

CHAPTER 5

THE CONTEXT FOR AIRPORT LEASING AND MANAGEMENT

5.1 PURPOSE

The City of Renton posed a number of questions regarding airport leasing and management to be answered by this Business Plan:

- Should the City operate airport buildings directly, leasing them to tenants as ground leases expire and reversions of building titles to the City are taken up?
- Should the City create shorter terms for ground leases as a means of increasing the rate at which building reversions will occur in the future? What are the pros and cons of such a strategy?
- If the City takes over the management, rehabilitation and maintenance of buildings as leases revert, what additional resources will the City need to provide the building management services? What are the costs and benefits associated with direct management of buildings?
- As sites become available, should the City itself erect buildings and lease them out?

These issues are addressed in Chapters 5, 6 and 7.

The various leasing questions listed above make the implicit assumption that the City will continue to own and manage the airport, with possibly a more active role in building development, maintenance, rehabilitation and operation. As was described in Chapter 3, at present the City does own and lease out some buildings, as well as some tie-downs, but the majority of the airport is under ground leases to Boeing and several aviation “Fixed Base Operators” or FBOs, the providers of airport services, as well as to other aviation-related private sector tenants. Questions have also been raised regarding whether the City should consider a change in the fundamental management structure of the airport, or simply make internal managerial changes or additional task assignments within the existing structure.

This Chapter provides the overall context for the leasing and management decisions Renton is poised to make as a result of this Business Plan. It offers:

- An overview of the broader economic issues that must be considered when making airport management and leasing decisions;
- A brief description of the various types of leasing used by airports across the U.S.;

- A list of airports that were contacted for information about their leasing policies and practices; and
- A review of the federal and state requirements regarding leasing.

The analysis of various alternatives to managing the airport by changing the leasing policies that currently guide City staff can be found in the following chapters, 6 and 7. A review of broader governance and structural options related to airport management can be found in Appendix G.

5.2 CONCLUSIONS

- Airports are an unusual public-private partnership, with the public and private sector sharing the responsibility of operating a functioning airport, since the service companies must be on the facility itself. The public sector tends to focus on the public infrastructure of the airport, while the private sector provides facilities for the services required by the aviation community.
- There are a variety of different types of leases, dependent on the type of leased property and the level of investment that is required from those leasing the facility.
- Airports across the U.S. use a wide variety of approaches to addressing leasing issues. As long as all tenants are treated equally, they are all viable options for Renton.
- The deed and grant assurances outlined in Chapter 2 also guide the leasing policy decisions of airports. The City is required to take an even-handed approach to all prospective tenants and must treat them equally. Washington State’s Constitution also requires the City to ensure that it receives fair market value for its property.

5.3 FINDINGS

5.3.1 The Unique Nature of Airport Business

Airports represent an unusual public-private partnership within the nation’s transportation system. The infrastructure for other modes of transportation is usually held either by the public sector—for example highways and transit systems—or the private sector—for example railroads or pipelines. These facilities are generally developed, maintained, and operated with user fees. Airports are different in that the public and private sector usually share ownership of the infrastructure: The public airport owner or “sponsor” owns the runways, taxiways and other infrastructure directly related to the operation of aircraft. The private sector often owns and operates the supporting infrastructure necessary for a well-functioning air transportation support system on the airport itself, rather than adjacent to the public facility. This is necessary because air transportation facilities are limited and all services required for the functioning of the system must be located on airports in order to be accessible to aircraft.

Because of the special nature of airports, the most common form of leasing on general aviation airports in the U.S., including Renton, is the ground lease: The public landlord or airport sponsor makes undeveloped sites available for the development of aviation businesses and private hangars on the field. If this were not the case, then the sponsor would have to invest its own money in creating the buildings and services needed, since the facilities must be located on the airport itself. The public sector faces many competing demands on public funds and bonding capabilities, and in some states, including Washington, there is a constitutional or other prohibition against using the credit of the public sector to aid the private sector¹. Thus, without the private sector stepping in, many airports would just be bare facilities—runways and taxiways but not much else.

In addition, the City of Renton has a policy to treat the airport as a self-contained “fund”. This means that the airport retains all revenues generated on the airport and does not receive any other funding from the city. It must be entirely self-sufficient and fund all its infrastructure and operational needs from airport revenues and federal grants.

When public agencies work with the private sector to provide facilities and services at public use airports, they must consider the needs of their tenants. Above all in business, the need is for a stable financial environment. Without it, the airport is unlikely to attract strong tenants because banks are reluctant to provide the loans necessary to develop the infrastructure and services needed. If major external changes keep occurring that alter the business’ ability to earn money, then lack of profits may cause layoffs and perhaps even closures. In the aviation industry, the overall market until September 11, 2001 was strong enough that a new business may step up to take the place of a failed one; nevertheless, a stable established business with a solid financial standing will generally be able to provide a higher quality of customer service, building care, and leadership. Thus it is generally in the airport sponsor’s interest to foster healthy businesses that will endure. This interest in stability, however, must be tempered by consideration of the legal obligations that the City has undertaken as a recipient of Federal airport development grant funds.

5.3.2 Types of Leases

In addition to the ground lease, other types of leases that can found on airports are leases of aircraft tie-downs and hangars for storage of aircraft or the provision of aeronautical services. Airports may own these facilities because they have taken them over after a lease expired or, less frequently, because they have developed them. The latter may occur when an airport owner has decided to maintain a high level of control over the airport, or because the community uses the airport as economic development tool and is willing to spend non-airport revenues for that purpose.

¹ Washington State Constitution, Article VIII, § 7.

Figure 5-1 provides an overview of the standard types of leases that are typically used at airports. Each leasing alternative is related to a defined set of leasing conditions that will be addressed in turn in the following Chapters.

Figure 5-1: Standard Types of Airport Leases

TYPE OF LEASE	LEASED PROPERTY	LEASE CONDITIONS
Ground	Unimproved land	<ul style="list-style-type: none"> • Requires significant tenant capital investment: tenant must develop a proposed improvement on site within specified timeframe • Lease specifies type of improvement, e.g. T-hangars or hangar for aeronautical services • Generally long-term lease, 25 years or more • Often includes provisions for lease extension options up to a specified number of years • Often includes provision for improvement to revert to the airport at the end of the lease plus all extensions • Generally requires tenant to maintain safe building, minimum level of aesthetics and cleanliness* • Subleasing allowed under certain conditions
Facility	Tie-down (private)	<ul style="list-style-type: none"> • Requires little or no capital investment • Month-to-month lease with automatic renewal unless notice is given • Subleasing prohibited • Generally requires tenant to carry out basic maintenance and up-keep
	T-hangar bay (private)	<ul style="list-style-type: none"> • Requires no or minimal capital investment • Year-to-year lease with automatic renewal unless notice is given • Subleasing prohibited • Generally requires tenant to carry out basic maintenance and up-keep
	Tie-down area, T-hangar, or hangar (commercial)	<ul style="list-style-type: none"> • May require minimal-to-moderate capital investment • Generally lease period 3-5 years, with options for renewal • Renewal options may be limited • Generally requires tenant to maintain safe building, minimum level of aesthetics and cleanliness • Subleasing allowed under certain conditions

* This may include periodic inspections of buildings by airport staff to ensure that they are maintained properly to protect the airport's interest. Source: Hanson Professional Services, Inc.

5.3.3 Comparison Airports

To develop the description and analysis of various options for decisions on leasing and management issues presented in the following Chapters, a number of airports and airport systems across the country with arrangements similar to those Renton seeks to explore were surveyed. Figure 5-2 lists these airports and identifies the leasing policy areas for which information was obtained.

Figure 5-2: Comparison Airports for Leasing Policy Options

Airport	Lease Duration	Sub-Leasing	Lease Rates	Reversion	“Direct Leasing”
Alaska State System (Rural Airports)	✓	✓	✓		
Auburn, WA	✓			✓	✓
Boeing Field, WA	✓			✓	
Grand Prairie, TX		✓		✓	✓
Klamath Falls, OR	✓		✓	✓	
Las Cruces, NM		✓	✓		
Oregon State System	✓			✓	
Phoenix, AZ System		✓			✓
Salt Lake City, UT System	✓		✓	✓	

Source: Hanson Professional Services Inc.

5.3.4 Federal and State Requirements

Before leasing policy and airport management decisions can be considered it is necessary to briefly review the regulatory context that provides the framework in which the City makes these decisions. This Section provides an overview of the relevant federal and state requirements.

5.3.4.1 Federal Requirements

Because the City has accepted FAA grant funds for development of the airport, it has signed certain binding “grant agreements” and undertaken certain obligations (the “grant assurances”). These and other obligations are detailed in Chapter 3. As indicated, some of these assurances limit the City’s flexibility with regard to leases to airport tenants, particularly to aeronautical tenants. For example, the grant assurances state that the City will:

- Not unjustly discriminate among users;
- Not impose different rates for the similar use of similar facilities;
- Not unreasonably restrict public use of the airport or access to the facility; and
- Not grant, explicitly or implicitly, an exclusive right for the aeronautical use of the airport.

The prohibitions on *unjust discrimination* and *imposing different rates and charges* often arise in the context of allegations that an airport is supporting an incumbent service provider against potential competitors. FAA, although it recognizes that airports would often prefer to retain well-established businesses rather than cope with turnover among their tenants, requires that airports maintain a level playing field and not unjustly favor one competitor over others.

Similarly, the prohibition on granting *exclusive rights* is intended to ensure that no tenant is either intentionally or by happenstance granted exclusive rights to provide a particular aviation/aeronautical service. FAA does not permit airports to establish or uphold monopoly business opportunities².

Although it is not a violation *per se* of the Federal grant assurances for a single provider to offer a given service, there can be no guarantee that during the term of such a lease, the airport sponsor will not grant a similar lease to competing operator. This is a basic business reality for FBOs at every airport in the U.S. If there is a monopoly situation or the threat of one, the airport sponsor may take proactive steps to induce another operator into business at the field. As an airport becomes increasingly built and leased out, and opportunities for new competitors become rarer, FAA will subject the airport's leasing decisions to greater scrutiny. In general, a sponsor should be very cautious of any decision that would result in the lease of all available aeronautical parcels (those with ramp, taxiway and runway access) to a single operator.

The simplest method for avoiding allegations of unjust discrimination in leasing is to establish a well-organized, comprehensive approach to leasing, including leasing procedures, policies, and minimum standards, and then to apply it rigorously. *Ad hoc* decision-making can lead to inadvertent noncompliance; FAA will look at the effect of the City's actions, rather than their intention, in deciding whether violations have taken place. This issue is best addressed by a leasing policy that ensures that all tenants are treated equitably. The consultant team developed an outline of the types of matters usually covered by a leasing policy, it is shown in Appendix H1. Subsequently, City staff developed a leasing policy modifying the consultant's draft policy. Appendix H2 provides the Leasing Policy document adopted by the Renton City Council on December 9, 2002.

² FAA provides guidance to airports on how to comply with Federal obligations through the use of guidance documents such as Advisory Circulars. The prohibition against the grant of exclusive rights, which dates back to the Civil Aeronautics Act of 1938, is discussed in FAA Advisory Circular 150/5190-A: *Exclusive Rights at Airports*, USDOT Federal Aviation Administration, first publication September 1966.

5.3.4.2 State Requirements

Washington State’s Constitution places the following prohibition on local government:

“No county, city, town, or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock or bonds of any association, company or corporation³.”

The purpose of this constitutional prohibition is to prevent the use of local government funds to benefit private sector interests under circumstances where the public interest is not primarily being served. With regard to the lease of public property, such as any lease at an airport, this means that the local government has an obligation to charge fair market value for all parcels, hangar bays and tie-downs on the airport⁴.

5.3.5 Tenant Issues

Our discussions with tenants also have raised leasing issues. Tenants indicated that, over the years, various tenant situations have been handled in a variety of different ways, leading to confusion and uncertainty. Until recently, tenants were able to negotiate new leases with the airport when their previous agreements expired. There also appear to be differences in the way subleasing agreements and operating permits for aviation businesses were handled. Some commercial tenants have received significant scrutiny and were required to go through a prolonged process to be granted operating permits and the permission to obtain a sublease, while other commercial subtenants appear to be operating on the airport without such scrutiny. Concerns have also been raised about the need for investigation and enforcement against “tailgate mechanics”, “shade tree mechanics” or “trunkers”—aircraft mechanics who operate commercially from their vehicle without paying rent and without an operating permit, since this is unfair competition with legitimate tenants.

There is a need for clear ground-rules between City and tenants on how leasehold, operating permit and other decisions will be made; there is a need to set a clear airport business climate. A well-designed leasing policy with an accompanying set of Minimum Standards for Aeronautical Service Providers can address these issues.

³ Washington State Constitution, Article VIII, § 7.

⁴ The “King County International Airport General Terms and Conditions” define fair market rental value as follows: “An amount in the competitive market that a well-informed and willing lessor, who desires but is not required to lease, would accept, and which a well-informed and willing lessee, who desires but is not required to lease, would pay for the use of the premises, after due consideration of all the elements reasonably affecting value.”