

# **3 Articles Explaining the Controversy over the F-35A basing in VT**

**(published in *VT Digger*)**

## **#1 – “Quite a pair of stings for F-35 basing”**

Posted By [Opinion](#) On May 21, 2013 @ 11:06 pm In [Opinion](#)

*Editor's note: This piece is by James Marc Leas, a patent lawyer in South Burlington.*

The Boston Globe report that Pentagon officials “fudged” numbers in their F-35 base selection process was only the first of two near simultaneous blows to F-35 basing in Burlington. That story so dominated the news that the other equally devastating blow to first round F-35 basing in Burlington was completely upstaged and overlooked by all the local news media: The Air Force said that its entire fleet of F-16s will be upgraded and its life extended.

### **The first sting: “Fudge-gate”**

The report of “fudging” appeared on the [front page of the Boston Globe](#) <sup>[1]</sup> on Sunday, April 14, and was written by the Globe’s respected Pentagon reporter, Bryan Bender. The story quoted a Pentagon official making four key points:

1. “The base-selection process was deliberately ‘fudged’ by military brass so that Leahy’s home state would win.”
2. “Unfortunately Burlington was selected even before the scoring process began.”
3. “I wish it wasn’t true, but unfortunately that is the way it is. The numbers were fudged for Burlington to come out on top.”
4. “If the scoring had been done correctly Burlington would not have been rated higher” [than the other National Guard locations under consideration by the Air Force].

Sen. Patrick Leahy is the most senior senator of all, and he holds sway over the Air Force budget. His office forcefully asserts that Sen. Leahy “made no attempt to influence the process.”

Regardless, applying influence is one thing. For top Pentagon officials to “fudge” the numbers in a supposedly objective scoring process is another.

The Globe “Fudge-gate” story was just the beginning. During the next several days more information was revealed as “Fudge-gate” stories appeared on all the Burlington local TV stations, Vermont Public Radio, Seven Days, the Burlington Free Press, and VTDigger.

After releasing the scoring sheet for Burlington, without logical explanation, the Air Force rejected a Freedom of Information Act request to release the scoring sheets for all the other sites considered in its scoring process. An appeal of that rejection was filed in Federal Court by Vermont attorney Jim Dumont on May 4, 2013. The [Burlington Free Press](#) <sup>[2]</sup> article added important details, including quotes from Sen. Leahy’s spokesman and from Frank Cioffi, president of the Greater Burlington Industrial Corporation (GBIC). Their strenuous denials unintentionally confirmed the seriousness of the charges.

The [scoring sheet for Burlington](#) <sup>[3]</sup> shows Burlington getting six points where it should not have. Burlington got three points for answering “no” (leaving the box unchecked) to the question, “Is there incompatible development in clear zones and/or accident potential zones?” Burlington got another three points for answering “no” to the question, “Is there incompatible development in the noise contours about 65 dB DNL?”

Sen. Bernie Sanders asked the Air Force to release the scoring sheet after a front page Burlington Free Press article, “Councilor: ‘Grave mistakes’ in ranking Burlington for F-35,” published on July 13, 2012, quoted a Pentagon official telling South Burlington City Council member Rosanne Greco that the supposedly objective base selection process included scoring sheets, and that the scoring sheet for Burlington had numbers out of line with reality.

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## The second sting: Air Force is upgrading and extending life of F-16s

Appearing just two days after the Boston Globe article, a seemingly neutral fact announced in an [Air Force Times](#) <sup>[4]</sup> article busted all rationale for Burlington to continue being in the first basing round for the F-35. According to the Air Force Times, the Air Force is upgrading its whole inventory of F-16s, adding eight to 10 years to their lifetime.

Thus, the underlying pretext for rushing to replace the Vermont Guard's F-16s in the very first F-35 basing round evaporated. With dozens of F-35 basing rounds anticipated, the Burlington Air National Guard can delay F-35 basing until a much later basing round while continuing to fly its upgraded F-16s. Even better, the Air Guard can use the time to find a mission compatible with the residential character of the Burlington airport.

Unless, of course, any serious hope for basing the F-35 in South Burlington depends on the fudged numbers in the scoring sheets and F-35 sponsors don't think they will get another chance to fudge.

Here is how the April 16 [Air Force Times reported](#) <sup>[4]</sup> the end of all argument for the notion that Burlington must urgently get the F-35 during its very first basing round:

The Air Force plans to upgrade all 1,018 of its F-16s and 175 F-15C/D Eagles to keep them flying until the F-35A joint strike fighter is fully operational and new weapons systems on the F-22 Raptor are installed, according to the 2014 budget request released April 10. In the fiscal 2014 budget request, the Air Force states the service life extension for all F-16s will add eight to 10 years to each airframe, along with upgrades to the fighter's radars, cockpit displays and other communications interfaces.

Within the same week of those two bombshells, on April 18, the Burlington Free Press reported the [Air Force announcement](#) <sup>[5]</sup> that it is delaying its final decision on first round F-35 basing until this fall.

The added months give plenty of time for a member of the Vermont congressional delegation, the governor, or the mayor of Burlington to ask the General Accounting Office, the Vermont attorney general, or the Chittenden County state's attorney to appoint an independent and impartial investigator to examine the facts and issue a report on the Fudge-gate controversy before any final basing decision is made.

Were the scoring sheets fudged not just for Burlington but also at any of the other sites considered by the Air Force? What explains the intense push to base the F-35 at a densely populated commercial airport in Vermont? What happens if we "follow the money," reminiscent of one of the most fruitful parts of the investigation of the [Watergate scandal](#) <sup>[6]</sup>? Is the Vermont Air National Guard being used for purposes having nothing to do with its military mission?

Fudge-gate may not just be about pleasing the most powerful member of the U.S. Senate, Patrick Leahy. The reason the scoring sheets were fudged may have a big money connection, too. That connection will be described in a forthcoming article.

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## #2 – "Follow the money – the F-35 Fudge-gate scandal"

Posted By [Opinion](#) On May 22, 2013 @ 11:42 pm In [Opinion](#) |

*Editor's note: This piece is by James Marc Leas, a patent lawyer in South Burlington.*

Is the Vermont Air National Guard being used for purposes having nothing to do with its military mission? The answer is yes. Big time. And for big money. In the article, "[Quite a Pair of Stings for F-35 Basing](#) <sup>[1]</sup>" on VTDigger I described how the scoring process was fudged. This article will follow the money to see why.

Interestingly, those who stand to gain the big money did not have to invest many of their own dollars to position themselves. They got the taxpayers to do that for them. The city of Burlington applied for and received a federal grant of \$40 million to buy 200 families out of their affordable homes near the airport entrance, and the city now holds title to most of those homes. Fifty-five have so far been demolished. Another hundred homes stand vacant awaiting demolition. Other homes are awaiting purchase for demolition.

The federal government put up the money to buy those 200 homes as "mitigation" for F-16 noise above 65 decibels day-night average sound level (DNL), the noise level the federal government considers "unsuitable for residential use." A [report about Burlington International Airport prepared for the Federal Aviation Administration](#) <sup>[2]</sup> (the "FAA report") says that "land acquisition and relocation is the only alternative that would eliminate the residential incompatibility" with that noise level (page 29).

Interestingly, certain Vermont officials, including Sen. Leahy and Gov. Shumlin, continue to repeatedly suggest that the F-35, which the [Air Force draft Environmental Impact Statement](#) <sup>[3]</sup> (EIS) says is more than four times louder than the F-16, would be fine for thousands more Vermont families who live in affordable neighborhoods of Winooski, Burlington, Williston and South Burlington. The Air Force draft EIS says the F-35 would put their homes within that same 65 dB DNL noise contour that the federal government considers “unsuitable for residential use.”

According to a chart in the FAA report (page 6), different land uses have different federally mandated noise limits. Noise levels that make a home “unsuitable for residential use” are perfectly fine for commercial and industrial activity. This may be because residential use generally involves children going out to play, open windows during spring, summer and fall, family conversation, and sleeping. Hotels and other commercial buildings may have permanently closed windows and incorporate other measures in design and construction to achieve substantial sound reduction. This difference in FAA mandated noise limits is what the big money people will exploit.

The FAA report indicates that the land within the high noise contours is not scheduled to be left as green space. Taking into account the fact that land unsuitable for residential use can still be used for commercial and industrial activity, the FAA report calls for adoption of a “Reuse Plan.” In fact, the FAA report says, “preparation of a property reuse plan is an FAA grant requirement.” Thus, the affordable residential properties the city of Burlington acquired with \$40 million of federal funds in South Burlington are being demolished to be made available for non-residential reuses.

The empty land from those 200 families is in fact being eyed by certain developers who stand to make lots of money by putting up commercial buildings near the airport entrance — similar to the commercial development one sees at other airports. The president of one of the state’s biggest commercial developers, Ernie Pomerleau, is a member of the Airport Strategic Planning Committee. Its meetings openly discuss things like building hotels and other commercial real estate on land next to the airport that used to be a thriving community of tiny affordable homes.

### **Vermont Air Guard vastly increased F-16 noise**

Commercial flights had nothing to do with driving out the 200 families. The Air Force draft EIS states that “The contribution of civilian aircraft is negligible compared to the military aircraft contribution” to Burlington airport noise (page BR4-21). In the neighborhood near the airport entrance, the major component of F-16 noise comes from the use of the afterburner by F-16s for routine takeoffs.

Routine afterburner use on takeoff was not required with the original configuration of the F-16. Only when the Vermont Air Guard switched from an external fuel tank located under the fuselage to tanks mounted to the wing tips did pilots find that they needed to use the afterburner for takeoff.

Just in time to push that rezoning for commercial development, heavily moneyed interests recently formed a political action committee (PAC) and spent an unprecedented amount to almost literally purchase seats on the South Burlington City Council for two pro-developer candidates in the March 2013 election.

The F-16 fuel tanks, the afterburner, the noise, and federal funds were all methodically and smoothly used to remove the 200 families living peacefully in affordable homes. Without any hearing, a thriving community of affordable homes was destroyed in favor of the Vermont Air Guard changing the position of its external fuel tank — and in favor of making this consolidated acreage available to commercial developers.

The only remaining obstacle between those developers and giant profits is the level of South Burlington city government willingness to rezone the newly vacated land from residential to commercial.

Just in time to push that rezoning for commercial development, heavily moneyed interests recently formed a political action committee (PAC) and spent an unprecedented amount to almost literally purchase seats on the South Burlington City Council for two pro-developer candidates in the March 2013 election. While the amount spent was among the highest ever to buy a city council seat in Vermont, it is a tiny fraction of the projected gain developers can expect from redeveloping the land when the remaining houses are torn down and Burlington makes the land available to the commercial developers.

Of course, there would have been no urgent reason to tear down any of those homes if the F-16 was going to be soon phased out and replaced by quieter equipment more suitable for a commercial airport located in a valued affordable residential area. Fudging the scoring so as to introduce the even louder F-35 to replace the F-16—supported by Senator Patrick Leahy, Senator Bernie Sanders, Congressman Peter Welch, Governor Peter Shumlin, and Burlington Mayor Miro Weinberger—consolidated the plan to destroy this affordable neighborhood.

While federal money was obtained to purchase the 200 homes in the high-value vicinity of the airport entrance, no federal money will be available to purchase the homes of the thousands more families in Winooski, Burlington, Williston and South Burlington whose homes will similarly be made “unsuitable for residential use” by the much louder F-35. Those residents will be left to take the hit to their lives and property values on their own.

Burlington is applying for no federal grant, and has no intention or desire to buy up the 3,000 parcels located in the noise and crash zones in the flight path at both ends of the runway if the F-35 is based here.

The difference is that those thousands of homes are not located on commercially valuable land, such as the land in South Burlington near the airport entrance.

### **Airport expansion plans — another developer-soaked dream**

The Air Force says the F-35 is more than four times louder than the F-16. Just as F-16 noise was vastly increased and harnessed to acquire federal money and use it to eliminate residential neighborhoods and make their valuable real estate near the airport entrance available to commercial developers, F-35 noise might in another way work magic for the developers: to facilitate major airport expansion goals. The F-35 is so loud that any amount of noise from the goal of doubling commercial jet traffic will be totally negligible compared to the F-35 noise. Just as the shift in the F-16's external fuel tanks and routine afterburner use is now being leveraged to remove housing near the airport entrance for commercial development, continued massive military jet noise from the F-35 can be leveraged for ambitious airport expansion to pass zoning and Act 250 review.

The fudge reported by the Boston Globe may only be the frosting on the cake.

### **Family connection**

A Hollywood story about a developer hoping to win big profits while thousands of families lose their affordable homes would never leave out some sort of love or family connection.

This Burlington story is no exception: Sen. Patrick Leahy is [nephew-in-law of Tony Pomerleau](#) <sup>[4]</sup>, chairman of Pomerleau Real Estate, one of Vermont's largest commercial real estate developers. Sen. Leahy is cousin-in-law of Ernie Pomerleau, president of Pomerleau Real Estate and head of its Commercial Development Investment Division. Ernie Pomerleau is also a member of the [Airport "Strategic Planning Committee"](#) <sup>[5]</sup> that is leading the charge for airport expansion. [Ernie Pomerleau accompanied Gov. Peter Shumlin](#) <sup>[6]</sup> on his private jet flight to "listen" to the F-35 at Eglin Air Force Base last December. And Ernie Pomerleau is a member of the board of the GBIC.

An "analysis" of home values within the 65 dB DNL noise zone was put out by the GBIC on July 19, 2012. [The GBIC report](#) <sup>[7]</sup> found that "real estate values in the 65 DNL have maintained value correspondent with overall value in Chittenden County."

However, while the GBIC report did mention the FAA home buyout program, the GBIC report failed to let its readers know that nearly all of the homes sold in the airport noise zone were purchased by the city of Burlington under that \$40 million FAA program with federal money. According to the FAA report, "Eligible property owners will be paid fair market value for their property at its highest and best rate." Thus, appraisers were told to make home value appraisals without regard to any diminution in value because of airport noise, as if the homes were outside the noise zone.

Therefore, the GBIC report merely amounted to saying that the FAA program worked as it was intended. It said nothing at all about what happens to the actual market value of homes when intense airport noise from F-16 or F-35 jets is taken into account. Without an FAA buyout program propping up home values, thousands of homeowners in Winooski, Burlington and Williston will be left swinging in the very heavy downdrafts in home value from F-35 noise.

Slicing into this Pomerleau-baked fudgy cake is sure to be fun for an investigator examining how, even in Vermont, GBIC executives and elected government officials are working hard to sacrifice the affordable homes of thousands of families in Vermont for the personal gain of a few developers.

But at least noise, loss of homes and neighborhoods, lost property values, fudged scoring, nepotism, buying an election and misleading reporting are not killing anybody. Unfortunately it gets worse: safety for thousands of people is also at risk, thanks to some of our elected public officials and their commercial developer friends. F-35 crash rates and crash zones and the scandalous eagerness of certain Vermont public officials to sacrifice the safety of thousands of Vermonters for the profits of a few developers will be the subject of a forthcoming article.

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## **#3 – "Crashing the party: Not if, but where the F-35 will crash"**

Posted By [Opinion](#) On May 23, 2013 @ 10:55 pm In [Opinion](#) |

*Editor's note: This piece is by James Marc Leas, a patent lawyer in South Burlington.*

At least noise, loss of homes and neighborhoods, lost property values, fudged scoring, nepotism, buying an election and misleading reporting are not killing anybody. All that was described in the article, [“Follow the money: The F-35 Fudge-gate scandal”](#)<sup>[1]</sup> on VTDigger. Unfortunately it gets worse: safety for thousands of people is also at risk, thanks to some of our elected public officials and their commercial developer friends.

## **Air Force expects crash rate of F-35 to be much higher than crash rate of F-16**

Noise is not the only health and safety issue with the F-35. In view of the Air Force asserting in the Air Force draft EIS (page BR4-47) that the anticipated crash rate of the F-35 during its first years of operation is expected to be much higher than the current crash rate of the F-16, safety for thousands of Vermonters living in crash zones at each end of the runway is very much at risk.

The numbers given in the Air Force draft EIS indicate that the expected crash rate of the F-35 will follow the pattern set by the F-22: very high during the first two years of operational service and gradually dropping in later years.

The expected decline in crash rate would normally dictate delay until as late a basing round as possible — if basing decisions were actually based on facts and not on influence, profits for developers, and fudging.

A table in the EIS (page BR4-47) indicates that during its first two years in operational service the crash rate of the F-35 will be an astounding 236 times the current crash rate of the F-16.

But looking over a longer time frame, things do get better: According to the numbers in the table in the EIS, during its first five years in operational service the F-35 crash rate decreases to 11 times the F-16's current crash rate.

And during its first nine years in operational service the F-35's crash rate will decrease to 2.3 times the F-16's current crash rate. Still too high. But a whole lot better than during the first five years.

With the F-35 taking off with 18,000 pounds of fuel, a crash into a heavily populated community near either end of the runway could be a major disaster. From a safety point of view, at least parts of Winooski, Colchester, Williston and Burlington will all be in high-danger zones if the F-35 comes to Burlington for the first basing round.

Because the Air Force anticipates that crashes are much more likely near the ends of runways, the Air Force designates “accident potential zones” for military bases and “runway protection zones” (draft EIS page 3-27) for commercial airports. The “accident potential zones” extend about three miles out from each end of the runway and are a bit more than half a mile wide.

So from a safety point of view, waiting for a much later basing round would be eminently sensible — except to Vermont's two senators, its congressman, its governor, and the mayor of Burlington.

Never before the F-35 basing program did anyone ever suggest putting a new military fighter jet into its first operational service anywhere but at a military base distant from residential communities.

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If, as shown in this map generated by Horace Shaw, a similar crash zone were applied to the Burlington Airport, [about 1,400 residential properties and many businesses](#)<sup>[2]</sup> in Winooski, Colchester, Williston and Burlington would be in that crash zone. The map combines the zone dimensions given in the Air Force draft EIS with town property tax information. The actual commercial and residential buildings in these zones are illustrated as red, green and yellow dots on this map.

Oops, Burlington scoring was flawed — or was it fudged?

Remarkably, the scoring sheet the Air Force used to select Burlington Airport as a “preferred location” for F-35 basing indicates no development at all in the red “clear” zones and in the yellow “accident potential zones,” all of which are shown on the Horace Shaw map.

Certainly the 32 commercial buildings in the “clear” zones could not have been overlooked when the Vermont Air National Guard provided the information for the scoring sheets. Certainly the 1,443 residential properties in the accident potential zones could not have been overlooked either.

Similarly, the scoring sheet indicates no development at all within the 65 dB DNL noise zone — even though the Air Force draft EIS states on page BR4-30 that 2,944 houses are in that noise zone.

Burlington got the full number of points on the scoring sheet for both having no development in the clear zone and in the accident potential zones and for having no development in the noise zones — even though commercial buildings and thousands of homes are in those zones.

The houses visible in the crash zone map and in the noise contours provided in the Air Force draft EIS are consistent with the information in the Boston Globe article — they indicate that the numbers in the scoring sheets were fudged. Here is how the fudging was accomplished: The military brass merely closed its eyes to the buildings and houses in the crash and noise zones to give Burlington the edge in points it needed to land in the top position in the scoring process.

Illustrating the serious attitude the Air Force normally takes toward houses in the crash zone, the Miami Herald reported on Feb. 26, 2013, that the [Air Force went to court](#) <sup>[3]</sup> to prevent a farmer from building houses on his land in the crash zone near Homestead Air Reserve Base.

OK. Now we have an idea how the military brass in the Pentagon fudged to get Burlington on top. And we know which moneyed interests stand to gain from the ongoing intense military jet noise. But why did the military brass go along with these interests and fudge numbers in view of the large number of commercial buildings in the clear zones and the thousands of houses in the Burlington crash and noise zones? Why did the military brass do it? And why are our Vermont political leaders not leading the fight against this egregious abuse?

## **Attacking the messengers**

The Boston Globe article reported that “Leahy, in an e-mailed statement, reiterated his support for the planes but did not respond to allegations of political influence. The Air Force denied the fix was in for Vermont.”

In a statement released on Monday, April 15, and [reported in the Burlington Free Press](#) <sup>[4]</sup> on April 15, Leahy said: “The Air Force selected the Vermont Guard as its preferred choice for the F-35s on the merits, based on the Vermont Air Guard’s unsurpassed record, its top-flight personnel and facilities, and its strategic location. Vague, anonymous, uninformed and rehashed conspiracy theories cannot change those facts.”

Frank Cioffi, president of the GBIC, was quoted in the same Free Press article calling the Globe story “a piece of blatant junk journalism ... and) a hack job using fear mongering and unnamed sources.” He said the Vermont Air Guard base is “under consideration for the F-35 because they’ve earned it.”

These attacks on the messengers — the Pentagon official and the Globe reporter — cannot be considered to be fully responsive to the message that the numbers were fudged. The attacks on the messengers implicitly acknowledge that the charge of fudging leveled by a Pentagon official is both serious and damaging.

## **The ones who “fudge” should not be the ones to judge**

With thousands of Vermont families and their homes at risk, with the integrity of the Air Force basing process undermined, with questions swirling about whether facts or political influence drives the basing decision, and with personal gain by a certain commercial developer an underlying factor, an independent and impartial investigation is needed to determine whether the numbers were fudged, and if so by whom and at whose behest. If indeed numbers were fudged, the Pentagon officials who “fudged” should not be allowed to continue to be the ones to make the final decision. But who will initiate such an investigation? Will a member of our congressional delegation? Will our Vermont attorney general? Or our Chittenden County state’s attorney? Or will that task continue to be left to conscientious reporters and members of the public?

## **No more tricks — the process was fixed, the F-35 should be nixed**

If fudging was essential for Burlington to come out on top, that alone should be enough to stop the process. Honest Vermont public officials and the Vermont Air National Guard should now join with local residents and [Burlington area clergy](#) <sup>[5]</sup> in asking the Air Force to skip Burlington for the first basing round so it can be reconsidered under a legitimate, impartial, transparent process for a future basing round.

But we can have no confidence in view of a money-soaked scheme by which noise zones are being put to use to drive personal gain for rich commercial developers while thousands more families in affordable homes are being put at risk.

Now is the time to build the grassroots movement demanding an immediate halt in any plan to base the F-35 in Burlington. The Vermonters living in those noise and crash zones are worth fighting for.