



# TOWN OF EAST HAMPTON

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## **Pending Airport Litigation Town Board Work Session September 15, 2015**

This morning I would like to briefly outline where we stand on pending airport litigation.

As we all know, last April the Town Board enacted three new local laws designed to address the impacts of aircraft noise in a balanced, reasonable manner.

We knew then that our efforts to protect our residents would make some airport users unhappy. We also knew that our opponents were well-funded and highly motivated in their desire to allow anyone to fly into East Hampton Airport at any time of day or night, with no limits.

Just as we expected, the opponents filed lawsuits. Currently there are six legal actions pending against the Town of East Hampton. Some of these are direct challenges to the new local laws. Others are more indirect, and address our decision to forego federal funding in order to be able to adopt noise restrictions.

While we anticipated that there would be lawsuits, it is unfortunate that these airport users are forcing the Town to spend airport funds to defend these restrictions rather than working cooperatively to help us achieve the best balance between users and residents.

That said, the Town was fully prepared for this litigation and we are vigorously defending our laws in every forum. Briefly, here is an update on the current status of the six different matters.

### **The Federal Court Cases**

First, a group of airport users calling themselves *Friends of the East Hampton Airport* has filed two lawsuits in federal court.

## **1. *Friends of the East Hampton Airport v. Town of East Hampton***

- The *Friends* group sued the Town directly in *Friends of the East Hampton Airport v. Town of East Hampton*, alleging that the three local laws are unreasonable and that they violate federal law and the U.S. Constitution. The case is being heard by Judge Joanna Seybert in the United States District Court for the Eastern District of New York.
- In this lawsuit, the *Friends* group also filed a motion seeking to delay the implementation of the local laws. Early this summer, at the request of Judge Seybert, the Town agreed to delay implementing the laws until she ruled on a preliminary injunction.
- On June 26, Judge Seybert issued her first ruling. She affirmed the Town's legal right to adopt restrictions to address the problem of excessive airport noise. She also upheld two of the local laws: the year-round mandatory nighttime curfew, from 11 p.m. to 7 a.m., and the extended curfew, on noisy aircraft, from 8 p.m. to 9 a.m. In response, the Town began enforcing the two curfews on July 2.
- The court also preliminarily enjoined the third law, which imposes a one-trip-a-week restriction on noisy aircraft during the summer season. As a result, the Town is prevented from enforcing this law while the case is pending.
- On July 22, the Town appealed the court order enjoining the one-trip-per-week law. The *Friends* group has also appealed. The appeal is before the United States Court of Appeals in New York City. The Town will be represented by one of the nation's preeminent appellate advocates, Kathleen Sullivan of Quinn Emanuel Urquhart & Sullivan, LLP.
- The Court of Appeals, as is its normal practice, has directed that the parties participate in court-ordered mediation. As we are required to do, the Town is participating in the mediation process in good faith.

## **2. *Friends of the East Hampton Airport v. FAA***

- The *Friends* group has also sued the FAA in federal court in *Friends of the East Hampton Airport v. FAA*. In this case, *Friends* has alleged that the FAA must enforce certain grant assurances and federal laws that would prevent the Town from enforcing the local laws. This case is also before Judge Seybert in the Eastern District of New York.

- Because the Town of East Hampton relied on the FAA's legal conclusions in enacting the noise restrictions – per the 2005 Settlement Agreement with the Committee to Stop Airport Expansion and the Bishop Responses – we have a vested interest in the outcome of the lawsuit against the FAA. Therefore, earlier this month, the Town asked for permission to intervene in that case. The Court has not yet ruled on our request.

### **The Administrative (“Part 16”) Cases**

In addition to the two lawsuits in federal court, our opponents have filed three separate administrative lawsuits – called “Part 16” claims – against the Town.

A “Part 16” case is an administrative lawsuit in which there is a claim that an airport has violated its grant assurances to the FAA. Part 16 cases are heard and decided by the FAA.

#### ***1. Sound Aircraft v. Town of East Hampton***

- In the first Part 16 matter – *Sound Aircraft v. Town of East Hampton* – one of the on-airport businesses, Sound Aircraft, claimed that the landing and fuel flowage fees enacted by the Town in 2014 violate various grant assurances. Sound Aircraft is challenging the new fees – one of which had not been raised in over 20 years – even though the Town has shown that the fees are necessary to meet Airport expenses, including debt service on bonds to pay for needed capital projects.
- The Town filed a motion to dismiss the case. All of the briefs have been filed and the case is now before the FAA. Considering the FAA's typical review for Part 16 cases, we can expect a decision sometime in 2016.

#### ***2. Friends of the East Hampton Airport v. Town of East Hampton***

- In the second Part 16 case – *Friends of the East Hampton Airport v. Town of East Hampton* – the *Friends* group challenged the Town on a series of issues related to airport maintenance, the use of airport revenue, and the 2014 fee increases.
- In this case, the *Friends* group alleges violations related to various maintenance issues. Yet the projects they highlight were either completed before the Complaint was even filed, or were nearing completion or well underway when the Complaint was filed. The *Friends* group also complains about the new 2014 fees. And finally, the *Friends* group criticizes some of the older, non-aeronautical leases at the Airport that do not reflect full, fair market rents. The Town already discussed this matter with the FAA a decade ago, and is working diligently to bring every lease up to fair market value.

- The Town has offered to work cooperatively with the FAA on a corrective action plan to address the issues in this lawsuit. Although the FAA has not yet accepted the Town's offer, we are working actively to resolve any open issues. For example, the Town continues to order appraisals for properties with leases set to expire in the near future. And last month, the Town approved the scope of work for our engineer to conduct a comprehensive pavement evaluation, which is a necessary first step to completing a Pavement Maintenance Management Plan.
- All the briefs have been filed in this lawsuit as well. We do not anticipate a decision before next year.

### **3. *National Business Aviation Assoc. v. Town of East Hampton***

- Rather than wait for resolution of the pending federal court cases, a group led by the NBAA (a national organization for corporate aircraft users), filed a third Part 16 lawsuit – *National Business Aviation Assoc. v. Town of East Hampton*. Specifically, the NBAA group alleges that the extended curfew and one-trip-per week laws would create an impermissible exclusive right at the Airport. The NBAA group also argues that the Town cannot use airport revenue to defend itself in the litigation.
- The Town filed a Motion to Dismiss and asked the FAA to defer the case until the FAA rules on the Motion to Dismiss. The FAA has not yet responded to the request to defer the case. Therefore, the Town will file its answer brief on October 8. Briefing should be complete by the end of the year.

### **State Court Case**

In addition to the two federal and three administrative lawsuits, there is one case pending in state court.

#### **1. *Sound Aircraft v. Town of East Hampton***

- When Sound Aircraft filed its Part 16 lawsuit against the Town regarding the 2014 fee increases, it filed almost the same case in state court in a case also entitled *Sound Aircraft v. Town of East Hampton*. The state court action is an "Article 78" proceeding challenging the Town's enactment of the 2014 fee increases.
- The state case is currently stayed pending resolution of the Sound Aircraft Part 16 litigation.

## **Next Steps**

With regard to next steps, please know that we will not be sitting by, waiting for the various courts and the FAA to rule. We are moving forward to continue to find solutions.

As I stated earlier, we will vigorously defend all of the litigation. The three local laws we enacted were designed to complement each other and work comprehensively to address the noise problem in a balanced, reasonable manner. Based on the feedback we have received, the two local laws we are now able to enforce – the nighttime curfew and the extended curfew for noisy aircraft -- have not solved problem. The one-trip-per-week limit is crucial in limiting aircraft noise and ensuring the quality of life of East End residents.

We are currently enlisting our noise consultant, HMMH, to develop a scope of work that allows us to evaluate the effectiveness of the existing laws utilizing operation and complaint data from the summer season – which we defined as May 1 to September 30.

As we have done from the beginning, we will share the results in a presentation to the public and will get community input before we take further action.