.

Mr. Gasbarro asked if the manager's report on procurement practices was received. Chairman Vaughan stated he had and will share it with everyone.

Mr. Gray asked if he should turn in his report on procurement practices he was assigned to Mr. Giorgio. Mr. Giorgio commented he should not at this point; the AG and IG offices are very much on top of the situation.

Mr. Giorgio turned the topic to the appropriation of funds in light of the airport's previous fiscal year-end issues explaining the enterprise fund statute falls under municipal accounting practices and requires every penny spent, except for grants, must be appropriated by the proper steps prior to and finally by town meeting. While there were several volatile costs, fuel for example, the airport needs to be sure costs are budgeted correctly. Having the revenue in the enterprise fund does not automatically mean the funds can be spent. A supplemental appropriation needs to go to town meeting in order to get this bills paid.

Mr. Peterson added the airport will have the same problem this fiscal year. The Department of Revenue restricted what the airport could show for increased revenue. In order to balance the budget expenses were kept at the same level as revenue. Mr. Giorgio added the DOR is reluctant to allow a larger estimate on what they consider non-recurring revenue (ie the volatility of fuel sales).

Mr. Gasbarro expressed his concern over the past procurement practices and felt, dependent upon the AG report, that someone should be held accountable. Mr. Gray concurred and cited the airports involvement in the restaurant renovations. Mr. Peterson explained lease of the restaurant went out to bid and the tenant proposed renovations and hired his own contractor. The Health Department then stepped in and ordered the space be brought up to code. The Airport agreed to pay

for the structural upgrades required and paid the tenants contractor directly. Mr. Giorgio added the topic of construction done through the lease process has been very controversial and noted the Supreme Court issued a decision made in May 2010 that clearly addresses this issue. Mr. Giorgio will share their memorandum on this subject and will forward it.

Mr. Gasbarro asked Mr. Giorgio to comment on procurement and contracts with employee's relatives. Mr. Giorgio noted the Conflict of Interest Laws which precludes any commissioner or airport employee from participating in any contract negotiation, contract award or contract supervision to a relative or spouse. Mr. Giorgio noted at any time there is doubt, upon request Town Counsel can issue an ethics opinion (public opinion) which would be filed with the State Ethics Commission who would award their decision. A private opinion can be obtained by calling the State Ethics Commission directly, but noted a public opinion if advice followed, will protect you should a complaint be filed.

Mr. Vaughan asked for any public comment thus far:

Cliff Williams commented it seems beneficial to put the fuel out to bid.

Carol Dunton commented with the size of the airport's projects no one from the enterprise fund has participated in formal procurement training. Mr. Peterson commented, up until Diane O'Neil, he wasn't aware of anyone from the Town getting formal training. He added the airport incorporated its own purchase order system prior to the Town establishing theirs.

Non-Union Contract

Mr. Giorgio stated the airport commission has the clear authority under the general laws to appoint the airport manager.

It was noted that previously the current airport manager held a standing appointment and for the first time awarded a written contract with Mr. Peterson. The contract was awarded in executive session. Mr. Giorgio noted the new Open Meeting Laws require a more specific posting that should have included the non-union position being negotiated. The law also requires the decision, once made, to be announced in an open session. There is also the suggestion that the vote must be held in open session. Mr. Giorgio feels the meeting at which the contract was awarded would be determined by the AG to not comply with the Open Meeting Law and thus, may invalidate the contract.

Mr. Giorgio noted the first step to rectify is to prepare and make public the executive session minutes and post notices correctly going forward, and recommends discussing the contract in a future open meeting.

Mr. Giorgio moved the discussion to the contract terms itself. His biggest concern is that under the general laws there are certain public employees positions that allow contracts can be for more than one year. Other municipal officials, that don't have a statutory provision for multi-year contracts, require a yearly appropriation of funds.

Mr. Vaughan has asked Mr. Giorgio to provide a commentary on the contract after which the commission would bring the contract back and re-vote. Mr. Giorgio will provide a confidential memo which the commission can review in executive session if they so choose to re-vote the contract, do so in open session.

Mr. Vaughan asked if he can share via e-mail with the other commissioners without violating the Open Meeting Law. Mr. Giorgio concurred but added there can be no discussion via e-mail.

Mr. Vaughan invited questions from the audience:

Jason Graziadei asked if Mr. Giorgio felt the contract was valid. Mr. Giorgio refused to answer but added there are only two parties that could declare the contract invalid, the AG through a bid protest or a court.

Cliff Williams stated the Federal Register allows airport revenue to be used for salaries but wasn't sure if it covered housing stipends or bonuses. Mr. Giorgio noted two sections from M.G.L. Chapter 90, §51I as well as §51E which states spending by an airport commission must be for 'valid public purpose'.

Bruce King introduced himself as the Airport Union Stewart and referenced what he believed to be a contract with the non-union employees and found it disturbing that it held a disclaimer. Ms. Egan corrected Mr. King to indicate he was referring to a handbook, not a contract. Mr. Giorgio interjected there are three employment relationships with municipal officials; a collective

bargaining unit, a contract, typically with department heads, and all other appointed officials including employees governed by personnel rules and regulations which is a guideline.

Whitey Willauer noted with other enterprise accounts, the town has been involved in union negotiations. He asked what control the town has over the union and non-union contract. Mr. Giorgio noted §51E of Chapter 90 authorizes the airport commission to appoint employees and fixing salaries. Mr. Giorgio added there is also a provision in the Town Charter that states the airport commission is not part of the town administration. Mr. Willauer asked about other benefits. Mr. Giorgio agreed the law does not mention other benefits.

Mr. Gasbarro asked if the commission should review the practice of setting salaries and making policies. Mr. Giorgio suggests all personnel practices should be reviewed. Mr. Gasbarro remarked in reviewing the AG website, he found that discussion of an employee's job performance that merits a bonus or salary increase must be held in open session. Mr. Gasbarro notes there have been past stipends and bonuses awarded without an open session discussion.

Mr. Gasbarro remarked he has requested through the Freedom of Information Act, minutes of the meetings at which stipends and bonuses were voted. Mr. Vaughan commented he believed any bonuses or stipends awarded were properly done, but going forward if procedures need to be changed, they will. Minutes of any such meetings will be made available.

With no further comments or questions it was **m/s/p** to adjourn at 6:36 PM.

Respectfully submitted,

Janine M. Torres, Recorder

Master Documents Used
8.16.11 Agenda

