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# FBO MATTERS

AUTHOR Douglas Wilson

## AIRPORTS, FBOS AND LEASE NEGOTIATIONS: IT'S COMPLICATED

*Know what to consider before negotiating a new contract between an airport and FBO.*



**A GOOD debate is respectful; parties on either side of the table realize each bring with them knowledge, experience and, yes, opinions formulated over years.**

While it seems the political discourse in recent years has devolved from the honorable notion of respectful disagreement to the dishonorable practice of schoolyard name-calling, at least we take comfort the unwritten code of conduct in the aviation industry remains largely unchanged. Aviation is, after all, a small community. Few in aviation today, in a position to negotiate a matter of business import, such as a long-term FBO lease at an airport, find themselves

at the negotiating table by happenstance. And, the road to arrive at that table is a long one, indeed.

For airport operators, the road that led them there meant thankless years in the trenches of airport operations, a multifaceted career in the public sector and tense meetings with elected officials. For FBO owners, their road was no less traveled: A summer job pumping gas, followed by decades on a busy ramp and countless sleepless nights weathering the global financial crisis just to make payroll led them to the table. For airport operators and FBO owners alike, that moment is a shared experience: Negotiating an FBO lease.

To be sure, negotiating a long-term lease of any property — particularly an FBO ground lease — is not an entry-level role. In order to arrive at a successful outcome, or the much vaunted and painfully cliché “win-win,” as it’s called,

both parties must understand the others’ need, wants and non-negotiables. A cool head and an encyclopedic knowledge of regulations doesn’t hurt either. Ultimately, however, each party must be prepared to compromise and respect the knowledge, experience and limitations of the other.

Against that backdrop, what should airports consider when negotiating with a prospective or renewing FBO tenant? And what should FBOs consider when negotiating with their airport?

Let’s begin with what an airport should consider when sitting across the table from a prospective FBO tenant. First, FBOs are not the cash registers they appear to be from the outside, nor does adding an FBO to an airport draw more aircraft or provide more revenue to the airport. Adding an FBO does not add more consumers to an airport’s market — it takes an airport’s existing customer base and *divides* them up, because economically speaking, airports do not behave like the free market. High barriers to entry, a price-sensitive consumer base, an inability to easily add to or replace

### ABOUT THE AUTHOR



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consumers, and a highly regulated environment define an airport.

Instead, it is the attendant features of the local economy such as a city's business-friendly or unfriendly policies, the growth or stagnation of living wage jobs and other attendant features determine how many itinerant aircraft visit or call that airport home. These aircraft and the total gallons produced by their activity is what determines the appropriate number of FBOs. For airports, the takeaway is this: Before entering into a lease for yet another FBO operator, consider if there is enough business to justify it. If your airport has two healthy, competitive FBOs, adding a third may make all of them marginal, while adding a fourth might put them all out of business. And just because an airport has one FBO, doesn't mean it needs two. In fact, a 2017 survey of AirNav.com found that of the 2,191 airports in the US in which an FBO offers Jet A, some 88.8 percent of them, or 1,946, have only one FBO.

Next, Minimum Standards should level an airport's playing field, not create onerous requirements that jeopardize the vibrancy of an airport's tenant base. In recent decades, the aviation industry has become more specialized and airport businesses have organized along two distinct paths as recognized by airports: FBOs and SASOs. Few FBOs remain that are truly "full service," which was once defined as offering fuel, hangar and tie down, plus flight training, aircraft maintenance, sales and charter—all in-house. Today, FBOs are mainly "gas and grass," meaning they offer fuel and related line services, plus aircraft hangar and tie down. A SASO business by contrast may be a flight school, an MRO or otherwise. And yet, I read well-meaning-yet-completely-outdated Minimum Standards every month that somehow think FBOs still provide "... avionics repair and installation, propeller and accessory overhaul, and parts sales." No longer. At a minimum, allow FBOs to outsource aspects of your Minimum Standards that are no longer relevant to the FBO business model.

Related, it is completely reasonable for airports to expect FBOs to deploy a reasonable level of investment for a given leasehold size, lease term, or

both at lease commencement. It is often in the FBO's interest to do so, particularly when inheriting a leasehold with outdated improvements. However, while reasonable to require a minimum investment, it's unreasonable to then also dictate how that FBO should invest in its facilities. FBOs know exactly which improvements provide sufficient ROI to make their rent payment to the airport—let them build what they know pays those bills, which by extension serves an airport's customers. That said, to ensure your airport provides essential services that are more SASO-centric, require the FBO to make space available for interested — and qualified — SASO sublessees.

Finally, consider what land you're offering. For example, a severely height restricted parcel does not have the same utility as an unrestricted parcel. To demand an FBO pay the same ground rent as a like or similar FBO tenant who has no such restriction is patently unequal treatment and an attorney might argue it violates certain Grant Assurances. If an FBO can't build say, hangars with 28' doors because the imaginary surfaces of FAR Part 77 preclude such size, that alone severely affects an FBO's profitability and ability to pay the rent. The ground rent charged should be discounted to reflect that fact.

Next, let's turn to the FBO's perspective. First, keep in mind public-use airports operate within a complex web of federal, state and local regulations — each of which limits an airport's ability to make arbitrary or capricious decisions. Further, airport administrators tend to report to a political body of some form or another — be it an Airport Authority, a Board of Supervisors or other elected officials. The point being, if an airport can't accept a certain request of a prospective lessee during a lease negotiation, it's not because they don't like the FBO across the table. It's the regulatory framework that constrains decisions by the public sector that the private sector would by contrast find easy to accommodate.

On that subject — the regulatory framework — get to know a publication your airport manager holds near and dear: The FAA Airport Compliance Manual, otherwise known as FAA Order 5190.6B.

At a mere 679 pages, it's a lovely weekend read. While most enjoy the brochure version of it, the FAA Grant Assurances themselves, FAA Order 5190.6B is virtually a religious document to an airport, complete with interpretations of said Grant Assurances. By understanding these documents as an FBO, not only will you be prepared to enter a negotiation on a level playing field, you'll likely earn the respect of the airport administrator seated across the table from you.

Next, with the recent yet slowly fading push by AOPA regarding "egregious FBO pricing," FBOs remain under a microscope by airports concerning their pricing policies. In fact, those Grant Assurances, the ones on pricing, are likely incorporated word-for-word as boilerplate into your FBO's lease or your airport's minimum standards. Because of this, recognize it is the most price sensitive of consumers — pilots of piston-powered light general aviation aircraft — who are also the most vocal to your airport administrators. If you're one of those 1,946 sole source FBOs, the need to manage perception is that much greater on pricing. As the expression goes: pigs get fat, hogs get slaughtered. To that end, consider dropping the Ace of Spades into your next negotiation for that new FBO lease: Propose adding an Avgas Self-Serve Island. While no, they're not money makers for a traditional FBO, neither is Avgas more generally. However, it's less than leasing an extra Avgas truck in the long run, counts as part of your FBO's required capital commitment, provides your Avgas customers service options and all-but-neuters any argument for price gouging.

Finally, and returning to the start, the key to any negotiation is understanding and being able to articulate the opposing party's position— not to exploit it, but to find common ground. While respectful debate should always be the norm, FBOs must always keep in mind when the negotiation with the airport is all done and the ink dries on the new lease, they're still your landlord and you still have to live together for the next 35 years. So, if your FBO's social media profile shows it as "in a relationship" with your airport, you might want to update it to the "it's complicated" tag. ▀