

Airport Governance Discussion

Responses to Commissioner Questions

February 5, 2020

Timeline to date

December
of 2018
NRAC
Created
Ad Hoc

April 2019
to
October
2019
7 AGAC
meetings

December
10th and
11th 2019
Grand
Traverse
Public Input
Sessions

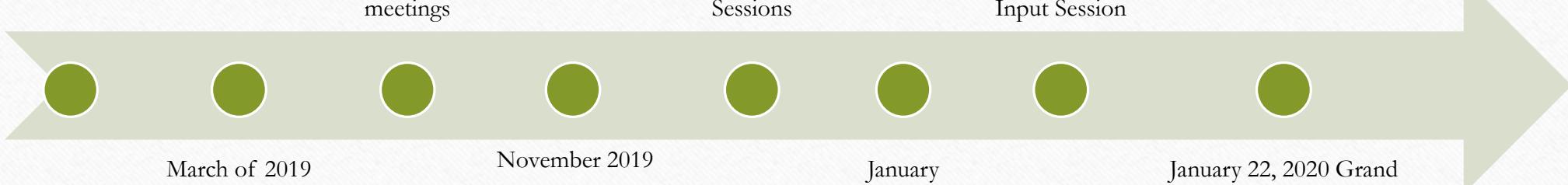
January 21,
2020
Leelanau
County Public
Input Session

March of 2019
Grand Traverse
BOC appointed
AGAC members

November 2019
NRAC and
AGAC Report
and
Recommendatio
n presented to
GT BOC

January
14, 2020
Leelanau
County
Public
Input
Session

January 22, 2020 Grand
Traverse County
Commissioners receive
initial answerers to
Commissioner
questions. Amended
for February 5, 2020
meeting



1- What are the actual terms of our current lease agreement with the Airport?

- There are two agreements that are in place
 - Joint Operating Agreement
 - 2015 Agreement Amending and Replacing Lease of May 1, 1972
- The term of the Joint Operating Agreement is February 17, 2049
- The term of the Agreement Amending and Replacing Lease of May 1, 1972 is September 30, 2040.

Joint Operating Agreement- 13 Sections

- Re-establishment; Authority
- Principal Officers; Representation; Term of Office; and Fiscal Year
- Annual Meetings; Officers
- By-Laws
- Employment of Personnel
- Expansion of Commission
- Operating Budget; Apportionment of Costs; Profits
- Conveyance of Airport Property
- Term
- Disposition of Property and Termination
- Agency Relationship
- Entire Agreement
- Notices

Agreement to Amend the Lease of 1972

- Grant and Premises
- Term
- Rental
- Purpose for which premises are to be used
- Maintenance of Premises
- Insurance
- Laws and Regulations
- Conditions upon use of the premises
- Improvements
- Assignment and Subletting
- Notices
- Default and Termination
- No Waiver
- Successors and Assigns
- Quiet Enjoyment
- Entire Agreement
- Construction
- Corporate Authority
- Counterparts
- Amendments and Agreements

2- What specific public interest protections could we build into any future legal agreements around Eminent Domain and zoning decisions in the event the Counties vote to allow the Airport to move to an authority governance model?

Question # 2 Response- Eminent Domain

- Articles of Incorporation can address Eminent Domain
 - Counties control Eminent Domain
 - Authority controls Eminent Domain
 - Counties and Authority Concur
 - Authority control for Aeronautical or safety purposes
 - Other issues deemed necessary

Question # 2 Response- Zoning

- Currently, state law dictates zoning for aeronautical uses and the Commission is exempt from local zoning for these uses.
- For non-aeronautical uses the Commission is subject to local control and must follow the zoning of the City of Traverse City
 - This is subject to a lot of discussion surrounding what is and what isn't aeronautical
- Under Act 95 an established Authority controls zoning for Aeronautical and Non-Aeronautical
- Articles of Incorporation can address issues surrounding zoning concerns

Question # 3- What specific pros and cons are there to the taxpayers of Grand Traverse County by moving to an Airport Authority governance model?

- The airport has been operating independent of the counties since 1998.
- Grand Traverse County is a 50% owner of the airport
- Grand Traverse County has 85% of the liability
- Next four slides show some advantages and disadvantages

Table 1. Commission Advantages & Disadvantages — Airport's Perspective

Airport: Commission Advantages

- ❖ Liability shared with Counties
- ❖ Legal/professional services can be supplied by Counties
- ❖ Can more easily rely on Counties for financial support
- ❖ Political connections and support
- ❖ Provides direct oversight and accountability by

Airport: Commission Disadvantages

- ❖ Cannot buy and sell property on its own
- ❖ Cannot enter leases past term of Operating Agreement
- ❖ No direct control of Airport zoning for non-aeronautical uses
- ❖ Political influence
- ❖ Less efficient
- ❖ Sponsors have other priorities besides the Airport's best interests
- ❖ Legislation & Agreements not as clear

Table 2. Authority Advantages & Disadvantages — Airport's Perspective

Airport: Authority Advantages	Airport: Authority Disadvantages
<ul style="list-style-type: none">❖ Airport business focus and Industry best practices❖ Zoning control❖ Buy & sell property❖ Clear legislation❖ Regional requirement❖ Efficient & effective actions❖ Reduces political influence & conflicts of interest❖ No more than 45% of elected officials on Board and criteria of expertise for Board members,	<ul style="list-style-type: none">❖ Liability held by Authority❖ Cannot impose a millage❖ Financial & operational support from Counties is harder to gain❖ Political connections and support

Table 3. Commission Advantages & Disadvantages — Counties' Perspective

Counties: Commission Advantages

- ❖ Political connections and support
- ❖ Counties approve buying and selling of land
- ❖ Counties' priorities can be reflected more easily
- ❖ Control over some long-term lease agreements past Operating Agreement
- ❖ Counties' have more influence over airport activities.

Counties: Commission Disadvantages

- ❖ Airport liability shared with Counties
- ❖ Legal/professional services can be supplied by Counties
- ❖ Airport can more easily rely on Counties for financial support
- ❖ No direct control of Airport zoning
- ❖ Legislation & Agreements not as clear

Table 4. Authority Advantages & Disadvantages — Counties' Perspective

Counties: Authority Advantages
❖ Liability held by Authority
❖ Cannot impose a millage
Airport business focus and industry best practices
❖ Not required to provide airport financial & operational support from Counties
❖ Clear legislation and zoning control
❖ Criteria of expertise for Board members and reduces the potential of political influence

Counties: Authority Disadvantages
❖ Buying & selling of property is more autonomous for Airport
❖ Eminent domain concerns
❖ Regional requirement
❖ May reduce Counties' control over decision making and long-term agreements
❖ Limitation of 45% of elected officials serving on Board

Question # 4- Should the County consider retaining independent legal counsel to help us navigate a shift to an Authority, again in the interest of protecting the public interest in matters as sensitive as commercial development, clear cutting of publicly owned property, use of Eminent Domain, etc.?

Response: Perhaps

Question # 5-What is the scope of Grand Traverse County's current authority over the taxpayer-owned Airport property?

- Grand Traverse and Leelanau Counties are equal owners of the airport
- Airport is constrained by various grant assurances
- Through agreements we have granted to the NRAC, control over the operation of the Airport. Under the Act the NRAC is currently formed under, the NRAC may exercise, on behalf of the Counties, all of the powers as granted by the Act. MCL 259.134(c).
- Further, the Act provides that where two or more political subdivisions operate an airport, they must create a Board or Commission that shall be in charge of all of the activities on the airport necessary to run an airport. MCL 259.134(b)
- Exceptions to the broad grant of authority to the NRAC include the exercise of Eminent Domain, the power to tax for airport purposes, the power to incur debt, and acquire property in the name of the counties

Question # 6-What can we do, and what can we not do, as Grand Traverse County to that property?

- Grand Traverse and Leelanau Counties are equal owners of the airport
- The Counties cannot use the property for any other purpose without the consent of the FAA.
- Additionally, the County (or another organization) would have to pay the Airport fair market value for this use if it is allowed – this is an FAA requirement.

Question # 7-How does zoning currently apply to the Airport's various uses of the land including subletting and commercial builds? What would change in the event the Airport governance model takes the zoning process “in house”?

Question 7 Response

- Under the current governance model, the Airport has control over all Airport property for aeronautical related facilities. Traverse City has zoning control over non-aeronautical related development at the Airport.
- Under a Regional Airport Authority, the Authority would have both aeronautical and non-aeronautical zoning control over property that is part of the airport, which includes airport facilities defined in the Act as both aeronautical and non-aeronautical development, subject to State and Federal legislation. MCL 259.143(3) and MCL 259.138(2)(b)(iii).

Question # 8/Comment

- In discussions with you (Nathan Alger) about this issue last week, we seemed to understand the Airport's responsibility on following City zoning differently. If I understood you correctly, you believe the Airport even under current status quo governance and agreements, didn't have to follow City zoning on the Costco development but did so to "be a good neighbor" (I believe that was your phrase). Did I understand that right?
- Please refer o the response to Question 7. I personally believe that regardless of whether or not we as the county or the Airport have to conform to zoning we should "be a good neighbor" and comply with local zoning requirements to the end that the compliance does not interfere with the efficient and effective operation of the use in question.

Question # 9-

- When the report says the existing agreement is “outdated” what exactly does that mean? We use many old documents in American government. Our U.S. Constitution founding document, for instance, is quite old, but most people still stand by it. So what *needs* changing?
- **Response:** The term “outdated” refers to the lack of compliance with current state and federal law. The existing agreements have multiple deficiencies that do not comply with state and federal law as outlined in the Airport Governance Advisory Committee Report.

Examples of deficiencies are on the next slide.

Question #9 Response Continued

- Term of the agreement
- Lack of dispute resolution between the Counties or the Airport Commission
- Historical property transactions
- Distribution of profits, which is a violation of FAA policy
 - Law and FAA policies have been evolving on this matter since 1982
- City zoning requirement for all uses
- Reversion of Airport property within deed

9 Continued- Revenue Diversion Grant Assurance 25

- Grant Assurance 25, which provides, in relevant part: All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other facilities which are owned and operated by the owner and operator of the airport.

Question # 10/Comment

- Can the Airport Director be an elected position? This feels somewhat outlandish, but I ask this because I believe strongly in the principle of authority and responsibility being vested in the same party and a mechanism for holding that party accountable. Vesting an appointed leader appointed by a board which is in turn appointed by multiple counties with Authority powers seems to violate that principle. There isn't an effective means to hold that person accountable for the impact his decisions have on the community. We commissioners are then responsible for the community decisions, but the airport director can be making decisions that directly impact the community, and the Board of Commissioners would lack the authority over those decisions.

Question # 10 Response

- There is no authority under Michigan law to create an elected Airport Director. Airport Director positions are not elected positions under any airport governance model provided by current Michigan legislation.
- The Articles of Incorporation could set standards for the removal of the Airport Director

Question # 11- How will the advisory board be appointed?

- An “advisory” board or council is a separate entity from the Authority’s Board Members. This answer addresses the appointment of the Authority’s Board Members, not a potential or optional advisory board/council/committee:
- Members to the Authority’s Board would be appointed by both Grand Traverse County and Leelanau County. The Articles of Incorporation would address specific appointment allotments, membership composition, terms of service, and any Board member qualifications above what is required by the Regional Airport Authority Act. Within these parameters, it is assumed the County would follow its normal/current application and appointments process.

Question # 12- What powers will the advisory board have, if any?

- In Michigan, the powers of the Authority Board are contained in the Regional Airport Authority Act, P.A. 95 of 2015, (“the Act”) and would also be enumerated within the Articles of Incorporation as allowed by Michigan legislation under the Act. Section 143 of the Act specifically lists the various powers of the Authority. Here is a summary of some of the powers listed in Section 143:

Question # 12 Response Continued

- Sue or be sued in any court in Michigan, or file suit in Federal Court
- Plan, expand, improve, repair and operate an airport
- Assume all responsibilities that are contained an agreement between the local government and State of Michigan or the FAA related to grants for the airport
- Exclusive responsibility to study and plan for any improvements, enhancements or expansions that affect the airport
- Responsibility for the development of all aspects of the airport and airport facilities
- Participate in economic development
- Apply for, accept and be responsible for all grants from the FAA or other federal agencies
- Adopt reasonable rules and regulations enforceable in a court of law for the orderly, safe, secure and sanitary use of airport facilities, and establish civil and criminal violations of such rules and regulations
- Appoint airport law enforcement officers, guards, or police officers who are authorized to act as peace officers

Question # 13- How will the Airport Director be appointed or removed?

- The Airport Director would be hired by the Airport Authority Board, the same as a Commission. The Airport Director would be an “at will” employee of the Authority and serve at the pleasure of the Board. Terms for the removal of an Airport Director are typically identified within the Airport Director employment agreement established by the Board and agreed to by both parties at the time of hire.

Question # 14- Will the Airport have the authority to issue debt without the approval of elected officials or the voters through a referendum? What will the process be?

- Under the Act, an Authority may issue self-liquidating bonds, borrow money, and issue municipal securities. The Counties may also choose to provide their full faith and credit to an Authority. This would need to be approved by the Counties. The Articles of Incorporation could provide additional language regarding the need for County approval prior to the Airport incurring any indebtedness regardless of whether the full faith and credit of the Counties are used.

Question # 15- How will the Airport be empowered to buy and sell land? Will it be able to buy and sell land with or without oversight or approval by anyone outside of the Airport Director and Advisory Board?

Question # 15 Response

- In general, the Act permits an Authority to buy and sell land on its own. However, the Articles of Incorporation could be written with some limitations on the ability of the Authority to buy and sell land. For instance, the Articles of Incorporation could require that the Authority seek County approval before entering into leases in excess of a certain defined period for non-aeronautical tenants.

Questions or Comments

- Grand Traverse County Administration will provide the following documents upon request:
 - 1998 Amended Joint Operating Agreement between Grand Traverse and Leelanau Counties
 - 2015 Agreement Amending Lease of 1972
 - Northwestern Regional Airport Commission By Laws
 - Public Act 95 of 2015