

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

On July 26, 2011, the District Commission held a public hearing for Criteria 1B, 1E, 4, 9A, 9K (non traffic) or 10 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 hearing pending submittal of additional information by the Applicants and Parties as set forth below. Notice of the hearing was distributed to all parties who attended the pre-hearing Conference on May 19, 2011.

II. Party Status

The following persons who attended the hearing have statutory party status pursuant to 10 V.S.A. § 6085(c)(1):

1. The **Applicants**, by Carol Weston; David White; Richard Haessler, Esq.; of the City of Burlington; Jack Myers P.E. of Stantec Engineering; Brian Dunkiel, Esq. & Elizabeth Caitlin, Esq. of Dunkiel Saunders, LLC and Dale Gozalkowski, P.E. & Jim Shields, P.E. of Clough Harbor & Associates.
2. The **Agency of Natural Resources** did not attend the hearing but maintains their statutory party status.
3. The **City of South Burlington**, did not attend the hearing but maintains their statutory party status.

The following people were granted preliminary party status under Criteria 1B, 1E, 4, 9A, 9K (non traffic) or 10 but did not attend the hearing which was the hearing designated for the criteria under which they had party status. The District Commission has preliminary denied their party status (with two exceptions, below) under these Criteria unless they can provide just cause for missing the Hearing.

4. **Howard Space Partnership** was represented at the Prehearing by Kevin Chamberlin and their preliminary status under Criterion 9K is now denied.

5. **David Lansky, Phd** attended the Prehearing and his preliminary party status under Criteria 9A and 10 is now denied.
6. **Lilian M. Beaudoin** attended the Prehearing and her preliminary party status under Criterion 1B is now denied.
7. **Nina Beaudoin** attended the Prehearing and her preliminary party status under Criterion 1B is now denied.
8. **Katherine O'Neill** attended the Prehearing and did not attend the Hearing. It has been determined that notices had been sent to an incorrect email provided by Ms. O'Neill. The Commission will allow her to cross-examine the Applicants' expert witness at the August 23, 2011 Hearing.
9. **Kilburn & Gates**, was represented at the Prehearing by Graham Goldsmith Jr. and their preliminary status under Criterion 9A is now denied.
10. **Carmen Bombardier** attended the Prehearing and was granted preliminary party status under Criterion 1B. Due to an emergency, Ms Bombardier was unable to attend the Hearing on Criterion 1B. However, she did contact the District Office prior to the start of that Hearing. She has since submitted her testimony and the Commission will allow her to cross-examine the Applicants' expert witness at the August 23, 2011 Hearing.

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 Title 24. The date of the adoption of the Transportation Plan cited in their Act 250 permit 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 Criterion 10.
5. Plans for a gated access to the South Meadow Housing Associates' stormwater pond.

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

6. The extent of the lease rights for the railway spurs in the area
7. The applicable statute or requirement that details that a railway spur would be a requirement for a rail station in the Burlington area.
8. 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.

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 **September 1, 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.
2. Any of the Parties listed in **II**, above may submit petitions to have their party status re-established. They must submit evidence that their absence at the scheduled Hearing was for an emergency and out of their control. Petitions must be received no later than 4:30 PM on August 17, 2011.
3. **The next public hearings will be held on August 23, 2011** to hear testimony under Criteria 1 (air), 7, 8 and 1B (Carmen Bombardier & Katherine O'Neill only) and on **August 31, 2011** to hear testimony under Criteria 5 and 9K (traffic). All hearings to 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 (August 15, 2011 and August 22, 2011, respectively - due to weekends)
 - 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 1B, 1E, 4, 9A, 9K (non traffic) and 10 only if there are outstanding questions or if a party has reasonable questions about the additional information. 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 11th day of August 2011.

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