Session 9: Strategies for Non-Aeronautical Development

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This afternoon’s session

- Legal fundamentals
- FAA role
- Examples of non-aeronautical development approval process
Why the focus on non-aeronautical revenue?

• Historically, airport land not viewed in economic terms
• Airports’ huge land buffers could be left undeveloped
Today’s market realities

• Non-aeronautical revenues becoming important at airports – relatively and absolutely

• Major businesses increasingly want to be on or near major airports
An inherent tension

- Need and obligation to generate revenue
- Aeronautical revenue difficult to grow – desire to keep airline costs down
- Federal policies create significant barriers to non-aeronautical development
Legal basics

- Significant federal, state, local requirements
- Some airport land cannot be used for non-aeronautical purposes (Surplus Property Act land, deed restrictions)
- Presumption that all airport land is for aeronautical purposes
Relevant Grant Assurances

19 – Operation and Maintenance
20 – Hazard Removal and Mitigation
21 – Compatible Land Use
22 – Economic Nondiscrimination
24 – Fee and Rental Structure
25 – Airport Revenues
29 – Airport Layout Plan
31 – Disposal of Land
Relevant questions

1. Is land on Exhibit “A” and ALP Property Map?
2. Was land acquired with AIP grant funds?
3. How is land depicted on ALP?
4. Is airport planning sale or lease?
5. If lease, what is intended term?
6. How is rent to be established?
7. Is land intended for public purpose?
FAA role

- Airport Layout Plan review/ approval
- Environmental review
- Full or partial release
- FAR Part 77 review
- Lease review (occasionally)
Airport Layout Plan

• Must (re)designate land for non-aeronautical use
• FAA’s traditional role: evaluate impact on safety, efficiency and utility
• FAA action is subject to environmental review
• More substantial FAA involvement recently
Land sale vs. lease

- Land purchased with AIP funds
- Need release for sale (except noise land)

- Lease: “interim” and “concurrent” uses.
- Release may be required for leases over 25 years

- Fair market value in any case
- Sale proceeds are airport revenue
Land use compatibility

- No on-airport residential use
- FAR Part 77 review for potential hazards to air navigation
- Certain uses have additional requirements
Revenue use

• Proceeds generally are airport revenue
• Fair market value sale or lease
  – Limited exceptions
• Typically can invest in on-airport infrastructure to support commercial development
Structuring the deal

Land

Vertical Development

Infrastructure
Structuring vertical development

• The land deal – sale or (more likely) lease
  – How long?

• Will market and private lenders accept ground leases?
  – Even up to 40-50 years?
  – With renewal options?

• Responsibility for construction
  – Airport
  – Developer
Structuring vertical development

• Who will own improvements? When?
  – From commencement of construction?
  – Completion of construction?
  – End of lease term?

• Rights of lenders
  – Lender step-in rights?
  – Sponsor control if the developer fails years later?
Structuring lease terms

- If a retail activity, will structure be like a concession agreement?
- If office or industrial, will it be traditional long-term ground lease?
- Examples of virtually every commercial structure today
Structuring infrastructure needs

• Who pays for on-airport infrastructure such as roads, water, utilities?
  – Off-airport infrastructure?

• Revenue Use Policy
  – Grant Assurance 25(a) states: “All revenues generated by the airport . . . will be expended by it for the capital or operating costs of the airport . . .”
Oil and Gas Development

- Surface use
- Pure subsurface use does not require ALP change
- Must be compatible with aeronautical uses
- Revenue use principles apply
- FAA has recommended lease terms
Agriculture Examples

• Huntsville, AL
  – $500K annually
  – Roughly 3,000 acres for cotton

• Jacksonville, FL
  – $300K annually
  – Timber and pine straw

• Denver, CO
  – 16,000 acres of dryland farming
UAS Activity

Image: University of North Dakota
Power Generation
Case study - DEN
Peña Station Next
Partnership among multiple landowners

- Denver International Airport – 60 acres
- L.C. Fulenwider – 154 acres
- Smith Estate – 150 acres
- SMT Investors – 19 acres
Anchor tenant reduces development risk

Panasonic Enterprise Solutions Company
Phase 1 infrastructure

- Station Platform
- Station Plaza
- Station Parking
- Roads
- Park
- Water & Sewer
- Smart City Infrastructure
- Dry Utilities
- Storm Drainage
Deal points

• Metropolitan Districts created to serve as financing entities
• DEN entered into five separate agreements in June 2015
• DEN provides $32 million – to be repaid $20 million through mill levies
  – Remainder provided by neighboring landowner developers
• Subordination clause ensures compliance with Grant Assurances
• Acknowledges separate agreements between Panasonic and developer
• Cooperation on marketing, vertical development and future infrastructure needs
FAA involvement

- Approvals
  - ALP Amendment
  - Environmental review
  - Part 77 review
- Communicated early and often about the deal
  - ADO, Region and HQ
  - Incorporated FAA comments into agreements
  - Provided full disclosure, but did not request opinion or approval
  - Briefed airlines regularly (most likely source of complaint to FAA)
- Treatment of airport revenue
  - Investment in infrastructure based on benefit to Airport
  - Loan to public entity at prevailing rate of interest
  - Proceeds are airport revenue
DEN real estate

- Over 15,000 developable acres
- Recent agreement with surrounding jurisdictions
- Required one FAA approval
- Working on “playbook” for FAA approval as part of Land Plan
Conclusion and homework

- Enormous development opportunities
- Legal complexities should not dissuade creative development
- Shift in mindset needed

Homework Questions

What land is available to develop?
What opportunities exist?
Who would be interested in these opportunities?
Questions?

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