

## Board of Aviation Commissioners considers litigation against Salem Common Council

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The most recent installment in the ongoing saga of the Salem airport project was made public Thursday, May 8, when the Board of Aviation Commissioners (BOAC) held a special public meeting; only one item was on agenda. At the meeting, Commissioner Tim Pease made a motion to secure a Special Counsel for the purpose of determining if litigation is warranted on the BOAC's part toward the Salem Common Council. Questions have recently surfaced regarding possible violations of Indiana Code 5-14-1.5 commonly referred to as the "Open Door Law." as it pertains to actions taken by the Common Council at its April 14, 2008 meeting. Pease also included in his motion the recommendation to retain New Albany, IN attorney, George Gesenhues as the Special Counsel. The motion was seconded by Commissioner John Jones and approved by a vote of 4-0 with Commissioner Danny Libka abstaining. Libka is also a member of the Salem Common Council.

At the April 14 public meeting, members of the Salem Common Council unanimously voted not to continue funding the airport project. As reported in local newspapers, the issue of the airport project was not on the agenda handed out to the public at the beginning of the meeting or was it added at the beginning of the meeting. Furthermore, the Council did not provide the public an opportunity to comment on the issue.

According to information obtained from the Salem City Clerk/Treasurer Office, the Salem Common Council originally voted to give support to the airport expansion project by a vote of 4-1, with Wally Kerkhorn voting against the project, on March 31, 2004. Two members of the present Common Council sat on the Common Council back in 2004: Pete Brown and Wally Terkhorn. However, since that vote, certain dynamics of the airport project and its funding have changed.

The original airport project called for expansion and upgrades of the existing facility at an estimated cost of approximately \$13.5 million with a 4000 foot runway. Since spring of 2004, due to Environment Protection Agency restrictions, the project has morphed into a plan for a new airport facility located to the northwest of the existing facility and including a 5000 foot runway (strongly recommended by the Federal Aviation Administration which is providing 95% of the total funding) along with new terminal building and a price tag of nearly \$22 million. The City of Salem's estimate cost (2.5% of total project cost) has risen from \$585,000 to as much as \$800,000.

After the Thursday morning BOAC meeting, members of the Board entertained questions from reporters. When asked if the majority of BOAC members believe that the action taken at the March 14 Common Council was in violation of the Open Door Law, Board President Bill Barnett said, "Yes, we have reason to believe that their decision was made prior to that meeting."

A review of the minutes of the January, February, and March 2008 Common Council official minutes fail to show any record of the airport project or funding for the project being discussed

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in public session.

In response to a question regarding specific examples of how the Common Council might have violated the statute in question, BOAC member, Mark Manship noted that there was no notice of the airport project on the official agenda for the April 14 meeting and yet all the members of the council voted unanimously with little or no public discussion.

When asked if the BOAC runs the risk of being accused of similar violations of the Open Door Law since there was no discussion at its special meeting on Thursday, Commissioner John Jones pointed to the Executive Meeting of the BOAC held on Monday, May 5 as the time when the subject of possible litigation was discussed. The Indiana Code allows public agencies to meet in closed executive session for the purpose of discussing possible litigation, personnel issues, land acquisition, or contract negotiation strategies.

In a subsequent interview, Salem Clerk Treasurer Pat Persinger and Salem Mayor both said that the airport subject was "penciled in" late in the afternoon of April 14, before the Common Council meeting.

When asked to explain why the subject was "penciled in" under Miscellaneous Business near the end of the meeting rather than under what would seem to be the more appropriate heading of Unfinished Business near the middle of the agenda, both Bower and Persinger did not provide a clear and concise answer.

Mayor Bower did point out that regardless of where the subject came up during the meeting, he asked for discussion, of which there was little to none.

Bower freely admitted that several("three or four") meetings among himself, various Common Council members, and various BOAC members have taken place in his office in the past few months to discuss the airport project.

Bower ended the interview by reiterating his commitment to the airport project if the money can be found. Bower also said that he hopes this recent development causes people to communicate a little better for the benefit of the community.