

Updated: Appeal court overturns decision in Burlington Airpark case

City of Burlington 'disappointed' with court's decision

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Burlington Executive Airpark. - Metroland file photo

An Ontario Court of Appeal judge ruled in favour of Burlington Executive Airpark Wednesday (May 24) morning in what has been a long battle with the city over landfill that was trucked into the northeast airport over a five-year period.

Most recently, the local airport appealed a Superior Court ruling from June 30, 2016 in favour of the city's effort to make Burlington airpark file a site alteration permit for fill dumped at the airport from 2008-13.

A 2014 City of Burlington site alteration bylaw (64-2014) regulates the placing, dumping, cutting and removal of fill or the alteration of grades or drainage on a piece of land. Those doing that type of work must first submit an application to the city for a site alteration permit.

The local airport has been trucking in fill to raise a part of its property in order to expand.

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UPDATED: Burlington Airpark will file site permit before deadline, owner says

Justices Robert J. Sharpe, Kathryn N. Feldman and L.B. Roberts presided over the appeal at Osgoode Hall in Toronto.

In a written decision, Sharpe states he recognizes the public importance of enforcing standards designed to protect the public from environmental harm, but noted the task in the appeal was limited to determining if the city's 2014 bylaw applied.

“In carrying out that task, we must respect important principles of our legal order, one of which is that, in the absence of clear legislative intention, to interpret an enactment as ‘reaching into the past and declaring the law to be different from what it was is a serious violation of the rule of law’,” Sharpe wrote in the decision.

“For these reasons, I would allow the appeal, set aside the order of the application judge and dismiss Burlington's application....”

Vince Rossi, owner of Burlington Airpark, told the *Post* Wednesday all he's wanted to do was work with the city.

“Aside all things — win or lose — all that we have wanted all along, is to be able to work constructively with the city, as well as all stakeholders, to be able to develop the airpark (to) where the city can be proud of (it and) for the community be able to enjoy. And create good paying jobs associated with the development, as well as the growth associated with the enhanced operation of the airport,” he said.

“My hope is that we can move forward away from litigation and build constructively with the City of Burlington's blessings.”

The City of Burlington released a statement Wednesday afternoon, saying it was disappointed with the appeal court's ruling.

“We are disappointed with the decision made by the Ontario Court of Appeal,” said Blake Hurley, assistant city solicitor, in the statement.

”Staff and legal counsel will be reviewing the decision in detail and working with city council to determine how the city will proceed forward in this matter.”

The media release stated the city would continue to use its regulatory authority to require site alteration permits for any new fill proposed to be brought to the airpark site.

In Sharpe's written decision, he states he saw no language in the city's 2014 bylaw to suggest it was meant to operate retroactively.

"The purpose and effect of the 2014 bylaw is to require a permit based upon standards set in 2014 for the dumping of fill or alteration of the grade of land," he wrote.

"To require (the) Airpark to obtain a permit in 2014 based upon standards set in 2014 for work already conducted years ago in 2008 and 2009 is plainly to change the law from what it was at the time the work was undertaken."

With the ruling of the appeal court falling in favour of Burlington Airpark, it is no longer on the hook to pay the City of Burlington \$118,327.53 in court costs, ordered by the Ontario Superior Court of Justice back in November 2016.

According to the Burlington Airpark's legal team, "the city will have to pay the Airpark the costs of the application, in addition to the \$40,000 in costs the city has to pay the Airpark for the appeal. If the parties cannot agree on the amount of the costs of the application, the Court of Appeal will decide the amount."

To view the complete decision online, visit www.ontariocourts.ca/decisions/2017/2017ONCA0420.htm.