

City of Creswell  
Emergency Meeting  
Council Minutes  
August 13, 2009

Council Present:

David Case  
Bob Hooker  
Jean McKittrick  
Jane Vincent

Jack Gradle  
Bill McCoy  
Bob Millam

Staff Present:

Mark Shrives  
Roberta Tharp  
Shelley Humble  
Christy Monson

City Administrator  
City Recorder  
Airport Manager  
Attorney

Council Absent        0

Press:                    1

Audience:             11

The emergency City Council meeting was called to order by Mayor Bob Hooker at 7:00 PM and the pledge of allegiance given.

**1. Discussion of the August 6, 2009 FAA letter regarding skydiving**

**Options and Responses**

Bob Hooker said the City of Creswell has received a response letter from the FAA stating the City's July 22, 2009 letter that outlines the actions the City has taken or is in the process of taking to meet the skydiving trial period deadline of September 1, 2009 fails to address the issue. Mr. Hooker said the Council needs to discuss the FAA's response and decide what kind of action they want to take.

Mr. Hooker asked if all the Councilors had read the August 6<sup>th</sup> letter addressed to the City from the FAA and everyone responded they had.

Mr. Hooker said he feels the FAA is flip flopping again as the City has set a timeline, hired a consultant to determine if there is a safe drop zone and where it is located on Airport property and now the FAA is wanting the City to start a trial period of skydiving beginning September 1<sup>st</sup>. It is his feeling that the City needs to stick to its original plan of getting the safety plan and insurance requirements sorted out and with the consultant already hired to look into the drop zone issue the FAA is trying to force the City into a trial period. Mr. Hooker said the FAA does not control, manage or operate the Creswell Airport, the City does.

Mr. Case asked if the FAA had changed its timeline and Mr. Hooker responded the FAA did not allow a reasonable time frame in the first place, the city needed to hire a consultant, and have his final report completed before moving forward and the FAA is now only giving the City until September 1<sup>st</sup> to begin a trial period for skydiving.

Ms. Vincent asked if the City becomes non-compliant with the grant requirements and do not allow a trial jump period to begin on September 1<sup>st</sup> will the grant be lost. Mr. Shrives said he has followed up with Caol Sumi who handles the grants for the FAA and asked if the reference in their letter regarding the grant is telling us that we would be non-compliant and not going to receive the grant should we not allow a trial period to begin on September 1, and her response was no, the grant is still in process and moving forward.

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Mr. Case asked how much annual money in grants would the Airport lose per year if we were non-compliant and Mr. Shrives responded that the annual AIP (Airport Improvement Project) money is \$150,000.00 and can be saved up for projects.

Mr. Hooker said we have two major issues at the Airport the first being we do not have a safe landing area for skydiving which is why we hired a consultant to determine if there actually is a safe location for a drop zone and secondly we still have the insurance issue that has not been resolved. In summary said Mr. Hooker, the FAA is telling us on September 1<sup>st</sup> the City should let the skydivers jump wherever they want to and if they don't have insurance so be it. Mr. Hooker said he is not going to hang the city out to dry as there are liability issues here.

Mr. Millam said through all this process the City has responded to the FAA in good faith but he feels the FAA doesn't want to take responsibility for anything, and is questioning whether or not it lessens our liability by working with the FAA.

City Attorney Christy Monson reiterated Mr. Millam's question as; If we work with the FAA and follow their informal written recommendations that are often conflicting but we try in good faith to work with them will that lessen our liability if there is an accident involving a skydiver and we allow that to happen? Ms. Monson said no, she thinks it would give the City some kind of defense but not a real defense in the minds of a defense attorney bringing a suit for a death. There was one other issue Ms. Monson outlined for the Council and that being the risk that the airport might have in losing their grants if becoming non-compliant with the terms. The grant assurance #22 that is being discussed is regarding treating all aeronautical uses fairly and in a non-discriminatory manner, however that grant assurance has a public safety clause in it that allows you to still act with public safety in mind. So the real question is said Ms. Monson, are we acting in a discriminatory manner when we insist upon public safety precautions and don't meet a pretty random deadline of September 1<sup>st</sup> when our goals are looking at October, is that enough to violate a grant assurance? Ms. Monson said she feels any judge would look at this and ask themselves are you acting reasonably and with public safety assurances in mind, are you acting in a discriminatory manner and if you can answer those questions in your mind you should feel more comfortable about making your decision.

Ms. Monson said you need to consider keeping public safety forefront, because if you don't and you make an unreasonable decision to allow actions that cause an accident, you will need to weigh the liability but on the other side of the issue you would need to consider what kind of third party claims you might get. Ms. Monson said in the nature of the FAA's request to you, they have been providing a lot of informal advise that has been changing over the years which has been very costly to the city, so as a policy decision the Council needs to decide how much and how to the letter are you going to follow their advise and how far do you want to go in following their advice and set your own standards making sure they are public safety orientated and making sure it is not discriminatory and let the chips fall where they may.

Discussion ensued regarding the costs to the City for legal services for the drop zone issue, the City's Liability should there be an accident, the City acting in good faith while the FAA is changing the rules, and the hiring of an Airport Consultant. Mr. Shrives said Airport Consultant has been hired and will be in Creswell on August 24<sup>th</sup> to interview many Airport Business Owners and Users. Mr. Millam suggested the consultant work together with the FAA between August 24<sup>th</sup> and September 1<sup>st</sup> to come to a conclusion to the drop zone issue.

Ms. Vincent asked about the thirty two acres of previous drop zone and Mr. Shrives explained to her that particular piece of property belonged to the Oregon Department of Transportation and it was their decision not to renew the permit the skydivers lost access for landing on the property. Since then the City has purchased that property with money from the sewer fund.

More discussion ensued regarding the City's responsibility should there be an accident, and what limits of liability insurance the City should require for skydiving and are they reasonable. Mr. Shrives said City Attorney Ken Jones and Eugene Skydivers Attorney Doug Minger are in about a ninety-five percent agreement with the safety plan they are currently drawing up.

The Council gave their consensus to firmly respond to the FAA by having the City Attorney draw up a letter to let them know the City is acting in good faith, has a hired a consultant to determine if there is a safe drop zone at the Airport and let them know we are doing everything we can to expedite this process, but there remains the two issues that need resolution to them, the drop zone and skydiving insurance.

Mr. Shrives said he spoke with Stan Allison, Deputy Airports Manager in Washington today asking him to coordinate with Donna Taylor to see if they are willing to extend the September 1<sup>st</sup> deadline so the City can

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complete the process needed. Mr. Allison phoned back and said Ms. Taylor is not willing to back off the September 1 deadline.

Ms. Monson said she feels the City has a very strong case but we need to remember we have standards we have to meet regarding the grant assurances but the FAA also has standards to meet being an administrative agency of the Federal Government. Ms. Monson said we also need to include in our response that this process is an incredible expense to the citizens of Creswell and we are willing to work with the FAA to try to meet the deadline but feel we cannot complete our process by September 1<sup>st</sup>.

Mr. McCoy suggested we include in the response that once we receive the report from the Consultant, the mayor could call an emergency meeting to review and take action on the final report.

Mr. Hooker asked the Council for their opinion on having Mr. Shrives contact Senator Wyden's Office in order to take this issue up a level to let him know what is happening and maybe he could put some pressure on the FAA. Councilors Millam, Vincent, Gradle, McKittrick, Hooker and Case all felt Mr. Shrives should contact Senator Wyden with Councilor McCoy feeling it would escalate the situation.

Ms. Monson said she will get the response to the FAA out sometime within the next week.

Bob Hooker recommended postponing the August 24<sup>th</sup> Joint City Council/Airport Commission meeting until a later date.

Mark has asked the consultant to address the drop zone issues and provide a risk analysis and report.

**3. Adjournment**

There being no further business to come before the council, Mayor Robert Hooker adjourned the meeting at 8:02 PM.

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Robert A. Hooker, Mayor

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Roberta J Tharp, City Recorder