Airport Land Use Process: Comparable Jurisdictions

Prepared for the
Regional District Of Nanaimo

Prepared by

CITY SPACES

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AIRPORT LAND USE PROCESS - COMPARABLE JURISDICTIONS

The Regional District of Nanaimo (RDN) is seeking clarity with the Nanaimo Airport Commission (NAC) over land use jurisdiction on lands owned by the NAC. This brief paper provides some case examples of the relationships and agreements between other airports in BC and the local government jurisdiction within which the airport is located, that provides some context for the current work being undertaken.

BACKGROUND

Role of the Federal Government

Historically, many airports in Canada were owned and operated by the federal government, through the Ministry of Transportation or the Department of National Defense. In 1994 the federal government developed a National Airports Policy and its implementation began the following year. The principles of the policy include:

- Airports should be operated on the basis of user pay; and
- Transfer of airports to local interests will lead to improved management and efficiencies.

The National Airports Policy sets out the framework to define the federal government’s role with airports. That role is defined through two main levels of federal involvement in airports with scheduled passenger traffic:

- Nationally-significant airports that form the National Airports System (NAS); and
- Regional/local airports.

The 26 NAS airports in Canada (those that handle over 200,000 passengers/year or serve the national capital or provincial or territorial capitals) continue to be owned, for the most part, by the federal government. Responsibility for the operation, management and development of NAS airports has been transferred to local airport authorities. BC airports in the National Airport System (NAS) are Kelowna, Prince George, Vancouver and Victoria.

Under the National Airports Policy, Canadian airports that handle fewer than 200,000 travelers a year are considered regional/local airports, unless they serve the national capital or a provincial or territorial capital. Under this policy, ownership and operation has been transferred to provincial, local or private sector interests. The non-NAS airports in BC include Abbotsford, Campbell River, Castlegar, Comox, Cranbrook, Dawson Creek, Fort Nelson, Fort St. John, Kamloops, Nanaimo, Penticton, Port Hardy, Powell River, Prince Rupert, Quesnel, Smithers, Terrace, Vernon and Williams Lake.

There are three additional categories of airports owned and operated by the federal government:

- Small airports (a group of federally supported airports that have no scheduled air service);
• Remote airports (where air service is the only year-round access); and
• Arctic airports (the federal government is currently negotiating the transfer of some
  these airports to the respective territorial governments).

RELATIONSHIPS BETWEEN AIRPORT AUTHORITIES AND LOCAL GOVERNMENTS

The Nanaimo Airport is operated by the Nanaimo Airport Commission, a not-for-profit
authority established under the Canada Corporations Act, which assumed management of
the airport in 1992. In 1996 the Commission was granted title to the airport lands. The
Board is comprised of four members nominated from local governments in the region, one
ominated by the Chamber of Commerce and the four remaining appointed by the Board
representing the community at large. The airport lands are located in Electoral Area A of
the Regional District of Nanaimo.

As shown on the table below, the governance structure, land-ownership pattern and
relationship with the local government having jurisdiction differs from most other airports
in the Province. However, like most, the NAC, is a product of the Federal aviation
divestiture program that occurred in the 1990s and these examples can provide some
guidance moving forward.

Case Examples

The consultants reviewed the ownership, operational authority, relationship with
local government and zoning status for several of BC’s airports. The following table 1
provides a summary of the findings.

Table 1: Examples of BC Airports and their Local Government

<table>
<thead>
<tr>
<th>Airport</th>
<th>Ownership</th>
<th>Operator</th>
<th>Relationship to local government</th>
<th>Local Govt. Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kelowna International Airport</td>
<td>City of Kelowna - (largest locally-owned airport in Canada)</td>
<td>City of Kelowna</td>
<td>Airport Advisory Committee is a standing committee of City Council. Airport Master Plan adopted in 2007</td>
<td>Permits “airports” as only principle use &amp; includes a long list of “secondary uses”</td>
</tr>
<tr>
<td>North Peace Regional - Fort St. John</td>
<td>North Peace Airport Society (Vancouver AA)</td>
<td>N. P. Airport Services</td>
<td>Airport Development Plan completed in 2008, not yet in Regional District Zoning By-law</td>
<td>Proposed CD zone permits “uses identified in the NP Airport Development Plan.” Intention to include the plan in the Zoning By-law</td>
</tr>
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<td>--------------------------------------------------------------------------------------------------</td>
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<tr>
<td>West Kootenay Regional Airport - Castlegar</td>
<td>City of Castlegar</td>
<td>City of Castlegar</td>
<td>Operated in accordance with the “Castlegar Airport Operations Manual” issued by MOT (1997)</td>
<td>Permits wide range of uses; airports, shopping centres, arcades, auto/rv sales, restaurants, hotels, etc.</td>
</tr>
<tr>
<td>Abbotsford International Airport</td>
<td>City of Abbotsford</td>
<td>Abbotsford Airport Authority</td>
<td>Transferred to the City in 1997. Strategic direction: “Develop the airport property in a way that is consistent and supportive of the City/Regional plan”; Prudently use aviation lands for other uses on an interim basis</td>
<td>Permits airport, airport industrial and aerospace industrial</td>
</tr>
<tr>
<td>Kamloops Airport</td>
<td>Kamloops Airport Ltd. (subsidiary of Vanc. Airport Services)</td>
<td>Kamloops Airport Authority</td>
<td>Comprehensive Plan prepared with City of Kamloops for a variety of uses and activities, and forms one of the City's local area plans</td>
<td>Zoning not changed to match local area plan. Restricted to airport terminals and airport-related commercial and airport (defines permitted uses) accessory uses are discretionary for City staff</td>
</tr>
<tr>
<td>Prince George Airport</td>
<td>Gov’t of Canada</td>
<td>Prince George Airport Authority</td>
<td>Accord between PGAA and City</td>
<td>Contains 2 zones within airport property, one that permits airports and related uses and the other is an airport plaza zone that permits a host of commercial uses designated by “west” and “east” zones</td>
</tr>
<tr>
<td>Vernon Regional Airport</td>
<td>City of Vernon</td>
<td>City of Vernon</td>
<td>Agreement between the Minister of Transportation and the City of Vernon to regulate lands surrounding the airport</td>
<td>Permits a list of “primary uses” and “secondary uses”. Primary uses limited to: airport/aerospace/sales repairs/r&amp;d/vehicle rental, gas bars, parking, &amp; utilities</td>
</tr>
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<td>Airport</td>
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<tr>
<td>Victoria International Airport</td>
<td>Gov’t of Canada</td>
<td>Victoria Airport Authority</td>
<td>Accords with District of North Saanich and Town of Sidney</td>
<td>Zoning restricted to airports and aviation related uses. Airport does not comply with designated uses</td>
</tr>
<tr>
<td>Nanaimo Airport</td>
<td>Nanaimo Airport Commission</td>
<td>Nanaimo Airport Commission</td>
<td>In RDN, no Accord.</td>
<td>Zoning does not permit airport or other related uses; limited to agriculture</td>
</tr>
</tbody>
</table>

Of the examples outlined above, the North Peace Regional Airport and the Kamloops Airport provide the closest “match” in terms of their ownership and operation structures and relationships with the local government within which the airport is located. The Accord between the City of Prince George and the PGAA and the City of Prince George’s approach within its Zoning By-law may also offer some assistance. These case examples are expanded below:

**North Peace Regional Airport/City of Fort St. John**

The North Peace Airport Society obtained ownership of airport lands from Transport Canada in 1997. The Society contracted with North Peace Airport Services, a wholly owned subsidiary of the Vancouver Airport Authority, to operate the airport. An airport development plan was completed in 2008, in close consultation with Peace River Regional District staff. The PRRD Zoning By-law currently outlines a specific list of permitted uses in its AP (Airport Industrial Zone). A proposed By-law amendment that would replace the existing list of permitted uses with uses identified in the North Peace Regional Airport Development Plan failed to pass at the Regional District Board. The Peace River Regional District intends to re-introduce the By-law amendment in the spring of 2012. The PRRD would conduct a public process to amend the Zoning By-law, thereby giving the general public opportunity to comment on the Airport Land Use Plan. Any future changes to the plan would require a zoning amendment, which would be subject to public review.

**Kamloops Airport**

The Kamloops Airport is owned by the Kamloops Airport Authority. The board of the authority is comprised of City of Kamloops Council members, City of Kamloops staff and members drawn from the public at large. The airport is operated by Kamloops Airport Ltd., a subsidiary of Vancouver Airport Services (subsidary of the Vancouver Airport Authority). The City of Kamloops Zoning By-law pre-dates the transfer of the airport to a local authority. The By-law lists 10 permitted uses. City of Kamloops planning staff have discretion over approval of uses “accessory” to these permitted uses. Given the make-up of the board, there is a close relationship with the City and there have been no issues with the existing By-law.
Approximately 10 years ago the Airport, in conjunction with the City of Kamloops, prepared a local area plan and development plan for the airport and the adjacent lands. The plan provides for significant growth and development of the airport lands. Implementation of the plan called for amendments to the Zoning By-law, replacing the existing zoning with five development zones. At this stage, the ‘original’ zoning is still in force and effect.

**Prince George Airport**

The Prince George Airport is one of four NAS airports in BC. The land is owned by the Ministry of Transportation, but responsibility for airport operations was transferred in 2003 to the Prince George Airport Authority (PGAA). In 2004, the City of Prince George and the PGAA signed an “Accord” to establish the terms for the conduct of their relations. Section 4 of the Accord addresses land use planning and the Airport Master Plan. “The Authority shall engage in timely and meaningful consultations with the City for the portion of the lands, which are located in the City, and will notify in writing and seek the opinion of the City when developing the Authority’s revised Land Use Plan and Airport Master Plan. This coordination is intended to ensure that the proposed Land Use Plan and the Airport Master Plan is consistent with the City’s Official Community Plan and Zoning By-law”. The Accord includes a reciprocal obligation for the City to consult with the Authority on land use and transportation planning that may affect airport operations. The Accord also includes a dispute resolution process.

The Airport Master Plan was developed in collaboration with City of Prince George staff.

The airport is identified as a specific DCC (Development Cost Charge) area in order to fund projects directly related to future development on airport lands.

The Prince George Zoning By-law includes the airport lands in a site specific zone with “airport” as the principal use and a list of 17 secondary uses.

**PRELIMINARY ASSESSMENT**

No two airport governance and relationships with local government are alike. None of the airports that have been examined have exactly the same governance, land-ownership and local government structure or by-law regulations as the Nanaimo airport has with the RDN. Like Nanaimo, the airport lands at Kamloops and North Peace (Ft. St. John) are owned by a local airport authority (society). North Peace Airport is also located in an unorganized area and the local government authority is the Regional District. However, the airport is not operated by a local operating authority.

Where land continues to be held by the Federal Government, the question of jurisdiction is very clear; the Federal Government does not have to comply with local government regulations, even where the land is occupied by a tenant not using the land for “federal purposes”, and, even if the terms of the lease stipulated that the tenant must comply with all laws of all jurisdictions. The Victoria Airport is a case in point. The airport authority leases to tenants carrying out activities not permitted in the local zoning by-law nor, in fact, do they take out building permit. The recent announcement of a new 35,000
sf Sobeys (formerly Thrifty Foods) distribution centre, now under construction on Victoria airport lands, does not comply with the District of North Saanich Zoning By-law nor have any permits been issued by the District. The airport lands remain on title with the Federal Government.

Issues relating to aeronautics were not a constitutional consideration in 1867 (for obvious reasons) and are now governed by the Aeronautics Act (refer to earlier section). A recent Supreme Court of Canada decision (2010) reaffirmed that local governments have no authority to regulate airports not only where the Federal Government has licensed an airport, but also where a licensed aviator wishes to use the land or water, irrespective of who owns the land. Local by-laws that prohibit airport use where airports are licensed or merely where a licensed operator lands, were deemed to be unconstitutional.

All local zoning by-laws in other jurisdictions investigated allow for uses ranging from “airport” and airport-related uses to a much broader range of activities, including shopping centres. In some instances, the by-laws prescribe primary and secondary uses and define secondary uses as either ancillary to the primary use and/or a lesser function by square footage than the primary use. Nanaimo airport zoning is unique, at least from the other jurisdictions investigated, in that it does not permit airports.

In most jurisdictions examined, airport lands are identified in local government land-use policy as being an economic hub for their region and tie policies relating to transportation and economic development in the discussion of airport lands.

It is clear that where lands are owned by the Federal Government, the local government does not have control over land use, neither aviation nor non-aviation uses. Where airport lands are not federally owned, issues of authority to regulate land use over non-aviation lands is not entirely clear. Under the Aeronautics Act, it seems clear that the regulation of airports and aviation related uses are beyond the jurisdiction of local government. However, the question of uses not related to aviation is unclear and it would seem that the local government could assert authority over these non-aviation related uses.

Where airports are owned by local government, there seems to be reasonable synchronization between land-use policy, zoning and uses permitted on airport lands. This should come as no surprise as the local government has a direct interest in the airport’s viability. In some local government jurisdictions, regardless of land-ownership, local plans have been developed that have incorporated, or propose to incorporate, the master development plans of the airport in the local government zoning by-law.

The greatest certainty over jurisdiction and non-aviation uses on airport lands appears to be achieved where there has been collaboration between the local government and the airport authority in the planning process of the airport lands, regardless of legal rights and jurisdiction under the Aeronautics Act or the actual ownership of the airport lands (federal, municipal or society). In making this observation, there is an assumption that public consultation is included in the process. For example, the District of North Saanich has been consulted on the master plan for the Victoria airport, and, even though the airport does not choose to comply with the zoning or take out permits, there is a positive and collaborative relationship between the airport authority and the District.
There are a number of jurisdictions where the local government and the airport authority have entered into some form of MOU that describes the relationship and in some cases, clearly articulates the approvals process. But, to be successful, there must be a willingness by the parties to work together, and in principle, have a complementary vision or understanding of the purpose and mandate of airport development.

With respect to clarifying jurisdiction over non-aviation related uses at the Nanaimo Airport, the Regional District of Nanaimo and the Nanaimo Airport Commission would appear, at this time, to have three choices. The parties could:

1. Go to court and have the courts decide. This is not a particularly desirable alternative;

2. Come to an agreement on a long list of uses that are or are not “aviation related” and that the non-aviation uses would be subject to Regional District regulation (which would not rule out option 1 from subsequently occurring); or;

3. The Airport Authority and the Regional District could agree on a land-use process and a master plan for the airport that would be included in the Electoral Area Community Plan. It would include a public consultation process and ultimately be implemented through a replacement zoning by-law.

The third alternative would appear to provide the most certainty and substance in terms of outcome. There is ample precedence in other jurisdictions where this kind of process has been followed and where it would appear to lead to effective community support and airport stewardship.

These options for proceeding will be discussed with stakeholders and community members over the coming months. A preferred direction or alternate direction may emerge from the consultation process.