



February 10, 2021

Re: Permitting Helipads and Airstrips

Dear Municipal Manager & Planning Commissioner:

The Vermont Transportation Board serves as the state permitting authority for airports and restricted landing areas. Restricted landing areas include private helipads and airstrips but do not include regulation of drones. Over the last few years, the Board has seen a significant increase in applications for private helipads and airstrips, often serving a single home in an existing subdivision or neighborhood. These private facilities can dramatically change the character of an area and can have negative impacts while providing a private benefit to few.

The State, as part of its permit process, requires that a proposed helipad or airstrip first receive municipal approval. But in the vast majority of cases that come before the Board, the host city or town has no regulatory mechanism to review such applications. In these cases, court guidance tells us the State must accept the application and proceed as if municipal approval has been granted. While this allows the application to proceed, it essentially shorts the permit process because the Transportation Board has no authority to review land use. This means that private helipads and airstrips often gain approval without any kind of local process that determines whether the proposed location is compatible with the surrounding area.

In short, the State's permitting process for a helipad or airstrip is designed to have three review components: 1) the local municipality reviews land use, 2) the State reviews ground-related safety to determine if aircraft can take-off and land safely, and 3) the U.S Government reviews the airspace to ensure safety once the aircraft is airborne. Given this regulatory structure, if the host municipality has no policy language in its adopted plan or no established regulatory mechanism, such as zoning bylaws that deal with aviation or a stand-alone municipal bylaw that deals with aviation, land-use issues and neighborhood concerns go unchecked.

Realizing this, the Board convened a committee comprised of municipal planners, regional planners, VTrans staff and a representative of the Vermont League of Cities and Towns to develop guidelines to help municipalities understand what they can do to establish a local, regulatory mechanism that deals with helipads and airstrips should one be proposed within your municipality.

The committee, as well as the Transportation Board, encourages all Vermont cities and towns to consider adopting municipal plan policies and/or bylaws regarding aviation facilities as recent history shows that applications for private helipads and airstrips are increasing. Vermont is regularly seeing



applications all across the state, and often for locations within or close to village settings or in existing residential neighborhoods in rural communities.

What follows are some suggestions on what to consider should your community wish to better prepare itself for such an application. Transportation Board Executive Secretary John Zicconi is willing to meet with any town (municipal manager, selectboard, planning commission, etc.) to discuss this issue further. Inquiries can be made directly to him at 802-343-7280 or at john.zicconi@vermont.gov.

MUNICIPAL PLANS

Municipal plans establish the policy basis for zoning bylaws, but they also have regulatory effect in state permitting processes, such as Act 250 (land use) and Section 248 (energy generation and transmission). Including explicit, prescriptive policy language in the municipal plan about where private helipads and airstrips are and are not allowed establishes a policy basis for municipal approval. Prescriptive policy language uses words such as will and must as opposed to more passive words such as consider, should, support, and encourage. If a municipality uses a municipal plan to either approve or deny a helipad or airstrip, the Transportation Board requires a letter from the municipality explaining its decision with reference to the section of the municipal plan used.

ZONING BYLAWS & ORDINANCES

Many Vermont towns have zoning, but not all zoning regulations capture helipads and airstrips. The Transportation Board encourages municipalities to review their zoning regulations to determine if they cover private aviation facilities which can be proposed in residential as well as commercial districts. Detailed zoning regulations may take the following tools into account.

Setbacks – establish a minimum for helipads and airstrips, which may vary depending on the zoning district. There is no magic number of feet a setback should be.

Lot Size – there is no common or recommended lot size. Helicopters can land in very small spaces. Appropriate lot sizes also may vary by type of zoning district as one size may be appropriate for a commercial district while a different minimum size may be more appropriate for a residential district. For airstrips, the U.S. Government sets minimum runway lengths necessary depending on the class of aircraft to be flown.

Noise – federal law prohibits states or municipalities from considering or regulating aircraft noise. Aircraft noise is the sole domain of the federal government. However, municipalities can regulate land uses and the character of an area so long as they are not used as a proxy for limiting aircraft noise.



For example, courts have held that regulating hours of an airport's operation is a proxy for regulating aircraft noise.

Permitted Use – if a community wishes to allow helipads and airstrips they can be allowed in some or all zoning districts.

Conditional Use – can address the character of the area, performance standards, and land uses so long as they are not a proxy for noise.

Accessory Use – helipads and airstrips can be allowed as incidental or subordinate uses to the property's primary use.

Prohibited Use – municipalities with proper regulatory tools can prohibit helipads and airstrips throughout town, or they can prohibit them only from specific areas of town or within specific zoning districts.

Exemptions – zoning can prohibit helipads and airstrips but also exempt certain aviation uses – such as crop dusting and insect control – from needing a local permit. The State and the U.S. Government may still be required to review such uses, but municipalities if they wish can exempt specific uses from needing local approval. None of this, however, would prohibit an aircraft that must land due to an emergency as federal law for safety purposes allows that to occur anywhere necessary.

Screening & Visual Impact – while planting trees and shrubs to screen certain development is commonplace within zoning, keep in mind that aircraft require specific glideslopes with specific ground-to-air clearance ratios (helicopters require an 8-to-1 horizontal to vertical clearance) to land and takeoff safely. Thus, trees or other structures cannot be placed too close to the actual landing facility. Also, zoning can establish how aircraft can be parked and other associated visual parameters.

Surface Type – certain aircraft can land on almost any kind of surface. Some towns require helipads to be paved and maintained free from dust, dirt and other loose material that could be blown onto adjoining properties by the air wash.

Runway Length – while helicopters can land in very small spaces – including on top of buildings – specific class of airplanes require specific runway lengths. As a result, zoning must understand what type of aircraft class is acceptable and then ensure the regulations allow for proper runway length.

Additional Permitting – Vermont statute requires that municipal approval be obtained prior to applying for a State Aviation permit, so local regulations should not require State approval be obtained



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first. Local regulations can, however, require that obtaining a State Certificate of Operation is required prior to the commencement of local flights.

STAND-ALONE MUNICIPAL BYLAW

Municipalities that do not have zoning can still regulate helipads and airstrips. Statutes allow for a stand-alone bylaw under Title 24 Chapter 117. As another option, statute allows for an ordinance under Title 24 Chapter 59. The above zoning guidelines also can be used to help guide communities wishing to establish such bylaws or ordinances.

QUESTIONS

In closing, the Transportation Board emphasizes that its executive secretary is happy to answer any questions you may have regarding helipads and airstrips, and is willing to meet with your local planning commission, selectboard or whatever other entity is responsible for drafting local zoning regulations and municipal ordinances. The Board has seen many examples of Vermont communities being caught off guard when application for a Restricted Landing Area is made and witnessed the shock local residents have when they learn the municipality has no way to determine for itself if such a facility is appropriate for their community.

As a result, the Board encourages all Vermont communities to discuss this issue and decide if its local permitting processes is adequate when it comes to siting helipads and airstrips. The Board hopes you find the enclosed information helpful, and it is happy to assist any city or town to help it better understand the issue.

Sincerely,

John B. Zicconi

Executive Secretary, Vermont Transportation Board