

# Oregon State Aviation Board Meeting Minutes

**December 10, 2009**

**Portland, Oregon**

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Pursuant to notice made by press release to newspapers of general and local circulation throughout the state and mailed to persons on the mailing list of the Committee, a meeting of the Oregon Aviation Board was held on Dec. 10, 2009, at the Port of Portland, Fire Station 8, Portland, Oregon.

**Board Members in attendance included:** Board Chair Mark Gardiner, Vice-Chair Chris Corich, and Board Members: Steve Beckham, Larry Dalrymple, Nan Garnick, Joe Smith and Jack Loacker via teleconference.

**Employees in attendance included:** ODA Interim Director, Gregg Dal Ponte; ODA Planning & Projects Manager, Chris Cummings; ODA Fiscal Manager, Cindy Pease; ODA Contracts & Leasing Manager, Rita Rogerson.

**Presenters and Guests in attendance included:** Chris Bryant, Shift Captain at Fire Station 8, Ken Hardwick of Independence Airport and Airpark; Bob Noble, OAMA, general public.

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## CALL TO ORDER — INTRODUCTIONS

- The meeting started at 11:10 a.m. Self introductions were made.

The Oct. meeting minutes were not available to approve. Mark thanked Chris Corich, Port of Portland PDX, Long Range Planning Manager, Vice-Chair to this Board for hosting this meeting at Port of Portland, Fire Station 8.

## Public Comments: None

Ken Hardwick of the Independence Airport and Airpark thanked Gregg Dal Ponte, Interim Director of Aviation, for attending the Independence Airpark town hall meeting and for the visit. ODA State Airports Manager, Mitch Swecker and OAB Board member Joe Smith also attended.

Bob Noble, OAMA Director thanked Gregg and ODA staff for shepherding the work on ConnectOregon3, clarifying issues and assisting with provisions related to HB2100. There are two unresolved issues: 1) A legislator has advanced a bill to remove the multi-modal fee for rural airports. Another legislator is proposing to remove it from all CO3 projects. Representative Gene Whisnant advanced it just from the rural airports side. 2) Is the retroactive part, those who crafted the bill (HB2100) to make it available this biennium and the interpretation that could not do any retroactive back to July, there is at least one critical grant recipient who wanted to go back to July 1, 2009. That was not part of the upcoming legislation.

Mark Gardiner would like to state for the record that the Board is absolutely supportive of Through-the-Fence (TTF) and Independence Airport.

**Executive Session:** Litigation and personnel discussions 30-45 minutes.

## Mark Gardiner – Board Chair Update:

Explained when he became part of this board and how the agency was operating. The Director runs the agency and the board does policies. Mark has since reviewed the agency statutes and the practice that was adopted does not reflect the statutes. The past idea that the board needs to stay

out of items regarding contracts is contradictory to statute. Need for change to the operating code. The board will be going through “Rules Management Process” to revise Oregon Administrative Rules (OAR) and to ensure good business practices. Key points:

 Policy Direction

-  Authorize contracts and items the board has not been doing. Mark distributed a memo with more details on what the board is expected to do. Group discussion.  
He explained the Oregon Department of Aviation’s (ODA) relationship with the Department of Administrative Services (DAS), Budget & Management (BAM), Legislative Fiscal Office (LFO), and the Department of Justice (DOJ). Also for the record how supportive the Governor’s Office has been to ODA as well as the support from some Legislative members.
-  FAA: There are issues with TTF. The funding in general for states to work with FAA on issues of grant assurance compliance with Aurora Airport, possibly others.
-  ODA Director Status: Mark explained Gregg had agreed to come on board as interim director for a short-time: for 60-90 days. Since the recruitment was just posted 12/9/2009, it will be a longer timeframe. Per the Governor’s Office, DAS, Oregon Department of Transportation (ODOT) he has agreed to split his salary 50-50 because of ODA’s current financial situation. Also note the board will be involved in the hiring process for the new director of ODA.

**Gregg Dal Ponte – Director’s Overview of ODA:**

Gregg has been at ODA for 8 weeks, most recently on a part-time basis. He believes he’s learned a great deal during that time and is happy to share his impressions.

He is reminded of “A Tale of Two Cities”. There are two stories to be told. Flightlines contains an article he wrote which broadly describes the various current undertakings of ODA with regard to public policy goals.....also he described the ODA staff as caring about Aviation and the work at ODA. The second is a story about inadequacies around staff training, strategic direction, and business infrastructure that imperils the positive attributes the staff possess. He says a genuine effort to improve must necessarily begin with an honest acknowledgement of problems.

New guest arrived: John Inlay, General Manager for commercial airlines.

In terms of managing expectations, he’d like you to consider the information he is going to share as an outline, since it should be obvious that we cannot have any of the substantial conversations this subject matter requires in the brief time today’s agenda provides. With that in mind, let me recite a list – details to follow not a complete list.

**I. Key Findings of Business & Financial Status**

- A. ODA suffers from budget problems of a substantial nature, including inadequate expenditure limitations and a projected cash shortfall. The magnitude of those problems is so large that extraordinary steps have been taken to stabilize the situation. ODA cannot balance cash without Legislative action.
  - 1. Temporary employee has been let go.
  - 2. Limited duration employee has been told this position will expire. 3/31/10- layoff initiated at ODA.
  - 3. Second year Pavement Maintenance Program (PMP) program for this biennium has been halted to preserve cash.
  - 4. Recently commenced or yet-to-begin GA entitlement work has been put on hold due to inadequate provision of Other Fund (OF) expenditure

- limitation needed to support ongoing payments to contractors for work already underway or scheduled to have commenced.
5. Our current best effort to project an ending fund cash balance in our Agency Operations budget results in a likely cash deficit ranging from a negative \$361K to a negative \$100K based on different analysts reviewing the same data – but regardless of assumption it is always negative. LFO expectation is that at a minimum the agency end the biennium with a positive cash ending fund balance in the Operations category equal to three months operating costs = \$500K. We have to deal with upwards of an \$860,000 cash shortfall.
  6. We've had to tell the contractor performing the work at the Lebanon Airport that ODA will not be able to pay them for work completed in 2009 until the Legislature approves additional expenditure limitation because the former Director signed a contract almost double the amount of the specific appropriation that the legislators authorized.
  7. Anticipated revenues from available revenue sources were overestimated during the construction of the 09-11 Legislative Approved Budget (LAB) in ways which appear could have been easily avoided resulting in the assembly of an unrealistic budget. (OVEREXTENDED AGENCY REACH)
  8. Internal audits have reported that ODA is failing to generate a maximum return in lease revenues from its state-owned airport assets.
  9. It is very apparent that ODA historically not follow its own administrative rules based on the observation that agency practices over the years do not conform to listing OAR.
  10. Several OARs lack necessary precision to be adequately instructional in day-to-day agency operations. (IN KIND payments)
  11. ODA has excess reliance on in-kind payments and needs to regain balance in that equation to create positive revenue flow.
  12. ODA reports that 4 out of 28 airports are profitable but I'll tell you that conclusion is suspect, given the agency does not follow the tenet of true product cost accounting by having no process to allocate the agency overhead costs to the individual airports.
  13. There historically has been no process in place to verify current expenditures to limitations availability.
  14. ODA has made no use of Reduction of Expense in some instances and also inappropriate use of Refund of Expense (RUX) in others as that process has been envisioned in the Oregon Accounting Manual.
  15. The organizational chart can be revised to achieve a better integration of multidisciplinary staff work product to reduce these kinds of issues.
  16. The basis for establishing appropriate lease rates is poorly and incompletely contemplated now, as seen by an unimproved land lease rate that is unsupported by any analysis and a lack of any apparent ability to assign a property lease rate on improved land that is buildable versus not buildable based on FAA Pt. 77 transitional surfaces.
  17. ODA has made false declarations to FAA that has resulted in receipt of federal funds that may have to be repaid – Aurora Tower Siting Study and Joseph AWOS.
  18. ODA has a history of inadvisable business practices which create a certain lack of discipline and constitutes a management problem to the agency. Staff are not to blame – past is prologue and the template was established years ago. External relationships need work within government.
  19. ODA interaction with DOJ less than satisfactory. Advice has conflicted and evolved. DAS resources not fully utilized. Need to restore confidence of LFO.

20. Only recently commenced process of creating monthly expenditure plan. Too simplistic to simply say, for example for three months, July-September, we've spent 11.5% of ODA's budget after 12.5% of biennium and call it good.
21. Ineffective management of staff OT and comp time cash payouts.

## **II. Processes Underway**

### **A. Management Audits**

1. ODOT Internal Audit – complete
2. DOJ Review – ongoing
3. DAS Multi-Disciplinary Team – ongoing
4. Staff interview trend Summary – complete

### **B. Budget/Financial Planning**

1. separate agenda topic

### **C. Business Practices**

1. separate agenda topic

## **III. Pending Processes**

### **A. OAR revisions – lots to be done here**

1. Acquired know how
2. Polling staff
3. TLM Lessons Learned  
app, in-kind, FMV

### **B. Legislative Actions**

1. E-Board Expenditure Limitations
2. Policy Legislative Concepts

## **IV. Connect Oregon III Process Update**

1. Application due date
  - Regular 11/20/09
  - Rural Airport 5/01/10 and successive date
2. Retroactive payment
  - ODOT agreed to excess match of late occurring costs
  - OAMA Legislative Concept
3. Schedule/ODA Board involvement
  - Chris Cummings

### **Chris Cummings Connect Oregon III Process Update:**

Chris explained to the board 97 applications for CO3 were submitted to ODOT for the CO Program. Aviation has 26 applications. The applications were sent over to Chris and his staff for in-house completeness review, last year a consultant was hired to do this. Chris will then send the results of the completeness review back to ODOT for their recommendations on who's eligible.

He distributed a handout with the CO3 schedule. After the review is complete the board will go through and agree or disagree on the projects. In the past the board conducted interviews of the applicants. Chris asks the board to discuss whether or not they want to do so again. In the past it was helpful to be able to ask questions to the applicants on their submitted projects. Once the board has made their final recommendations they'll send them back to the final review committee, who will then send them on to the Oregon Transportation Commission (OTC) for approval. One difference this year is the rural applications are due May 2010. Applicants can only receive one grant.

### **Action Item Agenda Item #6 Cash Rebalance Strategy**

Request to increase expenditure limitations -

Mark Gardiner entertained a motion to adopt the strategy described by Gregg

**Motion:** To move forward with the Legislative Concept to use the PMP cash and request E-Board for the appropriate changes to expenditure limitations

Chris Corich so moved the motion

Larry Dalrymple 2<sup>nd</sup> the motion

Open for Discussion

Motion passed unanimously

#### **Discussion:**

Chris Corich, he understands the sunset provision, he suggests the board be generous with this provision. If we put it in there and rely on the board to comeback and make the evaluation – does it makes sense, may be in the same position again. Are we going to only do this one time? Should work on the chronic nature of the problem but the PMP is a pretty large chunk of dollars that come in, possibly re-think it and possibly go from a year-to-year basis until the problem is solved.

Steve Beckham: Another question posed, is an audit committee needed? Is this something the board would be interested in having? This will be discussed further into the meeting.

Joe Smith: He suggests that a sunset provision is not asked for and if they insist then make it as far down the pike as possible.

### **Action Item Agenda Item #13 (#1) Under the ODA Business Practices**

Overall Approach –

Mark Gardiner read the motion w/clarification from Chris Corich:

**Motion:** The resolution will be a policy that no building is to be built west of the 35 ft. part 77 transitional area-line at Aurora Airport. Establish a building restriction line based on the 35 ft. of the part 77 transitional area surface.

Joe Smith so moved the motion

Larry Dalrymple 2<sup>nd</sup> the motion

Motion passed unanimously

Mark explained he, Gregg and Chris Cummings have discussed many different views of the Aurora State Airport, Pt 77, 35 ft. The three provided to the board a very detailed explanation of what they came up with and why.

### **Action Item Agenda Item #10 FAA Through-the-Fence Draft Policy Letter and Proposed Comments**

Mark explained to the board they have received many handouts and correspondence referencing Through-the-Fence (TTF). He briefed the board on discussions that have taken place. Gregg circulated a *draft* letter to the board addressed to the FAA referencing TTF. Mark said this is a job well done by Gregg in reflecting the issues.

Draft Letter to the FAA-

Mark Gardiner read the Motion

**Motion:** To approve submitting this letter over Gregg and his signatures in sustain form that we have in case there are some minor edits.

Steve Beckham so moved the motion

Larry Dalrymple 2<sup>nd</sup> the motion

Motion passed unanimously

### **Discussion**

Joe Smith: On the record agrees with the resolution, would like one of the proposed policies, to recognize sometimes what you do put out for bid, and that you take the best offer you get. He hopes that this would be considered as it makes no sense the building be sitting vacant, that the policy would always present.

Mark briefly discussed each board members assignments and would appreciate members meeting with him to discuss.

Joe: What role and expectations does the board chair expect from each board member and their assignments? Joe explained past practices of the board's duties, which included creating Oregon Administrative Rules when the Department of Aviation was a new agency.

Gregg: with regard to board member assignments he explained he met with the Senate President's Office 12/9, with less than full-assurance that ODA would get the budgetary Legislative Concept approved. Is there something the board can do to assist in finding a couple of key legislators who are in favor of this necessary Legislative Concept? Mark said he will work on this and talk with a few additional board members.

Mark: Future board meetings will be in Salem and Portland and CO3 meetings will be in Salem. The dates will remain the same; locations will be local until summer. He will mail out a revised OAB Board meeting list to members. Chris Corich offered accommodations when the meetings are in Portland; Mark accepted.

#### **V. Cash Rebalance Strategy**

- Ending Fund Cash Balance spreadsheet
- Legislative Concept
- LD Lay off

\*Second year salary in PMP needs to be moved back to OPS

#### **Agenda Item #8 OAR Review and Overhaul Path Forward**

Gregg expressed he may have to bring an outside source in to the department to assist with the procedural aspect of the form and process, preparing the submission to the Secretary of State.

#### **Agenda Item #9 General Liability Insurance Lease Requirements**

Rita distributed a handout with recommended fee changes. Senate Bill 1311 passed on April 15, 2009, and went into effect on July 1, 2009. The old tort claims were quite a bit lower. She provided the board with an overview (2<sup>nd</sup> handout) of the old amounts and new amounts. The department is being advised by DAS, Risk Management Division, and DOJ to go with the maximum amounts. ODA has not had a claim since approximately 2005. Rita had asked Risk Management to assist in determining the best fees for this agency. She would ask the board for their recommendation on amounts of coverage.

Mark: This will be put on hold until the board is presented with recommendations from ODA.

**Action Item Agenda Item #13 (#2) Business Practice Changes**

Board involved with direction of ODA Director and Dept. business practices –  
Mark Gardiner asks members to vote on this.

**Motion:** Direct the ODA Director to reform current ODA business practices related to airport management to be reasonable, consistently applied, reflect awareness of profit/loss implications, and to incorporate sound business practices in day-to-day operations, avoiding costs and maximizing the return on state assets.

Larry Dalrymple so moved the motion

Nan Garnick 2<sup>nd</sup> the motion

Motion passed unanimously

Discussion

The meeting was adjourned at approx. 3:30 p.m.

The next OAB teleconference is TBA.

The next OAB meeting will be TBA.