

## Newstead Town Board Meeting- April 30, 2012

A special public hearing was called to order by the Newstead Town Board on Monday, April 30, 2012 at 7:30pm at the Newstead Town Hall.

Present: David Cummings- Supervisor  
Justin Rooney- Councilman  
Richard Baran- Councilman  
Donald York- Councilman  
Mike Bassanello- Highway Supt.  
Scott Rybarczyk- Town Engineer  
Nathan Neill- Town Attorney  
Jennifer Heberling- Deputy Clerk  
Christine Falkowski-Sr. Clerk Planning & Building  
Ralph Migliaccio-Code Enforcement Officer

Absent: James Mayrose - Councilman

Roll Call was taken with all board members present except Councilman Mayrose who is out of town on business.

The Supervisor called the public hearing to order on the proposed site plan for construction of a T-hangar and a maintenance hangar by the Akron Airport.

The Deputy Clerk read the proof of publication.

### Comments:

The Supervisor went through some of the history of the airport. He made it clear that this public hearing was in regard to the site plan for a t-hangar and maintenance hangar only. Last October the ZBA denied 2 use variances. In April there was a court decision made regarding the t-hangar and maintenance hangar construction only; separate from the proposed crosswind runway currently in litigation. The Judge's decision was that the Christian Airmen were allowed to construct the t-hangar and maintenance hangar on the original 44-acre parcel and ordered the Town to hold a public hearing on April 30, 2012. On April 23, 2012, The Planning Board recommended (7 Aye votes) that a \$5,000 escrow fund be established per the Condition Negative SEQR Declaration from July 25, 2011 for maintenance completed by Christian Airmen, Inc. to reduce permeability if storage areas are not detaining water to elevations provided in the drainage report submitted with site plan, and to assist in mitigating flooding concerns of documented flooding problems that increase in the five years after improvements are completed at the airport. The Planning Board also recommended (5 Aye votes, 2 Nay votes) site plan approval to the Town Board subject to the following conditions:

- (1) Approval of the site plan by Wendel Duchscherer
- (2) Compliance with Fire Protection per New York State Fire Code

The Supervisor then opened the public hearing to comments.

Charles Carter - 6 Marshall Ave. – examined the site plan on file in the Building Dept. As a retired architect he is questioning why the plans are not signed or stamped, no FAA drawings, the drawings lack coordinates, no code review, nothing regarding the tank farm, no marking for fire department access, Knox Box, no fire suppression system or hydrants, and drywall partitions instead of masonry. The Supervisor stated that the tank farm is not being discussed at this time.

Dale Cheavacci – 113 John St. – asked if you need a building permit to begin site work. CEO Ralph Migliaccio replied that you do not need a building permit to move dirt around. Mr. Cheavacci informed the Board that they were dumping stone from the Marshall Avenue road re-construction project at the airport all day. The CEO stated that the airport would need a fill permit to do that, which they applied for on Friday, but is not currently approved. He questioned why the assessment for the airport has dropped the last 2 years when they have done approximately \$7.5 million in improvements over the last several years. He also doesn't understand how anyone can think there aren't drainage issues caused by runoff from the airport. The water runs down John Street bringing dirt and stones with it and the lower end of the park is a bowl and always wet. It is only going to make it worse when they add more structures. He believes he would not be able to sell his house if it

was being shown during a busy time at the airport and that his neighborhood assessments will be affected by noise and planes. Lastly, the airport started with only 2 planes.

David Finger – 154 East Ave. – stated drainage has been a problem ever since he has lived here. He has a finished basement and continually has flooding problems. He feels that \$5,000 is a pittance for escrow compared to what the flooding would damage. The runoff has changed since the construction has begun at the airport. It has migrated approximately 300 yards west of where it used to come down. It is now coming down directly behind his house. He is done putting money into his house only to have it destroyed by the water.

Alan Kidder – 27 Bloomingdale Ave. – stated he has been a Village resident for 39 years, was on the Village Planning Board for 10 years, was an economist in aerospace, the last 10 years a Dean at Genesee Community College and a pilot for 48 years. Mr. Kidder went through all the economic benefits the airport brings to the town. There are 24 jobs and 4 corporations at the airport. He stated these people shop at Pixley's and eat at our restaurants. There were 1,350 new parachute jumpers last year that bring at least three spectators, totaling 5,400 visitors per year. Flight training leads to jobs and great careers. Mr. Kidder then read a list of people who have become pilots or who work in the aviation field due to training received at or a first flight from this airport. Local corporations such as Perry's and Cold Spring Construction use the Akron Airport for their business needs. Angel Flight uses the airport to transport cancer patients for treatment. Mercy Flight lands at the airport when needed, such as Saturday when Jim DeYoung was severely injured and transported to ECMC.

Dan Kowalik, Akron Fire Company Chief – 105 Main St. – first wanted to thank the airport and the pilots for ceasing, allowing for Mercy Flight to provide emergency services for the DeYoung transport on Saturday. Since 2002 the Fire Co. has been in negotiations with the airport to get water up there for the safety of the pilots, the mechanics and the fire fighters. He received a letter from Albany stating that a fire department water supply is required by the NYS fire code for all buildings except for 1 and 2 family dwellings in an area without a municipal water system. Niagara Specialty Metals, I Squared R and Rite Aid have all been required to adhere to NYS Fire Code section 508 and he doesn't believe the airport should be any different.

Joe Rizzo – 5670 Cummings Rd. – stated he is one of the people Mr. Kidder mentioned that received his first flight at the Akron Airport and has now made his career in aviation and moved to this town because we have an airport. He questioned the Board as to the dollar amount spent on private attorneys and why they felt private counsel was necessary. The Supervisor replied that he could not answer how much the airport has spent on attorney fees; that he will get him the information regarding Town counsel fees and that given the litigation, the Board felt it was in the best interest for the residents.

Mary Kay Genthner – Passero & Associates, Engineer for the Airport – presented to the Board the latest stormwater plan revisions submitted to the Town Engineer at 5PM today. They have revised the retention pond from a 10 year storm retention pond to a 25 year storm retention pond.

Jeff Palumbo – Damon & Morey, Attorney for the Airport – stated that Mary Kay has zeroed in on the drainage issues. There are other drainage ponds that will be put in. They feel this one area that she revised was the most critical part and will satisfy the Conditioned Negative SEQR Declaration and Wendel Duchscherer. He is hoping the Town Board will grant them site plan approval conditioned upon (a) forthcoming approval from Wendel (b) compliance with NYS Fire Code section 508 and (c) \$5,000 escrow fund established. Mr. Palumbo asked that it not be denied due to the town engineer not being finished with the review. He stated that the bid opening is Wednesday, May 2<sup>nd</sup>.

Greg Brown – 80 Eckerson Ave. – asked that the Town Board please not feel pressured by the airport's timeline. We don't have stamped plans, and he feels the \$5,000 escrow is grossly underrated and would not even hire you an attorney. Consider non-fliers. He commented about the Lancaster Airport assessment and about drainage.

Robert Scheib – 51 Brooklyn St. – asked how deep the retention ponds are. Mary Kay answered they are approximately 2' deep. She said that is all that is needed to take care of the drainage. Mr. Scheib then asked if the Akron Airport is an official reliever airport. The Supervisor replied he is not sure but will find out. He then stated that the airport will be opening bids for construction on Wednesday. He questioned if Akron Airport's bid opening is legal; are they are receiving the grant

money legally since the Lancaster Airport received Federal funds illegally since they are not actually a reliever airport. The Supervisor then stated that the Town Board does not have knowledge of the grant details. He isn't sure if that information is necessary, but it has never been offered and the Town Board is only there to make sure the building is done correctly.

Cory Auerbach – Damon & Morey, Attorney for the Airport – stated that any resident drainage issues are pre-existing issues and not caused by this project since the project hasn't been done yet. There is no proof relative to cause by the Airport. If they are not allowed to move forward on this project, there will not be any improvements to existing drainage issues. This is a small hanger and maintenance building and there has been extensive review of this project involving time and money. There is only one very minor issue with a retention pond. They would not begin building tomorrow if the site plan was passed tonight. They will comply with the fire protection problem as the code is written. They have several options other than just installing fire hydrants. They are willing to take the site plan approval with the condition that the Town Engineer reviews all changes that happened at 5:00pm this afternoon. He claimed the Town Board is aware of the pending grant. He asked that they not let small issues bog them down. He claimed this project is not going to make the drainage worse.

Charles Carter – asked that all conditions shown be put on paper, signed and stamped.

Shawn Bray – Passero & Associates, Engineer for the Airport – explained to the Board that the grant amount is approximately \$350,000 and it expires on September 30, 2012. He also reminded the Town Board that they signed off on a document allowing the Airport to accept the grant.

Scott Rybarczyk – Wendel Engineering – explained that this was a very long process, he has worked very well with Mary Kay but, unfortunately, time has run out today. He cannot recommend approval at this time. The new design appears it may be appropriate, but it is in concept form and he does not have enough information. One of the conditions the planning board had was that Wendel approve the site plan. He doesn't know what they are looking at with the fire code; reservoir, water tank or hydrants.

Ralph Migliaccio – Town of Newstead CEO – stated that complying with the NYS Fire Code has no bearing on site plan approval but will affect building permit approval.

Councilman Baran – disagrees with the CEO and feels that the fire code is a very important issue; not a minor issue. Firefighters put their lives on the line daily.

Councilman Rooney – asked what substantial completion by September 30, 2012 meant per the grant.

Mr. Palumbo explained that the project had to be “substantially completed” by that date in order to receive the grant money. Mr. Palumbo also stated that the court order was only to hold the public hearing tonight; that a decision to approve or deny is not mandated tonight. Town Attorney Nathan Neill did not agree and read from the court order stating “and render decision regarding same”. He believes a decision does have to be made this evening.

Jeff Palumbo – Damon & Morey, Attorney for the Airport – stated a decision can be made at the next meeting.

Matt Plunkett – Attorney for the Town – agreed with Mr. Palumbo that it would be silly to take us back to court when the airport is the one asking for the extension. He also said that the decision is ultimately up to the board as to whether they act tonight or postpone it for 2 weeks.

The Supervisor stated that the board is prepared to act either way tonight and he understands that this is a very emotional issue no matter which side you are on.

Greg Brown – questioned if the escrow account is a retainer for making repairs to damage of people's homes. The Supervisor stated no and reiterated the purpose of the account. Mr. Brown suggested that a \$125,000 escrow account would be more appropriate.

Charles Carter – stated with regards to fire code, those are minimum standards. Pay attention to what the Chief is requesting and go beyond the minimum if necessary.

Scott Rybarczyk – Wendel Engineering – asked that if the action is tabled tonight, that the Airport engineers do not follow the same process of relaying information to him at the last minute.

Julie Brady – 27 Front St. – asked if the \$5,000 is only for retention pond repairs or can it be used for damage to residential property. Scott said it can be used for documented problems caused by the airport.

There being no further comments a motion was made by Councilman Baran, seconded by Councilman York to close the public hearing at 8:30pm. Carried

The Newstead Town Board called to order a special meeting at 8:30pm with the same members present as listed above.

Supervisor Cummings led the pledge to the flag.

### **NEW BUSINESS:**

#### **Discussion:**

Supervisor Cummings stated again that the Planning Board's approval required Wendel's approval of the site plan. There has been very good communication this last week, but if the vote was postponed we would not be able to receive information at the last minute again. Councilman York believes that this has been a rush deal, there are too many gray areas and too much at stake and should be postponed. Councilman Rooney believes that since they took us to court, didn't give us all the information needed and now wants us to give them a favor, he can't vote on this tonight in good conscious. He believes that if it was voted on tonight we would be back in court tomorrow, costing the taxpayers more money.

#### **Approval- Postponement of Site Plan- Akron Airport:**

A motion was made by Supervisor Cummings, seconded by Councilman York postponing vote on the proposed site plan for the Akron Airport until the May 14<sup>th</sup> meeting per the request of Christian Airmen with all information due to Wendel Engineering no later than Tuesday May 8<sup>th</sup>.

Cummings-Aye, Rooney -Aye, Mayrose-Absent, Baran-Aye, York-Aye

Carried

#### **Approval – Joint Facility Parking Lot:**

A motion was made by Councilman Rooney, seconded by Councilman York approving Supreme Sealing as lowest bidder for sealing of the parking lot at the Joint Highway Facility at a cost of \$7,145.

(Resolution Attached) Cummings-Aye, Rooney-Aye, Mayrose-Absent, Baran-Aye, York-Aye

Carried

There being no further business to come before the board a motion was made by Councilman Rooney, seconded by Councilman Baran to adjourn the regular meeting at 8:40pm.

Carried

Respectfully Submitted,  
Jennifer Heberling, Deputy Town Clerk