**Written Submission of Elliott Meisel to East Hampton Town Board**

 **In Connection with Proposed Airport Regulations March16, 2015**

Though I am a pilot, I fly a quiet single engine propeller plane that would not be affected by any of the Board’s proposed regulations and have no economic interest in the airport’s future. As a resident of Sagaponack near the airport, a draftsman of its zoning law, including dark sky, view shed, size limit and other protective provisions; longtime Chairman of its Zoning Board of Appeals, constantly evaluating the law’s impacts and balancing private and public interests; an environmental developer, having built the Watermill Ateliers, one of the first and only LEED Gold buildings in the area with a zero carbon footprint and affordable housing; a real estate attorney and member of the NYC Bar Association Aeronautics Committee, knowledgeable about aviation land use and operations law; and an officer of the East Hampton Aviation Association, Hangar Association and appointee to the East Hampton Airport Operations Subcommittee, I have great respect, not only for the quality of life in this community but the integrity of the legal process generally and have no conflict of interest.

 My interest in a quieter environment allowing me to enjoy aviation in a way that even the most vehement airport opponents do not challenge and my other activities here is well is aligned with most of the area residents. That is why, despite my concurrence with the need to effectively address noise emanating from the airport, mostly due to helicopters, I must voice my strong opposition to the proposed regulations.

Ill-framed Debate:

Unfortunately, as seems so often the case, battle lines have been drawn forcing people into extreme positions that prevent rational and effective solutions. Overheated rhetoric has overwhelmed facts, reason, and the Town Board’s judgment as to how to preserve a safe, if diminished, airport, which is indisputably a valuable community facility, while mitigating noise impacts that, despite claims to the contrary, no one disputes. The issue is not whether there is or isn’t noise, whether jobs are more important than quiet, or whether aviators are sensitive to the needs of other residents. The issue is whether the Town’s proposals will accomplish the desired result or delay effective noise abatement while costing the Town, its taxpayers and its general economy an enormous amount of money while inexorably leading to the irreversible deterioration of a valuable community asset. I believe the Town Board would like to achieve a fair solution but has grown weary of this chronic irritant and has been pushed to adopt ill-conceived regulations by a well organized and financed propaganda campaign that, rather than objectively gathering economic, engineering, noise, environmental and other evidence to guide it to a solution beneficial to the residents of East Hampton has engaged in a charade by following a script designed to make it appear to have done so while promulgating biased and incontrovertibly false information to support a preconceived conclusion.

Inappropriate Noise Data:

Though no one denies that the airport produces noise, rather than employing the day/night average sound level analysis, which is the virtually universal and FAA mandated methodology upheld by the Appellate Division when it recently dismissed the challenge to the Airport Master Plan, the Town’s single event noise study: (a) is likely to be rejected in the current and any future litigation; (b) was discriminatorily applied only to aircraft while ignoring trains, motorcycles, leaf blowers, hunters, construction and other constant and widespread violators of that standard; (c) ignores the scientific noise scatter evidence that virtually all exceedances are within the airport property; (d) multiplies each momentary exceedance by all tax lots in the Town, including those which are unoccupied to provocatively claim that approximately 25,000 total aircraft operations produced 30 million exceedances a statistic that alone should cast doubt on the integrity of the study’s purpose.

The noise complaint study has not determined where or how much noise there is but only where those who complained the most are located. The Town is ill advised to base proposed regulations not on available scientific maps produced by its own engineers of aircraft noise but on 24,000 complaints especially where those complaints were generated by: (a) 633 households produced by an active campaign; (b) most of those came from only a dozen individuals, some of whom are legally barred from complaining by Aircraft Noise Easements recorded against their properties as required by Section 220-1.06(E) of the East Hampton Town Code which provide for unobstructed passage of all aircraft (including any contrivance now known or hereafter invented and by whomsoever owned or operated) from 75 feet above the ground and causing “such noise, vibration, fumes, dust, fuel particles and all other effects they may cause operating in or out of the East Hampton airport”; (c) many of the complaints do not correlate to the actual noise scatter maps, may not be attributable to excessive noise or may be attributable to aircraft not even associated with East Hampton airport. Interestingly, the graphical depiction of noise generated by the complaints, supports a conclusion that the data merely depicts the location of the complainers as there’s a distinct absence of complaints between them and the airport. Planes don’t arrive and depart the airport quietly and then become noisy a few miles away. In fact the reverse is true, which is why many of the subdivisions and deeds to property in the vicinity of the airport contain the Aircraft Noise Easements. Though undoubtedly there are many others affected by airport noise who didn’t register complaints, several independent studies, including a poll by nationally recognized Potholm Group, determined that the vast majority of residents of East Hampton, from whom the Town Board also has not heard, were not affected or concerned by airport noise.

Inaccurate and Misleading Airport History, Use and Economic Impact:

The Town Board is being encouraged to return the airport to what was allegedly intended to be a small rural airport serving local hobbyists. There is overwhelming documentary evidence that is not true, starting with the language employed in 1936 when the airport was built with federal WPA funds, the intervening years of advertised commercial charter and scheduled service by Lamb Aviation, East Hampton Aire, Montauk Caribbean Airways and Shoreline Aviation, among others. Despite the unsupported contention of many airport opponents, the New York State Department of Transportation’s consistent and unbiased economic reports and other incontrovertible evidence confirm that the airport was always a crucial transportation link to the east end serving local businesses, tourism, medevac and natural disaster relief. as well as providing numerous direct and indirect jobs and many millions of dollars to the local economy throughout its history. It is simply not true that the airport serves a small group of wealthy hobbyists (plumbers, electricians, sportsmen, farmers) whose profile is little different from local boat owners.

 It’s true that among the airport users are some wealthy homeowners who, it is said, would be unaffected by the regulations, but it is untrue that the regulations would not have an economic effect on the Town. Wealthy second homeowners are the backbone of the east end economy. They are mobile and not immune to economic and other obstacles to their enjoyment. Some years ago when a modest excise tax was imposed on multi-million dollar yachts, the industry collapsed and the excise tax had to be repealed. There are feasible alternatives to East Hampton second home owners, including Nantucket, Martha’s Vineyard, Block Island, Newport and others. Without quibbling over whether the airport generates $1 Million in direct revenue, $14 Million in secondary revenues, 100 or more jobs, it’s undeniable that the draconian regulations the Town has proposed will have a serious adverse economic effect on the Town.

Misleading Information about the Law and Federal Funding

The Town and airport opponents, again despite documentary evidence to the contrary, persisted for years in claiming that certain Grant Assurances would expire at the end of 2014, that they’ve now done so, and that the Town is now free of FAA control and may regulate the airport without federal oversight. This false allegation was further exacerbated by the contention that it would be the case only if the Town declined to accept federal funds. In fact, the FAA settlement, which has repeatedly been shown to Town Board officials, never says or implies that any grant assurances expire. It merely provided that the FAA would not enforce 4 of the 25 or so assurances. Setting aside here the numerous legal arguments why that entire settlement was illegal and unenforceable which will presumably soon be litigated by Friends of East Hampton Airport, including that the FAA didn’t have the power or authority (as it asserts in Santa Monica) to waive congressionally mandated assurances, whether or not it chooses to enforce them, they remain in effect as contractually binding obligations of the Town. Furthermore, even if the contractual grant assurances expired, East Hampton airport, as a public use airport, is and will always be subject to statutory obligations under ANCA, and any regulations the Town adopts must meet essentially the same standards that would be required under the grant assurances. They must be reasonable, non-arbitrary and non-discriminatory, not be an undue burden on interstate commerce or inconsistent with safe and efficient use of the airspace and an adequate opportunity must be provided for public comment.

The tragedy here is that whether through misinformation or intent the Town’s refusal to take federal funds to satisfy an illegal and non-binding FAA agreement not to enforce grant assurances in the misguided belief that doing so would defeat its ability to regulate noise the Town has needlessly foregone perhaps $4 or 5 million dollars of readily available federal funds, allowed the airport to seriously deteriorate and drained its available revenues for useless studies while claiming, despite BFAC’s inability to so confirm, that it can generate sufficient revenues to maintain and operate the airport from onerous and illegal landing and fuel flowage fees paid by the very aircraft that it’s proposing to ban or severely restrict and defend it from the inevitable, indeed already commenced litigation resulting therefrom.

 In fact many airports, including most notably San Jose CA and Naples FL have successfully adopted noise mitigation measures while taking federal funds, indeed in some cases using federal funds specifically made available for noise abatement such as blast walls, signage, sound attenuation equipment, adoption of noise mitigation policies, procedures, flight paths and even sound insulation of surrounding properties. On the other hand, Burbank CA, despite not being subject to grant assurances, was unable to adopt a proposed curfew under ANCA, nor was NYC even in the absence of assurances able to adopt some proposed regulations affecting its Heliport which did not comply with ANCA requirements.

SEQRA

As the Board is by now surely aware, the Appellate Division just threw out the last challenge to the new Airport Master Plan which alleged that the Town’s environmental review of the Master Plan was inadequate and the single event noise analysis should have been used. How ironic it is then that the Town now premises its new proposed regulations solely on single event noise data and has done no environmental analysis on the impact those regulations would have on the Montauk, Mattituck and Gabreski airports, Southampton Heliport and their environs, traffic on Route 27, the LIRR, Suffolk County transportation, and the economic effect on the community. Even officials of adjacent jurisdictions for whom the East Hampton Town Board professes concern in adopting the regulations have expressed serious concerns about the effect these ill-conceived proposals will have on their constituencies.

Local Funding of Airport Capital Requirements and Operations

The East Hampton Subcommittee on Airport Operations, of which I’m an appointee have been investigating and analyzing the actual costs of maintaining the airport in a safe and effective condition as required by unchallenged grant assurances, ANCA and other statutory law, East Hampton’s own codes and common sense. We’ve also investigated alternate sources of revenue from new hangars, other rentals, solar power generation, parking fees and concessions. Even if those sources, which in view of the airport’s uncertain future are doubtful, together with the existing revenue sources augmented by legally challenged increases, are available, if the proposed regulations are adopted it is unlikely that the airport can be self-sustaining without federal funds, and of equal concern is that even if it could be self-sustaining, is the Town is not truly committed to sustaining it.

 How else can one explain the Town’s long time neglect, in violation of contractual and statutory obligations to re-pave runway 4/22, trim trees on the approaches, repair taxiway lighting, erect a deer fence, provide a functioning AWOS and otherwise maintain facilities which contribute to safety without in any way benefitting helicopters, are provided for in its Master Plan and would help abate noise as they would deter missed approaches, go arounds, low passes, circling the field and would permit distributing departures and arrivals over less populated areas?

Though the Town Board and noise abatement proponents deny any interest in closing East Hampton airport, this isn’t a high school debate where a proponent can mouth the proper words supported by made as instructed data, make a charade of mandated procedures, and adopt draconian restrictions bearing little relation to the actual problem while ignoring intended or un-intended consequences. The proposed regulations will significantly impair a wide array of substantial interests, and further, even if not intending to do so, the demise of an irreplaceable public asset. Rather than craft reasonable regulations, such as a curfew on takeoffs from 11PM to 7AM, mandatory flight paths and altitudes, disparate pricing for noisy aircraft, sound insulation tax credits for affected properties and others that could not only be in place this summer and financed in part by federal funds, the Town Board seems determined to embark on years of litigation and millions of dollars in legal fees under a likely injunction preventing any meaningful noise abatement.

 I regret that the East Hampton taxpayers who’ve been so thoroughly manipulated by simplistic and misleading information will so be burdened for years while one of the Town's economic engines and unique amenities continues to deteriorate in all likelihood to the delight of some who have worked assiduously for many years to waste existing, and starve it of potential, revenues, diminish its utility, cause its physical and economic decline and then logically claim the Town should dispose of it as surplus property of course at a deeply discounted price as a polluted, rundown facility adjacent to railroad tracks and high tension lines.

I urge the Board not to adopt the proposed regulations to satisfy a well orchestrated propaganda campaign without vetting the current self evidently biased data, further objective economic, environmental, diversion, engineering analysis, meetings with stakeholders, the FAA, other airport proprietors and objective consultants without a predetermined objective that is antithetical to the interests of the East Hampton and surrounding communities.