

To: Mayor and Members of Council

From: Scott Stewart, C.E.T.
General Manager, Development and Infrastructure Division

cc: Jeff Fielding, City Manager
Kim Phillips, General Manager of Community and Corporate Services
Blake Hurley, Assistant City Solicitor
Tom Eichenbaum, Director of Engineering
Bruce Krushelnicki, Director of Planning and Building
Angela Morgan, City Clerk

Date: June 7, 2013

Re: Burlington Airpark Site Alteration Bylaw

This memo is in follow up to the discussion at Council on May 21, 2013 and the legal companion report you have also received on this issue.

The memo tries to break the issues into sections to make it easier to bring all the issues to the forefront but also let you see how they are inter-related.

A. Staff Direction:

Direct the General Manager of Development & Infrastructure to contract an aviation consultant to report on:

- The standards, processes and requirements of Transport Canada and other Federal departments for the development and expansion of aeronautical facilities; and
- The identification of any opportunities for individual, municipal or provincial involvement and input in said Federal processes, and
- Expedite the presentation of recommendations to address the immediate issues of land fill, noise and expansion at the Burlington Airpark.(E-25-13)

Staff are currently doing a due diligence review to get ourselves up to speed on this industry and ensure we hire the right firm.

B. Co-ordination Meetings (City/Airport):

The Airpark is providing this information to the City on the basis that it does not attorn to any jurisdiction that the City claims it has that would require the Airpark to obtain a site alteration permit.

The City is reviewing the information without prejudice to its position that it may require the Airport to obtain a site alteration permit and may pursue any legal remedies it may choose should the Airport not be able to satisfy the City's concerns.

Meetings have taken place recently between the City and Airport representatives (Mr. Milt Farrow and Mr. Tim Crawford) to facilitate a cooperative approach to addressing the City's request for information regarding the past and current filling operations at the Airport site. The City has requested a grading & drainage plan, current and past soil test reports, the continued maintenance of silt fencing around the work area, securities to ensure contractor performance and permission for City staff to access the site. This information would be required for review by City staff in order for staff to reach a conclusion that a site alteration permit could be issued if one was applied for with that supporting documentation.

Discussions between City and Airport legal counsel have also taken place in this regard. City staff stated that this information must be provided to the City for review at this time, without delay. The required information has begun to be submitted for review; however, to date the submission is not yet complete. Information continues to be received, but there is still more that is needed.

C. On Site Work(s):

The City has requested a grading and drainage plan from the Airport and that disturbed areas be topsoiled and seeded. These are typical requests of a Site Alteration Permit.

- I. An email on May 27, 2013 from Councillor Lancaster advised that the airpark informed her that we would receive a letter with soil test samples and they will work with the City on the esthetics of the berm. To date a letter has not been received.
- II. The City requested soils test reports for current operations as well as past operations dating back as far as possible.

King Paving has the majority of the original soil reports. Milt Farrow followed up with King to organize the reports and to have them photocopied. The 1st portion of the photocopying of the reports was not completed until May 31st. Mr. Farrow delivered 5 reports to the City on May 31, 2013 at 4:15 pm. An additional 15 reports were delivered on June 5, 2013 at 1:30 pm.

- III. Soil test reports that were undertaken years prior are unacceptable because the City has no knowledge of what has occurred on the source site since the tests were undertaken.
- IV. The City does not know where the materials related to specific soil test reports have been placed on the site.
- V. Insurance underwriters: Milt Farrow advised the City that last year, as part of a potential financing arrangement, the bank (Toronto Dominion) was provided with additional soil test reports and a Phase 2 Environmental Site Assessment (ESA). Mr. Farrow agreed to try and get the soil reports back from the bank and provide them to the City. He would also ask Mr. Vince Rossi (Airport Owner) for permission to provide the Phase 2 ESA.

- VI. A “DRAFT” Phase 1 Environmental Site Assessment (ESA) was provided by the Mr. Rossi yesterday as opposed to the Phase 2 ESA as previously discussed.

A request for the Phase 2 ESA report was made this morning.

- VII. If this were a typical Site Alteration Permit process, the City would not in a position to issue a permit because the typically required information has not all been provided.
- VIII. King Paving stated they are still hauling topsoil onto the site. They are likely to have enough top soil quantity to cover the fill areas in the near future.

D. Regulators:

I. Transport Canada:

City Staff continue to discuss activities at the Burlington Airpark with staff from Transport Canada. Specifically, City staff have held discussions with Mr. Greg Cross at Transport Canada. Mr. Cross is a Civil Aviation Safety Inspector with Transport Canada who has direct knowledge of the current and historical operations of the Burlington Airpark. Staff contacted Mr. Cross by phone on May 14, 2013 to pose some basic questions regarding jurisdiction over the fill operations at the airpark and the approval process should the airpark expand.

On the issue of fill, Mr. Cross advised staff that there were no specific rules or legislation pertaining to fill, but re-iterated that anything integral to aviation was under federal jurisdiction. He indicated that importing fill to an aerodrome to build aeronautics facilities would be subject to federal jurisdiction. However, Mr. Cross also indicated that fill could be subject to other authorities (i.e. local, provincial, conservation authority, etc.), citing specifically the ability to regulate the quality of fill. Mr. Cross also advised that fill could fall within federal jurisdiction if it pertained to aeronautics, giving the example that if fill contained magnetic material, Transport Canada would have an interest as this could impair aeronautics.

On the issue of expansion and approvals required from Transport Canada, Mr. Cross re-iterated that the Burlington Airpark is a registered aerodrome, and that there is a distinction between registered and certified aerodromes. Registered aerodromes are registered with Transport Canada, which publishes the Canada Flight Supplement. As such, these aerodromes are required to comply with Part 301 of the Canadian Aviation Regulations. Transport Canada does not typically inspect these facilities, unless there is a need to do so. In terms of expanding or modifying the airpark, Mr. Cross advised that there is no process that the owner would have to follow, except to notify Transport Canada and change the published info in the flight supplement.

Certified aerodromes must comply with document TP-312 – Aerodrome Standards and Recommended Practices. Transport Canada requires an aerodrome to become certified under the following circumstances:

1. Aerodrome has regular passenger service
2. Aerodrome is within a “built up area” – no hard rules on this, but opinion is usually there is “built up area” on 3 sides minimum

3. Deemed to be necessary in the public interest by the Minister (i.e. level of activity of flights could trigger this)

Mr. Cross advised that the Burlington Airpark used to be certified, but believed that the certification was removed around the time the airpark was sold (2006 or 2007). Mr. Cross indicated that it was his opinion that the airpark didn't need the certification based on its operations, and that certification was not meant for this type of aerodrome. He indicated that the airpark did not meet the criteria listed above.

Following this conversation, City staff sent a follow up email to Mr. Cross on June 5, 2013, which contained the following:

1. **Is there a functional or regulatory difference between “airport” and “aerodrome” as defined by Transport Canada?** Based on our previous conversation I am of the understanding that the levels of identification are:
 - a) local airports/aerodromes;
 - b) registered airports/aerodromes;
 - c) certified airports/aerodromes; and,
 - d) for lack of a better term, the highest level of airports (such as Pearson) which I don't believe I noted a name/category for.

However, it has been noted that the Burlington Airpark is now calling itself the “Burlington Executive Airport” and it has been asked if this name change signifies anything from a legislative or regulatory perspective.

2. **Is there any additional information available from Transport Canada, aside from the word document you provided, which outlines Transport Canada's position with respect to the City's ability to enforce its own by-laws?**

One of the key issues regarding the Burlington Airpark is the filling exercise currently underway. Based on our phone conversation, I take it Transport Canada's position is that local authorities (i.e. City and MOE) may choose to impose standards and permitting processes regarding fill, if it does not impair the core aeronautic function. You mentioned something along the lines of fill that contained magnetic material may fall under the jurisdiction of Transport Canada as this could impair aeronautical activities. However, questions remain regarding other by-laws (such as noise, zoning, etc.) and regulations/standards (grading and drainage, dust, fuelling stations, de-icing operations, etc.). City staff are seeking clarity on Transport Canada's position with respect to local by-laws and activities at the privately owned airpark lands.

3. **Does Transport Canada have a position on the current filling activities at the airpark and the proposed expansion plans of the airpark?**

Specifically, does Transport Canada take the position that the current filling operations are related to aeronautics? If the airpark wishes to expand its facilities (i.e. lengthen runway, increase air traffic, attract larger planes/jets, build new terminal and hangars, etc.) does Transport Canada support these plans?

4. Can the process of certification be explained in more detail or is there clear documentation of how this process works that can be provided?

You mentioned that to become certified an aerodrome would have to follow TP-312 – Aerodrome Standards and Recommended Practices. The airpark has stated that it has no intention of becoming certified, but City staff seek clarity on this process anyway to understand when/how it would happen and whether there is any opportunity in that process for municipal input. Staff would like to know exactly how an aerodrome becomes certified and what certification means from a regulatory and monitoring perspective (i.e. does certification mean a greater involvement and monitoring by Transport Canada?)

5. Can Transport Canada provide clarity on the circumstances that Transport Canada would require certification? In our conversation you outlined three scenarios that Transport Canada would require certification under. These are:

- a) Aerodrome has regular passenger service – what is the criteria that determines “regular passenger service”? Does this pertain to a class or classes of aircraft? Length of runway? Number and distance of flights?
- b) Aerodrome is within a “built up area” – you mentioned that typically the “built up area” must be present on three sides of the airpark to fall within this category. Further to this, what is the definition of “built up area”? Is there a certain density or land use category used to make this determination? Does the number of nearby residences factor into this? Is consideration given to private services (i.e. local wells)?
- c) Deemed to be necessary in the public interest by the Minister – Is there a mechanism by which a municipality or resident can request a review of the airpark under this scenario? Who would be the appropriate contact to explore this avenue? An example you gave was the level of flight service, but are there any other criteria used (i.e. .comment above regarding number of nearby residences, private wells, etc.)?

6. Is Transport Canada willing to conduct an inspection/review of the current airpark filling operations and construction activities?

You mentioned that there typically is no inspection of registered aerodromes by Transport Canada. Is it possible for the Municipality or a resident to request Transport Canada to inspect the airpark? Can Transport Canada require the submission of expansion plans for review?

Mr. Cross provided a quick response indicating that he would endeavour to provide responses to these questions by June 7, 2013, as requested by City staff, after consulting with other Transport Canada staff internally.

II. Environment Canada:

The Ministry of Environment (MOE) – Halton Peel District staff advised the City that in the early stages of the filling operations (approximately 2007), Environment Canada determined that the filling operations were not under Provincial Jurisdiction (MOE). [Mr. Tim Edwards, District Engineer]

III. **Ministry of the Environment (MOE)**

The City has not advised the MOE that there are off-site impacts as the City does not have any documentation demonstrating this.

The City has advised the MOE that a new storm sewer outlet was installed that drains into the regulated watercourse.

The local MOE contact person is:

Alison Rodrigues
Issues/Project Coordinator
Halton-Peel District, Central Region
905-319-7289
Alison.rodrigues@ontario.ca

IV. **Conservation Halton**

The following Q&A was provide via the authority;

1. **Did the owners of the Airpark have to obtain similar permits and if so, why weren't the residences of the area notified of the impending work and where were the public meetings?**

The Airpark has not obtained permits from Conservation Halton for the filling activities that have occurred on-site.

2. **Do you have inspectors in the field checking as to what is going on?**

Conservation Halton staff have been inspecting the property in light of the filling activity. A small portion of the Airpark property is located within our regulated area as defined under the Development, Interfere with Wetlands and Alterations to Watercourses and Shorelines Regulation 162/06. These regulations are implemented in order to protect life and property from the adverse effects of flooding and erosion, to conserve land and water and to prevent pollution that may result from activities within river systems, lake systems and wetland areas. An on-going investigation into this filling activity at the Airpark is occurring.

3. **Comments as to the control that your organization is enforcing over the development and what course of action you are taking to ensure that it remains an Airpark and no more.**

For unauthorized activities (i.e. works that have occurred without approved permits under the noted Regulation), the Conservation Authority undertakes investigations to determine if violations under our jurisdiction have indeed occurred. If so, Violation Notices to the property owners are provided and staff work to rectify those violations with the property owners. Sometimes violations are resolved outside of court; sometimes, they are resolved through court proceedings.

City Staff attended a site meeting at the airpark on June 6, 2013. This meeting was also attended by representatives of Conservation Halton, the Region of Halton, King Paving, Mr. Marko Radisic (owner of 5431 Appleby Line) and airpark representatives. The meeting was coordinated by Conservation Halton staff based on preliminary comments they submitted regarding the active consent application for 5431 Appleby Line. This application is currently on hold, but proposes to transfer a 12.95 ha portion of land to the airpark. Staff examined some of the filling operations, the crossing of a hauling route over a watercourse feature, and the lands at 5431 Appleby Line. Conservation Halton staff primarily inspected the watercourse feature but did not offer any formal opinions on any impacts to this feature from the filling operations. In addition, City and Region staff inquired as to whether the airpark and the owner of 5431 Appleby intend to proceed with the consent application. The airpark owner indicated that he is still going to proceed with the application and that should he be able to acquire the lands he would initiate the proposed runway expansion, but that there were no formal plans prepared (i.e. site plan or survey sketch) indicating the location, length, etc.

V. **Region of Halton:**

The follow memo is addressed to the Chair and Members of the Planning and Public Works Committee, from Mitch Zamojc, P.Eng., Commissioner of Public Works. Dated June 12,2013

This memorandum provides supplementary information to the memorandum entitled “Burlington Executive Airport Fill Placement - Appleby Line (Regional Road 20), City of Burlington –Delegation” included in the agenda for the June 12, 2013 meeting of the Planning and Public Works Committee.

The memorandum previously provided to Committee indicated that “Trucks bringing fill into the Airport are entering the site via an existing farm field access off Appleby Line.” Staff would like to provide clarification as there are in fact three accesses to the site off Appleby Line. (Please see attached map.)

Accesses

The first, northerly, access is a permanent rural commercial access with a municipal address of 5351 Appleby Line constructed under a permit issued by the Region in July 2008. This access is currently in use. The permit for the construction of the north access was issued to the Burlington Air Park as a commercial permit, and was not associated with a development application or any other application. At the time the permit for the north access was issued it was anticipated that it would be a permanent entrance which would initially be used for truck access for a period of approximately one year.

The second, middle, access is an existing farm field access with a municipal address of 5351 Appleby Line. This access does not appear to be in use.

The third, southerly, access is an existing farm field access with a municipal address of 5260 Bell School Line (fronting Appleby Line). This access has been improved and is currently in use. The improvements to the southerly access were constructed in 2011 but no permit was issued by the Region for the work.

In reviewing the current use of the southerly access it appears that there is significant truck traffic entering and exiting the site via this access. Site lines in the area of the south access are limited and

an evaluation of the access is required to ensure that it is safe. Accordingly the Burlington Executive Airport is being requested to submit an application to “Modify an Existing Entrance”.

As part of this application the owners will be required to submit a traffic impact study and safety audit, addressing the use and configuration of the access, for review by the Region. This study is to be prepared by a consulting engineer acceptable to the Region. Until such time as the application process is complete and any recommendations implemented, all vehicular movements into or out of the south access will be suspended. In this regard, it will be necessary for the Region to enact a Bylaw in accordance with Section 11 of the *Municipal Act*, in order to exercise its authority under Section 35 of the *Act*. This By-law will restrict/remove the owner’s right to access Appleby Line from the most southerly existing access, until such time as the requisite traffic impact study and safety audit are completed and a final recommendation is implemented. Staff will contact the owners of the Burlington Airport to advise them of the Region’s intention to suspend the use of the south access and will present a By-law for Regional Council’s consideration, which will temporarily rescind the owner’s ability to utilize this access until such time as a final evaluation and resolution of the safety concerns referenced above are completed and implemented.

Mud Tracking

Since the completion of the north access in 2008 a number of complaints have been received regarding mud tracking on Appleby Line. Complaints of this type are forwarded to Regional road maintenance staff for action. Where the source of the tracking is evident the owner of the property is directed to clean the road. If the owner fails to clean the road within the specified period, typically 24 hours, the Region will arrange for the cleaning and charge the cost to the owner. In the case of the Airport, the owner has worked with staff to prevent mud tracking and has responded to complaints as they are received.

It is also noted that, in accordance with the Provincial Minimum Maintenance Standards for Municipal Highways, staff regularly patrol Regional roads to ensure that they are maintained in a state of good repair. Appleby Line the area of the Airport is a Class 3 road and is patrolled weekly. Any tracking of mud identified through these patrols would be addressed in the manner described above.

<Mitch Zamojc P.Eng. SIGNATURE>
Mitch Zamojc P.Eng.
Commissioner, Public Works

E. The 2007 ticket we have...

In December of 2008, the airpark provided to the City a scanned PDF of a soil sample report pertaining to fill being imported to the site at that time. This report consisted of a cover letter signed by a consulting engineer as well as a one page "Certificate of Analysis". The cover letter indicated that this soil originated from an area adjacent to the Bronte Road and QEW interchange. This report was provided to the Manager of Development, Environmental and Transportation Engineering at that time. His review concluded that the sample size was very small in consideration of the size of the filling operations, but noted that based on the numbers provided, the particular sample was of acceptable quality.

Staff are of the understanding that soil sample information was also forwarded to the Region of Halton in March of 2009. Region staff indicated that upon reviewing this information, the results met the Regional and Provincial standards for potable water as required in Table 2 of the Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act. City staff are not certain as to the amount of information provided to the Region at that time (i.e. number of reports, etc.) but will obtain these details from Region staff. In addition, staff note that the Region offered to continue to review these reports for subsequent fill to be imported, but City staff are uncertain as to whether any additional soil reports were provided to the Region by the airpark owner.

F. Quality of Life:

The neighbours have had to live with what I can only imagine is a high level of anxiety and uncertainty living next to this airpark which has not provided their plans to the City.

Noise exemption bylaw, we have received an enquiry from the airport representative on this topic. It is our opinion that this bylaw does apply and we would not grant an exception to haul fill material between the hours of 11pm and 7am either on site or off. Bruce Krushelnicki, the Chief Noise Control Officer for the City, can refuse to grant an exemption to the noise by-law, as can Council. If the City receives noise complaints of an activity such as loading and unloading outside of the permitted hours, an offence notice (\$300.00 fine) can be issued for each day the offence continues. To seek a much larger fine and or a prohibition order, an appearance before a Justice of the Peace would be required with all relevant evidence presented for trial.

As of Friday, June 6th the City has received written notice that the Airport plans to haul the Hwy 407 asphalt grindings to the Airport site during daytime and night time. An excerpt from the email notice also states:

"the Airport takes the position that our construction activities are not subject to municipal bylaws because of the exclusive jurisdiction of the federal government over aeronautics, including the construction of permanent facilities at the Airport."

G. E-MAIL from Minister Raitt's office:

From: lisa.raitt.c1b@parl.gc.ca [mailto:lisa.raitt.c1b@parl.gc.ca]

Sent: Monday, May 27, 2013 4:54 PM

To: Isada, Jackie

Subject: Aerodrome

Dear Jackie,

Thanks again for contacting our office in regards to federal regulations on aerodromes.

The Burlington Airpark is a “registered aerodrome”, which means that it is an aerodrome where the operator has provided its aeronautical data to Transport Canada and it is published in the Canada Flight Supplement (CFS).

The federal government, through the Aeronautics Act, has sole jurisdiction over aeronautical matters, which includes aerodromes and all related buildings or equipment at aerodromes used for aviation purposes. The federal government’s exclusive mandate extends only to matters integral to aeronautics. However, the laws of other jurisdictions may still apply. Aerodrome operators need to identify and comply with all applicable legislation.

TC’s role varies depending on the type of aerodrome; certified, registered or un-registered.

This case is with respect to a registered aerodrome. Therefore, TC’s role in this expansion is to verify that the information contained in the Aeronautical Information Service (AIS) related to this aerodrome is updated, which is done after the expansion takes place. If the runway expansion raises safety issues, then TC would get involved.

Given it is not a certified aerodrome, there is no certification involved in expanding this aerodrome.

Transport Canada encourages aerodrome operators to be aware of other jurisdictions, which might include other federal or provincial legislation or municipal by-laws, where the elements in question are not integral to the operation of the aerodrome. The question of the application of environmental laws however, is not a question that Transport Canada can determine.

Burlington Airport/Airpark is neither owned nor operated by Transport Canada. As stated, our jurisdiction is only related to aeronautical matters (safety regulations etc.) Consequently, we have no information on soil contamination at the Burlington Airport/Airpark.

Any concerns regarding soil contamination due to drainage into a local creek would be the concern of environmental regulatory agencies. In this case, the Ontario Ministry of Environment would likely be the responsible agency. Their public information number is 416-325-4000.

Additional contact information can be found at:

<http://www.ene.gov.on.ca/environment/en/main/contacts/index.htm>

Once again, thank you for contacting our office. Should you have any further questions, comments or suggestions in the future please do not hesitate in contacting us.

Best Regards,

Andrew Sidnell, Special Assistant

The Office of The Honourable Lisa Raitt, P.C., M.P.
Member of Parliament for Halton
T: 905.693.0166
F: 905.693.0704
Lisa.Raitt.c1b@parl.gc.ca<mailto:Lisa.Raitt.c1b@parl.gc.ca>

H. Securities:

Securities to ensure contractor performance were requested from the Airport. Mr. Grenier's (Airport lawyer) letter dated May 27, 2013 states: "The Letter of Credit typically provided further to By-law 6-2003 will not be provided by the Airport as the said By-law does not apply to the construction activities at the Airport."

I. Some History:

Conservation Halton Letter of Advice

In 2008, City staff contacted staff at Conservation Halton to determine their involvement in regulating the filling operations at that time. CH staff indicated they had issued a Letter of Advice (LOA) pursuant to their Level II Agreement with the Department of Fisheries and Oceans (DFO), and that the airpark was subject to DFO approvals which deal with federal fisheries legislation. CH staff also indicated that they did not issue a permit under their regulations because they were of the understanding that the airpark was exempt. City staff obtained a copy of the LOA, which pertained to the installation of a 600mm CSP culvert crossing of a tributary of Indian Creek. The LOA was issued on the basis that the work proposed did not result in the harmful alteration, disruption or destruction of fish habitat, but also contained a number of conditions (such as sediment and erosion control) that were to be implemented and maintained.

In 1999 the airpark (under the previous owners) received approval of a consent application from the City's Committee of Adjustment (Land Division Committee) to acquire a 12.7 ac portion of land to the south (from 5071 No 2 Side Road). This decision was appealed to the OMB by a resident. The OMB upheld the Committee's decision noting various reasons. There is discussion in the OMB decision on various matters such as the history of the airpark, policy framework in effect at time of application, planning issues, safety issues (which included testimony from a Transport Canada staff member), and noise issues. In addition, the decision indicates that City and Region planning staff supported the application. It appears that the reasons for acquiring the land were for the purposes of "protecting the airspace at the end of the runway", and that there were no plans to extend the runway at that time. However the runway was subsequently lengthened and paved to the extent shown today, but City staff are uncertain as to when this occurred. Staff believe this could have occurred in or around 2002, and that filling operations occurred at that time to facilitate the extension. Staff will continue to investigate to obtain detail on this history.

J. Amend the fill By-law:

The Engineering Department will review the Site Alteration By-law with the intent of revising/updating it before the end of this year.