

Burlington Conservation Board

149 Church Street
Burlington, VT 05401
<http://www.ci.burlington.vt.us/planning/>
Telephone: (802) 865-7189
(802) 865-7195 (FAX)

*Matt Moore, Chair
Will Flender, Vice Chair
Scott Mapes
Don Meals
Jeff Severson
Miles Waite
Damon Lane
Zoe Richards
Stephanie Young*



Conservation Board Meeting Minutes

Monday, March 10, 2014 – 5:30 pm
Main Meeting Room – Dept. of Public Works
645 Pine Street

Attendance

- **Board Members:** Zoe Richards (ZR), Jeff Severson (JS), Scott Mapes (SM), Matt Moore (MM), Miles Waite (MW), Don Meals (DM)
- **Absent:** Stephanie Young (SY), Will Flender (WF), Damon Lane (DL)
- **Public:** Tom & Jill Mitchell (1891 North Avenue) Frank von Turkovich, April Moulart, Karina Dailey, Shane Mullen, Lee Sedden, Shane Mullen, Andy Raubvogel, Robert Herendeen, Gerald Couture, Jasmin Pobric, Sarah Deshaw, Kelli Brooks, Joan Dorwart, Tom Papp, Jeff Temer (Keystone Development Corp. items)
- **Staff:** Scott Gustin (Planning & Zoning), Dan Cahill, Jesse Bridges (Parks & Rec) Megan Moir (Public Works)

MM, Chair, called the meeting to order at 5:30 p.m.

Minutes of January 6, 2014

A MOTION was made by DM and SECONDED by MW:

Approve the minutes of January 6, 2014 as written.

Vote: 6-0-0

Board Comment

None.

Public Comment

None.

Open Space Subcommittee

Dan Cahill and Jesse Bridges appeared. Mr. Cahill gave an overview of the Archibald Street community garden site. Remediation is needed. A topsoil cap is recommended. Some soil needs to be removed to accommodate the topsoil cap. MW asked about the PAH contamination. Is it sky high? Mr. Cahill replied that it's higher than allowed. ZR noted that it is used as a community garden site. MW noted that monies for the remediation analysis won't actually pay for the onsite remediation work. Mr. Cahill said that loans or other avenues are being considered. MM said that there are funds available for brownfield clean up. MM, what's the cost estimate? Mr. Cahill replied about \$100K - \$150K. MW noted that it's possible to deter public access to the contaminated soils and thereby reduce remediation costs. Mr. Bridges said that the quotes we have are for complete site remediation.

Update and Discussion

1. Discussion of Archibald Street Conservation Legacy Fund Acquisition

See OS Subcommittee above.

2. Discussion of Arthur Park management plan

The programs and services of the Dept. of Planning and Zoning are accessible to people with disabilities. For accessibility information call 865-7188 (865-7142 TTY).

Dan Cahill and Jesse Bridges appeared on behalf of this item.

Mr. Cahill overviewed where Arthur Park is located. Its across North Avenue from Arms Park. We're looking at putting together a management plan for this urban wild. It presently does not have one. He noted that the updated Open Space Protection Plan will form the basis for this and future management plans. MM asked if putting the management plan together would be put out to bid or done internally. Mr. Cahill said it would be done by an outside consultant. JS suggested using the McKenzie management plan as a guide. MW said he'd be comfortable using BCLF monies for this effort. JS said there's money available in the BCLF that could be used for this type of work. He'd support doing so. Mr. Cahill clarified that he's looking to use part of the acquisition funds. DM asked why. Mr. Bridges said there's not enough money in the administrative budget. SG noted that the acquisition funds were used to pay for the update of the Open Space Protection Plan. The Board sought and received a legal opinion from the City Attorney's Office stating that doing so was consistent with the parameters of that fund. The same could be done here. MM said it would make sense to develop a cohesive management plan for the area in its entirety (condo, city, and WVPD). ZR said the condo association's piece of land would likely be fairly inexpensive for acquisition. MM said the condo association land contains the sea caves, perhaps the most significant feature here. ZR said the sea caves are not the most important ecological component here. MM said we should open up communication with the HOA. Mr. Cahill said he'd bring back additional information and specific price points for the April BCB meeting. An opinion from the City Attorney's Office will be solicited as well. MW asked about city GIS work. Mr. Cahill said staff could do some of the related mapping.

3. Discussion of potential LID pervious pavement zoning amendment

Megan Moir appeared on behalf of this item.

Ms. Moir stated that this amendment is geared towards encouraging better stormwater management on residential properties. It provides up to a 50% coverage bonus. The degree of bonus is tied to the degree of performance. She also noted the change to coverage calculations for strip driveways. Eliminate the practice of calculating complete lot coverage for where cars park regardless of the underlying material. She noted the change to driveway material standards. If tilted towards the public street, they must have a stable surface that will not erode into the street. MM clarified that this is not a coverage bonus. It does not provide for coverage above the existing limits. Ms. Moir responded that it would free up some coverage from lot coverage calculations but would not provide for new coverage above existing limits. SM, is this effort limited to just residences? Ms. Moir replied affirmatively. MW, what about existing nonconforming properties? SG noted that it would not enable additional nonconformity. DM asked about the strip driveway provision. Ms. Moir explained that parking spaces on strip driveways are currently counted as 100% coverage. This amendment would only count the strips. DM said the gravel driveway provision is excellent. MW noted that the 2% slope threshold would require a survey. He also said water will not erode along a 2% slope. SM said that conditions running onto the driveway are just as important as the slope of the driveway itself. Ms. Moir suggested that a 5% slope may make more sense. MM likes the idea of putting something in place to limit runoff impacts into the city streets. MW suggested clarifying the amendment language per the Board's comments. SM said that a lot of folks don't know about permitting for driveways, so an educational component of this effort would be worthwhile. MW requested a clean version (rather than track changes).

Ms. Moir noted she's requested EPA assistance with incentivizing LID citywide. She'll be back in April with an updated amendment.

Project Review

1. 14-0747SD: 1891 North Avenue (RL, Ward 4) Tom Mitchell

Tom Mitchell and Jill Mitchell appeared on behalf of this item.

SG overviewed the project and why it's in front of the Conservation Board.

Mr. Mitchell said the site is flat and sandy. There are no significant wildlife or plants onsite. He said he's worked with the city's stormwater staff. The driveway will be pitched to put runoff onto surrounding grassy

areas. No offsite discharge is proposed. MW, the gutters will direct to surrounding lawn? Mr. Mitchell, yes. MW, has the ESPC been reviewed by city staff? Mr. Mitchell, yes. He said Champlain Consulting Engineers drew up the plans and did not note any problems.

A MOTION was made by MW and SECONDED by JS:

Approve subject to standard SWM and EPSC conditions.

Vote: 6-0-0

2. Review of Keystone Development Corp. Sec. 248 Certificate of Public Good proposal for a solar installation.

3. Review of Keystone Development Corp. VT Wetland Permit application for a solar installation

SG noted there are two distinct but related items here. They will be reviewed concurrently.

MW recused himself from this review.

Frank von Turkovich, April Moulaert, Karina Dailey, Shane Mullen, Lee Sedden, Shane Mullen, and Andy Raubvogel attended on behalf of this item.

Frank von Turkovich overviewed the project and its status.

Attorney Raubvogel said Section 248 projects are unusual in Burlington. These projects go through the PSB as opposed to Act 250. They do not need local zoning permits. In light of the fact that zoning is preempted, a 45-day notice period has been provided for comment. It's an early warning notice that gives the city opportunity to submit comments to the PSB around the time that the application is filed with the PSB. Upon filing with the PSB, there are opportunities for additional city comment. They have provided a detailed 45-day notice for this project. The actual application will have more detail. He said construction level drawings are rarely provided at the time of PSB filing. They tend to be design documents. Right now, what we've provided is the information that we can provide. We are principally here to address stormwater and wetlands.

Lee Sedden overviewed the solar facility design. He said the plant design is situated on 39 acres; about 18 acres will have solar panels on it. The land is a wet meadow, wet sand over clay forest, and an upland forest. Disturbance will be limited to the wet meadow and about 8 acres of upland forest. Power generated would be sufficient for about 700 Burlington homes. He said that a 12' wide gravel road would be needed to provide equipment. The road will be on the upland area. He overviewed the arrays. They are to be mounted on driven steel piles. There will be no concrete footings. This enables a low impact construction. He pointed out the fencing around the array. The fence is set back some 25' from the edge of the array. He noted the relatively short height of the array structures enables effective screening with shrub plantings. He pointed out a vegetative buffer between the remaining forest and the proposed array. The array consists of fixed solar panels. There will be no movement. Attorney Raubvogel noted in the 45-day notice package are visual simulations of the array and screening in place.

Mr. von Turkovich said the Army Corps has said they do not have jurisdiction over this project. He noted the VT DEC wetlands permit application process that is underway. SM asked what the no-jurisdiction letter was based on. Karina Dailey said it was because there is no discharge of fill in the wetland.

Karina Dailey noted the wetland area is 22 acres. About 13 are forest, 3 acres as scrub, and 6 as meadow. The forested is dominated by red maple and American elm and skunk cabbage. The entire area is a class 2 wetland. 12 wetland sample plots have been completed. Soils have restrictive clay layers causing a high water table. She noted that Allen Quackenbush visited the site and confirmed that it is class 2. SM asked if any intermittent streams. Ms. Dailey said there are none. April Moulaert said she has looked over the wetland to the north. It is basically a continuation of the same wetland.

MW said older orthophotos suggest the presence of a stream. Ms. Moulaert noted the presence of a ditch across the site. It was formerly farmland. Ms. Dailey pointed out another ditch that terminates in the wetland.

JS, how were the natural community boundaries delineated? Ms. Dailey said that Eric Sorensen came onsite to make the determination. Ms. Moulaert noted that there are distinctions in ecological values amongst the various wetland components.

SM asked about degree of wetland impacts. Ms. Moulaert said the proposed impacts are 0.52 acres of clearing in the wetland (wet meadow), 0.9 acre of buffer impact, and 84 sf of direct wetland impact due to driven poles and 6 sf of buffer impacts. She noted the required assessment of wetland functions and values under the VT wetland permit application. She found that this wetland is significant for 5 functions:

- Flood control function. The soil will be left intact. The existing dense vegetation will remain. ZR asked how that works with the mowing. Ms. Moulaert said the vegetation will be mowed but will continue to be present. Mowing will keep vegetation under 4' high.
- Surface and ground water function. Also due to the vegetation.
- Wildlife habitat is significant but limited by surrounding development. The more valuable development is located within the rare natural community. ZR asked how the wildlife assessment was made. Ms. Moulaert said they met with VT Fish & Wildlife. They also had an ornithologist conduct a season-long assessment of the site which found that it served as a stop-over site.
- Exemplary natural community. It is a C-ranked community, primarily due to surrounding development. The project will stay out of it. She noted that invasive plant management is included in this proposal.
- Rare, threatened, endangered species. A Torre's Rush plant was found onsite. It is rare in VT but globally common. They consulted Bob Popp and he suggested moving the plants to a different site.

In all cases, no undue adverse impacts were found in the assessment.

Ms. Dailey noted the vegetation management plan. MM asked if the wetland is stable or emerging or otherwise changing. Ms. Moulaert said it's the full expression given surrounding factors, except for the wet meadow that has been managed over time. Ms. Dailey noted the wetland boundary is also the natural community boundary. She noted that clearing will take place outside of the surrounding buffer. DM asked if thinning would include stump removal. Ms. Dailey said that it would not. JS asked where the clearing impacts are located. Ms. Moulaert said there are a couple of forested areas that there will be cleared. Brush-hogged areas are not included in the cleared acreage figure.

JS said he had a bunch of questions. He'd like to see a written response to them. MM, is any grading involved? Ms. Moulaert, nothing in the wetland or buffer zone. SM, what's the basis for claiming no impacts to the wetlands beyond the driven poles? Is there a jurisdictional opinion guiding this? Ms. Moulaert said it was done per the direction of the VT wetlands office. SM said he's hard pressed to think there will be no impacts to the site beyond just the poles. What about the activity involved in driving the poles? Mr. Sedden noted that the road will be in the upland area. All heavy traffic will remain on the road. He said a small tracked vehicle will be used to drive the poles in the wetland area. No damage to the soils is anticipated. Electrical conduit will be above ground.

DM asked what upland soil remediation consists of. Attorney Raubvogel said we'll address this as part of the stormwater discussion.

MM asked about project maintenance. How does shading of the panels impact the underlying plants? Attorney Raubvogel said the rows are 30' apart and face south. Light will continue to reach the ground. MM asked if there would be seeding within the construction area. Ms. Moulaert said there would be natural regeneration. MM asked about mowing. Mr. Sedden said a riding mower would be used. MM asked if repeated mowing presented a problem with soil compaction. Will pesticides be used? Mr. von Turkovich said that mowing practices could be addressed. Mr. Sedden said no pesticides will be applied.

ZR how much of the forested wetland will be converted to a different wetland type? Ms. Moulart said she's not done the calculation. JS estimates 12 – 13 acres of woody wetland area will be impacted by the project. What percent of forest will be converted to mowed lawn? What portion of forest will be cut and allowed to regenerate? He's noted these questions in his written submission. We really need to know these items so we can know the extent of impacts on the wetland. Attorney Raubvogel said we will answer what we can. What we're saying tonight reflects the preliminary assessment of the VT Wetlands Office. Their experience with similar projects fed into their advice. DM, what does "mowing" refer to? Attorney Raubvogel said it's not a mowed lawn; it would be an infrequent effort to limit vegetation to under 4' tall. Mr. von Turkovich said that the mowing would take place before vegetation gets to a height that would make mowing impossible. Mr. Sedden said that most installations mow 2X per year. JS said he was unaware of precedent of other projects relative to the limited impacts claimed. Please provide them so the Board can better understand.

Discussion moved to stormwater.

Shane Mullen overviewed the site. Its divided into two drainages. There are about 8 acres of run-on onto the property. About ¾ of the site is wet. Soils have become compacted over time in places. 0.36 acres of impervious surface are proposed; under the VT stormwater permit threshold of 1 acre. The solar panels are not impervious for the purposes of stormwater management. They are umbrella-like. Existing drainage patterns will remain. No large scale earth disturbance is entailed. The bulk of such work is limited to the upland area along the road. Silt fencing will be installed during construction. Overall, erosion risk is low. He noted the proposed soil restoration. Most of the soil types include sandy components. There is potential for infiltration. Proposed soil restoration will involve tilling them to improve their infiltrative capacity.

DM asked if any infiltration tests have been done. Mr. Mullen said he has not yet. His judgments are based on previous uses of the site. DM asked what practices are proposed to reduce pollutant loads? Mr. Mullen said it would be very minimal, tied to the gravel road. The surrounding vegetated land will handle road runoff. DM, is any offsite surface water discharge anticipated? Mr. Mullen said there would be, but pollutant loads are not a concern. He said the goal is to maintain the existing hydrology. No pipes are proposed. SM asked if pre and post construction runoff has been modeled. Mr. Mullen said it's been done, and he will provide the information. DM, what time of year is construction proposed? Mr. von Turkovich said late spring. Work in the upland may take place over the winter. SM requested information on existing drainage paths. Where does runoff exit the site? ZR, has there been an assessment of vernal pools? Ms. Dailey said there may be one in the rare natural community area. MM, do you have any plans to restrict further development of this property? What happens after the 25-year life of the project? Attorney Raubvogel noted the PSB requires a decommissioning plan and funding.

Public Comment:

Bob Herendeen, Burlington Electric Commission, and neighbor. Will there be concrete footings in the uplands? What about upland wildlife impacts? How can I get copy of 45-day letter?

Miles Waite, consultant for Strathmore. He noted Chapter 26 requirement of a stormwater management plan. Is such plan proposed? Will it show that sufficient engineering analyses has been done? We've yet to see a hydrocad model before the 45-day period expires? Will pre-development mimic the Appletree Terrace pre-development model that was done in 1999?

Tom Papp, Strathmore. Main concern is stormwater. We're waiting to see more substantive plans. Whatever modeling is done needs to account for the change in hydrology due to clearing forest.

Kelli Brooks, Strathmore. Concerned with reliance on lax precedent. This is not like other solar farms. It's bigger and closer to neighboring homes. When there is a stormwater management plan, when can we see it in a public setting? She noted the extent of mowing is more than previously done. The proposal makes the Strathmore Board very nervous.

Jeff Temer, Strathmore. All of the runoff from the upper watershed comes down into lower wet area next to Strathmore property. He's concerned with the size of the setbacks. This will be the largest solar installation in Vermont. He said that Mr. von Turkovich said that scaling the project down makes it infeasible. This installation is much closer to surrounding homes than other installations.

Jas Pobric, neighbor. His property receives the bulk of runoff from the subject property. He's concerned about additional runoff. He's also concerned about this home value.

DM asked about the setback concerns. What would be gained by a greater setback? Jeff Temer said he'd like a wider setback. Typically, there's a 400' to 600' setback. A bigger setback would improve aesthetics and maybe real estate values.

Applicant's response:

MM said that aesthetics are not under the BCB's review here per the City Council's resolution. Setbacks may or may not pertain to the wetlands and/or stormwater management.

Attorney Raubvogel said there are no concrete footings at all. The inverters will also be located on piles. The city has the 45-day letter. SG noted its online as well. Mr. von Turkovich said we may be best off answering these questions in writing. Research will be required.

MM asked Board members how they'd like to respond. JS noted the upcoming VT wetlands permit hearing. Having answers before that meeting would be helpful. Discussion of timing ensued. Attorney Raubvogel stated petition will not be filed prior to April 25. DM requested all new information at least 1 week prior to the BCB's April 7 meeting. Attorney Raubvogel said a response will be provided prior to the next meeting.

BCB will compile questions for applicant by March 11 for distribution to the applicant.

MM noted that the Board is not looking for construction drawings. JS wants to see things like ESPC specs and detail sheets. Attorney Raubvogel said that's understandable, but also said that the PSB application is not yet put together. The PSB does not require these details at the 45-day notice period because it's not part of the application. MM noted that he understands. This project is different from the zoning applications the BCB typically reviews. Attorney Raubvogel noted that the PSB will hold both a public process and an evidentiary process. JS displayed the site plan that was submitted with the wetland permit application. It's impossible to tell what's where. The PSB site plan is far more detailed but is not in the wetland permit application. It's the applicant's burden to demonstrate no undue adverse impact. If the Board cannot make an assessment, then the burden has not been met. Bring up the level of the wetland plans with those of the PSB plans. We want informative plans we can understand.

Applicant will return to April 7 meeting.

Adjournment

The meeting adjourned at 9:00 PM.