



CITY OF RAPID CITY

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MEMORANDUM

TO: Media

FROM: Joel P. Landeen, City Attorney

DATE: 02/10/20

RE: Modrick/Westjet Summary

In addition to the documents you requested pertaining to the Code of Conduct complaint against Lisa Modrick, I have also included documents pertaining to the City's ongoing disputes with Westjet Air Center. Since Alderman Modrick is currently employed as a manager at Westjet and the complaint was made with the active participation of her employers, her allegations are considered to be an extension of Westjet's continuing attacks against the airport's leadership.

The purpose of this summary is to help give some recent history of this dispute and put the materials you have been provided into context. Patrick Dame started as the Executive Director of Rapid City Regional Airport (RAP) in September of 2015. When Mr. Dame was going through the interview process, he started researching the airport and noted that from his experience the lease rate paid by the fixed base operator (FBO), Westjet, seemed very low. After he was hired he discussed this with board members. Board member Shawn Gab remembers speaking with Mr. Dame about the lease rates and suggested that he discuss his concerns with Westjet. Patrick communicated to Linda Rydstrom, one of Westjet's owners, that he believed their lease rates were low and that one of his goals as director was going to be getting rates up to market. He has expressed he was trying to be upfront with them and did not want them to be taken by surprise. He believes that Westjet's attitude toward him began to change at this point.

To put the rate issue in perspective, Westjet currently leases a total of 334,390 sq.ft. of land at the airport for an annual rate of \$11,366.97 a year or \$947.24 a month. While the actual rates are based on whether the land is improved or unimproved (Rate for improved land: \$.07185; Rate for unimproved land: \$.02105), the overall rate would be \$.03399 per sq.ft. In comparison, Dale Aviation, a business classified as a Special Aviation Service Operation (SASO) currently pays \$.26722 for improved land and \$.13366 for unimproved land. The FAA requires that the rates and charges by the airport be fair. It is also important that the airport is charging market rates. Airports are heavily subsidized by federal tax dollars and the federal government has an interest

in making sure airports are generating the amount of revenue they are capable of producing so that they do not over rely on federal dollars. Another concern with rates that are too low is that it encourages tenants to hold on to land that is not being put to its maximum economic benefit and produces little economic consequence to the tenant for failure to develop the land or put it to a beneficial use. The fact that Westjet is charged next to nothing for unimproved land is a perfect example of this principle. Of the land leased by Westjet, 85,198 sq.ft. is improved and 249,192 sq.ft. is unimproved. At the current rates (\$.02105), Westjet pays \$5,245.49 a year (\$437.12 a month) for hundreds of thousands of sq.ft. of land that is not being developed and which the airport has no ability to lease to someone who might want to put the land to a beneficial use. Mr. Dame, with support of the board, has made it a priority to address the issues with the lease rates being charged. Interestingly, Mrs. Modrick was on the Airport Board and served as President of the Board for two years during the time that the current lease rates were negotiated. The current lease agreement with Westjet states that the land rent *shall* be adjusted to a market rent every five years based on the findings of a rent study (§5.1.1.2 & §5.1.2.1.1). Consistent with the lease, the City commissioned a study of the rates to determine what the fair market rate should be. At the Airport Board meeting on the 28th the findings of this study were presented to the Board and public, and were consistent with Mr. Dame's assessment that the lease rates paid by Westjet are currently far below a fair market rate.

Mr. Dame made it about a year before difficulties with Westjet started to ramp up. This is a timeline/summary of those disputes:

Alleged Spill at Fuel Farm (September 2016 – April 2018)

On September 24, 2016, a retired Rapid City Fire Fighter who had been based at the airport went to the on-site fuel farm to collect waste fuel which he used to heat his home shop and reported what he believed to be fuel contamination in the ground surrounding Westjet's fuel tanks. It is widely known that he has collected this waste fuel for a number of years and it has never been an issue. He had access to the fuel farm through his general aviation badge. Westjet asserts that the City was the cause of this dispute because we let Mr. Reishus into the fuel farm by granting him improper access. The City disagrees with Westjet's assertion. Airport staff investigated and determined the ground did appear to be wet and smelled of petroleum and informed Westjet. Westjet was asked to initiate containment procedures, but refused. The City conducted testing at its own expense to determine if there was a fuel leak or contamination and ultimately concluded there had been no spill and there was no contamination. Westjet informed the City in early 2017 that it believed it should be reimbursed for the expenses incurred (mostly attorney's fees & travel) in connection with this event and that the City had damaged its reputation. Westjet also raised a number of other issues.¹ The parties began negotiating a resolution to the dispute throughout the rest of the year. While the City did not believe it had any legal liability, the Airport Board wanted to smooth over the relationship and try to move on from the dispute and was willing to pay Westjet for some of its expenses and also make improvements to the fuel farm in order to do so. The parties seemed close to a resolution of the claim in early 2018 when Westjet decided to file a claim that it was the victim of a hostile environment based on sex due to

¹ One being the inappropriate Sensitive Security Information (SSI) Cover sheet which I have included in the documents you were provided. Also included is an email from Patrick Dame which shows that the TSA found the same cover sheet online and also used it by mistake.

the actions of Mr. Dame. Despite this claim, the parties continued to negotiate. However, Westjet rejected the City's last offer and made a counter offer which among other things required Mr. Dame to admit to, and apologize for, engaging in harassment which he vehemently denies occurred. Westjet made clear it would drop its official complaint of discrimination if the City agreed to its terms. Believing that the discrimination claim was without any merit and Westjet had filed it to gain leverage in the settlement negotiations, the City withdrew its previous offer and suspended negotiations. No further settlement discussions have occurred since that time. Despite Westjet's threats to sue the City over this matter, they have failed to do so and the statute of limitations on any tort based claims expired earlier this month. Westjet could still theoretically bring a claim based on contract issues for a few more years.

Sex Discrimination Claim & Retaliation Claim (February 2018 – Early 2019)

Westjet's claims and the City's response are well laid out in the documents provided. These include the City's original response to the allegations and the FAA's decision concluding that Westjet had failed to demonstrate that any issues it was having at the airport were based on illegal discrimination. During the course of this investigation Westjet also claimed that it was the victim of retaliation based on its complaint. I have included the City's response to this claim and the FAA decision that Westjet had failed to prove retaliation.² When Westjet received the decision closing out the original complaint it requested a formal reconsideration. This process resulted in the decision rejecting Westjet's complaint being upheld. This all concluded in early 2019.

Fuel Farm – Envoy Audit (May 2018 – January 2019)

Westjet requested that they be placed on the May 8, 2018 Airport Board agenda to address concerns about the safety of the fuel farm based on the audit they received from Envoy Air, Inc. (American Airlines ground handler). While the audit did identify several concerns, it clearly identified the "risk level" of those items as "minor" and the "risk level" posed by those items as "acceptable." The City conducted an inspection based on Westjet's concerns and did take some of the actions requested, including improvements to the gate area to narrow the gap between the gate and the ground. Despite the City's actions, Westjet continued to raise issues with the security of the fuel farm throughout 2018. This culminated in Mr. Dame's memo to the Board dated January 16, 2019. The conclusion contained in that memo is based on the fact Westjet would pay \$101.46 to lease the space for its tanks in the fuel farm for 2019 and if they truly believed the fuel farm was unsecure they could certainly invest their own money to improve the security around their fuel tanks. If Westjet chose not to improve the security of its fuel tanks for itself, he could not support expending tens of thousands of tax payer dollars to satisfy their demands when the fuel farm was in compliance with all regulations and Westjet paid virtually nothing for its leased space.

² The FAA's letter closing out the retaliation claim mentions the denial of the records request and states that it will consider that issue separately. I have included the records request so you can see what happened. When the FAA was provided the documentation from the State of South Dakota showing that the City's denial was proper, it verbally informed the City no further action on the matter would be taken.

FAA Investigation – Safety Concerns from Westjet (December 2018 – March 2019)

The City received a letter of investigation from the FAA on December 21, 2018. This investigation was based on a complaint filed by Westjet. It raised four issues: 1) an incident involving a small aircraft where a NOTAM should have been issued, but was not; 2) concerns over the closure of the crosswind runway; 3) allegation that the airport failed to follow its emergency contingency plan related to a diversion of a California Pacific flight³; and 4) safety of the fuel farm. The closeout letter from the FAA did express concerns about the length of the closure of the crosswind runway and the mistake which allowed the NOTAM for this runway to expire when the runway was not available, but also found that the airport's response to this issue and the retraining the airport did on NOTAM's was sufficient to address the FAA's concerns. On the balance of the complaints the FAA found that the airport acted in compliance with federal regulations and its policies.

Whitelock Discrimination Complaint (June 2019 – January 2020)

I have included this complaint because shortly after his employment with the City ended, Mr. Whitelock went to work for Westjet. The law firm representing him also happens to be the same law firm that is representing Westjet. The City was notified on January 28, 2020, that the EEOC did not find there was sufficient evidence of discrimination for the agency to further pursue his claim.

Hangar Demolition (October 2019 – Present)

In early October airport staff noticed that people were removing siding material from an old hangar leased by Westjet. Everyone is aware that the hangar was going to be demolished and both parties wanted to see the hangar taken down. However, the Airport Board had never approved the demolition as required by the lease, nor had the FAA issued the Categorical Exclusion (CATEX) which was required before demolition could start. Mr. Dame reached out to Westjet to let them know they needed to stop demolition and wait for the necessary approvals. He also reached out in order to let them know that if they wanted he could put the demolition authorization on the board agenda for the following week to speed up the process and not unnecessarily delay the demolition of the hangar. He initially spoke with Miranda Maleki about the matter, but she was unsure of what to do and informed him that Linda and Don were at Mayo and she needed to talk to Linda. A short time later Linda called and was very upset. Mr. Dame explained the situation, but also made clear to Linda that he understood they needed to deal with whatever was going on at Mayo and they could resolve this when they returned. Westjet has subsequently characterized these conversations as hostile, but there is audio of both calls that proves this characterization is not accurate. Based on the long history of disputes with Westjet, one of my assistants drafted a letter to put Westjet on notice of what the City believed was a

³ It is not really covered in the documentation, but there is a reason why California Pacific would have wanted to go to the Westjet terminal rather than the main terminal. The airline did traditional "charters" but also did contract work for other carriers flying scheduled routes. If they are flying a scheduled route they should have gone to the terminal, but the passengers would also need to go through screening if they left. If it is a charter they could disembark and reload the plane without dealing with TSA. Apparently they have previously claimed that a flight was a charter at other airports when really it was scheduled service so they could avoid this issue. This flight was scheduled service to Pierre and we suspect the airline was playing a similar game in this situation. This incident also drew the attention of the TSA, but the airline went out of business shortly after the situation in Rapid City, so I do not believe anything came of it.

breach of its lease in order to document the fact and outline next steps. Despite Westjet's characterization of the letter, it makes clear that the City is willing to work with Westjet to resolve the issue and cure the breach. Westjet was subsequently put on the following weeks board agenda, received approval from the board to demolish the hangars, and upon issue of the CATEX proceeded with the demolition. Once the breach had been cured, my office sent Westjet notice that the City considered that the breach was cured and they were in compliance with their lease. Westjet takes issue with the fact that the Board did not "approve" the letter stating that the airport believed they were in breach of their lease before the letter was sent. The airport staff is not required to get formal Board approval before putting a tenant on notice of a potential breach. The Airport Board meets once a month. It is ridiculous to think that the airport would need to wait a month or more to let a tenant know if they are breaching their lease.⁴ The airport staff has notified tenants of breaches in the past without board approval. Granted, most of these did not come from the City Attorney's Office, but based on the history, it was decided at the time that the letter should come from my office rather than airport staff. If Westjet had failed to comply and the airport needed to take legal action, then staff would have needed board approval. Westjet has since insisted that the airport make clear they were never in breach of their lease and pay the costs and expenses they incurred in dealing with the City's claim that they were in breach. When the City refused to agree to their demands, they filed a notice of claim with the City.

Hangar Damage Caused by Airport Staff (October 2019 - Present)

During a snow event in October, one of Westjet's hangars was damaged during snow removal operations. Ironically, the damaged hangar is the same one that was the subject of the previous issue and has since been demolished. Westjet characterizes this incident as the "hit & run." While it appears the employee did report the incident, there was some confusion and clearly the accident was not properly documented at the time. After reviewing the incident, airport management has changed the reporting and documentation policy in an effort to prevent a similar situation from happening in the future. Westjet has made claims it is entitled to damages for the incident, but has yet to submit any documentation supporting their claim, or outlining how much they believe they are entitled to for the damage to the now demolished hangar.

Impact on Operations Staff (Summer 2019 – Present)

Based on the issues with Westjet, the operations staff is reporting to management that they are hesitant to do or say anything to Westjet employees or address issues near Westjet. They believe that if they identify an issue, or interact with Westjet, that they will become a target and come under attack. The evidence these fears are not unfounded is found in the documentation of the issues Westjet has raised over a specific staff member starting this summer up until the present. When airport management decided it had risen to the level that HR should get involved, Westjet backed off briefly and said they did not want to push it that far. However, it has recently reignited over the incident where a door was left open. Somehow, a friendly email where Westjet was asked to remind its staff to close doors has been turned into a conspiracy by airport staff to defame Westjet.

⁴ For the record staff was in contact with board leadership regarding the issue and the Board leadership was also aware of what staff was doing.

Westjet & Modrick Allegations (Fall 2019 – Present)

Lisa Modrick started working at Westjet as Director of Operations in October 2019. Since that time word has gotten back to the airport management that Westjet and Mrs. Modrick are seeking to stir up the tenants against management. She has also been stating to various people, including the Mayor, that there are major issues at the airport with its management and the tenants are dissatisfied, but they are too scared to say anything. According to Mrs. Modrick Westjet is out in front because the tenants are all coming to them and they are in a position to do something about it. This culminated in rumors that Westjet was telling media and others to show up at the Airport Board meeting on January 28th where substantial allegations would be revealed. As a member of the City Council, it is concerning that Mrs. Modrick would be withholding such concerns thus preventing the City from properly investigating them and would instead seem to be facilitating the revelation of unsubstantiated allegations, likely directed at Mr. Dame, in a manner that is meant to damage and embarrass him while also preventing him from defending himself or responding. In an effort to get to the bottom of the issue, the Mayor tasked HR with doing a review of the airport culture in the terminal building. This report concluded the widespread dissatisfaction among the tenants reported by Westjet and Mrs. Modrick does not appear to be accurate.

In addition, to the above issues, Mrs. Modrick contacted the Mayor on January 2nd to inform him she had something very serious to discuss. She claimed that he had been threatened by Darren Haar, the President of the Airport Board. Based on their conversation, the Mayor assumed this had just happened, but learned through the course of the call that this “threat” had actually occurred almost 3 weeks earlier on December 10th. The Mayor asked when they could get together to discuss the matter and Mrs. Modrick indicated that she was going on vacation for two weeks and they could meet when she returned. The Mayor expressed that if this was as serious as she was claiming he was not comfortable waiting that long and he would prefer to meet before she left so if necessary he could address it immediately. The Mayor met with Mrs. Modrick, her husband, the Rydstrom’s, and Westjet’s attorney January 6th at City Hall. Also present for this meeting was Police Chief Karl Jegeris and Jess Rogers from the City Attorney’s Office. Mrs. Modrick specifically requested that Chief Jegeris, or the Assistant Chief, be present at the meeting due to the serious nature of the threat and the concern she had over her safety. Mrs. Modrick told those assembled that she had met with Mr. Haar on the afternoon of December 10th at the Chamber of Commerce offices located in the Rushmore Plaza Civic Center. They met in the Chamber’s conference room. The nature of the threat and Mrs. Modrick’s allegations can be heard on the recording which has been provided. This meeting was on the same night as the Chamber’s annual Christmas party and after the meeting was over she went to the party. Mrs. Modrick stated that she was relieved to be in the party where there were a number of people, that she went to the back of the room and got some water and sat down by herself in order to write down what had occurred while it was still fresh in her memory because she was so disturbed by it.⁵ In addition to the allegations made by Mrs. Modrick, the representatives of Westjet claimed this was the greatest threat in the history of their business and they were so concerned they had

⁵ The Mayor saw Mrs. Modrick at the Christmas party, but she did not approach him to speak about the incident or anything else.

sent their daughter out of town and did not want her to return.⁶ They further informed the Mayor that they talked to the TSA and were told this could be considered a threat against civil aviation so they had also contacted the FBI.⁷ Since he became aware of the allegations the Mayor did touch base with Mr. Haar and ask him what was going on, at which point Mr. Haar indicated to the Mayor he had recorded the entire meeting with Mrs. Modrick. After listening to Mrs. Modrick and Westjet outline the allegations of the threat against them and their concerns, he informed them that the good news was the conversation had been recorded and he should be able to get to the bottom of this quickly. At this point, the mood noticeably changed and Mrs. Modrick's group became clearly upset. Jess Rogers later listened to the recording of the conversation between Mrs. Modrick and Mr. Haar and prepared a report for the Mayor analyzing the allegations. After reviewing the report the Mayor also listened to the recording of the conversation.⁸ Based on his review of the conversation the Mayor has concluded that no reasonable person could believe the conversation between Mr. Haar and Mrs. Modrick constituted a threat and that the differences between Mrs. Modrick's allegations and characterization of the conversation are so far from the reality that it is hard to reach any conclusion other than it is an outright fabrication. The Mayor met with Mrs. Modrick on January 28th and conveyed to her directly his assessment of her complaint. Since Mrs. Modrick is currently employed by Westjet and the owners of Westjet along with their attorney were actively involved in making this complaint, he has also sent a letter to Westjet outlining his findings and overall concern with Westjet's continued pattern of attacking the airport and its leadership.

In addition to the specific disputes I have identified, there is just a general attitude of hostility emanating from Westjet towards Patrick Dame. The Rydstrom's have told the Mayor and others, including members of the Airport Board, that their ultimate objective is to get Mr. Dame fired. Westjet is constantly playing down any positive accomplishments or news stories from the airport and promoting negative stories, or stories they believe will damage Mr. Dame's reputation. According to Westjet, any record that is broken, new service that is added, or anything positive that happens occurs in spite of Mr. Dame even though he has now been the executive director for over four years. During Mrs. Modrick's conversation with Mr. Haar, she goes so far as to take credit for the additional air service Rapid City has obtained based on her previous service on the Board. Everything the airport has accomplished over the last four years is apparently all due to luck and the efforts of everyone who proceeded Mr. Dame. While this view may be understandable if the airport's recent success had occurred within a few months of him taking over, after four plus years of being in charge it seems ridiculous to think he should not receive the credit he is due for the successes the airport has achieved over the last few years. The Mayor, a majority of the Council, the Airport Board, and many community leaders recognize the job he has done at the airport and have refused to buckle to the pressure from Westjet to have him fired. Everything he has been able to accomplish is even more impressive considering he has done so despite the difficult circumstances and constant distractions created by Westjet during his tenure as the airport's director. Having been unable to get Mr. Dame fired, it is virtually

⁶ Their daughter's FB page indicates that she currently lives in Chandler AZ. There is also a post from Dec. 16, 2019 where she indicates the last two months have been quite an adventure as she has taken a part time job with a company flying corporate clients, presumably based out of AZ.

⁷ It is our understanding that Mrs. Modrick has in fact given a statement to the FBI.

⁸ The recording of the conversation is not currently in the City's possession. The recording is currently in the possession of Mr. Haar's attorney David Lust. Mr. Haar has indicated he would be willing to allow the Journal to listen to the recording at his attorney's office.

impossible not to reach the conclusion Westjet is now trying to accomplish their goal of removing Mr. Dame indirectly by making his life so miserable he chooses to leave voluntarily. While the people who understand what he has accomplished would consider Mr. Dame leaving a huge loss for Rapid City, if something does not change that outcome appears virtually inevitable.

Please feel free to contact me if you have any further questions, or need to follow up on anything you have been provided.