

Development and Infrastructure Division

TO: Mayor and Members of Development & Infrastructure Committee

SUBJECT: Burlington Executive Airport Update #9 – February 3, 2014

Discussion:

The following is a summary of the issues that have been addressed or are in the process of being addressed since the last update to Council, on January 13, 2014.

Other Regulators:

MOE Updates

Results of the Airpark's groundwater testing program are not available as yet from the MOE.

Transport Canada Advisory Circular

On December 18, 2013, Transport Canada released Advisory Circular No. 300-009 entitled "Land Use and Jurisdictional Issues at Aerodromes". Advisory Circulars are published by Transport Canada to provide examples of acceptable means of demonstrating compliance with regulations and standards. They are prepared for a wide range of categories and range from very technical matters related to aeronautics to more general matters.

The stated purpose of this particular Advisory Circular is to provide guidance for Transport Canada officials and others on land use issues and jurisdictional issues surrounding aerodromes. The document notes that questions have arisen "respecting the use of contaminated fill, paint fumes, the improper disposal of solvents and paints in the local drainage system, the building of hangars etc. and the application of provincial and municipal laws to these activities."

The document states that the Aeronautics Act does not grant immunity to an aerodrome operator/developer from compliance with all other valid provincial legislation or municipal by-laws. The document concludes "For those structures or activities that are determined

not to be integral to aviation, it is expected that the proponent of an aerodrome comply with all applicable provincial legislation and municipal by-laws. It is expected that the proponent comply with all applicable federal legislation regardless of whether or not structures or activities are integral to aviation.”

Transport Canada’s clarification of its position on this issue through the Advisory Circular is consistent with the opinion that the City had received from Transport Canada staff, and is consistent with the City’s position on the applicability of the City’s Site Alteration By-law.

Reference to this Advisory Circular was incorporated into the City’s factum in support of its position on Burlington Airpark’s appeal to the Ontario Court of Appeal. The Advisory Circular has been sent from the City to both the Region Health Unit and MOE.

Update on FOI Request to MOE for Monitoring Plan and Details

As noted in the last update, the MOE’s decision on the City’s FOI request was to partially release the information requested. Staff have received the released information from the MOE in PDF format on compact disc, and are currently reviewing it. Primarily, the information provided consists of items the City was already in possession of, such as copies of the Phase 1 and Phase 2 Environmental Site Assessments for the Airpark property.

Given that the decision by the MOE was to partially release the information, staff have submitted an appeal of this decision to the Information and Privacy Commissioner of Ontario. The required documentation and fee was submitted via mail on January 28, 2014. Staff have followed up with the IPC office to ensure the submission was received, but as of the writing of this report no response has been received.

Legal Matters:

Factums containing legal arguments for both the Burlington Airpark and the City of Burlington have now been filed. The City’s factum was filed with the Court of Appeal on January 21, 2104.

The Court of Appeal has not scheduled the appeal hearing to date.

Communication Matters:

The legal arguments filed by the City of Burlington and the Burlington Airpark with Ontario Court of Appeal regarding Burlington Airpark Inc.’s appeal of November 13, 2013 decision of the Superior Court of Justice have been posted on the airpark page of the city’s website: www.burlington.ca/airport. This update will also be posted on the airpark page of the city’s website.

Conclusion:

This report has been provided for information.

Respectfully submitted,



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