

Mukilteo Mayor Joe Marine's Remarks at County Council Meeting

February 4, 2009

1. Mukilteo wishes to make clear at the outset that they understand the legal constraints under which the County must operate, including relevant statutes and regulations, and the County's contractual commitments as set forth in its Grant Assurances.
 - a. Specifically, Grant Assurance 22 requires that an airport, like Paine Field, receiving funding from the Federal government, through the Federal Aviation Administration ("FAA") "make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport."
2. Mukilteo also understands and concurs that the health of Paine Field and the Boeing Company are of major importance to the region as well as the national economy.
3. Mukilteo nevertheless remains strenuously opposed to the County's passage of the Resolution specifically with regard to its predetermined outcome, favoring a new, County funded airport terminal to accommodate the potential operations of an air carrier proposing to bring in approximately seven additional flights to Paine Field per day.
4. Mukilteo's reasons for this opposition are as follows:
 - a. At the level of 6 - 7 operations a day, the airline will take decades to pay back through user and concession fees the County's share of the construction costs of a County-funded terminal, thereby forcing County taxpayers to bear the burden;
 - b. There will also be incentives for the County to bring in ever more airline service to help pay the bills, thereby starting a journey down a slippery slope toward significant noise and other environmental impacts that has been seen at so many other airports;
 - c. Contrary to the assertions made in the County's publicly distributed memorandum of January 7, 2009, the County can exert as much control through a ground lease upon which the airline can build an airline funded terminal, as through a County-funded terminal. Such control mechanisms include, but are not limited to:
 - (1) Negotiation of the size and attributes of the terminal and memorializing those attributes in a new Airport Layout Plan which must be submitted to the FAA for approval;
 - (2) Reasonable, non-arbitrary and nondiscriminatory conditions on the ground lease;
 - (3) A Site Plan to be developed by the airline and approved by the County before implementation;
 - (4) Please keep in mind that the County's Grant Assurances, Assurance 22(h), also says that the County "may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport."
5. Under existing law, all the County is obligated to do is negotiate in good faith with an airline - see FAA Order 5190.6A, § 4-15.
 - a. While the January 7, 2009 memo concedes that "FAA has not defined the parameters of what is meant by 'good faith' negotiations"

- b. The January 7th memo goes on to define a violation of “good faith” to include:
 - (1) Imposing operating lease conditions on a prospective carrier (e.g., size of aircraft, times of operations, noise restrictions, etc.) that would otherwise violate Federal law if such conditions were imposed by regulation;
 - (2) Demanding lease payments which are unreasonable, as defined in the FAA’s established policies on airports’ rates and charges and the considerable case law under those policies;
 - (3) Requiring lease terms (e.g., length of term, lease rate, location of available property, insurance requirements) that are unreasonable or do not comport with industry practice; and
 - (4) Extending negotiations indefinitely in a manner that becomes tantamount to denying access to Paine Field.
6. Federal funding will not be jeopardized, as long as the County refrains from any of these prohibited practices which distort negotiation, it will have met its obligation by negotiating.
7. Therefore, Mukilteo strongly urges the County to revise the Resolution to delete all references to the predetermined outcome of the negotiations as being a “County-built and maintained facility,” Draft Resolution, § 5.
8. And the County is not operating under any time constraint. While, in its December 17, 2008 letter, Horizon Air advises that it wants to start operations in April, 2009, that goal is impractical at best for the following reasons:
 - a. There are no reasonable facilities at the airport to accommodate Horizon’s flights before the construction of a terminal.
 - b. The requisite Security Plan will take 90 days to negotiate.
 - c. The upgrade of the airport Operating Certificate has not begun and requires a minimum of 30 days for FAA approval.
 - d. Prior to the construction of the terminal, a new Airport Layout Plan would have to be submitted and approved by the FAA.
 - e. As a predicate to approval of the Airport Layout Plan, the FAA would have to conduct environmental review under the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* (“NEPA”). Such review would also be required for the airline’s initiation of service and for the change in the airport’s Operating Certificate. Environmental review under the Washington State environmental statute, SEPA, would also be required for the construction of the terminal. *See also*, January 7, 2009 memo, p. 17, Council Question #5.
 - f. These required activities will take a substantial length of time and require a substantial investment on the part of the FAA, the airport, and, potentially, the airline as well. A certainty is that service cannot begin by April, 2009.
9. Mukilteo therefore renews their urgent request that the County Council take some time to reconsider this potentially costly and environmentally adverse decision, and work with the South County cities to reach a mutually acceptable resolution that will not disproportionately and ill advisedly impact the surrounding communities.