

EAST HAMPTON AVIATION ASSOCIATION

P.O Box 623

Wainscott, New York 11975

July 12, 2013

William J. Wilkinson, Supervisor
Town of East Hampton
Town Hall
159 Pantigo Road
East Hampton, N.Y. 11937

Dear Mr. Wilkinson:

The East Hampton Aviation Association wants to thank you for all the work and time you have spent grappling with airport issues. Your steady support for the airport has resulted in new Airport Master and Layout Plans to guide the facility over the next 20 years and a new seasonal control tower to increase safety and noise mitigation at the airport.

Our Association has a four point proposal, we hope you will consider in the months ahead:

1) **No Airport Expansion** - We continue to support the new Airport Master and Layout Plans, unanimously approved by the Town Board, which provide for elimination of one runway, shortening and making narrower another runway, and keeping the third runway the same length as built in 1936. The Plans were upheld by the Supreme Court of the State of New York on July 5, 2012. The Association has spent considerable funds as an intervenor supporting the town's position in the Article 78 challenging the plans.

2) **Secure FAA Approval of the Atlantic Route** – Such a route will alleviate much of the existing noise problem as set forth in a letter to the FAA, dated October 12, 2012. That letter is historic, with signatures from 19 elected East End officials. *(See attached letter.)*

3) **Continue Noise Studies to Restrict Helicopter Operations** –Peter Kirsch and our attorney, David Schaffer, both top aviation lawyers in Washington, DC, agree that to successfully regulate helicopters, technical studies are necessary to “establish that East Hampton is a quiet community and that helicopters are noisier or more bothersome than fixed-wing aircraft.” Thankfully, you have already begun this work. Once concluded, this data will allow the Town to adopt mandatory curfews and access limitations for helicopters under federal law. *(See attached letter from David Schaffer dated July 1, 2013.)*

4) **Secure FAA Funding for Repairs** - Airport maintenance and repair costs are estimated at a minimum of \$7 million. Airport revenue could not be increased sufficiently to pay for the current maintenance and the ongoing routine repairs, control tower, and noise monitoring required at the airport. For this reason, airports all over the country are maintained largely through FAA funding. Even if bonded, using up town bonding capacity for this purpose is unjustified since there is no benefit or added local control achieved by rejecting FAA funding. To successfully regulate helicopters, the National Helicopter case makes it clear that the town needs to comply with the same federal standards whether it accepts or rejects FAA funds, and regardless of the 2005 stipulation of settlement to which the Town was not a party. (See attached letter from David Schaffer dated July 1, 2013.)

We would be happy to meet with you to discuss the above. If you wish to do so, please call me at 324-5182 or send me an email at gebe@optonline.net.

Sincerely,

A handwritten signature in black ink that reads "Gerard Boleis". The signature is written in a cursive style with a large initial "G".

Gerard Boleis
President



NEW YORK STATE LEGISLATURE

October 12, 2012

Michael P. Huerta
Acting Administrator
Department of Transportation
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Re: Request for Approval of the Atlantic Route for Long Island Helicopter Traffic

Dear Acting Administrator Huerta:

We write you as elected officials from all levels of government representing the East End of Long Island. The undersigned are the elected officials at the Federal, State and County levels, all the Town Supervisors, and all the Village Mayors representing all municipalities in the five East End Towns of Suffolk County.

We are united in our position that, despite significant efforts to mitigate helicopter noise, helicopter noise on the East End remains a major, unresolved “quality of life” issue for our region, which also adversely impacts a regional economy dependent on tourism and the second-home industry.

The current situation remains unsatisfactory. For some local communities, the situation has actually gotten worse during the summer of 2012. The focus of community complaints has centered on helicopter traffic utilizing East Hampton Town Airport. Federal intervention must be a part of the solution.

We note the FAA formally designated a North Shore Route by rule adopted in July 2012, which was implemented in August 2012. However, no action has been taken by the FAA with regard to an Atlantic Route for the South Shore as was requested by East End local governments and officials by a letter to the FAA dated, June 24, 2010 (attached). We do not need to wait for the end of the two-year test period for the North Shore Route to know that we also need a South Shore Route to mitigate East End noise. By this letter, we renew our request for the establishment of the Atlantic route.

The source of the overwhelming majority of helicopter noise complaints centers on north-south cross island transits over residential communities. Most notable are the transits from the North Shore Route to and from East Hampton Airport. No matter how the deck is re-shuffled with regard to these transit routes, there is no acceptable transit route solution to mitigate helicopter noise on the East End.

Rather, helicopter noise can only be substantially mitigated by reducing the number of north-south helicopter transits. The establishment of the mandatory North Shore Route mitigated the impacts of helicopter noise in Nassau County and Western Suffolk by keeping helicopters one mile offshore in the Long Island Sound, but did nothing to alleviate the problem on the East End. This goal can only be accomplished by the establishment of both an Atlantic Route and a North Shore Route.

In conclusion, we urge the FAA to act immediately to approve the Atlantic Route proposed in our June 24, 2010 letter. Your consideration is greatly appreciated.

Respectfully,

Timothy Bishop
Congressman
U.S. House of Representatives

Kenneth P. LaValle
Senator
New York State Senate

Fred W. Thiele, Jr.
Assemblyman
New York State Assembly

Dan Losquadro
Assemblyman
New York State Assembly

Jay Schneiderman
Legislator
Suffolk County Legislature

Edward P. Romaine
Legislator
Suffolk County Legislature

James D. Dougherty
Supervisor
Town of Shelter Island

Scott A. Russell
Supervisor
Town of Southold

Dominick J. Stanzone
East Hampton Town Councilman
Airport Liaison

Sean M. Walter
Supervisor
Town of Riverhead

Anna Throne- Holst
Supervisor
Town of Southampton

Christine P. Scalera
Councilwoman
Town of Southampton

Laura M. Nolan
Mayor
Village of North Haven

Timothy Hogue
Mayor
Village of Dering Harbor

Paul F. Rickenbach, Jr.
Mayor
Village of East Hampton

Brian Gilbride
Mayor
Village of Sag Harbor

Donald Louchheim
Mayor
Village of Sagaponack

Mark Epley
Mayor
Village of Southampton

David Nyce
Mayor
Village of Greenport

cc: U.S. Senators Charles Schumer and Kirsten Gillibrand

enclosure

Mr. Gerard Boleis, President
East Hampton Aviation Association
P.O. Box 623
Wainscott, N.Y. 11975

9205 Hambletonian Place
Vienna, VA 22182
703-938-3062
703-994-6209 (cell)
703-938-3063 (fax)
dlschaffer2@cox.net

July 1, 2013

Re: Restrictions to Address Helicopter Noise at the East Hampton Airport

Dear Mr. Boleis:

I have been retained, through your local counsel, Anthony Pasca, Esq., to provide you with my opinion, based on federal aviation law, as to whether the Town of East Hampton would have the power to adopt restrictions aimed at addressing helicopter noise issues. I have been asked to address whether the acceptance of FAA grants (coupled with the issuance of grant assurances) would limit the Town's powers to restrict helicopter noise.

The following opinion is based on both my experience and knowledge of federal aviation law and on an extensive survey of more than 30 cases spanning 40 years touching on the topic of local powers to impose restrictions. My experience includes serving 20 years as Senior Counsel and Staff Director for the House Aviation Subcommittee, 6 years as Attorney-Advisor for the Civil Aeronautics Board, and the past nine years in private practice representing both governmental and private aviation clients.

It is my professional opinion that the following conclusions are supported by federal law:

1. Currently, the Town has local control of the airport as the airport "proprietor" and exercises such control through its Airport Master & Layout Plans. As the proprietor, it has flexibility in fashioning its noise regulations, Santa Monica Airport Association, et al. v. City of Santa Monica, et al., 659 F.2d 100, 105 (9th Cir. 1981). There are no instances where rejecting FAA funding gave a Town additional control in this regard. Accepting FAA funding does not diminish the Town's authority to adopt reasonable and non-discriminatory restrictions regarding the use of the airport.
2. Under federal law, any restriction on helicopter operations (whether FAA assurances have expired or not) must be reasonable and not make unjustified distinctions between operators or types of aircraft, British Airways Board, et al. v. Port Authority of New York and New Jersey, et al., 558 F.2d 75, 84 (2d Cir. 1977).
3. Regardless of whether FAA assurances have expired or are extended, in order to justify restrictions on helicopters, the Town should undertake technical studies to establish that East Hampton is a quiet community and that helicopters are noisier or more bothersome than fixed-wing aircraft, City of Naples Airport Authority v. Federal Aviation

Administration, 409 F.3d 431, 436 (D.C. Cir. 2005). I understand these studies are already under way.

4. If such studies demonstrate a justification for restrictions, curfews and limits on the number of flights could be upheld, even after taking FAA funding and extending grant assurances, Santa Monica Airport Ass'n v. City of Santa Monica, 481 F. Supp. 927, 946 (C.D.Cal. 1979) [curfews do not breach the grant assurances] and Alaska Airlines, Inc., et al. v. City of Long Beach, et al., 951 F.2d 977, 986 (9th Cir. 1991) [numerical restriction on flights is rational].

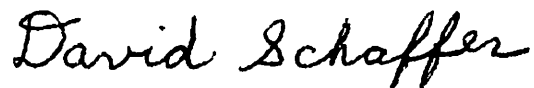
National Helicopter Corp. of America v. City of New York, et al., 137 F.3d 81 (2d Cir. 1998), has been cited to support the proposition that, by rejecting FAA funds, a municipality can secure the ability to regulate helicopters as it sees fit. Just the opposite is true.

In that case, New York City had taken no FAA funding for the heliport and had not agreed to any grant assurances. Nevertheless, the federal court rejected three regulations the city had imposed on helicopters as being unreasonable. Thus, National Helicopter confirms that, even if a municipality has taken no FAA funding and is not subject to FAA contract assurances, its regulations must still meet the same federal standards for establishing noise restrictions as at an airport that has accepted FAA funds.

In sum, rejecting FAA funding does not enhance the ability of the Town to regulate helicopters arriving at and departing from the East Hampton Airport. Conversely, accepting FAA funding does not prevent the Town from adopting restrictions on helicopters. With or without FAA funding, the regulations must be reasonable and must not treat helicopters and other types of aircraft differently without justification.

I would be pleased to provide you with more information on these topics and to address the Town to explain why I believe it has the power to adopt reasonable, non-discriminatory restrictions and still take FAA funds.

Sincerely,



David Schaffer

"Mr. Schaffer is retiring after twenty-six years of Federal Service, including the past 20 years with the Committee. His unmatched knowledge in the field of aviation, as well as his engaging personality, will be sorely missed in the halls of Congress. Every single aviation law passed in the last two decades is marked with David's creative ideas and approaches. He has earned an immeasurable amount of respect from everyone with whom he has worked, including Members of Congress, staff, and those in the transportation community."
February 24, 2004

Honorable Don Young (R - Alaska) Former Chairman, House Committee on Transportation & Infrastructure

David provided outstanding, professional leadership and service as a member of the House Aviation Subcommittee staff since 1984. He became Majority Counsel and staff director of the Subcommittee in 1995 and was instrumental in passing twenty major aviation bills during his time on Capitol Hill. As Chair of that Subcommittee, I believe the Congress and the American People have benefited not only from his decades of public service, but also from his untiring efforts after the attack on our Nation on September 11, 2001. Indeed, we were privileged to have David's experience and talents as we developed legislation to secure our national aviation and transportation systems. I have been fortunate, along with Full Committee Chairman Don Young, to also have David Schaffer lead our staff efforts as we worked to replace AIR-21 with a new four-year federal aviation authorization bill."
March 2, 2004

Honorable John L. Mica (R - Fla.) Former Chairman, House Committee on Transportation & Infrastructure

"Your dedication and hard work helped us shape the aviation system in this country, leading to much important and far-reaching legislation. In your career, starting at the Civil Aeronautics Board through your last day at the committee, you have acquired an expertise in all things aviation. And you graciously shared that expertise to shape policy on aviation safety, small community and international air service, consumer protection, competition, airport improvement, and air traffic control modernization."
February 12, 2004

Honorable Norman Y. Mineta, Former Secretary of Transportation

"Over the course of his 26 years in the federal government, including 6 years with the Civil Aeronautics Board, his efforts have directly contributed to many of this Committee's significant legislative efforts to enhance the overall safety, efficiency, competitiveness and security of our Nation's aviation system. As the Majority Counsel for the Aviation Subcommittee, David was instrumental in crafting the Aviation Investment and Reform Act for the 21st Century (AIR 21), Federal Aviation Authorization Act of 1996, the Aviation Medical Assistance Act, Pilot Records Improvement Act, Aviation Disaster Family Assistance Act, and the Aviation and Transportation Security Act. His bipartisan, non-confrontational approach to crafting legislation, his painstaking attention to detail, and his mastery of the subject matter has been most impressive and has been greatly appreciated by my staff, and by me. I know that his work has required great personal sacrifice and I commend him for his unwavering commitment to excellence."
February 25, 2004

Honorable James Oberstar, D - Minnesota, Former Chairman, House Committee on Transportation & Infrastructure

▪ **David E. Schaffer Associates, LLC**

David E. Schaffer Associates, LLC provides legal and policy advice, legislative strategy and prepares regulatory filings for a variety of aviation clients in government and industry.

From 1984 to 2004, Mr. Schaffer was Senior Counsel and Staff Director of the US House of Representatives Aviation Subcommittee.

In that capacity, he

- Advised Chairmen and Members of Congress on legislative and policy issues relating to aviation including aviation safety, security, airports and airport capacity, international aviation, and air traffic control modernization
- Drafted legislation and composed letters, memoranda and speeches
- Organized Congressional Committee hearings
- Negotiated and worked to resolve policy issues with various interest groups, the Administration, House and Senate Leadership, and other Congressional offices
- Wrote and helped enact such legislation as the Pilot Records Improvement Act, Aviation Disaster Family Assistance Act, Aviation Medical Assistance Act, FAA Reauthorization Act of 1996, Airport Security Improvement Act of 2000, Aviation and Transportation Security Act (ATSA), the Aviation Investment and Reform Act for the 21st Century (AIR 21), and Vision 100-Century of Aviation Reauthorization Act.
- Before joining the US House Staff, Mr. Schaffer was Attorney-Advisor to the Civil Aeronautics Board. In that role he prepared memoranda, letters, regulations, legislative proposals, and court briefs dealing with aviation issues including such matters as essential air service, international aviation, smoking, and airline passenger protection. Mr. Schaffer argued cases in Federal Circuit Courts on these issues.
- Current and former clients include:
 - Federal Aviation Administration
 - National Transportation Safety Board
 - Transportation Security Administration

Mr. Schaffer holds a Bachelor of Arts Degree in Political Science from Colgate University (1975), and a Juris Doctor Degree from the Boston University School of Law (1978.)

Grants, No Grants, No Difference

BY JOANNE PILGRIM

A well-credentialed aviation law consultant hired by the East Hampton Aviation Association has issued a report mirroring the advice given East Hampton Town by its own aviation consultant — that, in order to enact rules restricting access to the airport in an effort to reduce noise, Federal Aviation Administration permission will be needed, even if the town ceases to accept new federal airport grants.

East Hampton residents bothered by the noise of aircraft, particularly helicopters, have continually called on the town to work toward enacting binding rules that would restrict access to the airport. In response, the East Hampton Town Board earlier this year asked consultants to begin compiling the data that could be submitted to the F.A.A. to prove that there is a noise problem here and that some restrictions on airport use could be considered “reasonable” and “nondiscriminatory” under the agency’s definition.

Airport noise-control advocates have argued that the town will have more leeway when several binding agreements with the F.A.A., called “grant assurances,” expire next year, provided the town does not enter into new agreements by taking new federal grants. However, both consultants have said that, while the grant assurances do have an effect, underlying federal law limiting what restrictions a proprietor (in this case, the town) can place on general aviation airports will remain in place. Those rules dictate the procedure by which the town could petition the F.A.A. to allow localized use limits. The first step is the data collection already under way.

The East Hampton Aviation Association retained David E. Schaffer, an aviation law and government relations consultant, who served for 20 years as senior counsel and staff director of the United States House of Representatives Aviation Subcommittee and for six years as an attorney-adviser for the Civil Aeronautics Board, to weigh in regarding potential “restrictions to address helicopter noise at the East Hampton airport,” according to his report.

In a July 1 letter addressed to Gerard Boleis, the president of the aviation organization, he outlined several conclusions that in his professional opinion, he said, are supported by federal law.

They dovetail with those provided to the East Hampton Town Board by Peter Kirsch, the consultant hired by the town.

Mirroring what Mr. Kirsch told the town board, Mr. Schaffer said that under federal law and with or without grant assurances in effect, any restriction on helicopter operations must be “reasonable” and nondiscriminatory — that is, in Mr. Schaffer’s words, “not make unjustified distinctions between operators or types of aircraft.”

To justify restrictions on helicopters, Mr. Schaffer said, the town should “undertake technical studies” such as those already under way, “to establish that East Hampton is a quiet community and that helicopters are noisier or more bothersome than fixed-wing aircraft.”

If those studies “demonstrate a justification for restrictions,” Mr. Schaffer wrote, “curfews and limits on the number of flights could be upheld, even after taking F.A.A. funding and extending grant assurances.”

In a presentation to the town board earlier this year, Mr. Kirsch said the difference between seeking more local control with or without grant assurances in effect is what type of action the F.A.A. could pursue against the town if it believes East Hampton has acted improperly in enacting flight restrictions. With grant assurances in effect, the federal

agency could challenge the town in an administrative action, for breaching the agreement, or “contract,” between the town and the F.A.A. prescribed by the grant assurances.

Without grant assurances in effect, Mr. Kirsch had explained to the town board, the town must still comply with federal aviation laws — but if the F.A.A. believes the town has overstepped, it would have to sue the town in federal court.

In either case, before enacting curfews or other restrictions, the town must prove to the F.A.A. that the regulations are warranted and that they are fair, both attorneys said.

Advocates of airport noise control have pointed to an agreement between the F.A.A. and the Committee to Stop Airport Expansion as an opportunity for the town to enact stricter airport regulations. In the lawsuit settlement, the F.A.A. agreed that, as of 2014, it will no

longer enforce 4 of the 39 grant assurances the town has agreed to.

The four expiring agreements are “not just minor and insignificant,” Mr. Kirsch said during his earlier visit to East Hampton. One requirement that will be expiring in just over two years is that the town have an up-to-date airport layout plan, or map showing existing conditions at the airport, on file with the F.A.A. The others that are expiring, he said, “essentially say you will not discriminate” regarding who can use the airport, or “impose restrictions on use that are unreasonable.”

“That expires in 2014, but federal law doesn’t,” he said. So for instance, should the town attempt to enact a ban on helicopters without first following the required procedures to justify its actions, under the grant assurances the F.A.A. would likely file an administrative action against the town.

If there were no grant assurances in effect, he said, the F.A.A. would have to sue the town in federal court for violation of the parallel federal laws and would probably seek an injunction to prevent the town from enforcing the ban.

Several airports across the country, some assisted by Mr. Kirsch, have petitioned Congress for exemption from federal rules, and a handful have succeeded. In his presentation, Mr. Kirsch characterized the town’s options for how to address the airport noise problem as lying along a continuum.

“Some restrictions are so hard to get — such as banning helicopters outright — that I would advise you’re wasting your time,” he said. Then, he said, there are “those that are so easy to get, I don’t know why you’re not already doing it.”

Some airports, the attorney said, are developing “prophylactic rules” — regulations designed to prevent airport problems from getting worse — which he said are “somewhat easier to impose.”

In his letter to the East Hampton Aviation Association, Mr. Schaffer concluded that, “in sum, rejecting F.A.A. funding does not enhance the ability of the town to regulate helicopters arriving at and departing from the East Hampton Airport. Conversely, accepting F.A.A. funding does not prevent the town from adopting restrictions on helicopters. With or without F.A.A. funding, the regulations must be reasonable and must not treat helicopters and other types of aircraft differently without justification.”