



Agenda Report

MEETING DATE: Tuesday, January 25, 2022

TO: City Council

FROM: AIRPORT DIRECTOR WILLIAMS
ASSISTANT ADMINISTRATIVE ANALYST AGUADO

SUBJECT: ELLAS'S AT THE AIRPORT ASSIGNMENT DENIAL APPEAL

STATEMENT OF ISSUES:

The applicant is appealing the Municipal Airport (Airport) Director's denial of a lease assignment to Chielo Apac dba Nancy's Airport Café, Willows/Glenn County Airport.

RECOMMENDED ACTION:

Airport management recommends the City Council uphold the denial of the requested lease assignment to Chielo Apac, filed by the appellants Tiffany Ella King and Sergio Angeles.

DISCUSSION:

The Airport restaurant facility lease (Resolution No. 168-17) (Lease, Exhibit A.) with Tiffany Ella King and Sergio Angeles, doing business as Ella's at the Airport (EATA), expired on October 31, 2021. EATA continues to occupy the Airport restaurant facility pursuant to the Lease's holdover provision in a month-to-month tenancy on the same terms and conditions as the expired Lease.

The four-year Lease allowed for assignment with advance approval of the City, and articulates certain factors on which the City may condition its consent. On May 20, 2021, EATA contacted the City stating that it intended to exercise its option to extend the lease (Exhibit B). Since the lease required EATA to notify the City of EATA's intent to exercise its option to extend by April 30, 2021, the City responded to EATA, noting that, while EATA did not exercise its option by the deadline, the City would be willing to negotiate a new lease with EATA. In August 2021, the Airport contracted with a commercial real estate broker to negotiate a lease renewal with EATA.

After much discussion, the Airport's broker and EATA negotiated terms for a new lease, and signed a term sheet in mid-September.

On September 20, 2021, before the new lease had been considered by the Council or executed by the parties, EATA notified the Airport that EATA had identified a potential assignee that EATA had completed the required "Assignment Checklist".

The Airport retained the services of the Santa Cruz Small Business Development Center (SBDC) to assist with the evaluation of the proposed assignee and immediately commenced an assessment of the potential assignee by: (1) personally visiting and dining at assignee's cafe and (2) forwarding requested information, provided by the assignee, to the SBDC consultant.

After the Airport's site visit, the Airport's and SBDCs' consultant independent review of the requested information (or lack thereof), including analysis of the proposed assignee's Balance Sheet, Income and Expense Statement, income tax returns, industry quick ratios comparison, and assessment of resumes and business plan, Airport management forwarded a memorandum, dated September 30, 2021, to the City Manager recommending not approving an assignment of the requested assignee. (Exhibit C).

As explained in the memo, City staff assessment of this assignment is inconsistent with the requirements of the lease because the proposed assignee has insufficient experience and inadequate financial strength. We base this conclusion on our analysis, and that of SBDC, of the resumes and financial information submitted by the proposed assignee. Also noting the failure to submit certain financial information and references requested by Airport staff.

In October 2021, Airport orally informed the broker representing EATA of the reasons why the proposed assignee was not acceptable. EATA's broker stated the Airport's findings of inadequate experience and financial strength were unwarranted, but did not offer any additional information to support this claim.

The Airport informed EATA's broker that the parties had reached new lease terms that would allow EATA to sell the restaurant once the City had approved the assignment. The Airport further advised EATA's broker that a signed lease was required for an assignment and that EATA should seek out potential buyers for EATA before the lease expired on October 31, 2021.

The Airport rescheduled the planned September consent agenda item to October. Although EATA previously agreed, in writing, to new lease terms, EATA continued to insist the Airport approve the assignment request, without providing any additional information that would refute the Airport's assessment and subsequent denial.

As a result of the continued delay in signing a new lease, the previous Lease expired and EATA entered into its current holdover status.

On November 4, 2021 the Airport delivered the new lease to EATA and provided two weeks to review and sign, allowing time to be placed on the November consent agenda. Again, although EATA and the City previously agreed to the terms of the lease, in writing, EATA refused to execute the new lease. Instead, EATA demanded the Airport first approve the assignment request, although there was no lease in effect to assign,

and without providing any information that would refute the Airport's assessment and assignment denial.

On November 12, 2021 Airport management transmitted a memorandum, "*Ella's at the Airport Lease Status and Recommendation*", with exhibits, to the City Council, City Manager, Tiffany Ella King and Sergio Angeles, to summarize the lease history of EATA and substantiate and document in writing the Airport's decision to deny the requested assignment. (Exhibit D.)

APPEAL LETTER:

Subsequently, EATA's legal counsel submitted a Notice of Appeal, dated November 19, 2021, in which he agrees that the Airport Director has "sole and unfettered discretion to approve or reject any sub-lease or assignment" and alleges that the Airport Director's denial of the requested assignment is "unfounded [and] unsupported." The letter also cites to the California Civil Code as support that the Airport Director's decision is unreasonable. (Exhibit E.)

California Civil Code Section 1995.260 and 1995.270(b) both require that if a restriction on the transfer of a lease requires the landlord's consent but provides no standard for giving or withholding consent, the landlord's consent may not be unreasonably withheld. The burden is on the tenant to prove that the landlord failed, within a reasonable time, to state in writing a reasonable objection to the transfer

Section 20 of the Lease provides, in pertinent part, as follows:

CONSENT BY LANDLORD.

Landlord shall have the sole and unfettered discretion to approve or reject any sub-lease or assignment. Landlord may condition consent upon such factors as the identity, reputation, financial worth and stability and operating ability of any proposed assignee or subtenant.

The Notice of Appeal reveals EATA's attorney's misunderstanding of the Lease consent provision. Although the Watsonville Municipal Code (Code) delegates authority to the Airport Director to administer Airport leases, the Airport Director possesses no sole and unfettered discretion. The Lease clearly defines "Landlord" as the City of Watsonville, which is governed by the City Council. Accordingly, the Code provides for the appeal to the City Council of administrative decisions made by the City's administrative staff.

However, the Landlord did not exercise sole and unfettered discretion to reject the assignment. Rather, the Airport Director, in the exercise of his delegated lease administration authority, retained the services of an experienced real estate broker to negotiate a lease and the services of the Santa Cruz Small Business Development Center (SBDC) to assist in the evaluation of the proposed assignee, and applied the standards, as articulated in the lease, of assignee identity, reputation, financial worth and stability, and operating ability.

The Airport staff and SBDC reviewed and analyzed the documents submitted by the proposed assignee, including the proposed assignee's Balance Sheet, Income and Expense Statement, income tax returns, industry quick ratios comparison, Business Plan, and assessment of resumes. Following the review and analysis, Watsonville Airport management forwarded a memorandum to the City Manager recommending not approving a purchase and assignment by the proposed assignee. The Airport Director informed EATA of the decision to deny the requested assignment, in writing, on November 12, 2021.

The City provided a verbal notification of the assignment denial on October 7, 2021, less than two weeks after receiving the assignment request. The City provided the written decision of the Airport Director to EATA within 54 days of the Airport first being informed of the proposed assignee, which is reasonably timely. The decision was based on, and supported by, the actual data provided by, or lack of information not provided by, the proposed assignee.

FINANCIAL IMPACT:

If the City Council upholds the Airport Director's denial of the appeal of the requested EATA lease assignment there will be no financial impact to the Airport Enterprise Fund unless the appellant litigates the matter in court, at which time the Airport would be subject to attorney's fees to defend the case. If Council supports the appeal and rescinds the Airport Director's denial of the requested assignment, there may be continuing rent in connection with the restaurant facility lease.

ALTERNATIVE ACTION:

The City Council could grant the appeal. The Council could also require the Airport to reevaluate the requested assignee with any additional documentation submitted relative to financial analysis, restaurant management experience and a cogent business plan for a General Aviation airport restaurant facility.

ATTACHMENTS AND/OR REFERENCES (If any):

Exhibit A: Airport restaurant lease (Resolution No. 168-17)

Exhibit B: EATA intent to exercise its option to extend the lease.

Exhibit C: Memo to City Manager recommending not approving an assignment

Exhibit D: Airport memorandum, "*Ella's at the Airport Lease Status and Recommendation*"

Exhibit E: EATA's submitted a Notice of Appeal, dated November 19, 2021