STATE OF IDAHO)
County of KOOTENAI)ss
FILED 11/28/2022
AT 1:20 O'Clock P. M
CLERK OF DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

HELIDOCK, LLC, an Idaho Limited Liability Company, and the JOHN HUCKABAY REVOCABLE LIVING TRUST, by and through JOHN HUCKABAY as trustee of the John Huckabay Revocable Living Trust,

Plaintiffs,

vs.

KOOTENAI COUNTY, and the KOOTENAI COUNTY BOARD OF COMMISSIONERS, a govenmental entitiy, COEUR D'ALENE AIRPORT ADVISORY BOARD and STEVEN KJERGAARD, in his capacity as airport director,

Defendants.

Case No. **CV28-20-4974**

MEMORANDUM DECISION GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on a Motion for Summary Judgment brought by defendants Kootenai County Board of Commissioners (Board of Commissioners), Kootenai County, Coeur d'Alene Airport Advisory Board (Airport Advisory Board), and Steven Kjergaard (Kjergaard) (collectively defendants), against plaintiffs Helidok LLC (Helidok, which is owned by James Walsh) and John Huckabay Revocable Living Trust (Huckabay Trust) (collectively plaintiffs). Also before the Court is the defendants' Motion To Exclude Portions of the Declaration of John Huckabay.

The plaintiffs in this matter two individuals, James Walsh, and John Huckabay, who through their legal entities, are the owners and operators of airport hangars located at the Coeur d'Alene Airport. Amended Complaint ("Am. Compl.") ¶ 1.1; Stipulation to

Dismiss Certain Plaintiffs and Amend the Complaint, 1-2. Defendant Board of Commissioners is the "operator of the Coeur d'Alene Airport"; defendant Kjergaard is "an employee of Kootenai County and the airport director of the Coeur d'Alene Airport"; and defendant Airport Advisory Board is "an entity of Kootenai County created to support the Kootenai County Board of Commissioners with respect to airport-specific issues." *Id.* ¶¶ 1.2-1.4; Ans. ¶¶ 1.2-1.4.

This case involves a dispute surrounding the county's desire to construct fencing between hangars in order to comply with "14 C.F.R. Part 139 requirements of minimizing public access on the airfield." Am. Compl. ¶¶ 3.6-3.7. This project was "proposed to the Kootenai County Board of Commissioners as a necessity for improved security and access control at the airport." Def.'s Mem. in Supp. of Mot. for Summ. J. 2.

A. Factual Background

The Coeur d'Alene Airport is operated by the Kootenai County Commisioners. Am. Compl. ¶ 1.2; Ans. ¶ 1.2. The Coeur d'Alene Airport does not currenty service commercial airlines or commercial air transport. Kjergaard Decl. 8, ¶ 26. "The Airport holds a Part 139 certification for the purpose of future expansion, to include commercial air transport. *Id.* at 8-9, ¶ 27.

The Coeur d'Alene Airport has an Airport Advisory Board, comprised of members appointed by the Kootenai County Board of Commissioners, which present airport related issues to the Kootenai County Board of Commissioners. Fillios Decl. 2, ¶ 5; Kjergaard Decl. 4, ¶ 10. This Airport Advisory Board meets the second Wednesday of every month. *Id.* Additionally, this Airport Advisory Board holds monthly meetings with the KCBC, known as the "Airport Advisory Board Update" meeting, on the fourth Monday of each month. *Id.* at 4, ¶ 11.

In or around the beginning of 2020, a near collision between a private aircraft

and a vehicle occurred at the intersection of Taxilane D2 and the paved area adjacent to Walsh's hangar. Kjergaard Decl. 4, ¶ 11. This paved road was installed by Walsh's predecessor-in-interest, Carl Lewis (Lewis), when Lewis designed and built the airport hangar. Walsh Decl. 2, ¶ 5. In response to the near collision, on or around March 2020, the airport placed concrete ecology blocks on the north side of the paved area to prevent this from occurring. Kjergaard Decl. 5, ¶ 13; Walsh Decl. 2, ¶ 8. The blocks do not prevent vehicles from entering this area, however, but instead act to discourage vehicles from entering this area. Kjergaard Decl. 5, ¶ 13; Walsh Decl. 2, ¶ 8, 9, 10, Ex. B. Kjergaard claims that in addition to this near collision, there additionally were "significant hazards" caused by a "significant number of people driving around and between hangars, damaging hangars." Kjergaard Decl. 5, ¶ 14. Recent Meeting Minutes show that the issues of non-aviation vehicles driving on the taxiway being previously discussed by Kjergaard (*See* for example Dick Decl. Ex. 13: "...found a Jimmy John's food delivery driver on the taxiway;" Dick Decl. Ex. 16: ". . . had vehicles stray on to the taxiways in the past; people had gotten confused and mistaken it for a roadway.")

To "preclude future unauthorized movement between the hangars, public roadways and taxi-lanes," and to "prevent unwanted and unauthorized access to airport", Kjergaard proposed installation of fences between the individual hangars along Cessna Ave to the Kootenai County Board of Directors on June 22, 2020. Kjergaard Decl. 5, ¶ 15, 16. Kjergaard claims "[t]he installation of fencing between the private hangars located along Cessna Avenue would help prevent unwanted incursions onto Taxilane D2 and provide for the safety and security of those hangar owners." *Id.* ¶ 16. This proposal was listed as an "action item" on the meeting's agenda. Kjergaard Decl. 5, ¶ 17; Fillos Decl. 4, ¶ 11.

The Agenda for the "Special Meeting" held on June 22, 2020 provided:

Agenda
A. Call to Order
B. Changes to the Agenda (Action)
C. Business (Action)
1. Review of Airport Advisory Board Meeting
2. Cessna Fencing
D. Public Comment (Discussion)
E. Adjourn

Kjergaard Decl., Ex. 13; Dick Decl., Ex. 13.

The meeting minutes for the June 22, 2020, meeting provide in relevant part:

Cessna Fencing
Mr. Kjergaard explained this item involved an additional, internal fencing project and provided a map showing its planned location. He noted that had received some bids, the lowest of which was about $25,000. He remarked it would help solve many of their access issues, increase security for aircraft and personal property and reduce the Airport's potential liability. He said if the Board approves, his staff will advise tenants and ask for their input.
Commissioner Leslie Duncan commented she would like more information on this project before she offered an opinion. The other Commissioners voiced agreement.

Kjergaard Decl., Ex. 13; Dick Decl., Ex. 13.

The defendants contend that at the June 22, 2020, meeting, the Kootenai County Board of Commissioners "advised [Kjergaard] that he could begin discussing the fencing project with hangar owners and begin cost projections." Fillos Decl. 4, ¶ 11. *See also* Kjergaard Decl.6, ¶ 19. Kjergaard "did not discuss the specific cost of the project with the Commissioners at that time because there were still some details to work out with the tenants, such as location and placement of the fencing between their hangars and whether or not they would want a gate in the fence." Kjergaard Decl. 6, ¶ 18. Though Kjergaard would need the Board's approval for funding prior to installation, he did not seek budgetary approval during this meeting, and no vote regarding this proposal was taken by the Kootenai County Board of Commissioners.

Fillos Decl. 4, ¶ 11; Kjergaard Decl. 6, ¶ 18, 19. After the Airport Director discussed the matter with the tenants and solidified bids, the defendants claim the next step was "the Airport Director would take the issue back to the Commissioners and ask for budgetary approval. Until the director had solidified placement plans with the tenants and received projected pricing bids for Board approval, no bids would be accepted or awarded." *Id.* at ¶ 22. To date, the Airport Director has not taken the issue back to the Commissioners to ask for budgetary approval.

On or about June 23, 2020[1], Kjergaard sent the following letters to the tenants allong Cessna Avenue, which include members of the planitff, Walsh and Huckabay:

> Dear _____,
> With your investment at COE and the need to protect that investment, as well as to meet the FAA's FAR Part 139 requirements of minimizing public access onto the airfield, the Airport wil be installing fencing between the hangars on Cessna Avenue. The Airport has this right through your lease agreements, Airport Minimum Standards and requirements under FAA FAR Part 139.
> This fence will be installed from hangar to hangar and will be placed approximently 15' from your hangar door. The airport is open to discussing this placement if both neighbors can agree to an acceptable location.
> There is no plan to install gates in between hangars; however, if you would like to have a gate installed as part of the general fence installation that can be arranged at your cost. There will be two options if you choose to install a gate. They are a 4' and a 6' foot [sic] gates. The costs are:
> 4 foot gate: $500.00
> 6 foot gate: $600.00
> This cost will include a lock and key that must be used on the gates at all times. If you wish to have a gate installed, please advise the Airport office no later than July 31st 2020. Failure to do so will result in the Airport being unable to accommodate any requests for the gate installation.
> If you choose not to install a gate there will be no cost to you for the installation of the fence.
> If you have any questions, please give me a call.
> Sincerely,
> Steven Kjergaard

[1] Mr. Walsh's letter is dated June 22, 2020, while Mr. Huckabay's letter is dated June 23, 2020.

Airport Director

Walsh Decl. Ex. 3; Huckabay Decl. Ex. B; Kjergaard Decl. Ex 3.

The purpose of the letter "was to inform the tenants of the fencing project and work with each individual tenant to get their input on where they preferred to have the fencing located between their hangars." Kjergaard Decl. 6, ¶ 20.

On July 15, 2020, Mr. Huckabay received the following letter from Kjergaard:

> Dear Mr. Huckabay:
> Re: Fence Installation - Cessna Avenue
> Beginning around 2:00 p.m., July 31", the Airport staff will begin marking with spray paint the fence line from hangar to hangar down Cessna Avenue.
> As was stated in the previous letter, our intent is to place the fence line approximately 15' from your hangar door.
> We will be placing the fence based upon previous conversations we have had so far with individual tenants. If you would like to contact the office to discuss a fence placement other than the 15' from the hangar door, please make sure you and your neighbor are in agreement and then contact the Office Airport no later than August 7th.
> Additionally, several of you have indicated you would like a 4' or a 6' gate. If you haven't yet and would like to purchase one, please reach out to us no later than August 7th. We will be confirming with everyone once we have all the details of gate installation,
> If you have any further questions, please give us a call.
> Thank you.
> Sincerely,
> Steven Kjergaard
> Airport Director

Huckabay Decl. Ex. B.

On July 24, 2020, Douglas Dick (Dick), attorney for the plaintiffs, began e-mailing Kjergaard and the Kootenai County Airport about this matter. *See* Dick Decl. 3, ¶ 12, Ex. 100. On August 12, 2020, the Airport Advisory Board Meeting Minutes mention the Cessna Ave Fencing for the first time since June 22, 2020, stating:

> Fence Progress — Airport staff is working on the fencing between hangars on Cessna Ave. The project should be completed this year. The FAA won't pay for this fence. We have offered an option to the tenants to have a man gate if they would like at their expense.

Dick Decl., Ex. 15.

On August 13, 2020, the original plaintiffs filed thier Complaint.

Proxy Card and PIN-Code System

On or about February 7, 2022, "the FAA conducted its annual inspection of the Coeur d'Alene Airport. . . to determine if the airport was incompliance with 14 CFR Part 139 regulations and the Airport's Part 139 certification." Kjergaard Decl. 9, ¶ 28. The FFA found the Airport" did not comply with all the requirements of Part 139" and thus was written-up for "non-compliance of Section 139.335(a)(1), which requires that all access gates near or around the Airport remained closed to prevent inadvertent entry from the public and Wildlife."[2] *Id.*, at Ex. 24. The Airport was written-up for non-compliance related to three other sections in the Airport's Part 139 certification. *Id.*

Following, the Airport closed all access gates near or around the Airport, and initiated a "proxy card" system, allowing tenant's access with this card through specific access points. Kjergaard Decl. 9, ¶ 29. The implementation of such was not reviewed or approved by the Kootenai County Board of Commissioners. Mem. in Supp. 14, ¶ 36. The defendants claim that this "proxy card" is free to all tenants, and that if a tenant wishes to obtain a card, they "simply need[] to go the administration office, fill out a form and leave a copy of their driver's license." Kjergaard Decl. 9, ¶ 29. This standard was additionally stated by the Defendant's Counsel at oral arguments. However, while the defendant's claim that it does not require a test, the May 11, 2020, Airport Advisory Board Meeting Minutes show that:

> Prox Cards (Discussion) — [Kjergaard] just wanted to remind everyone that Prox cards will be issued beginning April 1st and the system will go live May 1st. Tenants will need to complete the Driver Training test. Cards will limit the tenant to the area they need. There's no cost unless

[2] On May 15, 2020, a meeting was held wherein bids for the Kootenai County Airport Perimeter Fencing Project were presented.

> an individual loses their card and needs one reissued. We are asking everyone to contact our office to make an appointment to take the test.

Dick Decl. Ex, 8. (emphasis added) (underlining in original). (*See also* Dick Decl. 3, ¶ 13, Ex. 101; ". . .if they complete the drivers training, they will receive access . . ."; *See also* Huckabay Decl., Ex. D. containing e-mails from the Coeur d'Alene Airport stating ". . .Once you are ready to take your test, give me a call to schedule an appointment.", ". . . if you choose to complete the airport driving program you will be able to access the front of the hangar from Citation Ave gate entrance." and "Please contact me to make an appointment to come in and take your test and get your Prox. Card.") With such, there is a contention between the plaintiffs and the defendants on what is the appropriate procedure for obtaining a Proxy Card.

Though not discussed by the defendants, who claim that the cards were implemented in response to the write-up[3], the matter of Proxy Cards was previously discussed in an Advisory Board Meeting on June 10, 2020, almost 20 months prior, wherein the minutes show the discussion item of:

> Runway Airport Access Changes — Notices will be sent out next week to begin badging. The gates will be operational October 15. D3 proxcard holders will test only once. D2 will test annually as will DI. Only three people can test at a time so appointments will be required.

Dick Decl. Ex, 10. (emphasis added) (underlining in original).

In addition to the "proxy card" system, the Airport implemented a PIN-code system that allowing entry into some of the locked gates. Kjergaard Decl. 9, ¶ 30. The defendants claim that there are multiple ways to obtain a code: a tenant can call and request the code from the airport administration office; or, if it is after hours, a tenant can call and request the code from the number posted on the gate. *Id.* Mr. Huckabay claims, however, that the "Airport Director refuses to provide [him] with a pin code, and

regularly changes the pin code without providing notice. . ." Huckabay Decl. 5, ¶ 32, and further that:

> I have attempted to call that number [next to the gate that you can call to obtain access] after hours when I needed access and did not get an answer. Once my call was sent to an answering machine that told me someone would contact me within the next 24 hours. More than five times there was no answer. As a result of my restricted access I was unable to respond to an emergency call-out, because I could not get access to my hangar and my aircraft.

Id. at 5, ¶ 33.

Because Mr. Huckabay's attempts at getting the PIN-Code from the Airport were unsuccessful, Dick sent an e-mail to Kjergaard requesting the pin on Mr. Huckbay's behalf. Dick Decl. 3, ¶ 14. In relevant part, Kjergaard responded:

> The code is currently . . . However this code will change every month and we are only giving it out to businesses. As I have stated before Mr. Huckabay should stop into the airport office and get a Cessna gate card or complete the driver training program.

Dick Decl. 3, ¶ 14, Ex. 102. (emphasis added) (underlining in original).

Lease Agreements

In relevant part, plaintiff Huckabay's lease agreement states:

> Such public airport facilities and improvements may be changed, altered, or modified from time-to-time at the discretion of the County; however such changes shall not eliminate or substantially limit Lessee's ability to use its facilities for aviation or other lawful purposes intended by this Lease.
> Lessee further agrees that its right to use said public facilities and improvements in common with others shall be subject to the laws, rules, and regulations of the United States of America, State of Idaho, Kootenai County, Federal Aviation Administration, and other governmental bodies having jurisdiction, and Lessee agrees to abide by these laws, rules and regulations.
> It is understood and agreed that the County hereby retains the right of ingress and egress over, under, across and through the Leased Premises to provide access to the property and any time.
> . . . .
> Lessee agrees to abide by all applicable federal, state, and local rules,

[3] Memo. in Supp. 13, ¶ 32-34.

regulations, or ordinances ad may apply to the leasehold granted in this
Lease, to include Federal Aviation Administration.

Def. Mem. in Supp. 26. [Citing to "Exhibit 1, pgs. 3-4; 7."]

Plaintiff Walsh's lease agreement states in relevant part:

The use of the Premises must, at all times, be in compliance with the County's Rules and Standards of the Coeur d'Alene Airport as adopted by the County and as may be amended from time to time. The County and Lessee will cooperate in developing appropriate plans in the event a change in the Minimum Standards requires a change to the Premises.

. . . .

If the Federal Aviation Administration ("FAA") or its successor, requires modifications or changes in this Lease as a condition precedent to granting funds for improvements, Lessee agrees to consent to the amendments, modifications, or changes of this Lease as may be reasonably required and to incorporate such required changes into an amendment of this Agreement.

This Lease is subordinate to the provisions of any existing or future agreement between County and the United States of America relating to the operation or maintenance of the Airport.

. . . .

The County has adopted and will enforce Minimum Standards and reasonable rules and regulations to be uniformly applied to similar uses and users of similar space, which Lessee agrees to observe and obey with respect to the use of the Premises, and the health, safety and welfare of those using the Premises. The Minimum Standards and rules and regulations may be amended from time to time following notice to Lessee.

Def. Mem. in Supp. 27. [Citing to "Exhibit 2, pgs. 3, 7, 15."]

Authority Granted under Minimum Rules and standards

The Coeur d'Alene Airport enacted Minimum Rules and Standards, "which were created to help run and maintain the airport facility in a safe, efficient, economical, environmentally-acceptable, and responsive manner to the Coeur d'Alene community." Kjargaard Decl. 3, ¶ 7. These Standards "define the operating parameters for all stakeholders and users of the Coeur d'Alene Airport" and "apply to all leases, permits, tenants, entities and any unauthorized aeronautical and non-aeronautical activities on

any part of the airport." *Id.*

Pursuant to Definitions provided in the Rules and Standards that were in effect in 2020, "Minimum Standards means the qualifications set forth in Subdivision III hereof, which set forth the minimum requirements to be met as condition for the right to conduct Commercial Aeronautical Activity on the Airport." Kjargaard Decl. Ex. 18, at 5, ¶ nm. "Commercial Aeronautical Activity means the sale, exchange, trading, buying, merchandising, hiring, marketing, promotion, or selling of commodities, goods, services, or property, or any revenue-producing activity made available to the public in connection with Aeronautical Activities." *Id.* at 4, ¶ v.

Throughout briefing the defendants assert that Kjergaard, as Airport Director, has certain authority and jobs. In particular, Kjergaard claims:

> 4. As the Airport Director I have the authority to conduct airport business and engage in the daily operations of the airport, along with maintaining access control and improving the safety and security of the airport, without approval or oversight from the Kootenai County Board of Commissioners. Generally, the airport director does not need approval from the Kootenai County Board of Commissioners to enhance or improve security measures at the airport if the cost of the improvement is below the statutory limit or county policy limit.

Kjargaard Decl. 2, ¶ 4. (Emphasis Added). (Underlining in Original). Similarly, Chris Fillos (Fillos), a Kootenai County Commissioner, claims:

> 14. The Airport Director does not need Board approval for the implementation of security measures at the airport that fall below the airport's budgetary allocation. The Airport Director is allowed to take measures necessary to ensure safe operations at the airport, including but not limited to: taking action to avoid unauthorized access of pedestrians, vehicles and wildlife; avoid runway incursions and unauthorized movement; ensure that taxiways do not interfere or create a problem for other structures or other aircraft; and change or alter security access to airport grounds that do not require unplanned expenditures over budgetary allowance pursuant to policy or statute.
> 15. The Kootenai County Board of Commissioners does not need to approve the implementation of gate access and security control required by the FAA to meet the Airport's Part 139 Certification. The proxy-card system, pass-code system, or other changes made to airport access, do

> not need Board approval or direction if the costs to implement those security measures fall below the airport's budgetary allowance pursuant to statute or policy and don't need to be contracted out.

Fillos Decl. 5, ¶ 14, 15. (*See also* Def. Mem. in Supp. of Mot. For Summ. J. ¶ 3, stating Kjergaard "has the authority to conduct Airport business and engage in the daily operations of the airport, along with maintaining access control and improving the safety and security of the airport without approval or oversight from the Kootenai County Board of Commissioners." (emphasis added).) It should be noted, however, that none of the defendants cited to authority or exhibits to provide for the assertion that the Airport Director has the authority to improve the safety and security of the airport with an action such as implementation of permanent structures on airport grounds without Kootenai County Board of Commissioner's approval. The Court reviewed the pleadings in detail looking for this provision, but did not find any expressed authority provided to the Airport Director, apart from the general statements of: "The Airport Director shall have the authority to enforce the Rules and Standards, as may be amended from time to time." The provision that seems to be relied on by the defendants to provide this authority states:

> The County reserves the right to install security devices on the Airport as may be deemed necessary by the Airport Director in furtherance of the Airport Security, Wildlife Program or other required FAA directives. Security devices installed within a Tenant's leased premises shall be located only along the Airport perimeter, in public use areas or locations to best protect the airport.

Kjargaard Decl. Ex. 18, at 10.

This provision, however, provides the County with this authority, not the Airport Director. While there is expressed authority granted to the Airport Director throughout the Minimum Standards provided[4], as evidenced by some relevant provisions below, no

[4] The airport minimum standards can be viewed on the Kootenai County website at

provisions seem to provide the claimed authority. For example, the following are examples of expressed authority provided to the Airport Director:

> Section C—Administration, Enforcement, Penalties and Appeals
>
> I. Administration
>
> a. The Airport Director has primary responsibility for the interpretation and application of the Rules and Standards and is authorized to issue directives and interpretive guidance in conformity with the Rules and Standards. The decisions of the Airport Director hereunder are subject to appeal, as provided in Subsection II (Administrative Appeal).

Id., at 9, ¶ a. (emphasis added) (underlining in original)

> Section B – Aircraft Operations
>
> I. General Responsibilities
>
> d. In addition to any other penalties prescribed by these Rules and Standards or that may be imposed by FAA for the same conduct, the Airport Director is authorized to restrict access to the Airport by (i) any Person who has been found by the FAA to have violated applicable FAA regulations concerning the operation of aircraft, where such violation would, at the sole discretion of the Airport Director, present a real and present danger to the safety of persons or property on the Airport; or (ii) who has been found by the County to have violated the preceding provision of the Rules and Standards concerning the safe operation of aircraft on the Airport.

Id. at 22, ¶ d.

> Security
>
> General
>
> The Airport Director may issue directives and orders to implement the Airport Security Program. The Airport Security Program is considered sensitive security information in accordance with federal law and regulation, and no Person is entitled to demand or obtain a copy from the County.

Id. at 35.

Additionally contained within the Minimum Standards are the following Reservation of Rights:

> The County reserves the right to plan and develop the Airport in the best interest of the County, Tenants, and Airport users. Relocation of existing Tenants will be subject to and conducted

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https://kcgov.us/169/Rules-and-Standards. Kjergaard Decl. 3, ¶ 8.

> in the manner provided in a Lease, Permit, or Agreement, by mutual agreement, or by exercise of eminent domain by the County.
>
> . . . .
>
> The County reserves the right to limit certain operations that are unsafe or that create significant inefficiency at the airport. The Airport Director shall make a recommendation to temporarily limit certain operations to the Airport Advisory board. The Airport Advisory Board shall vote to approve, deny or modify the recommendation based upon the merits of each recommendation. All users affected may appeal the limit to the Board of County Commissioners.

Id., at 10.

Finally, the Minimum Standards provide that: "Where this Agreement calls for the consent or approval of the County, the same shall be in the form of resolution approved by the County as provided by law." Kjargaard Decl. Ex. 18, at 4, ¶ aa.

B. Procedural History

On August 13, 2020, plaintiffs James Walsh, Carl Lewis, Jim Chamberland, George Franco, Janet Gasset, Mark Mantufal, John Huckaby, Burt Rutan, Save Logue, Steve Vantavia, Murdo Cameron, Mervin Nilsson, Charles Branch, and Ross Schlotthauer (collectively original plaintiffs) filed a complaint against Kootenai County, Board of Commissioners, Airport Advisory Board, and Steven Kjergaard for violation of Idaho's open meeting laws, breach of lease agreement, and prescriptive easement.[5] On September 17, 2020, defendants filed their Answer to Complaint and Demand for Jury Trial (Answer). On October 21, 2020, the Court issued an Order on Voluntary Stipulation to Dismiss Steve Vanbatavia as a Plaintiff. On November 30, 2020, the Court issued an Order on Voluntary Stipulation to Dismiss Jim Chamberland as a Plaintiff. On May 9, 2022, the Court issued an Order on Stipulation to Dismiss Certain

[5] Plaintiffs stated in their Memorandum in Response and Opposition to Motion for Summary Judgment that they are no longer pursuing the prescriptive easement claim. Pl.s' Mem. in Resp. and Opp'n to Mot. for Summ. J. (Opp'n to Mot. for Summ. J.) 1 n.1.

Plaintiffs and Amend the Complaint, ordering that all remaining original plaintiffs be dismissed, that the caption "be modified to remove those Plaintiffs from all further pleadings"; and allowing the complaint to be amended to "substitute 'John Huckaby Revocable Living Trust, by and through John Huckaby as Trustee' for Plaintiff John Huckaby; and 'Helidok LLC' for Plaintiff James Walsh". On May 11, 2022, plaintiffs filed an Amended Complaint, adding Helidok and Huckaby Trust as plaintiffs. Plaintiffs' Amended Complaint requests the following relief:

(1) "Defendants should be estopped from implementing the proposal and should be required to comply with I.C. § 74-201 *et seq.*, so that any proposal will be made with the benefits of public comment and debate", Am. Compl. 5 ¶ 4.5;
(2) "an injunction and restraining order prohibiting the continued construction of the fencing", *id.*, Payer for Relief ¶ 2;
(3) damages for breach of their respective lease agreements, *id.* ¶¶ 4.13, 4.15-18;
(4) "uninterrupted and uninhibited use" of "the space between the[ir] hangars" by "an order establishing a prescriptive easement in favor of Plaintiffs", *id.* ¶¶ 4.20, 4.23, Prayer for Relief ¶ 3; and
(5) "reasonable costs and attorneys fees", *id.*, Prayer for Relief ¶ 5.

On August 4, 2022, defendants filed Defendants' Motion for Summary Judgment, Defendant's Memorandum in Support of Motion for Summary Judgment, and Declarations of Chris Fillios, Steven Kjergaard, and Counsel in support of their motion. On August 23, 2022, plaintiffs filed Plaintiffs' Memorandum in Response and Opposition to Motion for Summary Judgment and declarations of John Huckaby, James Walsh, and Douglas R. Dick in support of their motion. On August 30, 2022, defendants filed Defendants' Reply Memorandum in Support of Motion for Summary Judgment, Defendants' Motion to Exclude Portions of the Declaration of John Huckaby, Defendants' Memorandum in Support of Motion to Strike Portions of John Huckaby Declaration, and Defendants' Motion to Shorten Time to Hear Defendant's Motion to Exclude Portions of the Declaration of John Huckaby. On November 08, 2022, plaintiff

filed Plaintiffs' Memorandum in Response and Opposition to Motion to Strike.

Defendants seek dismissal of all plaintiffs' claims on summary judgment, and that certain paragraphs in John Huckaby's Declaration be excluded for purposes of the Motion for Summary Judgment.

A hearing on the motion for summary judgment took place on November 15, 2022. After oral arguments were presented, this Court granted the defendant's Motion to Strike in full, and granted the defendant's Motion for Summary Judgment related the violation of Open Meeting Laws. The Court took the defendant's Motion for Summary Judgment related to the breach of Mr. Walsh and Mr. Huckabay's lease under advisement.

II. STANDARD OF REVIEW

A. Motion to Strike

Motions to strike under Idaho Rule of Civil Procedure 12(f) generally focus on pleadings. *Alpha Mortgage Fund II v. Drinkard*, 169 Idaho 446, 450 497 P.3d 200, 204 (2021). "The court may strike from a pleading ...." I.R.C.P. 12(f); see also *Hayden Lake Recreational Water and Sewer Dist. v. Haydenview Cottage*, LLC, 835 F. Supp. 2d 965, 984 (D. Idaho 2011) ("The [c]ourt has recognized in previous cases that motions to strike ... are limited to pleadings[.]"). In addition, motions to strike may also be addressed to the sufficiency of affidavits on summary judgment. *Id.* See generally *Sales v. Peabody*, 157 Idaho 195, 202, 335 P.3d 40, 47 (2014) (explaining that motions to strike are also permissible for affidavits at summary judgment under I.R.C.P. 56(c) to preserve the right to challenge the admission of evidence on appeal).

The Court's decision to grant or deny a motion to strike is reviewed under the abuse of discretion standard. *See Chadderon v. King,* 104 Idaho 406, 409-10, 659

P.2d 160, 163-64 (Ct.App. 1983); *Mallonee v. State,* 139 Idaho 615, 623, 84 P.3d 551, 559 (2004) (citing *State v. Campbell,* 123 Idaho 922, 925, 854 P.2d 265, 268 (Ct.App. 1993).

Appellate courts apply a four-prong standard for discretionary review: "whether the trial court (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." *Lunneborg v. My Fun Life*, 163 Idaho 856, 867, 421 P.3d 187, 198 (2018).

B. Motion for Summary Judgment

Idaho Rule of Civil Procedure 56 governs motions for summary judgment. According to that Rule, summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). A party asserting that there is no genuine dispute as to any material fact or a party asserting that a genuine dispute exists, must support that assertion by "citing to particular parts of materials in the record" or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." *Id.*

> If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
>
> (1) give an opportunity to properly support or address the fact;
> (2) consider the fact undisputed for purposes of the motion;
> (3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or
> (4) issue any other appropriate order.

Id. 56(e).

The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Fin. Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). "Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking." *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000) (citing *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994)). "A material fact is one upon which the outcome of the case may be different." *Peterson v. Romine*, 131 Idaho 537, 540, 960 P.2d 1266, 1269 (1998).

Once the moving party meets their burden of establishing the absence of a genuine issue of material fact, the burden shifts to the non-moving party to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)). To do so, the non-moving party "must come forward with evidence by way of affidavit or otherwise that contradicts the evidence submitted by the moving party, and that establishes the existence of a material issue of disputed fact." *Chandler v. Hayden*, 147 Idaho 765, 769, 215 P.3d 485, 489 (2009) (citing *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007)). "Circumstantial evidence can create a genuine issue of material fact. . . . However, the non-moving party may not rest on a mere scintilla of evidence." *Shea v. Kevic Corp.*, 156 Idaho 540, 545, 328 P.3d 520, 525 (2014) (quoting *Park West Homes, LLC v. Barnson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013)).

> In determining whether material issues of fact exist, all allegations of fact in the record and all reasonable inferences from the record are construed

> in the light most favorable to the party opposing the motion. *City of Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 240, 16 P.3d 915, 919 (2000). When a jury is to be the finder of fact, summary judgment is not proper if conflicting inferences could be drawn from the record and reasonable people might reach different conclusions. *State Dep't of Fin. v. Res. Serv. Co., Inc.*, 130 Idaho 877, 880, 950 P.2d 249, 252 (1997).

Edmondson v. Shearer Lumber Prod., 139 Idaho 172, 176, 75 P.3d 733, 737 (2003).

III. ANALYSIS

A. The Defendants' Motion to Strike

As a preliminary matter, before the Court is the defendants' *Motion to Exclude Portions of the Declaration of John Huckabay*, wherein the Board of Commissioners ask that for the purposes of Summary Judgment the Court strike and not consider certain statements and conclusions made in John Huckabay's August 23, 2022, Declaration in Opposition to Defendant's Motion for Summary Judgment. Mem. In Supp. of Mot. To Strike Potions of John Huckabay Decl. ("Memo. In Supp. of Mot. To Strike.") at 5. Those statements that the defendants are asking this Court to strike are outlined as follows:

1. I do not believe that it is necessary for the Coeur d'Alene Airport to continue to maintain a Part 139 certificate because it no longer has regularly scheduled commercial air traffic. ¶ 18.
2. If the airport was in compliance in the past, and still had a Part 139 certificate, without fencing and with the old access systems in place, it would still be in compliance without these changes. ¶ 20.
3. My experience from flying into Reno Stead, which has a tower and a terminal, is that gates only close when they have commercial flight coming in. Such a system would work for the Coeur d'Alene Airport if commercial traffic would ever return. ¶ 22.
4. Having a hangar design like Mr. Walsh's hangar and the ability to move planes from either side of the hangar and still access the taxiway alleviates liability and risk of hangar rash. ¶ 28.
5. Having the ability to drive between hangars also alleviates liability and risk of hangar rash. ¶ 30.
6. The Airport Director and the Commissioners are not properly managing their fiduciary responsibility in managing what is going on at

> the airport. They are failing to provide cost benefit analysis of projects being proposed and implemented. ¶ 40.

Mem. in Supp. of Mot. To Strike, at 3-4. The defendants contest that Mr. Huckabay has not been identified or qualified as an expert witness, and further, his declaration is void of any facts that lay the foundation required to demonstrate that he is qualified as an expert witness, especially with regard to airport design and FAA Part 139 certification, arguing:

> ... to exclude certain portions of the declaration that contain expert opinion and/or embrace ultimate issues of law to be decided by the court. Mr. Huckabay has not been disclosed as an expert in this matter and certain statements made within his declaration contain opinion testimony or embrace ultimate issues of law for which Mr. Huckabay has not been qualified to render an opinion on.

Mem. in Supp. of Mot. To Strike, at 1-2.

The plaintiffs respond that:

> To the extent any of the statements could be considered opinion testimony, Mr. Huckabay is permitted under I.R.E. 701 to make statements of opinion, so long as he does not rely on scientific, technical, or other specialized knowledge that would fall within the scope of Rule 702 in expressing his opinion. Each of the statements Defendants want struck is either a factual assertion that he can make or a lay opinion that is permitted under I.R.E. 701. None of the statements Mr. Huckabay has made required him to rely on scientific, technical, or other specialized knowledge that fall under the scope of Rule 702.

Resp. Mem. in Opp'n to Mot. to Strike, 3.

For the reasons stated on the record, this Court grants the Plaintiffs' Motion to Strike in full. The statements listed above, namely: paragraphs 18, 20, 22, 28, 30, and 40 of John Huckabay's Declaration are excluded for purposes of Summary Judgment. Huckabay's statements in those paragraphs are full of impermissible legal conclusions, unsupported factual opinions, and mere beliefs. Additionally, Huckabay gives expert opinion and Huckabay lacks the qualifications to give such opinions. Being a pilot does

not give Huckabay the qualifications to render expert opinion contained in those paragraphs.

B. Defendants' Motion for Summary Judgment

Defendants move for summary judgment on all claims. Their primary arguments are: (1) "Defendants did not violate Idaho's open meetings laws"; and (2) defendants did not breach the plaintiffs' lease agreements because (a) "the Cessna fencing will not change or substantially limit plaintiffs' use of their hangars for aviation purposes" for either plaintiff; and (b) "plaintiffs' lease agreements and the Airport's minimum standards allow[ ] for unilateral changes to Airport property for safety and security reasons." Def.s' Mem. in Supp. of Mot. for Summ. J. at 16, 19-20, 26 (capitalization altered).

1. Because there was not a Violation of the Open Meeting Laws Related to the June 22, 2020, Meeting, Defendant's Motion for Summary Judgment regarding the Breach of Open Meeting Laws is Granted.

The plaintiffs contend that the defendants, as the governing bodies of a public agency, failed to follow Idaho Code § 74-201 *et seq.*, as required by failing "to post an agenda, minutes, or conduct a public hearing on the proposed fencing between the hangers," and by "failing to allow for public comment on the fence proposal." Am. Compl. 5, ¶¶ 4.1, 4.2, 4.3.

However, the defendant's assert that:

> Plaintiffs . . . cannot show that the Kootenai County Board of Commissioners or the Airport Advisory Board failed to properly post the agendas necessary for the public meeting involving the discussion of the Cessna fencing project. As shown by the June 22, 2020 Airport Advisory Update Meeting agenda, the item of "Cessna Fencing" was listed on the agenda as an action item. Also, as evidenced by the agenda, the items of business for that meeting would be open for public comment. The agenda was posted to the County website and in at least two physical locations, i.e. at the Kootenai County administration office and at the airport.

> The "Meeting Minutes for the Airport & Airport Advisory Board Update" meeting for June 22, 2020, shows that the Cessna fencing project was discussed during the meeting and that the Board advised that the airport director could begin discussions with the tenants about the fencing and get their input. As shown by the meeting minutes, no vote was taken because there was no action needed at that time. The Board simply gave direction to begin the discussion of the fencing issue with the tenants and to gather further information on the cost of the project.
>
> . . . .
>
> The Airport Advisory Update meeting is a standing meeting that is held the fourth Monday of every month at the Kootenai County administration building. The agendas are posted the Friday before the meeting in several places. Plaintiffs were aware of the standing meetings and aware that Kootenai County has a website where the County posts the agendas for each meeting. The plaintiffs are also aware that the Airport Advisory Board posts its agenda on the County website. The plaintiffs are further aware that the County and the Advisory Board posts the agendas for each meeting at lease [sic] forty-eight (48) hours prior to the meetings.
>
> It cannot be disputed that the defendants followed the applicable state laws when posting the item of the Cessna fencing project for discussion at the June 22, 2020, airport update meeting. The agenda clearly gave notice to those interested that the item of Cessna fencing would not only be discussed, but potentially could be voted on by the County Commissioners, should a vote be needed. A vote was not needed because the project was in its initial stages. Direction was given by the Commissioners to proceed with discussing the fencing location and potential costs of gating with tenants, which is allowed by law. No bids were award [sic] and no funding was asked for at that meeting.
>
> There was no violation of the open meeting laws and no issues of law or fact that would preclude summary judgment. Plaintiffs cannot show a violation of Idaho Code § 74-201 *et. seq.* Summary judgment is therefore appropriate in this matter.

Def.s' Mem. in Supp. of Mot. for Summ. J. 17-19. (internal citations omitted).

Plaintiffs respond that looking at the meeting minutes and the subsequent actions taken, there are material questions of facts as to whether the Kootenai County Board of Commissioners complied with Idaho's open meetings laws. Opp'n to Mot. for Summ. J. 8. Plaintiffs claim the following are issues of material fact which preclude summary judgment on the issue of a violation of Open Meeting Laws:

1. Whether Defendants failed to comply with Idaho's open meetings law?
2. Whether any authorization was granted to the Airport Director at the June 22nd meeting with the Board of County Commissioners?
3. If authorization was granted on June 22nd, what was the scope of the authorization?
4. Whether the public was denied an opportunity to comment on the Cessna Fencing project?
5. Whether Defendants are estopped from claiming they were not required to seek approval from the Board of County Commissioners?

Id. at 6. In their *Memorandum in Response and Opposition to Motion for Summary Judgment*, the plaintiffs argue in detail that a "review of the June 22nd meeting minutes show that there is material question of fact regarding whether any authorization was even granted to the Airport Director," (*Id.* at 8) "the meeting minutes are ambiguous about what, if anything, was agreed to that day," (*Id.* at 9) and thus "an issue of fact regarding whether there was any approval, and if so what was authorized and the scope of that authorization" is created. *Id.*

> Given the wording of the meeting minutes and the fact that the Airport Director was seeking Board approval of the action item, and that reasonable members of the public may properly rely on the representations made in meeting minutes there is a material question of fact whether Defendants are equitably estopped from arguing no Board approval was necessary.
>
> Considered in the light most favorable to the nonmoving party, a reasonable person who reviews the letters and meeting minutes could conclude that no decision had been made, and that no authorization was granted by the commissioners. These material questions of fact create genuine issues about whether the Defendants complied with Idaho's open meeting laws and summary judgment should be denied as a result.

Id. at 13.

As correctly pointed out by the defendants, plaintiffs' argument centers around the wording and content of the meeting minutes for the June 22nd meeting, not whether the County met the provisions of § 74-204 and § 74-205 as alleged. Def.s' Reply Mem.

in Supp. of Mot. for Summ. J. (Reply in Supp. of Mot. for Summ. J.) 3, 4.

> Plaintiffs do not dispute the following facts: that the Airport Advisory Board Update Meeting of June 22, 2020, was a regularly scheduled meeting; that the County gave proper notice of the meeting by posting an agenda to the Kootenai County website and at the Kootenai County Administration building; that the meeting was open to the public; that the public portion of that meeting allowed for public comment; that the agenda was posted timely and contained the statutorily required information, including all items known to be probable items of discussion and actions items that may be voted on; that the agenda listed the Cessna Fencing item as a "Business (Action)" item; that the agenda was not amended prior to the meeting; that the meeting minutes were timely posted to the County website and are a matter of public record; that the plaintiffs did not attend the June 22nd meeting and therefore do not have personal knowledge of what discussions were held; and that the plaintiffs were not precluded from attending the meeting on June 22nd.

Id. 2-3. Defendants continue:

> Plaintiffs do not dispute that the County met the provisions of Idaho Code § 74-204. Instead, Plaintiffs argue that, because the Cessna fencing item was listed as an action item on the agenda, "it would be expected that some form of approval, vote or authorization would occur and that the result would be adequately recorded." Plaintiffs argue that because the meeting minutes are *ambiguous*, there is a question of fact as to what scope of authorization the Airport Director was given regarding the Cessna fencing project. Plaintiffs' argument fails because the plain language of Idaho Code § 74-205 does not require a detailed written account of what was (or was not) discussed, but only the following elements regarding the information needed to satisfy the statute[:]
>
> . . . .
>
> (a) "The meeting minutes show all members of the governing board present", *id.* at 5 (capitalization altered);
> (b) "The meeting minutes show all motions, resolutions, orders, or ordinances proposed and their disposition", *id.* (capitalization altered); and
> (c) "Meeting minutes must only show the results of all votes and the vote of each member by name", *id.* at 6 (capitalization altered).

Id. 3-5 (internal citations omitted).

This Court finds that the outcomes of "Whether any authorization was granted to the Airport Director at the June 22nd meeting with the Board of County

Commissioners?"; "If authorization was granted on June 22nd, what was the scope of the authorization?"; and "Whether Defendants are estopped from claiming they were not required to seek approval from the Board of County Commissioners?", are not material to outcome of this Motion for Summary Judgment. For the purposes of this Motion for Summary Judgment, the Court agrees with the defendants that:

> Regardless of what was discussed, decided, voted on, or not voted on at the June 22nd meeting, the Airport Director's subsequent actions do not give rise to a cause of action under Idaho's open meeting laws. Even assuming arguendo, that the Airport Director "completely ignored the direction he alleges he received or he completely exceed the alleged authorization," given by the Board, the Airport Director's subsequent actions do not prove violation of Idaho Code § 74-201 *et. seq.* See Plaintiffs' Reply Memorandum, p.10. The provisions of Idaho's open meeting laws govern only the conduct of the Kootenai County Board of Commissioners leading up to and during the meeting and the content of the meeting minutes posted afterward. Idaho Code § 74-201 et seq., governs the procedural process and notice requirements necessary to ensure that public business is not conducted in secret. It does not govern the actions of the public, or even the actions of a governmental employee, after the meeting has concluded.
>
> It is immaterial that the Airport Director sent letters to the hangar owners immediately following the June 22nd meeting. It is also immaterial that the Airport Director began marking the fence line with spray paint. And it is immaterial that the letters did not ask for input on the project, but stated that the airport would be moving forward with the project. The Airport Director's subsequent actions, even if done in total disregard to what that Commissioners authorized him to do, does not prove a violation Idaho Code § 74-201 *et. seq.*

Defs' Reply Mem. In Supp. 9-10. Therefore, for the purposes of this Motion for Summary Judgment, the Court is not addressing those issues. Additionally, because this Court does not find a violation of the Idaho Open Meeting laws, as stated on the record at the November 15, 2022, hearing, the Court will not address the consequences of a violation of Idaho Open Meeting Laws.

This Court's task is to determine if, as a matter of law, the plaintiffs have pled

enough to show that the defendants failed to follow I.C. § 74-201 *et seq*[6]., as required by failing "to post an agenda, minutes, or conduct a public hearing on the proposed fencing between the hangers," and by "failing to allow for public comment on the fence proposal." Am. Compl. At 5, ¶ 4.1, 4.2, 4.3. Idaho Code § 74-202, discussing definitions, provides:

> (1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present, but shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting held in compliance with this chapter.
> (2) "Deliberation" means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature that do not specifically relate to a matter then pending before the public agency for decision.
> . . . .
> (4) "Public agency" means:
> (a) Any state board, commission, department, authority, educational institution or other state agency created by or pursuant to statute, other than courts and their agencies and divisions, and the judicial council, and the district magistrates commission;
> (b) Any regional board, commission, department or authority created by or pursuant to statute;
> (c) Any county, city, school district, special district, or other municipal corporation or political subdivision of the state of Idaho; and
> (d) Any subagency of a public agency created by or pursuant to statute, ordinance, or other legislative act.
> (5) "Governing body" means the members of any public agency that consists of two (2) or more members, with the authority to make decisions for or recommendations to a public agency regarding any matter.
> (6) "Meeting" means the convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter.
> (a) "Regular meeting" means the convening of a governing body of a public agency on the date fixed by law or rule, to conduct the business of the agency.

[6] The Court does not find Idaho Codes §§ 74-201, 74-202, 74-206A, 74-207 or 74-208 relevant to this Motion for Summary Judgment.

> (b) "Special meeting" is a convening of the governing body of a public agency pursuant to a special call for the conduct of business as specified in the call.

As a preliminary matter, the June 22, 2020, Meeting Agenda labels the meeting in question as a "Special Meeting." *See* Kjergaard Decl., Ex. 13; Dick Decl., Ex. 13. However, this "Airport Advisory Board Update" meeting was a regular meeting held on the fourth Monday of each month. Kjergaard Decl., 4, ¶ 10. As such, this Court finds that as a matter of law, the June 22, 2020, meeting held was a regular meeting under §74-202(6)(a), and not a special meeting under §74-202(6)(b).

Idaho Code § 74-203, discussing the governing bodies' requirement for open public meetings, provides in relevant part:

> (1) Except as provided below, all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act. No decision at a meeting of a governing body of a public agency shall be made by secret ballot.
> . . . .
> (4) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced.
> (5) All meetings may be conducted using telecommunications devices which enable all members of a governing body participating in the meeting to communicate with each other. Such devices may include, but are not limited to, telephone or video conferencing devices and similar communications equipment. Participation by a member of the governing body through telecommunications devices shall constitute presence in person by such member at the meeting; provided however, that at least one (1) member of the governing body, or the director of the public agency, or the chief administrative officer of the public agency shall be physically present at the location designated in the meeting notice, as required under section 74-204, Idaho Code, to ensure that the public may attend such meeting in person. The communications among members of a governing body must be audible to the public attending the meeting in person and the members of the governing body.

Idaho Code § 74-203. Here, the June 22, 2020, meeting was a regular meeting, open to the public, held the forth Monday of every month at the Kootenai County

administration building. Def.s' Mem. in Supp. at 18. The Agenda provided:

> *In accordance with the Governor's stay at home order and proclamation allowing public meetings to be conducted remotely, the meeting will be live streamed on the County website using YouTube.*
> - The live meeting can be viewed at https://www.youtube.com/channel/UCEjmwiw17QXMqtLfvyr4hA
> - To participate or listen via telephone dial (208) 825 - 9699
> - Please be sure to keep your devices on mute to limit background noise.

Dick Decl. Ex, 13. Because the meeting was open to the public, at a place that does not discriminate based on factors listed in Subsection (4), and was conducted in a way that allowed the public, if they so choose to listen, the Court finds as a matter of law the defendants did not violate Idaho Code § 74-203.

Continuing, Idaho Code § 74-204, discussing the agendas and Notice requirements of meetings provides in relevant part:

> (1) Regular meetings. No less than a five (5) calendar day meeting notice and a forty-eight (48) hour agenda notice shall be given unless otherwise provided by statute. Provided however, that any public agency that holds meetings at regular intervals of at least once per calendar month scheduled in advance over the course of the year may satisfy this meeting notice by giving meeting notices at least once each year of its regular meeting schedule. The notice requirement for meetings and agendas shall be satisfied by posting such notices and agendas in a prominent place at the principal office of the public agency or, if no such office exists, at the building where the meeting is to be held. The notice for meetings and agendas shall also be posted electronically if the entity maintains an online presence through a website or a social media platform.
>
> . . . .
>
> (4) An agenda shall be required for each meeting. The agenda shall be posted in the same manner as the notice of the meeting. An agenda may be amended, provided that a good faith effort is made to include, in the original agenda notice, all items known to be probable items of discussion. An agenda item that requires a vote shall be identified on the agenda as an "action item" to provide notice that action may be taken on that item. Identifying an item as an action item on the agenda does not require a vote to be taken on that item.
>
> (a) If an amendment to an agenda is made after an agenda has been posted but forty-eight (48) hours or more prior to the start of a regular meeting, or twenty-four (24) hours or more prior to the start of a special meeting, then the agenda is amended upon the posting of the amended agenda.

> (b) If an amendment to an agenda is proposed after an agenda has been posted and less than forty-eight (48) hours prior to a regular meeting or less than twenty-four (24) hours prior to a special meeting but prior to the start of the meeting, the proposed amended agenda shall be posted but shall not become effective until a motion is made at the meeting and the governing body votes to amend the agenda.
> (c) An agenda may be amended after the start of a meeting upon a motion that states the reason for the amendment and states the good faith reason the agenda item was not included in the original agenda posting. Final action may not be taken on an agenda item added after the start of a meeting unless an emergency is declared necessitating action at that meeting. The declaration and justification shall be reflected in the minutes.

Idaho Code § 74-204.

Here, as stated above, this was a regular meeting. As such, only an annual notice of this regularly scheduled meeting was needed. *See* § 74-204(1). The plaintiffs are not contending that the defendants violated this requirement. Therefore the Court finds that the Notice requirement of Subsection (1) is satisfied. Further, the defendants posted the Agenda in three[7] different places: the administration building, the airport hangar, and on the website. Def.s' Mem. in Supp. of Summ. J. 18. Because the defendants allege that this Notice was posted at-least 48 hours in advance, and the plaintiffs do not contest that this, the Court finds that the Agenda was timely posted to the proper places, and in conformity to § 74-204(4). There were not any amendments made to the Agenda. With such, the Court finds that as a matter of law, the defendants did not violate Idaho Code § 74-204 relating to the June 22, 2020, meeting.

Finally, Idaho Code § 74-205 discusses written minutes of meetings. It provides:

> (1) The governing body of a public agency shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law. All minutes shall be available to the public within a reasonable

[7] The Defendant's Reply Memorandum states that the Agenda was posted to the Kootenai County website and at the Kootenai County Administration building only. Reply Memo at 3, however that discrepancy does not change our analysis.

time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;
(b) All motions, resolutions, orders, or ordinances proposed and their disposition;
(c) The results of all votes, and upon the request of a member, the vote of each member, by name.

Idaho Code § 74-205.

Here, the meeting minutes recorded provide that:

The Kootenai County Board of Commissioners: Chairman Chris Fillios, Commissioner Leslie Duncan and Commissioner Bill Brooks met to discuss the following agenda items. Also present were Airport Director Steven Kjergaard, BOCC Senior Business Analyst Nanci Plouffe and Deputy ClerkTina Ginorio. Also present were Airport Advisory Board Chair Joan Genter and T-O Engineers Project Engineer Corrie Esvelt-Siegford.

See Kjergaard Decl., Ex. 13; Dick Decl. Ex. 13. The plaintiffs do not contest that there were any members missing, or that this information was listed on the June 22, 2022, meeting minutes. Therefore, the Court finds that the defendants' Meeting Minutes for the June 22, 2020, meeting satisfies subsection (a) as a matter of law. The defendants argue that, related to subsections (b) and (c) of Idaho Code § 74-205:

Plaintiffs have presented no evidence to contradict the defendants' testimony that, although listed as an action item, no vote, motion, or resolution was made and/or brought to disposition regarding the Cessna fencing project. Idaho Code § 74-205 does not require "a full transcript nor a recording of the meeting," and clearly does not require that the "scope of authorization" be detailed in the meeting minutes. All that is required, by statute, is the recording of the disposition of motions, resolutions, orders or ordinances proposed.

Id. Tis Court agrees.

For the reasons listed above, and for the reasons further set out on the record, the defendants' Motion for Summary Judgment regarding the alleged violation of Open Meeting Laws is granted.

/

2. Because there are Material Questions of Fact Whether the Defendants' Proposed Action Deprives the Owners of the Full Access and Use of their Hangars, Defendants' Motion for Summary Judgement Regarding the Breach of Contract is Denied.

The plaintiffs contend, among other allegations in their complaint, that the defendants have breached their leases because the, "Defendants have proposed unilateral changes that eliminate and/or substantially limit the Plaintiffs' ability to use their facilities for aviation and/or other lawful purposes," (Am. Compl. at 6, ¶ 4.12,) that the proposed fencing will restrict the plaintiffs' "ability to participate in other activities reasonably incident to [their] ownership of such hangar without compensation and without renegotiation of the terms of the lease," (*Id.* ¶ 4.9,) that "Defendants have violated the duties established by their course of dealings with the Plaintiffs by attempting to restrict Plaintiffs use of the property, (*Id.* ¶ 4.16,) and that the Defendants "actions violate, nullify and significantly impair the benefits of the leases and the course of dealing." *Id.* ¶ 4.17.

In summation of their argument, the defendants respond and move for Summary Judgment because "the proposed fencing will not deprive the owners of full access and use of their hangars, but will secure airport property and prevent vehicles from accessing taxi-lanes unnecessarily." Def.s' Mem. in Supp. of Mot. for Summ. J. 20.[8] The defendants argue that the following facts are not in dispute:

> . . . the Airport's minimum standards gives Kootenai County the right to plan and develop the airport in the best interest of the county, including improvements necessary for the safety and security of the airport; the plaintiffs' lease agreements are subject to, and subordinate to, the Airport's Minimum Standards; the County has the right to install security devices at the airport as deemed necessary by the Airport Director; internal fencing between the hangars is necessary for the safety of

[8] It should be noted that, as discussed previously, no vote has been taken by the Kootenai County Board of Commissioners regarding the budget allocation for this project- which the defendants contend is required to commence the project. Fillos Decl. at 4, ¶ 11, 12. Kjergaard Decl. at 6, ¶ 18, 19.

airplane travel on Taxilane D2; controlled access onto the runways and taxiways is necessary for the safety and security of the airport; incidents near or around Mr. Walsh's hangar, including an near collision between an airplane and vehicle, pose significant safety concerns at the airport; to prevent unwanted incursions onto Taxilane D2, the Airport Director proposed that internal fencing be installed between all hangars on Cessna Avenue, not just the plaintiffs; the purpose of the plaintiffs' lease agreements is for private aircraft storage and general use of all airport facilities; installation of the fencing will still permit plaintiffs access to their hangars through their north and south entrances; installation of the fencing will still allow access to Taxilane D2 through the plaintiffs' north hangar doors.

Plaintiffs do not dispute that fencing in between the hangars will increase airport security, prevent unwanted incursions on Taxilane D2 and allow the Cessna Avenue gate to be open during business hours. What they argue, instead, is that the fencing will substantially limit their ability to use Cessna Avenue and the areas in between the hangars as taxiways, something they have been historically allowed to do.

Reply Mem. in. Supp. 10-11.

The plaintiffs claim, however, that the following summarized questions of material fact preclude summary judgment related to the issue of Breach of Lease:

> 6. Whether Plaintiffs lease terms are ambiguous?
> 7. Whether Defendants complied with the lease requirement to cooperate and find resolution that is mutually satisfactory to all parties?
> 8. Whether Defendants complied with notice provisions required within the Plaintiffs' leases?
> 9. Whether the proposed changes at the airport will eliminate or substantially limit Plaintiffs' ability to use their hangars as they have in the past?

Resp. Mem. in Opp'n to Summ. J. 6-7.

A. There is a material question of fact if the proposed fencing, and the concrete blocks already implimented, change or substantially limit the Plaintiffs' Use of their Hangars, therefore Summary Judgment must be deneid.

The defendants argue that plaintiff Walsh's lease would not be limited or changed with this proposed fencing because:

> . . . Mr. Walsh's hangar has two access doors, a hangar door on the north facing Taxilane D2, and an access hangar to the south facing Cessna Avenue. Walsh Deposition, p. 11; Fegert Decl.

Exhibit 5-2. In the past, when Mr. Walsh's hangar housed four small aircraft, Mr. Walsh would "stack" the airplanes, two facing the north hangar doors and two facing the south entry doors. Walsh Deposition, pgs. 36- 38. At deposition, Mr. Walsh testified that it would be more difficult for the airplanes stored on the south side of his hangar to access Taxilane D2 if fencing is installed, because he would have to unstack the planes in order for the planes housed on the south to exit the north hangar door. Walsh Deposition, pgs. 36-38, 41. Mr. Walsh explained that it would be a detriment to him because the "airplane owners on the south side would have to remove the airplanes on the north side to get to Taxiway D2... creating a potential hangar situation that the clients don't want to be involved with." Walsh Deposition, pgs. 38, 46.

While the fencing may cause a slight inconvenience to Mr. Walsh, it will not prohibit or exclude him from storing aircraft, or other personal items, inside his hangar. In the event that Mr. Walsh wants to store four aircraft in his hangar, which he does not currently have, aircraft on the south side of the hangar would not be precluded from using Taxilane D2 if fencing is installed, but would merely need to be moved. Walsh Deposition, pgs. 36-38, 41. Mr. Walsh could still access Taxilane D2 out the north side of his hangar, as required by design of the airport taxi-way and for aviation safety. Mr. Walsh further complains that the fencing would "severely" limit access to his hangar because, instead of being able to load his plane on Cessna Avenue, and then taxi his plane around the west side of his hangar onto Taxilane D2, he would have to carry his belongings and equipment through his hangar and across his lawn to aircraft waiting on Taxilane D2, approximately one-hundred (100) feet. Walsh Deposition, pgs. 49-53. Mr. Walsh seeks to disregard the safety risks associated with taxiing his plane on the paved area between his hangar, an activity that in the past caused a near collision between an aircraft and a vehicle, all for the convenience of loading and unloading his aircraft one-hundred feet closer to Taxilane D2.

The proposed fencing in between hangars is needed for the safety and security of the airport and does not prohibit Mr. Walsh from full use of his hangar. The fencing is needed to prevent aircraft from using Cessna Avenue and the areas between the hangars as a taxiway and to prevent collisions between vehicular traffic and aircraft. Mr. Walsh's lease agreement is for the operation of a private storage hangar. Mr. Walsh does not conduct any business out of his hangar at the airport and does not rent out his personal aircraft or charge his friends to use his airplanes.[6] [[6]Mr. Walsh's lease agreement does not allow him to rent out his hangar. Mr. Walsh's lease agreement is for private storage only.] Walsh Deposition, pgs. 7, 25-26, 35, 49-53. Mr. Walsh does not have clients who would

be inconvenienced. Walsh Deposition, p. 51. Placement of the fencing will not limit the storage space or limit the amount of aircraft that can be stored in Mr. Walsh's hangar. Walsh Deposition, pgs. 69-70. Instead, internal fencing will allow for the Cessna gate to be open during the day while still securing Taxilane D2 and providing security for the airport's tenants and pilots.

Def.'s Mem. in Supp. 21 – 23. In regards to plaintiff Huckabay's lease, the defendants argue:

> The crux of Mr. Huckabay's complaint centers around his ability to access to his hangar now that the Airport has closed the Cessna gate to the public during business hours. Huckabay Deposition, p. 9. Prior to February 7, 2022, the airport allowed for the entry gate on Cessna Avenue to be open during business hours. After the FAA's inspection in February, 2022, the airport was required to close all access gates during business hours in order to comply with its Part 139 certification. After the gates were closed, the airport enacted two ways in which a tenant could access their hangar on Cessna Avenue, through the airport's proxy-card system or PIN-code system. Both ways are free to tenants and the process of obtaining both simple.
>
> Mr. Huckabay does not have a proxy-card and refuses to get one to access the Cessna Avenue gate because it is time consuming and he doesn't want to "jump through the hoops" of taking a driver's safety test. Huckabay Deposition, pgs. 27-29. Mr. Huckabay also refuses to get a proxy-card because "anything magnetic doesn't last" due to his work. *Id.* Mr. Huckabay acknowledges that there is a PIN-code system that would allow him to access Cessna gate, however he claims that the handful of times he had to call to get the code he was unable to connect with airport staff. Huckabay Deposition, pgs. 45-47. He was therefore required to call other tenants to get the pass-code "on the sly." *Id.*
>
> While Mr. Huckabay refuses to get a proxy-card, he also objects to the proposed internal fencing between hangars. Mr. Huckabay objects to the Cessna fencing project because it will limit his access to Taxilane D2 and burden him with an inefficient and time consuming process when loading and unloading his plane. Amended Complaint, ¶ 3.23, Huckabay Deposition, pgs. 18, 35- 37. If fencing is installed between the hangars, Mr. Huckabay complains that he would be unable to drive his vehicle around the west side of his hangar, or use the paved area between Mr. Walsh's hangar, to access Taxilane D2 when loading his plane. *Id.* Mr. Huckabay does not have a proposed solution.

Id. at 23 – 24.

In response, the plaintiffs argue that:

> Mr. Walsh entered into his lease in January of 2020. Walsh Decl. ¶ 2. Mr. Walsh's lease states he was granted "easements and access for ingress and egress." Walsh Decl. Ex. A, p. 1. He is also entitled under the lease to the general use of "runways, taxiways, public ramps, roadways, sidewalks" and other Airport Facilities as defined in the lease. *Id.* The placement of blocks on the pavement next to his hangar and the proposed fencing between hangars is a modification to his lease that removes access for ingress and egress which he is entitled to under his lease. It also changes the available use of his premises and precludes his historical use of the taxiways, public ramps and roadways.
>
> Defendants clearly acknowledged that Mr. Walsh's hangar had the ability for aircraft to exit from the south side of the hangar and then traverse the paved road north to the taxiway. Defendants' Memorandum, p. 29. They also acknowledge that this use has been continuous and uninterrupted for more than 20 years. Id. This fully acknowledged historical use of the pavement begs the question of what the pavement is considered to be. Is it a taxiway or taxilane? It is a roadway? Is it a public ramp? While the parties agree on how the pavement has been used in the past they disagree over whether the airport can restrict the use of the pavement.
>
> . . . .
>
> The Airport Director's refusal to cooperate and develop appropriate plans was a material breach of the lease because the blocks and the proposed fencing require a change to the use of the Premises. To the extent Defendants would argue the Premises does not include the paved area next to the hangar, the lease terms of Premises and Airport Facilities would have to be considered ambiguous because they can be read broadly enough to encompass ingress and egress to the taxiway. Plaintiffs contend that as written the lease grants Mr. Walsh ingress and egress to the taxiway from both sides of his hangar because he is granted access to the Premises and Airport Facilities. See Walsh Decl., Ex. A, p. 1. This is consistent with the historical use of the hangar by Carl Lewis and his renters that enjoyed ingress and egress to the taxiway from both the south side and the north side of the hangar for aircraft. Walsh Decl. ¶¶ 4-7. Based on the wording of the lease and the historical use of the pavement next to the hangar for vehicles and aircraft to access the taxiway the County was required to provide notice and negotiate with Mr. Walsh when

they decided to alter the use of the Premises.

Mem. in Resp. 14 – 15, 17.

A breach of contract occurs when there is a failure to perform a contractual duty. *Shawver v. Huckleberry Estates, L.L.C.*, 140 Idaho 354, 361, 93 P.3d 685, 692 (2004). A material breach "touches the fundament purpose of the contract" defeating the object of the parties entering into the agreement. *Borah v. McCandless*, 147 Idaho 73, 79 (2009). Whether a breach of contract is material is a question of fact. *Pugmire v. Sandy,* 102 Idaho 346, 347, 630 P.2d 138, 139 (1981).

There are material questions of fact as to whether the proposed fencing and the implemented concrete barriers touches the fundamental purpose of the contract. The plaintiffs claim that, "When Mr. Walsh bought his hangar it had four renters in it that paid monthly rent for storing their aircraft. This was one of the reasons he decided to purchase that particular hangar" (Mem. in Resp. 2), and "Mr. Walsh lost his renters because the barriers precluded their ability to access the taxiway through the south side hangar doors." *Id.* at 4. Further, after the implementation of the PIN-Code and Proxy Card System, Walsh was unable to reach the person in charge of the after hours phone number to get access to his hangar, and thus could not get out on a Emergency Death call. Fegert Decl. Ex. 27, p. 28, l. 21-25. The defendants agree that there will be some changes to Walsh's current use of his hangar, stating: "the proposed fencing will only make it problematic for airplanes stored on the south side of Mr. Walsh's hangar to access Taxilane D2 when housed on the south side." Reply Mem. 15-16.

With such, there is a material question of fact as to if the proposed and implemented changes breach the plaintiffs' lease agreements. Therefore, summary judgment on this matter must be denied. While that finding as to the possible breach of

plaintiffs' lease agreements precludes granting defendants' summary judgment motion, the Court will additionally address the authority questions brought about in briefing.

B. Because there was no Notice provided to Plaintiffs in this matter, and there is a material question if the Airports Mimimum Standards provides for this type of change, summary judgment on this issue is denied.

The defendants argue that the "Plaintiffs' Lease Agreements and the Airport's Minimum Standards Allows for Unilateral Changes to Airport Property for Safety and Security Reasons." Mem. in Supp. 26.

> The County is allowed, through the express terms of the Plaintiffs' lease agreements, to make changes to the airport and the airport property as needed to comply with federal, state and local rules and safety requirements. The lease agreements expressly state that the plaintiffs must abide by the Airport's Rules and Regulations, or minimum standards. The Airport's minimum standards, which apply to all lease agreements, expressly states that the County reserves the right to install security devices on the Airport as deemed necessary by the Airport Director. By these provisions and through the express terms of the plaintiffs' lease agreements, the installation of security devices deemed necessary for the safety and security of the airport do not materially breach the plaintiffs' lease agreements.

Id. at 27.

In part, the plaintiffs argue that:

> Defendants cannot make unilateral changes because they entered into a lease with the Plaintiffs that requires notice be provided via certified mail. See Huckabay Decl., Ex. A. p. 13; Walsh Decl. Ex. A, p. 13. Mr. Huckabay's lease requires notice "whenever consent, approval or direction by the County is required." Huckabay Decl., Ex. A. p. 13. Mr. Walsh's lease requires to notice if there is a changes to the Premises or when Minimum Standards and rules or regulations are amended. Walsh Decl. Ex. A, p. 3 and p. 15. None of the letters sent by the Airport Director were sent certified mail. Huckabay Decl. ¶ 10; Kjergaard Dep. p. 134, ln. 19- 22. Defendants are not permitted to make changes without providing proper notice to the [Plaintiffs].

Mem. in Resp. 22. As a preliminary matter, the Court finds that the defendants did not provide proper certified notice as required by the airport's own Rules and Regulations.

The plaintiffs further argue that:

> Defendants belief that they could make changes without Mr. Walsh's input or involvement is mistaken. The terms of the lease entered into between Mr. Walsh and Kootenai County require the Defendants to cooperate with Mr. Walsh to fine a resolution that is mutually satisfactory. The lease states in section 11 that "Lessee will not be required to ...change the use of the Premises or accept a relocation or reduction in size of the Premises until Lessee and the County have fully executed an amendment to this lease that is mutually satisfactory to all parties." Walsh Decl. Ex. A, p. 3. The lease also states in Section 8 that "[t]he County and Lessee will cooperate in developing appropriate plans in the event a change in the Minimum Standards requires a change to the Premises." Walsh Decl. Ex. A, p. 3. It also states "Minimum Standards and rules and regulations may be amended from time to time following notice to Lessee." Walsh Decl. Ex. A, p. 15. Notices under the lease are required to be "in writing and sent by certified mail, return receipt requested, postage prepaid, or by overnight delivery service with proof of delivery." Walsh Decl. Ex. A, p. 13. The Airport Director stated that he does not recall ever sending letters certified mail. Def's Counsel Decl. Ex. 25, Kjergaard Deposition p. 134, ln. 19-22.

Mem. in Resp. 15. No Amendments to Mr. Walsh's lease have been executed or suggested. Continuing, the plaintiffs argue:

> Mr. Huckabay's lease is different than Mr. Walsh's because his lease agreement was entered into beginning in 2017. Under his lease, Mr. Huckabay's permitted uses include "maintenance and operation of an aircraft storage hangar and other activities reasonably incident to Lessee's ownership of such a hangar; minor aircraft maintenance; storage of aircraft and other incidental property such as parts, equipment supplies, and property carried on such aircraft; parking of Lessee-owned ground vehicles; for office space; and for no other purpose." Huckabay Decl., Ex. A, p. 2 (emphasis added). The lease does not define the scope of the "other activities reasonably incident to Lessee's ownership of such a hangar." The lease is therefore ambiguous regarding what those activities are, particularly in light of the statement "for no other purpose".
>
> Plaintiffs contend that "other activities" would include the historical use of ingress and egress between the hangars to transport cargo and materials to the taxiway side of their hangars. This contention would be consistent with the wording that appears in the County's new leases like Mr. Walsh's which expressly grants rights of ingress and egress. Being able to drive his vehicle to the air side of the hangar is a reasonable incident activity associated with hangar ownership for Mr. Huckabay. The Airport Director recognized this historical use and the need for continued access between the hangars in his June letter to Mr. Huckabay. Huckabay Decl. Ex. B. The offer of

> inclusion of a gate in the fence recognizes that the hangar owners would continue to want access between the hangars and that the placement of the fence between hangars was going to remove that access.
>
> While the lease permits changes to be made to the airport by the County, the lease also states the changes "shall not eliminate or substantially limit Lessee's ability to use its facility for aviation or other lawful purposes intended by the Lease." Huckabay Decl. Ex. A, p. 3. Other lawful purposes intended by the lease would include access to his hangar and the ability to drive to the airside of his hangar as he has in past to load his plane. Due to the language in the lease there is a material question of fact whether fencing between the hangars, with or without a gate will eliminate or substantially limit the Plaintiff's ability to use his facility as he has in the past.

Id. at 19-20.

The provisions being discussed, located within the Reservation of Rights in the Mimimum Standards, provide:

> The County reserves the right to plan and develop the Airport in the best interest of the County, Tenants, and Airport users. Relocation of existing Tenants will be subject to and conducted in the manner provided in a Lease, Permit, or Agreement, by mutual agreement, or by exercise of eminent domain by the County.
>
> . . . .
>
> The County reserves the right to install security devices on the Airport as may be deemed necessary by the Airport Director in furtherance of the Airport Security, Wildlife Program or other required FAA directives. Security devices installed within a Tenant's leased premises shall be located only along the Airport perimeter, in public use areas or locations to best protect the airport.

Kjargaard Decl., Ex. 18, at 10.

The crux of the defendants' argument is that the proposed fencing and implemented concreate barriers would be a "security device" that the County reserved the right to install to further Airport Security. This Court finds there to be an issue of material fact which would preclude this Court entering summary judgment.

Further, while the defendants state that "[the proposed] fencing is needed to prevent aircraft from using Cessna Avenue and the areas between the hangars as a taxiway and to prevent collisions between vehicular traffic and aircraft (Mem. in

Supp. 22), the defendants only point to one "near collision" that occurred during the beginning of 2020. The defendants have not shown at this point that this potential hazard was not alleviated with the concreate barriers implemented by the airport in or around March 2020. Reading these facts in light of the plaintiffs, there is a question of material fact if the proposed fencing is in fact "needed" for the safety and security of the airport, as it could be that the concrete barriers previously erected are sufficient to prevent the problems that defendants claim that the fencing would fix.

Continuing, the defendants have stated that: "The Airport has put into place two ways. . [to] access airport property, . . .through the proxy-card system or through the PIN-code system. The other better option, ..., is the installation of fencing between the hangars on Cessna Avenue." Mem. in Supp. 24. Read in the light most favorable to the non-moving parties, the defendants are stating the installation of the fencing is not needed because there is already a proxy-card and PIN-code system in place, and that the fencing option would just be a "better option." As stated by the plaintiffs, "[I]n light of the decision by the FAA to require the gate to be closed on Cessna, a material question of fact about whether internal fencing and the blocks are still needed, now that the gate to Cessna is closed during business hours." Mem. in Resp. 18.

The plaintiffs further argue that there are ambiguities in both plaintiffs' leases, "particularly with respect to how the leases are to be applied given the historical use of the property, and the historical use of the airport by hangar owners, operators and renters" that genuine issues of material fact that preclude summary judgment. Resp. Mem. in Opp'n 14. Because the Court has denied defendants' Motion for Summary Judgment regarding Breach of Lease, the Court will not address this argument as to any ambiguities in those leases.

Because of these issues of material fact discussed above, summary judgment on the breach of the lease agreements is denied.

IV. CONCLUSION AND ORDER.

For the foregoing reasons, defendants' Motion to Exclude Portions of the Declaration of John Huckabay is granted in all aspects; defendants' Motion for Summary Judgment is granted in part in that there was no violation of the Open Meeting Laws regarding the June 22, 2020, meeting; and denied in part regarding a breach of the lease agreements.

IT IS HEREBY ORDERED Defendants' Motion to Exclude Portions of the Declaration of John Huckabay is GRANTED in all aspects.

IT IS FURTHER ORDERED Defendants' Motion for Summary Judgment is GRANTED IN PART in that there was no violation of the Open Meeting Laws regarding the June 22, 2020, meeting.

IT IS FURTHER ORDERED Defendants' Motion for Summary Judgment is DENIED IN PART as to there being no breach of the lease agreements.

Entered this 28th day of November, 2022.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 28th day of November, 2022, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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