

August 15, 2011

The East Hampton Star

Dear David:

It is lovely that, faced with an election and an increasingly irate population, the majority Republican members of the Town Board are suddenly expressing the desire to “do something” about airport noise. Wouldn't it be even lovelier if they took the time to educate themselves to the fact that they do have the power to solve this problem if only they have the will to do so?

According to your front-page article last week, Supervisor Wilkinson asks why we cannot shut the airport from 11 pm to 7 pm. Would he do so if he could? Councilwoman Quigley suggests charging prohibitive fees that would have that effect. Councilman Stanzone says, not so fast, we have limited authority over a general aviation airport. Confusion reigns.

If the Town Board wants to know the root of the problem, it need look no further than the mirror. The Town Board's own decisions are the only obstacle to controlling airport noise, shutting it at night if we choose to do so, even prohibiting helicopters completely. As the immortal Pogo said, “We have met the enemy and they are us.” But, before I explain in detail, let me outline briefly the magnitude of the problem.

In the course of the preparation of the environmental impact statement for the Airport Master Plan update, the Committee to Stop Airport Expansion hired its own aviation noise expert. Using the same computer noise modeling software used by the FAA and by the author of the Town's EIS and analyzing the Town's own data on expected airport usage, including aircraft types, flight tracks, altitudes, and frequency of use, the expert asked and answered this question: How many times do aircraft using East Hampton Airport create what would be a violation of East Hampton's own noise ordinance if aircraft were not specifically exempted?

The noise ordinance makes it a violation, subject to fine and, in the case of repeated violation, criminal prosecution, to project noise across a residential property line that exceeds 65 decibels from 7 am to 7 pm and 50 decibels from 7 pm to 7 am. The answer? 9.8 million times per year! Airport noise adversely impacts 114 square miles and a resident population of 39,000 (including residents of Southampton). That is the burden of noise imposed on this community by the out of control East Hampton Airport.

But the study went further and actually counted the number of such incidents house by house. The areas most heavily impacted, with more than 1,000 noise events per year per household, include an area of 31 square miles with a population of more than 6,000. Households impacted between 6,000 and 25,000 times per year cover an area of

18 square miles with a population of more than 3,000. Contrary to what airport users claim, the problem of noise is not at all limited to “people who bought a house near the airport.”

When Councilman Stanzione says we have limited authority over a general aviation airport that is true only if the airport were independently owned, such as the Montauk Airport. But the Town of East Hampton is the owner of the East Hampton Airport. As proprietor, it has the ability to control hours of use, the numbers of aircraft that can use the airport, and the aircraft types that can use the airport with the specific purpose of protecting the community from noise. We know this definitively because the Federal Court of Appeals for the Second Circuit, sitting in New York City, has said so in the 1998 case of *National Helicopter v. The City of New York*.

The City of New York is the municipal owner of a heliport. It sought to impose a curfew on use, close its heliport on weekends, and limit the aircraft types using its heliport with the goal of cutting noise in half. The Second Circuit said that it could do all these things as long as it treated aircraft with a similar noise impact in the same manner. East Hampton is within the jurisdiction of the Second Circuit. There is no State or local government or agency and no Federal agency, including the FAA, with the power to contradict the Second Circuit within this jurisdiction. Only two bodies have the power to do so, the Congress of the United States and the United States Supreme Court. Unless and until one of them should do so, the word of the Second Circuit is not merely an opinion in East Hampton, it is the law. The law might be different in San Francisco or Miami, but in East Hampton, the Second Circuit is the authority.

Applying the opinion of the Second Circuit here, the Town of East Hampton, as airport proprietor, could even prohibit helicopters altogether so long as it treats any similarly noisy aircraft (of which there are a few but not many) in the same manner.

There is one important hitch, however. Because it has accepted construction subsidies from the FAA in the past, East Hampton Airport is subject to contractual covenants with the FAA known as “grant assurances.” Under the grant assurances as interpreted by the FAA, the recipient of a grant must, subject only to weather or emergency, keep the airport open 24 hours a day, 365 days a year to any aircraft that choose, in the sole discretion of the pilot, to use the field. In short, we cannot have local control of the airport and take FAA money too. It is one or the other.

The grant assurances apply for 20 years from the date of the grant, even if the grant is as little as a dollar. There does not exist in Federal law any mechanism for terminating a grant agreement early, even if the money were repaid. Thus, every time the Town accepts an FAA grant, it alienates for a period of 20 years its power to control airport access. In effect, taking a grant means adopting the FAA’s policy of completely unrestricted access.

Due to past misconduct of the Town of East Hampton, in which it twice took grant money illegally, the Committee to Stop Airport Expansion negotiated a judicially approved and binding reduction in the term of the grant assurances in East Hampton. If

the Town does not take any more grant money from the FAA, the relevant assurances will expire on December 31, 2014, years before they otherwise would. On that date, the Town of East Hampton can recover full control over access to its own airport and can use that power to minimize airport noise, provided only that it treats comparably noisy aircraft in a like manner.

Airport users claim that, if the Town does not take FAA subsidies for capital projects, it will cost the taxpayers money. This is complete nonsense. The benefit of the FAA subsidies does not flow to the taxpayers, it flows to the airport users who would otherwise have to pay the full costs of the airport to keep it open and operating.

The airport provides no service that is essential to the well-being of East Hampton. It is not necessary for emergency medical evacuation. It serves a small group of hobby pilots, about 50 of whom actually live in East Hampton, and wealthy second homeowners who want to spare themselves an extra hour or so to get here. That is it. It is absolutely trivial in its contribution to transportation. At most, it takes about 25 cars per day off of the Long Island Expressway. That is statistically insignificant when we have thousands arriving here. It doesn't even take cars off of our local roads because, once people arrive at the airport, they don't walk home. They get in cars.

Naturally, the airport users want the airport to be as cheap for them as possible. Who doesn't want the things they use to be cheap or free? Indeed, at present, aircraft based at East Hampton pay nothing, zero, to land at East Hampton. But in truth the airport is not free, not to us, because the community pays for FAA subsidies with the loss of peace and the quite enjoyment of our homes. Their cheap airport comes at our expense.

The question the community needs to answer is this: If airport users do not feel it is worth it to them to pay the cost of their airport use, why should the community subsidize them either with taxes or by suffering from excessive noise? I cannot imagine any reason for thousands to suffer the loss of the enjoyment of their homes so that hobby pilots and those who ride in private jets and helicopters can save money. Can anyone?

It is an election year indeed. If you are burdened by helicopter noise, by airport noise, ask the candidates, all of them, including Supervisor Wilkinson, and the members of the Board who won't be running again for two years, Mr. Stanzione and Ms. Quigley, this simple question:

Will you pledge to stop taking FAA money so that East Hampton can recover local control of its own airport and solve this problem once and for all, or will you take another poisoned FAA dollar and subject all of us, irrevocably, to this growing burden for another 20 years? If you care about the answer, make that your reason to vote.

Sincerely,

David Gruber