

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

FRIENDS OF THE EAST HAMPTON AIRPORT, INC.,
ANALAR CORPORATION, ASSOCIATED AIRCRAFT
GROUP, INC., ELEVENTH STREET AVIATION LLC,
HELICOPTER ASSOCIATION INTERNATIONAL, INC., No. 15 Civ. 2246 (SJF) (ARL)
HELIFLITE SHARES LLC, LIBERTY HELICOPTERS,
INC., SOUND AIRCRAFT SERVICES, INC., and
NATIONAL BUSINESS AVIATION ASSOCIATION, INC.,

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

-----x

DECLARATION OF STEVE BROWN

I, Steve Brown, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the Chief Operating Officer of the National Business Aviation Association (“NBAA”). NBAA is one of the Plaintiffs in this action and a member of the Friends of the East Hampton Airport, Inc., one of the Plaintiffs in this action.

2. I am a former employee of the Federal Aviation Administration (“FAA”), where I served as the Associate Administrator for Air Traffic Services and the Vice President of Operations Planning before joining NBAA in 2004.

3. I make this declaration, based upon personal knowledge, in support of Plaintiffs’ application for a temporary restraining order enjoining the Town of East Hampton’s recently-enacted restrictions on access to the East Hampton Airport (“HTO”).

Background on NBAA and its Mission

4. Founded in 1947, NBAA's mission statement is to foster an environment that allows business aviation to thrive in the United States and around the world. NBAA is the leading organization for companies that rely on general aviation aircraft to help make their businesses more efficient, productive and successful. Such aircraft include jet aircraft, helicopter aircraft, piston engine aircraft and turbo prop aircraft. NBAA is based in Washington, DC, and has more than 10,000 member companies worldwide. NBAA member companies own, operate or support over 11,000 general aviation aircraft, of all kinds.

5. NBAA also provides more than 100 products and services to the business aviation community; sponsors the world's largest civil aviation trade show; and collects, interprets and disseminates operational and managerial data related to the safe, efficient and cost-effective use of business aircraft. Throughout its history, NBAA has also been integrally involved in identifying and understanding advances in aviation technology and procedures important to the business aviation community.

6. Fulfillment of NBAA's mission requires fair and reasonable access to the thousands of general aviation airports serving the business locations and destinations of our member companies. Just as our interstate highway system is an essential element of our national way of life and economic health, so too is our national system of airports. Without reasonable access to well-managed and safe airports, the business aviation industry cannot function efficiently or safely.

7. Accordingly, NBAA has been at the forefront of efforts aimed at fairly settling problems related to air space access, airports, and aircraft noise and is focused on issues such as

aviation safety, operational efficiency, fair and equal access, FAA reform, noise and compatible land use, and business aviation advocacy.

8. Reasonable airport access, in a manner supportive of business aviation, is also critical to the economy. Business aviation is responsible for the creation of thousands of jobs – from the aircraft and component manufacturers, airplane mechanics and repair shops, fuel companies, hangar operators, caterers and the providers of ground transportation, to the employees at the hundreds of general aviation airports throughout the country, and including a vast array of secondary tier services such as air transportation charter brokerage, fleet insurance, marketing, and other necessary services.

9. Moreover, a key to a well-functioning, national system of air transportation is national uniformity. For obvious reasons, the business aviation industry cannot function efficiently or effectively if local governments and airports impose differing requirements and standards for aircraft and airport use. In that regard, the federal laws and regulations governing noise and access restrictions – including those codified in the Airport Noise and Capacity Act of 1990 (“ANCA”; 49 U.S.C. § 47524), 14 C.F.R. Part 161, and other FAA statutes and regulations – preempt local standards and are critical to NBAA’s members. ANCA and its implementing regulations in Part 161 in particular exist in order to prevent local airport proprietors from imposing noise access restrictions on Stage 2, Stage 3 and Stage 4 aircraft without first complying with the federal government’s uniform, national requirements.

NBAA Members’ Operations to and from HTO

10. HTO is an important destination and base of operations for many of NBAA’s members. Three NBAA members are based at HTO, and numerous NBAA members use HTO. At least one NBAA member conducts more than 1,000 operations annually at HTO; at least two

additional NBAA members conduct 200 or more operations annually at HTO; at least three additional members conduct 30 or more operations annually at HTO; and at least ten additional members conduct four or more operations annually at HTO. Additionally, many other members can and do use HTO on a transient basis. Thus, NBAA's members depend on current and future access to HTO.

11. HTO figures prominently into the regional and national economy, as recognized by the FAA, which for decades has designated HTO as a regional airport of national interest in its *National Plan of Integrated Airport Systems* ("NPIAS") report, as updated and provided by the FAA to Congress every two years.

12. East Hampton is an important destination for many people, including many of the nation's business and political leaders. Our members fly a significant number of flights to and from the HTO annually, and operation of these flights represents a significant portion of business for many of these members.

13. A significant percentage if not the vast majority of our members' flights to and from HTO occur during the summer months. Many of our members' passengers reside in East Hampton or maintain homes there. Many fly from the greater New York City metropolitan area to East Hampton, by helicopter, on Thursday or Friday evening, and fly out on Monday morning. Many of our members' flights also involve interstate transportation.

East Hampton's Recently-Enacted Restrictions

14. On April 16, 2015, the Town Board adopted three new local laws restricting access to East Hampton Airport ("the Restrictions"). I understand that the Restrictions include (1) a mandatory curfew, prohibiting use of East Hampton Airport between 11:00 p.m. and 7:00 a.m. (the "Mandatory Curfew"); (2) an extended curfew for so-called "Noisy Aircraft" banning

use of the airport from 8:00 p.m. to 9:00 a.m. (“the “Extended Curfew”); and (3) a prohibition on “Noisy Aircraft” flying more than one trip per week during the “summer” – the latter term is not defined in the Restrictions, but apparently intended to mean between May and September (the “One-Trip Limit”). I further understand that the Restrictions define “Noisy Aircraft” as including any aircraft that has “a published Effective Perceived Noise in Decibels (EPNdB) approach (AP) level of 91.0 or greater” based upon noise data published by the FAA. The Restrictions deem violations to be criminal misdemeanor offenses, punishable by a range of monetary fines, injunctions, and/or a ban from using the airport.

15. The Town has not explained the basis for its selection of the 91.0 EPNdB AP level as the basis of its definition of “Noisy Aircraft” other than that most helicopters would fall within that definition. The studies and other work relied upon by the Town include no noise evaluation metrics, no noise reference measurement points, and no provisions for trade-offs by the aircraft operator – nor did the Town consider or recommend other alternatives, such as the involvement of the FAA to modify approach paths to the Airport.

16. Many of the aircraft operated by NBAA members – including both fixed wing aircraft and helicopters which fly to and from East Hampton – fall under the Town’s definition of “Noisy Aircraft.”

17. The Restrictions are severe, excessive and unreasonable and will harm many of NBAA members. Moreover, the Restrictions are not based on complete and accurate data, and fail to comply with ANCA, Part 161, and other federal laws and regulations that preempt local standards.

18. Prior to the Town’s enactment of the Restrictions, NBAA requested a meeting with Town officials in an effort to find a reasonable way to address the Town’s noise concerns

without harming users of HTO. Such a meeting was held on February 27, 2015 and attended by representatives of NBAA and the Town, as well as representatives from the National Air Transportation Association (“NATA”) and the Aircraft Owners and Pilots Association (“AOPA”). At that meeting, NBAA voiced its concerns with the Town’s proposed Restrictions, including that:

(a) The Town’s comparison of the number of aircraft using HTO in 2014 to 2013, rather than over a longer period of time, made it appear that there was a significant increase in usage in 2014, without accounting for the fact that traffic in 2013 was unusually low due to poor weather;

(b) The Town’s reliance on the total number of noise complaints as the basis for the Restrictions failed to incorporate a more nuanced evaluation of which complaints were genuine and how many were filed by a small minority of East Hampton residents and/or were the product of outreach efforts intended to generate noise complaints;

(c) The Town lacked authority under its federal statutory, regulatory, and contractual obligations – and the so-called “proprietor’s exception” thereto – to impose the proposed Restrictions;

(d) Long overdue maintenance obligations at HTO would be jeopardized by reduced revenues due to the Restrictions and the Town’s own budget committee had not been able to reconcile the funding shortfall; and

(e) Even if the Town re-evaluates the Restrictions in the fall of 2015, real and permanent damage to NBAA members’ businesses would occur, in many cases with no hope of re-establishing those businesses.

19. While the Town listened to our concerns at that meeting, it was unwilling to engage in real dialogue about less severe restrictions that would mitigate noise without severely impacting our members. The Town proceeded to adopt the Restrictions on April 16, 2015, without responding to NBAA's expressed concerns, without complying with ANCA, Part 161, and other federal laws and requirements that preempt local standards, and without preparing or publishing any analysis of the economic impact of the Restrictions on businesses, aircraft operators, and HTO's long-term maintenance and sustainability.

20. If the Restrictions are enforced, many of our members who are based at or otherwise fly to and from HTO will be subject to all three of the Restrictions—the Mandatory Curfew, Extended Curfew and One-Trip Limit.

The Restrictions' Impact on Members

21. The Restrictions will severely harm Members who fly to and from East Hampton and threaten the viability of their business models by reducing or eliminating the frequency of flight operations needed to maintain their businesses. The Restrictions will also disrupt the efficient functioning of the national transportation system and raise safety concerns.

22. The Town's public statements in enacting the Restrictions have reflected a particular intention of targeting helicopter operations. But business aviation jet aircraft will likewise be subject to the Restrictions. Examples of jet aircraft that routinely are operated by NBAA members and are included in the Town's definition of "Noisy Aircraft" because at least certain configurations have an AP level of 91.0 EPNdB or more are:

- Bombardier CL-600
- Cessna 550; Citation 560 XL Excel
- Learjet 31A, 35A, 36A, and 45

- Gulfstream G-200
- Dassault Falcon 50, 200, and 7X
- Raytheon Hawker 125-700A

To the extent that the above aircraft have an AP level of 91.0 EPNdB or more, they will be subject to the Restrictions even though they also may be certified as “Stage 3” or “Stage 4” under U.S. and international noise standards – i.e., they are generally recognized as quiet and any restrictions on operations at any U.S. airport (irrespective of whether it has accepted and the status of federal grant monies) require affirmative FAA approval pursuant to ANCA and Part 161.

23. Restricting access to HTO for a significant number of hours per day, and for a significant number of aircraft models, will result in disruption to the National Airspace System, causing congestion at other airports, and delays in transiting the airspace over the Long Island area.

24. The Restrictions put pilots in the untenable position of having to decide between safety and operational factors versus possible criminal misdemeanor charges and substantial monetary fines when deciding when and where to land. For instance, a cross-country flight that is planned to arrive prior to the curfew may be delayed due to weather or air traffic control factors. Under the Restrictions, the pilot must now monitor the aircraft’s progress against the mandatory curfew time and anticipate whether the arrival will occur after the curfew, resulting in a last minute decision either to alter the flight plan and divert the flight to an unplanned airport, or incur a criminal charge and monetary fine. Pilots are trained to make inflight operating decisions on the basis of safety and should not have to weigh non-operational non-safety factors

such as criminal or financial penalties in operating decisions. Putting the additional burden of such decisions on pilots jeopardizes safety of flight.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 28, 2015

A handwritten signature in cursive script, reading "Steven J. Brown". The signature is written in black ink and is positioned above a horizontal line.

Steve Brown