



NEW YORK STATE
Adirondack
parkagency

MEMORANDUM

TO: Terry Martino, Executive Director

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

DATE: October 2, 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 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. Existing development on the project site includes 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. Six of those residences (not owned by Arbour) are located within 800 feet of the runway.

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. Accordingly, the Agency's decision on the proposed 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. Additionally, 9 NYCRR 574.6 of Agency regulations states "the Agency will not approve a project which is a prohibited use under local zoning requirement." Thereafter, the Agency considers whether the project would have an "undue adverse impact."

On April 23, 2012, the 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.

Pursuant to Executive Law § 809(3)(d), a public hearing is required before Agency denial of a project. A public hearing would provide the Project Sponsor a final opportunity to seek a use variance from the Town of Willsboro. In addition, the Agency has the discretion to require a public hearing for the potential noise impacts associated with the proposed project, which staff believe raise "substantive and significant issues" related to whether the project will result in an "undue adverse impact." See, Executive Law §§ 809(3)(d) and 809(9).

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 Section 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. Whether the potential adverse noise impacts on adjoining and nearby neighbors from take-offs and landings associated with the proposed airport use are undue.

Staff recommend a hearing on this issue to obtain information regarding potential noise impacts from the proposed use including the timing, projected noise levels, frequency and duration of such impacts taking into account noise impacts associated with existing private airports in the vicinity of the project site.

Based on public comment and staff review after the February 14, 2012 completion notice, staff sought additional information from the Project Sponsor concerning such impacts on April 3, 2012. This information request was consistent with Executive Law Section 809(2)(b), which allows the Agency to seek additional

information after completion of an application "to enable the agency to make the findings and determinations required by" law. The Project Sponsor had said that he would provide the requested information but has never done so. Staff believe this information is relevant to the Agency's determination whether or not noise from the proposed use will cause an undue adverse impact. See, Executive Law Section 809(9). It may also assist the Agency in determining appropriate conditions to mitigate noise impacts if it decides to approve 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 with the intent to produce a final determination from the Town of Willsboro Zoning Board of Appeals allowing the proposed airport use. The hearing may be adjourned to allow the Project Sponsor to obtain such determination; and (2) If the Zoning Board of Appeals issues a use variance or a written interpretation that the proposed airport is not a prohibited use, the hearing will proceed to develop a record on the potential noise impacts of the proposed project on adjoining and nearby neighbors. Staff recommend that discretion be delegated to the administrative law judge with respect to the specific issues, to be adjudicated concerning potential noise impacts, as that determination could be affected by the action of the Town of Willsboro Zoning Board of Appeals.

REW:PVC:mlr

Attachments to this memo are provided on the CD in the mailing package and 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