

State of Vermont
DISTRICT 5 ENVIRONMENTAL COMMISSION
5 Perry Street, Suite 60, Barre, Vermont 05641-4267

RE: City of Montpelier
City Hall, 39 Main Street
Montpelier, Vermont 05602

Application 5W1433-1
Hearing Recess Order
10 V.S.A. §§ 6001-6093 (Act 250)

I. Introduction

On April 2, 2015, the District 5 Environmental Commission held a public hearing for the construction of a bike/pedestrian path between Granite Street and the Montpelier Civic Center on Gallison Hill Road. The project involves new construction, as well as resurfacing, widening and paving to create a 10' wide path with a dedicated bike lane. In addition, a small parking area located at the intersection of Granite Street and Barre Street will be re-constructed to serve the project.

Pursuant to Act 250 Rule 13(B), the Commission recessed the hearing pending receipt of supplemental submittals as set forth below.

II. Rule 20 Request for Assistance:

Pursuant to 10 V.S.A. 6024 and Act 250 Rule 20, the District 5 Environmental Commission has requested the assistance of the Vermont Agency of Transportation Rail Division in providing information regarding the Agency's plans for the repair and reconstruction of both the pipe arch culvert off the end of Old Country Club Road that washed out during Irene, and the other culverts and stormwater management infrastructure systems similarly impacted by the storm. A copy of the Commission's request letter accompanies this recess order.

III. Party Status

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

1. The Applicants, by Tom McArdle, Montpelier Public Works Director, Jessie Baker, and Consultants Evan Detrick and John Benson.
2. The Agency of Natural Resources (ANR) through an April 2, 2015 Entry of Appearance by Jennifer Mojo, ANR Regulatory Planning Analyst.

The following was granted preliminary party status:

1. Vermont College, adjoining landowner, by and through Gerald Tarrant, Esq., was granted preliminary party status under Criteria 5 and 9(K).

Pursuant to 10 V.S.A. § 6085(c)(6), the Commission will re-examine preliminary party status prior to the close of the hearing and will state its decision regarding final party status in the final decision

VI. Supplemental Evidence

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

Criterion 1(B): The Commission acknowledges that an Individual Stormwater Discharge Permit is required and that an application has been filed with the ANR Watershed Management Division.

The Commission requests that the applicant file copies of the correspondence between the City of Montpelier and the Vermont Agency of Transportation Rail Division regarding the ongoing discharges from un-repaired infrastructure damaged during storm Irene.

Criterion 1(D): The Agency of Natural Resources (ANR) staff conducted a site visit on April 1st. The District Commission takes administrative notice of the Agency's comments in an Entry of Appearance filed on April 2, 2015. Based on Agency recommendations, the Commission requests that the applicant file a volumetric analysis, prepared by a P.E., for all fill proposed below Base Flood Elevation, (BFE). Alternatively, if a P.E. certifies that no change in grade will occur anywhere in the Special Flood Hazard Area (SFHA) as a result of the project, then a volumetric analysis is not necessary. If fill is to extend into the flood fringe, an offset cut of equal volume may be required to provide compensatory flood storage, depending on the amount proposed to raise existing grade. If fill extends into the FEMA floodway then the fill must be shown to be de minimis in volume or a P.E. will need to demonstrate the fill will not increase flood elevations or velocities per DEC Flood Hazard Area and River Corridor Protection Procedure, Section 7.0 (a)(1)(B).

In addition, the Commission requests cross sections for stations 540+00 through 560+00 (Old Country Club Road) which will depict changes in grade within the SFHA.

During the site visit, it was noted that the current design alignment may require placement of fill within the banks of the Winooski River in the vicinity of Station 310+00 with said fill not shown on the plans. Please clarify how this floodway encroachment will be avoided.

Criterion 1E (Streams) and 1F (Shorelines): The Commission also takes administrative notice of ANR's comments in the Entry of Appearance regarding potential stream and river shoreline impacts. Old Country Club Road is a city maintained road runs along the top of the river bank. There is little to no riparian buffer. The site plans indicate that ditching on the upland side of the road will be installed, along with upgraded culverts, and stabilization along eroding upland areas to address current erosion issues. The Agency observed erosional issues along the upland side of the road, and that "proper drainage under and around the existing railroad bed has not been adequately maintained." The Agency noted that the proposed project includes the clearing of vegetation and shoreline armoring near the end of the road in order to properly align the path with the railroad corridor. The Commission requests that the applicant reconfigure the alignment of the path along the upland side near the end of the road (in the vicinity of Station 561+00), consistent with ANR's recommendations, in order to avoid new potential encroachment into the River Corridor and to minimize vegetation clearing and river bank armoring (further discussed under Criterion 4 below).

Railroad Corridor Section: The plans indicate that vegetation clearing, excavation and armoring will occur within the 100 feet of the top of bank buffer of the Winooski. The applicant acknowledges that the riparian area along most of the Winooski River in Montpelier is already highly impacted, including the section along Old Country Road. As such, ANR recommended that a stormwater management system would be designed to

ensure that the project does not contribute to future sediment loading or erosion. While it is conceded by ANR that the “configuration of the current infrastructure and limitations imposed by the railroad ROW result in limited space available for this to occur on Old Country Club Road, the snow dump area is one area that could be mitigated.” Therefore, the Commission requests that the applicant file a riparian area planting and management plan developed in consultation with ANR staff: the plan should include discontinuation of snow disposal at this site. The Commission encourages efforts to include replanting and/or seeding versus hard armoring to allow for faster regeneration and restoration of buffer functions and values.

Perennial Streams: Consistent with ANR recommendations, the Commission requests an ANR fisheries assessment to be conducted as soon as conditions allow to determine if fish are present in the Winooski River tributaries to be crossed by the bike path. If streams are determined as perennial and support aquatic life, structures will be required to provide aquatic organism passage.

The Commission requests that the applicant file a narrative describing how the transition describing how the transition between the new culvert at the end of Old Country Club Road and the failed railroad crossing. Will the old culvert be removed and the railroad fill cut back in order to assure a stable reach between the new culvert outlet to the river.

The applicant agreed to update the plans to include proposed construction staging areas, or at least the standards to be used to assure the staging area siting does not conflict with buffer protection or create stormwater runoff issues.

The applicant further agreed to provide information on what measures will be taken to control the spread of invasive plant species such as Japanese knotweed.

Criterion 1(G): The Commission acknowledges receipt of a copy of Individual Wetland Permit 2014-257, issued on March 16, 2015 by the ANR Department of Environmental Conservation, Watershed Management Division.

Criterion 4 (Erosion): The project is located within the ANR River Corridor (formerly called Fluvial Erosion Hazard area). ANR observed during a site visit that “the only portion of the project that may represent a new encroachment is the stone embankment/path proposed between stations 560.29+04 and 561.35+36. The Final Plans appear to indicate the stone embankment at the path curve extends closer to the river than the existing development (Old Country Club Road and the Rail Road bed). Shifting the “S” in the path to the west side of the existing Old Country Club Road turnaround may eliminate this encroachment. Steepening the slope of the stone embankment may also reduce the encroachment and allow the project to be covered under Appendix A in the Procedure.” The Commission requests the applicant revise the plans as recommended by ANR in order to reduce encroachment into the river corridor.

Criterion 5 (Traffic): Please provide sight distance information for the Barre Street crossing at Station 514+00 and respond to the concept discussed at the hearing of moving the crossing easterly in order to increase the sight distance.

Criterion 8 (Aesthetics): The Commission requests that the applicant propose options to “soften” the appearance of the stone embankments, such as the use of grubbed material and planting pockets. Please also provide information on the modular concrete wall appearance.

The applicant is also requested to confirm that the proposed chain link fence around the RR Lines is black vinyl coated, and that all such fencing will be that same specification.

V. Order

The Commission requests the above documentation be provided to all parties listed on the certificate of service accompanying this order, and that four paper sets plus a digital version of the submittals be filed with the District Commission Office. The Commission requests that the digital version be supplied either on a CD-ROM or attached as an email to the NRB public folder: (nrb-act250Barre@state.vt.us) or, if larger than 3 MB in size, uploaded to the NRB ftp site (<http://www.nrb.state.vt.us/lup/publications/efilingguidelines.pdf>). Any upload to the NRB ftp site will be followed by an email to both the NRB public folder and to the Coordinator advising that the submittals have been uploaded.

The parties will be provided fifteen days from the receipt of the applicant’s response to submit any rebuttals, pursuant to Act 250 Rule 12(F). Any rebuttals filed by the parties shall also be filed to all of the recipients listed on the Certificate of Service.

After the foregoing submittals and any comments have been received, the District Commission will consider the evidentiary record to determine whether the submittals complete the record; whether additional submittals are required; or whether a second hearing is indicated. If the record is deemed to be complete, the District Commission will move as efficiently as possible toward issuance of a final decision.

An appeal from this order may be filed with the Environmental Court in accordance with 10 V.S.A. Chapter 220 and the Rules for Environmental Court Proceedings.

Dated at Barre, Vermont this 21st day of April, 2015.

BY: /s/ Jito Coleman
Jito Coleman, Chair
District 5 Environmental Commission

CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of the foregoing **HEARING RECESS ORDER 5W1433-1 (CITY OF MONTPELIER)** by U.S. Mail, postage prepaid, or Email on this 21st day of April, 2015, to the individuals without email addresses and by electronic mail, to the following with email addresses:

Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes.

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FOR INFORMATION ONLY

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BY */s/ Lori Grenier*
Lori Grenier
NTB Tech.