

MARCUM

ADVISORY GROUP



Independent Review of:

THE TOWN OF NANTUCKET MEMORIAL AIRPORT

Prepared for:

The Town of Nantucket

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INTRODUCTION AND SCOPE OF WORK

A subcommittee of the Nantucket Finance Committee was appointed in August 2010, to look into questions raised regarding certain town paving contracts involving the Nantucket Memorial Airport. In June 2011, a report of the subcommittee was presented and raised additional questions. A unanimous vote of the Finance Committee requested “The Board of Selectmen to engage an outside auditor to conduct an independent departmental review of the Airport and its operations.....” Simultaneous to this, significant media and Massachusetts Office of Attorney General inquiries culminated in the issuance of a Request for Proposal (“RFP”), to which Marcum LLP submitted and was awarded a contract in November 2011.

Specifically, the contract required Marcum to conduct a forensic audit/operational management review of the Nantucket Memorial Airport to include the following components:

- Audit FY2010 12/30 Runway Paving Project.
- Audit the Restaurant renovation project and subsequent lease.
- Audit 3-5 other specific Nantucket Airport projects from FY2010 and FY2011 to examine compliance with procurement and other applicable Mass General Law(s).
- Review and evaluate Airport administrative processes and practices, both of the administration and the commission, and recommend improvements in same.
- Review and evaluate departmental reporting, contract scope and negotiation as related to Airport procurements.

METHODOLOGY

The process of this forensic audit comprised of interviewing individuals/employees, both internal and external to the Town of Nantucket, and reviewing a multitude of records, documents and reports. During the course of the audit, where possible, the investigators have attempted to obtain corroboration of certain facts from multiple sources.

During the course of our review, over 45 individuals were interviewed, most of whom were interviewed on multiple occasions. In an effort to maintain confidentiality, we have chosen not to identify specific individuals or attribute information received to specific individuals. However, the individuals interviewed were from the following groups:

- Past and Present members of the Airport Commission
- Past and Present Airport Managers
- Past and Present employees of the Airport
- Past and Present members of the various Town Departments
- Office of the Attorney General
- Department of Revenue
- MassDOT
- Past and Present Town Counsel
- Contractors and Subcontractors that performed work at the airport
- Town Manager
- Members of the Boards of Selectmen, Finance and Audit Committees

In an effort to ensure that all relevant information was received, we attempted to interview members of the media that had previously reported on the issues. Our requests for interview were refused.

Additionally, we obtained and reviewed a substantial number of documents, emails, financial records and reports. Attached as **Exhibit 1** is a listing of files containing documents reviewed.

Lastly, a confidential email address was obtained and communicated to the General Public. This email, NantucketAirportInquiry@gmail.com was monitored solely by Marcum and information received came directly to the Marcum team.

EXECUTIVE SUMMARY OF FINDINGS:

As part of the catalyst for this review, the Massachusetts Office of the Attorney General's had previously conducted a preliminary investigation into the Airport procurement practices. The general findings included:

- Failure to require proper prevailing wage documentation on certain Airport construction projects;
- A closed system of bidding;
- Repeated instances of possible bid splitting;
- Lack of written contracts or specifications for work;
- The possibility of inappropriate bartering exchanges with vendors;
- Renovations to restaurant space in the Airport terminal without compliance with designer selection law and public bidding construction laws; and
- Misapplication of the exemption from bidding for aviation uses.

The results of our review, which will be discussed in more detail through this report, confirm the Attorney General's findings. We did not however, find evidence of fraud nor intention to split certain bids. Instead the violations appear to be a result of inappropriate and poor decisions by Airport Management and ultimately, the Airport Commission.

The circumstances surrounding the Airport that gave rise to this review were aggravated by a combination of several interrelated factors to wit:

- The Airport operated as an Enterprise Fund;
- Massachusetts General Laws require appointment of an Airport Commission to manage a municipal airport;
- The Nantucket Home Rule Charter specifically excludes the Airport from Town Administration; and
- There were no definitive rules, regulations or defined procedures promulgated by management specific to the operations of the Airport

Standing alone, none of these factors should have contributed to the current circumstances. However, the apparent result of the totality of these contributing factors is that the Airport has been viewed and allowed to operate as a completely independent entity. Oversight of the Airport Commission was often times non-existent on many projects. Whether appropriate or not, at least since 2004, complete deference was apparently given to two individuals for interpretation of operating rules and implementation of processes. Those individuals were the former Airport Manager Mr. Alfred Peterson, and the long serving Airport Commission Chairman, Foley Vaughan.

To be perfectly clear, this deference had a number of positive results. The Airport Manager, as the aviation professional, was oftentimes in the best position to make daily management decisions. In most instances, having the experience of a Chairman with over 20 years experience on the Commission and former Town Counsel for Nantucket was a desired attribute and benefit. In fact, from 2005-2011 over 53 capital projects were begun and/or completed.

These projects that were completed were professionally sound and have resulted in the apparent betterment of the Nantucket Memorial Airport. During our interviews, we were told that Mr. Peterson was a stickler for holding contractors accountable.

Over the past several years, there were many positive and also “not so positive” achievements concerning the Airport. Throughout our review, we found that the results of the operations at the airport were primarily the responsibility of the actions of the Airport Manager and ultimately, the Chair of the Airport Commission for the oversight or in certain circumstances, lack thereof.

A review of projects and processes shows that there was a focus on getting jobs completed, often without regard to procurement processes. A very liberal definition of aviation use and emergency purchase provided the rationale for completing jobs without regard to procurement rules, particularly when unplanned issues arose. We found that many items that were deemed to be time sensitive were the apparent result of management inadequacies and/or poor planning. Beginning in 2010, when questions were raised regarding spending on airport projects, incomplete and conflicting responses were often provided by Mr. Peterson, creating more suspicion and further aggravating the situation.

However, at least in several circumstances other members of Town Departments cannot escape scrutiny for their lack of involvement. While not directly responsible for oversight of these projects, members of the Town Finance and the Boards of Selectmen had opportunities to raise questions regarding some activities and failed to do so in a timely manner.

AUDIT FY2010 12/30 RUNWAY PAVING PROJECT

The first project we were asked to review was the repaving of Runway 12-30 in 2010. There has been concern over this project due to the use of Victor Brandon Corporation to perform the work, because the project was not included in the 2010 project plan and because the final fees grossly exceeded the initial estimate. A review of this project reveals that the maximum dollar amount written into the Town's contract with Victor Brandon was exceeded without proper notice and approval. This project stands as an example of the lack of coordination between airport management and town departments. All parties involved, including the Airport, the contractor and the Town Departments should have known that any additional work would have and/or did exceed the maximum annual amount of the annual contract.

Before discussing our findings, it will be helpful to provide a brief summary of events to help understand the circumstances surrounding the paving project. To gain an understanding of the totality and timing of circumstances, we have prepared a detailed timeline of events. This timeline is our compilation based upon information gleaned from interviews, documents, emails and official meeting minutes.

Time Line

DATE	DESCRIPTION
July 8, 2009	Annual Town Contract for Surfacing, Resurfacing, Patching and Furnishing of Asphalt Roadway Paving Products Town Contract with Victor-Brandon Corporation; Maximum project amount was \$488,732 (contract historically used for DP roadwork)
Fall, 2009	MassDOT announces extra funds available to the Airport due to delayed Pittsfield Airport project
December, 2009	Al contacts Victor Petkauskos for estimate to pave runway 12-30
December 23, 2009	Memo from Mr. Peterson to Airport Commission proposing runway 12-30 resurfacing, estimate is \$400,000
January 6, 2010	Pre-Application submitted to MassDOT for 12-30 project, total cost estimate of \$400,000
January 12, 2010	Airport Commission Meeting: 12-30 paving estimate discussed
February 12, 2010	Victor Brandon submits written estimate of \$395,978 at Town contracted rate of \$179 per ton
March 12, 2010	MassDOT letter approving funding for 12-30 project at \$400,000, of which \$80,000 is Airport responsibility.
April 12, 2010 – April 21, 2010	Jacobs daily inspection reports show dates work is performed; project total is 3,405.5 tons = \$609,584.50.
April 14, 2010	Application to MassDOT for 12-30 project; project estimate is \$585,000, 80% state share of which is \$468,000 and local share is \$117,000; Grant for \$468,000 subsequently approved
April 22, 2010	Airport Commission votes to accept grant offer of \$320,000, with Airport funding

DATE	DESCRIPTION
	responsibility of \$80,000.
April 22, 2010	Invoice from Victor Brandon for \$609,586.29 for 3,405.5 tons at \$179 per ton
April 23, 2010	Invoice from Victor Brandon for \$11,433.00 for installation of runway and taxiway pavement markings.
April 29, 2010	Invoice from Victor Brandon for \$15,000.00 for installation of loam and rake shoulders on Runway 12-30
May 6, 2010	Request for Payment submitted to MassDOT for \$673,083.29; request to MassDOT for additional funding is denied, overrun is to be covered by airport
May 11, 2010	Al tells Commission over budget
August 13, 2010 - June 23, 2011	Town Finance Subcommittee review of 12-30 paving project
November 21, 2011	Airport Capital improvement plan has 2013 scheduled for remainder of 12-30 work, estimate still includes paving

Finding: It was allowable, and in fact preferable, to use Victor Brandon to perform paving at the airport; however, exceeding the contract amount without an amendment was an oversight by all involved.

Victor Brandon Corporation had a contract with the Town to do paving for the fiscal year 2009-2010; the company had won the contract as the low cost bidder. The contract was based on the Town DPW's estimate of paving needs for the year and included a maximum project amount of \$488,732. **See Exhibit 2 (Victor Brandon Contract)** Before moving forward with using this contract, Mr. Peterson contacted the Town's Chief Procurement Officer to ensure he was able to do so. He also discussed the use of the Town's contract with the Town's attorney, the Attorney General's office and MassDOT. It was confirmed by all that using the Town contract was acceptable. He was provided with a copy of the contract.

We believe the use of town resources is usually a preferable way to conduct business at the airport. The Town has already vetted the vendor, has established that this is a low cost provider, and has entered into a contract with the vendor.

However, in this case the issue of the contract maximum was clearly ignored by all those involved in the process. It was clear from the original estimate by Victor-Brandon that doing this project would result in going over the maximum contract amount. The original portion of Victor Brandon's estimate was \$350,000, while the contract was for a maximum of \$488,732. That is 71% of the contract amount. In setting the annual maximum amount, a list of scheduled Town projects for the year are budgeted and compiled to set the contract price. For 2009-2010, the scheduled projects only included paving of the following roads: Surfside Road; Orange Street from Plum Lane to Union Street; and Meader Street. Unless the Town did not plan to do some of the projects, the maximum would easily be exceeded.

The primary responsibility to check that the maximum contract amount was not exceeded fell first on Victor Petkauskos, President of Victor Brandon. The contract states:

4.4 This project may be subject to budgetary restrictions which may limit the total amount of funds available for the work. Accordingly, unless otherwise stated in Exhibit B, the TOWN will not be obligated to pay any amount in excess of the maximum project amount without the express written approval of the TOWN.

By doing work in excess of the town contract, Victor Brandon ran the risk of not getting paid. Victor Petkauskos certainly knew that this project would exceed what was already planned. The company should have asked for an amendment to the contract immediately. However, Mr. Peterson also had a copy of the contract and should have raised the issue as well. He had a responsibility to monitor the work he requested. In concept, any additional paving that was not on the Master Contract would have exceeded the maximum amount.

Other Town employees had opportunities to at least communicate a potential problem of the contract being overrun. That multiple parties did not raise this potential problem points to a lack of coordination between the town and airport. In his responses, Mr. Peterson claimed that the contract overrun is a Town, not an Airport issue. This is one of the examples of the Airport attempting to have the best of both worlds, where they can take advantage of Town resources yet deny responsibility for their decisions.

Finding: The decision to go forward with the project was reasonable given excess funding at the state level, despite not being planned for in 2010.

One rumor we have heard repeatedly is that Mr. Peterson had an inside track to state funding and was able to get projects done that others would not have. Mr. Peterson was able to take advantage of the airport's favorable financial situation compared to other airports in the State, its backlog of shovel ready projects and his tendency of pushing projects along quickly.

The airport's capital improvement plan in 2009 had work on runway 12-30 scheduled for 2015. The FAA works with the airport to prioritize items on the capital improvement plan, lining up projects in order of priority as funding from the FAA becomes available. The 12-30 project had been pushed back repeatedly in prior years, as the FAA juggled the order of projects it would fund.

In the fall of 2009, MassDOT announced extra funding would be available for state airport projects due to the delay of a large project in Pittsfield. The money was already available and needed to be used by June of 2010 or it would be lost to Massachusetts. All Massachusetts airports were notified of these funds at a meeting. Few airports in Massachusetts have cash available to fund a large project, even with the state funding 80%. Nantucket has historically been in the favorable position of being financially successful, particularly in comparison to other small airports in Massachusetts.

The 12-30 project was particularly appealing to begin in 2010 due to upcoming renovations on runway 33, which would necessitate the use of 12-30 for overflow. As 12-30 had not been repaved in well over 32 years, the timing was right to move forward. MassDOT therefore considered this project worthy of expediting and the airport was able to take advantage of money that had not previously been available to them.

Finding: The project was pushed through quickly and as a result exceeded the initial estimate.

An original estimate of \$400,000 was provided to the Airport Commission in January of 2010 to complete the project. The estimate was established by a quick calculation of runway length times width, at a thickness of 2 inches. **See Exhibit 3 – (Memo Regarding Runway 12-30 Resurfacing)**

By the end of the project, the cost totaled \$681,668, of which \$468,000 was reimbursed by the state. The difference of \$213,668 was therefore the responsibility of the airport. The airport did attempt to get additional reimbursement from the state but was denied.

The excess project cost was due to multiple factors. The estimated area to be paved was increased with the addition of the taxiway areas, in addition, extra sealing and leveling was included. Jacobs Engineering was consulted on the project to help ensure it was done correctly, and once started, Jacobs provided daily monitoring of the project as it was performed. However, it appears likely that had Jacobs been involved from the outset, as is typical in FAA projects, the original estimate would have been more in line with the final cost.

Mr. Peterson was well known for pushing projects through quickly in an attempt to save money, and this appears to be an example of good intentions without adequate planning. FAA reimbursed projects must follow very strict guidelines and are done with the involvement of Jacobs Engineering to monitor that all aspects of the project are performed correctly.

The 12-30 project, which included replacing the safety area alongside the runway as well as the repaving work, has been on the airport's capital improvement plan as far back as 2001. In 2009 the capital improvement plan indicated the 12-30 project was planned for 2015, at a total cost of \$1.5 million at 90% FAA reimbursement. As of the 2011 plan, the 12-30 project was planned for 2013, at an estimated cost of \$1.54 million. The estimate of \$1.54 million appears to still include the paving work that was done in 2010, with the remainder of the project estimated at \$500,000 to \$800,000. In a memo, he wrote in defense of the 12-30 project, Mr. Peterson claimed he had saved the airport over \$1 million by pushing through the project in 2010. This claim appears to ring false, as there is still work to be done and it appears the total cost will still be in the \$1.5 million range. However, the estimated FAA reimbursement for the project is 90%, the state reimbursement estimate is 50% of the remainder, making the airport's estimated cost 5% of the total project. The implication is that had the airport waited to do this project with FAA funding, the amount paid by the airport could have been much less than it was in 2010.

Finding: Even though information was well known by Airport officials, it was not publicly disclosed that the project would be over budget until well after completion.

In August of 2010, the Town's Finance Committee performed a review of the 12-30 project because the total cost grossly exceeded the initial estimate. This appears to be one of the first attempts by the Town to investigate airport proceedings.

The ensuing interaction between the Town and Airport during the investigation reveals many of the behaviors that resulted in the present state of the Airport situation. The Subcommittee tasked to investigate the 12-30 project invited Mr. Peterson to a meeting in September of 2010 to review the project requesting that he bring relevant files to the meeting. It has been reported that Mr. Peterson arrived at the meeting with no paperwork and acted in a defiant manner to questioning. While it is understandable that he may have been uncomfortable at the questioning, Mr. Peterson was already known for believing the airport was under no authority from the Town. Cooperation between the Town and the Airport is vital to

the success of both, and as mentioned previously, the acrimonious relationship between the Town and the Airport is at the root of many of the problems, coming to a head today.

The Airport Commission met on April 22, 2010, and again on May 11, 2010. At the April 22 meeting, the initial grant approval for 80% of \$400,000 was accepted. However, as of April 22, work had already been completed on the project, meaning the additional aspects of the project such as length and grading would have been known. **See Exhibits 4 and 5 (Daily inspections from Jacobs Exhibit 4 and invoices from Victor – Exhibit 5).** In addition, an application for \$585,000, signed by Al Peterson and Foley Vaughan, had been submitted to MassDOT as of April 14. **See Exhibit 6 (Application to MassDOT)** Why a vote was taken to accept the initial grant amount without discussion of the additional monies is suspicious. According to meeting minutes, it was not until the May 11 meeting that the full Commission, and therefore the public, was informed the project was above the initial \$400,000 estimate. **See Exhibit 7 (Airport Commission Minutes)**

The omission of an overrun of nearly \$300,000, the result of which \$213,668 was the responsibility of the Airport, is an example of keeping outsiders, including Town officials and taxpayers, uninformed.

Finding: The Airport had a barter deal with Victor Brandon

One item that came to light during the proposal and investigation of the 12-30 runway paving project was a barter deal that the airport had with Victor Brandon Corporation. The airport had worked out a deal to allow Victor Brandon to store materials for road paving on some Bunker property in return for them giving material ground off the road to the Airport. The material was later used for the airport's perimeter road, reportedly saving a very large amount of money. This barter arrangement, however, had nothing to do with the 12-30 Runway project. **(See Exhibit 3 – (Memo Regarding Runway 12-30 Resurfacing))** Barter deals are expressly prohibited by Massachusetts Procurement rules as they are unfair to other potential bidders. That the Airport would highlight this deal is another example of either lack of understanding or a blatant disregard for rules.

AUDIT OF THE RESTAURANT RENOVATION PROJECT AND SUBSEQUENT LEASE

The second project that we were asked to look into was the complete renovation of the airport restaurant which took place in the first half of 2007. Total fees paid to renovate the facility were approximately \$1.29 million, of which the airport paid nearly \$1.05 million. We have found no evidence of fraud despite the high cost of the project, but the project does highlight multiple problems that should never have occurred.

Procurement laws were clearly violated during this project as the renovations were never put out to bid, nor were they properly budgeted. However, the Airport Commission allowed the situation to proceed. The restaurant renovation and later adjustment to rental rates for the space provide examples of the independent attitude by airport management, a general disregard at the airport for rules and regulations, and a lack of oversight by officials. This was a large, highly visible project that was never budgeted, not planned for, but openly discussed at various times.

It is noted that during the six months of construction, no Town or Airport official questioned the work or, more importantly, how it was being paid for during the six months of construction.

Time Line

Before discussing our findings, it will be helpful to provide a brief summary of events to help understand the circumstances surrounding the restaurant. To gain an understanding of the totality and timing of circumstances, we have prepared a detailed timeline of events. This timeline is our compilation based upon information gleaned from interviews, documents, emails and official meeting minutes. In some instances, findings were determined by the most probable, as determined by the information.

DATE	DESCRIPTION
April 11, 2006	Hutchinson announces he will leave at end of year, rent at the time was \$7,589 per month, \$91,073 per year
August 17, 2006	Request for Proposal for restaurant lease posted in newspaper
September 15, 2006	Proposal submitted by NRG, \$114,382.50 per year rent offered
October 17, 2006	Airport Commission meeting: discussion of restaurant RFP and awards to Nantucket Restaurant Group
October 18, 2006	Nantucket Restaurant Group, LLC informed they are awarded lease, letter sent by Mr. Peterson
December 18, 2006	Walk through by Health Inspector with Mr. Peterson
December 18, 2006	Airport Commission meeting: discussion of restaurant and visit by health inspector; Mr. Peterson states it is the airport's responsibility to deliver a restaurant that is up to code and there may be downtime to bring the restaurant to code for which rent may be reduced
January 1, 2007	Lease executed with NRG for \$114,382.50 per year, for ten year term

DATE	DESCRIPTION
January 2, 2007	Letter from (Nantucket Architecture Group – Castle Group) to Mr. Peterson stating agreement to do the renovation and addition to the restaurant wing of the airport; work charged to airport will be that needed to bring restaurant to code according to the general building code as well as provision of construction labor and materials for the addition
January 7, 2007	Letter and contract from Nantucket Architecture Group to Mr. Peterson for architectural services for the renovations and additions to the Restaurant, contract signed by Mr. Peterson
January 17, 2007	Airport Commission meeting: discussion that Nantucket Restaurant Group has hired Castle Group as their contractor and Nantucket Architecture Group as their architect; changes have been approved by HDC, airport should be responsible for framing and code work
February 6, 2007	Food Establishment Permit Application by Nantucket Restaurant Group to Nantucket Health Department
February 13, 2007	Airport Commission meeting: Mr. Peterson reports adding a basement will cost \$4,000 and would be beneficial; renovations should be completed in March
June 6, 2007	MAC Reimbursement Request Form including \$127,548 invoice from The Castle Group for renovations to the restaurant, subsequently approved
July 11, 2007	Restaurant opens
September 14, 2007	Email from Nantucket Health Department stating renovations to restaurant were NOT due to changes required by health department
January 18, 2008	Receipt of estimate from Skanska of \$1.9 million cost to do renovations to restaurant
November 20, 2008	Airport Commission meeting: Restaurant requests rent abatement, nothing voted on
January 1, 2009	Effective date of transfer of lease to Nantucket Regal Group, LLC
February 3, 2009	Airport Commission meeting: restaurant legal issues mentioned
February 21, 2009	Agreement between Nantucket Restaurant Group (Seller) and Nantucket Regal Group, LLC (Purchaser, owned by Chris Skehel) to sell business of Alice's Restaurant including all furniture fixtures and equipment for release of debt by NRG of \$160,000 to Nantucket Restaurant Group to Nantucket Regal Group
March 10, 2009	Airport Commission Executive Session – Chris Skehel will take over restaurant, rent is \$120,000 per year. Mr. Skehel would like to pay \$6,000 a month for 12 months (\$72,000) which would be retroactive from the first of the year. The Commission agreed and will revisit again in December of 2009.
May 12, 2009	Airport Commission is said to have voted on assignment of lease to Nantucket Regal Group, however the topic of the restaurant and the vote is not mentioned in

DATE	DESCRIPTION
	the meeting minutes
July 14, 2009	Assignment and Assumption of Lease and Notice of Assignment of Lease to Nantucket Regal Group: Gary Simanson signed and notarized; lease is stated to be assumed as of January 1, 2009; a vote on May 12, 2009 by the Airport Commission is referenced
January 12, 2010	Airport Executive Session: Commission agrees to Chris Skehel's request with a decrease in rent to \$7,000 from the lease rate of \$12,000, no end date is determined but Chairman Vaughan requests accountant to look at Crosswinds books after March 31.
February 2, 2010	Memo to Tina Smith from Janine Torres to adjust Nantucket Regal Group monthly lease to \$7,000 per month until further notice and Commission has requested audit to be performed by the airport's accountant after March 31, 2010
March 23, 2010	Assignment and Assumption of Lease and Notice of Assignment of Lease Agreement to Nantucket Regal Group signed by Foley Vaughan and signature notarized, referencing a May 12 th vote.

Finding: The restaurant construction project violated Massachusetts Procurement laws, was not authorized through the proper Town channels, was not budgeted and was not appropriately monitored.

The catalyst for the restaurant project was longtime Hutch's restaurant lessee William Hutchinson's announcement in 2006 that he would be leaving at the end of the year, before construction on the terminal renovation started. In July, based upon existing Procurement regulations, it was properly determined an RFP would be needed to find a new tenant, and after receiving four of proposals, the RFP was awarded to Nantucket Restaurant Group, LLC ("NRG") in October of 2006.

The RFP specifications offered a ten year lease for the restaurant space, which at the time was 2,109 square feet on the first floor and 156 square feet of basement storage space. The lessee would be required to pay as additional rent 3% of gross in excess of annual rent and rent would be adjusted annually based on the CPI-W. Improvements proposed to the lease space were listed as 20% of the evaluation criteria; however, nowhere in the RFP did it describe whose responsibility it was to pay for renovations. The RFP did state that terminal renovation would take place during the time of the lease and disruption of service as well as relocation may occur. **See Exhibit 8 (RFP)**

The airport received four proposals and these proposals were reviewed and rated by the Airport Commission. Nantucket Restaurant Group was given the highest scores in the evaluation process, particularly in the categories of improvements proposed for lease space and price per square foot. In his application, Gary Simanson of NRG proposed a rental rate of \$50.50 per square foot, which at the time would have been \$114,383 per year. The proposed executive chef, Simanson's brother in law, had extensive experience as executive chef at a number of high end establishments and was the driving factor seeking to make the airport restaurant a quality destination restaurant with local produce and seafood. **See Exhibit 9 (Simanson proposal)**

We have been told that the renovations to the restaurant have been attributed to requirements by the Nantucket Health Department. We have not been presented with any information that corroborates this account. In fact, officials at the Health Department claim that upon its original inspection, performed upon change of ownership, it found only three minimal violations:

“The restaurant was code compliant with exception of a 20x10 back store room. The floor had chipped paint and worn areas and needed to be repainted. The walls and ceilings were CDX plywood with holes, knots and gaps that needed to be made smooth and easily cleanable. There were 5-6 pieces of residential refrigeration in this back store room that needed to be removed, and if replaced, replaced with NSF approved equipment. This is all that needed to be done for the 2007 license to be issued.” **See Exhibit 10 (Ray Email)**

Had these problems been addressed, at an estimated time to fix of three days, the restaurant could have opened immediately. Nantucket building inspectors performed annual reviews of the restaurant, reviews which included inspections of the ceilings, and would have noticed large problems such as structural deficiencies.

This is supported by an email exchange between Mr. Peterson and Gary Simanson on December 18, 2006, in which Al states the restaurant can open in about a week due to minimal changes required by the Health Department.

Gary,

We met with Art Crowley from the Health Dept. and addressed the back room. He indicated that the reason for the floor drain was Richard’s thought of moving the dish washing into that room. If it is used for storage and non water related activities there is no drain required. We can redo the walls and floor.

Would you please send us a sketch of what you have planned so that we can show them and pin down the moving targets? They seem to be understanding but he was concerned about what actually will take place vs. what is there now. If it stays pretty much as is-we can fix the back room and get you going in about a week.

Thanks.

Al

In their earlier proposal, NRG proposed a two part plan for renovations to the restaurant in conjunction with terminal renovations as follows:

Pre-Airport Renovation Period:

Initially, NRG will seek to operate the Restaurant with few, but significant, changes. The initial and immediate changes would be with respect to the Restaurant's general appearance (provide new paint, ceiling tiles, art work, window treatments, carpeting and either a deep clean of the existing FF&E or replacement thereof. Plus, the addition of a full-bar area.

The goal would be to utilize the existing operation as much as possible in order to limit the disruption to the customer and the Airport and concentrate on designing, in close

consultation with the Airport Commission, the new Restaurant facility, theme and menu as part of the overall Airport Renovations.

Despite the limited changes initially proposed by NRG, there are multiple indications as early as December of 2006 and January of 2007 that this project would be a large scale renovation. In fact, the email exchanges between Mr. Peterson and Gary Simanson are evidence that the Restaurant was intended to be renovated, not just a new operating lease arrangement. **See Exhibit 11 (Peterson Emails)**

The email exchange between Mr. Peterson and Mr. Simanson lists changes desired by Nantucket Restaurant Group, including moving a dishwasher to a back room, putting a bar in the area of the Hutch's office and extending the lunch counter. The dishwasher being moved would require an additional drain by the Health Inspector. The replacement of refrigerators was a problem for Nantucket Restaurant Group's immediate opening because they would have to wait for a walk in to be installed. However, the lease clearly states that all equipment is the responsibility of the tenant. A delay caused by refrigeration units or by the tenant's desire to reorganize the space, should not have required a lease abatement or the extensive work that later occurred.

It is clear that the Airport Commission knew that the work would be a major construction project. Airport Commission minutes in December of 2006 mention that the restaurant may be closed during renovations and rent reduction may be needed during this time. **See Exhibit 12 (Meeting Minutes)**. Given the Health Inspector estimate of 3 days of work to complete the required changes, it is surprising that this was considered necessary. In January, due to the proposed renovations, letters from Castle Group and Nantucket Architecture Group to Mr. Peterson also mention work to include an addition. **See Exhibit 13 (Castle Group Agreement)**. These letters also make it clear that the Airport is the contracting authority, not Gary Simanson as had been reported. However, minutes from the Airport Commission meetings do not indicate the scope of the renovations, nor any votes on whether to proceed with such work. In January, it is stated in a Commission meeting that the airport should be responsible for framing and code work; in February it is mentioned that adding a basement would be beneficial. Despite plans drawn up by Nantucket Architecture Group, no budget was created for this project and no evidence of votes or discussions as to whether to proceed with such major renovations has been provided.

The renovation to the entire restaurant that subsequently took place required many additional remediations to comply with health, building and plumbing code specifications due to the additional scope of work. The renovations included the addition of 443 square feet of space in the back of the restaurant, movement of office space, as well as the addition of the bar. The total cost came to \$1,292,820, of which \$1,048,464 was paid by airport. The difference of \$244,355 was the responsibility of Nantucket Restaurant Group and was for cosmetic improvements. Al Peterson was responsible for performing a review of all invoices to ensure the airport did not pay for cosmetic improvements. **See Exhibit 14 (Restaurant Expenses Spreadsheet)**.

The first invoice from Castle Group to the airport, dated February 23, 2007, was for \$188,192. At this point, early in the project, the scope of the project was clearly large; however, the project is not discussed again in the Commission minutes until an update in April, with no mention as to cost, and finally an update as to near completion in June, again with no mention of cost.

An email from Mr. Peterson after the project was completed regarding the reasons behind the escalation of the project contradicts reports from the health inspector regarding the severity of the initial problems and attempts to justify the escalation in costs.

“Due to the change of ownership it was discovered that the restaurant was woefully lacking in code issues based on inspections by the health department, who closed it down. Simonson (sic) hired Castle Group who was also working on his house. He also got involved with NAG. As the project evolved it was discovered that there were no drains in the slab behind the counter and in the kitchen. There is also a NTM article prohibiting the expansion of the restaurant. To accommodate a better layout required moving what Hutch had for an office and storage area. The uncovering of the walls revealed rot, a tangle of electrical wires from the days when it was a CAB weather station and engineers found the roof structure to not meet code. The architects NAG recommended reinforcing the roof and in order to meet structural code and to install drains we excavated to be able to achieve needed slope, this evolved into a full basement. Our agreement with Simonson (sic) was to handle the structural components but no interior aesthetics, to provide him with the necessary code compliant structure.”

Despite this explanation, it appears that lack of planning and lack of oversight were the primary causes of a project spun out of control.

Finding: Procurement procedures were violated during the restaurant project.

Gary Simanson had recently used the Castle Group to perform renovations on his personal residence and wanted Castle Group to handle the minimal renovations described in the RFP proposal. However, a letter dated January 2, 2007, from Castle Group to Mr. Peterson clearly states that work would be charged to the airport, to include work to bring the restaurant to code as well as construction labor and materials for the addition. **See Exhibit 13 (Castle Group Agreement)**

Massachusetts procurement procedures require that for building construction work over \$100,000, sealed bids be received, advertising must be posted in a newspaper, a bid deposit of 5% of the value of the total bid must be issued, a payment bond and a performance bond of 100% of the project must be issued, a contractor evaluation must occur and prevailing wages must be paid. None of these requirements were adhered to.

We have requested, on numerous occasions, information about the invoices submitted from Chris Skehel, President of the Castle Group and current operator of the Restaurant regarding subcontractors in an attempt to verify prevailing wage rates and names. While these files should be readily available, they have not been provided, raising questions that indicate potential issues. No time sheets or prevailing wage documentation were submitted to the airport by Castle Group.

Nantucket Architecture Group was brought into the project as of January 7, 2007. According to their letter to Mr. Peterson, they would act as part of an on-going sub-consultant of Earth Tech working on the renovation and addition to the airport. Their scope would be to design the new kitchen addition and renovation to the interior space to meet current building codes. The contract also states Nantucket Architecture Group will assist the airport in determining a contractor-bidding list. We note that this project is falsely considered here to be part of the airport renovations, and Nantucket Architecture Group, by stating it was acting as a consultant to Earth Tech, appears to be positioning its involvement to not require a separate RFP for this project. **See Exhibit 15 (Proposal from Nantucket Architecture Group)**

Finding: The restaurant construction project was not budgeted and was paid for out of apparent unrelated funds.

As we reviewed circumstances surrounding the restaurant renovations, it became apparent that the project was not budgeted or planned for. A review of airport Commission minutes does not show any votes or approvals on the restaurant.

A review of the payment vouchers show that the restaurant project was charged to the Airport's Capital account 55482 96075 A14/2006 Airport Terminal. **See Exhibit 16 (Stamped Invoices for Castle Group)**

A review of the aforementioned warrant article does not identify any discussion of business or restaurant improvements. In fact, the warrant specifically mandates that "no further expansions of business concessions or any other non security related areas are included." **See Exhibit 17 (Warrant A14)** In June of 2007, a reimbursement request form for the terminal project was submitted to MassDOT. This form included \$127,548 for an invoice paid to Castle Group for the restaurant renovations. This reimbursement was at 100% and was subsequently approved for structural/code compliance reasons. This was the sole reimbursement for the restaurant renovations sought by the airport. The restaurant work was not reimbursable under FAA guidelines as it is not part of aviation use. That no subsequent invoices were submitted to MassDOT is telling.

In late 2007, questions were raised regarding the scope of the project. Mr. Peterson attempted to justify the work as necessary due to the Health Department; however, the Health Department strongly disagreed with this in an email to the Town Manager. Al Peterson then requested that Skanska, the general contractor performing the terminal renovations, perform an analysis on what it would have cost had Skanska done the renovation work performed by Castle Group.

Skanska provided a 25 page detailed proposal in which they estimated the fee would have been approximately \$1.9 million combined for both tenant and landlord costs, based upon drawings, photos and discussions. It appears that Skanska's estimate included many items that were not included in the fees paid to Castle Group, including landscaping and fence costs of \$19,539 (island factor of 30% markup included), none of which were included in the work Castle Group performed. Skanska's estimate also included \$236,126 (30% markup included) of food service equipment, none of which was supplied by Castle Group or paid for by the airport. Construction management fees for Skanska totaled \$232,159. Castle Group billed \$175,396 for general contractor's fees.

While this estimate appears high, it further proves that this was a large scale renovation project that should have been budgeted, with an RFP process and submitted for public vote as a capital project. Skanska provided an estimate based upon drawings by Nantucket Architecture Group. These drawings were completed in January 2007, before renovations were started.

Finding: The assignment of the restaurant lease in 2009 was valid; however, subsequent rent reductions may have violated Procurement laws.

In late 2008, Gary Simanson and Nantucket Restaurant Group were looking to exit the restaurant lease due to poor financial performance and due to internal personnel issues. According to our interviews, former Town Counsel was consulted on the situation and provided the airport with multiple options on how to handle the lease termination. One alternative was to assign the lease to Chris Skehel's company,

the newly formed Nantucket Regal Group¹. No subleases were allowed in the original lease. The original lease had gone out to bid with the RFP and was a ten year term, making an assignment without an additional RFP a viable option, as long as the assignment held to the terms of the original lease agreement. **See Exhibit 18 (Notice of Lease Assignment)**

Nantucket Restaurant Group owed Castle Group \$160,000 for work reportedly done to the restaurant and/or other sites. Gary Simanson of Nantucket Restaurant Group came to an agreement with Chris Skehel of Nantucket Regal Group to sell the restaurant's operations and the restaurant's equipment to Nantucket Regal Group in return for a release of the \$160,000 debt outstanding. **See Exhibit 19 (Purchase and Sale of Restaurant Equipment).**

The original lease signed by Nantucket Restaurant Group in 2007 contained the following provisions:

7. Rent. Lessee shall pay to the Lessor, during the term hereof, the sum of fifty (50) dollars and fifty (50) cents per square foot or \$114,382.50 as base rent, in addition to the annual business fee. The Lessor and Lessee do hereby mutually agree that the rent shall be subject to annual review and adjusted by the CPI-W rate on the anniversary date. The base rent will be paid in twelve (12) equal installments, due on the first day of the month, commencing on January 1, 2007. Any monthly installment of rent which is not paid within ten (10) days after receipt of notice, shall be subject to interest charges at twelve percent (12%) per annum or part thereof.

In 2009 base rent had increased to \$122,050.69.

However, at an executive session in March 2009, the Airport Commission agreed to reduce the rent for 2009, retroactive from the first of the year, to \$6,000 per month, per a request from Chris Skehel. The effect was a reduction in rent to \$72,000 annually. The Commission decided to revisit this again in December of 2009. **See Exhibit 20 (Meeting Minutes – March 10, 2009)**

The topic arises again at an executive session in January of 2010. The Commission then agreed to Chris Skehel's request to raise the rent to \$7,000 monthly rather than \$12,000 per month, though Foley Vaughan stated he would like the airport's accountant to review the restaurant's financial statements after March 31 and to revisit the situation. **See Exhibit 21 (Meeting Minutes – January 12, 2010)** The accountant review did not occur. There are no discussions of amending the terms on the written lease contract.

It should be noted that no votes were taken on these items during open meetings and that there is no mention of as to the legality of lowering the rent without issuing another RFP. By cutting a deal in private, the airport denied other businesses the ability to propose on the restaurant at the newly reduced rental rates and stopped potentially higher bids. At the time of the lease reassignment, we were informed that at least four other parties had expressed interest in the restaurant.

Finding: Rental income from the restaurant has been significantly lower than what is required in the signed lease.

We have performed an analysis of rental payments received by the airport from the three tenants in occupancy from 2005 through 2011. Nantucket Restaurant Group ceased paying regular rent in August

¹ We note the name similarity of Nantucket Restaurant Group and Nantucket Regal Group. NRG is referenced in various documents as the operator of the Restaurant.

2008 but made up for the remaining 2008 payments in June of 2009. Both Nantucket Restaurant Group and Bill Hutchinson paid their required payments of rent.

Monthly rental payments by Chris Skehel and Nantucket Regal Group began in June of 2009. Rent payments have been inconsistent, with months missed and paid late. Despite the late payments, no interest charges have been requested or paid. As of yearend 2011, Nantucket Regal Group was still paying \$7,000 per month. It should be noted that at the time of his leaving in 2006, William Hutchinson was paying monthly rent of \$7,589.46 – a significantly higher rate for a smaller and lower quality space than is presently available. The total difference between what Nantucket Regal Group had paid in rent at the end of 2011 and what should have been paid per the original rental agreement is over \$140,000. See below table for actual rent due at the actual rates versus paid through December 2011.

<u>Payment Due Dates</u>	<u>Payments Due At CPI-W Adjusted Rate</u>	<u>Pay Dates</u>	<u>Amount Paid by Nantucket Regal Group</u>	<u>Difference</u>
Security deposit	\$12,000.00	4/30/2009	\$12,000.00	\$0.00
Apr-09	10,170.89			10,170.89
May-09	10,170.89			10,170.89
Jun-09	10,170.89	6/18/2009	6,000.00	4,170.89
		6/18/2009	1,525.00	(1,525.00)
Jul-09	10,170.89	7/9/2009	6,000.00	4,170.89
Annual Fee	1,500.00			1,500.00
		7/30/2009	6,000.00	(6,000.00)
Aug-09	10,170.89	8/13/2009	6,000.00	4,170.89
Sep-09	10,170.89	9/4/2009	5,550.00	4,620.89
		9/30/2009	1,395.00	(1,395.00)
Oct-09	10,170.89	10/8/2009	6,000.00	4,170.89
Nov-09	10,170.89	11/12/2009	6,000.00	4,170.89
Dec-09	10,170.89	12/10/2009	6,000.00	4,170.89
Jan-10	10,364.14			10,364.14
Feb-10	10,364.14	2/25/2010	6,000.00	4,364.14
Mar-10	10,364.14	3/31/2010	7,000.00	3,364.14
Apr-10	10,364.14			10,364.14
May-10	10,364.14			10,364.14
Jun-10	10,364.14	6/10/2010	10,000.00	364.14
Jul-10	10,364.14	7/22/2010	10,098.85	265.29
Annual Fee	1,500.00			1,500.00
		8/2/2010	7,000.00	(7,000.00)
Aug-10	10,364.14	8/13/2010	14,000.00	(3,635.86)
Sep-10	10,364.14	9/23/2010	4,000.00	6,364.14
Oct-10	10,364.14	10/28/2010	8,500.00	1,864.14
Nov-10	10,364.14			10,364.14
Dec-10	10,364.14			10,364.14
Jan-11	10,695.79	1/20/2011	7,000.00	3,695.79
Feb-11	10,695.79			10,695.79
Mar-11	10,695.79	3/3/2011	6,415.00	4,280.79

Apr-11	10,695.79	4/7/2011	4,675.13	6,020.66
		4/7/2011	7,000.00	(7,000.00)
		4/28/2011	7,000.00	(7,000.00)
May-11	10,695.79			10,695.79
Jun-11	10,695.79	6/9/2011	6,673.65	4,022.14
		6/23/2011	6,354.00	(6,354.00)
		6/30/2011	7,000.00	(7,000.00)
Jul-11	10,695.79	7/21/2011	8,500.00	2,195.79
Annual Fee	1,500.00			1,500.00
Aug-11	10,695.79	8/4/2011	7,000.00	3,695.79
		8/25/2011	7,000.00	(7,000.00)
Sep-11	10,695.79			10,695.79
Oct-11	10,695.79	10/6/2011	7,000.00	3,695.79
		10/20/2011	7,000.00	(7,000.00)
Nov-11	10,695.79			10,695.79
Dec-11	10,695.79			10,695.79
Total	\$360,757.15		\$217,686.63	\$143,070.52

As part of our inquiry, we reviewed submitted financial statements for the restaurant. Based upon the information submitted, the restaurant's net profits have been increasing each year since 2009. **See Exhibit 22 (Financial Statements of Crosswinds)**

REVIEW OF VARIOUS OTHER NANTUCKET AIRPORT PROJECTS OR ISSUES

As noted earlier, we have reviewed numerous projects and issues at the Airport. Several are discussed below:

Tenant Rates

The Airport leases space inside the terminal to airlines and vendors, including the restaurant, gift shop, auto rental agencies and for ATMs. Hangars are rented for private airplane storage as well as for a number of businesses; tenants include a flight school, lumber company, UPS, and others. In addition, outlying space on airport property is leased to various companies for storage of materials such as asphalt, equipment and propane.

All airlines pay the same rate per square foot of space inside the terminal. However, many specialized deals with tenants, including abatement of the annual fee or CPI-W increase, are still in evidence in the leases for outlying space, the gift shop and the restaurant. Both the restaurant and the gift shop were leased through an RFP process. Therefore, rent abatements which have occurred for both tenants, appear to be a violation of procurement rules. An abatement given to a current tenant that won the lease through a process designed to award to the highest bidder clearly places applicants that bid lower and did not have a chance to ask for an abatement at a disadvantage. Differing deals for outlying tenants also place tenants that don't ask for special treatment at a disadvantage.

Mr. Peterson has made an attempt in recent years to standardize leases and rental rates. As leases for outlying space expire they are replaced with a standard lease that includes extra fees based on profitability. Unfortunately, many of the leases are long term, for 20 to 30 years, and they will continue to expire into years 2020-2030. The interim current Airport Manager was made aware of some of these problems, including rumors that some tenants were subleasing when the leases prevented this, and has been attempting to remedy the situation. **See Exhibit 23 (Tenant Rate Schedule)**

Purchase of Televisions by Employees

During the terminal renovation work and as part of their contract, Skanska purchased two 32 inch televisions for \$1,000 each which were reimbursed by the Airport. These were used by Skanska employees while on the Island; once the work was completed Skanska turned the televisions over to the Airport after nearly two years of use. These were sold to two employees, Tina Smith and Janine Torres, at a price of \$200 each. We have been provided with copies of the cancelled checks as proof of reimbursement. The cash went to the Airport's miscellaneous fund. **See Exhibit 24 (Invoices for Purchase of Television and Check Reimbursements).**

The purchase of the televisions by two employees in the inner circle at the airport is another lapse regarding fair treatment of employees, a theme we heard consistently in our interviews. According to Massachusetts Procurement Act, Chapter 30B, Section 15 Tangible Supply disposition "For a supply with an estimated net value of less than \$5,000, the procurement officer shall dispose of such supply using written procedures approved by the governmental body."

According to the Code of the Town of Nantucket, under Part I, Administrative Legislation, the proper procedure is to put surplus equipment out to bid. Chapter 38, Article II states that

The Selectmen are authorized to dispose of obsolete or surplus Town equipment worth more than \$500 by putting it up for bid without the necessity of a Town Meeting vote. Obsolete or surplus equipment with a value of less than \$500 shall be disposed of by advertisement and sale on a "first come" basis, yard sale or delivery to the Town sanitary solid waste facility, as the Town Administrator deems appropriate. Surplus equipment worth more than \$25,000 shall require a Town Meeting vote for disposal.

Clearly Town rules were violated selling the televisions to employees in-the-know rather than offering others the ability to purchase them.

Mr. Peterson Housing Stipend and Benefits

While serving as Airport Manager, Mr. Peterson received a number of perks by the Airport Commission. This was clearly within their purview. The Commission has statutory authority to compensate the Manager through Massachusetts General Laws, Chapter 90, Section 51E, which reads, in pertinent part:

Subject to appropriation, said commission shall appoint such other officers and employees as its work may require and shall fix the salaries of all officers and employees appointed or employed by it.

However, records of the votes are sparse and many of his perks appear to have been approved outside of public session.

In February of 2005, Mr. Peterson was awarded a bonus of \$15,000, referenced in a letter from Foley Vaughan. The letter states that the bonus was decided on at the Airport Commission meeting on February 8. However, neither the Commission minutes nor the Executive Session minutes mention a vote on this item. **See Exhibit 25 (Meeting Minutes – February 2005)**

In February of 2006, Mr. Peterson was awarded a bonus of \$20,000 and it was also decided that the Airport would also pay for his aircraft insurance, a cost of \$4,500 per year. This was apparently decided at an Executive Session of the Airport Commission on February 21, 2006, however, these minutes have not been found. The insurance payment was not included in Mr. Peterson's 2010 employment contract. **See Exhibit 26 (Letter from Foley Dated February 22, 2006)**

Mr. Peterson began receiving a housing allowance of \$3,000 per month in 2006, voted on and approved by the Commission, with one vote of Nay, on November 28, 2006, in Executive Session. **See Exhibit 27 (Meeting Minutes – November 28, 2006 and Letter from Foley Vaughan).**

That the approval came during executive session meant that it was not publicly reported. The first two payments of this allowance were included in Mr. Peterson's paycheck and reported on his W-2. However, subsequent payments were paid monthly and reported for tax purposes via a 1099, the form for reporting income to independent contractors. The format for reporting taxes does not affect his responsibility to pay taxes and it has been reported that the reason for the change in reporting of income may have been due to ease of administering a monthly payment.

However, we note that by not including the stipend in his base earnings, the stipend was not included in the Town's report of salaries for Town officials. The result is that Mr. Peterson's actual pay and his status as highest paid Town employee was not publicly reported. The housing stipend was included in Mr. Peterson's 2010 employment contract.

Mr. Peterson also received free hangar space to store his plane while he was the Airport Manager. Other lease agreements show that this may be a benefit of up to \$600 per month; however, we can find no evidence that this income was reported as compensation. We also have not seen this topic raised or approved in any Commission minutes.

Jeff Marks, another Airport employee also received the benefit of hangar space at no charge. We note that prior to Mr. Peterson's tenure, Jeff Marks was paying for his hangar space. It was reported to us that Mr. Peterson told him to stop making payments.

It was also discovered that all hangar tenants at the Airport received a discount on the purchase of fuel. This discount was equally applied to all tenants of hangars. However, the practice did not distinguish between paying and non paying tenants. As a result, both Mr. Peterson and Mr. Marks received fuel purchase discounts for their aircraft.

REVIEW OF AIRPORT ADMINISTRATIVE PROCESSES AND PRACTICES, BOTH OF THE ADMINISTRATION AND THE COMMISSION

Finding: The procedures surrounding the hiring of the Airport Manager in 2004-2005 appeared to favor Mr. Peterson.

The Airport Commission had an opening for the position of Airport Manager in December 2004, as the current manager had accepted early retirement. The Airport began soliciting applications for the position. During this time period, Jeff Marks was appointed acting manager. Applications were submitted during November and December 2004. The initial review of the applications was performed by the retiring Airport Manager Fred Jaeger, who ranked each of the applicants based on the qualifications noted on the resume. The results were reported to the Commission with each applicant graded A-F.

Mr. Peterson was a member of the Airport Commission at this time and initially did not submit an application. However, after he reviewed the analysis by former manager Jaeger, Mr. Peterson submitted his interest for the position. **See Exhibit 28 (Peterson Letter)**

We could not find an official deadline for submittal of application but note that Peterson's application was the last in, after review of applications began.

In January 2004, Mr. Peterson resigned from the Airport Commission and shortly thereafter was named Acting Airport Manager, replacing Jeff Marks, who had also applied for the permanent position. We were not presented with the job responsibilities for Airport Manager from the 2004 posting; however, the most recent search qualifications included, but were not limited to, the following:

- Managing all aspects of staffing, facilities, budgets, security, safety and tenant, user and community relations;
- Overseeing and implementing programs to ensure effective operation and safety of the airfield;
- Directing all maintenance and construction;
- Responsibility for preparation of operating and capital budgets and for performance against budget;
- Managing the collection and audit of all revenues;
- Assisting the Commission in planning and formulating overall airfield policy;
- Overseeing compliance with applicable rules and regulations, Commission policies and priorities, and airport procedures;
- Responsibility for day-to-day working relationships with the FAA, MassDOT Aeronautical Division, airline and general aviation customers, tenants, users, service contractors, etc.;

Minimum qualifications included, but were not limited to, the following:

- Degree in aviation management or a related field.
- 5-7 years airport management-related experience.
- Extensive knowledge of aircraft and airport operations, airport certification requirements, as well as procurement law and grant assurance procedures.

We note as significant the deviation in the search process, at least in allowing a Commission member to apply, after all other applications were in and after a preliminary review had occurred. During the search process, Al Peterson was named Acting Manager, replacing Jeff Marks.

It was reported that the work group consisting of Chairman Foley Vaughan and Commissioner Finn Murphy, recommended the Acting Airport Manager Peterson for the position, stating that having someone local would be “the way to go”. The applications were narrowed down to three finalists. In May 2004, Mr. Peterson was named permanent Airport Manager. **See Exhibit 29 (Meeting Minutes – May 21, 2004)**

Finding: The Nantucket Airport Commission has been allowed to operate independently with little to no oversight throughout the years. There has been an apparent reluctance to intrude or question the airport’s operations.

Throughout the years, the Airport has operated almost entirely independent from the Town of Nantucket. One of the main catalysts for this is the Nantucket Home Rule Charter which reads, in part:

Section 4.4 – Town Administration Departments [**Amended 4-10-2002 ATM by Art. 46, Approved 4-1-2003 ATE**]

(a) The Town Administration shall include the Building, Finance, Fire, Health, Island Home, Marine and Coastal Resources, Police, Public Works, and Visitors Services departments; provided, however, that nothing in this Charter mandates the continued existence of any such Town Administration department or continuance of a department name or function.

(b) The Town Administration shall not include the Airport, the Park and Recreation, the School and the Water departments.

Coupled with several other contributing factors, there was an opinion, mainly put forward from the Airport Manager and Commission Members, that complete autonomy was required and/or existed. Other factors that contributed were the Enterprise Fund and Massachusetts General Laws Chapters 90 and 30.

Enterprise Funds

The Airport has been an enterprise fund for many years. An enterprise fund is defined under Massachusetts Law Chapter 44 and is used to establish a separate accounting and financial reporting mechanism for municipal services for which a fee is charged in exchange for goods or services. Under enterprise accounting, the revenues and expenditures of the service are segregated into a separate fund with its own financial statements, rather than commingled with the revenues and expenses of other governmental activities. Once certified, retained earnings may be appropriated only for expenditures relating to the enterprise fund. Conversely, if during the year, the enterprise fund incurs an operating loss, the loss must be raised in the subsequent year’s budget.

The benefits of an enterprise fund include the segregation of total cost for providing a service separate from other services, in this case allowing the public the ability to see the total cost of operating the Airport. In addition, an enterprise fund makes sense for an Airport due to the reliance on revenues from the FAA which has strict rules regarding usage of funds for aviation purposes only. Many airports in Massachusetts are accounted for as enterprise funds.

However, it is important to note that an enterprise fund is not a separate or autonomous entity from the municipal government operation. Like every other department, a budget is prepared that is reviewed and analyzed by the Finance Committee. The budget, as well as any transfers among the enterprise fund's line item appropriations, requires action by the council or town meeting. The municipal department operating the enterprise service continues to fulfill financial and managerial reporting requirements.

Airport Commission

Massachusetts Law Chapter 90 Motor Vehicles and Aircraft provides the regulations that establish the Airport Commission and its appointment by the Board of Selectmen.

Chapter 90 Section 51E. In any city or town in which an airport is established under section fifty-one D, or under any other provision of law, there shall be established a board consisting of an odd number of members not less than three nor more than eleven in number, to be called the airport commission, which shall have the custody, care and management of the municipal airport of said city or town. Of the members appointed at least one shall be a person having experience in aeronautics. An airport commission may be established as herein provided in any city or town for the purpose of establishing an airport therein. Except as provided otherwise in any special law, enacted prior to January first, nineteen hundred and forty-seven, relating to an airport commission in any city or town, the members of the airport commission shall be appointed, in cities, by the mayor with the approval of the city council, and in towns by the selectmen. In the initial appointment of the members of such an airport commission, their terms shall be so arranged that one third of the members, as nearly as possible, will expire each year; and thereafter when the term of any member expires his successor shall be appointed to serve for the term of three years and, in each instance, until the qualification of his successor. Vacancies in the commission shall be filled for the unexpired term by the appointing authority. The members of said airport commission shall annually choose one of their members as chairman. The airport commission may appoint an airport manager who shall be qualified by general management experience and aeronautical knowledge and shall be the executive officer of said commission, and may also appoint an assistant airport manager who shall be qualified as aforesaid. Neither the airport manager nor the assistant airport manager shall be subject to chapter thirty-one. The assistant airport manager shall act in place of the airport manager at such times and under such conditions as the airport commission may direct. The airport manager, and the assistant airport manager when acting in place of the airport manager under the direction of the airport commission, shall be responsible to said commission for the proper maintenance and operation of such airport and of all facilities under his supervision. Subject to appropriation, said commission shall appoint such other officers and employees as its work may require and shall fix the salaries of all officers and employees appointed or employed by it.

Further confusing the independence issue are requirements of Grant Assurances by the Massachusetts Aeronautics Commission, which reads, in pertinent part:

Certification of the Selectmen of the Town of Nantucket.

Notwithstanding any powers that may be granted to the Selectmen of Nantucket, the Town agrees not to attempt to reorganize the Airport Commission, or in any way to interfere with the autonomy and authority of the Airport Commission as created un Chapter 90, Section 51E of the General Laws, without the express approval of the Aeronautics Commission. **See Exhibit 30 (Grant Assurances)**

These factors all had a role in the perception that the Airport is required to have complete autonomy.

These factors all had a role in the perception that the Airport is required to have complete autonomy. Our review found a number of instances where Town finance personnel either questioned a process or requested additional information. However, it was often responded to with aggressive pushback by Mr. Peterson, further discussed later in this report.

In the current structure, the Board of Selectmen is the controlling authority over the Airport Commission. During our interviews, we were told of reluctance on the part of the Selectmen to question the Airport's operations. Due to the long serving Chairman Foley Vaughan's stature and experience, we were informed that deference was often given to his decisions.

An email exchange from July 2010 is particularly revealing about the Airport and identifies, at least the perception that the Airport is independent of the Town and should be left alone: Former Finance Director Connie Voges, discussion in an email on recommendations from Financial Consultant Mark Abrahams:

“The BOS level issue is: whether the Airport is part of the TON, and whether the policies and procedures that apply to the TON also apply to the Airport. There are other operations which are reviewed by other agencies: e.g., the schools, Our Island Home, etc.

The underlying procedure question is whether Mark's report is going to be followed, as written, or whether allowances can /should/will be made for different controls that are in place at other town locations. As written, there was no room in the Abrahams' report for 'other controls in place' – at the airport or elsewhere. Rick Atherton weighed in on this at Audit Committee meeting, with respect to the Airport receivables: his sentiment was basically, IF the Airport has controls in place that work, why do we need to repeat what they do – if we've reviewed the controls and found them to be sufficient.”

But – that's a different approach from the Abrahams' report. It's not an entirely unreasonable approach, but it's not the one that has been on the front burner for the last 2 years.” **See Exhibit 31 (Email Exchange)**

No changes were made at the time.

Finding: Often times, the business of the airport was conducted, discussed and apparent decisions made in violation of open meeting requirements.

A review of email communications, before and after July 2010 reveals information that indicates potential violations of open meeting law requirements. We were told that members often stopped by Mr. Peterson's office, both unannounced and by request to discuss issues and/or get updates. We suspect that in those instances where no formal vote is found in minutes of official Commission meetings, decisions were made to proceed via alternate communications. Some areas where violations appear to have occurred:

- Emails are expressly included in definition of “deliberation,” which is prohibited outside of open session; but distribution of agendas, scheduling information or reports to be discussed at next meeting is permitted.
- Minutes must contain more detailed information; in addition to “date, place, time and matters discussed,” shall include summaries of matters discussed, list of documents used, all decisions made/votes taken.

- Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.
- Chairs required periodically reviewing executive session minutes and determining if they should be released, or if purpose for executive session is still ongoing to keep minutes confidential.

Our review of Airport Commission minutes revealed a number of missing dates, incomplete information, and more importantly, no discussion of public votes taken on expenditures that were eventually approved. The awarding of Al Peterson's final contract in June 2011 is a recent example. On June 21, 2011, on the eve of appointment of new commission members, the existing Airport Commission voted unanimously in Executive Session to award a contract to Al Peterson. Surprisingly, the existence of a written contract was denied two days after the vote. No public acknowledgement or vote was conducted. **See Exhibit 32 (June 21, 2011 – Executive Session Minutes and Emails)**

The circumstances surrounding the restaurant renovations and subsequent lease are another example of potential open meeting law violations. We have discussed many of the issues in the previous sections. A further review shows that the signed documents assigning the lease from Gary Simanson to Chris Skehel in 2009. The effective date of the assignment is January 1, 2009. However, Gary Simanson does not sign the document until July 2009. Chris Skehel signature is undated. Then surprisingly, Foley Vaughan does not sign the document until March 2010. His signature references a May 12, 2009, vote at the Airport Commission meetings. There is no record of this vote. **See Exhibit 18 (Notice of Lease Assignment)**

Finding: When not mandated by FAA requirements, Massachusetts' Procurement Laws were avoided. There was an apparent liberal definition of aviation use and/or emergency process by the Airport Manager that was not questioned. Many items that were deemed to be time sensitive were the apparent cause of management inadequacies.

The Uniform Procurement Act, which is based on Chapter 30B of the Massachusetts General Laws, illustrates bidding requirements and other regulations that are intended to promote transparency, open competition, gain public confidence and avoid favoritism in awarding public money. This applies to every contract for the procurement of supplies, services or real property and for disposing of supplies or real property by a governmental body.

Procurement of a supply or service in the amount of \$5,000 or greater, but less than \$25,000, is to require written or oral quotations from no fewer than three suppliers or vendors. The responsible official that is requesting quotations (the Procurement Officer) shall record the names and addresses of all persons from whom quotations were sought, the names of the persons submitting quotations and the date and amount of each quotation. The contract is awarded to the vendor offering the supply or service at the lowest quote. There is no such requirement for procurements less than \$5,000 (See Section 4 of Chapter 30B).

Procurements in excess of \$25,000 require sealed bidding procedures, which the Procurement Officer shall issue an invitation to bid. The invitation will be of public notice, with a reasonable time prior to the date for opening of bids, and include all items discussed in Exhibit 25 under Section 5(c). The Procurement Officer shall evaluate a bid based solely on the requirements and criteria set forth in the invitation for bids. Such standards include the quality, workmanship, results of inspections and tests, and suitability for a particular purpose. The Procurement Officer shall unconditionally accept

a bid without alteration or correction, and shall award the contract to the lowest responsible and responsive bidder (See Section 5 of Chapter 30B).

Our review found that all projects that were reimbursed by the FAA were managed and overseen through Jacobs Engineering. As such, the process and record keeping appear to be pristine. Attached as an exhibit is one such project. (See Exhibit 33 Sample Project From Jacobs)

However, there were other non FAA projects where corners appear to have been cut. Several of those projects have been discussed in this report. We were told that Mr. Peterson was known for wanting projects to be started and completed as quickly as possible. This is evident from the projects we have reviewed. We were told that he often considered a delay to be an emergency project. Unfortunately, in the public sector, very few projects are considered to be a true emergency. A true emergency in terms of procurement law is defined in Chapter 30B, Section 8 as:

Whenever the time required complying with a requirement of this chapter would endanger the health or safety of the people or their property a procurement officer may make an emergency procurement without following that requirement. An emergency procurement shall be limited to only supplies or services necessary to meet the emergency and shall conform to the requirements of this chapter to the extent practicable under the circumstances.

A delay in opening a restaurant cannot be considered an emergency, nor can a delay in construction due to electrical problems. However, Mr. Peterson believed these situations allowed him the discretion to hire contractors outside of procurement regulations.

Mr. Peterson has responded publicly to many of these issues and has provided his justifications for some issues.

Mr. Peterson's Responses

1. Champoux Landscape – no contract for work in excess of \$370,000. This was put out as a Request for Proposals. It consisted of a design concept and a separate sealed price component. We awarded it to Champoux conceptually but also as the low bidder. We did not have an actual contract with him. At the time, 2008-09 we did not believe OSAH applied since it was landscaping and not vertical construction and since it was a separate contract from the terminal I do not believe that Jacobs's who was our Project manager confirmed prevailing wage. Under our current system we would have a contract following the award.
2. Bernard Walsh – no contract for work on phone system “and other work” at airport since August 2008 for over \$250,000. 25 separate payments to Walsh with “no competitive bidding or written contract. 15 invoices exceeded \$5,000. Bernie Walsh was the phone support guy here when I took over and had always done the day to day maintenance. The system had been a conglomeration of changes that were a complete mystery due to years of patches. He became involved with the terminal project without bidding when we found that the architects assumed that this was covered by the security contract. It was not and the electrical contractor brought it to our attention and we asked Walsh to install the wiring and the electrical contractor to do all the conduit work. This occurred as the wall boarding was getting ready to go up. We had the option of including it in Skanska's or the electrical contractor paying him directly. We opted to do the latter to avoid additional overhead and profit. This was not covered by a contract and under normal circumstances

would have been either added to the contracts of Annese or Skansk as an add or put out to bid if time allowed.

3. Robert W. King – no bidding and no contract for electrical contracting work on two projects for over \$47,000 past three years. Once contract was signed more than a month after the work was completed. This was for work that was performed for several unrelated projects. The first was the wiring for the trailers that made up the temporary terminal for the terminal project. He also worked on disconnecting at the annex building and last assisted with the moving of the fuel farm controls from the old ARFF/Administration building to the temporary shed that is next to the fuel farm. The 2011 projects were at the rate of the Town’s electrical contract of \$75.00/hour. I do not believe the Town had an electric contract under which we qualified in 2008. In any event I believe that this falls under the aviation exclusion of chapter 30B.
4. Per Diane O’Neil – regarding the Champoux work, “...no prevailing wages were paid, no proof of a bond, no proof of insurance and no OSHA cards were available upon request.” I cannot say if this is true or not and I am not sure whether she can make that statement. This was landscaping not construction; for sure OSHA does not apply.
5. Bid splitting – no detail. This was never conceived nor intended. We started these projects with goals of completing the work as soon as possible. They were task specific i.e. disconnect the electrical components from the annex and ARFF building or wire this trailer for use once it was in place. When we started the projects most were considered to be less than \$5000.00. The relocation of the controls for the fuel farm turned into a much bigger project due to not having any as built drawings and problems with the conduits through which the wires were run. The relocation was challenging since much of the wiring was very unorganized. Again, this preceded the town having an electrical contract, but all work following the establishment of the contract was required to be done at the same rate \$75.00/hour.
6. March 2009 – RFP – no mention of a gazebo in the RFP. Five responses and Champoux chosen for \$256,070. Story asserts that an invitation to bid rather than an RFP was the correct way to go. Also asserts that a public works construction project involving any horizontal building requires an IFB. We thought we had done this properly. The original landscaping package was in the AECOM presentation. They had a Boston Landscape firm on their team. After one meeting with them it was decided to remove the landscaping from the overall contract and to keep it as a separate local project. The bidding was advertised and we requested conceptual presentations from all submissions with prices being submitted separately. Champoux was chosen for this concept but was also the low bidder. The Commission subcommittee and airport management reviewed these presentations.
7. No formal vote by the commissions to add a gazebo to the March 2009 RFP. The plans were reviewed at a commission meeting and I believed we had a consensus of the commission before we proceeded with it. It further went through about six HDC meetings for revisions and compliance issues about handicap accessibility that required us to lower the building and modify the landscaping to conform to the lower height.
8. \$2,000 rental of Walsh house for one week. Last year we were expecting to get housing for the ACE Camp from either the High School or the Hospital. Jack Wheeler found the neither place had availability at the last minute for all personnel. We had one dwelling but needed additional bedrooms. In his discussions with Bernie Walsh on phone issues he found that Bernie had a rental house available. He quoted \$2,000 and I ok’d it since it was relatively cheap and we were without time to shop.

9. Three “phone bids” for electrical work with the work going to Robert King, 19 invoices for over \$22,000.00. The contract signed with King a month after the fact showed that he did not have a required errors and omissions policy. This was a discussion between Janine and Diane O’Neil that went on for a couple of weeks deciding whether or not one was needed. By the time it was decided to write one work was well underway. We noted that fact on the contract and had King sign it. This was not major contract work nor did it exceed the \$25,000.00 level.
10. Paul Torres paid \$16,692 since October 2008. Paul is one of two electricians who are badged for access to the secure ramp. He wired the three double wide trailers during the terminal project. This saved us from having to tie up one of our people to escort him on the secure ramp. He further assisted in the breaking down of the trailers during the decommissioning phase. We also used him to wire the new pilot flight planning trailer and he assisted King on the fuel farm, providing escort and electrical help. All work in 2011 was at the Town contract rate of \$75.00/hr. \$20,000 bonuses over the last 3 years to non-union employees as well as contractor who worked on recent projects. We have had plenty of discussions for these. Two went to Paul Letendre as part of his contract. The others were administrative personnel who carried the bulk of the added work on the terminal and ADFP building projects, as well as Leisa who handled the art program for the terminal.

As Airport Manager, Mr. Peterson had discretion to reasonably apply the “airport use” exemption based upon his airport expertise. Generally, no building construction services or land disturbance activities will qualify as an “aviation use.” Based upon a review of certain projects and Mr. Peterson’s explanations, there appears to be violations of procurement laws.

We found that the explanations are further proof of Mr. Peterson’s liberal use of the exceptions to Procurement regulations and/or deviations to open meeting law requirements. A review of these projects suggest inadequate planning was responsible as opposed to viable exceptions. We were informed by various commission members that decisions of this type were left solely to Mr. Peterson. At a minimum, some oversight or discussion by the Airport Commission regarding these issues would have provided a better analysis or the required checks and balances for decisions of this type. We did not find any relevant meeting minutes on many of these topics.

Finding: Significant reconciliation differences between the Nantucket Airport and the Town of Nantucket resulted in long-running accounting problems and a recent deficit in retained earnings of approximately \$3.3 million

Accounting problems between the Town and the Airport have been ongoing for years. This stems from differences in accounting systems, the Town operating on the Municipal Uniform Information System (MUNIS) and the Airport operating on Microsoft Dynamics (formerly Great Plains). Airport capital projects were being completed without the proper borrowing, or use of authorized but unused borrowing from previous capital projects to complete other projects that were not approved by the capital committee.

The Town’s annual financial audit by Powers & Sullivan, LLC during the years of 2008 through 2012 indicated multiple management letter comments and material weaknesses, including failure to comply with procurement laws and regulations as summarized above. **See Exhibits 34 (Management letters).**

The Town operates the Airport as an enterprise fund, meaning its revenue and expenses are separated from the general fund and other municipal departments. The Airport, unlike many other enterprise funds, has historically been able to operate without subsidy from the General Fund. Enterprise funds that do not

generate enough revenue to cover expenses, such as the Solid Waste and Sewer Enterprise funds, by law require annual cash infusions from the Town's general fund to fund operations.

In the early 2000's, the Airport hired former acting Town Finance Director and former member of a prior Town independent auditor Peter Lamb to aid in the monthly close process. Peter was not involved in monitoring or reviewing budgets, rather he was more of a reviewer to make sure that accounts within the Airport are reconciled. Cash accounts carried on the Airport and Town financial systems were reconciled with the "Due to/From" accounts, which were used to monitor inter-fund receivables and payables. The balances of these accounts are intended to represent cash that has not been transferred between funds.

Prior to 2011, the Town's record-keeping over the Airport was not strong. Much reliance was placed on the records prepared and provided by Airport Finance Director Tina Smith, with the review of Peter Lamb. Tina Smith prepared schedules summarizing what expenses were paid, reimbursements that were made from the Town from grant receipts and other borrowing funds that were received from the Town and used to pay Airport expenses. At the end of each year, the Town would make an adjusting journal entry forcing an adjustment to tie to the Airport's schedules.

During 2011, the issuance of a report prepared by the Abrahams Group, and the continued management letter comments and qualified audit opinion on the 2007 year-end audit issued by Town auditors Powers & Sullivan, LLC, forced Town officials to begin to address these reconciliation differences. The Abrahams Report, first issued in September 2008, provided an organizational review of the Town Finance Department. The review was in response to management letter comments for the years 2005 through 2007 by Powers & Sullivan, LLC, which included, among other things:

- warrants were issued but not transferred into enterprise cash accounts upon time of issuance;
- the Town's inability to reconcile cash and due to/from accounts;
- the Town's inability to provide support for general ledger balances;
- the Town does not have internal procedure manuals clearly defining the responsibilities of each position with the finance department; and
- segregation of duties issues throughout multiple areas.

2009 management letter comments from Powers & Sullivan, LLC also revealed that there were payments made at the request of Mr. Peterson, without supporting documentation, but just a signed remittance form, with which the Town payables clerk processed the payment. The 2009 audit revealed that there was no supporting documentation for several Airport transactions, which is a direct breakdown of the Town's system of internal controls. At that time, the policies and procedures for payment at the Town level did not provide for much discretion for review, after the Department Head approved:

1. The department head signed the invoice stamp and indicates the account number to charge the expense.
2. The department head or the designated staff in the department enters the invoice into the town accounting system for payment.
3. The Airport Commissioners then sign to approve the accounts payable warrant and forward to the town finance department for payment.
4. After all the accounts payable requests are turned in by all town, school, and enterprise departments, the final accounts payable warrant is signed by the town accountant or assistant town accountant and a majority of the board of selectmen.
5. Once all the approvals have been obtained, the checks are released by the town finance department.

The Town began performing detail reconciliations of all fund balances, including the enterprise funds. At the end of fiscal year ended June 30, 2011, reconciliation was performed between Town and Airport schedules, and concluded that the Airport schedules contained inaccuracies. This posed the question of how far back were the Airport reconciliations inaccurate.

Miscellaneous income accounts were used to track reimbursements and other deposits that were outside of the normal course of business. The Airport has a general ledger account setup for miscellaneous receipts, account number 65482-48405, "MISC INC.", which is utilized to record deposits received outside of the normal course of business or one-time events. The following is a summary of miscellaneous income activity during the years ended June 30, 2005 through 2011:

YEAR	ACTIVITY
2005	\$7,295
2006	\$15,305
2007	\$4,091
2008	\$123,683
2009	\$27,410
2010	\$28,217
2011	\$32,116

The nature of the miscellaneous deposits include, but are not limited to the following:

- Rental income received by the Town of Nantucket related to the cottage, and reimbursed to the Airport.
- Miscellaneous utility and vendor credits, including "Going Green" refunds in 2010.
- Employee reimbursements, including the receipt for the sale of televisions (See Exhibit 25) in the amount of \$766.12 during 2010.
- Registration fees paid for the ACE Camp.
- Miscellaneous parking and shuttle income.
- Terminal plan fees made by contractors purchasing plan and specification documents related to the Terminal Project.
- Fixed Base Operation revenues (2011).

Finding: American express cards were given out to four Airport employees, and were used primarily for business purposes. Expenses were not signed off, indicating that a review was not performed.

Four American Express corporate credit card numbers were assigned to the Airport Manager, Administrative Assistant, and Finance Director (who had two of the account numbers). The Finance Director had an administrator account number, which is the administrative account number used to manage the account. The remaining account numbers represent cards issued for the aforementioned three employees. The use of the cards was for business travel for conferences, paying for airline tickets, meals

and travel. Any purchases made that related to personal expense were either paid directly to American Express or reimbursed directly to the Airport. There were a few instances that Mr. Peterson traveled with his wife and purchased airline tickets for both of them using the American Express card². Subsequently, Mr. Peterson cut a check to American Express for the portion of the expense related to his wife. Other employees that utilized the American Express cards and had personal expenses reimbursed the Airport directly, which was recorded as miscellaneous income on the Airport's general ledger system. Based on our review of the American Express statements, it appears that the cards were used primarily for business use, and any personal expenses were reimbursed. **See Exhibits 32 (Reimbursements).**

Finding: Bonuses, evaluations, and salary increases do not appear to be uniformly measured for every Airport employee.

Massachusetts Law Chapter 90 Section 51E provides that "Subject to appropriation, said ("Airport") commission shall appoint such other officers and employees as its work may require and shall fix the salaries of all officers and employees appointed or employed by it."

The Airport paid a total of \$20,500 in bonus payments since November 2009 to five non-union employees. It was discussed in an interview with Mr. Peterson that these bonuses were for "exceptional performance" as a result of the "extra workload" from capital expenditures related to the Terminal Renovation Project. The bonuses were paid out of the fund's personnel operating budget, which was derived by airport revenues. This created a future problem as at the time these bonuses were given, the Airport was running on an apparently unknown deficit, which resulted from paying for capital expenditures with operating or unborrowed money.

No other town departments received cash bonuses. However, we were told that the Finance Department reviewed the payment of the bonuses and determined that, due to the existing organizational structure, the Town could not prevent the Airport from giving the bonuses. **See Exhibit 35 (Personnel Spreadsheets)**

Evaluations were provided to Airport employees by Mr. Peterson. When an evaluation was performed with a minimum grade of "Satisfactory", a minimum raise of 5 percent was given to the employee. However, an evaluation had to be completed for a raise to be given. Certain employees have complained that the evaluation process was not consistent, as Mr. Peterson avoided giving evaluations to certain employees to avoid giving raises to them. Additionally, during this time period, the Mr. Peterson had given substantial raises to certain employees, including the Airport Finance Director and Administrative Assistant that some considered excessive.

POTENTIAL ETHICS ISSUES

Use of Red Sox Tickets

It was reported that in 2009, Mr. Peterson received the use of a Boston Red Sox luxury suite. This suite was given to him by an Airport contractor. We were informed that Peterson used this for employees as a team building activity. After the use was made public and questioned, Mr. Peterson was requested to reimburse the contractor.

² We were told that Mr. Peterson did not have to get pre-approval for any business travel. He was given discretion to travel to business conferences and meetings as he deemed appropriate.

We spoke with the president of the contracting firm who provided the suite. We were told that he provided the suite as a courtesy, as his firm was not able to use it on that date and the suite would have gone unattended. He further stated that his work was completed at the airport and he was not bidding on any new work. He stated that the gesture was not intended as anything other than a courtesy.

The contractor stated that he did not ask for reimbursement but received two personal checks from Mr. Peterson for the full value of the suite. **See Exhibit 36 (Peterson Reimbursement Letters for Tickets).**

Travel

We were informed of business being conducted by the Airport with an Airport Commission member, Sheila Eagan O'Brien. Ms. O'Brien's company, Swain's Travel reportedly acted as the travel agent for airport employees and received commission fees. It was also reported that airplane ticket commuter books were sold by Swain's Travel to the Airport.

We have confirmed that Swain's Travel did receive commission fees per booked travel. It was reported to be a thirty dollar fee per transaction. We were informed that this process has been discontinued.

Use of Relatives as Subcontractors

There were at least two instances of the husbands of airport employees, Janine Torres and Tina Smith that were hired to do work at the airport.

As previously reported, procurement violations may have occurred. In both instances, an existing Town contract was in place regarding the applicable services. As with the paving contract, the Airport could have engaged the services under the existing Town contract. The relatives of the employees would not have been hired.

Finding: Mr. Peterson's managerial style contributed to a breakdown in communications and review between the Town and the airport.

One theme consistently heard throughout our interviews, reports and the documents we reviewed was that Mr. Peterson's management style and personality played a large role in the stressed relationship between the Town and the Airport as well as the Airport's lack of abidance of rules. Some of the conflict appears to be a natural occurrence arising from cultural conflicts between a person from the private sector interacting with public sector politics and rules. Mr. Peterson's experience in private industry did not necessarily prepare him for the rules and regulations rampant in public service. While these rules and regulations are there to serve a purpose, they can often seem unnecessarily binding to a person with the best of intentions desirous to get projects completed quickly.

As we have noted, we have not found evidence of fraud or personal gain by Mr. Peterson or others at the Airport. Rather, we believe, as do many others we have spoken with, that Mr. Peterson desired to act in the best intentions of the Airport by pushing for and completing numerous projects. In fact, Airport Commission members that we spoke to held Mr. Peterson in very high regard. Officials at MassDOT also had great praise for Mr. Peterson and thought of him as an effective Airport Manager. We were told in several interviews that Mr. Peterson stated that he wanted the improvements he was able to complete during his time in service, such as completion of a beautiful new terminal, to be his legacy. Unfortunately, the public sector does not look kindly on deviations from rules, even if for the good of the public. Rules and regulations such as procurement laws are in place to prevent mismanagement of funds and to ensure that projects are properly monitored. That these rules were so easily circumvented points to a greater problem of lack of oversight.

On the one hand, Mr. Peterson did get many new projects done at the Airport and some claim that he pushed more through than prior Managers. He was also very involved in local and national airport organizations and used these resources to educate himself on how to effectively work with the FAA and act as an active Manager. Involvement and the related expense of membership and travel to conferences with these organizations is on the whole beneficial to the Airport and point to Mr. Peterson's proactive approach.

However, there are a number of examples of behavior throughout his tenure that are not consistent with cooperation. An excerpt from an email that Mr. Peterson sent in response to a member of the Town's finance department attempt to question an expense is as follows:

"I hope you review this objectively and observe the ridiculousness on your comments. If you do not recognize them I would be surprised. These are paid from the Airport enterprise account and have been reviewed and authorized. I do not expect you are an expert on flag pole height so why waste everyone's time. Are clothes pins and pepper shakers an area of your expertise?" **See Exhibit 37 (Email to Finance)**

In addition, after being instructed on various procurement issues by the newly appointed Town's Attorney, Mr. Peterson responded to an email with:

"Thank you for the dissertation on Purchasing. I hope this is on the Town's nickel." **See Exhibit 38 (Email)**

As we noted previously, Mr. Peterson's attitude toward the Finance Subcommittee during questions about the 12-30 paving project was also inappropriate and a catalyst for this review.

These examples of not only uncooperative but arrogant behavior show how little Mr. Peterson did to help the crumbling situation. We were told on numerous occasions that had the Airport Commission imposed restrictions on his behavior, or had Mr. Peterson been more inclined to cooperate, the relationships between the Town and the Airport may have been better and a forensic audit may not have been deemed necessary.

CONCLUSION

During the course of our review, we were provided access to a multitude of records concerning the Airport. As noted, we have not found any indication of fraudulent activity or malicious intent, other than a desire, both by Mr. Peterson and the Airport Commission, to get things done quickly and remain independent from the Town. The aforementioned procurement and open meeting law deviations are serious offenses. Poor planning, lack of coordination and significant reconciliation differences between the Nantucket Airport and the Town of Nantucket resulted in long-running accounting problems and a recent deficit in retained earnings of approximately \$3.3 million. Mr. Peterson, as Airport Manager, was primarily responsible for the how the Airport was managed and was the face of the Airport to the Town. The Airport Commission, either by vote or by acquiescence, placed him in this position, approved his actions and made decisions as to what should be publicly recognized. While the majority of blame for the Airport's actions should be placed on the shoulders of the Airport Commission and Mr. Peterson, we also acknowledge the Town's responsibility for managing the overall finances of Nantucket and for implementing proper checks and balances. All parties, including the Board of Selectmen, Board of Finance, and Town Administration could have done more to avoid the present situation.

We have referenced the Town Charter, Enterprise Funds and statutory requirements of the Airport Commission as contributing factors in the circumstances under review. The result of the totality of these contributing factors is that the Airport has been viewed and allowed to operate as a completely independent entity, thus creating the proverbial "Silo Effect". By design, particularly from Airport Management, the core of the Airport's business was understood by too few people and there was a disconnect, at least in non FAA reimbursed projects, between the project management and the finance and administration groups of the Town. At times, the Airport had the benefit of utilizing Town resources without having to take responsibility for monitoring compliance. Town Administration felt powerless to oversee the financial condition of the Airport or, in certain circumstances, relied on the Charter to "look the other way."

However, we also note that these factors have been in place under previous administrations and for numerous years. The current financial and procedural issues were not at issue during that time.

The current Nantucket Charter specifically excludes the Airport from the Town Administration. This provision has been in place for many years. However, solutions to the aforementioned issues do not necessarily mandate a change in the Charter. The problems at the Airport were not caused by not knowing what to do or with organizational structure but in enforcement of the proper actions on how to conduct business. As evidenced by FAA funded projects and prior Airport administration, the current operating environment in place works, if processes are adhered to.

Removing political infighting, enforcing financial controls from the Town to the Airport, and improving interdepartmental communication will correct previous deficiencies and have no impact on any regulatory autonomy that the Airport is required to have. The recently signed Memorandum of Understanding on Procurement is an example of a workable and viable initiative.

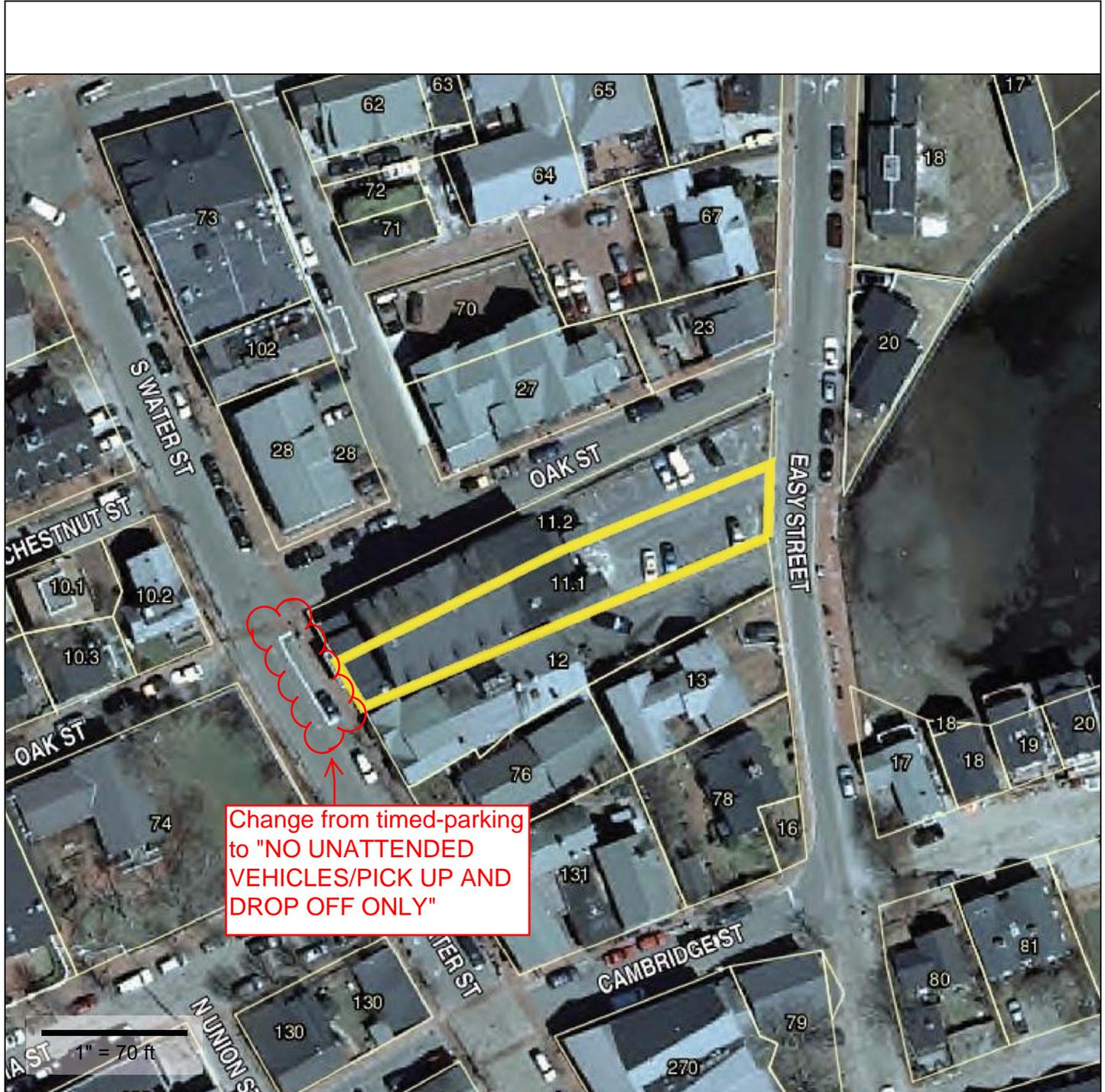
During the past few years, there have been several financial consultant reports and Audit management letters identifying issues and suggesting recommendations for correction, albeit focused primarily at the Town level and not the Airport. We have reviewed those recommendations and believe many of them to be sound. In addition, a detailed set of operational policies, procedures and rules must be developed and implemented for the Airport. These should be consistent with and not in conflict with existing Town policies and procedures.

Progress has been made in the implementation of recommendations. Some of the corrective initiatives that have been already put in place will go a long way towards preventing future problems and forging coordination. Centralized procurement and transition to the MUNIS financial system will help Airport management ensure reconciliation of accounts and compliance with regulations.

We recommend an audit of the new processes in a few months to gauge their effectiveness and the Town and Airport's compliance with the new procedures.

EXHIBITS

1. Exhibit 1 – Document Inventory List
2. Exhibit 2 – Victor Brandon Contract
3. Exhibit 3 – Memo Regarding Runway 12-30 Resurfacing
4. Exhibit 4 – Daily Inspections form Jacobs Engineering
5. Exhibit 5 – Invoices From Victor Brandon
6. Exhibit 6 – Application to MassDOT
7. Exhibit 7 – Airport Commission Minutes
8. Exhibit 8 – RFP
9. Exhibit 9 – Simanson Proposal
10. Exhibit 10 – Ray Email
11. Exhibit 11 – Peterson Emails
12. Exhibit 12 – Meeting Minutes – December 2006
13. Exhibit 13 – Castle Group Agreement
14. Exhibit 14 – Restaurant Expenses Spreadsheet
15. Exhibit 15 – Proposal from Nantucket Architecture Group
16. Exhibit 16 – Stamped Invoices for Castle Group
17. Exhibit 17 – Warrant A14
18. Exhibit 18 – Notice of Lease Assignment
19. Exhibit 19 – Purchase and Sale of Restaurant Equipment
20. Exhibit 20 – Meeting Minutes – March 2009
21. Exhibit 21 – Meeting Minutes – January 2010
22. Exhibit 22 – Financial Statements of Crosswinds
23. Exhibit 23 – Tenant Rate Schedule
24. Exhibit 24 – Invoices for Purchase of TV and Check Reimbursements
25. Exhibit 25 – Meeting Minutes – February 2005
26. Exhibit 26 – Letter from Foley dated February 22, 2006
27. Exhibit 27 – Meeting Minutes – November 28, 2006 and Letter from Foley Vaughan
28. Exhibit 28 – Peterson Letter
29. Exhibit 29 – Meeting Minutes – May 2004
30. Exhibit 30 – Grant Assurances
31. Exhibit 31 – Email Exchange
32. Exhibit 32 – Executive Session Minutes and Emails
33. Exhibit 33 – Sample Project from Jacobs
34. Exhibit 34 – Management Letters
35. Exhibit 35 – Personnel Spreadsheets
36. Exhibit 36 – Peterson Reimbursement Letters for Tickets
37. Exhibit 37 – Email to Finance
38. Exhibit 38 – Email Exchange



Change from timed-parking
to "NO UNATTENDED
VEHICLES/PICK UP AND
DROP OFF ONLY"

1" = 70 ft

Property Information
Property ID 4231 11.1
Location 17 S WATER ST
Owner NANTUCKET DREAMLAND FOUND



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

The Town makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Parcels updated January 1, 2011

