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TOWN OF ROCKPORT

PRESS RELEASE

Helicopters in Rockport

Rockport, September 7, 2016: The Rockport Board of Selectmen is issuing this press release to clear up some misunderstandings about helicopter laws, regulations, and what is being done to address citizens' concerns about helicopter operations and landing sites in town. At a meeting on June 1, 2016 with the Zoning Board of Appeals, the Selectmen decided to move forward with three parallel tracks: 1) by litigating the current matter already in the courts, 2) by putting a by-law in place to regulate landing sites through the Site Plan Review and Special Permit processes, and 3) by petitioning the Massachusetts Legislature to amend the current statute that requires approval of any local by-law by the state Aeronautics Division of the Department of Transportation (DOT) whose mission is to encourage and promote helicopters (and other aircraft) operations, not prohibit their use.

Litigation:

The Town's Zoning Bylaws presently ban the landing of aircraft, including helicopters. The Bylaw does not *explicitly* ban aircraft landings, but does so *implicitly* because the Bylaw provides that any use which is not specifically allowed by the Bylaw is prohibited, and aircraft landing is not specifically allowed. Presently, the Town is defending a case in Land Court, in which the appealing party argues that the Bylaw is invalid because it was not approved by the Aeronautics Division, a division of the Massachusetts Department of Transportation.

In May, 2016, in the case of [Hanlon v. Town of Sheffield](#), the Massachusetts Appeals Court ruled that a town bylaw, which bans aircraft landings in the same way that Rockport's does, was invalid because the bylaw had not been approved by the Aeronautics Division. The Appeals Court based the decision on its interpretation of a State statute, General Laws Chapter 90, Section 39B (the 4th and 5th paragraphs). This was the first time that a Court had ruled that local laws relating to aircraft must be approved by the Aeronautics Division in order to be valid.

Because the Hanlon decision was issued by an Appeals Court, it is binding on all cities and towns unless and until it is overturned by another Appeals Court decision, or a decision of the Supreme Judicial Court, which is the highest Court in the State. Therefore, unless and until the Hanlon decision is overturned, any local bylaw that regulates the use of aircraft in any manner must be approved by the Aeronautics Division, or it will be held to be invalid if challenged in Court.

The Aeronautics Division has not established criteria for what types of bylaws it will approve. However, it has already rejected bylaws which, like Rockport's, ban aircraft landings. It has also stated, explicitly, that it will not approve of such bans.

The Hanlon case was unusual in that the town whose bylaw was at issue, Sheffield, did not defend the appeal. As a result, arguments in favor of allowing local regulation without State approval were not fully presented to the Appeals Court, and there was no opportunity to appeal the Appeals Court's decision to the SJC. In Rockport Town Counsel's opinion, these circumstances allow Rockport to continue defending its Bylaw in the case that is presently before the Land Court. While the Town will likely lose the case in the Land Court (because the Hanlon decision is binding on the Land Court), the Town will then have a chance to file an appeal at the Appeals Court and/or the SJC, in order to pursue the appeal that the Town of Sheffield did not. Note that, if the Land Court issues an unfavorable decision, aircraft landing will be permitted in Rockport unless and until an appellate court overturns Hanlon and restores the Rockport Bylaw.

Some people may be aware of a decision that was issued in a case out of Martha's Vineyard 1½ years ago (Boch v. Tomassian), in which the Land Court held that a bylaw which banned aircraft landings was valid, even though it had not been approved by the Aeronautics Division. This decision was issued before the Hanlon decision was issued, and Boch, who lost the case, did not file an appeal to the Appeals Court. In Rockport Town Counsel's opinion, the Boch decision is no longer "good law" in light of the Hanlon decision.

By-Law:

As mentioned above, in addition to the litigation that Rockport is defending in Land Court, the Town is pursuing two other means of addressing the impact of the Hanlon decision. First, the Town is attempting to approve a bylaw that would regulate (without banning) aircraft landings in a manner that might be approved by the Aeronautics Division.

The Board of Selectmen has placed an Article (I) on the September 12th Fall Town Meeting Warrant that was drafted by the Planning Board to allow the Town to regulate Aircraft Landing Areas (ALA) by requiring the construction of an ALA to go through the Site Plan Review process which would consider the potential

impacts on neighborhoods such as noise, downdrafts, and hours of operation, for instance. The siting of an ALA would be subject to the Special Permit process of the Zoning Board of Appeals.

A key aspect of this approach is that the use of helicopters would be an expressly Permitted Use which is the reason given why the Aeronautics Division disapproved all other submitted municipal bylaws across the state.

Petition the Legislature to Amend the current Statute:

The Town has been contacting its local representatives, as well as other State officials, since June 2nd, the day following the Selectmen's decision to pursue this approach, to ask whether the State Legislature will take action to restore to municipalities the right to regulate aircraft landings without State approval. Massachusetts General Laws (MGL), Chapter 90, Section 39B is the troublesome law that takes control from municipalities and puts it in the hands of the Massachusetts Department of Transportation's Aeronautics Division. To quote: "Such rules and regulations, ordinances or by-laws shall be submitted to the [aeronautics] commission and shall not take effect until approved by the commission." That clause sets up an automatic conflict between any municipality that wishes to regulate or prohibit helicopters within its borders and the state aeronautics division whose goal is to ensure the exact opposite. That is why the Board of Selectmen is working diligently to have the Legislature change this law.

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