



VILLAGE OF RYE BROOK

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Hon. Michael B. Kaplowitz, J.D., CFP
Chairman of the Board
Westchester County Board of Legislators
148 Martine Avenue, 8th Floor
White Plains, New York 10601

Dear Legislator Kaplowitz:

On behalf of the Village Board, I would like to thank you for the opportunity to address with the Westchester County officials the proposed lease agreement (the "Lease") between Westchester County and Oaktree Capital Management, L.P. ("Oaktree") for the exclusive operation of the Westchester County Airport (the "Airport") for the next forty (40) years.

The Village of Rye Brook takes no position on whether privatization of the Airport facility would be more or less favorable than the current public operation. This is a policy matter to be determined by the Board of Legislators. However, if privatization is determined to be more beneficial in the long-term, the full impacts of any Lease must be thoroughly vetted and discussed without the pressure of needing to approve a one-year operational budget of the County. To even have the appearance of having to balance a one-year operational budget using a Lease with front-loaded revenues and creating an operational shortfall in the County budget over the next few years does not give the impacts of a 40 year Lease agreement the weight it deserves. In short, the review of the impacts of a 40 year Lease must be reviewed separately on its own merits. If it turns out that an Airport Lease is finalized and approved in the upcoming fiscal year, a more appropriate use of the resulting revenues would be to apply them towards the many worthy capital infrastructure projects that would benefit the County taxpayers or to spread the revenues out over the length of the Lease to create a long-term alternative revenue source to offset the County budget.

If the County wishes to pursue privatization of the Airport, the Village urges the County officials to think long-term in terms of operations, impacts on neighbors, safety, and capital

needs. The proposed Lease is clearly front-loaded with certain revenues that quickly dissipate for the majority of the Lease term. This is not proper long-term planning.

The Village is pleased to provide comments on the proposed Lease agreement. However, we note that this is a very detailed legal document which represents over a year of discussions and negotiations between the County administration and the proposed operator. The limited time provided for us to review this document may result in some items that are already addressed in other parts of the Lease. We apologize in advance for any inconsistencies in our comments and questions and look forward to receiving clarification on these matters as well.

Comments made Publicly about the Lease are Not Reflected in the Lease:

The County Executive has stated in several public relations documents that as a result of this Lease agreement, Westchester County Airport will not be increasing in size or capacity and that the "current limits on passengers and the current number of gates will remain as is". In addition, the County administration states in conclusory fashion, that one of the top priorities in this transaction is that the Lease arrangement will preserve the quality of life of the surrounding communities, strengthen protection of the environment, all while maintaining the current footprint of the area. There have also been comments that the previously proposed modifications to the Terminal Capacity Agreement (TCA) have been "shelved" and that the runway length, number of gates, voluntary curfew, and no airport expansion policy will remain unchanged. However, there is nothing in either the draft Lease or Operating Standards that commits to these items for the term of the Lease as it seems that any of these operational or policy items can be amended by the County at any time. In the case of the TCA, the proposed Lease still states that the private operator must follow the terminal use agreement in effect *or as may be amended*. (p.44).

Forty-Year Lease Revenues are Heavily Front-Loaded:

This Lease is very heavily front loaded and create a significant imbalance short-term vs. long-term. There is a concern about the vast majority of the revenues occurring in the first several years at the expense of the future. On the surface, this appears to be very short-sighted and would be a missed opportunity to maintain stability at the Airport and recurring revenue throughout the Lease term for the County budget.

Revenue streams for the granting of the Lease: Section 2.1(a) describes that revenues payable under this Lease starting in Year 1 would be \$15M, then Years 2-6 would be \$5M, followed by \$2M in the last 34 years of the Lease. These funds should either be spread evenly throughout agreement or applied towards a non-recurring capital need that would not create an operational budget imbalance in future years.

Annual County Gross Revenue Sharing: The definition of gross revenue and the methods of payments need further explanation. The definition of revenue should be made broader to include everything other than governmental grants or its equivalents, including any revenue from subleased facilities or other sources. The definition should also reflect the parking garage revenue that the operator will receive in the current lease of this proposed Lease. On page 239, "Part I" revenue sharing is fixed at an amount starting at \$190,000 in year 1 to \$750,000 in year 15, while in "Part II" the revenue sharing percentages go from 2.5% to 11.5%. To gain a better

understanding of the projected revenue sharing, the County should identify the history of gross revenue amounts received at the Airport and what amounts are anticipated from these "Part II" percentages identified in the Lease.

Operational Revenue & Expenses & Capital: It has been said that the airport currently collects about \$45M in revenues and pays \$45M in expenses. It is not clear if the \$45M includes funding for capital expenses. How are capital reserved accounted for to address the long-term needs of the Airport?

Parking Garage Revenue ends in 2024: Since 1994 Westchester County and the Village of Rye Brook have received revenue from an agreement with Westchester Airport Associates, L.P. (WAA) for the Airport Parking Garage. Once the WAA ground lease is over in year 2024, the parking garage management would then go to the new private management company (Oaktree) who would apparently no longer have to share parking garage revenue with the County for the remaining 32+ years of the proposed Lease. How much is this revenue source per year now for the County that they will be losing over the balance of the 32+ years of the new Lease? Would Rye Brook still receive the \$40,000 per year revenue payment from Oaktree for the parking garage under the new Lease? If not, will they be paying property taxes on the private operation of the parking garage facility?

Reimbursement of Costs for Police, Fire and Emergency Services: Section 3.17 (p.60) of the Lease agreement addresses police, fire and emergency services, and Section 3.20 (p.63) includes an "expense reimbursement for [County] services" of \$4.9M/year plus \$3.7M for the 1st five years. It is not clear why these costs do not have an escalation factor representing the increasing costs to provide these services over a forty year period, or why an additional \$3.7M is provided in the first 5 years. However, while the County provides primary police services, the primary EMS is provided by the *Port Chester-Rye-Rye Brook EMS Corps* (a not-for-profit agency) and the fire services are mostly provided by the surrounding jurisdictions. In the case of EMS, the *Port Chester-Rye-Rye Brook EMS Corps* is the first emergency response due for all EMS calls at the Airport.

- Average EMS Calls at the Airport in the last 5 years: *59.4 calls per year*
- Average Fire Calls to Airport (Port Chester and/or Rye Brook): *26 calls from 2013-15*

Just like the County, these primary emergency response agencies should also receive an "expense reimbursement for County services" to offset the costs of the surrounding municipalities to provide these emergency support services for the *private* airport operator/operation who does not pay taxes. Otherwise, why would the County be entitled to such a reimbursement for police services? In the proposed Lease, the Rye Brook, Port Chester and Rye City taxpayers are providing the costs for many of these primary emergency services without offsetting revenues from the private Airport operator. Either the operator or the County should be required to remit an amount to the *Port Chester-Rye-Rye Brook EMS Corps* and surrounding municipal fire departments approximating their expenses for providing fire and EMS services based on prior experience.

Identification, Approval and Funding of Capital Projects Need Further Clarity:

With respect to capital projects, the operator is required to expend at least \$30M in the aggregate for "accelerated" capital projects over the first 5 years. There is no additional amount articulated concerning its obligations for capital projects in Years 6 through 40. In addition, the Operating Standards as to the Capital Asset Management Plan does not include specific requirements but instead, a general outline of Capital Projects, the development of a capital plan by the operator, and their scope. Although the County has the right to modify Capital Projects at any time under both the Lease and the Operating Standards, much more detail is needed on the right of the County to require the identification, approval and funding of certain Capital Projects by the operator.

The County may want to consider requiring an annual capital reserve for airport projects to be approved by the County as a better solution. While the up-front payment in the Lease is clear for the "accelerated projects", there will undoubtedly be significant and expensive capital projects needed at the airport over the remaining 35 years of the Lease. How will significant capital projects be identified, approved and funded in the best interests of the County taxpayers? A private operator, who is responsible in the Lease to prepare and prioritize a Capital Improvement Program (CAP), may have very different interests in project and priorities than the County. The process for approval of these projects should be spelled out in the Lease.

For instance, a private operator who wants to maximize profits may not address issues such as the de-icing problem that has occurred in recent years. The de-icing fluid that leaves the site in the brook may technically meet regulations but still resulted in fluid going into the Blind Brook and causing a horrible smell in the surrounding communities miles away from the airport and also impacting emergency services (responding to what people felt was a "gas" odor). A private operator charged with developing, prioritizing and improving capital projects may have a different goal than County officials to minimize these neighbor impacts through costly capital projects.

When capital projects are needed to address items such as smell, deicing, noise, flight patterns, etc. will it just be up to the private operator to propose the projects and "meet minimum required regulations" regardless of neighborhood impact, or will the County have a greater role in this process? Currently these projects are vetted by Westchester County Airport Advisory Board, our Legislators, the County administration, and the public. Additional clarity on this process is needed in the Lease. Relying on a private operator to do this is not nearly as effective as having the County tasked with either performing these functions or having direct oversight for their proper performance.

Operating Standards and Plans Not Sufficiently Detailed:

Article 6 of the Lease defines and discusses the Operating Standards. After it states that the operator is required to comply with and implement the Operating Standards in all material respects, it gives the County the right to change those Operating Standards and states that if the operator wants to change them, it must obtain the approval of the County *and the airlines* in accordance with the New Use Agreement, but curiously not the input of the impacted neighbors. The Operating Standards cover ten (10) sections of the Lease involving ten (10) separate programs or plans. The specific plans themselves are not set forth in these Operating Standards but are instead simply referenced. It appears that each of these plans are to be developed by the Operator and shall include specific assurances to the County relating to the particular area

included in the plan including a regulatory compliance, and any existing plans. The plans incorporate therein the appropriate Federal regulations and statutes and existing plans where they exist, and require the identification of the plans objectives, scope and performance schedule and reporting requirements. The affected communities should be provided with copies of these plans upon their formulation and should be notified of each material amendment thereof, preferably prior to this implementation and be provided with copies of them as well.

The term “New Use Agreement” is mentioned throughout the document and is defined on p. 23 as “collectively the airport use agreements to be entered into by each of the Signatory Airlines in place of the existing terminal use agreements between the County and each airline”, but they are not provided for review. These agreements should be provided for review in the context of this new Lease. There is nothing specific in the Lease as to hours of operation, number of runways or additions to runway or extensions to runways, extensions to the terminal. number of passengers except that they need prior approval of the County, nor deicing, fueling, other environmental concerns and noise concerns. In fact, although there are a number of references to new Use Agreement (described a collection of other existing agreements) and the Airport Master Plan, these documents have not been provided to the public or the Village. In particular, the new Use Agreement and Airport Master Plan are important considerations in ensuring that the Lease and Operating Standards fully protect Rye Brook and other directly affected municipalities.

The relevant sections of the Operating Standards, the Facilities Standards Plan (Section 2), the Air Field Operating Standards Plan (Section 3), the Capital Asset Management Plan (Section 4), the Environmental Sustainability Plan (Section 5) and the Safety Plan (Section 6) only describe in general terms what the plans are, general performance requirements and reporting requirements, and do not state with any specificity (a) the manner in which the surrounding communities needs and interests will be preserved, and (b) how the quality of life of the surrounding communities will be preserved.

In a number of these plans, there is a reference to a definition of “Stake Holders” which are interested entities in the appropriate formulation and performance of each of these plans. The surrounding and adversely affected municipalities should be specifically named as Stake Holders. That will give Rye Brook, a seat at the table in dealing with the Operating Standards such as the Air Field Operating Standards Plan, the Facilities Standards Plan, the Capital Assessment Management Plan, the Environmental Sustainability Plan, the Safety Plan, as well as the other listed plans.

Of particular note is that Capital Asset Management Plan includes in addition to regulatory compliance in existing plans, functional areas for inspection, e.g. Table 4-1 which include airport and vehicle fueling systems and associated storage facilities (deicing) and also environmental systems and structural systems.

Similarly, Section 2 the Facilities Standard Plan, relates to mechanical, electrical and plumbing, architectural plans and communication and information technology and includes specifically environmental (Table 2-1), stormwater sewage systems, aircraft and vehicle fueling systems and associated storage tanks, and landscaping which also should be fleshed out. 2.4.6 of the Facilities Standards Plan states that the County, airlines and Operators all acknowledge that the terminal is specifically designed in a matter to limit growth and air traffic development in the County and therefore is significantly spaced-constrained. However, the only obligation the

Operator has under this Section is to use its reasonable efforts to maintain the service levels described herein subject to these constraints. This is too low a standard and should be strengthened either here or elsewhere.

The Environmental Sustainability Plan should be provided to Rye Brook and every other impacted community and should include specific commitments to accomplish the goals set forth in this plan. The issue of deicing, noise, refueling and related subjects also fall within this Operating Standard.

The current standards on the limitation of takeoffs and landings, terminals and number of passengers should be specifically written into the Lease and the Operating Standards rather than simply being generally referenced therein and these standards should not be subject to change without the input of the surrounding municipalities who they directly impact.

It is also noted that the Lease mandates the operator to comply with the Operating Standards and then states that the Operating Standards are not to be deemed violated by “occasional isolated acts or omissions including any occasional isolated failure to comply with specific requirements set forth therein” without defining the meaning of those terms. The Agreement also states that the operator's noncompliance shall not constitute a violation provided that the operator is not deliberately violating or failing to comply with the standards or acting inconsistent with the standards. Finally, it bases continued compliance of many of these standards on the new Terminal Use Agreement of which we do not have a copy.

Although Section 4.5 of the Lease provides some protection to surrounding municipalities in that it prohibits the operator, without the approval of the County, to erect any new or additional structures at the County facility or to modify or make any addition, improvements or replacements of any existing structure or a structure built at any time during the term in a manner that is inconsistent with the use of the Westchester Airport as a public use airport, or to construct any additional commercial airline terminal or new runway or extension of any existing runway. However, the County could certainly approve such a project in the form of a modification of the standards or agreement.

In short, the Operating Standards are not specific enough concerning the topics of most concern to the affected municipalities, maintaining the current size of the airport, limiting the number of passengers using it and other limitations the County is committed to continue as well as making issues such as controlling deicing problems and fueling problems to the benefit of the neighbors, the County's responsibility and the County's priority rather than the Operators. It also provides the operator the ability to seek modification of these items, and allows for a procedure for the County to modify them.

Westchester County Airport Advisory Council & Public Communication:

It is noted that certain areas directly affect the neighboring residents in areas such as protecting the environment, (noise monitoring, deicing, traffic, parking, etc.), and safety efforts (including emergency response and the prevention and reporting of incidents). It is imperative that the County ensure that these projects and procedures address these important issues and that the public remains informed of these incidents and efforts to address them. It is our understanding that the Westchester County Airport Advisory Board will remain and that this Board is identified

in the County Charter. It is unclear whether the County or Oaktree would provide the reporting information to the Airport Advisory Board under the proposed Lease, which is important as this is the main conduit whereby the public and the neighboring municipalities receive information on a monthly basis about flights violating the voluntary curfews and any environmental impacts, safety matters, and the status of important capital projects. The continuing roles and responsibilities of Oaktree, the County and the Airport Advisory Board should be identified in the proposed Lease so the public will be aware of the method of receiving information about the Airport.

Public Disclosure of Financial and Other Information by the Operator:

The Lease discusses the Operator's preparation of financial reports and audits and providing them to the County (p.71, Section 8.1-8.2), and also discusses confidentiality in certain instances (i.e. trade secrets), but the Lease should specifically identify what financial reports must be made available for the public to review regarding revenues, expenses and audits. The Lease should also clarify the requirement to report and disclose environmental documentation currently available to the public such as such as complaints, noise monitoring, flight information, violations of voluntary flight curfews, etc.

Right to Sub-Lease & Leases of Fixed-Base Operators (FBO's):

The Lease gives the private operator the right to sublease virtually every Airport facility. There should be a way for the County to control this so that the facilities themselves operate for the benefit of the surrounding communities as well as the County.

The County should also clarify in the Lease who will be responsible for managing, negotiating and approving Leases for all fixed-based operators (FBO) at the airport. Many of these private FBO's are currently required by their existing agreements to make payments to the local municipalities in which they reside and operate their private operations.

Airport Master Plan Lacks Community Review and Involvement:

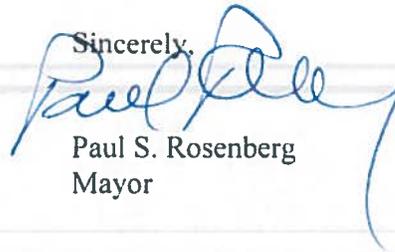
In the preparation of the update to the Westchester County Airport Master Plan, the County is supposed to follow the guidelines of the FAA's Community Involvement Policy Statement which establishes the County's commitment to community involvement in preparing and reviewing plans such as a Master Plan or its update. The goals of the policy are to provide active, early, and continuous public involvement, provide reasonable public access to information, provide the public an opportunity to comment prior to key decisions, and solicit and consider public input on plans, proposals, alternatives, impacts, mitigation, and final decisions. Simply holding a public hearing at the end of the Master Plan process is just plain insufficient and not consistent with the policy of active, early, and continuous community involvement as contemplated by the FAA. To date, the County has sent the final draft of the Airport Master Plan to the FAA, but has failed to involve the impacted community, and the draft Airport Master Plan still is not publicly available. It is impossible to review the proposed Lease without reviewing the potential impacts of the Airport Master Plan as it is unknown what is being contemplated at the Airport in this long-term planning document.

Private Operator's Ability to Enforce a Voluntary Curfew:

It is our understanding that the County Board of Legislators are also looking into the ability (and interest) of having a Lease whereby a private Operator would be responsible for "enforcing" the County's voluntary curfew on flights overnight. The Village shares this concern.

Thank you again for inviting the Village of Rye Brook to provide comments on the proposed Lease agreement with a private Operator. If there is interest in privatizing the operation of the Airport, we look forward to working with the County Board of Legislators and other County officials to provide input on an improved long-term Lease with this Operator or another selected through a competitive process that would truly be beneficial to the residents in the surrounding municipalities as well as the County taxpayers.

Sincerely,



Paul S. Rosenberg
Mayor

CC: Robert P. Astorino, Westchester County Executive
George Oros, Westchester County Chief of Staff, County Executive' Office
David Gelfarb, Westchester County Legislator
Westchester County Board of Legislators
Jack Robinson, Chair, Rye Brook Airport Advisory Council