



**CITY OF RICHMOND**

**REPORT TO COMMITTEE**

**TO:** Planning Committee

**DATE:** December 6, 2000

**FROM:** Paul Kendrick  
City Solicitor

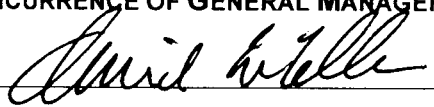
**FILE:** 8060-20-7173

**RE: COMMENTS ON REQUIREMENTS FOR NOISE COVENANTS**

**STAFF RECOMMENDATION**

That the Report, dated December 6, 2000, of the City Solicitor be received for information.

  
Paul Kendrick  
City Solicitor

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Development Applications.....	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	

## STAFF REPORT

### ORIGIN

At the Public Hearing held on November 20, 2000, questions were raised by the applicant for the rezoning of 11591 Bird Road, regarding the necessity of a noise covenant and as well the wording of the noise covenant. The covenant was to be registered before Bylaw 7173 could receive final reading.

As a result of the submission of the applicant a number of questions were referred to staff, the actual questions were as follows:

- a) that the City Solicitor provide a detailed report on the wording of the covenant;
- b) that it be determined what effect a change in the covenant wording would have on properties with existing covenants in place;
- c) that it be determined whether the applicant is giving up rights beyond land use and noise;

### FINDINGS OF FACT

The form of covenant the applicant was asked to sign has been in use since 1995. The Covenant contains clauses in which the owners acknowledge that the land is impacted by aircraft and then agree not to sue the City over any damages that result or could result from airport noise. The agreement also sets standards for noise insulation.

### ANALYSIS

The requirement for the covenant has been in existence for some time. In fact all 120 lots which were subdivided by the City in the Odlinwood area have a similar covenant registered against the titles.

A large portion of Richmond has a requirement by the Ministry of Environment for Flood Plain covenants. These covenants also contain similar clauses, in which the owner acknowledges that there is a flood danger and agrees not to sue the City ( and the Province ) in the event of a flood.

The purpose of the covenant is, among other things, to warn purchasers of the lots of the aircraft noise potential.

The covenant would not have as big an effect on the value of the property as compared to any effect the actual noise might have.

There is no doubt the applicant is giving up rights beyond land use and noise, namely the right to seek damages from the City in certain circumstances. This clause is specifically allowed under section 219 (6) of the Land Title Act.

Ms. Kaether's submission also mentioned that the covenant was not applied to existing lots. This is because the City has no power to require the covenant in the case of existing lots applying for a building permit, but does have the power to require the covenant in the case of subdivision or rezoning. If the City had the power to require a similar restrictive covenant on existing lots, the City would make the Covenant a condition of building permits.

Allowing a change of wording to the covenant would not effect the wording on properties with similar covenants in place, however allowing such a change may result in requests for similar changes to the existing covenants. Each covenant is a separate document and a change in one does not effect another.

FINANCIAL IMPACT

This covenant protects the City from potential law suits from those who claim that the City, by allowing a rezoning or subdivision, caused them damage as a result of the impact of aircraft noise on the new property. It also alerts potential purchasers to the potential impact of aircraft traffic on the property.

CONCLUSION

The covenant, and the indemnity agreement contained in it, is a reasonable requirement for rezonings in this circumstance. The applicant may choose not to execute the covenant and not have it registered in the Land Title Office, however then it not be possible to go ahead with the rezoning application.



Paul Kendrick  
City Solicitor

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