



**M E M O R A N D U M**

**TO:** Terry Martino, Executive Director

**FROM:** Richard E. Weber, Deputy Director-Regulatory Programs

**DATE:** September 6, 2013

**SUBJECT:** **APA Project 2011-95**  
**Recommendation to direct the project**  
**to a Public Hearing**

**PROJECT SPONSOR:** Daniel Arbour  
**LANDOWNER:** Sunset Farm LTD.  
**PROJECT TYPE:** Private Airport  
**LOCATION:** Town of Willsboro, Essex County  
**LAND USE AREA:** Rural Use

**PROJECT AS PROPOSED**

A new private airport is proposed on existing agricultural fields. A 1,450-foot long, 50-foot wide grass airstrip would be maintained by mowing. The proposed runway is no less than 1,400 feet in length westerly of Route 22 and has a north-south orientation. No runway lighting or structures are proposed other than a 7-foot tall pole with an orange nylon windsock adjacent to the runway. Use of the airstrip would be limited to daylight hours during the twelve months of the year. A maximum of 150 take-offs and landings annually are proposed. Landings and take-offs would be both from the north and the south. No maintenance or re-fueling will occur on-site. The airport would be utilized by single-engine planes only, without horsepower limits.

**JURISDICTION**

The project consists of a private airport, a Class A regional project requiring an Agency permit pursuant to Executive Law § 810(1)(d)(9).

### SITE DESCRIPTION

The project site is a 285±-acre non-shoreline parcel of land identified as being all of real property tax map parcel number 40.1-2-22.002. The project site is managed for agricultural purposes developed by six (6) agricultural use structures and a single family dwelling. The bulk of the property (including the proposed airport) is located in a Rural Use land use area, with a small portion of the site along NYS RT 22 located in a Low Intensity Use land use area. It is bounded on the east by 700 feet of frontage on NYS Route 22, on the west by 1150 feet of frontage on Middle Road, and on the north and south by privately-owned lands of others. A gravel farm road runs the length of the parcel from Middle Road to NYS RT 22.

The proposed runway's southern terminus is approximately 120 feet from the property line. The parcel adjoining to the south is densely wooded with mature coniferous and deciduous trees. The northern runway terminus is 30 feet from the property line; the lands adjoining to the north are maintained as a meadow for agricultural uses.

There are approximately two dozen residences within ½ mile of the proposed runway. There are six residences (not owned by Arbour) located within 800 feet of the runway. The Braidlea Farm property to the south is comprised of several residences.

Three other private airports including a seaplane base on Lake Champlain in the Town of Essex, are located within a 3± mile radius of the proposed airport.

### AGENCY DECISION AND HEARING CRITERIA

The Town of Willsboro has an Agency-approved local program; therefore, the Agency's decision on the proposed project, a class A regional project, must be made pursuant to Executive Law § 809(9). Under that section, the Agency cannot approve a project unless it first determines that the project meets "all of the pertinent requirements and conditions" of an approved local land use program. Thereafter, the Agency considers the statutory requirements for approval of any jurisdictional project before concluding the project would not have an "undue adverse impact."

On April 23, 2012, Town of Willsboro Zoning Board of Appeals determined that the airport requires a use variance. The Board's determination is reflected in the approved minutes of its April 23, 2012 meeting. From this determination, it appears that the project as proposed does not meet "all of the pertinent requirements and conditions" of Willsboro's code and, therefore, must be denied. Furthermore, "the Agency will not approve a project...which is a prohibited use under local zoning requirements" (9 NYCRR 574.6).

Pursuant to Executive Law § 809(3)(d), a public hearing is required before denial of a project. In addition, the Agency has the discretion to require a public hearing for the noise impacts associated with the proposed project. These impacts "are substantive and significant issues related to findings or determinations the Agency is required to make, including the likelihood that the project will be disapproved or can be approved only with major modifications." 9 NYCRR § 580.2 sets forth specific criteria for the Agency to use in assessing whether or not to hold a public hearing.

#### **POTENTIAL HEARING ISSUES**

**1. Whether the project meets all of the pertinent requirements and conditions of the Town of Willsboro's approved local land use program as required by Executive Law § 809(9)?**

Staff recommend that a hearing be held to require the project sponsor to produce, as evidence in the hearing, a final and binding, written determination by the Town of Willsboro Zoning Board of Appeals that the proposed private airport is permitted and meets all the requirements of the local land use program and therefore, is not a prohibited use.

**2. What are the potential noise impacts from take-offs and landings on nearby and adjoining neighbors associated with the proposed use and the projected frequency and duration of such impacts, taking into account noise impacts associated with existing private airports in the vicinity of the project site?**

Staff recommend a hearing on this issue based on the following regulatory criteria:

**9 NYCRR § 580.2(a)(2) *The degree of public interest in the project, as evidenced by communication from the general public, governmental officials or private organizations***

The Agency has received thirty-four comment letters on the proposed project, with eleven in support and twenty-three opposed. At an informal informational meeting on the proposed airport in Willsboro on January 10, 2012, there were fifteen landowners from the area surrounding the project site.

Concerns expressed by the public about the project include potential impacts from noise and to property values. In addition, several individuals emphasized that with three existing private airports within a three-mile radius, the addition of the proposed airport might cause greater, cumulative impacts.

The Agency has also received several letters from the attorney for Braidlea Farms Limited Partnership, who own a 220-acre tract of land with several dwellings located immediately south of the project site. The dwellings on that property are potentially in the flight path of the proposed airport, and the letters raise concerns about, *inter alia*, noise and vibration.

**9 NYCRR § 580.2(a)(3) *The presence of significant issues relating to the criteria for approval of the project***

The Agency cannot issue a permit for the proposed private airport unless it first determines that it would not have an "undue adverse impact." In making this determination, the Agency is required to consider the development considerations set forth in Executive Law § 805(4) which include: Noise [§ 805(a)(4)] and Adjoining and nearby land uses [§805(c)(2)(b)].

Take-offs and landings from the private airport have the potential for causing adverse noise impacts affecting adjoining and nearby neighbors. In addition, there is potential for cumulative noise impacts on these neighbors due to the close proximity of existing airports.

**9 NYCRR § 580.2(a)(4) *The possibility that the project can only be approved if major modifications are made or substantial conditions are imposed***

With the information developed through a hearing, it may be possible to mitigate noise impacts from the private airport through operational conditions such as placing reasonable limits on the number of landings/takeoffs from the private airport, restricting the times of day for the airport use, and prohibiting events known as "fly-ins" where multiple airplanes land and/or

take-off from an airport on a given day. Conditions imposing these requirements could be substantial and/or require major modifications to the proposed project.

**9 NYCRR § 580.2(a)(5) *The possibility that information presented at a public hearing would be of assistance to the agency in its review***

Agency staff believe that additional information about the noise associated with the project is essential for a determination of whether or not the private airport use will cause an undue adverse impact. Specifically, staff believe that additional information is required concerning potential noise impacts on nearby and adjoining landowners. In addition, information concerning the use of existing airports is relevant to any assessment of cumulative impacts that could result from the proposed project.

**RECOMMENDATION**

Staff respectfully recommend that the project be directed to an adjudicatory hearing. The hearing should be undertaken in two stages: (1) The hearing should be convened and then perhaps adjourned until the project sponsor obtains a final determination from the Town of Willsboro Zoning Board of Appeals allowing the proposed airport use; and (2) If the Zoning Board of Appeals issues a use variance or a written interpretation the proposed airport is not a prohibited use, the hearing should then proceed to develop a record on the potential noise impacts of the proposed project.

With respect to issue of noise impacts, staff recommend that the Agency seek testimony and evidence including, but not limited to:

- What are the potential noise levels for take-offs and landings for aircraft that may utilize this airport?
- What specifically will be the highest noise levels, in decibels, that adjoining and nearby landowners will experience due to noise associated with the proposed project?
- What will be the potential impact of those noise levels on adjoining and nearby landowners, taking into account ambient noise levels?
- What are the intended flight paths and the projected distribution of use of the flight paths based on wind direction data and other air traffic?
- What homes of nearby and adjoining landowners will be within the projected flight path(s)?

- What will be the projected elevations of aircraft above ground level along the flight path(s)?
- What will be the maximum daily number of take-offs and landings?
- What will be the proposed hours of operation of the private airport?
- Is the private airport proposed to be operated on weekends?
- Will there be any fly-in events where multiple planes may take-off and land at the airport? If so, what is the anticipated type and maximum number of planes per event, and the frequency and overall number of such events each year?
- What agreements, if any, does the project sponsor have with the existing, nearby private airports as referenced in the FAA's "Determination of Landing Area Proposal" dated May 19, 2011.
- How do the flight paths for existing nearby private airports relate to the projected flight path(s) for the proposed project?

REW:PVC:SBM:MJG:SEL

Attachments to this memo include documents in the following categories:

- Application Materials
- Public Notices
- Public Comment Letters
- Agency Communications to the Project Sponsor
- Agency Communications with the Town of Willsboro