

Draft
October 9, 2006

AN ORDINANCE

**AN ORDINANCE TO AMEND
THE CODE OF DEKALB COUNTY, GEORGIA,
CHAPTER 6, ARTICLE III, PERTAINING TO AVIATION
AND FOR OTHER PURPOSES.**

The DeKalb County Governing Authority makes and adopts the following findings and conclusions in the enactment of this ordinance:

WHEREAS, the Governing Authority of DeKalb County is tasked with the protection of the county's public health, safety, and general welfare; and

WHEREAS, PDK Airport is an enterprise fund department of DeKalb County, Georgia *independent of the financial support from County taxes*; and, PDK Airport routinely enters into long-term lease agreements with lessees who base private businesses at PDK Airport, and

WHEREAS, *there is a need to provide a framework governing such leasing and rental decisions as they relate to the development of new agreements and, as appropriate, modifications to existing agreements.*

WHEREAS, all such leases provide the County with significantly more value and revenue in the form of capital improvements and escalating lease payments than other types of leases at PDK; and

WHEREAS, *there exists a need to achieve the optimal use of scarce assets under changing market conditions*, the governing authority desires to ensure that in executing such leases at PDK, the County is obtaining the most advantageous lease provisions and rental terms from current and prospective tenants; and

WHEREAS, the County may determine the fair market value for the use of such premises at the airport without necessarily submitting the lease of such premises through a competitive bid process, such as the Request for Proposal ("RFP") process; and,

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WHEREAS, based upon certain objective criteria, the County may desire to renew its lease of such premises at PDK Airport to current tenants at fair market value, as opposed to submitting the re-lease of such premises through a competitive bid process, if, at the sole discretion of the governing authority, such is determined to be in the best interest of DeKalb County.

NOW THEREFORE, be it ordained by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapter 6, Article III of the Code of DeKalb County, Georgia is hereby amended as follows:

PART I. ENACTMENT

By amending chapter 6, Article III, section 6-36 to add the definition of the following term in alphabetical order as follows:

Sec. 6-36. Definitions.

"Lease" means a written agreement between the county and a person which gives rise to a new or renewed relationship of landlord and tenant or lessor and lessee for property, real or personal, located at PDK Airport, whether such written agreement creates a leasehold interest by an assignment, extension, modification, amendment or conversion for a different purpose of an existing lease.

Rentals for commercial office and shop space, airplane tie-downs and Airport T-hangar space for aircraft parking shall not be considered as a "lease" for purposes of this ordinance.

By amending Chapter 6, Article III, to add the following new Division 5, sections 6-133 through 6-135 to read as follows:

DIVISION 5. LEASES

Sec. 6-133. Authority to lease.

The Governing Authority of DeKalb County, Georgia has the authority to enter into leases and the renewal of leases of premises located at the Airport.

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Sec. 6-134 Consistency with Long-Range Master Plan.

Airport property proposed to be leased shall be located in areas designated for the proposed uses according to the airport master, or any airport land use, or layout plans, and shall not constrain the County's ability to achieve its long-range developmental plans.

Sec. 6-135. Requirement for Appraisal.

Prior to extending any lease covered by this article or amending the length of the term of any lease covered by this article, the airport director shall obtain a professional airport-aviation related appraisal of the available leasehold interest in order to determine the current *and future* Fair Market Value (FMV) to be placed on such leasehold.

Sec. 6-136. Requirements for Renewal of Leases.

- (a) All requests for renewal of a lease by a lessee must be made at least 365 calendar days prior to the expiration of the lease term or such requests shall not be considered by the County. The written request to extend the term of any lease must contain the details of the lessee's proposal for the extension and must address all of the factors set forth in this section. *The County shall exercise good efforts to conclude negotiations for renewal of the subject lease no later than six months before the expiration of the existing lease.*
- (b) The written request may be hand delivered or mailed (U. S. first class, postage prepaid) to the airport director or designee. If a request for renewal or extension that complies with the requirements of this section is not received by the airport director in *a reasonably timely manner, such as may result in the subject premises becoming vacant at the expiration of the existing lease term*, the airport director shall *then* take any and all necessary action to seek competitive offers pursuant to a publicly advertised request for proposal process for rental of the subject premises at the expiration of the lease at issue.
- (c) A request for renewal of any lease shall be for no more *than the shortest reasonable duration taking into account (1) the operational needs and capital investment in leasehold improvements of the tenant and (2) the ability of the County to manage capacity and long-term airport development. Lease terms shall not exceed five years, unless substantial tenant investment in leasehold improvements warrants a longer term. In no case shall the term of any lease exceed 20 years, unless it is determined by the Governing Authority that substantial benefit would inure to the public.*
- (d) A request for renewal shall, in part, include:
 - (1) the legal names of all persons requesting renewal of the lease; and

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- (2) the names of the members of the board of directors, chief executive officer, chief operating officer, the president, and executive vice-presidents, of any form of corporation, partnership, limited liability company, joint venture, or association requesting renewal of the lease; and
 - (3) a copy of the articles of incorporation, corporate charter, and partnership or joint venture agreement of any form of corporation, partnership, limited liability company, joint venture, or association requesting renewal of the lease.
- (e) In the event a timely request for renewal is received by the airport director, the County, shall perform its due diligence in deciding whether to extend the current lease, and shall consider such factors as:
- (1) the history of the relationship with the lessee, including whether the lessee has violated any airport or county polices, rules, or regulations or has violated any environmental laws, rules or regulations, including but not limited to unreported fuel spills, unapproved washing or de-icing of aircraft;
 - (2) whether the lessee has in all material respects complied with the existing lease terms, including whether all lease payments have been made in a timely manner;
 - (3) whether the proposed rental payment meets or exceeds the appraised fair market value of the premises;
 - (4) whether the current lessee has agreed to accept lease provisions recommended by the Airport Director, including, but not limited to, a requirement to make capital improvements to the leasehold with such capital improvements reverting to the County at the expiration of the lease; escalating rental payments; payments for various fees; additional rental payments to the County in the form of a fixed percentage of gross revenue of tenant or gross rental revenue received by the tenant from approved sub-lessees;
 - (5) whether the overall proposal improves or adds value to the airport premises, and is consistent with the long-term vision of the governing authority;
 - (6) whether the overall proposal adds value or benefit to the surrounding airport community, and/or the County;
 - (7) the written recommendation of the Airport Advisory Board;
 - (8) the opinion and recommendation of the Airport Director; and

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- (9) the appraisal required by section 6-134.

Sec. 6-137 Airport Investment.

Tenant investment actions in existing facilities, or in the construction of new facilities, will be shaped through this Ordinance and the long-range master plan or airport land use or any airport layout plans. Tenant investment shall be approved in advance by the Governing Authority, constructed in accordance with airport guidelines, applicable building codes and environmental standards and subject to ongoing oversight by the County. The County may condition its approval of tenant improvement requests in accordance with the provisions of this Ordinance.

Unless otherwise stated in a lease, title to improvements financed by tenants or third parties shall revert to the County at the expiration or termination of the lease or earlier as provided for in the lease agreement. The County may, at its option, negotiate in the lease the right to require that tenant to demolish and remove such improvements and return the premises to their original condition, ordinary wear and tear excepted.

Except as provided in the lease agreement, tenants shall be responsible for maintaining any improvements and compliance with applicable building codes and environmental standards in the construction and maintenance of any improvements.

Sec. 6-138 Encumbrances.

A tenant shall not mortgage, pledge, assign as collateral, encumber, or in any manner transfer, convey, or dispose of leased premises or improvements thereon or any interest therein for any purpose or intent without the prior written consent of the Governing Authority, which consent shall not be unreasonably withheld. The encumbrance of land is expressly prohibited under any circumstances.

Sec. 6-139 Prohibited Activities.

Airport land or improvements shall not be occupied or used for any activity that is contrary to the safe and efficient operation of the airport, including, but not limited to, any activity that jeopardizes the safety of the public, aircraft, or the property located at the airport, or any activity that is inconsistent with current Federal Aviation Administration grant certifications and assurances.

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Sec. 6-140 Compliance.

The Airport Director shall monitor compliance with lease provisions. The premises of each lease shall be subject to periodic physical inspection and audits conducted by the County Finance Department. The premise inspections and lease compliance audits should be conducted as appropriate with reasonable advance notification.

Sec. 6-141. Consideration of Proposal by Airport Advisory Board.

All requests for extensions of leases shall be presented to the Airport Advisory Board by the airport director for consideration and evaluation within a reasonable time of receipt. After due consideration of any proposal and request for extension of a lease and within a reasonable time of its first presentation to the Airport Advisory Board, the Airport Advisory Board shall provide the airport director with its written recommendation. The airport director shall then consider the Airport Advisory Board's recommendation and shall forward his/her own written recommendation to the chief executive officer along with the recommendation of the Airport Advisory Board within a reasonable time of receipt of the request to extend the term of the lease. If the airport director does not receive a timely written recommendation from the Airport Advisory Board, the airport director shall nonetheless forward his/her own recommendation to the chief executive officer as required by this section.

Sec. 6-142. Final Award.

Once placed upon the agenda, the board of commissioners shall have the authority to award such leases in accordance with the factors in section 6-135, or such other factors as the board of commissioners shall deem necessary. After consideration of the agenda item, the board of commissioners also has the discretion to take any necessary action to seek competitive offers pursuant to a publicly advertised request for proposal process for rental of the subject premises at the expiration of the lease at issue.

Sec. 6-143. Exemption from 365-day requirement.

If at the time of the effective date of this ordinance any affected person desires an extension of a lease covered by this article and cannot meet the 365-day requirement of section 6-135(a), then such person shall within sixty (60) business days of approval of this article by the chief executive officer, give written notice of intent of his request to comply with the provisions of this article to the airport director who is then authorized to consider such request in accordance with the remaining requirements set forth in sections 6-135 c, d, and e, 1-6 of this article.

Secs. 6-144 – 6-200. Reserved.

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PART II. EFFECTIVE DATE

This ordinance shall become effective upon adoption by the Board of Commissioners and approval by the Chief Executive Officer.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this ____ day of _____ 2006.

BURRELL ELLIS
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____ 2006.

VERNON JONES
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

MICHAEL J. BELL
Ex-Officio Clerk
Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

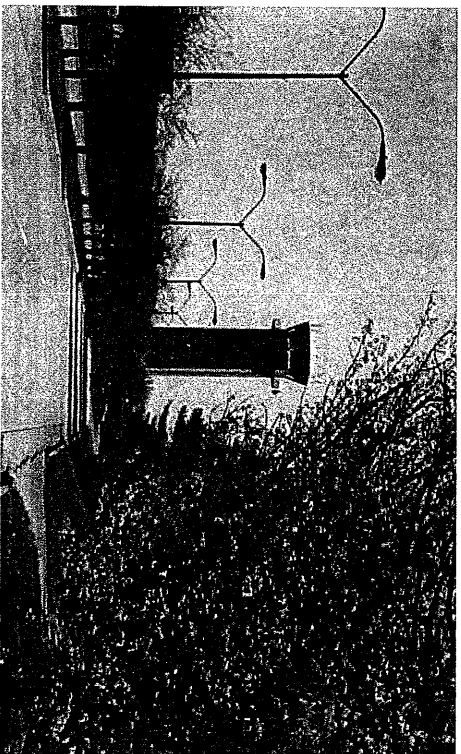
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APPROVED AS TO FORM:

WILLIAM J. LINKOUS, III
County Attorney
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

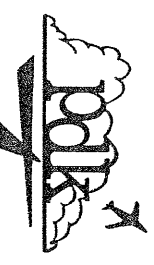
CARL L. REMMEL, A.A.E.
Director, Peachtree DeKalb Airport
DeKalb County, Georgia



Ordinance – Airport Leasing

BOC Work Session

Tuesday, November 7, 2006



Background - Review

- Smallest enterprise fund in the County
- Budget:
 - Operations & Maintenance (O&M)
 - Capital Improvement Plan (CIP)
 - Federal, state and internal infrastructure projects *— not from Fed or State*
 - Financially Self Sufficient *— Mainly from self sufficiency*
- Revenues come from:
 - Leases – rent of Airport property
 - Commissions – a % of something
 - Interest

Airport Leasing Ordinance

- Maintain & ensure financial independence *of airport as Fuel*
- Provide a general, formal and objective leasing & rental decision framework
- Achieve optimal use of scarce assets – *Airport Limited and Property*
- Primarily directed toward “high value” leases
 - More than 20 years in length –
 - 4 Full service FBO’s • 1 SASO (JetFueling) • 13 corporates
- Rent + capital improvements + reversion rights to the capital improvements to the Airport fund upon expiration of the lease

Airport Leasing Ordinance

- “Amend & extend” current lease agreement
 - Amendment to current agreement
 - New agreement with the same lessee

< OR >

Made & Law Dept.

- RFP/ITB process thru County P&C Dept
 - Public advertisement *all persons through Purchasing*
 - All qualified may participate based on the prerequisites of the RFP/ITB



Qualifications Criteria

- Requested by current Lessee
- History & total lease compliance – *have long been good tenants.*
- Offer meets or exceeds Fair Market Value (FMV) appraisal *We are setting the value.*
- Documented future CIP *what is lease willing to do*
- Continuing rent escalation & “additional rent” *2% of gross*
- Adds value & benefits the Airport & County *consistent with vision of*
- Consistent with long-term vision of County *airport master plan*
- Recommendation of the AAB & Airport Director

Approval Process

If Lessee wants to come to Airport Director

- Direct negotiations – Arprt Director & Lessee
- Draft agreement w/Purchasing & Contracting
- “Finalization” btwn Arprt Dept & Lessee
- (Initial Law Dept review “as to form”) * *if lease not complete legal dept would be involved early*
- Execution by Lessee *(*signatures*)
- (Presentation to Airport Advisory Board (AAB)) * *lease as final*
- Law & Airport Director’s approval signatures * *Airport Director looks at substance*
- Review & approval by CEO
- Set for BOC agenda
- BOC approval/disapproval/approve w/conditions
- Return to Airport/Lessee – mods & conditions

Airport Director – Lessee

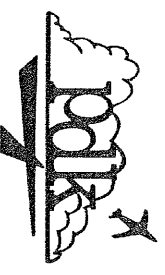
Negotiation Justification Points

- “Amend & Extend” – New or used?
- Term – based on future CIP commitments
Fair Market Value
- 10% of FMV established by Airport conducted aviation-airport appraisal (per annum)
- Regular CPI adjustments *Consumer Price Index*
- “Additional rent”
- Continuance &/or adjustment to Fuel Flowage Fee
- Opportunity to adjust to updated FMV appraisal at regular interval(s) *5 or 3yr intervals*

Current Schedule

- **1st draft review by AAB** **Sep 11**
- **Work Session w/BOC** **Nov 7**
- **2nd draft review by AAB** **Nov 13**
- **BOC consideration** **Nov 14**

Questions – Concerns – Discussion



COMPLETED AMENDMENTS AND EXTENSIONS

NAME	TYPE	LEASE DATES	EXTENSION	DATES	ACCOMPLISHED
B of A	corporate	1969-1989	yes yes	1989-1999 1999-2019	Feb-69 Jan-89 Jan-98
Epps	FBO	1965-1973 1979-2004	lease cancelled yes yes	2004-2014 2014-2024	Apr-89 Feb-96
Wachovia Bank	corporate	1981-2002	yes	2002-2015	Jan-96
Helicopters, Inc.	FBO	1981-2002	yes/ acquired thru bankruptcy	2002-2017	May-00
2005 Flightway Drive, LLC	corporate	1982-2003	yes	2003-2016	Oct-96
KH Enterprises	corporate	1982-2003	yes	2003-2023	May-99
JetFueling (AVGROUP)	SASO	1982-2003	yes yes	2003-2008 2008-2018	Dec-92 Dec-92
Flightway One, LLC	corporate	1983-2003	no/RFP-ITB	2005-2025	5-Jan
AMENDMENTS AND EXTENSIONS IN WORK					
NAME	TYPE	LEASE DATES	EXTENSION	DATES	ACCOMPLISHED
Mercury Air Center	FBO	1983-2006	being finalized	2006-2026	in work - 12/01/2006
Homelife	corporate	1986-2007	in work	2007-2027	in work
Rollins	corporate	1978-1998	yes in discussion	1998-2008 2008-??	Dec-95