

Owner Occupied Hangar Lease Policy

- All historical actions and decisions would remain in-force and not be affected by the new policy until such time as a request for time extension was made. Neither would any such historical actions or decisions be considered when approving or rejecting a request.
- The term 'extension' was no longer appropriate for the application of the proposed policy. Rather, a new term 'amendment' was selected as correct and in-fact descriptive of the policy as the existing lease agreement would be amended immediately to comply with the new conditions.

The following conditions would apply to any approved request:

- The Board determined that any historical actions or decisions would not be affected or considered, meaning going forward a previous 'extension' would be treated as having not occurred.
- Upon request and approval, the existing footprint lease would be amended to extend the lease period for an additional 10 years from the end of the current lease agreement.
- Such an amendment request could only be granted once during the life of a lease. Transfer or sale of a lease would not have the effect restarting the clock.
- Upon request and approval, the existing footprint lease would be amended to require the lease holder to begin payment of the current footprint rate from the date of approval, nullifying any previous rate.
- Upon request and approval, the existing footprint lease would be amended to nullify any tax rate agreement that may have been previously allowed.

We further determined this policy should be made part of the operating conditions of the KGEV advisory board and airport management. A report on hangar leases will be made to the Ashe County Board of Commissioners prior to the development of County's annual budget.

Adam Stumb

From: Crews, Connor H. <ccrews@sog.unc.edu>
Sent: Thursday, October 22, 2020 1:17 PM
To: Adam Stumb
Subject: RE: Airport Leases

Good afternoon Adam,

In short, it depends.

Ordinarily, leases of surplus real property owned by a county are subject to procedural requirements contained in [G.S. 160A-272](#). However, [G.S. 63-53\(3\), \(4\) and \(6\)](#) modify that result with respect to real property located at a county-owned airport.

Presumably, the County would not rely on the authority granted by G.S. 63-53(4) to lease surplus airport property to a private entity. That provision authorizes counties to “lease any property . . . acquired for airport purposes and belonging to the [county], which, in the judgment of the governing body, may not be required for aeronautic purposes in accordance with the laws of [North Carolina].” (Note that the term used throughout the airport statute is “municipality” (see [G.S. 63-1\(a\)\(14\)](#)), but the statute defines “municipality” to include a “county”. In my opinion, reliance on G.S. 63-53(4) would require the County to proceed according to the procedural requirements in G.S. 160A-272. A [1982 AG opinion](#) came to that conclusion, as well.

Reliance on the provisions below would not require proceeding according to the procedural requirements of G.S. 160A-272. In other words, the County could convey leasehold interests by private negotiation and without complying with the substantive or procedural rules in G.S. 160A-272.

- G.S. 63-53(6) authorizes counties owning airports to “engage, on an airport, in commercial and industrial land development projects which relate to, develop, or further airborne commerce and cargo and passenger traffic, and, in connection with any project, to improve real estate on an airport and lease that improved real estate to public or private commercial and industrial enterprises, or contract with others to do so.”
- G.S. 63-53(3) authorizes municipalities (i.e., counties) owning airports to “lease to private parties . . . for operation or use consistent with the purpose of this Article, space, area, improvement, or equipment on such airports.” An airport includes “any area of land or water, except a restricted landing area, which is designed for the landing and take off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities . . .” See G.S. 63-1(a)(8). This is likely the governing provision for a hangar lease, but that would depend upon the specific facts that you have.

This also is discussed in David Lawrence’s [Local Government Property Transactions in North Carolina \(2d Ed. 2000\)](#) on p. 157 if you have a copy.

Please feel free to give me a call if you would like to discuss in more detail.

Best regards,
Connor

Connor H. Crews
Assistant Professor of Public Law and Government

The KGEV Advisory Board met Tuesday July 28, to formulate a position and recommendation for the county commissioners regarding recurring requests to add years to existing hangar footprint leases. These requests have historically been called lease extensions. While a single request was the trigger for a review, we determined that the formulation of a policy that would be applied to all such requests was the best way to move forward and resolve this issue into the future. A summary of what we discovered and decided follows:

Asking the question “Is it in the county’s interest to amend lease agreements adding years to the lease term?” We determined that there are several conditions and circumstances that could cause amending a lease to be in the best interest of the county. The difference in revenue from renting a hangar and leasing a footprint while significant was not as great after taxes were factored in. Some hangars were constructed under different building codes than those in force today potentially creating maintenance issues. For these and other reasons we therefore determined that a blanket recommendation of no extensions or amendments was not practical.

We considered the conditions extant when the request is made including lease time remaining, previous extensions, hangar characteristics, hangar condition, hangar type and other factors. No factors could be identified that could be used as a selection criterion for approving or rejecting a request. We touched briefly on the possibility that the use of such criteria may be perceived as special treatment or even arbitrary and further consideration was abandoned.

The discussion turned to the criteria and conditions which could to be applied to any such request. We established the following guidelines as a policy proposal:

- All historical actions and decisions would remain in-force and not be affected by the new policy until such time as a request for time extension was made. Neither would any such historical actions or decisions be considered when approving or rejecting a request.
- The term ‘extension’ was no longer appropriate for the application of the proposed policy. Rather, a new term ‘amendment’ was selected as correct and in-fact descriptive of the policy as the existing lease agreement would be amended immediately to comply with the new conditions.
- The following conditions would apply to any approved request:
 - TO BE CLEAR** we determined that any historical actions or decisions would not be affected or considered, meaning going forward a previous ‘extension’ would be treated as having not occurred.
 - Upon request and approval, the existing footprint lease would be amended to extend the lease period for an additional 10 years from the end of the current lease agreement.
 - Such an amendment request could only be granted once during the life of a lease. Transfer or sale of a lease would not have the effect restarting the clock.

- Upon request and approval, the existing footprint lease would be amended to require the lease holder to begin payment of the current footprint rate from the date of approval, nullifying any previous rate.
- Upon request and approval, the existing footprint lease would be amended to nullify any tax rate agreement that may have been previously allowed.

We also considered requiring a lease holder to bring the subject hangar's electrical system to current code. This however could create a moving target that has the potential to create more hardship than necessary and still require additional code compliance work when the hangar becomes county property.

We further determined this policy should be made part of the operating conditions of the KGEV advisory board and airport management removing a need to bring every such request to the county commission but not removing any requirement for reporting such amendments.