

ATTACHMENT #5

AGENDA CITY AND BOROUGH OF JUNEAU ASSEMBLY COMMITTEE OF THE WHOLE WORK SESSION

**Monday, August 30, 2004; 5pm
Assembly Chambers**

- I. Call to Order**
- II. Airport Audit Report**
 - A) Packet Items
 - June 18, 2004 Independent Accountant's Report - CBJ Airport by Elgee, Rehfeld, Mertz
 - June 28, 2004 Committee of the Whole Minutes
 - B) Airport Board Comments
- IV. Adjournment**

ATTACHMENT #5

CITY AND BOROUGH OF JUNEAU,
AIRPORT

INDEPENDENT ACCOUNTANTS' REPORT
ON APPLYING AGREED-UPON PROCEDURES

ELGEE REHFELD MERTZ, LLC

CERTIFIED PUBLIC ACCOUNTANTS

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To Members of the Assembly,
City and Borough of Juneau, Alaska

We have performed the procedures enumerated below, which were agreed to by the City and Borough of Juneau, (CBJ), solely to assist you in evaluating the current Airport Enterprise Fund Board's administration practices, internal controls over leases and rate setting. This agreed-upon procedures engagement was performed in accordance with consulting services standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the specified users of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

PROCEDURES:

The agreed upon procedures and our findings are as follow:

1. We performed inquiries of numerous Airport employees and Airport Board members to identify the processes used for billing and the development of the current rate structure for airport leases.
2. We reviewed selected Airport Board meeting minutes for rate change and billing transactions and the related approval and handling of related party or conflicts of interest.
3. We reviewed the current regulations governing the Airport Board for its current guidance on board member conflict of interest issues and compared that to current airport practices.

FINDINGS:

1. A Majority of the Airport Board Have Apparent Conflicts of Interest

The current ordinance for the Airport Board states, in part: "*No City and Borough airport employee may be a member of the airport board or the spouse or a member of the household of a member of the airport board. To the extent possible, appointments to the airport board shall include persons having aeronautical, engineering, financial, or other skills relevant to airport matters.*" However, the ordinance does not limit the number of members who may serve on the Airport Board who have a conflict of interest due to a financial interest.

Currently, four members of the Airport Board, a majority of the seven-member board, have conflicts of interest, or at least an appearance of a conflict of interest, due to a direct financial interest at the airport. They are Mr. Joe Johnson, Mr. Pete Carlson, Mr. Ron Swanson and Mr. Tom Williams. These financial interests relate to the ownership of one hangar by each of Mr. Williams and Mr. Carlson, two by Mr. Swanson, and several by Mr. Johnson. Also, in Mr. William's case, there is a potential conflict as a management-level employee of Ward Air, Inc. Due to the cost to build and own a hangar at the Juneau Airport, not to mention more than one hangar, none of these financial interests could be reasonably deemed

ATTACHMENT #5

as inconsequential. Accordingly, it would appear that it would be appropriate for members declare a conflict of interest pertaining to certain actions taken by the Airport Board with respect to rate setting for hangar and commercial operators, decisions relating to operations of Ward Air, Inc. (a Part 135 operator) and other matters that could be perceived as beneficial to these board members.

Airport Board governance, and airport billing and rate structure development are negatively impacted by the current structure of the Airport Board. Since a working majority of the board have conflicts of interest pertaining to significant activities of the airport, the ability of the board to operate objectively is in question. With the amount of pressure that these members must feel, both from themselves and from their tenant friends related to keeping their personal expenses to a minimum, we feel that there is undoubtedly an effect on their decisions.

We recommend that the Assembly review the Airport Board ordinance to determine whether tenants, and others with conflicts of interest, should be limited to a minority of positions (three or fewer) on the board of directors. Such a change would also require board members to provide an annual conflicts of interest statement to enable the City to monitor changes in conflicts of interest.

In the interim, before the Airport Board ordinance is reviewed and possibly changed, the Assembly may want to place greater emphasis on the tenant/non-tenant make-up of the board before making future board appointments.

2. Minutes of Significant Actions of the Finance Committee are Not Kept and the Finance Committee is Made Up Entirely of Airport Tenants

The Finance Committee of the Airport Board consists of three members, all of who have potential conflicts of interest due to a direct financial interest at the airport as previously discussed. They are Mr. Johnson, Mr. Carlson, and Mr. Williams. The Finance Committee develops the Airport budget for submission to the full board for acceptance and referral to the CBJ Assembly. Part of the budget development process includes setting rates for all revenue lines in the airport budget. The Finance Committee does not keep minutes of its meetings, so it is difficult to identify the process used, and rationale behind, the development of the budget, including rate setting. For example, the minutes for the Airport Board meeting for March 10, 2004 included the Airport Board's discussion and approval of the Fiscal 2005 and 2006 biennial budget. Attachment #2 to those minutes was an informal listing of the decisions made by the Finance Committee, including rate adjustments to be made. However, these are not formal minutes and there is no discussion as to the justification for the rate setting, including those rates that were increased and the rates that were left the same.

Because the Finance Committee consists entirely of tenants and because that committee does not keep minutes, rate setting, budget determination and other recommendations and decisions made by the Finance Committee to the Airport Board are less credible due to conflicts of interest concerns.

We recommend that the Airport Board not appoint a majority of members with conflicts of interest to the Finance Committee, and that all significant standing committees keep minutes of meetings.

3. The Board of Directors Have Not Declared Conflicts of Interest

In a memorandum to the Airport Board dated July 2, 2002, City Attorney John Corso addressed conflicts of interest questions by the Airport Board as follows:

The CBJ Conflict of Interest Code includes section 01.45.010, which is entitled "Misuse of Official Position". It says that a municipal officer may not "Take or withhold official action in order to affect a matter in which the municipal officer has a personal or financial interest." It also says that a municipal officer may not "Attempt to affect a personal or financial interest through coercion of a subordinate." and finally, "An assembly member, school board member, or member of any board or

ATTACHMENT #5

commission may not deliberate or vote on any matter in which he or she has a personal or financial interest."

Given the relatively small number of airport leases, and the significant sums of money involved, it is likely that any Board member who is party to an airport lease would have a conflict of interest in voting on a policy to amend leases as described in this memorandum. I recommend that tenant Board members refrain from voting. I have been informed that there are four such members. The Charter provides that the vote required to take action (four, in the case of the seven-member board) is reduced by one for every two members who must abstain, provided that it is never less than a third of the membership. This means that if four members step down, action requires the unanimous vote of the remaining three.

During our work, we reviewed all of the minutes of the Airport Board for fiscal 2004 to date and selected minutes from fiscal years 2003 and 2002. During our review of the minutes, the only references to conflicts of interest that were discussed were as follows:

- During a strategic planning session, facilitated by the McDowell group in September of 2003, the board identified the current board member makeup and lack of guidance for conflict of interest as areas demanding attention.
- At the November 12, 2003 Airport Board meeting, during discussions about the hangar lease reversion issue, there was discussion about the Airport Board not being able to take any action with regard to this issue due to a majority of the Board members having conflicts of interest. The approved minutes from this meeting state the following, in part, with regard to what the Board can do regarding the lease issue:

There is a potential conflict due to a majority of tenants on the Board. In the absence of those people being able to take part in any kind of discussion, the Board would not have a quorum and the Board would not be able to do anything.

The Board's opinion with respect to their ability to take action on the leases seems to contradict the guidance by Mr. Corso, as discussed above. It also indicates an inability for the Airport Board to act objectively on certain matters due to a majority of board members with conflicts of interest. Nevertheless, in this case, the board appeared to recognize the conflict of interest.

- At the January 14, 2004 Airport Board meeting, the Airport Board again reiterated their belief that there was a conflict of interest with respect to the hangar lease reversion issue.
- At the February 11, 2004 meeting Mr. Williams asked the Airport Board to change the wording regarding the Airport Board's lack of objection to its support of a certain federal bill. Mr. Williams indicated that the wording of the Airport Board's action may cause him to have to declare a conflict of interest.

These instances indicate that the airport board is aware of potential conflicts of interest due to their financial interest. In addition, the Board adopted new by-laws in February 2004 that established guidance on dealing with the conflict of interest issue; but this has not resolved actual or perceived conflict. The new bylaws, due to the current composition of the board (majority being tenants), contain the potential to override the Chairman's decision regarding potential conflicts.

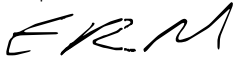
The conflicts discussed above, do not include all potential conflicts, however. We did not identify any declarations of conflicts of interest with respect to the determination and establishment of the overall budget for the airport (as discussed under point number 2 above), rate setting for hangar owners, or rate setting for Part 135 operators (commercial operators). These are all areas that actual or perceived conflicts of interest exist. The fact that there has been no discussion of these items during the Board meetings indicates that the Airport Board members are not declaring all potential conflicts of interest.

ATTACHMENT #5

We recommend that the Airport Board members comply with their by-laws and the CBJ's Conflict of interest Code regarding all conflicts of interest.

We were not engaged to, and did not, perform an examination, the objective of which would be the expression of an opinion on the controls discussed above. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of CBJ Assembly and Management in their evaluation the procedures used for Airports' Board practices, lease and rate setting processes and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes.



June 18, 2004

ATTACHMENT #5

ELGEE REHFELD MERTZ, LLC

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May 5, 2004

Rod Swope, City Manager
City and Borough of Juneau
155 S. Seward
Juneau, AK 99801

We are pleased to confirm our understanding of the nature and limitations of the services we are to provide for the City and Borough of Juneau.

We will provide services to analyze and apply the agreed-upon procedures which you have specified, listed below, to evaluate the current Harbor Enterprise Fund's board administration practices, internal controls over procurement, and the Airport Enterprise Fund's board administration practices. These procedures will include interviewing the Enterprise Fund's management and accounting personnel to determine the flow of accounting information and controls placed in operation, as well as specific transaction and document testing as deemed necessary.

These procedures are expected to include the following:

HARBOR ENTERPRISE FUND

1. We will perform inquiries of the Harbor Enterprise Fund's personnel (and board members as necessary) to identify the processes used for contracts and procurement.
2. We will review FY2003/2004 board meeting minutes for procurement transactions and the related approval and handling of related party or conflict of interest contracts.
3. We will select a sample of procurement transactions to test compliance with the current regulations over procurement.

AIRPORT ENTERPRISE FUND

4. We will perform inquiries of the Airport Enterprise Fund's personnel (and board members as necessary) to identify the processes used for the development and setting of the current rate structure.

ATTACHMENT #5

5. We will review FY2003/2004 board meeting minutes for rate structures and the related approval and handling of related party or conflicts of interest.
6. We will review the current regulations governing the Airport board for its current guidance on board member conflict of interest issues and compare that to current airport practices.

Upon completion of the interviews and preparation of a draft summary report we will provide you the total hours incurred to date and an estimate of the hours anticipated for the additional optional procedures. At that time you can elect to have the following steps completed or not.

HARBOR ENTERPRISE FUND

7. We will perform inquiries of the Harbor Enterprise Fund's personnel to identify the processes used for billing and payment collection.
8. We will review FY2003/2004 board meeting minutes for billing transactions and the related approval and handling of related party or conflict of interest contracts.
9. We will select a sample of transactions to test compliance with the current regulations over billing and current rates, as well as proper segregation of duties in the collection, recording and reporting processes.

AIRPORT ENTERPRISE FUND

10. We will select a sample of billing transactions to test compliance with the current regulations over billing and current rates, as well as proper segregation of duties in the collection, recording and reporting processes.

We will submit a report listing the procedures performed and our findings. This report is intended solely for the use of the Assembly and Management, and should not be used by those who did not agree to the procedures and take responsibility for the sufficiency of the procedures for their purposes.

We plan to begin our procedures the week of May 3, 2004 and, unless unforeseeable problems are encountered, the engagement should be completed by May 31, 2004.

This engagement is solely to assist the CBJ Assembly and Management in their evaluation the procedures used for Harbor and Airports' board practices, procurement, billing and rate setting processes. Our engagement to apply agreed-upon procedures will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of those parties specified in the report. If, for any reason, we are unable to complete the procedures, we will describe any restrictions on the performance of the procedures in our report.

ATTACHMENT #5

Because the agreed-upon procedures listed above do not constitute an examination, we will not express an opinion on the CBJ Harbor or Airport Enterprise Funds. In addition, we have no obligation to perform any procedures beyond those listed above.

We estimate that our hours for these services will fall within the hours for additional services provided with our audit contract with the CBJ (currently approximately 60 hours are available). As indicated above, after we have completed the interviews and our evaluation of the controls we will estimate the hours needed to complete the optional sampling steps listed above. Hours in excess of the audit contract hours will be billed at our standard hourly rates, which range from \$140 to \$157 an hour. You will also be billed for out-of-pocket costs such as report production, typing, postage, etc. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation.

We appreciate the opportunity to assist you and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us. If the need for additional services arises, our agreement with you will need to be revised. It is customary for us to enumerate these revisions in an addendum to this letter. If additional specified parties of the report are added, we will require that they acknowledge in writing their responsibility for the sufficiency of the procedures.

Sincerely,



RESPONSE:

This letter correctly sets forth the understanding of Elgee Rehfeld Mertz, LLC and the City and Borough of Juneau.

By: 

Title: Deputy City Manager

Date: May 6, 2004

ATTACHMENT #5

CITY AND BOROUGH OF JUNEAU ASSEMBLY COMMITTEE OF THE WHOLE WORK SESSION

Monday, June 28, 2004

Assembly Chambers

I. Call to Order: Chairman Jim Powell called the meeting to order at 5:00 p.m.

Members Present: Deputy Mayor Jim Powell; Mayor Bruce Botelho, Jeannie Johnson, Dan Peterson, Stan Ridgeway, Merrill Sanford, Randy Wanamaker, Marc Wheeler.

Members Absent: David Stone.

Staff Present: Rod Swope, City Manager; Peggy Boggs, Assistant City Attorney; Laurie Sica, Municipal Clerk; Allan Heese, Airport Manager.

II. Approval of Minutes

A. May 3, 2004 Committee of the Whole

MOTION, by Johnson, to approve the minutes of the May 17, 2004 Committee of the Whole meeting. Hearing no objection, it was so ordered.

III. Audit Report on the Airport

Max Mertz, an auditor for Elgee, Rehfeld and Mertz, said that in response to an Assembly request, they have reviewed the Airport Board and Docks and Harbors Board operations. The audit contract allows for 80 hours of specific services, and this work was done under that provision. The auditing firm will finish the report on the Docks and Harbors Board soon. Ms. Karen Brewer-Tarver, an audit manager who was present in the audience, performed the work. Mr. Mertz said he owns a hangar at the airport, and so did not do the actual audit, but did the finalization of the work, as presented.

Finding 1 – 4 of 7 members of the board, a majority, have a conflict of interest on matters that can affect the airport board's ability to carry out its business. All four are hangar owners, and in one case, a member is a managerial employee of a tenant of the airport.

Finding 2 – the Airport Board Finance Committee – a 3-member sub-committee of the Airport Board, is entirely made up of members with a conflict. In addition, that committee was not keeping minutes. Regarding the development of the rate structure and billing, there was no record of how business was conducted.

Finding 3 – Regarding declaration of conflicts of interest - there was no discussion that we could find that declarations of conflicts were complete in all matters.

Mayor Botelho asked if the auditors ever asked Airport Board members why the board did not comply with the advice of the city attorney. Mr. Mertz said no, and if there is a defense of that, the members can bring this to the Assembly.

Ms. Johnson asked the nature of the ownership interests in relationship to the overall airport operations. Mr. Mertz said the conflict is one in which a financial ownership interest is

Committee of the Whole Meeting	1	June 28, 2004
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ATTACHMENT #5

significant. The value of a hangar is significant. The perception is that there could be action taken by board members to protect that interest. We are not saying that was done in any particular circumstance. There are a host of areas that would have an effect on the future value of that type of interest. It may make sense to have some hangar owners, but it should not be a majority of the board. There is a judgement call to be made. Regarding the employment situation with the one board member, there are so many areas that impact his interest, he asked how that member could effectively serve.

Ms. Johnson asked if the concerns were the ownership of hangars or the lease rate of land. Mr. Mertz said that the ownership of hangars was the most significant of the two.

Mr. Ridgeway asked how the hangars work regarding ownership. Mr. Heese said that there are some privately owned hangars, which take up the footprint of leased land. There are commercial owners whose footprint can take up a greater portion of leased land. Regarding paving on a tenant's leased land, the tenant would have the decision on how to handle the leased land, otherwise if it is airport land the board would make decisions.

Ms. Johnson asked about the ability to direct where things are constructed on the airport and if there is any land available now? Mr. Heese said the airport is land poor now. The airport is in the EIS process to obtain land, and there are a few small pockets available.

Mayor Botelho asked regarding hangars, is there an issue at the end of the lease about how the sale is to take place – does the hangar owner have an automatic right to renewal or is it open to all comers?

Mr. Heese said the current tenant has the first opportunity to sell or lease. The chair of the Board said, from the audience, that it is muddy -there are different leases all over the place.

Ms. Boggs provided information on the conflict of interest code. Board members cannot deliberate on any issue of which they have a financial interest. If the interest is insignificant or of a large class, there is no conflict. If the influence has insignificant effect, there is no conflict. It is a matter of degrees. In this case, there is a potential for a conflict of interest. A lease is a contract, there is bargaining, there are terms of the lease to be negotiated. Regarding land use issues, more facts are needed, but this could pose a potential conflict. CBJ Law has not issued a written opinion since 2002 on this issue.

Ms. Johnson asked if a board member thinks they have a conflict, what would be the proper procedure. Ms. Boggs said there are provisions for the law department to issue informal and formal opinions, and they are open to every board member.

Mr. Powell asked about the standard for review – and if it is the same procedure for Asserablymembers. Ms. Boggs said yes. Mr. Powell asked if more time was needed by the law department to review the three comments of the auditor. Ms. Boggs said that regarding the first finding, the law department doesn't know how many hangars there are. We don't know if those who own hangars constitute a large class of people. Regarding the second finding, minutes need to be kept. Regarding the third finding, declarations of a conflict of interest are mandatory if there is an indication that there may be a conflict.

Mayor Botelho said it would be helpful to know where the conflicts arise in the work of the board in general categories, and if there a point where the conflict is so pervasive that it would prevent a member to carry out the work of the board.

ATTACHMENT #5

Mr. Mertz said that a person in question is a management level employee of Ward Air. When the financial livelihood is dependent on the airport itself – virtually every decision made will effect, either directly or indirectly, a business operating at the airport. Rate setting, allocation issues regarding Alaska airlines and the 135 operators, and terminal expansion are some of the major decisions the board effects.

Mr. Wheeler asked for a process to make decisions on board member appointments - should we ask our legal staff to advise on potential conflicts? Mr. Mertz said the hospital board is a good example – there are two doctors, but not six. You want the perspective, but not the majority. It has to do with the degree of control. It makes sense to have some determination of what conflicts a person may have and may bring to the board.

Mr. Ridgeway said conflicts are inevitable, but the way that it has been dealt with is to create advisory boards. The minutes appear to show most members have some sort of conflict. There are not a lot of outsiders coming to the airport board. Perhaps we should consider an advisory board of user groups and have a separate business board. Mr. Mertz said that struck him as well, that the people who show up to the meetings have direct interests in the operation of the airport, which is good, however, because of the strong involvement of the tenants, it makes more sense to limit the potential insiders with interest on the board. The airport board was an advisory board previously, and expansion can be cumbersome. He has seen an advisory group to a board work effectively, and not.

Mr. Heueisen said the people who serve on the board, whether there is a perceived conflict or not, have the best interest of the airport at heart, and he has not seen people make decisions which personally benefit them. He is an insurance agent, and has gone to the attorney, personally, several times, for an opinion on conflict. At the time board appointments were made, he asked for no more tenants to be appointed to the board. The problem is the perception of a conflict, whether there is a real conflict or not. When the issue of leases come up, how are they to act? He has made the call that he doesn't feel the airport board has the ability to make decisions on leases. In the future, he asked the Assembly to count the number of people who are tenants, and appoint some. Their opinion is valuable, but it should not be a majority. He appoints the committees, and he picked the members on the Finance Committee due to their expertise. He purposely left them off the leasing committee. The operations committee chair has the most experience out there. They do their best, but he asked the Assembly to please not send them any more conflicted people.

Mr. Wheeler asked if it is possible to appoint non-members to the committees. Mr. Heueisen said that on standing committees it was not, but on ad-hoc committees it was possible. Mr. Heueisen said he was finance chair previously and the meetings were recorded, but no written minutes were made. It appears that the recording has stopped, but we can record all meetings.

Board members in the audience said that the auditors had not spoken with them about this issue.

Mr. Powell asked the assembly about accepting the report tonight, or if more information was needed.

MOTION by Johnson, to accept the report.

ATTACHMENT #5

Mr. Wanamaker asked what accepting the report means, if it was to accept it without making any determination on findings.

Mr. Powell said yes. We can qualify the acceptance with follow up actions. Mr. Botelho suggested receiving the report.

Hearing no objection, the report was received.

Ms. Johnson said to allow only three tenants to be board members, the Assembly would need to make an ordinance change. Board appointments are scheduled for this Wednesday. She would like to delay those appointments for further recommendations from the Attorney's office. The timing is unfortunate and we do not have enough information on the degree of conflict. She asked if the Assembly wished to do the same with the harbor board.

MOTION by Johnson, to delay the consideration of airport board appointments for approximately 30 days.

Ms. Johnson said there are two members who have the appearance of conflict, that are up for reappointment, and two applicants have apparent conflicts. The Assembly needs to know the degree of conflict.

Mr. Wheeler said it makes sense, and the establishing ordinance needs to be reviewed in the Human Resources Committee.

Mr. Wanamaker said delaying appointments and allowing members to continue to act is prudent. There is a presumption of a conflict now, and the information in the report goes back and forth regarding the conflict with the definitions. There are a lot of things wrong with the conflict of interest code. The Assembly needs to do a comprehensive revision of the conflict of interest code. The city attorney, potential candidates and board members need to discuss conflicts before they are brought to the Assembly. He is concerned about protecting people's legal rights.

Mr. Ridgeway agreed to delay appointments. The Assembly should consider delaying all appointments, including those to Eaglecrest, to stay on the subject. Mr. Ridgeway said that a total revision may be needed of all the boards. We will always have this conflict of interest issue before us due to people's personal interest in serving. There are some areas where we could look at advisory boards.

Mayor Botelho supported the idea of delay. He suggested the need to set some time aside at the next meeting to allow Airport board members with potential conflicts to discuss this with the Assembly, before any appointment interviews. He suggested moving forward with the interviews for the Eaglecrest Board, as we need to stay on track with time.

Mr. Sanford said that most of the board members on the Eaglecrest Board are users or part-time employees. Most of the members are those who want to see good facilities. This will be difficult to do and I would like information from the law department on the levels of conflict.

ATTACHMENT #5

Mayor Botelho said he was not aware of employees on the Eaglecrest board, which would create a conflict, however, users of the facility could be considered in a large group of public in the same position and exempt from conflict.

Mr. Swope said he wanted to bring up concerns regarding Eaglecrest. That board is lacking members with specific financial experience, and there are no new applicants at this time, so he was going to ask for a delay in those appointments.

Mr. Wheeler said there is an appearance of conflict now, but he would like this board to be able to make decisions without the pall of the appearance.

Ms. Johnson said she spoke with Mr. Corso about conflicts a few years ago, and in a community of this size, it is going to happen -- we need to know how much is too much. She appreciates holding off for 30 days.

Mr. Wanamaker prefers holding off for 60 days, to allow time to work through this. He is concerned about the conflict of interest code, and terms such as "speculative conflict of interest." This term is not in there, but we need time to come to some better informed places of decision making capabilities.

There was no objection to a 60 days delay to on appointments to the Airport, Docks and Harbors and Eaglecrest Boards, and to return the issue to the Committee of the Whole. There was no objection to reviewing the existing airport board ordinance for possible changes for limitations on tenants on the board.

Mr. Wheeler asked about Findings 2 & 3. Ms. Johnson said she was certain the airport board will comply with both of those from now on.

IV. Adjournment: 6:50 p.m.

Submitted by:
Laurie Sica
Municipal Clerk