

September 24<sup>th</sup>, 2013

Norwood Airport Commission (NAC)  
cc: Mr. Russ Maguire, Airport Manager  
125 Access Road  
Norwood, MA 02062

Re: FlightLevel Norwood, LLC Leasehold Property Rights

Dear Mr. Chairman and NAC Members:

Last week, we called Thomas Vick from the FAA's "New England Region Airports Division" to enquire about the FAA's stance on leasehold property rights at grant eligible airports and to voice to him our stance on the same. Needless to say, our stance is the common sense one that holds true for all American enterprise according to common law: namely that no business would ever be compelled to allow its assets to be used to their own detriment let alone to enable a competitor without just compensation (e.g. Ernie Boch wouldn't allow Herb Chambers to sell cars on his lots; Ford would never grant Honda access to its plants; etc.).

Upon speaking with Mr. Vick and querying him for commentary, he made it clear that the FAA does not get involved in such matters in any way, shape or form unless/until they have escalated to a full legal dispute. He also confirmed that it is the role and responsibility of the airport owner, in this case the NAC, to uphold and enforce property rights on their airport according to the common law and the terms of the leases they have in place.

I have certainly interpreted through the minutes of recent monthly NAC meetings that the NAC understands and shares this common sense position. It was also confirmed through those minutes that Mass DOT does as well.

However, in light of the following:

1. The day-to-day threats we face to the viability of our business including those with regard to our property rights
2. The significant capital improvement projects we have planned at the airport
3. The nearly \$2 million we've already paid in land leases and taxes on the airport over the past 6 years for those property rights
4. The fact that the very insurance the NAC requires us to carry according to our leases would be unobtainable were our property rights allowed to be violated (e.g. should another business be allowed to provide competing services on our leaseholds).
5. The fact that our Title Insurance Policy would kick in if our property rights were somehow taken away

FlightLevel respectfully requests that the NAC simply states its position on this subject.

Thank you for your time and I look forward to your response.

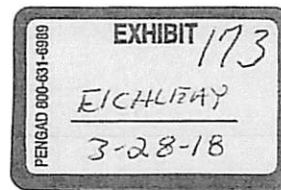
Sincerely and Respectfully,

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Peter Eichleay  
*FlightLevel* Aviation - President  
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Norwood, MA 02062  
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January 14, 2015

Norwood Airport Commission  
Hon. Mark P Ryan, Chairman

Re: Norwood Memorial Airport  
Prospective Second FBO

Dear Chairman Ryan,

It is my impression following the Norwood Airport Commission ("NAC") meeting today, that the NAC is much closer than previously anticipated to deciding on Boston Executive Helicopter's ("BEH") application for a permit to conduct business as a commercial fueling fixed base operator ("FBO") at the Norwood Memorial Airport (the "Airport"). What concerns me first and foremost is what I perceive to be a softening of the NAC's resolve to ensure that BEH provides clear justification of the viability of its business model. As operator of multiple FBOs in the northeast, I am keenly aware of what it takes to succeed, and also the fragility of an FBOs success on small airports such as ours.

As an owner/operator with \$8,000,000 invested at the Airport, I am writing first to reiterate my long-standing position that the Airport cannot support two FBOs, just as it couldn't more than a decade ago when the Airport's two FBOs were forced to consolidate at the absolute economic peak of general aviation activity. I understand that coming from me, the owner of the entity that would suffer most from the enfranchisement of BEH as a commercial fueler, this contention may be passed off as partisan.

However, it is a fact that there are no (i.e. zero) airports in the COUNTRY of Norwood's size and scope (which is to say airports with maximum runway lengths of only 4,000 feet) at which two fuel providers currently and profitably co-exist. So I am writing secondly to renew my earlier request, that before acting to enfranchise BEH (or any additional FBO), an independent third-party consultant be retained by the NAC to study the issue and advise the NAC on whether one or more additional FBOs can viably co-exist at the Airport. Because I know that the enfranchisement of a second commercial fuel vendor at the Airport will radically destabilize my company (as well as the airport), and place at risk employment and the +/- \$250,000 that it pays to the Town of Norwood annually, and because I believe this information is absolutely essential to the NAC's ability to make the best decision under what we understand are tough circumstances, I would absolutely be willing to commit FlightLevel funds to cover the cost of the study by the contractor of the NAC's choosing.

FLIGHTLEVEL AVIATION  
125 ACCESS ROAD  
NORWOOD, MA 02062  
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2002

Lastly, for the Commission's benefit, I've copied below the exceptions under which airport sponsors may host solitary FBOs without violating the exclusive rights prohibitions — these are directly applicable to this case:

The Exclusive Right Exclusion is contained in the three statutory sections:

- (1) 49 U.S.C. § 40103(e), No exclusive Rights at Certain Facilities;
- (2) 49 U.S.C. § 47107(a), General Written Assurances;
- (3) 49 U.S.C. § 47152, Terms of Conveyances

The Single FBO exception can be found in a couple of places;

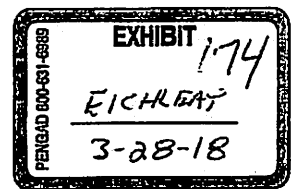
- 49 U.S.C. § 47107(a)(4)(A and B) states:
  - (4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if—
    - (A) [it] would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and
    - (B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;
- 49 U.S.C § 40103
  - (e) "A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed operator is not an exclusive right if—
    - (1) it is unreasonably costly, burdensome, or impractical for more than one fixed operator to provide the services; and,
    - (2) allowing more than one fixed base operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

Thank you for your consideration.

Respectfully,

Peter Eichleay

**Nick Burlingham**



**From:** Peter Eichleay <peter@flightlevelaviation.com>  
**Sent:** Thursday, January 15, 2015 9:43 AM  
**To:** Nick Burlingham; Mike DeLaria  
**Subject:** FW: Meeting and Letter

FYI, see below:

**From:** Peter Eichleay  
**Sent:** Thursday, January 15, 2015 9:38 AM  
**To:** 'Russ Maguire'  
**Subject:** RE: Meeting and Letter

Thanks, Russ. Yes, either January 21<sup>st</sup> or the 22<sup>nd</sup> would work well for us. Let me know when you've had a chance to see what works for the others so we can get it nailed down.

Best,  
Peter

**From:** Russ Maguire [mailto:rmaguire@norwoodma.gov]  
**Sent:** Thursday, January 15, 2015 7:28 AM  
**To:** Peter Eichleay  
**Subject:** Re: Meeting and Letter

Good morning Peter,  
I know that some members of the Norwood Airport Commission have received this letter already. I'll wait to hear back from the board on a firm date for the meeting. Would you be available to meet on January 21 or January 22, or perhaps, during the week of January 26?

Russ

**From:** "Peter Eichleay" <peter@flightlevelaviation.com>  
**To:** [rmaguire@norwoodma.gov](mailto:rmaguire@norwoodma.gov)  
**Cc:** "Mark Ryan" ([mrivan@norwoodma.gov](mailto:mrivan@norwoodma.gov)) <[mrivan@norwoodma.gov](mailto:mrivan@norwoodma.gov)>, [kevin@norwoodlight.com](mailto:kevin@norwoodlight.com), [mshahhan8@gmail.com](mailto:mshahhan8@gmail.com), [kshaughnessy@norwoodma.gov](mailto:kshaughnessy@norwoodma.gov)  
**Sent:** Wednesday, January 14, 2015 2:57:38 PM  
**Subject:** Meeting and Letter

Dear Russ,

I'm writing to request a meeting with you and members of the NAC and perhaps the town Manager and/or Selectmen to discuss the attached letter which voices our concerns following today's Airport Commission Meeting. To the extent that we can schedule that meeting sooner rather than later (with immediately being ideal), that would be greatly appreciated. We can make any time work.

Thanks very much for your assistance with this matter.

Best,

Peter

FlightLevel Aviation - President

125 Access Road

Norwood, MA 02062

W: 781.769.8680 ext. 128

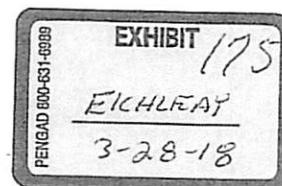
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Russ Maguire, Manager

Norwood Memorial Airport

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www.flightlevelaviation.com



January 20, 2015

Michael J. Lyons, Chairman  
Board of Selectmen  
Town of Norwood Massachusetts

Re: Recent Developments at Norwood Memorial Airport

Dear Chairman Lyons,

By way of introduction, I am the President of FlightLevel Aviation ("FlightLevel") which operates several FBO businesses at various East Coast airports. FlightLevel is headquartered here at the Norwood Memorial Airport where it owns 120,000 sq. of hangar and office buildings, employs just under 30 people, and has over \$8,000,000 in invested capital. FlightLevel's payments to the Town of Norwood (rents and flowage fees) average around \$250,000 per year making it by far the airport's largest contributor to the Town. I apologize in advanced for the length of this letter but feel that it contains information critical to understanding the causes and effects (realized and potential), of the turmoil that has embroiled the airport over the past two years, and makes the case that certain decisive actions need to be taken to put an end to it.

#### AIRPORT ECONOMICS

The Airport's primary limitation has always been its short runway (merely 4,000'), which renders it unusable to aircraft capable of uploading fuel in significant enough volumes to support two viable FBOs.<sup>1</sup> In the early 2000s, at the absolute height of General and Corporate Aviation activity, and as a result purely of economic pressures, the two FBOs on the field were forced to consolidate. Eastern Air Center purchased the assets of Wiggins Airways, assumed responsibility for the leaseholds of both entities, and became the sole FBO at the Airport. FlightLevel established its presence at the Airport in January of 2008, when it acquired the assets of Eastern Air Center. As will be important later in this letter, there was no conspiracy, and there was no disparate treatment. As of today there are no (i.e. zero) airports in the United States with maximum runway lengths of 4,000 feet that have more than one (1) full service FBO.<sup>2</sup>

<sup>1</sup> FBO stands for "Fixed Base Operation," which is an industry designation for a business authorized to perform a number of aviation-related services. These typically include aircraft maintenance, avionics service, flight training, aircraft sales, charter, and ground support. What sets FBOs apart from other airport business is that they are uniquely authorized to conduct commercial aviation fueling operations.

<sup>2</sup> See: Representative Survey of Airports in Massachusetts (Exhibit 1).



## **BOSTON EXECUTIVE HELICOPTER**

In 2010, Boston Executive Helicopters ("BEH") under the direction of Mr. Christopher Donovan, assumed space in a FlightLevel-owned T-Hangar condominium building. The space actually belonged to data storage entrepreneur, Moshe Yanai, BEH's benefactor. Shortly thereafter BEH applied for a commercial permit to conduct its Part 135 helicopter charter operation.

Within just a few months of its arrival, and notwithstanding decades of peaceful use of the Airport by its numerous helicopter operators, Mr. Donovan wrote to the FAA, complaining that "members of the Airport Commission, the Airport Manager and the Monopoly FBO [i.e., "FlightLevel"] are conspiring to discriminate against helicopters and our operation here at Norwood Airport."<sup>3</sup>

Nothing could have been farther from the truth. I had personally provided a character reference for Mr. Donovan, and then worked with him, the Airport Manager and the NAC to arrange for BEH to operate its helicopter from FlightLevel's north ramp in close proximity to Mr. Yanai's hangar condominium. When complaints started surfacing from third-party customers and tenants about aggressive piloting behaviors and excessive and prospectively hazardous rotor-wash on the north ramp, precipitated primarily by BEH, the Airport constructed helicopter circles a mere fifty feet away across Taxiway "A," expressly to accommodate helicopter operators such as BEH.<sup>4</sup> In spite of this significant investment incurred to BEH's direct benefit, inexplicably, BEH continued its use of FlightLevel's north ramp even when congested, while the helicopter circles sat vacant. From then on, at the NAC public meetings, which I attend religiously, accusations of conspiracy and disparate treatment would be levied by Mr. Donovan in connection with nearly every land use restriction, safety regulation, and/or Airport rule with which he or BEH found displeasure<sup>5</sup>.

## **BEH ACQUISITION OF LOT F**

During the Winter of 2010-2011, a hangar on Lot F, which bordered FlightLevel's Lot G<sup>6</sup>, and could be viewed across Lot G from Mr. Yanai's condominium space (See: Site Map attached as "Exhibit 2"), was damaged beyond repair when its roof collapsed under the burden of heavy snow. Swift Aviation, Inc. ("Swift"), the maintenance business that had occupied the structure, elected to fold rather than rebuild. BEH saw an opportunity to expand its operation onto Lot F, and on November 30, 2012, Swift and BEH executed an assignment which was approved by the NAC at its February 13, 2013 meeting.<sup>7</sup> Although its plan was never conveyed to FlightLevel, it appeared (and later turned out to be true) that Mr. Donovan envisioned BEH making use of Mr. Yanai's two condominium units in FlightLevel's building, a new to-be-constructed hangar on Lot F, with FlightLevel's Lot G leasehold serving as the connector between the two.

## **BEH ATTACK ON FLIGHTLEVEL**

In December 2011, after it had been established that BEH would be acquiring Lot F, Mr. Donovan requested in a face-to-face meeting with me, that FlightLevel sell Jet Fuel to BEH (and its future Lot F hangar tenants) at pennies

<sup>3</sup> See: December 20, 2010 Donovan email to FAA's Deandra Brooks (Exhibit 3).

<sup>4</sup> See: <http://norwood.wickedlocal.com/article/20140822/News/140829013> (Exhibit 4).

<sup>5</sup> See, e.g., NAC meeting minutes from Spring/Summer of 2014 concerning operating too close to parked aircraft and buildings, Winter/Spring 2013 concerning DC-3 ramp, Fall/Winter 2012 concerning object free areas and setbacks, Winter 2010/2011 concerning North Ramp Helicopter Document.

<sup>6</sup> See: Site Map (Exhibit 2).

<sup>7</sup> See: February 22, 2013 letter from Russ Maguire to BEH, attn. Chris Donovan, President (Exhibit 5).



over FlightLevel's raw cost (in other words at a significant net loss). Mr. Donovan's request was levered with the representation that if FlightLevel did not agree, BEH would simply start its own FBO centered around the hangar it planned to build on Lot F. ~~FlightLevel had already been providing BEH with a previously negotiated and very attractive fuel price, but in emails exchanged over the next several months, BEH's request intensified to what we considered ultimatum status and its demands of FlightLevel became increasingly unrealistic and impossible to meet.~~<sup>8</sup>

It was during this period that Mr. Donovan proposed BEH acquire FlightLevel so it wouldn't have to start a second FBO, once again invoking his "negotiation-by-threat" tactics. He would ultimately offer a purchase price for FlightLevel that was only a fraction of FlightLevel's actual investment and the company's fair market value.

My impression from all of this was that Mr. Donovan either didn't acknowledge, or perhaps emboldened by Mr. Yanai's deep pockets, didn't care about the economics or the regulatory constraints, and was simply aiming to strong-arm me into selling at a loss. From this point forward we began hearing reports from FlightLevel customers and tenants about encounters with Mr. Donovan on FlightLevel property during which he would solicit their business "for his future FBO." Often tied to these reports were representations that BEH planned to "put FlightLevel out of business."

### **BEH DISREGARDS LIMITATIONS, WARNINGS, REGULATIONS – OVERBUILDS LOT F AND CAN'T FUEL ON IT**

Toward the end of 2012, BEH introduced to the NAC a design for its new Lot F hangar facility which included an adjacent fuel storage/dispensing system. As is often the case for flight departments that self-fuel, BEH opted to design a facility that would occupy nearly its entire leasehold. What was glaringly different about it, however, was that it didn't leave room for a fueling area of ANY kind.

With the application of the NFPA restriction on fueling aircraft within 25' of a hangar, and the taxiway object free area restriction ("TOFA") which prohibits fueling within 57' of a taxiway or taxi-lane centerline (one of which borders lot F to the north), as presented the BEH design would literally render the fueling of Aircraft on its leasehold illegal.<sup>9</sup> And although questioned repeatedly by individual Commissioners on the wisdom of this, Mr. Donovan adamantly insisted that it would not be a problem for BEH.<sup>10</sup>

At its December 12, 2012 public meeting, and on the basis of Mr. Donovan's representations, the NAC voted to approve the design on several conditions, the material one voiced in a December 14, 2012 letter from the Airport Manager to the Board of Selectmen and copied to BEH, that BEH "comply with all taxi-lane object free area restrictions that apply to the siting of BEH's fueling equipment; per the airport's design standards, and clarifying guidance from the FAA."<sup>11</sup> In other words, the NAC placed BEH on written notice of what it saw as potential design flaws eight (8) months prior to BEH's groundbreaking in August of 2013.

<sup>8</sup> It takes approximately \$0.46 per gallon over raw cost to QC a fueling system, and move fuel from a transport, through a fuel farm, into a refueler, and ultimately into an aircraft. BEH's requests went from \$0.09 to \$0.08 and eventually to just \$0.03 over FlightLevel's raw cost.

<sup>9</sup> See: Site Map (Exhibit 2).

<sup>10</sup> BEH would still have been able to fuel its own aircraft in areas on the Airport where self-fueling was permitted.

<sup>11</sup> See: December 14, 2012 letter from Airport Manager to Michael J. Lyons, Chairman, Norwood Board of Selectmen (Exhibit 6).

About 6 months later, at the June 19, 2013 NAC meeting, it appeared that final approval of BEH's site design and construction were imminent. Having seen no response to the NAC's concerns, and fearing that BEH intended to conduct its fuelings on FlightLevel's Lot G, I immediately directed a letter to the NAC, voicing my concerns, and requested that they be addressed as soon as possible.<sup>12</sup>

In a July 12, 2013 memorandum to Mr. Donovan, the Airport Manager requested BEH's written fueling plan to "put to rest the [Commission's] concern, that BEH fueling will be conducted in a manner consistent with regulations, standards and best management practices, with minimal impact to other tenants [emphasis added]." The memorandum also requested "a statement of BEH's interest in commercial fueling vs. self-fueling."<sup>13</sup>

Confirming my fear, and still two months prior to breaking ground, Mr. Donovan now turned to making the case to the NAC that BEH had the right to fuel on FlightLevel's Lot G leasehold.

At the July 17, 2013 NAC meeting, Mr. Donovan submitted materials related to BEH's construction project, conveyed that BEH intended to start an FBO and made outlandish representations to the board that it could fuel on FlightLevel's leasehold, because the Airport had been developed with federal funding. On hearing this, FlightLevel's, Norwood General Manager, Mike Delaria, disavowed that claim and represented that BEH had no legal right to utilize Lot G or any other FlightLevel leasehold for that matter in connection with his desired fueling operation and that, therefore, the only Airport land upon which he could legally conduct fueling operations would be on the helicopter stub parking area on the South end, the Town-controlled West Ramp, and the helicopter pads the airport had previously constructed, in part, for BEH's benefit.

Failing to appreciate why Mr. Donovan (over repeated warnings from the NAC) would insist upon a design that would so seriously restrict how BEH could accept fuel deliveries to his planned fuel farm and administer fuel to aircraft, but also having grown weary of Mr. Donovan's rebukes when repeatedly asked to explain how and why the design and lay-out made sense, the NAC appeared to resign itself to the position that how BEH chose to spend its money, even if patently unwise, was still BEH's decision to make.

Furthermore, recognizing the contentious nature of BEH's claim to be able to fuel on FlightLevel's Lot G, the NAC "approved the continuation of [BEH's] hangar construction and fuel farm installation" with the proviso that an "aircraft fueling restriction east of its leasehold [i.e., toward Lot G] since this involves abutting leaseholds [. . .] remain in place until such time that BEH can demonstrate to the Airport Commission that the property rights of others would not be violated."<sup>14</sup> By August/September of 2013, BEH reportedly had broken ground.<sup>15</sup>

With BEH's attack on FlightLevel's leasehold now open and public, I directed a September 24, 2013 letter to the NAC, reaffirming Mr. DeLaria's assertions in the July NAC meeting, in which I represented that FlightLevel would NOT permit a competitor to use FlightLevel's leasehold to solicit FlightLevel customers, conduct competing fueling operations, and undermine FlightLevel's business. Mr. DeLaria also contacted the FAA for further

<sup>12</sup> See: June 20, 2013 letter from Peter Eichleay to Norwood Airport Commission c/o Mr. Russ Maguire, Airport Manager (Exhibit 7).

<sup>13</sup> See: July 12, 2013 Memo to Chris Donovan from Russ Maguire Re: BEH Fuel Farm Proposal (Exhibit 8).

<sup>14</sup> See: July 19, 2013 letter from Russ Maguire to BEH, Attn: Chris Donovan (Exhibit 9).

<sup>15</sup> See: <https://www.ainonline.com/aviation-news/business-aviation/2013-08-06/boston-executive-helicopters-breaks-ground-norwood-fbo> (Exhibit 10).

guidance. Mr. Thomas Vick of the FAA's "New England Region Airports Division," conveyed that the FAA would not become involved at that point, it being the responsibility of the individual leaseholders and the airport owner (the NAC) to uphold and enforce property rights according to common law and the terms of the leases in place. I lastly requested that in light of the imperialistic posturing of BEH, the significant capital improvements planned by FlightLevel, the nearly \$2,000,000 in rents, flowage fees and taxes FlightLevel had paid to the Town through that date for its property rights, and the complex insurance implications of what BEH was seeking to achieve, that the NAC simply state its position on the subject of FlightLevel's leasehold property rights.<sup>16</sup> The NAC ultimately and correctly informed Mr. Donovan in a public Commission meeting that if it wanted to utilize FlightLevel's leasehold, it would have to work that out with FlightLevel, and that MassDOT shared that position.

By letter dated November 19, 2013 and delivered via certified mail to FlightLevel's Mr. Delaria, BEH's attorney declared, in error, that BEH, as a successor to Swift, had the right to use FlightLevel's Lot G for its business operations, and "will continue to exercise this right without unreasonable interference to the stakeholders of Lease Lot G."<sup>17</sup> For the first time ever, we now had written confirmation from the source that BEH planned to use FlightLevel's Lot G for accessing its Lot F business. Although the letter didn't specifically mention fueling, that would come later.

By letter dated December 5, 2013, FlightLevel General Counsel, Nick Burlingham, replied in kind, clarifying that the rights granted to Swift under the enabling instrument were expressly limited to Swift's "own business" (i.e., Swift Aviation, Inc.'s then defunct aircraft maintenance business) and when Swift ceased conducting its "own business" on Lot F, its right of access over and across Lot G ceased as well. As such, FlightLevel, as successor to Lot G, had no obligation to BEH, and BEH had no exercisable right to utilize Lot G in connection with its use and occupancy of Lot F.<sup>18</sup>

While BEH's attorney never responded, Mr. Donovan did via email. That email, for the first time, acknowledged his long-suspected intent to fuel on Lot G, and also acknowledged that BEH would need FlightLevel's permission to so. That email reads in part as follows:

[. . .] I would like to enter into a 1-2 page agreement stating that each of us can use the areas between the hangars on Lots F and G [i.e., FlightLevel's Lot G leasehold] for uses including fueling, provided that we do not unreasonably interfere with one another and that I do not unreasonably interfere with the rights of the condominium hangar users.<sup>19</sup>

As a good corporate citizen, and in spite of Mr. Donovan's now well-established campaign to undermine FlightLevel, I still would have worked something out with him regarding BEH's use of Lot G for the ingress and egress of aircraft and automobiles, but I needed to submit the question of fueling, even if only self-fueling to FlightLevel's General Counsel. I then responded to Mr. Donovan by forwarding our attorney's reply, which stated in part:

I'd like to review our OWD insurance and SPCC [stand for Spill Prevention Control and Countermeasures] profiles (as you've appropriately suggested). My recollection is that we also have very specific branding and loyalty requirements within our fuel supply agreements [. . .] The \$50M excess pollution policy is also implicated. [. . .] The proposed arrangement would, at

<sup>16</sup> See: September 24, 2013 letter from Peter Eichleay to NAC, cc: Mr. Russ Maguire, Airport Manager (Exhibit 11).

<sup>17</sup> See: November 19, 2013 letter from Joshua M. Fox to Warren Michael Delaria, Manager (Exhibit 12).

<sup>18</sup> See: December 5, 2013 letter from Nick Burlingham to Joshua M. Fox, Esq. (Exhibit 13).

<sup>19</sup> See: January 24, 2014 email from Chris Donovan to Peter Eichleay (Exhibit 14).

minimum, present a defense to coverage should BEH experience a release on FLN leasehold (particularly if we've violated exclusivity covenants in our supply agreements). Further, there's the inherent conflict of interest that concerns me. As I understand it Mr. Donovan has indicated to you that he/BEH has no interest in competing with [FlightLevel], but my review of the Commission minutes indicates otherwise. Moreover, from a fundamental perspective, if BEH were to experience a release, it would serve its interests (at least on some level), if that release were to have occurred on its competitor's leasehold, rather than on its own [ . . . ]. So, while an access easement is a relatively simple and achievable matter, there's quite a bit more to be considered when it comes to fueling.

Neither Mr. Donovan nor his attorney ever responded. However, *now long aware of the deficiencies of BEH's proposed hangar and fuel farm lay-out, and with plenty of time to redesign the same to permit BEH to fuel on its OWN leasehold (Lot F), Mr. Donova/BEH deliberately chose to proceed with construction without deviation of any kind.*

To that point, the conflict between BEH and FlightLevel had been limited merely to rhetoric and posturing. That was going to change. Around seven (7) months later, in July of 2014, the matter escalated considerably when BEH, without FlightLevel or Airport authorization, physically removed and repaved a significant portion of FlightLevel's Lot G ramp, and then erected a construction barrier around it and Lot H (which abuts Lot G to the South and is also FlightLevel property) preventing access to either leasehold by FlightLevel personnel. This prompted a forceful written rebuke by FlightLevel's General Counsel, which stated in part:

If BEH damaged my client's apron during the construction of its hangar facility, and undertook to repair the same without thinking to discuss the incident with my client prior to the repair, then kindly provide me with a written explanation of the same, to include a description of the materials removed from Lot G, how the site was prepared for asphalt, the kind quantity and volume of materials including asphalt applied, copies of all permits issued in connection with the work on Lot G, and the names and addresses of all participating contractors. Please also include a clear and concise disclaimer of interest in the freshly paved portion of Lot G, so that my client can be assured that BEH harbors no intent to use its re-paving on Lot G to acquire rights of use in connection with its activities on Lot F. Failure to provide a prompt disclaimer of interest satisfactory to my client will be deemed an admission that BEH seeks to acquire by adverse possession or other means, the recently re-paved portion of my client's Lot G for use in connection with its operations on Lot F. My client hereby disavows any such claimed right or use, and should this be the case, it will aggressively seek to protect its interests.<sup>20</sup>

The construction barrier was removed following receipt of the letter, but FlightLevel has yet to receive a reply from BEH or its counsel, confirming once again its malevolent intent with respect to FlightLevel's leasehold rights. In September of 2014, FlightLevel commissioned a survey of its Lot G confirming BEH's trespass beyond question.

#### **BEH REJECTS NAC OFFER OF PRIME RAMP AND FILES FAA PART 13 COMPLAINT AGAINST AIRPORT**

At the March 12, 2014 NAC meeting, and in furtherance of BEH's request for more land, the NAC, in good faith, and constrained by the reality that most of the Town-controlled West Apron was already under contract to other tenants, nonetheless offered (without RFP) to make available to BEH approximately 6,900 sq.' of the West Apron. This would have given BEH frontage on Taxiway "A," commensurate with the business needs of a start-up commercial fueling operation.

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<sup>20</sup> See: July 29, 2014 letter from Nick Burlingham to Joshua M. Fox, Esq. (Exhibit 15).

Thereafter, at the April 9, 2014 public meeting, the NAC represented that it would remain receptive to expanding BEH's West Apron footprint in the future as BEH demonstrated business need, and as West Apron real estate became available. ~~BEH, however, expressly rejected the offer, representing that it would need significantly more apron to compete with FlightLevel, and Mr. Donovan accused the Airport Manager, on the record, of using OFAs as a means of obstructing BEH's plans, which was recognized by one of the Commissioners to be prospectively slanderous.~~ So, by April 9, 2014, Mr. Donovan had both been offered and actually rejected prime ramp for its commercial fueling operation, with the opportunity to expand as its business grew, and with frontage on Taxiway "A." The NAC, having made a good faith attempt to accommodate BEH (to the detriment of FlightLevel), and incredulous at BEH's rejection of its offer, withdrew the offer at the next Commission meeting in May.

At around this same time, BEH filed an FAR Part 13 Complaint<sup>21</sup> alleging NAC officials discriminated against BEH, "to prevent" it from building an FBO. In its July 10, 2014 response, the NAC denied the allegations, claiming they lacked merit and requested that the FAA take no action."<sup>22</sup>

### **BEH HARRASSMENT OF FLIGHTLEVEL EMPLOYEES AND CUSTOMERS**

By April of 2014, Mr. Donovan had become increasingly hostile, and failing to take responsibility for having ignored the NAC and others concerning the flaws in his hangar and fuel system lay-out, now appeared to have convinced himself, literally to the point of obsession, that the fueling regulations and the OFAs had been instituted at the Airport solely to prevent BEH's fueling operation. This would be confirmed to me in a September 30, 2014 email from Donovan himself.

Possibly in an attempt to prove it, BEH began filming FlightLevel employees in the hope of documenting violations of Airport regulations.<sup>23</sup> The practice was observed as early as 2013 but back then, BEH employees/loyalists would attempt to conceal their filmings. By the April 9, 2014 NAC meeting, BEH appeared to have changed its tactics. Filmings were now conducted in the open, with greater frequency, and with the clear intention of intimidating FlightLevel employees and customers. It was around this time that BEH also began filming the NAC meetings themselves.

The practice of filming FlightLevel customers and employees continues to this day, but of what must be dozens of photos and hours of footage, only one violation was ever brought to our attention. That occurred September 4, 2014, when FlightLevel employee, Jason Tibbets, a new hire at the time, responded to a BEH employee's call for fuel.

BEH's aircraft had been pre-positioned and chalked for the fueling in the area of BEH's Lot F hangar and the Gate 3 taxi-lane. When Mr. Tibbets questioned the setbacks, and requested that the aircraft be moved to comply with OFA restrictions, BEH employee Rob Silva declined, insisting instead that the aircraft was in proper position for

<sup>21</sup> An FAR Part 13 Complaint typically alleges that an airport sponsor (in this case the NAC) has done something to violate the Grant Assurances, which are the conditions and stipulations pursuant to which airports accept federal funding for improvement projects. It is submitted to the FAA, and investigated by Federal Airport Compliance personnel.

<sup>22</sup> See: <http://www.ainonline.com/aviation-news/2014-08-12/faa-reviewing-norwood-airport-response-boston-exec-helicopters-complaint> (Exhibit 16).

<sup>23</sup> Presumably, if the safety regulations were either not enforced as to FlightLevel, or not enforced at all, then enforcing them against BEH would be evidence of disparate treatment.

the fueling, and that "everything was in order," which of course was not the case. Mr. Tibbets erroneously succumbed, and fueled BEH's aircraft as chalked. The incident was reported to FlightLevel by an employee of ~~another airport company, who observed Mr. Silva mentioning something to the effect that BEH had finally caught~~ FlightLevel.

I immediately reported the incident to the Airport Manager, and upon further investigation, discovered that it had been recorded by airport security cameras. The recording supported Mr. Tibbetts' written statement,<sup>24</sup> clearly demonstrating Mr. Tibbetts' resistance and ultimate capitulation to Mr. Silva's coaxing. Mr. Tibbetts was counseled re-trained, and placed on probation. By letter dated September 9, 2014, and without diminishing FlightLevel's responsibility for the violation, *I requested that BEH discontinue the practice of attempting to induce FlightLevel employees into violating safety regulations.*<sup>25</sup> Notwithstanding, a similar yet unsuccessful attempt would be made in almost the same location in November of 2014, only this time, as discussed later, it was perpetrated by newly appointed Airport Commissioner, Oulton Hues, Jr.

### **BEH INFLUENCES NAC RESTRUCTURING**

Also in April of 2014, the NAC was increased from five to nine members by the appointment of four freshmen Commissioners.<sup>26</sup> Disturbingly, three of the four new appointees (the lone exception being Mr. Michael Sheehan) had either an established loyalty to Mr. Donovan or BEH, or an established interest in the Airport as a tenant, which in all propriety, would require that they disclose their conflicts and recuse themselves from NAC decisions impacting the rights of Airport tenants.<sup>27</sup> New appointee Oulton Hues, Jr., in addition to being a close friend of Mr. Donovan, is actually a tenant of BEH in its Lot F hangar. In the months to come, Mr. Hues, in particular, would come to identify himself by act and deed, to be on the NAC for the singular purpose of advocating for BEH, intent on aiding Mr. Donovan by whatever means possible, including if necessary to the detriment of the Airport. Much more disturbingly, though, Commissioner Hues appeared convinced, equally to the point of obsession, that the NAC, rather than Mr. Donovan, was responsible for the adverse consequences of BEH's ill-conceived development plan, and the failure up to that date of his aggressive territorialism, and now obvious "mission-creep" tactics.

### **THE PRICE PAID BY ALL**

The NAC, the Airport Manager, Airport and the Town of Norwood have paid a steep price since reconstitution of the NAC in April. In June of 2014, as one of his first acts as a Commissioner, Mr. Hues "filed a formal complaint with the state's ethics division against two NAC members alleging harassment."<sup>28</sup> He also brought criminal charges against Chairman Thomas Wynne, alleging he was assaulted when Mr. Wynne threw papers at him. Mr. Wynne's denial was supported by the veteran Commissioners, many of whom were on site and prepared to testify for Mr. Wynne at the September 3, 2014 Dedham District Court hearing. Mr. Hues' purported corroborating witness, Commissioner Paul Shaughnessy, did not appear, and Mr. Hues withdrew his complaint.<sup>29</sup> Thereafter,

<sup>24</sup> See: Statement of Jason Tibbetts (Exhibit 17).

<sup>25</sup> See: September 9, 2014 letter from Peter Eichleay to Chris Donovan (Exhibit 18).

<sup>26</sup> Oulton A. Hues, Jr.; Paul V. Shaughnessy, Jr., Michael Sheehan, and Hylie Hutchens.

<sup>27</sup> For example, Commissioner Hues is a close personal friend of Mr. Donovan, and maintains an aircraft in BEH's Lot F hangar. Commissioners Hutchins and Paul Shaughnessy are tenants of the Airport on the West Ramp. Commissioner Paul Shaughnessy is also a former employee of Boston Air Charter. Mr. Hutchins actually disclosed his potential conflict of interest prior to being appointed. On information and belief, the others did not.

<sup>28</sup> See: <http://www.ainonline.com/aviation-news/2014-10-28/second-part-13-complaint-filed-against-norwood-airport> (Exhibit 19).

<sup>29</sup> See: <http://norwood.wickedlocal.com/article/20140925/News/140928370> (Exhibit 20).

Commissioner Wynne, despite having been unanimously reappointed to another term as Chairman just a few months prior, elected to resign from the Commission after years of service, rather than endure such treatment. So ~~within two months of his appointment, Mr. Hues had succeeded in ousting the Chairman of the Commission: one~~ of the individuals with the strength of principle to hold Mr. Donovan accountable for his own self-created problem. A great loss to the NAC, the Airport, and the Town of Norwood, but a tremendously successful partisan act by Mr. Hues for the benefit of BEH.

A second FAR Part 13 Complaint, this one dated September 30, 2014, and submitted by Commissioner Hues himself, claims that "the town of Norwood, Mass., through the Norwood Airport Commission, is in violation of federal grant obligations for allegedly discriminating against Boston Executive Helicopter's [ ] long-planned FBO at Norwood Memorial Airport."<sup>30</sup> Upon the filing of Mr. Hues' complaint, effectively on BEH's behalf, Mr. Donovan withdrew his / BEH's. ~~Certainly a Federal complaint filed against an airport by one of its own~~ commissioners (being self-incriminating) would be presumed more credible than a complaint filed by an agenda-driven third party private user. Shockingly though, while shedding BEH's status as "complainant," Mr. Donovan had now ALSO succeeded in transferring the financial burden of both the prosecution and the defense of its Part 13 claims directly onto the shoulders of the NAC.

Perhaps emboldened by Mr. Hues' success in ousting Commissioner Wynne, Mr. Hues' willingness to file the complaint to BEH's benefit, and, generally speaking, the success of laundering the execution of his agenda through Commissioner Hues, Mr. Donovan no longer attempted to conceal his role as puppeteer. In fact, Mr. DeLaria has personally witnessed Mr. Donovan meeting with Mr. Hues and Commissioner Paul Shaughnessy both before and after NAC meetings. Mr. Donovan has also overtly targeted the members of the NAC who have held him accountable for his own actions, and refused to succumb to his bullying tactics and mission-creep agenda.

According to a July 3, 2014 Boston Globe Article, Mr. Donovan:

has asked Norwood selectmen and state ethics officials to determine whether there might be a conflict of interest posed by Mark Ryan, Norwood's Department of Public Works superintendent and vice chairman of the airport commission, and Kevin Shaughnessy, another airport commissioner and town employee in the Light Department. He said both have asked him for donations for town events and local charities while making decisions on his business requests.<sup>31</sup>

The hypocrisy of this was alarming, given the influence Mr. Donovan now overtly exerted over Mr. Hues (and possibly Mr. Paul Shaughnessy as well), who appeared uninterested in anything but shifting the blame, the expense, and the responsibility for Mr. Donovan's manipulative and perhaps intentional poor planning onto the NAC.

Mr. Donovan has further seized every opportunity, including regular use of the media, to bootstrap his claims of ethical and criminal misconduct, and those of Mr. Hues, into defamatory rhetoric to discredit the NAC. According to an AIN article published July 31, 2014,

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<sup>30</sup> See: <http://www.ainonline.com/aviation-news/2014-10-28/second-part-13-complaint-filed-against-norwood-airport> (Exhibit 19).

<sup>31</sup> See: <http://www.bostonglobe.com/metro/2014/07/02/tensions-high-norwood-airport-commission-after-member-alleges-assault-another/xAN2mTMoN6ub0sbu96RzJP/story.html> (Exhibit 21).



Boston Executive Helicopters' long-planned FBO at Norwood (Mass.) Airport is stalled again amid allegations of ethical and criminal misconduct by members of the airfield's administrative body, the Norwood Airport Commission. The company claims infighting is intensifying a campaign being waged by certain members to thwart the planned FBO. City and state ethics and rulemaking officials are reviewing requests by the company to investigate the purported improprieties. Members were unavailable for comment. The FBO was originally scheduled to open last summer.<sup>32</sup>

Unfortunately, while he succeeded in injecting chaos into the Airport's governance, he appeared to care little about the damage it may have caused. When BEH filed its FAR Part 13 Complaint in May of 2014, the NAC was forced to suspend action on BEH's FBO approval pending determinative advice from the FAA.<sup>33</sup> And when Mr. Hues filed his FAR Part 13 Complaint in September of 2014, the timeline for response and consideration was re-set. Although we have yet to see what impact this will have on BEH's FBO project, it has already caused problems for Airport governance. For example, much of the public portion of the November NAC meeting was occupied by queries concerning certain Commissioners' potential conflicts of interest. The meeting then went into executive session to discuss Mr. Hues' FAR Part 13 Complaint, and upon re-convening in public session, tempers were so hot that the meeting had to be adjourned with important but unrelated Airport business left unresolved. The December meeting was cancelled altogether.

According to an AIN article published October 28, 2014,

The FAA is reviewing another complaint claiming that the town of Norwood, Mass., through the Norwood Airport Commission, is in violation of federal grant obligations for allegedly discriminating against Boston Executive Helicopter's (BEH) long-planned FBO at Norwood Memorial Airport.

This latest grievance, dated September 30, is the second to be filed against the city under FAR Part 13, "Complaints about Airport Compliance." BEH filed its first Part 13 complaint last summer, and the airport commission responded with a filing denying the assertions.

What makes the second filing unusual is that it was submitted by Oulton Hues Jr., a newly appointed member of the airport commission who has butted heads with other members regarding several of the group's actions. Last June, Hues filed a formal complaint with the state's ethics division against two members for alleged harassment.

Meanwhile, airport manager Russ Maguire told AIN the commission has tabled further "discussion of BEH's FBO interest based on the Part 13 complaint filed by BEH." With regard to the Part 13 complaints themselves, "the commission is confident in its position, as it awaits the FAA's determination."<sup>34</sup>

## **USING AUTHORITY TO GAIN ACCESS TO FLIGHTLEVEL PROPERTY AND CUSTOMERS**

In May of 2014, just after his appointment to the NAC, Mr. Hues accompanied by Mr. Donovan, appeared unannounced at FlightLevel tenant Mike Peavey's hangar. Mr. Donovan and Mr. Hues proceeded to conduct "an inspection" of Mr. Peavey's private space. Mr. Peavey, obviously disturbed by the incident, reported it to the assistant airport Manager and FlightLevel.<sup>35</sup> On information and belief, the underlying purpose of the "inspection"

<sup>32</sup> See: <http://www.ainonline.com/aviation-news/2014-07-31/norwood-fbo-plans-stalled-alleged-misconduct-airport-commission> (Exhibit 22).

<sup>33</sup> See: <http://www.ainonline.com/aviation-news/2014-10-28/second-part-13-complaint-filed-against-norwood-airport>. "[...] the commission has tabled further discussion of BEH's FBO interest based on the Part 13 complaint filed by BEH" (Exhibit 19).

<sup>34</sup> See: <http://www.ainonline.com/aviation-news/2014-10-28/second-part-13-complaint-filed-against-norwood-airport> (Exhibit 19).

<sup>35</sup> See: May 23, 2014 Letter from Peter Eichleay to Russ Maguire with Mr. Peavey's letter attached (Exhibit 23).

was to find regulatory violations on the part of FlightLevel that would help to justify Mr. Donovan's claims of disparate treatment. No violation was ever reported.

### **HECKLING OF COMMISSIONERS**

Mr. Hues' behavior during the NAC meetings has been childish and petulant at best. At the conclusion of the November NAC meeting, Mr. Hues was observed actually heckling other Commissioners upon departing the meeting.

### **BAITING VIOLATIONS OF SAFETY REGULATIONS**

*A few days after the November, 2014 NAC meeting we had an incident whereby Mr. Hues attempted to bait my newly hired and trained employee, Steve Annis, into violating airport fueling restrictions outside of BEH's hangar, almost exactly as BEH employee Mr. Silva had done a few months earlier with another new-hire employee.* However, this time freshman Commissioner Mr. Paul Shaughnessy was literally staked-out in his vehicle a short distance away watching the encounter unfold.<sup>36</sup> FlightLevel's lineman refused to comply with Mr. Hues' demand that he fuel his aircraft in a known restricted area, and when Mr. Hues reluctantly agreed to allow his aircraft to be moved to a compliant area, Mr. Paul Shaughnessy drove off.<sup>37</sup>

We now had at least two Airport Commissioners overtly attempting to undermine the Airport's governing authority, and the Airport's largest employer and private source of revenue, all in an attempt to prove-out their friend, Mr. Donovan's fantasy conspiracy theory.

We're also now at the point where customers of ours have actually told us that they will be utilizing competing airports around us, such as Mansfield and Bedford because, although less convenient to them than Norwood, they're sick of being filmed when we fuel or tow their aircraft. At the many other airports where we and our partners operate FBOs, we've never seen anything that comes even remotely close to this.

### **DISREGARDING SAFETY REGULATIONS**

On May 8, 2014, N721SA, a FlightLevel customer returning from a flight could not access its tie-down because Mr. Oulton Hues, Jr.'s silver F350, and Mr. Paul Shaughnessy's red Camaro had blocked the way. The aircraft was forced to taxi to FlightLevel's transient parking. When asked why, the two Commissioners responded "we can do whatever we want, we're on the Commission."<sup>38</sup>

On May 16, 2014, at 1740 hrs, then Commissioner Oulton Hues, Jr. drove to the north end of the Airport, parked in the Gate 3 taxi lane, shut his vehicle off and abandoned it in place for 45 minutes. FlightLevel's Kevin Putnam was forced to tow N727SH in close proximity to the helicopter hangar building to get around Mr. Hues' vehicle. When advised that he couldn't park in the taxi lane, Mr. Hues reportedly explained that it was "ok because he was a Commissioner."<sup>39</sup>

<sup>36</sup> See: Statement of Kevin Putnam (Exhibit 24).

<sup>37</sup> See: Statement of Kevin Putnam (Exhibit 24).

<sup>38</sup> See: Record of Incident dated May 8, 2014 (Exhibit 24).

<sup>39</sup> See: Record of Incident dated May 16, 2014 (Exhibit 24).

## REMOVAL OF OULTON HUES, JR FROM THE NAC

To the Town's credit, and our great relief, on Thursday, December 30, 2014, the Selectmen took action, and ~~removed Oulton Hues, Jr. from the NAC. This has already restored considerable order to the NAC, but time will~~ tell if Mr. Paul Shaughnessy, who remains, is on the commission for the benefit of BEH or the benefit of the Airport. In either case, justice will not be served if BEH stands to profit from the unfortunate resignation of Commissioner Wynne, and the absolute chaos reeked upon the NAC by its partisan Commissioner appointees.

## SUMMARY AS TO BEH

Making BEH's investment lucrative for BEH, is NOT the NAC's burden to bear. Nor does the NAC have any obligation to accommodate BEH's demands (or anyone else's for that matter) beyond existing leases, contractual agreements or property rights. With that in mind, below is a list of some salient facts that illustrate the hypocrisy of BEH's claimed mistreatment, and underpin the reasonability with which, the NAC has acted.

1. No representation was ever made by the NAC or Airport Manager that additional leasehold would be afforded to BEH when BEH was considering its purchase of Lot F and its hangar and fuel farm investments. In fact, the NAC, at least eight months prior to the start of BEH's fuel farm construction, brought to light, in open forum, the real estate constraints of its facility design, and how the NFPA setbacks and object free areas (OFAs) would greatly limit where BEH would be able to administer fuel. In one meeting it was spelled out that given its design choices, BEH would only be able to fuel on the West Apron and the helicopter parking areas. Had BEH constructed a smaller hangar on lot F, it would have been able to fuel compliantly on its OWN leasehold. Yet with full knowledge of this, BEH elected to proceed with its investment, and at its own peril, construct its facility on Lot F without altering its design in any way to address the needs of its fueling operation. With the benefit of hindsight, it is my impression that BEH intentionally disregarded NAC warnings, planning instead to force the NAC to fix its problem at a later date by succumbing to demands for more and more land under the threat of litigation and relentless administrative chaos. This, of course, turned out to be true in fact, and if the NAC now succumbs as BEH expects it will, BEH's caustic behavior will have proven extremely effective and will likely NEVER end.
2. At the Wednesday March 12, 2014 NAC public meeting, BEH requested a lease on the West Apron or a piece of the West Apron to conduct its desired fueling operations under the warning from BEH's attorney that the NAC's not doing so "would start costing BEH money." Whether or not this was intended as a threat, it's illustrative of BEH's entire approach: ignore warnings, do whatever you want, get in trouble, make it sound like it's the Airport that did it to you, cause as much chaos as possible until the Airport fixes your problem under threat of litigation, and then do it all over again. At NO time is it the fault of the Airport that BEH's own bad decisions would "start costing [it] money."<sup>40</sup>
3. In furtherance of BEH's request, the NAC, in good faith, and constrained by the reality that most of the West Apron was already under contract to other tenants, nonetheless offered to make available to BEH approximately 6,900 sq.' of the West Apron on an expedited basis (bypassing the optional RFP process routinely followed for new property offerings of this size and nature). At the April 9, 2014 public meeting, the NAC represented that it would also remain receptive to expanding BEH's West Apron footprint in the future as BEH demonstrated business need, and as West Apron real estate became available. BEH, however, expressly rejected

<sup>40</sup> To be sure, BEH and FlightLevel will experience greater losses as two FBOs on the airfield.

the offer, and Mr. Donovan accused the airport manager, on the record, of using OFAs as a means of obstructing BEH's plans, which was recognized by one of the Commissioners to be prospectively slanderous.

4. The NAC is NOT required to license just anyone who wants to become an FBO, let alone an entity with no prior FBO experience such as BEH. The presence of a single FBO on an Airport it is NOT a violation of the Grant Assurances, and an Airport may deny even a qualified FBO applicant if "[it] would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator."<sup>41</sup> BEH specifically rejected the apron that the NAC offered to make available, demanding instead a minimum of 100,000 sq. ft.<sup>42</sup>, which would require the NAC to reduce the size of FlightLevel's space. This is precisely the factual pattern for which the single FBO exception was intended.

## **ENOUGH IS ENOUGH.**

### **BEH SHOULD NOT BE REWARDED FOR ITS OWN WRONGDOING**

In the nine months since the appointment of the Freshmen Commissioners, led in particular by BEH's most partisan advocate, Commissioner Hues, BEH has succeeded in near complete perversion of what was formerly an extremely responsible, informed, and effective Airport administration. Through ridiculous criminal charges, hypocritical ethics complaints, self-serving FAR Part 13 Complaints, overt harassment of the Airport's largest employer, and conduct unbecoming of public officials, BEH succeeded in ousting Chairman Wynne, who recognized Mr. Donovan's "mission-creep" "bullying" tactics, and had the strength and courage hold him and BEH accountable for them. In the process, BEH has revealed to all the kind of neighbor it will be on the Airport, and should not now be rewarded for its actions.

### **BEH's FBO APPLICATION SHOULD BE DENIED**

To reward BEH's behavior by acceding to its demands, and put it (with absolutely no commercial fueling experience, no genuine explanation for how it intends to make its fueling business profitable, and a demonstrated proclivity to achieve its objectives solely by "threat" and "mission-creep") on equal footing with FlightLevel is fundamentally wrong.

<sup>41</sup> The Single FBO exception can be found in a couple of places;

• 49 U.S.C. § 47107(a)(4)(A and B) states:

(4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if—

(A) [it] would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and

(B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;

• 49 U.S.C § 40103(e) "A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed operator is not an exclusive right if—

(1) it is unreasonably costly, burdensome, or impractical for more than one fixed operator to provide the services; and,  
(2) allowing more than one fixed base operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

<sup>42</sup> See: April 21, 2014 "BEH Looks For Land" Article, <http://norwood.wickedlocal.com/article/20140421/NEWS/140429958> (Exhibit 25).

### **The Airport Cannot Sustain Two Competing Fueling Businesses**

~~FlightLevel established its presence at the Airport in January of 2008, when it acquired the assets of Eastern Air Center, the successor in interest to the last two FBOs that attempted to co-exist on the Airport. There was no conspiracy, and there was no disparate treatment. As of today there are also NO (i.e. zero) airports in the United States with maximum runway lengths of 4,000 feet at which two fuel providers currently and profitably co-exist.~~<sup>43</sup>

### **An Independent Third-Party Evaluation Is Necessary Before If The NAC is Seriously Considering Licensing BEH to Become an FBO.**

I have requested and now re-request that the Town commission an independent third-party FBO expert, to study the Airport and advise the NAC on whether BEH and FlightLevel (or any two competing FBOs) can profitably co-exist at Norwood. Because I know that the enfranchisement of a second commercial fuel vendor at the Airport will radically destabilize my company (as well as the airport), and place at risk numerous local jobs, the \$8,000,000 investment of FlightLevel's stakeholders, and the +/- \$250,000 that FlightLevel pays to the Town of Norwood annually; and because I believe this information is absolutely essential to the NAC's ability to make the best decision under what we understand are tough circumstances, I would be willing to commit FlightLevel funds to cover the cost of the study by the contractor of the NAC's choosing.

### **Choosing to Enfranchise BEH will be Choosing BEH Over FlightLevel**

BEH's investment will be a mere fraction of FlightLevel's \$8,000,000 stake in the Airport. If enfranchised as an FBO, and given additional land at the Airport, the NAC will have handed BEH an overwhelming competitive advantage over FlightLevel as a commercial fueler. In reality, the competitive advantage on our 4,000' airfield is such that the decision to enfranchise BEH or any second FBO will at the same time be the election of BEH or the newcomer over FlightLevel as the Airport's solitary FBO, and a solid endorsement of BEH's tactics.

BEH has also repeatedly represented that it owns its assets outright, and has used its "no debt" argument justify its creditworthiness, and to circumvent repeated requests on the part of the NAC for "real" underlying financials — both as evidence of its solvency, and to justify how it plans to make its commercial fueling operation economically viable. As recently as the January 14, 2015 NAC public meeting, Mr. Donovan dodged yet another attempt by the NAC to draw-out this important information. The fact that an individual, group, or organization is wealthy, has NEVER been justification for licensing it, unnecessarily, so that it can destabilize existing businesses — especially when, as here, the single FBO exception applies. I submit that the strategy of whomever is funding BEH, whether Mr. Yanai alone, or possibly a silent consortium at the Airport, is to take advantage of their significantly lower overhead, and even incur indefinite losses if necessary, until FlightLevel is out of business and they can assume control over the Airport.

If the Town chooses to ignore its safe harbor in the "Single FBO Exception," and enfranchise BEH (with merely twenty-five percent of FlightLevel's investment in the Airport) as a second FBO, it will trigger sweeping changes for FlightLevel, starting with massive and immediate layoffs in an effort to reduce costs. In time, Airport services will revert to the lowest possible standard, as the two FBOs struggle to compete for insufficient business, and the \$250,000 that FlightLevel pays the Town annually will be placed at risk. BEH will be emboldened to continue to subvert Airport governance at every turn to further its agenda, and it will only be a matter of time before BEH

<sup>43</sup> See: Representative Survey of Airports in Massachusetts (Exhibit 1).

demands FlightLevel's ramp, using its now proven slap-down tactics to distort and subvert the rule of law to get what it wants. Only if the NAC holds BEH accountable, and stands up to Mr. Donovan, will the cycle be broken.

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BEH's FBO application should be denied. In the alternative, and prior to further action on BEH's FBO application, the NAC should commission a private, independent, third-party study to advise it on whether the Airport can support two FBOs.

Respectfully submitted,

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Peter Eichleay



# FLIGHTLEVEL AVIATION

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www.flightlevelaviation.com

## VIA HAND DELIVERY

January 29, 2015

Norwood Airport Commission (NAC)  
c/o Mr. Russ Maguire, Airport Manager  
125 Access Road  
Norwood, MA 02062

Re: Recent Developments at Norwood Memorial Airport  
Supplement 1 to January 20, 2015 Submission  
BEH Blocking FlightLevel Fuel Farm

Dear Mr. Chairman:

On January 27, 2015, as FlightLevel was fully mobilized (with all available equipment and personnel) clearing nearly 10 acres of Airport property of the 2+ feet of snow that fell during the massive blizzard on Monday and Tuesday of this week, Boston Executive Helicopters was busy combining the snow from its leasehold (lot F) with the snowfall on FlightLevel's leaseholds (lot G and lot H), to create a 6+ foot wall of snow across nearly the entire length of FlightLevel's Lot H (the location of FlightLevel's fuel farm - photos are attached).

This massive snow bank now blocks access to FlightLevel's fueling system, rendering it impossible for FlightLevel to receive fuel deliveries at the Airport. Since FlightLevel will require a load within the next day or two to keep its business going, it has literally been forced to contract a third-party to remove the snow.

In addition to being the most blatant and notorious trespass by BEH to date (and the most heinous example of BEH undermining FlightLevel both financially and operationally), this serves as the pivotal example of how and why the NAC cannot enfranchise BEH to operate as a second FBO at Norwood Memorial Airport.

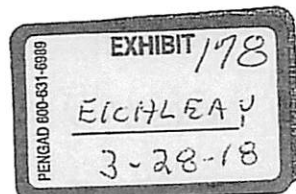
First, the fact that BEH constructed its facility such that it cannot operate on Lot F without trespassing on Lots G and H, means that to permit BEH to conduct a compliant commercial fueling business, the NAC would first have to reduce space leased to FlightLevel at the Airport. Moreover, since BEH cannot so much as remove snow from its Lot F without either trespassing onto FlightLevel's Lot G and/or Lot H, or conducting an overt act of sabotage, dispossessing FlightLevel of its business opportunities, and the quiet enjoyment of its leasehold; together with the fact that the airport cannot sustain two commercially viable FBOs, and the price to be paid by ALL in what will certainly be an indefinite period of intense hostility as the two FBOs fight each other for insufficient business at the Airport, and drain the Town of Norwood's resources in ongoing

FLIGHTLEVEL AVIATION

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781-769-8680 FAX 781-769-7180



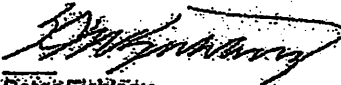


and increasingly desperate and litigious attempts to enforce their property rights and quiet enjoyment, means that it would ALSO be unreasonably costly, burdensome, or impractical to enfranchise more than one FBO at the Airport.

The presence of a single FBO on an Airport it is NOT a violation of the Grant Assurances, and an Airport may deny even a qualified FBO applicant if "[i]t would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator."<sup>1</sup>

Both of these elements are satisfied here. The NAC needs to end this insanity once and for all by acting NOW to invoke its safe harbor, the single FBO exception.

Respectfully submitted,

  
Peter Eichleay  
FLIGHT LEVEL Aviation - President  
125 Access Road  
Norwood, MA 02062  
W: 781.769.8680 ext. 128  
E: peter@flightlevelaviation.com  
F: 781.769.7180

<sup>1</sup> The Single FBO exception can be found in the following places:

- 49 U.S.C. § 47107(a)(9)(A and B) states:  
(4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if—  
(A) [i]t would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and  
(B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;
- 49 U.S.C. § 40103(e) "A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed operator is not an exclusive right if—  
(1) it is unreasonably costly, burdensome, or impractical for more than one fixed operator to provide the services; and,  
(2) allowing more than one fixed-base operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS



BOSTON EXECUTIVE HELICOPTERS, LLC,  
Plaintiff,

v.

FRANCIS T. MAGUIRE, ET AL.,  
Defendant.

C.A. NO. 1:15-CV-13647-RGS

AFFIDAVIT OF KATHLEEN E. KELLY

I, Kathleen E. Kelly, hereby depose and state, based upon my own personal knowledge,  
as follows:

1. I am an attorney admitted to practice law in the Commonwealth of Massachusetts.
2. I am a partner at the law firm of Hinshaw & Culbertson LLP in Boston, MA.
3. I represented Boston Executive Helicopter, LLC ("BEH") in the following matter:  
Boston Executive Helicopters, LLC, et al. v. Flightlevel Norwood, LLC, et al.; Norfolk County  
Superior Court; Case No. 2015-00213.
4. The above matter involved a motion for preliminary injunction filed by BEH  
seeking a judicial order removing several "Jersey barriers" ("barriers") unilaterally installed by  
Flightlevel Norwood, LLC ("Flightlevel") and/or its CEO Peter Eichleay at the Norwood  
Memorial Airport (the "Airport") on February 13, 2015 in violation of BEH's rights to access and  
use certain areas of the Airport.
5. The barriers obstructed BEH's access to one of its hangars and impeded access  
between two of its hangars. BEH argued that the only possible reason for Flightlevel's

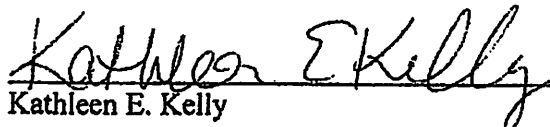
installation of the Jersey barriers was to deprive BEH its contractual rights to access its hangars from and across an aircraft apron which lay in front of each hangar facility door.

6. On March 2, 2015, arguments on the motion were heard before Judge Angel Kelly Brown and I attended that hearing on behalf of BEH.

7. During the March 2, 2015 hearing, Mr. Eichleay repeatedly expressed his opinion that if BEH pumped any fuel at the Airport, that Flightlevel would be unable to compete against BEH and that Flightlevel would go out of business. From these statements I inferred, I believe fairly, that Flightlevel had erected the barriers in order to disrupt BEH such that BEH would be unable to compete with Flightlevel by selling fuel at the Airport.

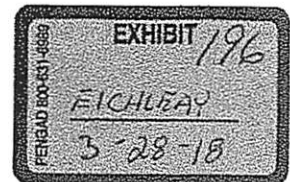
8. At the conclusion of the March 2, 2015 hearing, BEH's motion for preliminary injunction was granted and Flightlevel, via a signed Order dated March 6, 2015, was ordered to remove the barriers.

Signed under the pains and penalties of perjury this 2<sup>nd</sup> day of August, 2017.

  
Kathleen E. Kelly

## COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 2015-00213BOSTON EXECUTIVE HELICOPTERS, LLC;  
MILL AVIATION SERVICES, LLC,  
Plaintiffs

vs.

FLIGHTLEVEL NORWOOD, LLC;  
EAC REALTY TRUST II; and PETER EICHLEAY,  
DefendantsORDERRECEIVED & FILED  
CLERK OF THE COURTS  
NORFOLK COUNTY

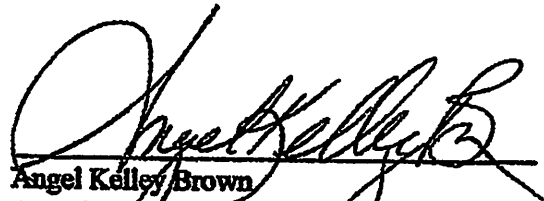
3/6/18

Following a hearing on plaintiff's request for a preliminary injunction and review of arguments and written submissions, the Court is convinced that plaintiffs meet the requirements for a preliminary injunction. Therefore, the Court orders:

- 1) Defendants shall immediately remove the "Jersey barriers" installed on February 13, 2105, along the Lot G and Lot Property line at the Norwood Memorial Airport, and refrain from installing any further or similar obstruction preventing or obstructing access to or between Lot F and Lot G;
- 2) FlightLevel Norwood, LLC and/or EAC Realty Trust II shall plow and maintain Lot G in a timely manner, and refrain from plowing any snow from Lot G onto Lot F;
- 3) Boston Executive Helicopters, LLC shall plow and maintain Lot F in a timely

manner, and will refrain from plowing any snow from Lot F onto Lot G;

- 4) Each Plaintiff shall refrain from fueling aircrafts on Lot G and may utilize Lot G as a taxiway only. In the event damage is done to Lot G as a result of Plaintiffs' fuel truck driving over Lot G, Plaintiffs will be responsible for the cost of reasonable repairs.
- 5) Each Defendant shall refrain from fueling aircrafts on Lot F and may utilize the so-called "15 foot Strip" on Lot F as a result of Defendant use of the "15 foot Strip" on Lot F, Defendants will be responsible for the cost of reasonable repairs.
- 6) All applicable period(s) of time pursuant to which any plaintiff may gain rights to or in Lot G, whether by adverse possession, prescription or otherwise, are hereby tolled.

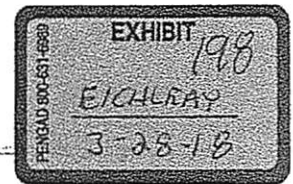
  
Angel Kelley Brown  
Associate Justice of the Superior Court

**DATED:** March 5, 2015

I ATTEST THAT THIS DOCUMENT IS A  
CERTIFIED PHOTOCOPY OF AN ORIGINAL  
ON FILE

  
Deputy Assistant Clerk

3/6/15



From: Peter Eichleay <peichleay@gmail.com>  
Date: Thu, Mar 12, 2015 at 5:26 PM  
Subject: Re: Norwood Airport Commission Meeting, Visual Aid  
To: Russ Maguire <rmaquire@norwoodma.gov>  
Cc: "Brandon H. Moss" <bhmoss@nhatl.com>, Mark Ryan <mryan@norwoodma.gov>

Of course. Attached is the PowerPoint file the poster board was based on. I've also attached the Swift-EAC Lot F Agreement that discussed the grant by EAC to Swift (i.e., the easement language that BEH is basing its claim on). Kindly note, that:

- the Agreement is not a lease;
- BEH is not a party to the Agreement;
- The right granted to Swift to use Lot G was for Swift's "own business" (i.e., non-assignable by its express terms);
- the Agreement was executed between EAC, Swift and BMA at a time when fueling operations on Lot F were expressly disallowed under the lease Swift had in place;
- the Agreement, was neither transferred to BEH nor included in BEH's acquisition of Swift's Lot F lease (although mentioned for purposes of disclosing to BEH that EAC/FlightLevel has the right to use the "Lot-F Licensed Area.")

You have the Affidavit of Michael Pendergast, confirming from BMA that EAC/FlightLevel is within its rights to preclude the occupant of Lot F from using Lot G in connections with its Lot F operations. August Mazzella, the President of Swift who executed the Agreement on Swift's behalf is preparing an affidavit to that effect as well. This will complete the confirmation from all 3 parties to the Agreement that BEH can claim NO rights to Lot G in connection with the Agreement or its Lot F operations.

Most importantly, the NAC's two letters to BEH from way back in July of 2013 (which arose partly out of my concern that BEH intended to "bully" its fueling operations onto my leasehold), correctly placed the onus on

**BEH to demonstrate to the NAC that the property rights of others would not be violated** with respect to the operations of its fueling facility. This clearly has NOT been satisfied. It could be 2 years before the courts rule on this matter in FLN vs. BEH. But since that ruling is necessary for BEH to comply with the NAC's requirement in those letters (that the property rights of others will not be impacted), the NAC should stick to its position. Not doing so and letting BEH off the hook would greatly undermine the NAC's authority and serve as a victory to BEH's "give me what I want, or I'll file FAA complaints and sue" strategy.

Please don't forget, that had BEH simply reduced the size of its hangar, or restructured its site design when repeatedly warned by the NAC, by me, by Mike DeLaria and by others, BEH would have been able to fuel on its own leasehold, and all of this would not now be a problem. BEH deliberately disregarded those warnings, because it believed that if it caused enough chaos, it would get what it wanted, regardless of the rule of law and the rights of others.

When the NAC, as the Airport's governing body, imposes a requirement like this (from the July 2013 letters), it must stand firm. Failure to do so will undermine the NAC's authority, encourage parties to literally trample on the rights of others, and in the present case prove to BEH that it can achieve anything it wants, irrespective of the rules imposed by Airport governance, and irrespective of the rights of others, by simply weakening the NAC's resolve through the threat of FAA complaints and civil lawsuits, and the simple passage of time.

Thanks for reading,

Peter

On Thu, Mar 12, 2015 at 11:17 AM, Russ Maguire <[rmaquire@norwoodma.gov](mailto:rmaquire@norwoodma.gov)> wrote:

Good morning Peter,

At yesterday's NAC meeting, Nick Burlingham was using a poster board representation of the Lots F,G,H lease lots and easements to illustrate how the abutting properties corresponded with one another. Norwood Town Counsel's Brandon Moss has asked if it we could have a copy of this overlay. Is this possible?

Russ

Russ Maguire, Manager  
Norwood Memorial Airport





FLIGHTLEVEL  
AVIATION

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www.flightlevelaviation.com



VIA EMAIL

June 8, 2015

Board of Selectmen - Town of Norwood

Norwood Airport Commission (NAC)

c/o Mr. Russ Maguire, Airport Manager

125 Access Road

Norwood, MA 02062

Re: NAC Letter from July 19, 2013, BEH Encroachment

Dear Chairman Lyons and Chairman Ryan:

Nearly two years ago, on July 19, 2013, the NAC, under direction of then Chairman Thomas Wynn, issued a written directive to Boston Executive Helicopters (BEH) in connection with the initial approval of its fuel farm design, requiring BEH to agree to a fueling restriction east of its Leasehold (toward FlightLevel lot G) "until such time that BEH can demonstrate to the Airport Commission that the property rights of others will not be violated."

This directive arose out of the NAC's valid concern, and over BEH's emphatic, incorrect, and often belligerent insistence to the contrary, that the operation of BEH's fueling system, as designed and located on Lot F (given regulatory setbacks and restrictions), would necessarily result in continuous and on-going encroachments onto FlightLevel's Lot G.

Please be reminded that if BEH had simply reduced the size of its hangar, or restructured its site design when repeatedly warned by the NAC over 2 year ago, well before construction began, BEH would now be able to operate its fueling facility on its own leasehold, and all of this would not now be a problem.

At the June 2013 NAC Public Meeting, FlightLevel also voiced its concern, that by refusing to acknowledge the design defect, and by insisting under threat of litigation that the NAC was holding up its project because the foundation couldn't be poured until the tanks were installed, BEH was essentially bullying the NAC into authorizing competing fueling operations on FlightLevel's leasehold. At that meeting, and on numerous other occasions, FlightLevel has stated that such action would not be tolerated, and in letters dated June 19, 2013 and September 24, 2013, I explicitly asked that the NAC respond with how it intended to deal with such a property rights violation.

---

FLIGHTLEVEL AVIATION

125 ACCESS ROAD

NORWOOD, MA 02062

781-769-8680 FAX 781-769-7180

2069

While FlightLevel has yet to receive a response from the NAC to those letters, some comfort arrived with the discovery via public records request that the NAC's July 19, 2013 letter to BEH (first mentioned above) correctly placed the onus on BEH to demonstrate that FlightLevel's property rights would not be violated. Unfortunately, it seems that the NAC has forgotten about this directive or looked the other way. In spite of my having reminded the NAC on multiple occasions about it, including in a January 20, 2015 letter, at the March 2015 NAC Public Meeting, and in emails to the NAC through the Airport Manager, THIS CONDITION STILL HAS NOT BEEN SATISFIED BY BEH.

When the NAC, as the Airport's governing body, imposes a requirement like this, it must stand firm. Its failure to do so will undermine its authority and establish a precedent of lawlessness at the airport, where any operator can achieve anything it wants, irrespective of the rules imposed by Airport governance, and irrespective of the rights of others, by simply weakening the NAC's resolve through the threat of FAA complaints and civil lawsuits, and the simple passage of time. So far, BEH has proven this to be an extremely successful tactic.

While to date I have relied on diplomacy and positive corporate citizenship to vet my and FlightLevel's concerns with the NAC, my efforts so far appear to have failed. With this letter, I submit FlightLevel's final cordial attempt to remind the NAC of its duty to standby its own directives, and to protect FlightLevel's contractual leasehold rights at the airport – the same rights that FlightLevel relied upon, in good faith, in making its enormous financial investment. If the NAC fails to do so, it, rather than FlightLevel, will be responsible for the resulting breach. In such event, diplomacy and positive corporate citizenship will have failed, and FlightLevel, which is already in litigation with BEH, will act swiftly and aggressively to protect its interests vis-à-vis the NAC and the Town of Norwood.

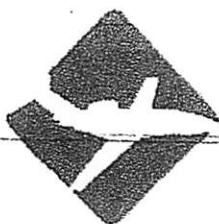
Respectfully submitted,



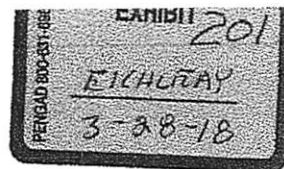
Peter Eichleay  
FLIGHTLEVEL Aviation - President  
125 Access Road  
Norwood, MA 02062  
(781) 769-8680

Cc: Nicholas Burlingham, Esq.  
FLIGHTLEVEL Aviation – General Counsel  
125 Access Road  
Norwood, MA 02062  
(781) 769-8680

Cc: Nicholas A. Iannuzzi, Jr., Esq.  
FLIGHTLEVEL Aviation – Litigation Counsel  
Orsi, Arone, Rothenberg, Iannuzzi & Turner, LLP  
160 Gould Street, Suite 320  
Needham, Massachusetts 02494



# FLIGHTLEVEL AVIATION



PHONE: 781.769.8686  
FAX: 781.769.7180  
www.flightlevelaviation.com

VIA EMAIL AND HAND DELIVERY

September 23, 2015

Board of Selectmen – Town of Norwood  
Norwood Airport Commission (NAC)  
Norwood Town Manager  
c/o Mr. Russ Maguire, Airport Manager  
125 Access Road  
Norwood, MA 02062

Re: NAC Special Meeting re BEH

Dear Chairman Bishop, Selectman Lyons, Chairman Ryan and Town Manager Carroll,

On September 30, 2015, the Norwood Airport Commission will convene a special meeting to consider, inter alia, matters relating to the application of Boston Executive Helicopters ("BEH") to conduct commercial fueling operations from its facility on Lot F at the Norwood Memorial Airport (the "Airport"). Kindly be reminded that BEH can neither provision its fuel system, nor lighter stored fuel into trucks or aircraft without violating Airport rules and FAA/NFPA regulations or trespassing on my company, FlightLevel's abutting Lot G. Make no mistake about it: Responsibility for this lies squarely with BEH.

Under the direction of its president Christopher Donovan, BEH first led the NAC to believe its operations would be limited to self-fueling, and therefore conceptually proposed a hangar facility that took up nearly the entire footprint of its Lot F, leaving insufficient space to perform compliant truck-to-aircraft or cabinet-to-aircraft fuelings. The presumed logic behind this design was that BEH would self-fuel on the nearby Town Helipads which had been recently installed to satisfy unrelated BEH complaints. It wasn't until later when Donovan presented actual drawings of the proposed facility that the NAC pointed out the seemingly obvious but critical deficiency first mentioned in my introduction: that with the application of regulatory setbacks and object free areas, BEH's proposed site design would actually render its fueling system unusable without encroaching on FlightLevel's Lot G.

However, rather than alter the size or position of its hangar to permit fuel farm operations on its own Lot F (which could easily have been accomplished), BEH defiantly insisted over my verbal and written objections and the concerned warnings of the NAC, that it had the right to conduct its fueling operations on my company's Lot G – an outrageous claim that was and is untrue. So, when the NAC approved BEH's construction, they wisely required that a fueling restriction remain in place until BEH could demonstrate that the property rights of others would not be violated presumably to protect the sanctity of FlightLevel's Lot G lease.

Knowing this directive couldn't be complied with, BEH chose not to address it, and proceeded with its un-altered design, fully aware that it would not be able to operate its fueling system without trespassing on my company's leasehold. Its gamble was that once its facility was constructed, and amidst a maelstrom of self-spun media attacks painting it as the victim and the NAC as the villain (not to mention ethics charges against individual commissioners, disparate treatment complaints and a barrage of public records requests), BEH could successfully bully, blame and shame the NAC into forgetting about the directive and giving it what it wanted – the right to fuel irrespective of safety regulations and FlightLevel's Lot G property rights.

When the NAC, at the time under Chairman Thomas Wynne, refused to succumb to this tactic, Donovan, apparently oblivious to the absurdity of the request he was about to make, actually emailed me asking that I grant him access to FlightLevel's Lot G so that BEH could operate its competing fueling business -- effectively conceding that FlightLevel's permission was required. Since Chairman Wynne's resignation from the NAC, disturbingly, two of the three newly appointed commissioners remaining, one of

whom was actually a recent tenant of BEH's, have "bought in" to BEH's tactics and in fact promote its baseless narrative at nearly every NAC meeting, paying little if any consideration to the Town's best interests, the historical context of the entire BEH saga (to which they were largely absent), the properly enacted directives of the NAC, and the guidance of Town Counsel who is at the same time charged with defending the Town in administrative and civil litigation commenced by BEH. Instead of recusing themselves from matters involving BEH, these two Commissioners, by their own admission have been known to actually meet with Donovan and his Counsel in private before and after NAC meetings.

In the meantime, BEH has been causing as much chaos and financial hardship as possible, both with respect to FlightLevel and the Town of Norwood. In addition to their ridiculous public records lawsuit and attempts to disrupt Airport governance, BEH and Donovan have also engaged in the following outrageously bad behavior which has already caused FlightLevel six figures in damages and legal expense. They have:

1. Vandalized FlightLevel ramp and equipment,
2. Blockaded portions of FlightLevel's Lot G and H leaseholds,
3. Sabotaged FlightLevel's fueling system,
4. Stalked FlightLevel customers and employees,
5. Discharged pollutants onto FlightLevel and Town property,
6. Repeatedly attempted to induce FlightLevel personnel to violate Airport rules, including with the assistance of Commissioner Paul Shaughnessy, and former Commissioner Olten Hues Jr.,
7. Defamed the NAC at nearly every possible opportunity, and
8. Embroiled FlightLevel and the Town in frivolous and costly slap-down litigation.

Furthermore, BEH continues to attempt to deflect and distract attention from its defective site design, bad behavior, and inability to provide a compliant fueling plan by embroiling the NAC in red herring issues whose outcomes BEH easily controls -- like when it will submit financial information the NAC has been requesting for literally years and under what conditions those financials might be reviewed. Apparently the thinking here is that such distractions once resolved will have caused the NAC to completely forget about these other more serious issues and pave the way to an easy approval of their FBO application before the real problems are ever addressed.

While FlightLevel's court date with BEH is more than a year away, the Town needs to understand that BEH's behavior represents an immediate, continuous and ongoing threat to the Airport, and provides the NAC with independent and incontestable grounds both to reject its FBO application, and to evict Christopher Donovan outright from the Airport. See: U.S. Aerospace, Inc., v. Millington Mun. Airport Auth., No. 16-98-06, Director's Determination (Oct. 20, 1998) (Respondent did not unreasonably exclude complainant by initiating eviction actions against complainant and declining to grant complainant the right to operate an FBO where complainant's president had damaged the incumbent FBO's property). See also: SeaSands Air Transp., Inc. v. Huntsville-Madison Cnty. Airport Auth. - No. 16-05-17, - No. FAA-2006-25072, Director's Determination (Aug. 28, 2006) (A sponsor may deny access due to the unprofessional and threatening actions of an applicant's president); and, (a sponsor may determine that specific behavior is so highly unprofessional as to be unacceptable, even if such determination leads the sponsor to restrict a user's access or to decline to continue a business relationship).

When it meets on September 30, 2015, the NAC should do the right thing and once and for all, reject the FBO application of BEH and decline to continue its business relationship with Christopher Donovan. It can base its decision on any one or combination of the radically unacceptable behaviors listed 1-8 above, and/or on any one or combination of the following material failures in connection with BEH's FBO application:

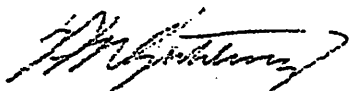
1. the fact that due solely to BEH's own decisions and practices it cannot now compliantly operate a fueling system on its own Lot F; and/or,
2. the fact that BEH has not and cannot satisfy the original condition established by the NAC -- that the property rights of other will not be impacted; and/or,
3. the fact that BEH has not provided the information requested in connection with NAC's vetting of an FBO applicant.

Moreover, if the NAC elects to approve BEH's FBO application at this time, it will render moot its now fully-briefed and fully-submitted defense to BEH's Part 16 Complaint and open itself to lawsuits which will be significantly harder to defend against than any claim coming from BEH (I will address this in more detail below). The Town's Part 16 defense carries with it an extremely strong likelihood of success on the merits (which is why BEH and its two pocket Commissioners are pushing so hard for a quick political solution). The probable dismissal of the Complaint will not only vindicate the Town and NAC, but more importantly, it will eliminate BEH's primary weapon in all future dealings with the Town and Airport – the threat of shutting off federal funding if it doesn't get its way.

While FlightLevel has relied on diplomacy and positive corporate citizenship to vet its concerns with the NAC, it can no longer afford to do so. The NAC has a duty to stand firmly behind its own directives and protect the contractual leasehold rights of its tenants – the same rights that FlightLevel relied upon, in good faith, in making its \$8,000,000 investment in the Airport, and the rights that underpin its more than \$200,000 in annual payments to the Town without which the Airport would not be self-sustaining.

As a result of its own actions BEH cannot operate its fueling system without trespassing on FlightLevel's Lot G. If the NAC chooses to ignore this and enfranchise BEH as an FBO notwithstanding everything stated in this letter, the NAC will at the same time effect (1) a taking of FlightLevel's Lot G contract rights entitling FlightLevel to just compensation under the law, (2) a breach by the Town of Norwood of its master lease with Boston Metropolitan Airport ("BMA"), (3) a breach by BMA of its Lot G lease with FlightLevel as evidenced by BMA's sworn affidavit; and (4) a violation of FlightLevel's right to quiet enjoyment of its leasehold. Under such circumstances, FlightLevel will immediately seek judicial intervention and damages vis-à-vis its landlords, including BMA, who, in turn, will likely also pursue recourse against the Town since BMA firmly sides with FlightLevel in this matter and importantly serves as the landlord to both FlightLevel and BEH on lots G and F respectively. In comparison to the claims of BEH based on smoke, mirrors and conspiracy theories, the positions of BMA and FlightLevel will be based on written agreements and concrete facts as have been documented in the literally dozens of letters I have submitted to the NAC on this matter.

Respectfully submitted,



Peter Eichleay  
FLIGHTLEVEL Aviation - President  
125 Access Road  
Norwood, MA 02062

Cc: Nicholas Burlingham, Esq.  
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125 Access Road  
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Cc: Nicholas A. Iannuzzi, Jr., Esq.  
FLIGHTLEVEL Aviation – Litigation Counsel  
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Needham, Massachusetts 02494

Cc: Brandon Moss, Esq.,  
Murphy, Hesse, Toomey & Lehan, LLP  
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Quincy, MA 02169-9126



# FLIGHTLEVEL AVIATION

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VIA EMAIL AND HAND DELIVERY

November 17, 2017

Board of Selectmen – Town of Norwood  
Hand Delivery  
Norwood Airport Commission (NAC)  
c/o Mr. Russ Maguire, Airport Manager  
125 Access Road  
Norwood, MA 02062

Re: Boston Executive Helicopters, LLC v. Town of Norwood, et al.

Dear Chairman Plasko and Honorable Selectman,

I am writing today as an airport tenant and employer, who is also a defendant in frivolous litigation commenced by Boston Executive Helicopters, LLC ("BEH"), to ask the Board of Selectmen to support and encourage the NAC and the individually named Commissioners, to harden their resolve, and to see the litigation brought by BEH through to final judgement.

The only way to resolve matters with parties who use lawsuits as weapons of intimidation, and to avoid the consequences of their own bad acts, is to force them to prove their claims in court. Anything short of this, including negotiation, will encourage additional bad behavior, result in further expense and delay, and guarantee the commencement of more frivolous lawsuits into the indefinite future.

I offer the following in support of this request:

1. BAD BEHAVIOR. On February 13, 2015, in direct violation of numerous cease and desist letters and the express instructions of Norwood Police, Christopher Donovan and Robert Silva of BEH entered FlightLevel's airport leasehold, and with the intention of vandalizing FlightLevel property, emptied the contents of eleven aviation barriers containing approximately 6½ 55 gallon drums of glycol propylene, directly onto FlightLevel, BMA and Town property. The incident was recorded on video. It was just one of many well documented assaults against FlightLevel by BEH at the direction of Christopher Donovan, and for which BEH, Donovan and Silva have yet to answer.
  2. BEH LAWSUITS INTIMIDATE AND COERCE. BEH's action against the Town and the individually named Town defendants was commenced on October 2, 2015 --- just days before the NAC show-cause hearing on the barrier dumping incident. It was timed for maximum impact, and coerced the Town's all-volunteer NAC panel (through threat of personal financial injury) to reserve action in response to BEH's illegal behavior and the compelling video evidence against Donovan and Silva, until the judicial process could play out. That judicial process now needs to play out.
  3. THE DEFENDANTS HAVE MADE STEADY PROGRESS. In spite of the allegations asserted by BEH, the Town has seen steady progress toward exoneration. On July 6, 2017, the Federal District Court, Stearns, D.J., dismissed 11 of the 12 counts in BEH's action against the Town defendants. On November 9, 2017, the court
-

dismissed BEH's remaining count against four of the seven individual Town defendants. *The Court's rulings, coming prior to the presentation of any Town evidence, reveal the extreme lack of substance behind BEH's claims.* Likewise, on October 20, 2016, the state court, Locke, J., in BEH's lawsuit against the FlightLevel defendants, dismissed BEH's conspiracy count. These rulings are significant wins for the Town Defendants in the federal case, and for the FlightLevel defendants in the state case.

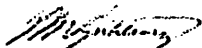
4. **THE TOWN DEFENDANTS DESERVE BOS SUPPORT.** In spite of the ever-present threat of personal financial injury at the hands of BEH, the NAC and the individually-named Town defendants have consistently placed the interests of the Airport first, and have proven themselves to be extremely good stewards of the public trust.

- (a) **NAC Requirements Have Been Appropriate.** The requirements imposed by the NAC on the airport's tenants have been reasonable, well-considered, and uniformly applied. Each, including proof of adequate insurance, a personal guaranty of lease obligations, and a professionally engineered fueling plan to demonstrate that the operations of one tenant do not interfere with the property rights of another, is consistent with what sponsors at other airports require, and are easily satisfied by any airport entrant, including FlightLevel which has complied in full.
- (b) **Quality Airport Governance.** The Commission, as currently configured, is a fair and seasoned body. It has done an excellent job of running the airport through what has now been several years of chaos at the hands of BEH.
- (c) **Town Will Win.** The Town Defendants have a compelling story to tell, with both the facts and the law on their side. They (and FlightLevel) have been wrongly bullied and maligned. They deserve their day in court, and the exoneration that final judgements on the merits will bring.
- (d) **Bad Behavior Continues.** BEH's litigious and obstructionist behavior, which has been well documented in the letters that I have written to the Board of Selectmen, continue to this day. By letter dated March 28, 2017, BEH threatened to sue Norwood Light/Broadband when it sought to fulfill FlightLevel's request to bring internet access to FlightLevel's building on Lot G. More recently, in September of 2017, BEH feigned no knowledge of an agreed inspection, and sought to acquire the names of FlightLevel's third-party engineers to place them in fear of prosecution for merely working with FlightLevel. Most recently, BEH has been overtly driving its fuel trucks on FlightLevel leasehold in an effort to bait, bully, and intimidate.

It is time to end BEH's regime of bullying and intimidation. FlightLevel is committed to proceed all the way to verdict in the action it faces in state court. The Town Defendants have come far. Their case is strong and their position is just. They should continue to stand firm and proceed to verdict in the action they face in federal court, and to final determination as well in the Part 16 proceeding before the FAA. They can and will prevail if they have your full support.

FlightLevel respectfully, and at the same time strongly and emphatically, urges the Board of Selectmen to continue that full and unbridled support.

Respectfully submitted,



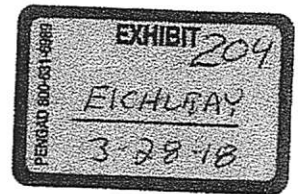
Peter Eichleay  
**FLIGHTLEVEL Aviation - President**  
125 Access Road  
Norwood, MA 02062





# FLIGHTLEVEL AVIATION

PHONE: 781.769.8680  
FAX: 781.769.7180  
www.flightlevelaviation.com



VIA EMAIL AND HAND DELIVERY

December 8, 2017

Board of Selectmen – Town of Norwood  
Hand Delivery  
Norwood Airport Commission (NAC)  
c/o Mr. Russ Maguire, Airport Manager  
125 Access Road  
Norwood, MA 02062

Re: Boston Executive Helicopters, LLC v. Town of Norwood, et al.

Dear Chairman Plasko and Honorable Selectman,

In my letter of November 17, 2017, I provided several examples of the continuing litigious and obstructionist behavior that FlightLevel Norwood, LLC (FLN) has been subjected to at the hands of Boston Executive Helicopters, LLC (BEH). Thereafter, the following additional detail was requested, which I now submit.

Exhibit A is a copy of a March 28, 2017, letter in which BEH threatened to sue to prevent Norwood Light/Broadband from fulfilling FlightLevel's request to bring internet access to FlightLevel's building on Lot G. The pole placements under consideration at the time were to be located on FlightLevel and BMA property as shown, and not on any BEH's leasehold or aircraft taxi area. However, to this day, as a result of BEH's actions, FlightLevel's building on Lot G remains without internet service.

Exhibit B is a narrative of an agreed inspection of T-hangar units occupied by BEH in FlightLevel's Lot G building. Measurement by licensed engineers became necessary following unauthorized modifications by BEH that FLN believes encroach into space within the building that neither BEH nor its owners lease. The narrative is detailed, so here is an executive summary:

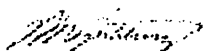
1. The T-hangar building belongs to FlightLevel, and is located on FlightLevel's leasehold.
2. BEH occupies units 7 and 8, which are leased to Moshe Yanai (Yanai) and MII Aviation Services (MII).
3. BEH installed an office and exterior window in an area of the building overlooking FLN's fuel farm, that FLN believes Yanai and MII do not lease. There, BEH has maintained a video camera trained on FLN's fuel farm.
4. FLN requested an inspection to measure and photograph the area for purposes of resolving the issue.
5. BEH represented to the presiding judge in its lawsuit against FLN that it would permit the inspection.
6. BEH agreed in writing that FLN could inspect the premises "at any time."
7. FLN uses Norwood Engineering for its work at the airport, and Norwood Engineering had a survey crew available to do the inspection and measuring on September 7, 2017 at 12:00 noon.

8. FLN notified BEH that it would conduct its inspection at that time, and asked that the doors be open.
9. BEH received the notice and voiced no objection to the time or date of the inspection.
10. FlightLevel and three representatives of Norwood Engineering arrived on time. The doors were open, and a representative of BEH named "Way" or "Wei" acknowledged with a wave when FlightLevel's general counsel, Nick Burlingham said: "Hello, We're here for the inspection."
11. As soon as the Norwood Engineering representatives had crossed the threshold of Unit 7, the BEH representative approached Mr. Burlingham, advised that he was not aware of the inspection, and asked that the inspection be postponed until Mr. Donovan (who was only 20 minutes away) could be back on site.
12. Mr. Burlingham immediately complied, withdrawing the Norwood Engineering representatives from Unit 7 to other nearby FLN property.
13. When Mr. Donovan arrived, he stated that he did not consent to the inspection because while it may have been agreed to, it wasn't in the form of a court order.
14. Mr. Burlingham, who had driven from Connecticut for the inspection, informed Mr. Donovan that the inspection had been agreed to by trial counsel, and that he had repeatedly confirmed that with FLN trial counsel, including just minutes prior to the start of the inspection.
15. Mr. Donovan closed the hangar doors and demanded the names of the Norwood Engineering representatives who had crossed the threshold of Unit 7.
16. Mr. Burlingham apologized to the extent that there had been a misunderstanding, and although initially agreed to provide the names of the Norwood Engineering representatives, he later declined after concluding that Mr. Donovan's only reason for wanting the names was to place them in fear of prosecution for working with FlightLevel.
17. Mr. Donovan repeated his demand for the names several additional times that day, then again on September 20 via email with the subject heading "Flight level Trespass" and again on September 22.
18. On September 22, 2017, BEH trial counsel reported that BEH "is hesitant to schedule this until provided with the names of the gentlemen who were in the condo hangar with Nick two weeks ago."
19. On September 27, 2017, FLN trial counsel replied, stating:

"Your client's request for the names of the Norwood Engineering personnel who attempted to inspect the premises on September 7, 2017 is in our view part of an attempt to harass and intimidate Norwood Engineering. In response to our Rule 34 request you stated FlightLevel could inspect the hangar building. You had previously told us in an email that we could inspect the hangar at any time. We emailed you when we were coming asking that someone be there to open the doors. We arrived when we said we would. The doors were open when we arrived. The word "trespass" in the caption of your September 20, 2017 email in these circumstances is nonsense."
20. By Order dated December 1, 2017, the court granted FLN's motion to compel the inspection "to include measurements, drawings or photographs, of Units 3, 7, 8 and appurtenant office areas of the second floor space within the hangar on Lot G"

I hope you find this letter adequately responsive to your inquiry. As always, if you have any further questions or concerns, please don't hesitate to call.

Respectfully submitted,



Peter Eichleay  
FLIGHTLEVEL Aviation - President  
125 Access Road  
Norwood, MA 02062

# EXHIBIT A

## POLE PLACEMENT

### PIERCE & MANDELL, P.C.

ATTORNEYS AT LAW

11 BEACON STREET, SUITE 800  
BOSTON, MASSACHUSETTS 02108

617-720-2444

FAX 617-720-3693

WWW.PIERCEMANDELL.COM

March 28, 2017

#### VIA FEDERAL EXPRESS

Mr. James Collins  
Superintendent  
Norwood Light/Broadband  
206 Central Street  
Norwood, MA 02062

Re: Norwood Airport Construction

Dear Superintendent Collins:

We represent MIT Aviation Services, Boston Executive Helicopters, LLC ("BEH") and HB Holdings in connection with a variety of litigation matters pending in the Norfolk Superior Court, United States District Court for the District of Massachusetts and before the Federal Aviation Administration. Our clients lease several parcels and conduct business at the Norwood Municipal Airport (the "Airport"), and the various proceedings described above involve, generally, disputes between our clients and the Norwood Airport Commission ("NAC") and FlightLevel Norwood, LLC, another service provider at the Airport ("FlightLevel").

Recently our clients encountered Norwood Light/Broadband employee and NAC Commissioner, Kevin Shaughnessy, surveying in and around our clients' leased parcels at the Airport. When asked, Mr. Shaughnessy stated that he was planning the installation of telephone poles and overhead wires to provide cable service to an office hangar located across a taxiway from BEH's primary operations hangar. There was no notice to our clients regarding this action, and Mr. Shaughnessy claimed that he did not know for whom the planned installation was being undertaken.

As an initial matter, please be aware that Title 14 of the Code of Federal Regulations (14 CFR) Part 77, requires that nearly all proposed construction or alterations at the Airport be subject to an Obstruction Evaluation/Airport Airspace Analysis ("OE/AAA") conducted by the Federal Aviation Administration, and initiated by the filing of a Form 7460-1. Please advise whether

Mr. James Collins  
Norwood Light Broadband  
March 28, 2017  
Page 2

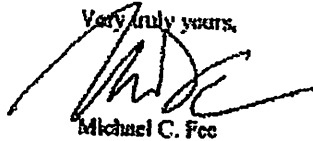
Norwood Light/Broadband has initiated the OE/AAA for the proposed pole installation, and if so, please provide a copy in accordance with the Massachusetts Public Records Law (G.L. c. 66, §1 et seq.).

As you may know, in one of the pending litigation matters (Norfolk Superior Court C.A. 15-00213) BEH alleges that in 2014, FlightLevel conspired with members of the NAC, the Airport Manager and others to block access to our clients' leased parcels. The action resulted in the Court ordering FlightLevel to remove barriers placed in the same areas that are now apparently stated for pole installations. Please be advised that installation of poles or wires in, on, under or over our clients' leased property is contrary to our clients' property rights, and would disrupt the unfettered use of an active Airport taxiway.

We respectfully request your cooperation in refraining from such actions, now and at any point in the future. Please be advised that if the Norwood Light/Broadband proceeds with these plans, we will take all necessary and appropriate action to protect our clients' rights, including seeking a temporary restraining order and preliminary injunction from the Norfolk Superior Court.

Please feel free to call me if you wish to discuss. Thank you.

Very truly yours,



Michael C. Fee

MCF/spl

cc: Mrs. Mary T. Walsh (FAA, MER)  
Mr. Jeffrey DiCarlo (Mass. D.O.T./Aeronautics Div.)  
Mr. Michael Pendergast  
Mr. Russ McGuire, Airport Manager  
Mr. Mark Ryan, Chair Norwood Airport Commission  
Mr. Allan Howard, Chair Norwood Board of Selectmen  
Neil Hartzell, Esq. (via electronic mail)  
Jason Crotty, Esq. (via electronic mail)

Fee-jc001.docx

## **EXHIBIT B**

### **INSPECTION NARRATIVE**

On Friday, July 7, 2017 at 2:00 pm, Attorney Michael Fee for the BEH parties, and Attorneys Neil Hartzell and Nick Burlingham for the FlightLevel parties appeared before Judge Locke in Plymouth Superior Court for a case status conference. During the conference Mr. Hartzell informed Judge Locke that the FLN parties desired an inspection of the FlightLevel-owned T-hangar units on FlightLevel's Lot G occupied by the BEH parties. Mr. Fee represented that he didn't have any objection to inspection of the T-hangar units on Lot G, but reserved the opportunity to check with his client Chris Donovan. Judge Locke stated that if Mr. Donovan disapproved, and a motion was requested, it would take the court only a few minutes to order the requested inspections.

On Friday, August 25, 2017, at 4:01 pm, Mr. Hartzell through his associate Attorney Eric Martignetti provided Mr. Fee with a draft of FlightLevel's Rule 34, request for inspection of the T-Hangar units on Lot G and the building and Fuel Farm on Lot F, stating:

"Mike: Also, attached is a draft of FlightLevel's Rule 34 request for inspection. We will be in touch with you to coordinate scheduling."

On Saturday, September 2, 2017, at 8:56 am, Mr. Fee responded to Mr. Hartzell and Martignetti via email:

"As Neil and I discussed with Judge Locke, you can inspect the condo [a/k/a the T-Hangar units] at any time. However, Neil and I never discussed, either privately or with the Judge, FL's apparent desire to now tour Lot F as well. My client will not agree to any inspection of Lot F and if you intend to press that issue I suggest that you forward a signed Rule 34 request. I will respond and object in accordance with the rules."

On Wednesday, September 6, 2017 at 5:24 pm, Mr. Martignetti served a signed Rule 34 Request for Inspection on Mr. Fee, stating in the cover letter:

"Norwood Engineering can be on site at 12:00 noon tomorrow to inspect and measure the interior portions of the T-hangar building/condo. Someone from BEH will have to be there to open the doors. As for the inspection of Lot F, please see the attached Rule 34 request, which is also being sent by mail."

Mr. Burlingham confirmed that no objection to the inspection was received from Mr. Fee or BEH either the afternoon or evening of September 6, 2017 nor during the morning of September 7, 2017.

At no time has Mr. Fee ever represented that he did not receive the September 6, 2017 email.

On Thursday, September 7, 2017, Mr. Burlingham travelled to Norwood Airport from his home in Connecticut for the agreed inspection and measurement of the T-Hangar units on Lot G. He arrived at Lot G at approximately 11:35 pm to find the doors to Units 7 and 8 in their full open positions. He called out vocally to announce his presence and to ask if anyone BEH was on site, but received no reply. He then returned to the FlightLevel terminal to wait for the surveyors from Norwood Engineering. Mr. Burlingham then confirmed with FlightLevel's trial counsel's office that no objection to the inspection

had been received from Mr. Fee or BEH. At 12:01 pm, a Norwood Engineering representative called Mr. Burlingham to report that the survey crew had arrived at the airport.

At approximately 12:05 pm, Mr. Burlingham in a FlightLevel vehicle, and three representatives of Norwood Engineering in a green pick-up truck marked "Norwood Engineering," arrived at Lot G. A representative of BEH was seated just inside BEH's building on Lot F, in clear sight of the T-Hangar units and the Norwood Engineering vehicle. Mr. Burlingham and the Norwood Engineering representatives parked on FlightLevel's tank farm lot on Lot H, and exited their vehicles. At that point, the BEH representative (whose name was possibly "Way" or "Wei"), walked out of the BEH hangar on Lot F. Mr. Burlingham, who had been directed to remain clear of Lot F, called out to the BEH representative in a loud voice "Hi, we're here for the inspection" and he and the BEH representative then exchanged friendly waves. At 12:15 pm, Mr. Hartzell called Mr. Burlingham to report that he had attempted to reach Mr. Fee via telephone that morning, and while Mr. Fee had not yet returned his call(s) from that day, the two had agreed to the inspection at 12:00 noon, and while it was possibly a trap that Mr. Donovan was not present, the inspection should proceed as scheduled and agreed.

Mr. Burlingham then instructed the Norwood Engineering representatives to anticipate that the inspection was being filmed and possibly recorded, but to proceed with the measuring of the T-hangar units, to the extent that measurements could be taken without touching anything within units 7 and 8.

As soon as the Norwood Engineering representatives had crossed the threshold of Unit 7, the BEH representative approached Attorney Burlingham from BEH's building on Lot F, and stated that Christopher Donovan had not informed him about the inspection, and that he would feel better if the inspection could wait until the two had had a chance to speak. Mr. Burlingham immediately complied, withdrawing the Norwood Engineering representatives from Unit 7 to FlightLevel's tank farm parcel on Lot H, and at 12:20 pm, and he called Mr. Hartzell. In the meantime, the BEH representative reached Christopher Donovan by phone, and reported to Mr. Burlingham that Mr. Donovan was only a few minutes away, and had asked that the parties hold off on the inspection until he could be on site.

At 12:22 pm, Mr. Burlingham called FlightLevel Director of Line Services, Kevin Putnam, and asked Mr. Putnam for assistance opening the external door to FlightLevel's fuel farm control room located on FlightLevel's Tank Farm parcel on Lot H, at the south end of the T-Hangar building on Lot G. The fuel farm control room is not part of unit 7 or 8.

Mr. Donovan returned to the airport shortly after 12:22 pm, and informed Mr. Burlingham that he did not consent to the inspection, and that he wanted the names of every Norwood Engineering employee who had been in his T-Hangar. Mr. Burlingham informed Mr. Donovan that the inspection had been agreed to by trial counsel for BEH and FlightLevel, and that Mr. Burlingham had repeatedly confirmed that with Mr. Hartzell, including just minutes prior to the start of the inspection.

Mr. Donovan stated that he didn't consent to the inspection because while it may have been agreed to, it wasn't in the form of a court order. He next reported that he'd spoken with Mr. Fee, and that Mr. Fee had not spoken with Mr. Hartzell, and did not agree to the inspection either. He repeatedly requested that Mr. Burlingham identify the Norwood Engineering representatives by name, and closed the hangar doors to units 7 and 8. Mr. Burlingham apologized if there had been a misunderstanding, and initially agreed to provide the names of the Norwood Engineering representatives, but later declined after concluding that Mr. Donovan's only reason for wanting the names was to place them in fear of prosecution for working with FlightLevel.

The statements at paragraph 27 of Mr. Donovan's affidavit, which is appended hereto in the interest of fair disclosure, are false as Mr. Burlingham never said what Mr. Donovan claims.

At 12:41 pm, Mr. Hartzell, forwarded a second copy of the September 6, 2017 email informing that the inspection would take place at 12:00 pm, September 7, 2017.

At 12:52 pm, Mr. Fee responded "Chris did not agree to the time and is now pretty upset. Not sure if this will impact his willingness to mediate. I will call you later."

At 12:53 pm, Mr. Hartzell responded: "Then he should have told us yesterday."

At 1:00 pm, Mr. Fee responded: "Maybe you should have confirmed."

At 1:04 pm Mr. Hartzell responded: "Can you please ask Chris if he will let our people back into the condo as he has asked them to leave and closed the door so that they can do their measurements?"

At 1:15 pm, Mr. Fee responded: "Chris would prefer to reschedule. He wants to know in advance who will be present and he wants me to attend. Please provide this information and we will reschedule promptly."

At 4:57 pm, Mr. Fee responded in writing to FlightLevel's formal request for inspection, objecting to measurement of the building on Lot F because FlightLevel had "unfettered access to view the exteriors of both Lot F and Lot G" and to the extent that the FlightLevel defendants "wish to measure boundary lines, building locations, aircraft aprons, foundations, doors, set back areas, and taxi lanes that exist on Lot F, such definitive measurements appear on stamped engineering plans prepared by plaintiff in connection with the construction of its hangar and fuel system [. . .] which are on file with the Norwood Airport Commission." Mr. Fee further objected "to the inspection and/or measurement of [BEH's] fuel farm on Lot F, contending that the fuel farm "is nowhere near the disputed area, and thus its dimensions bear no relation to any issue in the case." No objection was interposed with respect to the measuring of the T-hangar units on Lot G.

On Monday, September 11, 2007, at 1:14 pm, Mr. Martignetti wrote to Mr. Fee, stating:

"Mike: We propose that the inspection of the T-hangar areas take place this Wednesday morning (September 13). Please let us know if that works for your client."

At 1:16 pm, Mr. Fee responded stating: "Eric, I can't do it this week. How about next week?"

On Tuesday, September 12, 2017, the parties attended a mediation session in Boston before Thomas F. Maffei.

On Friday, September 15, 2017, Mr. Fee, Mr. Donovan, Mr. Neil Hartzell and Mr. Burlingham appeared before Judge Locke for a case status conference. Mr. Hartzell renewed the request for the two inspections. Mr. Fee informed the court that Mr. Donovan would consent to the inspection of the T-Hangar units on the FlightLevel parties' Lot G, but would require a hearing with respect to any inspection by FlightLevel of the building and fuel farm on BEH's Lot F.

At 4:54 pm, Mr. Martignetti wrote to Mr. Fee and Mr. Zanolli, stating: "Mike: We propose doing the inspection next Wednesday (9/20) at 10:00 am. Please let us know if this works for your client."

On Sunday, September 17, 2017, at 5:34 pm, Mr. Fee wrote to Mr. Hartzell and Mr. Martignetti, stating:

"Wednesday at 10 does not work for me. I can do Monday afternoon, Tuesday afternoon or Weds at 2 with a hard stop at 3. I'm in DC Thursday and Friday. More flexible the following week."

On Monday, September 18, 2017, at 5:45 pm, Mr. Martignetti wrote to Mr. Fee and Mr. Zanolli, stating:

"Mike: Given our respective schedules, I don't think we will be able to do the inspection this week. Please let us know your availability for Monday, Tuesday, Wednesday, or Thursday of next week. We would like to do the inspection at 12:30 pm on one of those days."

On Wednesday, September 20, 2017, at 10:24 am, Mr. Donovan wrote to Mr. Fee in an email identified by subject: "Flight level Trespass," stating:

"Michael, At approximately 12:14 pm on September 7, 2017 I received a call from one of my employees. He said there were men inside our condo hangar walking around. He did not know how long they had been inside our property. AS I stated earlier Nick said Neil had spoken with you and approved their entry to our property. I spoke with Nick Burlingham that day and he "promised" me he would get the names of the Norwood Engineering people who were in our hangar. I want the names please. I can reach out to Nick or perhaps you can. Let me know please."

At 1:10 pm, Mr. Fee forwarded Mr. Donovan's email to Mr. Hartzell, stating: "Can you please follow up on this request from Chris that Nick said he would oblige. Thanks."

FlightLevel concluded that the only use Mr. Donovan would have for the names of the Norwood Engineering representatives, would be to threaten them with litigation if they continued to serve FlightLevel.

On Friday, September 22, 2017, at 1:44 pm, Mr. Fee wrote to Mr. Hartzell and Mr. Martignetti, stating:

"Client is hesitant to schedule this until provided with the names of the gentlemen who were in the condo hangar with Nick two weeks ago. Can you advise please?"

On Monday, September 25, 2017, Mr. Hartzell filed a Motion to Amend the Tracking Order seeking more time than Mr. Fee was willing to agree to for dispositive motions.

On Wednesday, September 27, 2017, Mr. Hartzell wrote to Mr. Fee, stating:

Dear Mike: Your client's request for the names of the Norwood Engineering personnel who attempted to inspect the premises on September 7, 2017 is in our view part of an attempt to harass and intimidate Norwood Engineering. In response to our Rule 34 request you stated FlightLevel could inspect the hangar building. You had previously told us in an email that we could inspect the hangar at any time. We emailed you when we were coming asking that someone be there to open the doors. We arrived when we said we would. The doors were open when we arrived. The word "trespass" in the caption of your September 20, 2017 email in these circumstances is nonsense."

Also on Wednesday, September 27, 2017, Mr. Hartzell filed a Motion to Compel Inspection and Measurement of both the T-hangar units on Lot G, and the building and fuel farm on Lot F.

On Friday, October 6, 2017, Mr. Fee, through Mr. Zanolli, filed an opposition to FlightLevel's Motion to Compel Inspection and Measurement. BEH's filing expressed no objection to the inspection and measurement of the T-hangar units on Lot G and in fact stated overtly that FlightLevel could inspect them.

Also on or about October 6, 2017, FlightLevel received Norwood Engineering Invoice No. 3952 in the amount of \$991.50 for services rendered in connection with the failed September 7, 2017 inspection.



On October 16, 2017, Mr. Hartzell filed a Reply to BEH's Objection to FlightLevel's Motion to Compel Inspection, contesting BEH's facts, and stating in part:

"It has become clear that BEH, and specifically, Christopher Donovan, will do anything to make it as difficult, expensive, and time-consuming as possible for FlightLevel to conduct the requested inspections and measurements. FlightLevel served its Rule 34 request over one month ago and has several times requested dates when BEH and MII are available for the inspections and measurements. FlightLevel's attempts to resolve what should be a simple scheduling task have been met with Mr. Donovan's constant stonewalling."

On Wednesday, November 8, 2017, at 5:19 pm, Mr. Martignetti wrote to Mr. Zanolli and Mr. Fee, stating in part:

"Also, we are following up on FlightLevel's request to inspect Unit 3, Unit 7, Unit 8, and the office area on the second floor of the control room located in the T-Hangar building. In the response to FlightLevel's request, your clients indicated these areas would be made available for inspection at a mutually agreeable time. Please let us know if any dates next week are not available for the inspection. Also, this is another request to inspect the exterior areas of Lot F and Lot G, as well as the fuel farm located on Lot F. We will seek a Court hearing on FlightLevel's motion to compel if your clients continue to refuse that inspection."

On Monday, November 13, 2017, at 12:58 pm, Mr. Zanolli responded, stating in relevant part:

We [...] will not make the premises available for inspection prior to the Court's decision on the motion to compel.

On December 1, 2017, the court entered orders (without a hearing) on FlightLevel's Motion to Compel, allowing the motion "as to an inspection, to include measurements, drawings or photographs, of Units 3, 7, 8 and appurtenant office areas of the second floor space within the hangar on Lot G"; and denying the motion "as to an inspection of Lot F and fuel farms [...]."

No explanation is given in the ruling for the denial of the inspection of Lot F, which FlightLevel had requested in order to confirm the location of the Lot F building and fuel farm relative to the property boundaries, although BEH had claimed in its opposition that exact measurements are available on stamped engineering plans on file with the NAC.

Because the court's ruling is unclear as to whether FlightLevel can simply "take measurements" as opposed to perform an "inspection" on Lot F, and because BEH has refused to allow FlightLevel and/or Norwood Engineering representatives on Lot F, FlightLevel has requested a copy of whatever BEH engineering plans may be on file with the NAC.

**RELEVANT EXTRACT FROM AFFIDAVIT OF CHRISTOPHER DONOVAN**

**B. Events of September 7, 2017**

23. At approximately 12:14pm on September 7, 2017, I received a call from one of BEH's interns stating that there were three men inside BEH's condominium unit located on Lot G (the "Condo"). He stated that he did not know how long they had been inside the building, but appeared to have been looking around for some time.

24. I instructed him to ask for their names, for them to leave the building immediately, and to let them know that I was on my way and would be available for discussion.

25. I returned to the Airport immediately. Upon arrival, Nick Burlington ("Mr. Burlington"), FlightLevel's general counsel, was inside BEH's Lot H Fuel Farm area.

26. Mr. Burlington was accompanied by two Norwood Engineering employees, and he told me that BEH's counsel, Michael C. Fee, Esq. ("Mr. Fee"), had approved the entry and inspection to FlightLevel's litigation counsel, A. Neil Hartzel, Esq. ("Mr. Hartzel").

27. Mr. Burlington told me that when he arrived on location he called Mr. Hartzel to ask if entry was approved. Mr. Burlington was told by Mr. Hartzel that Mr. Fee had approved entry to BEH's property via telephone just minutes prior. Mr. Burlington indicated that he was surprised that no one from BEH, or its counsel, was present, but insisted that Mr. Hartzel assured him Mr. Fee had already approved the entry.

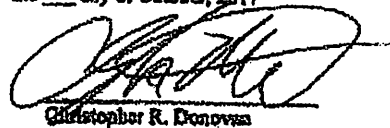
28. I told Mr. Burlington that BEH had not agreed to the inspection time, and had already called Mr. Fee to determine if he had given approval to Mr. Hartzel for Mr. Burlington and Norwood Engineering to enter BEH's property. Mr. Fee told me that he had not spoken to Mr. Hartzel.

29. Mr. Burlington and I agreed that it would be appropriate for BEH's counsel to be present during any inspection, and that they would immediately leave the premises.

30. I asked Mr. Burlington for the names of the Norwood Engineering employees, and he promised to provide BEH with their names.

31. Mr. Burlington acknowledged that they should not have entered without anyone present, and apologized for having done so.

Signed under the pains and penalties of perjury this 5 day of October, 2017



Christopher R. Donovan