

State of Vermont
Environmental Division
of the
Superior Court

Re: Request for Jurisdictional Opinion re:
Changes in Physical Structures and Use at
Burlington International Airport for F-35A
Vermont Air National Guard Jets

Environmental Court Docket No.42-4-13 Vtec
Jurisdictional Opinion #4-231

APPELLANTS' STATEMENT OF UNDISPUTED FACTS

A. OBJECTION TO CITY'S SOUF

Appellants object to Paragraphs 12, 14 and 22 of the City's Statement of Undisputed Facts.

See Part 5 of Appellant's Reply to Defendants' Motion for Summary Judgment.

B. APPELLANTS STATEMENT OF UNDISPUTED FACTS

1. The VANG itself agrees on its status as a state agency subject to state environmental laws. In Petition of Vermont Air National Guard for A Certificate of Public Good authorizing the Construction of a 2.1 MW solar array at the Vermont Air National Guard Base at the Burlington International Airport, South Burlington, Vermont, Docket No. 7755, the VANG filed a petition with the PSB alleging that it is "the military department established under 3 V.S.A. § 212 and 20 V.S.A. § 361(a)" and that it "is subject to the Vermont Public Service Board's jurisdiction pursuant to § 203 of Title 30." (Appellants' Statement of Undisputed Facts ¶ 1, and Attachment A, the VANG Petition). The VANG sought the PSB's approval for construction of a solar farm at the same VANG base that is the subject of this Jurisdictional Opinion appeal. The Board approved. Its ruling, dated 9/29/11, found that the petition was from the military department of the State of Vermont, and that the petition, supported by prefiled testimony, satisfied each of the criteria of 30 V.S.A. § 248. Analysis of aesthetic impacts was performed under the Quechee precedent. Attachments 1A and 1B.
2. The City of Burlington also -- in the past -- has agreed that improvements made on the lands it owns at the Burlington International Airport to the VANG are subject to Act 250 jurisdiction, as well as all other state environmental jurisdiction. The City applied for and was granted Land Use Permit 4C0331-20, for the demolition of an existing hangar and office used by the VANG and its replacement by a larger hangar and office "to house relocated employees of the Air National Guard." The City agreed, and the District Commission found, that this work required an amendment as a "material and substantial change" to the City's basic airport construction permit, Land Use Permit #4C0331. See

Land Use Permit 4C0331-20 (March 25, 2005), attached. The Permit incorporates Waste Water Permit WW-4-1042-4, issued February 25, 2005. The City's application for the Waste Water permit described the applicant's tract of land as 942 acres, *i.e.*, the Burlington International Airport. Attachment 2.

3. According to the final EIS excerpt submitted by the City as an attachment to its motion, the project would include the following physical actions on the project site: internal renovation of Building 120 for an "F-35A simulator;" adding "270 DC, 28 DC Power in Aircraft Shelter Parking Areas (Buildings 130, 131, 132, 150, 360);" providing "Secure/Classified Upgrades in Rooms 0004/004A, Building 140," and providing a "Secure Parts Storage Area for ALIS, Building 70 Warehouse." (See section BR 2.1.3 and Table BR2.1-2 at pages BR4-4, BR4-5 and BR4-6.) The EIS refers to these changes as "construction... within existing facilities" and states that this construction will cost nearly \$4.7 million (EIS p.BR4-6). Attachment 3
4. The EIS states that the lands used by the 158th Fighter Wing of the VANG involve 280 acres and 44 buildings. The EIS states that the entire mission of the 158th Fighter Wing would shift to maintaining and flying the F-35 jets. (EIS p. BR4-1). Attachment 4.
5. The main runway at the Burlington airport is runway 15-33. Neither the VANG nor the Air Force leases this runway. It is shared. There are numerous Act 250 permits which have been applied for and granted which govern this runway. (District Coordinator's J.O. ¶¶ 8 and 19 and Stanak Affidavit, citing Land Use Permits # 4C0331-13 and Amendments -A, -B and -C and Land Use Permit # 4C0331-26). Attachment 5.
6. The proposed use of the airport by the 158th Fighter Wing will involve use of this Act 250-permitted runway, since no new construction of any runway is planned and the 15-33 runway would be the one used by the F-35. (CBSOUF ¶¶19-21, FEIS p.BR4-35). Attachment 6.
7. According to the EIS conducted by the U.S. Air Force, (Table 2-12, p.2-32; Table BR 3.10-2; Table BR 3.10-3; Table BR3.2-14; pages BR4-35, BR4-67, BR4-68,) *1,444 additional homes and 3,117 additional individuals, i.e.*, in addition to those already impacted by F-16 jets, would become part of what the Federal Aviation Administration (FAA) considers an area "*incompatible*" with residential use, those areas exceeding the 65 DNL noise standard, because of the noise impacts of the F-35 jets that would take off and land on the Act 250-permitted runway. Of these additional persons affected, 182 additional persons would be exposed to DNL noise levels in excess of 75. The DEIS explains (Table 3.2-1, page BR4-23) that one reason for the change is that using the instantaneous Lmax scale -- which is the standard that the Environmental Board's precedents favor (see McLean Enterprises Corp., No. 2S11147-1-EB, 11/24/2004) -- at certain locations the F-35 will be 21 dB higher than the F-16 on take-off, 22 dB higher than the F-16 on arrival, and 25 dB higher than the F-16 on Low Approach and Go. Each 10 dB increase means a doubling in loudness, so a 20 dB increase means the noise will be perceived by the human ear as *four times louder than the F-16*. (EIS p.3-7). Attachment 7.

8. The EIS (p.BR4-78) notes that in Chittenden County as a whole the average annual number of building permits for the past decade has been 573. *The number of additional residential units rendered incompatible with residential use, by introduction of the F-35s, will be the equivalent of 2.4 years of new construction of homes in all of Chittenden County.* Attachment 8.
9. The City's 2012 Master Plan for the airport explicitly contemplates that additional homes "will" be purchased and demolished in the future because of military aircraft noise. (Airport Master Plan). Attachment 9.
10. South Burlington and Chittenden County already suffer from a shortage of affordable housing. The South Burlington Comprehensive Plan states: "Existing and developing residential neighborhoods shall be identified and protected through appropriate zoning and responsible site planning. Many of these residences constitute an irreplaceable, lower cost segment of the City's housing stock." Other parts of the Plan reiterate this point, for example stating that "providing for housing is a fundamental element of the Plan." Protection of housing availability and quality, and in particular protection of affordable housing subsidized by government programs, receives even greater emphasis in the Winooski Municipal Plan. See, e.g., pp. 5-7, 20, 23-26. Page 7 also notes that the Burlington International Airport is growing "at the expense of the airport's residential neighbors" because of the impacts of noise on residential neighborhoods. It warns that "this situation may worsen as the operation of the airport grows." (Plans). Attachments 10A and 10B.
11. There are 17 other airports in Vermont. Eleven of those are owned by the State of Vermont. (See Vermont Agency of Transportation website, <http://aviation.vermont.gov/airports>). None of the other airports is located in a heavily populated urban area. Attachment 11.

December 2, 2013

Richard Joseph et al.

BY:

James A. Dumont

James A. Dumont, Esq.