

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
Prehearing Conference Report and Order
10 V.S.A. §§ 6001-6092 (Act 250)

and

State of Vermont Agency of Transportation
attn: Wayne Davis
One National Life Drive
Montpelier, VT 05633-5001

I. Introduction

On April 15, 2011, the City of Burlington and the State of Vermont Agency of Transportation filed an Act 250 application for a Project generally described as completion and construction of the Champlain Parkway connecting Interstate Highway 189 ("189") to a new roadway extending to Lakeside Avenue, reconstruction and repaving of Lakeside Avenue and of Pine Street, between Lakeside Avenue and Main Street. The project includes a new shared use path connecting Shelburne Street to Pine Street, along the new roadway and along portions of Lakeside Avenue and Pine Street. The project is located on 189 in the Cities of Burlington and South Burlington, Vermont.

A Prehearing conference pursuant to Act 250 Rule ("Rule") 16 was held on May 19, 2011 for the above-referenced application, following a site tour. Chair Thomas A. Little explained the purpose of the Prehearing conference, identified various issues under the ten criteria, and made preliminary decisions regarding party status.

II. Party Status

The following persons have statutory party status:

1. The **Applicants** by Carol Weston; Steve Goodkind; Richard Hassler; Heidi Lemieux; Colin Brett; Larry Kupferman; Jen Stauber; Joe Reinert & Mayor Bob Kiss of the City of Burlington; Wayne Davis & Scott Newman of the Vermont Agency of Transportation; 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 **City of South Burlington**, did not attend the Prehearing but have filed an Entry of Appearance by Justin Rabidoux, Public Works Director

The following persons were present at the Prehearing and requested party status. The Commission has preliminarily granted or denied party status under the criteria indicated, pursuant to 10 V.S.A. § 6085(c)(1):

3. **Alan Hunt** 89 Maple Street Burlington was at the Prehearing and is represented by Franklin Kochman, Esq. At the Prehearing the Chair preliminarily granted party status under Criteria 5 (traffic) which requires that the proposed project will not cause unreasonable congestion or unsafe conditions with respect to use of highways, waterways, railways, airports, and other means of transportation existing or proposed; 8 (aesthetics) which requires that the proposed project will not have an undue adverse effect on the scenic or natural beauty of the area; 9(K) (effects on public investments) which requires that the proposed project will not unnecessarily or unreasonably endanger the public or quasi public investments in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency or safety of, or the public's use or enjoyment of or access to the facility, service or lands; and 10 (local and regional plans) which requires that the proposed project is in conformance with any duly adopted local or regional plan or capital program under chapter 117 of Title 24.
4. **Richard Gamache**, 15 Lyman Ave. Burlington attended the Prehearing. At the Prehearing the Chair preliminarily granted party status under Criteria 1 (air pollution) which requires that the proposed project will not result in undue air pollution and 8 (aesthetics).
5. **Vermont Railway, Inc.** was represented at the Prehearing by Eric Benson, Esq. At the Prehearing the Chair preliminarily granted party status under Criteria 1(B) (wastewater) which requires that the proposed project, in addition to all applicable criteria will meet any applicable health and environmental conservation department regulations regarding the disposal of wastes; 1(E) (streams) which requires that the proposed project, on lands adjacent to the banks of a stream will, whenever feasible maintain the natural condition of the stream and will not endanger the health, safety, or welfare of the public or of adjoining landowners; 5 (traffic); 8 (aesthetics); 9(A) (impact on growth) which requires that the proposed development will not significantly affect the municipality's existing and potential financial capacity to reasonably accommodate both the total growth and the rate of growth which would result from the development; and 10 (local and regional plans).

Initially requests were also made under Criteria 1(D) (floodways) and 1(G) (significant wetlands) but these interests are more correctly established under Criterion 1(B) and the request was rescinded.
6. **South Meadow Housing Associates** was represented at the Prehearing by Jeffrey Kirschner, P.E. and William W. Schroeder, Esq. At the Prehearing the Chair preliminarily granted party status under Criteria 1(B) (wastewater); 4 (erosion control) which requires that the proposed project will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result; 5 (traffic); 8 (aesthetics); 9(A) (impact on growth) and 9(K) (effects on public investments).
7. **Howard Space Partnership** owns property at the corner of Howard and Pine Streets and was represented at the Prehearing by Kevin Chamberlin. At the Prehearing the Chair preliminarily granted party status under Criteria 5 (traffic) and 9(K) (effects on public investments).
8. **Lilian M. Beaudoin**, 14 Lyman Ave. Burlington attended the Prehearing. At the Prehearing the Chair preliminarily granted party status under Criteria 1(B) (wastewater); 5 (traffic) and 8 (aesthetics).

9. **David Lansky, Phd** owns Precision Bioassay, Inc. located at 431 Pine Street, Burlington. At the Prehearing the Chair preliminarily granted party status under Criteria 5 (traffic); 9(A) (impact on growth) and 10 (local and regional plans).
10. **Kristin McCracken**, 349 Flynn Ave. Burlington attended the Prehearing. At the Prehearing the Chair preliminarily granted party status under Criteria 5 (traffic) and 8 (aesthetics).
11. **Nina Beaudoin**, 85 Foster St. Burlington attended the Prehearing. At the Prehearing the Chair preliminarily granted party status under Criteria 1 (air pollution); 1(B) (wastewater) and 8 (aesthetics).
12. **Carmen Bombardier**, 26 Lyman Ave. Burlington attended the Prehearing. At the Prehearing the Chair preliminarily granted party status under Criteria 1 (air pollution); 1(B) (wastewater) and 8 (aesthetics).
13. **Carmen Bombardier** owns business property located at 8 Home Ave. Burlington. At the Prehearing the Chair preliminarily granted party status under Criteria 1 (air pollution); 1(B) (wastewater) and 8 (aesthetics).
14. **Independent Block, LLC** located at 255 South Champlain Street Burlington was represented at the Prehearing by Jason Adams. At the Prehearing the Chair preliminarily granted party status under Criteria 1 (air pollution); 1(B) (wastewater) and 8 (aesthetics).
15. **Dorothy Lewis**, 29 Home Ave. Burlington attended the Prehearing. At the Prehearing the Chair preliminarily granted party status under Criteria 1 (air pollution) and 8 (aesthetics).
16. **Katherine O'Neil**, 16 Ferguson Ave. Burlington attended the Prehearing. At the Prehearing the Chair preliminarily granted party status under Criteria 1 (air pollution); 1(B) (wastewater); 5 (traffic) and 8 (aesthetics).
17. **Kilburn & Gates** is located at 316 Pine Street Burlington, was represented at the Prehearing by Graham Goldsmith Jr. At the Prehearing the Chair preliminarily granted party status under Criteria 5 (traffic); 8 (aesthetics) and 9(A) (impact on growth).
18. **Karen Spach**, 40 Batchelder Ave. Burlington attended the Prehearing. At the Prehearing the Chair preliminarily granted party status under Criterion 5 (traffic).
19. **Fortieth Burlington, LLC** owns property at 128 Lakeside Ave. Burlington. They were represented at the Prehearing by Liam Murphy, Esq. At the Prehearing the Chair preliminarily granted party status under Criteria 5 (traffic).
20. **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. At the Prehearing the Chair preliminarily granted party status under Criteria 5 (traffic).

21. **David Kestenbaum**, 103 South Crest Drive Burlington attended the Prehearing. At the Prehearing the Chair preliminarily granted party status under Criteria 1 (air pollution); 1(B) (wastewater); 5 (traffic) and 10 (local and regional plans).
22. **Annie Dwight**, 42 Central Ave. Burlington attended the Prehearing. At the Prehearing the Chair preliminarily granted party status under Criteria 5 (traffic) and 8 (aesthetics).
23. **Maltex Partnership** is located at 431 Pine Street Burlington and was represented at the Prehearing by Rick Davis. At the Prehearing the Chair preliminarily granted party status under Criterion 5 (traffic).
24. **453 Pine, LLC** is located at 453 Pine Street Burlington and was represented at the Prehearing by Rick Davis. At the Prehearing the Chair preliminarily granted party status under Criterion 5 (traffic).
25. **Jackson Terrace Apartments** is located at 500 Pine Street Burlington and was represented at the Prehearing by Jack Dubrul. At the Prehearing the Chair preliminarily granted party status under Criterion 5 (traffic).
26. **Ken Grillo**, 41 Central Avenue Burlington. Mr. Grillo did not attend the Prehearing but has filed a request for party status under Criteria 5 (traffic) and 8 (aesthetics). Pursuant to 10 V.S.A. 6085(c)(3), the District Commission has determined that this request would not unfairly delay the proceedings or place an undue burden on the parties. Therefore, the Chair preliminarily granted party status under Criteria 5 (traffic) and 8 (aesthetics).
27. **Harry Clark & Sharie Elrick**, 8 Conger Avenue Burlington. Mr. Clark & Ms. Elrick did not attend the Prehearing but have filed a request for party status under Criterion 5 (traffic). Pursuant to 10 V.S.A. 6085(c)(3), the District Commission has determined that this request would not unfairly delay the proceedings or place an undue burden on the parties. Therefore, the Chair preliminarily granted party status under Criterion 5 (traffic).

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

28. **Local Motion**, was represented at the Prehearing by Jason Van Driesche. At the Prehearing the Chair preliminarily granted Friend of the Commission status under Criterion 5 (traffic) and 10 (local and regional plans).

The Chair preliminarily denied Friend of the Commission Status under Criterion 6 (educational services). The issues articulated under this criterion are more correctly dealt with under Criterion 5.

The following people attended a portion or all of the Prehearing but did not request party status.

29. **Dan Kent** 272 Pearl St. Burlington did not request party status but would like to receive all documents.

30. **Bill Keogh** 21 Alder Lane Burlington did not request party status but would like to receive all documents.
31. **GBIC** 60 Main Street Burlington was represented at the Prehearing by Curt Carter, they did not request party status but would like to receive all documents.
32. **David G. White** 38 South Crest Drive Burlington did not request party status but would like to receive all documents.
33. **Joan Shannon** 41 Central Ave. Burlington did not request party status.
34. **John Kell** 59 South Crest Drive Burlington did not request party status.

Preliminary party status designations are summarized as follows:

Name	Act 250 Criteria								
	1 (air)	1B	1E	4	5	8	9A	9K	10
City of South Burlington	under all criteria								
Alan Hunt					G	G		G	G
Richard Gamache	G					G			
Vermont Railway Inc.		G	G		G	G	G		G
South Meadow Housing Associates	G	G		G	G	G	G	G	
Howard Space Partnership					G			G	
Lilian M. Beaudoin	G	G			G	G			
David Lansky					G		G		G
Kristin McCracken					G	G			
Nina Beaudoin	G	G				G			
Carmen Bombardier (26 Lyman Ave.)	G	G				G			
Carmen Bombardier (8 Home Ave.)	G	G				G			
Independent Block, LLC	G				G				
Dorothy Lewis	G				G	G			
Katherine O'Neil	G	G			G	G			
Kilburn & Gates					G	G	G		
Karen Spach					G				
Fortieth Burlington, LLC					G				
GP Burlington South, LLC					G				
David Kestenbaum	G	G			G				G
Annie Dwight					G	G			
Maltex Partnership					G				
453 Pine, LLC					G				
Jackson Terrace Apartments					G				
Grillo					G	G			
Clark & Elrick					G				

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

III. Issues

The following relevant issues have been identified, on which the applicant and all parties (for those criteria on which they have been preliminarily granted party status) should be prepared to provide testimony or submit documentary evidence at a hearing, if necessary:

1. Criterion 1(Air), regarding the increase in air pollution generated by the Project's design.
2. Criterion 1(B), regarding wastewater and stormwater disposal from the Project.
3. Criterion 1(E), regarding the impact of the Project on Englesby Brook.
4. Criterion 4, regarding erosion control measures for the Project.
5. Criterion 5, regarding traffic safety and congestion, including a description of off site improvements to be made in conjunction with the Project.
6. Criterion 8, regarding historic sites, aesthetic issues, particularly the increase in noise.
7. Criterion 9(A), regarding the proposed project's impact on the municipality's existing and potential financial capacity to reasonably accommodate both the total growth and the rate of growth which would result from the project.
8. Criterion 9(K), regarding the impact of the project on adjacent public investments.
9. Criterion 10, regarding the project's conformance with the local and regional plans.

IV. Order

1. All parties and Applicants must send their potential schedule conflicts over the next three months to the District Coordinator by **June 9, 2011**.
2. Any party that is proposing to give testimony shall inform the District Coordinator with an estimate of the time needed for the party's witnesses by **June 9, 2011**. The District Commission highly encourages parties to work together and, when possible and appropriate, have one speaker for their concerns.
3. Any party that is proposing to have an expert witness at the upcoming hearings is required to submit pre-filed testimony from that expert with the expert's resume, no later than two weeks before the scheduled Hearings.

4. Once we have all the information regarding scheduling conflicts and the amount of testimony to the District Commission, we will schedule Hearings on the Criteria.
5. This Prehearing Order is issued pursuant to Rule 16(C) and is binding on all parties unless a written objection, in whole or in part, supported by legal memorandum is filed on or before **4:30 P.M., June 9, 2011.**

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.

Dated at Essex Junction, Vermont this 27th day of May 2011.

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