

Closing street to aid jet fitter up to LR board

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The Little Rock Board of Directors on Tuesday will consider closing a short stretch of East Ninth Street and its right of way and **giving it to the airport** for an expansion by Dassault Falcon Jet Corp.

Officials at the Bill and Hillary Clinton National Airport/Adams Field have been in formal negotiations for several months with the Metropolitan Housing Alliance for a short-term lease on that same 2,000-squarefoot piece of property. The property is part of a larger 24-acre tract owned by the housing alliance, which is Little Rock's independent public-housing agency.

The 24 acres is the former Hollinsworth Grove housing project property off East Sixth Street that has been the focus of informal talks between the airport and the housing alliance for almost a decade. The airport is interested in the property for possible future expansion.

The ordinance, if passed, would provide an end run around stalled negotiations between the airport and the alliance and allow the jet company to get on with its expansion.

Emails obtained by the Arkansas Democrat-Gazette through Arkansas Freedom of Information Act requests show that negotiations between housing alliance Executive Director Rodney Forte and airport Executive Director Ron Mathieu stalled earlier this month. Shortly after, Mathieu began reaching out to city directors and city officials for help in obtaining the property for the jet company.

"I am not interested in a showdown, I just want to get the job done," Mathieu wrote in one email.

City Attorney Tom Carpenter said the ordinance would close the stretch of East Ninth Street to traffic. The city would then transfer that part of the street and its right of way to the airport for the jet company's expansion.

"The city's usual process is to split that right of way between the property's two adjacent neighbors," Carpenter said. "But in this instance, to accommodate the need for Dassault Falcon's expansion, the whole property [street and its entire right of way] would be given to the airport."

The street and right of way - in addition to undeveloped land that the airport already owns - would be enough property for Dassault Falcon to complete its \$60 million expansion, which was announced in May. The company plans to expand its jet-completion center in time to unveil its new jet design later this year.

The few extra feet of right of way are necessary from an engineering standpoint to improve the grading of the expansion site so that it is level with the airport's taxiway.

The company's completed jets could then be taxied to the runway without having to burn a lot of fuel to climb the upward slope.

City Manager Bruce Moore said the city is getting involved in the property matter not because the negotiations aren't bearing fruit but because of the jet company's expansion timeline.

"I have visited with Ron and Rodney, and we are all in a partnership together. And we all know this is a great economic development opportunity for us," Moore said. "I felt very confident that all of the agencies could come together and develop an option, but what we were really dealing with was an issue of timing. The company has a timeline it would like to meet for the expansion, and, in dealing with a negotiation that involves two federal agencies, we knew it would take significant time to get everything completed."

The two federal agencies in question are the Department of Housing and Urban Development and the Federal Aviation Administration.

Moore said the airport asked for the ordinance, but he expects the airport's negotiations for the larger property to continue.

Shane Carter, airport spokesman, said Mathieu was traveling Thursday and unavailable for comment.

"We are very appreciative that the city is taking up this ordinance because Dassault Falcon is on a tight timeline and this will allow them to stay on schedule," Carter said. "The airport commission is planning to continue its efforts to acquire the Hollinsworth Grove property, as Dassault may have a future expansion need. We'd also like to have the property for any new opportunity that may present itself in the future with an additional company."

Forte, the housing alliance executive director, said Thursday that he was aware of the ordinance but did not know all of the details. He said it would not hamper negotiations for sale of the remaining property.

"We're open to assist the airport in whatever they hope to achieve," he said. "As we've always stated, we're here to support them. So however we can help, we will."

Forte said the discussions over the short-term lease and the overall property sale became confused in the emails, which led to frustration in the negotiations.

HUD has specific rules regarding disposition of public-housing property and has only one office in charge of processing applications to sell property. Forte said he had proposed a short-term lease to allow the jet company's project to move forward quickly, noting that property sales can take 220 days or more under HUD procedures.

The short-term lease would have been for 300 days, with a possible 90-day extension. After that, the alliance would have been required to finalize the sale under HUD rules.

According to the emails between Mathieu and Forte, the sticking point in the negotiations was whether the airport would have to pay the demolition costs for Hollinsworth Grove, which was razed more than five years ago.

“Let me be clear, under the advice of [counsel] and the FAA, everything is on hold, including the lease, until there is an understanding and agreement that it is illegal for the airport to reimburse Housing for the demolition expenses as part of the sale of the property,” Mathieu wrote in an email to Forte on Aug. 6.

“I simply cannot allow Dassault to build anything on land that the airport does not control when we do not have the basis for a legal sales agreement for the property. The only [definitive] thing that I am asking you to do is to acknowledge my legal limitations.”

Forte responded a few hours later.

“I don’t know your legal limitations. You are the FAA expert,” he wrote. “You’ve not provided me any information ... or regulations regarding your limitations. As one of your biggest supporters, MHA stands ready to do whatever it takes to assist the airport with getting your deal done!”

Forte said by phone Thursday that an appraisal of the Hollingsworth Grove property, which included the cost of demolishing the housing project, was given to the alliance’s board of commissioners as background information in May. He said the board had not voted on a specific asking price or made any motion regarding the appraisal.

The appraisal included \$540,000 for the land and \$397,677 for the demolition costs, including environmental cleanup.

Before it was demolished, the alliance’s former director, Shelly Ehenger, had tried to sell the aging housing project for \$2.2 million plus demolition costs. The airport and alliance haggled but never reached a deal, and the matter was put on a back burner because airport officials did not have an immediate need for the property.

Meanwhile, the Hollinsworth Grove buildings deteriorated, and residents moved to other housing. Finally, the alliance had to either renovate the buildings or tear them down.

In 2009, the alliance used 2008 Capital Fund Program funds to demolish the building with HUD’s approval, according to an audit of the alliance that was obtained by the Arkansas Democrat-Gazette through a Freedom of Information Act request.

Forte said all of the HUD funding given to the alliance is labeled as a grant. However, that doesn’t mean all of that funding is restricted in the same way that traditional grant funding earmarked for specific projects is.

But, Moore said, city staff members had found information that the demolition was done as part of a grant that former Arkansas Congressman Vic Snyder had helped obtain, which meant the demolition costs would be ineligible for reimbursement.

"I suggest the City of Little Rock review the following citations and tread very carefully..."

Dan B. Robison, DDSM

Adams v. Merchants & Planters Bank & Trust Company, 288 SW 2d 35 - Ark: Supreme Court 1956

It is conceded that the governing law has long been settled. The city holds the streets and sidewalks as a trustee and cannot permanently divert them to a public or private use foreign to the purpose of the original dedication. Nevertheless the city has power to permit an encroachment— temporary in the sense that the city's permission may be withdrawn—which does not necessarily interfere with the public's use of the thoroughfare. Such an encroachment, however, may be abated upon complaint by anyone suffering special damages not common to the public at large.

http://scholar.google.com/scholar_case?q=adams+v.+merchants+%26+planters+bank&hl=en&as_sdt=4.4&case=12059586650407234677&scilh=0

Freeze v. Jones, 539 SW 2d 425 – Ark: Supreme Court 1976

When a city vacates a street in which it has only an easement, it has no further rights in the property. [Kansas City Southern Ry. Co. v. City of Ft. Smith, supra](#). It cannot be sold by the city but passes to the abutting owners. [Beebe v. City of Little Rock, supra](#); [Arkansas River Packet Co. v. Sorrells, 50 Ark. 466, 8 S.W. 683](#); [Town of Hoxie v. Gibson, supra](#). Neither can the city devote the street to another public use even though the legislature may have attempted to authorize such action, because to do so would impose an additional servitude upon the land in violation of the rights of the abutting owner, who would have the right to enjoin such use. [Lincoln v. McGehee Hotel Co., supra](#); [Arkansas River Packet Co. v. Sorrells, supra](#); [City of Osceola v. Haynie, 147 Ark. 290, 227 S.W. 407](#).

http://scholar.google.com/scholar_case?q=ownership+of+vacated+streets&hl=en&as_sdt=4.4&case=16486326182702062233&scilh=0

Kralicek v. Chaffey, 998 SW 2d 765 - Ark: Court of Appeals, 3rd Div. 1999

Finally, we come to the question of whether appellants and appellees have an equal ownership interest in the alley by virtue of Ark.Code Ann. § 14-301-306(a) (1987). That statute reads:

Upon the adoption of [a city] ordinance [vacating a public way], the absolute ownership of the property abandoned by the city or town shall vest in the owners of the real estate abutting thereon. Each such abutting owner shall take title to the center line of the street or alley so abandoned, and the ownership shall be free from the easement of the city or town for public use as a street or alley.

http://scholar.google.com/scholar_case?q=mcgee+v.+swaerengen&hl=en&as_sdt=4.4&case=79660358103784975498&scilh=0