

State of Vermont
NATURAL RESOURCES BOARD
DISTRICT 4 ENVIRONMENTAL COMMISSION
111 West Street • Essex Junction • Vermont 05452

RE: City of Burlington
attn: Carol Weston
645 Pine Street
Burlington, VT 05401

Application #4C0438-17
Hearing Recess Order
10 V.S.A. §§ 6001-6092 (Act 250)

and

State of Vermont Agency of
Transportation
One National Life Drive
Montpelier, VT 05633-5001

I. Introduction

The District Commission held public Hearings on August 23, 2011 (Criteria 1A and 8) and August 31, 2011 (Criteria 5 and 9(K - traffic issues)) for the above referenced application located at I89 in the Cities of Burlington and South Burlington. Pursuant to Act 250 Rule 13(B), the Commission recessed the Hearings pending submittal of additional information by the Applicants and Parties as set forth below. Notice of the Hearings was distributed to all parties who attended the Prehearing Conference on May 19, 2011 or received preliminary party status at the first Hearing. This Hearing Recess Order supersedes the Order issued on August 11, 2011 following the July 26, 2011 Hearing and summarizes all three Hearings.

II. Party Status

The following persons who attended either of the last two hearings (8/23/11 and 8/31/11) have statutory party status pursuant to 10 V.S.A. § 6085(c)(1):

1. The **Applicants**, by Carol Weston; Richard Haessler, Esq.; Larry Kupferman; Steve Goodkind (8/23/2011 Hearing only) of the City of Burlington; Jack Myers P.E. of Stantec Engineering (8/23/2011 Hearing only); Brian Dunkiel, Esq. & Elizabeth Caitlin, Esq. of Dunkiel Saunders, LLC; Ken Kaliski, P.E. (8/23/2011 Hearing only); John Hinckley, P.E. (8/23/2011 Hearing only) & Joe Segale, P.E. of RSG (8/31/2011 Hearing only); Jean Vissering (8/23/2011 Hearing only) and Dale Gozalkowski, P.E., David Kahlbaugh, P.E. (8/31/2011 Hearing only) & Jim Shields, P.E. of Clough Harbor & Associates.
2. The **Agency of Natural Resources** did not attend the Hearings but maintains their statutory party status.
3. The **City of South Burlington**, did not attend the Hearings but maintains their statutory party status.

The following were granted preliminary party status under one of the Criteria and have exercised their right of preliminary party status. Others have failed to exercise their right and their preliminary status has been changed.

4. **Alan Hunt** 89 Maple Street Burlington, is represented by Franklin Kochman, Esq. Roger Dickinson, P.E. of Lamoureux & Dickinson Consulting Engineers provided expert testimony under Criteria 8 and 5 at the second and second Hearing, respectively. Mr. Hunt and his representatives have attended all Hearings and there are no changes to his preliminary party status designations under Criteria 5 (traffic), 8 (aesthetics), 9K (public investments) and 10 (local and regional plans).
5. **Richard Gamache**, 15 Lyman Ave. Burlington, attended the second Hearing and there are no changes to his preliminary party status designations under Criteria 1 (air pollution) and 8 (aesthetics).
6. **Vermont Railway, Inc.** was represented at the Hearings by Eric Benson, Esq. Mr. Benson has attended all Hearings and there are no changes to the Vermont Railway's preliminary party status designations under Criteria 1(B) (wastewater); 1(E) (streams); 5 (traffic); 8 (aesthetics); 9(A) (impact on growth) and 10 (local and regional plans).
7. **South Meadow Housing Associates** was represented at the Prehearing and first Hearing by Jeffrey Kirschner, P.E. and William W. Schroeder, Esq. Through an entry (Exhibit #132) they have notified the Commission that they will not be attending other Hearings. There are no changes to their preliminary party status designations under Criteria 1(B) (wastewater); 4 (erosion control) and 9(A) (impact on growth). However, since they did not present any testimony or cross examine witnesses, the Commission has changed their party status under Criteria 5 (traffic); 8 (aesthetics) and 9(K) (effects on public investments) to preliminarily denied.
8. **Howard Space Partnership** owns property at the corner of Howard and Pine Streets and was represented at the Prehearing by Kevin Chamberlin and at the third Hearing by Karen Unsworth. There are no changes to their preliminarily party status under Criteria 5 (traffic) and 9(K) (effects on public investments).
9. **Lilian M. Beaudoin**, 14 Lyman Ave. Burlington, attended the Prehearing. Ms Beaudoin has not attended any Hearings and since she did not present any testimony or cross examine witnesses, the Commission has changed her preliminarily party status under Criteria 1(B) (wastewater); 5 (traffic) and 8 (aesthetics) to preliminarily denied.
10. **David Lansky, Phd** owns Precision Bioassay, Inc. located at 431 Pine Street, Burlington Dr. Lansky attended and testified at the third Hearing there are no changes to his preliminary party status designations under Criteria 5 (traffic). However, he did not attend the first Hearing, present any testimony or cross examine witnesses, therefore the Commission has changed his party status designation under Criteria 9(A) (impact on growth) and 10 (local and regional plans) to preliminarily denied.

11. **Kirstin McCracken**, 349 Flynn Ave. Burlington, attended the Prehearing. Ms McCracken has not attended any Hearings and since she did not present any testimony or cross examine witnesses, the Commission has changed her preliminarily party status under Criteria 5 (traffic) and 8 (aesthetics) to preliminarily denied.
12. **Nina Beaudoin**, 85 Foster St. Burlington, attended the Prehearing. Ms Beaudoin has not attended any Hearings and since she did not present any testimony or cross examine witnesses, the Commission has changed her preliminarily party status under Criteria 1(B) (wastewater); 5 (traffic) and 8 (aesthetics) to preliminarily denied.
13. **Carmen Bombardier**, 26 Lyman Ave. Burlington, attended the attended and testified at the second Hearing and there are no changes to her preliminary party status designations under Criteria 1 (air pollution); 1(B) (wastewater) and 8 (aesthetics).
14. **Carmen Bombardier** owns business property located at 8 Home Ave. Burlington attended and testified at the second Hearing and there are no changes to her preliminary party status designations under Criteria 1 (air pollution); 1(B) (wastewater) and 8 (aesthetics).
15. **Independent Block, LLC** located at 255 South Champlain Street Burlington was represented at the Prehearing by Jason Adams. They have not attended any Hearings since they did not present any testimony or cross examine witnesses, the Commission has changed their preliminarily party status under Criteria 1 (air pollution); 1(B) (wastewater) and 8 (aesthetics) to preliminarily denied.
16. **Dorothy Lewis**, 29 Home Ave. Burlington, attended the second and third Hearings and testified at both. There are no changes to her preliminary party status designations under Criteria 1 (air pollution) and 8 (aesthetics).
17. **Katherine O'Neill**, 16 Ferguson Ave. Burlington, attended the Prehearing. Ms. O'Neil has not attended any Hearings since she did not present any testimony or cross examine witnesses, the Commission has changed her preliminarily party status under Criteria 1 (air pollution); 1(B) (wastewater); 5 (traffic) and 8 (aesthetics) to preliminarily denied.
18. **Kilburn & Gates** located at 316 Pine Street Burlington, was represented at the Prehearing by Graham Goldsmith Jr. They have not attended any Hearings and since they did not present any testimony or cross examine witnesses, the Commission has changed their preliminarily party status under Criteria 5 (traffic); 8 (aesthetics) and 9(A) (impact on growth) to preliminarily denied.
19. **Karen Spach**, 40 Batchelder Ave. Burlington, attended the Prehearing. At the Prehearing the Chair preliminarily granted party status under Criterion 5 (traffic). However at the third Hearing it was determined that her concerns are more aptly met under Criterion 1B and the Commission has changed her party status designation to preliminary granted under Criterion 1B.
20. **Fortieth Burlington, LLC** owns property at 128 Lakeside Ave., Burlington. They were represented at the Prehearing by Liam Murphy, Esq. They sent an entry (Exhibit #150) indicating that they are working with the Applicant on design changes at the Project's intersection on

Lakeside Avenue and have requested that we hold the Hearing open on Criterion 5 until they resolve the issue. The Commission has granted that request and there are no changes to their preliminary party status designations under Criterion 5 (traffic).

21. **GP Burlington South, LLC** owns property on Lakeside Ave., Burlington and has a property interest on a parcel on Sears Lane, both in Burlington. They were represented at the Prehearing by Liam Murphy, Esq. They sent an entry (Exhibit #150) indicating that they are working with the Applicant on design changes at the Project's intersection on Lakeside Avenue and have requested that we hold the Hearing open on Criterion 5 until they resolve the issue. The Commission has granted that request and there are no changes to their preliminary party status designations under Criterion 5 (traffic).
22. **David Kestenbaum**, 103 South Crest Drive Burlington attended the Prehearing. Mr. Kestenbaum attended and testified at the first and second Hearing there are no changes to his preliminary party status designations under Criteria 1 (air pollution); 1(B) (wastewater); and 10 (local and regional plans). However, Mr. Kestenbaum did not attend the third Hearing and since he did not present any testimony or cross examine witnesses, the Commission has changed his party status under Criteria 5 (traffic) to preliminarily denied.
23. **Annie Dwight**, 42 Central Ave. Burlington, attended the Prehearing. Ms Dwight has not attended any Hearings and since she did not present any testimony or cross examine witnesses, the Commission has changed her preliminarily party status under Criteria 5 (traffic) and 8 (aesthetics) to preliminarily denied.
24. **Maltex Partnership** is located at 431 Pine Street Burlington and was represented at the Prehearing by Rick Davis. Mr. Davis attended and testified at the third Hearing and there are no changes to his preliminary party status designations under Criterion 5 (traffic).
25. **453 Pine, LLC** is located at 453 Pine Street Burlington and was represented at the Prehearing by Rick Davis. Mr. Davis attended and testified at the third Hearing and there are no changes to his preliminary party status designations under Criterion 5 (traffic).
26. **Jackson Terrace Apartments** is located at 500 Pine Street Burlington and was represented at the Prehearing by Jack Dubrul. Mr. Dubrul attended and testified at the third Hearing and there are no changes to his preliminary party status designations under Criterion 5 (traffic).
27. **Ken Grillo**, 41 Central Avenue Burlington. Mr. Grillo did not attend the Prehearing but filed a subsequent request for party status under Criteria 5 (traffic) and 8 (aesthetics), which were preliminarily granted. However, Mr. Grillo has not attended any Hearings and the Commission has changed his preliminarily party status under Criteria 5 (traffic) and 8 (aesthetics) to preliminarily denied.
28. **Harry Clark & Sharie Elrick**, 8 Conger Avenue Burlington. Mr. Clark & Ms. Elrick did not attend the Prehearing but filed a subsequent request for party status under Criterion 5 (traffic), which were preliminarily granted. Mr. Clark attended and testified at the third Hearing and there are no changes to his preliminary party status designations under Criterion 5 (traffic).

29. **Evzen Holas**, 55 Lyman Ave. Burlington. Mr. Holas did not attend the Prehearing but filed a subsequent request for party status under Criteria 7 (municipal services) and 8 (aesthetics), which were preliminarily granted. Mr. Clark attended and testified at the second Hearing and there are no changes to his preliminary party status designations under Criteria 7 (municipal services) and 8 (aesthetics).
30. **Rieley Properties, LLC** owns property at the intersection of Morse Place and Batchelder Street. Their notice for the Prehearing was returned due to an incorrect address. The address was corrected and they were represented at the second Hearing by Sheldon Rieley, who testified. The Commission preliminarily granted them party status under Criterion 8 (aesthetics).

The District Commission allowed the following persons or entities to participate pursuant to 10 V.S.A. § 6085(c)(5) - Friends of the Commission.

31. **Local Motion**, was represented at the Prehearing by Jason Van Driesche. Mr. Van Driesche attended and testified at the first and third Hearings. There are no changes to their preliminary party status designations under Criteria 5 (traffic) and 10 (local and regional plans)

Pursuant to 10 V.S.A. § 6085(c)(6), the Commission will re-examine its party status decisions prior to the close of all of the Hearings and will state its final party status decisions either in the decision it issues on the case or in a separate memorandum.

III. Supplemental Evidence

Pursuant to Act 250 Rule 20(A), and with regard to the Criteria discussed and testimony provided, the Commission requires that the Applicant submit the following information:

1. The amended Stormwater Discharge Permit for the Lakeside Reconstruction from the Water Quality Division, Agency of Natural Resources.
2. A Conditional Use Determination from the Water Quality Division, Agency of Natural Resources.
3. The date that the most recent City of Burlington Municipal plan was duly adopted pursuant to Chapter 117 of Title 24. The date of the adoption of the Transportation Plan cited in their Application and the date of the adoption of the Transportation Plan incorporated by the City's most recent Municipal Plan. The application must include the plans that were duly adopted by the date of the Application's submittal. If the submitted plans were not the current plans, we require submittal of the correct plans.
4. Responses to the comments addressed by Local Motion under Criteria 10 and 5.
5. Plans for a gated access to the South Meadow Housing Associates' stormwater pond.
6. Revised plans for the Lakeside Avenue area.
7. The Levels of Service sheets for the affected intersections.

8. Potential noise abatement structures aesthetically appropriate for the Lyman Avenue to Ferguson Avenue area together with their noise abatement specifications.
9. Potential mitigation measures that could discourage non-essential truck traffic from Maple and King Streets including but not limited to an evaluation of the efficacy of making Maple Street eastbound only and King Street westbound only (between Pine Street and Battery Street) and signage to divert truck traffic off Maple and King Streets.

With regard to the testimony provided, the Commission requires that **Vermont Railway** submit the following information:

10. The extent of the lease rights for the two railway spurs in the area
11. The applicable statute or requirement that details that a railway spur would be a requirement for a rail station in the Burlington area.
12. A copy of the 1981 agreement between the Vermont Agency of Transportation and Vermont Railway regarding culverts under the rail bed in the area. We also require the size of the culvert under the rail line that was replaced by the State and the year it was replaced.

With regard to the testimony provided, the Commission requires that **Alan Hunt** submit the following information:

13. Potential mitigation measures that could discourage non-essential truck traffic from Maple and King Streets including but not limited to an evaluation of the efficacy of making Maple Street eastbound only and King Street westbound only (between Pine Street and Battery Street) and signage to divert truck traffic off Maple and King Streets.

IV. Order

1. The Commission requests the above documentation, be provided to all parties listed on the attached certificate of service and that **four (4)** sets plus a digital version of the documentation be submitted to the District Commission Office on or before **October 24, 2011**. All filings must be received in the District Commission office no later than **4:30 p.m.** on the date scheduled, unless another time is specifically required or authorized. Telefax filings are not permissible, unless specifically requested or authorized by the Commission. Parties will until November 1, 2011 to file any rebuttal testimony. All rebuttal testimony must be provided to all parties listed on the attached certificate of service and that **four (4)** sets plus a digital version of the documentation be submitted to the District Commission Office
3. The **next public Hearing will be held on November 16, 2011** to hear further testimony. The Hearing will be held starting at 6 PM at Contois Auditorium 149 Church Street, Burlington, VT , Vermont.

- A. Any testimony to be provided by expert witnesses must be distributed to the District Commission (4 copies plus a digital version) and to all parties who have status under that criterion no later than 10 days prior to the start of that Hearing (October 28, 2011)
- B. All parties not utilizing expert witness shall be prepared to give testimony on the date of their Hearing.

After the above information has been received, the Commission will reconvene the Hearing on Criteria 5 (as it concerns the railroad lines and the intersection of the Project with Lakeside Avenue), on 8 (as it relates to noise abatement structures) and 10. If other issues arise or if a party has reasonable questions about the additional information they will be announced in a *Memo to All Parties*. If the information has not been received by the appointed date, or if the Hearing is not reconvened, the Commission will set a date for adjournment and issue a final decision based on the existing record following a full deliberation of all the issues.

Pursuant to Chapter 220 of Title 10, any party aggrieved by this order may file a motion for interlocutory (preliminary) appeal regarding questions of law to the Environmental Court. Such a motion must be made in accordance with Chapter 220 of Title 10 and must be filed directly with the Environmental Court within 10 days of the date of this Order.

If any party has any questions or wishes to request the Hearing be reconvened, please call the district coordinator, Peter Keibel at 879-5658.

Dated at Essex Junction, Vermont this 12th day of September 2011.

By: /s/Thomas A. Little, Chair
Thomas A. Little, Chair
District #4 Environmental Commission