

For Immediate Release
BRAAC Airport Action Coalition
P.O. Box 233
Three Bridges, N.J. 08887
Friday, March 24, 2006

BRAAC Airport Action Coalition Rebutts Dudzinski's Assertion That Readington Can Control Airport Expansion

The BRAAC Airport Action Coalition, a citizens organization opposed to expansion of Solberg Airport, has sent the following letter to Mr. Ed Dudzinski in response to his remarks to the Readington Township Committee of March 20, 2006. In his remarks, Mr. Dudzinski, a candidate for Township Committee, asserted that from his study of the matter, "there is no preemption of local controls on the question of airport expansion." Thus, asserts Mr. Dudzinski, Readington can control Solberg Airport's expansion.

BRAAC Airport Action Coalition refers Mr. Dudzinski to the New Jersey Municipal Land Use Law, the Air Safety and Zoning Act, and the Aviation Act. These state laws in fact dictate Readington's land use and zoning laws for airports. The laws (a) prohibit municipal ordinances that would prevent airport expansion, (b) prohibit classification of airports as non-conforming uses, and (c) grant the Commissioner of Transportation the power of review of zoning laws affecting the airport.

The effect of these state laws is that a Solberg Airport expansion plan would go before Readington's Planning Board as an allowed use. The Planning Board is legally obliged to approve an allowed use, which in this case could include a 5,600 foot runway accommodating jets, as Mr. Solberg has proposed.

In New Jersey, these state laws pre-empt local control of airports, contrary to Mr. Dudzinski's assertion. Municipalities such as Readington cannot pass ordinances or use zoning to prevent or limit airport expansion.

BRAAC Airport Action Coalition is a non-profit citizens group opposed to expansion of Solberg airport. Further information can be found at www.braac.org

Friday, March 24, 2006

Mr. Ed Dudzinski
5 Brier Road
Whitehouse Station, N.J.

cc: Readington Township Committee

Dear Mr. Dudzinski

In your remarks to the Readington Township Committee of March 20, 2006, you invited examination of the information you presented regarding Solberg Airport. Your analysis is that municipal control of airport expansion is not pre-empted by state or federal agencies. A reading of state statutes shows this is not correct.

The bases of your analysis are the statements to you by the FAA and NJDOT Division of Aviation that any airport expansion would specifically be subject to Readington's land use and zoning requirements. While this is technically correct, Readington's land use and zoning laws for airports are dictated by the state Municipal Land Use Law and the Air Safety and Zoning Act of 1983.

The power of municipalities to zone is bestowed under the Municipal Land Use Law of 1975 (N.J.A.S. 40:55D et seq.). That law gives municipalities the power to enact zoning ordinances and regulate land use, except for airport safety zones. Section 40:55D-62.1(c) of the law states "The zoning ordinance shall provide for the regulation of any airport safety zones delineated under the 'Air Safety and Zoning Act of 1983,' P.L. 1983, c. 260 (C. 6:1-80 et seq.), in conformity with the standards promulgated by the Commissioner of Transportation.

In turn, the standards promulgated by the Commissioner of Transportation pursuant to the Air Safety and Zoning Act, N.J.A.C 16:62-1.2(d) says:

"Municipalities of the state are required to implement and maintain land use ordinances in accordance with the provisions of this chapter. These ordinances are subject to review by the Commissioner."

N.J.A.C 16:62-2.1(e) further says:

“Municipalities which contain within their boundaries airports regulated by the provisions of this chapter, may not hereafter classify those airports as non-conforming land uses within the context of their ordinances or master plans of development. Those municipalities which may currently classify an airport as non-conforming land use within the context of their ordinances or master plans of development shall amend those ordinances or plans to eliminate that non-conforming status.”

N.J.A.C 16:62-5.1(b) says:

“...A municipality further may not implement ordinances which would have the effect of preventing routine improvement of an aeronautical facility or airport within the area zoned under this chapter.”

In other words, the township must zone in accordance with the Air Safety and Zoning Act, and may not classify airports as a non-conforming land use. Zoning laws regarding the Airport Safety Zone are subject to review by the Commissioner of Transportation. Further, the township may not pass ordinances preventing airport expansion.

A Solberg expansion plan would therefore go through the Readington Planning Board as an *allowed* use, not to the Zoning Board as a non-conforming use. The Planning Board would be legally obliged to approve an allowed use, which in this case could include a 5,600 foot runway.

The Commissioner of Transportation has the power to overrule any local determination with respect to airport expansion. Under the State Aviation Act of 1938 the Commissioner of Transportation has the power to override local zoning decisions with respect to aeronautical facilities. The New Jersey Supreme Court, in the decision of Garden State Farms, has explained that the Commissioner of Transportation holds the “ultimate authority as to the placement of aeronautical facilities” and municipalities “must not exercise their zoning authority so as to collide with expressed policy goals of the State legislation...or the final decision of the Commissioner.”

Thus, the township’s control of land use pertaining to the airport is pre-empted by State law.

With regard to your suggestion that there may be a “tripwire” whereby the town can know that the Solbergs have re-launched an expansion, we only need to remember that in 1996 there was a public hearing on a Master Plan, with over 1,000 people attending, and the overwhelming majority objecting to, the Plan’s provision for a 5600 foot runway.

There was no apparent action in the public view for three years following that hearing. On March 25th, 1999, the Mayor of Readington Township received a letter from Emmitt

O'Hare, Acting Director of the Division of Aeronautics, announcing that the FAA and the NJ DOT had approved the Master Plan with a 4890 foot runway and given conditional approval to the airport layout plan pursuant to that Master Plan.

This history suggests that airport expansion can make giant strides out of the view of the public and the Township Committee.

Respectfully,

BRAAC Airport Action Coalition
James Brightwell, Director