



Ballfields at The Olympia Regional Airport Background and Frequently Asked Questions May 31, 2023

NOTE: The Capitol Little League provided additional questions on June 5, 2023 which will be answered in subsequent updates.

History of Capitol Little League Ballfields on Olympia Regional Airport Property

Overview

The Port of Olympia recognizes the value of youth sports in the community and is working with Capitol Little League to update their lease to utilize space for ballfields at the Olympia Regional Airport. In doing so, the Port wants to ensure the lease complies with all Federal Aviation Administration (FAA) requirements.

Property Description

Capitol Little League leases approximately 10.6 acres of Olympia Regional Airport property for ballfields from the Port of Olympia on its Olympia Regional Airport Property. The leased parcel is bounded by 76th Ave SW on the north, Terminal St SW on the east, 78th Ave SW on the south, and New Market St SW on the west. See Exhibit D attached.

Lease Timeline

February 1, 1999: The Capitol Little League and Port of Olympia first entered into a lease agreement to use an unutilized parcel of airport property. From 1999-present day there has been no aeronautical demand for this property.

February 1, 2000-February 1, 2008: Lease for temporary use was renewed annually.

February 1, 2008: A new five-year lease for temporary use was signed.

January 26, 2023: A new one-year lease for temporary use was signed with stipulations about paying market rate for future leases.

January 31, 2024: The planned expiration date of the current lease.

Situation

The Port of Olympia's airport property is subject to Federal Aviation Administration (FAA) oversight and the airport's FAA Airport Layout Plan (ALP). The FAA prioritizes aeronautical uses on airport properties. When a parcel is used for non-aeronautical purposes, the tenant is required to pay a fair market rate.

Capitol Little League's lease is currently out of compliance because they have not been the paying fair market rate. As confirmed by the FAA, the Port needs to bring the parcel into compliance by charging the Capitol Little League fair market rate. The Port has been working in partnership with the Capitol Little League on a plan and timetable to comply with the FAA regulations while minimizing the burden on the Capitol Little League.

Additional Background Information: Lease Language

The original 1999 lease included this language (in the same bold font as existed in the lease):

THIS OPTION TO RENEW MUST BE AGREED TO BY BOTH PARTIES. THE PORT MAY WITHHOLD IT AGREEMENT TO SUCH EXTENSION FOR ANY REASON, INCLUDING WITHOUT LIMITATION, A DESIRE TO LEASE THE PREMISES TO A THIRD PARTY WHOSE USE IS IN COMPLIANCE WITH THE PORT OF OLYMPIA'S CURRENT COMPREHENSIVE PLAN.

IT IS UNDERSTOOD AND AGREED TO BY BOTH PARTIES THAT TENANT'S USE OF THIS PARCEL IS NONCONFORMING AS DESCRIBED IN THE CURRENT PORT OF OLYMPIA COMPREHENSIVE PLAN.

Effective February 1, 2000, the following language was added to the two paragraphs above in the lease agreement:

IT IS ALSO UNDERSTOOD AND AGREED TO BY BOTH PARTIES THAT TENANT'S USE OF THIS PARCEL IS TEMPORARY AND THAT TENANT'S IMPROVEMENTS SHOULD ALSO BE TEMPORARY. TENANT WILL BE RESPONSIBLE FOR REMOVING ALL IMPROVEMENTS AT THE END OF THE LEASE PERIOD.

Effective February 1, 2008, the above three paragraphs were slightly revised and remain in effect today:

THE PORT MAY TERMINATE THIS AGREEMENT FOR ANY REASON, OR NO REASON. WITHOUT LIMITING THE FOREGOING, REASONS FOR THE PORT'S TERMINATION MAY INCLUDE, WITHOUT LIMITATION, A DESIRE TO LEASE THE PREMISES TO A THIRD PARTY WHOSE USE IS IN COMPLIANCE WITH THE PORT OF OLYMPIA'S CURRENT AIRPORT LAYOUT PLAN (ALP).

IT IS UNDERSTOOD AND AGREED TO BY BOTH PARTIES THAT TENANT'S USE OF THIS PARCEL IS NONCONFORMING AS DESCRIBED IN THE CURRENT PORT OF OLYMPIA AIRPORT LAYOUT PLAN.

IT IS ALSO UNDERSTOOD AND AGREED TO BY BOTH PARTIES THAT TENANT'S USE OF THIS PARCEL IS TEMPORARY AND THAT TENANT'S IMPROVEMENTS MUST ALSO BE TEMPORARY. TENANT WILL BE RESPONSIBLE FOR REMOVING ALL IMPROVEMENTS AT THE END OF THE LEASE TERM.

Frequently Asked Questions

What does “aeronautical use” mean?

Under Federal law, federally obligated airports may use airport property only for aviation-related purposes unless otherwise approved by the FAA.

What then is non-aeronautical use?

Non-aeronautical use is any activity conducted at the airport that is not associated with aviation.

Why is the Capitol Little League site designated for aeronautical use?

The Olympia Regional Airport must reserve its aeronautical use parcels to meet the forecast need for increased aviation activity in future years. The ongoing Airport Master Plan Update includes a feasibility study for potential regional commercial service, concluding that such demand is likely to materialize as soon as 2035. Meeting that demand for commercial service will require repurposing the parcel currently used by the Capitol Little League to support this new aviation activity. It is important to note therefore that – even at market rate – the Capitol Little League’s continued use of the existing parcel will be limited to the next several years; a permanent relocation will eventually become necessary.

Why is Olympia Regional Airport subject to FAA regulations?

Olympia Regional Airport, as the only public use airport in Thurston County with paved runways, is one of 3,300 nationwide airports designated in the National Plan of Integrated Airport Systems (NPIAS). The NPIAS identifies airports included in the national airport system and the roles they currently serve. Designation as a NPIAS airport in turn entitles Olympia Regional Airport to federal grant funding of its eligible projects from the Airport Improvement Fund, significantly reducing the financial burden on the Port to maintain the airport.

Why must airport properties comply with FAA requirements?

As an airport receiving federal funds, the Olympia Regional Airport is subject to FAA Grant Assurances. When airport owners (known as “sponsors” in FAA vernacular) accept funds from FAA-administered airport financial assistance programs, they must agree to certain obligations (or assurances). These obligations – there are 39 in all – require the recipients to maintain and operate their facilities safely and efficiently and in accordance with specified conditions.

Is Olympia Regional Airport subject to these conditions?

Yes. The Port has both grant assurances through the funding it has received through the Airport Improvement Program as well as from a Surplus Property Deed Restriction, the latter resulting from the fact that the federal government conveyed most of the airport’s property to the City of Olympia at the conclusion of World War II. That deed restriction carried over to the Port when the Port acquired the airport from the City of Olympia in 1963.

Can airport properties be leased for non-aeronautical uses?

If an airport sponsor (such as the Port of Olympia) has unused aeronautical use property for which it has no current aviation demand, it may lease such property to non-aeronautical tenants subject to the following conditions:

- The airport must charge a fair market rate for the property, and
- Aeronautical use must always receive priority consideration. The interim non-aeronautical use must be immediately discontinued when a demand appears for an aeronautical purpose.

Has the FAA specifically commented on the nature of the Capitol Little League lease?

Yes, it has. In response to the question posed by a community resident, the FAA Compliance Program Officer on March 23, 2023 stated: *"...The deed restrictions and the contractual obligations the Port has with the federal government require that the land at the airport must receive a fair market rate for nonaeronautical use. There are no waivers to this requirement..."*

How is the fair market rental rate of the leased property determined and what is it currently?

The Port determines the value of its leased properties via periodic formal appraisals and subsequent review and approval by the Port of Olympia Commission during the annual budget process. The 2023 Commission-approved Ground Rent – Airport Land Aeronautical Rate is \$.35 per square foot.

What is the resulting financial impact on the Capitol Little League lease and how has the Port structured the lease to achieve FAA compliance?

Under the current lease, the Capitol Little League will pay \$9,177.36 in 2023 on an annual tax-exempt basis for its lease of 464,136 square feet of airport aeronautical land (the parcel dimensions are 498 feet x 932 feet). At \$.35 per square foot, the fair market rate for the approximate 10.6 acres is \$162,447.60. This is the dollar amount that FAA requirements dictate the Port receive for this leased parcel.

Recognizing the significant financial burden this cost increase would place on the Capitol Little League, the Port opted to implement the required rate change over a three-year period. Such practice has proven to be regularly acceptable to the FAA when non-compliance issues are identified, namely, that a path to achieve timely compliance must be firmly identified. For 2023 therefore, the Port offered to maintain the status quo of the existing lease with the normal annual increase of five percent over 2022. There is no obligation placed on Capitol Little League to continue this lease beyond its current term. If, however, the Capitol Little League wishes to pursue a 2024 lease option, the ground rent will be adjusted to achieve 50% of the Port Commission-approved Ground Rent – Airport Land Aeronautical Rate. Should the Capitol Little League pursue an additional 2025 lease option, the ground rent will be adjusted further to achieve 100% of the Port Commission-approved Ground Rent – Airport Land Aeronautical Rate.

Were the Capitol Little League officers appropriately notified and informed of these requirements and their impacts in advance?

Yes. On September 28, 2022, Olympia Regional Airport Senior Manager Warren Hendrickson met with President Loris Gies and Vice-President Jessica Clark to explain in detail the Port's obligations to the FAA and the phased implementation plan to achieve compliance. President Loris Gies executed the current lease with the aforementioned stipulations on January 26, 2023.

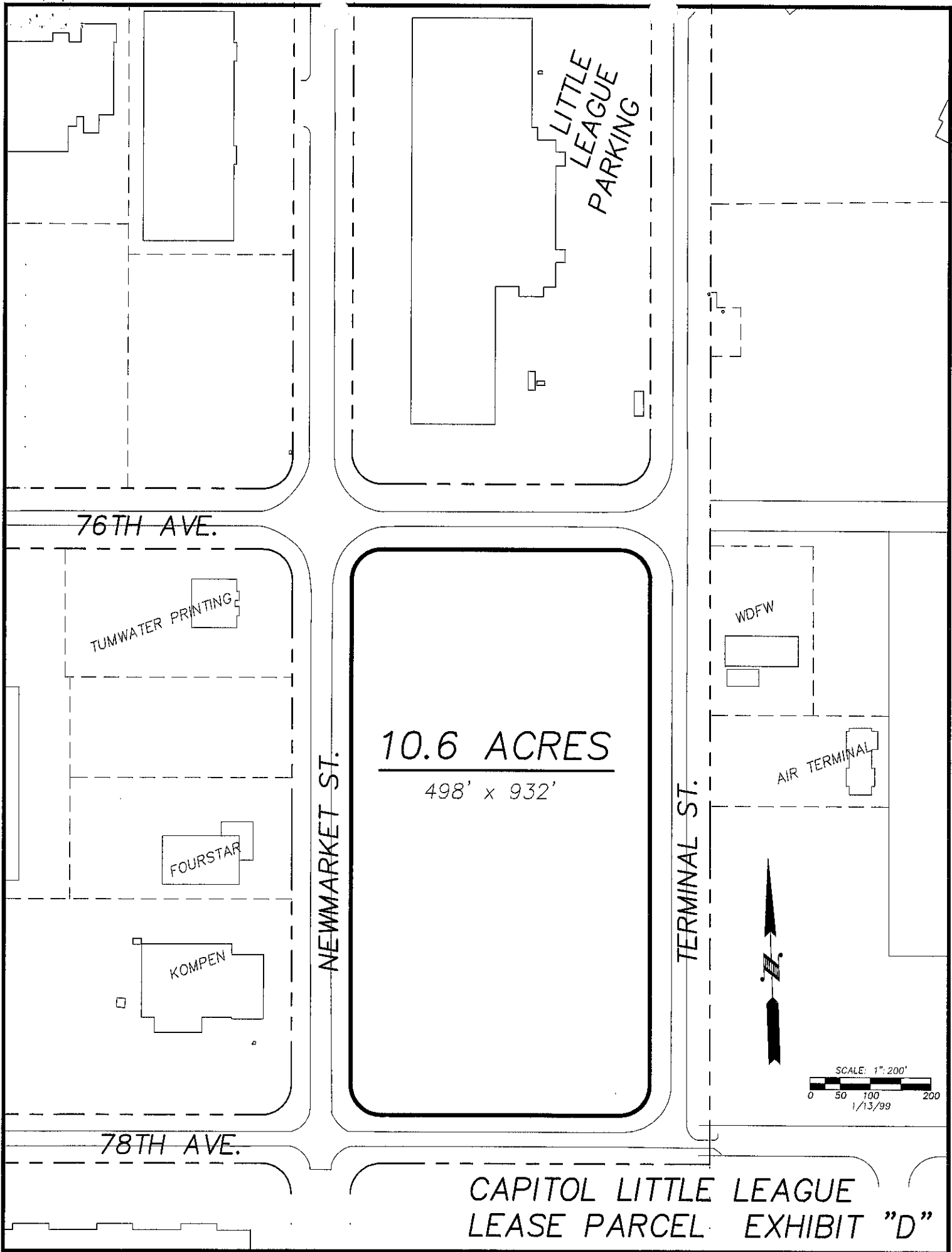
Can the Port of Olympia donate the difference in cost between the current lease and fair market rental rate to the Capitol Little League?

No.

First, doing so would mean that the Port is not receiving fair market rate for its property and that is a direct violation of the FAA Grant Assurances requirements (discussed above).

Second, doing so would breach the state constitution's prohibition of gifting of public funds by the Port. In assessing whether a gift has been bestowed to a private entity, the courts have used a two-step process.

- Courts first determine whether the funds are being expended to carry out a fundamental purpose of the government.
 - Ports are special purpose governments with limited statutory authority and providing baseball fields is not among its fundamental purposes. This test would not pass.
- Courts otherwise look to see whether the government entity had a "donative intent" and whether it received an adequate return for the transfer.
 - The question itself creates a donative intent.
 - Also, agencies can sometimes justify an exchange of funds for something of roughly equal value, as in any contract with a vendor. That exchange needs to be legitimate, i.e., something that directly benefits the Port. Given the difference between the cost of the current lease and the FAA-required fair market rental rate, it would be difficult for the Capitol Little League to provide an adequate return for the donation of Port funds. This situation therefore does not apply here, and this test would also not pass.



CAPITOL LITTLE LEAGUE
LEASE PARCEL EXHIBIT "D"