

Intermunicipal Airport Master Plan Task Force
Request for Municipalities to Support Renewal of the Westchester County Airline Terminal Use
Agreements

July 2, 2024

Background

In July 1994, the County and airlines conducting operations at the airport signed the “Westchester County Airport Terminal Capacity Affirmation and Extension Agreement” (“1994 Terminal Capacity Agreement” or “TCA”). This Agreement acknowledged that “the Airport’s principal function is one of accommodating general aviation with an emphasis on business use”, as opposed to commercial airline service, and reaffirmed prior Board of Legislators resolutions with regard to the passenger capacity of the commercial airline terminal and ramp space dating back to 1985. In 2004, the County sought and obtained FAA approval to codify the key terms of the TCA and passed the Westchester County Terminal Use Procedures Law (TUP, Westchester County Code of Ordinances, Section 712.462). Pursuant to that law, the County entered into new Terminal Use Agreements (TUAs) with each airline. These ten-year agreements allowed for two five-year extensions. The agreements were subsequently extended, but December 31, 2024, marks the end of those extensions and the end of all TUAs entered into with airlines since 2004. Action must now again be taken by the County to engage the airlines in new TUAs.

It is important to note that the County’s FAA-approved TUP law requires all airline passenger service to take place at the main terminal and defines airlines as any operator providing “air service...for which seats are individually offered or sold to the public...in aircraft designed for more than (9) passenger seats.”

The Intermunicipal Airport Master Plan Task Force (“Task Force”) is addressing a wide range of concerns related to the County Airport Master Plan. Through its early deliberations this year, the need to address the TUAs as a high priority became immediately apparent due to their December expiration. The purpose of this document is to outline the Task Force’s findings about the TUAs, how they have functioned to date, the role they play in controlling airport development, and recommendations for the County to pursue in the next set of TUAs. The Task Force hopes each participating municipality will vote to endorse the Task Force’s findings and thus help make a strong, consensus-based recommendation to the County Board of Legislators.

What the Current TUAs Control or Address

The TUAs can be traced back to a 1984 federal lawsuit brought by certain airlines against Westchester County and the FAA regarding airport operations. The settlement and Stipulation that resulted allowed Westchester County to establish certain parameters, based on the County airport’s design capacity, for airlines’ use of the airport. Today, the key provisions include:

- Terminal ramps may only accommodate four scheduled aircraft at one time.
- Commercial airline carriers are limited to four “operations” (i.e. takeoffs or landings) per half-hour to correspond to the four gate positions at the terminal.
- Airline participation in ramp allocation is by lottery and the airlines must participate in recordkeeping related to the number and timing of flights and number of passengers.

- A maximum throughput of 240 passengers per half hour is permitted at the terminal (regardless of whether passengers are arriving or departing).
- Passenger limits are not enforceable during 66 days per year on and around major holidays, although ramp/gate limitations remain unchanged on those days.
- Airlines may not request a reassessment of terminal capacity limitations nor challenge the legality of the Terminal Use Procedures law for the term of the Terminal Use Agreements.
- Assignment of terminal use fees, terminal use operating costs, and ground handling service fees to the airlines

In general, the Task Force believes that these provisions have been successful in controlling commercial airport operations, although recognizing that strict adherence to the 240-passenger limit is difficult for multiple airlines to control when arrivals and departures are delayed. Further restrictions on airlines or proceeding with terminal expansion could very well violate the terms of FAA approval of our TUP law and lead to unrestricted airline traffic at the County airport, with all the consequent harm to the environment and public health, safety, and well-being.

What the Current TUAs Do Not Control or Address

The current TUAs control commercial airlines only. It is important to note that commercial flights comprise only approximately 15% of the air traffic in and out of the airport. The other 85% are private and use the multiple other hangar and terminal buildings located around the airport property. All such buildings are owned by the County and leased out, either to corporations like Pepsi and IBM, fractional jet ownership companies like NetJets and Flexjet, or Fixed Base Operators (i.e. independent facility operators, aka “FBOs”) like Signature and Million Air, which service the balance of private or “general” aviation operators at the Airport.

The County is in litigation with certain operators that meet the TUP’s definition of airlines but are utilizing FBO facilities instead of the main terminal and have neither signed TUAs nor adhere to their rules and restrictions. This issue, along with County lease provisions for the private terminals and hangars are among those being studied by the Task Force.

The TUAs do not address flight paths, including altitude rules and guidelines. These are the exclusive domain of the FAA. However, the County can raise community concerns about flight paths to the attention of the FAA and the FAA has responded by considering changes, as is now taking place with respect to a flight path that roughly follows the Sound shore of Greenwich and Port Chester.

The TUAs do not address noise. Clearly, with 85% of the air traffic being non-commercial and outside the scope of the TUAs, and flight paths and altitudes being controlled by the FAA, noise concerns will not be substantially resolved by new TUAs. However, maintaining current limitations on airline traffic should help keep noise from worsening.

The TUAs do not limit overnight and early morning flights. The current midnight-6:30 AM “curfew” that is often referenced as in need of enforcement to help with noise is actually voluntary and also outside the scope of the current TUAs. A prior mandatory overnight curfew imposed by the County was struck down by the courts many years ago. The Task Force will be considering how to better regulate overnight flights in connection with the Airport Master Plan.

The TUAs do not address the costs of the emergency medical services (EMS), which are currently provided almost exclusively by Port Chester-Rye-Rye Brook EMS. To date, the cost of providing these services has been borne by the EMS organization and has created a financial burden on these municipalities and their residents.

Conclusion

The Task Force has concluded that adding provisions to the TUAs that restrict aircraft operations is problematic. As mentioned, the TUAs were the result of a lawsuit that was successfully fought by the County on the basis of terminal design capacity and rules and procedures that were in effect prior to the Airport Noise and Capacity Act of 1990 (ANCA), including any subsequent adjustment “that does not reduce or limit aircraft operations or affect aircraft safety.” Changes to the TUAs that do not hinge on terminal capacity or have the effect of increasing restrictions on aircraft operations and may be hard for the County to support.

Further, the Task Force concluded that the TUAs have generally worked well in controlling the commercial operations of the County airport and, with some exceptions, have limited airline operations such that they do not exceed the maximum design capacity of the airport. Certainly, some may argue parking and lounge space/amenities are overcrowded at peak times, but the Task Force believes the terminal issues can be resolved with thoughtful re-development that does not expand the County airport or the main terminal’s footprint or operational capacity. The existing TUAs represent the single best mechanism for controlling airport expansion. The Task Force, therefore, recommends keeping the substance of the existing TUAs intact and asks the affected municipalities to recommend to the County Board of Legislators that they proceed to negotiate with the airlines toward this end.

The only exceptions to this recommendation to maintain, reaffirm and extend the TUAs, endorsed by the Task Force, would be for:

1. TUA terms set to be at least as long as the expiring ones (i.e., 10 years initially with two 5-year extensions at the discretion of the County), preferably for a straightforward term of 20 years or more. This recommendation reflects the fact that the agreements have worked well to date and longer terms would reduce administrative costs to the County. We point out that the County has signed numerous lease agreements for airport facilities that lock in terms for 30 years. These include agreements with Flexjet, IBM, JP Morgan Chase, NetJets, Million Air, Signature, and others.
2. TUA terms of a uniform duration instead of having all TUAs expire on the same date regardless of when they were entered into. The current arrangement subjects the County and its TUP law to the risk of coordinated legal challenges by multiple airlines on the day after all the TUAs expire.
3. A provision that extends the airlines’ agreement not to challenge the validity or legality of the TUP for 90 days after the expiration of the TUAs. This would ensure that airlines have to cease operations at the Airport for a period of time before they could seek to undermine our one protection against unrestricted airline operations at the County airport.

4. Adjustment of the TUA fee schedule to reflect current costs and, if deemed appropriate by the County Legislators, to include full coverage of EMS costs in the terminal use operating cost calculation. The EMS costs are, as a category of costs, consistent with other terminal use operating cost categories listed in the current TUAs. The Task Force understands that the EMS cost issue is already being pursued by the EMS organization with the County in the form of an annual payment to the EMS agency. The Task Force endorses whatever mechanism the County deems appropriate in order to compensate the EMS organization for those costs.

Proposed Draft Resolution

A draft resolution for your consideration is provided in Exhibit A. The Task Force hopes that each community will adopt the substance of this resolution. Modifications of the resolution for consistency with each municipality's practices are expected. If there are any concerns with the substance of the resolution, the Task Force asks that the municipality reach out to their Task Force representative(s). Our goal is to have a consensus and a consistent recommendation endorsed by all participating communities.

Additional Information

In the interest of brevity, the TUAs are not included here (for example, the current JetBlue TUA is 97 pages long, including appendices and the full text of the TUP local law). However, the Village of Rye Brook is maintaining a repository of airport related documents on their website. These can be found at <https://ryebrookny.gov/imatf/>

Included on the website is also a current list of all Task Force participants, selected by their communities, who contributed to or endorsed this recommendation document. The communities represented include: City of Rye, Town of Rye, Rye Brook, Port Chester, Greenwich, New Castle, and North Castle.

EXHIBIT A

Resolution Recommending Westchester County Board of Legislators Renew and Reaffirm, With Updates, the Terminal Use Agreements of Commercial Airlines Operating at Westchester County Airport

WHEREAS, on _____ [date], the _____ [municipal entity] appointed representatives _____ and _____ to serve on the Intermunicipal Airport Master Plan Task Force (Task Force) comprised of representatives of City of Rye, Village of Rye Brook, Village of Port Chester, Town of Greenwich, Town of New Castle, Town of North Castle; and

WHEREAS, the Task Force has met on four occasions in 2024 to deliberate on community concerns related to operations at the Westchester County Airport; and

WHEREAS, the Task Force has unanimously voted in favor of reaffirming the substance of the existing Terminal Use Agreements (TUAs) signed with the airlines, which expire December 31, 2024, pursuant to the 2004 Westchester County Terminal Use Procedures Law (TUP), as successor and complement to the 1994 Westchester County Airport Terminal Capacity Affirmation and Extension Agreement; and

WHEREAS, the Task Force unanimously supports adjusting the terminal use fees, terminal use operating costs, and ground handling service fees contained in the TUAs to represent current costs to the County; and

WHEREAS, the Task Force unanimously supports compensation of costs for the EMS services provided by Port Chester-Rye-Rye Brook Emergency Medical Services (EMS);

NOW, THEREFORE, BE IT RESOLVED, the _____ [entity] adopts the findings of the Task Force related to the TUAs and recommends that the Westchester County Board of Legislators negotiate, at its earliest convenience, new TUAs with all commercial airlines operating at the airport, with the following provisions:

1. TUA terms of 20 years or more, possibly with extensions if deemed appropriate by the County, but not less than the current 10 years, with two 5-year extensions.
2. TUA terms of a uniform duration for all TUAs as opposed to a single expiration date.
3. A provision that extends the airlines' agreement not to challenge the validity or legality of the TUP for 90 days following the expiration of the TUAs.
4. Fees and costs enumerated in the current TUAs adjusted to reflect current costs. We leave it to the discretion of the County Legislature whether and to include compensation of EMS costs to the EMS organization as part of the revised TUA or through some other mechanism.