

**St. Lucie County International Airport
LEASING POLICY AND PROCEDURE
12/12/06**

Policy

The St. Lucie County Board of County Commissioners (Board), as the governing agency controlling the St. Lucie County International Airport, is responsible for leasing Airport land according to Local, State, and Federal law including, but not limited to, the guidelines and grant assurances of the Federal Aviation Administration (FAA), the Florida Department of Transportation (FDOT), County Code of Ordinances, Land Development Code, and Resolutions adopted by the Board. It is the policy of the Board to lease property on Airport for aviation purposes as a first priority. If there is no aviation purpose that can be identified for a site available for lease, the Board will consider non-aviation or interim proposals.

Authority to Lease

All leases and subleases require the approval of the Board of County Commissioners. The Board must also approve all amendments to such leases. The Board has in the public interest, the right to:

1. Impose and update from time to time fair and reasonable operating requirements and standards for commercial and non-commercial activities that are conducted on airport property.
2. Impose and adjust from time to time fair and reasonable fees, rents, or other charges, for the privilege of conducting commercial and non-commercial activities upon Airport property, the proceeds of which are to be used to pay for operating, maintenance, and development expenses of the Airport. The rates and fees charged by the Airport are meant to be structured to make the Airport as self-sustaining as possible, while ensuring fair and reasonable rates.

No person, group of people, firm, or corporation shall locate a commercial business activity within the boundaries of the St. Lucie County International Airport without the written approval of, or under the specific terms and conditions of, a lease agreement or other operating agreement with the Board and, as necessary, approval by the Federal Aviation Administration.

No one shall enter upon airport property for the purpose of conducting any commercial activity that is competitive to any existing airport tenant without the written approval of the Board, and when necessary, the Federal Aviation Administration.

Land Uses

Land uses on the Airport are described in the Airport Master Plan and Airport Layout Plan, which have been developed and periodically updated along with any associated environmental impact documents. These documents are reviewed and approved by the FAA, FDOT, and the Board, following a public review and input process. These documents serve to guide Airport staff in making land use leasing recommendations to the Board for approval. The lease documents specify the allowed uses of airport land and any land use restrictions that may apply. At the Board's sole discretion, interim uses may be permitted if the demand for the highest and best use for the property is delayed due to market conditions. Interim uses would be considered for shorter term leases.

Competitive Lease Proposals

Airport property identified for aviation uses may be leased without seeking competitive proposals when it is in the best interest of Airport, such as when supporting community aviation needs. This is usually done only when there is a surplus of airport land available for lease, and when not more than one party has expressed an interest in leasing a particular parcel of land. In some instances, lessees that adjoin a vacant parcel may be given the first opportunity to lease the adjoining parcel. Periodic appraisals or

market analyses will be used to establish lease rates. The potential tenant is leasing property in an AS IS condition and must use due diligence in investigating the condition of the site or facilities.

If more than one party is interested in bidding on a non-aviation (including industrial) lease, competitive proposals may be after establishing a starting rent through an appraisal process or market analysis to set fair market value. If used, this process will involve Board review and selection of the proposal based on financial standing, lease rate, ability to construct in a timely manner, provisions for any unmet aviation segment to serve the general aviation or commercial service needs, and investment in, and appearance of the facilities to be constructed. Operating fees or percentage of gross sales may alternatively be used in determining a rental rate for non-aviation uses such as hotels, rental car facilities, and restaurants.

A minimum deposit of three months of rent will be required on the execution of any lease, which can be returned to the Lessee at the end of the lease if the Lessee leaves the property in good condition, normal wear and tear excepted, has removed and appropriately closed all fuel or other storage tanks, and after all rent due is paid.

Length of Lease Term

To allow the County the greatest flexibility in making land use decisions over time, lease terms are generally limited to the shortest term possible, especially for interim uses. When necessary, fixed-term leases are granted for the minimum number of years to allow a lessee to amortize, and receive a reasonable return on, the lessee's investment in leasehold improvements. A formula to determine term based on investment is to grant one year of lease term for each \$5,000 invested per acre of leased land, with an initial term for aviation leases not to exceed 40 years. Accordingly, to qualify for a forty-year term on a 5-acre parcel, a lessee would have to invest \$1,000,000 in approved leasehold improvements ($\$5,000 \times 5 \text{ acres} \times 40 \text{ years} = \$1,000,000$). The \$5,000 per acre per year formula for determining the length of lease term is a minimum requirement. Airport industrial land leases typically have the same minimum investment requirements, at \$5,000 per acre per year, with an initial lease term of 40 years. Extensions of term beyond this timeframe may be negotiated subject to the additional investment as noted above. Both aviation and industrial leases will be subject to periodic adjustments to keep pace with the rising cost of land. Lease terms for other non-aviation use properties may have different investment requirements and longer or shorter lease terms based on the proposed use. Leases where there is no investment by the lessee will be on a month-to-month basis, depending on the circumstances.

Fair Market Rental

It is a policy of the Board, and a requirement of the FAA and FDOT, that the Airport receive fair market value based on the highest and best use when leasing airport land. As noted above, interim land uses may be allowed if the demand for the highest and best use is delayed due to market conditions. Achieving fair market value usually starts with an appraisal requisitioned by the Airport, followed by negotiations between Airport staff and the lessee, or prospective lessee, to reach agreement on terms. The County typically negotiates for a rent based on an **8%** return on the appraised value of the land or as recommended by a qualified appraiser based on market conditions. Restaurants, hotels, rental car facilities, and certain other land uses, usually result in rentals based on a percentage of the lessee's gross income, as is customary for such leases. Leases with a term exceeding ten years in length shall provide for renegotiation of rent to market value at ten-year intervals. Annual adjustments based on Consumer Price Index (CPI) or 2 %, whichever is greater, will be required in intervening years to ensure that the value of land leased adjusts accordingly.

Lease Contracts and Legal Review

County lease contracts are intended to transfer to the lessee the liabilities associated with possession and control of real property regarding compliance with all federal, state and local laws and regulations, including those pertaining to the use, storage and disposal of hazardous materials and maintenance of the facility. All County leases shall be written on a form approved by County Attorney's Office and shall, at a minimum, conform to local/regional standards of tenant responsibility and liability and consistency

with all FAA and FDOT guidelines and grant assurances. County leases may contain more restrictive clauses than private sector leases to better protect the public interest. The County requires strict compliance with the Airport's security program and all federal, state and local laws, particularly environmental laws such as hazardous materials management, spill control and counter measures plans, and storm water pollution prevention regulations. Any violations caused by the tenant for failing to comply with any of the federal, state or local laws will be the sole responsibility of the tenant. Lease language may be periodically updated to reflect changes in real estate law and to meet changing economic and other risks associated with the ownership of land. During the term of a lease, lease amendments may be agreed to between the parties to effect changes to the rent or other economic lease provisions, or to update antiquated lease language that no longer protects one or both of the parties as originally intended.

Construction of Leasehold Improvements

Airport leases typically require the construction of leasehold improvements, which will be owned by the lessee during the term of their lease and which will revert to the ownership of the County at the end of the lease term. Height restrictions, lot-line set backs, parking requirements, building design, quality of construction, and other requirements are controlled by the County' Land Development Code, County building code requirements, and FAA design standards. A performance bond may be required to guarantee the timely construction of required leasehold improvements. A potential lessee that has a conceptual approval from the Board has no more than 90 days for a due diligence period prior to entering a lease with the County for the land. This 90-day period should include filing a site plan/conditional use applications, completing an environmental phase 1 audit if desired, and submitting an FAA airspace study. If development does not occur in a timely fashion (18 months), the performance bond and all rights to leasing the property may be forfeited. Exceptions may be allowed by the Board, but this must be based only on reasons beyond the control of the potential lessee.

Lease Extensions Existing Tenants and Equity

A lease extension may be granted to a tenant who has fully complied with all terms and conditions of the lease, including timely payment of rent, and if granting an extension would be in the best interests of the County. Existing tenants may submit a request for a new lease six months prior to the end of their lease. The County is not obligated to accept such a request, but will consider all proposals, evaluating them in light of the following criteria:

- Existing/proposed use must be consistent with Airport Layout Plan, Master Plan, Zoning, Comprehensive Plan, and other relevant land use planning documents.
- County must determine that there is no immediate need for the land after the current lease expires.
- Lessee must be in good standing (i.e., compliant with existing lease terms including timely payment of rent and other operating fees).
- New capital investment shall apply to qualify for a term in excess of the current termination date at current standard (see "Length of Lease Term" above).
- County shall determine whether or not the public interest would be better served by allowing the lease to expire so that potential new tenants may participate in a competitive selection process.
- If the developments on the site are to revert to County ownership, the County may chose to retain ownership of the facilities and to lease these improvements back to the Lessee with the extended lease term, or the County may require payment for the present value of its reversionary interest in the leasehold improvements.

It is the practice of the Airport to negotiate lease extensions when it is in the best interest of the aviation community or when a surplus of land is available for lease and there is no written notice of interest by third parties in bidding on the particular parcel of land covered by the expiring lease.

Typically, Airport leases provide that at the end of the lease the improvements will become the property of the County regardless of who originally installed the improvements. If a lease is extended prior to the expiration of its term, the County may require payment for the present value of its reversionary interest in the leasehold improvements. This interest is referred to as Equity. The amount of equity is based on appraising the value of the improvements as of the end of the lease, and discounting that value to a present value. Typically, an appraisal is done by the Airport to establish this value, and negotiation may ultimately be involved to settle on terms acceptable to both the County and the lessee. The County will permit an amortization of the equity it is owed, with interest, over a period of months not to exceed approximately 50% of the extended lease term. The purchase of the County's equity interest by the lessee, whether by cash payment or amortization, may be counted as part of the investment requirement in establishing the length of extended term, as discussed above under "Length of Lease Term".

Procedure for Granting a New Lease to an Existing Lessee for a Longer Term

At times, part way through an existing lease, a Lessee may express interest in constructing new capital improvements in exchange for an extension of a lease. This can be in the County's best interest because: (1) it provides for new and improved aviation and/or industrial facilities earlier than if Airport was to wait until the lease terminates; (2) it prevents deferred maintenance, which can be common in the final years of a long term lease; and (3) it allows a successful business to continue on at the airport. The initial term for leases is typically 40 years or less. The procedure for a lease extension includes:

1. County receives a written request from Lessee, proposing a new lease.
2. County staff reviews Lessee's proposal to determine if:
 - Lessee is in good standing and provides a valuable service to the local aviation and/or business community.
 - The existing or proposed use is appropriate and consistent with the Airport Layout Plan, Master Plan, Zoning, Comprehensive Plan, and any other relevant land use planning documents.
 - The existing use is an interim use and it may be in the best interest of the County to allow the use to continue until market demand necessitates the change in use at the County's sole discretion.
 - No written Notice of Interest by other parties to bid on this premises have been received by County.
 - County has no need for this area upon the termination of the existing lease.
3. If it is determined that it is appropriate to enter into a new lease, County Attorney's Office will draft a written lease amendment to Lessee, subject to Board approval. This proposal will detail the Capital Improvement Requirements and the Equity Payment that may be paid to County for postponement of County's reversionary interest in the property.
4. Upon acceptance by Lessee, the proposal is placed on the agenda for the Board to approve the lease. There is public notice of all items on the Board Agenda and public comment on any item is accepted upon request.