



Memo

To: Airport Board of Directors
From: Patrick Dame, C.M. Executive Director
Date: June 15, 2020
Re: General Aviation Leasing Policy

After receiving the recommendations of Frasca & Associates and public comments, it was determined that a General Aviation (GA) Leasing Policy is needed to help ensure a level playing field for addressing lease agreements at the Rapid City Regional Airport. This will also assist management in applying a consistent answer for tenants for better understanding of the policies.

In May, we met with several existing lessees, one-on-one, to talk about the application of the Frasca recommendations. We discussed the rates and charges aspect along with the reversionary clause as both are a major part of the recommendations. We have also spoken with other GA members through the GA Committee meetings.

Throughout our conversations with tenants, they commonly believed they are entitled to new lease when the leases expire. The two main applicable clauses in the existing Airport lease agreements are as follows:

Old Leases

At the termination of this Lease, whether by expiration of its term, as may be extended by options, or termination for any reason, the parties shall negotiate a fair and reasonable price at which the Lessor may, at its sole option, purchase the hangar from Lessee. In the event the parties fail to reach a price through negotiation or if the Lessor does not desire to purchase the hangar, then in that event the hangar structure shall be removed from the premises and the area shall be restored to a condition acceptable to the Lessor. The cost of hangar removal and site restoration shall be the sole expense of the Lessee. (This is contained in the 14 oldest leases.)

Newer Leases

If this Agreement is not renewed or the Parties do not enter into a new agreement, Lessee shall remove the Improvements owned by Lessee and return the effected portion(s) of the Leased Premises to its original condition and character, ordinary and reasonable wear and tear excepted. If Lessee does not remove said Improvements within 90 days, Lessor may do so at the risk, cost, and expense of Lessee. In lieu of removal, at Lessor's option, Lessee may transfer the ownership (or title) of the Improvements (specifically designated by Lessor) to Lessor. (This is contained in 18 leases.)

Under FAA Sponsor's Assurance 5(a), Preserving Rights and Powers: [The airport sponsor] will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

Based on the FAA's interpretation of Assurance 5a, as it relates to reversionary interests, an airport sponsor's **failure to include or exercise lease agreement reversion clauses contributes to forfeiting the sponsor's rights and powers.**

Continuous leasing practices, beyond the initial term of the lease, puts the Airport Board in a position for potential violation of their Sponsor's Assurances and can jeopardize federal funding in the future.

Under the GA Leasing Policy, we provide the tenant several options to work with the Airport Board to assist the Airport in meeting the Sponsor's Assurances and to conduct a transition plan. It is our goal to allow all future tenants to understand the requirements prior to construction of a facility and work to transition existing tenants over the next decade. The GA Leasing Policy provides six options for tenants with leases that will expire. Those options are as follow:

1. Extension. All Tenants with Agreements expiring between August 1, 2020 and December 31, 2026 shall be offered one (1) additional five (5) year lease. The new lease will be non-transferable.
2. Remove Improvement. Tenant shall remove the Improvements owned by the Tenant and return the affected portion(s) of the Leased Premises to its original condition.
3. Transfer Ownership to Board. If agreed to by the Board, in lieu of removal, at Tenant's option, Tenant may transfer the ownership (or title) of the Improvements (specifically designated by the Board) to the Board at no cost to the Board.
 1. Provided the Tenant has been in good standing with the Board, the Board may offer a Right of First Lease to the Tenant at Fair Market Value. Lease rent shall include all ground, building and maintenance expenses.
 2. The Board will not purchase Improvements at the expiration of any agreement.
4. Holdover. Board may elect to continue the Agreement with the Tenant on a month-to-month basis (where holdover provisions allow).
5. New Lease Agreement Capital Improvements. Tenant may request a new lease Agreement with a pledge of Capital Improvements extending the life of the hangar, to include but not limited to replacing exterior siding (including on the door skin), roof, hangar door operator and other mechanical components. Lease terms will be determined by investment. The request for Capital Improvements must go to the Board, be approved and all work must be completed prior to the expiration of the Agreement.

6. Lease Reversionary Deferral Option. Tenant may also request a new Agreement without making Capital Improvements. Tenant would maintain ownership and be responsible for all taxes, maintenance and upkeep. Fair market value for ground and building rent would be required with up to a five (5) year term limit on the Agreement.

All new lease agreements will incorporate the clause of removal or reversion as the only options for lease end.

The GA Leasing Policy addresses the term versus investments. We considered \$100 per square foot development costs, for common hangar sizes at RAP, to help set the investments and terms.

The value of hangar improvements lies in the length of the remaining term of the lease agreement. In the past, leases have been sold based on the perceived value of the improvements with few years remaining on the lease. The buyer then comes to the Airport for a new lease and the Airport is left in a position to approve or deny the lease after the fact. The GA Leasing Policy is intended to protect both the buyer, seller and Airport Board. Future leases will declare transfers without prior consent of the Board null and void. Sales in the final five (5) years of an agreement will require further consideration of the Airport Board.

We further addressed the need to preserve apron frontage in an effort to foster competition at the Airport. Apron is costly to construct and finite in the amount we can develop. The Policy allows the Airport Board to seek further justification as to why a tenant needs apron access and to further scrutinize requests from those who have existing apron frontage.

We believe this GA Leasing Policy is a good start to ensure that we have a roadmap for future development and procedures, in print, for those who are users of the airport today.

STAFF RECOMMENDATION: Staff recommends Airport Board approval of the General Aviation Lease Policy.