

**Matter of Town of Babylon v New York State
Department of Transportation**

2006 NY Slip Op 30529(U)

September 7, 2006

Supreme Court, Suffolk County

Docket Number: 15248-06

Judge: Michael F. Mullen

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**SUPREME COURT - STATE OF NEW YORK
IAS PART XXVI**

Seg. 001 - HOT D
Seg. 002 - CASE DISP
INDEX NO. 15248-06

PRESENT:
HON. MICHAEL F. MULLEN, J.S.C.

DATE: SEPTEMBER 7, 2006

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In the Matter of the Town of Babylon, and
Steven Bellone, Individually and as Supervisor
of the Town of Babylon,

Plaintiffs-Petitioners,

For a Judgment Pursuant to CPLR Articles 30
and 78

-against-

New York State Department of Transportation,
Northeastern Aviation Corp., and John Doe 1, 2,
3, 4, and 5.

Defendants-Respondents.
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This hybrid proceeding commenced with an order to show cause dated June 1, 2006 (Emerson, J.), in which the petitioners sought to enjoin the respondent Northeastern Aviation Corp. ("Northeastern") from taking any further steps in connection with the construction of two airplane hangars and related parking facilities at Republic Airport, which is located in the Town of Babylon in Suffolk County. Prior to the start of construction, the New York State Department of Transportation ("DOT"), which owns and operates the airport, had issued a Negative Declaration on April 7, 2006.

The June 1st order contained a temporary restraining order (TRO) which is still in effect. The verified complaint-petition asserts, that the Town is not only seeking a permanent

injunction prohibiting any construction by Northeastern, but also a judgment declaring that the DOT violated the State Environmental Quality Review Act (“SEQRA”) when it issued the Negative Declaration, and directing that it not approve, implement or fund the project.

In essence, the plaintiff-petitioners allege that DOT failed to comply with SEQRA’s prohibition against segmentation, and that it failed to take a “hard look” at the project and make a reasoned elaboration with respect to the environmental impact it would have on the community.

In support of their pleadings, the plaintiffs-petitioners have submitted voluminous affidavits by environmentalists with impressive credentials, countless exhibits, and memos of law, all intended to convince that DOT has dropped the ball here, i.e., that it has not carried out its responsibilities as the lead agency. The defendants-respondents have responded in kind: affidavits by experts, maps, diagrams and memos of law, intended to show that a hard look was taken and the Negative Declaration was amply supported by the record. They cross-move to dismiss the complaint-petition on several grounds, including that it fails to state a cause of action, and that the plaintiffs-petitioners do not have standing.

It is clear to the Court, after wading through the volumes of materials submitted by both sides, and hearing oral argument, that the key to deciding the issues here is the Environment Assessment (“EA”) prepared by a consulting group, Freudenthal and Elkowitz, in September 2005. (It was revised in April 2006). It runs for seventy-six pages, and includes an additional ten appendices. The latter include copies of maps, tables, site plans, photographs, a noise analysis, permits and certificates issued by the County Department of Health, a traffic impact study, and data supplied by the NYS Office of Parks, Recreation and Historic Preservation.

The project itself involves approximately 11.01 acres on property leased (or to be leased) to Northeastern by DOT. The airport covers 535 acres. In view of the acreage involved, this project would constitute a Type 1 action, and, as such, a full EA must be used to determine its significance (6 NYCRR 617.6[a][2]). That was done here.

The proposed plan would call for the construction of an addition to an existing hangar, the construction of a new hangar, and parking for approximately seventy-five vehicles, all at the location presently used by Northeastern, which has been based at Republic since 1978. It owns a fleet of eight aircraft and manages twenty others. The proposal would enable it to expand its operations to serve its increasing customer base. The plan is to add hangar space for eighteen new aircraft - all Stage 3 or quieter - and the necessary parking

spaces attendant thereto. The hangar space would be increased by seventy thousand square feet, from its present thirty-eight thousand two hundred fifty square feet. The number of employees would double from seventy-four to a projected one hundred forty-eight.

With these projections in mind, the EA addressed the following:

- (1) Alternatives - either no action, or an alternative location, within or outside Republic Airport;
- (2) Potential impacts on
 - (a) noise from take-offs and landings (including noise abatement procedures);
 - (b) land use under existing conditions;
 - (c) water resources, with recognition that (1) Long Island is considered a sole source aquifer region; that (2) the County has a Sanitary Code in place which addresses, inter alia, the storage and handling of hazardous materials to safeguard water resources from existing and potential sources of pollution; that (3) there is a danger from storm water runoff and drainage during and after construction; and (4) the possible presence of wetlands within or adjacent to the site;
 - (d) Vehicular traffic;
 - (e) Site Trip Generation;
 - (f) Future Traffic operating conditions;
 - (g) Parking; and
 - (h) Visual Impacts;
- (3) Other environmental considerations, including
 - (a) Historical, Architectural, Archeological and Cultural Resources;
 - (b) Soil and Topography, existing and potential impact;
 - (c) Energy Supply and National Resources;
 - (d) Solid Waste;
 - (e) Construction Impacts; and
- (4) Social Impacts

Under mitigation measures, the EA focused on noise, land use, water resources, vehicular traffic, visual impacts, historical resources, soils and topography, ecology, energy supply, solid waste, construction impacts, social impacts, and so-called "induced socioeconomic impacts" (the conclusion was there were none).

So what we have is a determination by DOT that construction of the two hangars and the parking spaces will not have any "large and important (environmental) impacts." That determination was based upon the EA and findings that there would not be:

- (1) a substantial adverse change in air quality, water quality, traffic or noise levels; (2)

destruction of large quantities of vegetation or fauna; (3) any interference with any resident or migratory wildlife or any threatened or endangered species of animal life or plant; (4) any attraction of a large number of people for more than a few days; (5) a material conflict with the community's current plans; (6) any impact on important historical, archeological, architectural or aesthetic resources; and (7) a major change in the use of energy nor a hazard to human health nor a substantial change in the use of agricultural land, open space, or recreational resources.

One side argues that the “look” taken was a “soft” one, the other, that it was a “hard” look. One argues that the review was superficial, the other, that it was in depth. One group of experts is pitted against another group of equally qualified experts. Here, an administrative agency (DOT) made a determination. The Court, even if different conclusions can be reached as a result of conflicting evidence, may not substitute its judgment for that of an agency responsible for the determination. The Court must only ascertain whether there is a rational basis for the decision or whether it is arbitrary and capricious (see, *Matter of Cohen et al. v State of New York et al.*, 2 AD3d 522, 525; see also, *Matter of Stewart Park et al. v NYS Dept. of Transportation*, 157 AD2d 1, 7-9, aff. 77 NY2d 970).

Looking at the project here which involves eleven acres, in the context of 535 acres, and remembering this is an airport which operates under a so-called “limited” airport certification, and in light of the fact that no private or municipal property is directly involved, and in view of the extensive EA which was prepared and analyzed and the several mitigating measures which have been put in place, it can hardly be said that the negative declaration was arbitrary or capricious in this case, (see, *Matter of Pheasant Pond Owners Assn. Inc., et al. v Board of Trustees of the Village of Southampton*, 295 Ad2d 435).

On the issue of whether DOT improperly “segmented” the review process, it seems clear that the 11 acre parcel in question is the only one in which Northeastern has an interest. The parcel is already improved with two airplane hangars, and the intent is to increase the hangar space and provide the necessary additional parking. There is no hint that anything more is anticipated or would even be permitted (see, *Matter of Farrington Close Condominium Board of Managers et al., v Village of Southampton et al.*, 205 AD2d 623, 626).

This is not a subdivision nor is there any indication that this is only the first phase of a larger plan by Northeastern to clutter the airport with buildings and accessory structures (see, *Matter of Buerger v Town of Grafton et al.*, 235 AD2d 984, 986).

The DOT is under a statutory mandate to provide adequate, safe and efficient “air transportation facilities” and services to the public (see, Transportation Law §400[1] and [2]). In carrying out its mission, DOT, in turn, must have its projects approved by the Federal Aviation Administration (FAA). The FAA has established its own standards to ensure the safety and the longevity of the airport. In other words, the fear of unbridled expansion or future development seems unfounded.

There is no evidence that DOT segmented its review of the project in this case. By the very nature of its operation and mandate, DOT had to look at the long-range big picture.

In sum, the Court concludes that the cross-motion to dismiss the petition insofar as it seeks a permanent injunction must be granted. There is no need in this case to resolve the issue of standing - we assume it arguendo. The petitioner has simply not shown the likelihood of success on the merits. Also, the record shows there is no basis for a judgment declaring that DOT violated SEQRA in issuing the Negative Declaration dated April 7, 2006. In view of these conclusions, the TRO which is presently in effect must be vacated.

The foregoing constitutes the decision and judgement of the Court.

DATED: September 7, 2006

Michael F. Mullen
HON. MICHAEL F. MULLEN, J.S.C.