

Burlington Conservation Board

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Scott Mapes
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Damon Lane
Zoe Richards
Stephanie Young*



Conservation Board Meeting Minutes

Monday, January 4, 2016 – 5:30 pm
Planning and Zoning Conference Room - City Hall Lower Level
149 Church Street

Attendance

- **Board Members:** Stephanie Young (SY), Zoe Richards (ZR), Jeff Severson (JS), Don Meals (DM), Matt Moore (MM), Damon Lane (DL), Miles Waite (MW)
- **Absent:** Scott Mapes (SM), Will Flender (WF)
- **Public:** Gil Livingston, Charles Simpson, Andy Simon (BC land acquisition), Doug Henson (451 Ethan Allen Parkway)
- **Staff:** Scott Gustin (Planning & Zoning), Jesse Bridges, Dan Cahill (Parks & Recreation)

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

Minutes of December 7, 2015

DM noted on pg. 2, 1st paragraph, 2nd sentence, "... with many people working in multiple roles" should be added to the end. Pg. 2, 7th paragraph, 1st sentence, "... but obligating future funds automatically is not acceptable" should be added to the end. Pg. 5, 1st paragraph, 1st sentence, "... and wondered what it's for. The applicants could not answer, as they didn't yet know tenants" should be added to the end.

MW noted on pg. 4, 4th paragraph, only sentence, delete "do" and insert "drive" and add "... during construction" to the end. Pg. 4, 9th paragraph, 6th sentence, delete it and insert "Stormwater runoff from rooftops, parking, and other impervious surfaces infiltrating into the ground may change groundwater conditions and end up in nearby basements."

JS noted on pg. 6, 2nd paragraph, add new 3rd sentence to read "The Vermont Wetland Permit issued by the Agency of Natural Resources creates the presumption of compliance with the Wetlands criterion in Section 248." Last sentence, delete "fruitful" and replace with "prudent."

A MOTION was made by DM and SECONDED by ZR:

Approve as corrected.

Vote: 6-0-1

Board Comment

None.

Public Comment

Charles Simpson noted the BC lands map. State law says there's no cutting by right of trees on slopes of 20% grade. Therefore, the 12 acres of land to be conveyed to the city is grossly overvalued. Due to surface water runoff, the property will become a marsh.

Open Space Subcommittee

Dan Cahill noted that the Bayberry item was an agenda mistake.

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1. CLP funding application: Burlington College land acquisition & development agreement

MM noted this was the primary topic of discussion at the Subcommittee meeting. They discussed stormwater and schedule, but made no formal decision. Now, it's before the full Board. If the Board desires, we can make a recommendation on the use of the Conservation Legacy Fund as we see fit. At Subcommittee, we asked what if the decision was deferred. Can there be an extension to February? It sounds like that's not negotiable with Mr. Farrell in light of the financing obligations.

DM, does that mean that the contents of the development agreement are not open to discussion by the Board? MM, it's fine to talk about the agreement in order to understand if this is a good deal or not.

JS stated he will recuse himself from discussion and voting. MW said he will do the same. MM said he will not recuse from discussion of the conservation parcel.

ZR, it sounds like we're being asked to make a recommendation relative to the BCLF. MM, the application before us is for \$500K. The MOU touches on the \$500K at closing and an additional \$500K after. DM, on page 2 of the MOU, it does say that \$500K and possibly up to another \$500K from the city if fundraising falls short. It is the intent that the city's financial obligation not exceed \$1M. There seems to be an assumption that the BCLF is good for the 2nd half million dollars. He doesn't want to obligate the fund for monies not in it. Gil Livingston said we are asking for a definite \$500K. There is a strategy in place to cover the 2nd \$500K. If that does not work, a back-up strategy is in place. If that does not work, the agreement commits the BCLF to a second \$500K. Jesse Bridges pointed out the fund has \$1M. There's been discussion about making payment installments so that the fund is not completely used up. DM, it seems that his impression is correct. If the two strategies fail, the 2nd \$500K will come from BCLF. Mr. Livingston said he is confident that the monies for this project will largely come from the community. Ideally, ½ from city government and ½ from philanthropic sources. SY, if we vote in favor, we're on the hook for \$1M. Mr. Bridges, no. DL, the action requested tonight is just for \$500K. MM said the agreement caps total obligation at \$1M. DM, this is all technically true. If some time from now, monies are not raised, this agreement will be pointed to for payment of the 2nd \$500K.

ZR, doesn't have a problem with the agreement. She's hopeful that we won't need to spend the 2nd half, but this is what the fund is for. SY, what did the Board have in mind for this land prior to today? ZR, the trail, the woods. MW, Texaco beach and trail connectivity to North Ave.

MM, will the Board be comfortable taking action tonight? Board members noted affirmatively.

Public Comment:

Charles Simpson referred to earlier comments.

MW, has anyone else questioned the \$2.9M valuation? Mr. Bridges, there was some public comment at the Council meeting relative to valuation. The valuation takes into account the bike path ROW, unbuildable areas, and development potential. The appraisal was done by the preeminent appraiser in the state. Also, we're not buying it for \$2.9M, we're buying it for \$2M. MM noted that the appraisal is valuing the property under present conditions, not under potential conditions.

Mr. Simpson said there's no solution to potential problems with surface water runoff. The public is taking the obligation to handle runoff from the construction.

Andy Simon, when he was here last month, one of the responses was that BCB is just an advisory board. However, it is the body serving as gate keeper of the BCLF. Even with comments and concerns in the minutes, action still results in expenditure of the fund. He has concerns with the development agreement relative to stormwater. If the Board has concerns, there should be at least one meeting for reviewing/commenting on "sustainability" aspects of the project. In a month or so, the Board's power relative to what happens will be reduced. He also noted concern with MM's refusal to recuse from discussion. The development and conservation aspects are bound together.

MM recapped that BCB are stewards of land and water in the city and touched on the stormwater, sustainability guidelines, and conflict of interest concerns.

MM, relative to conflict of interest, he's participated for years and has no bearing on his job with Housing VT. His pay, job security, etc. are in no way affected by this project or any related decisions. He will recuse himself from review of the development project. DM recalled that no one on BCB objected to MM's participation. DL said that public perception matters. If there's a perception of conflict, we should address that. Mr. Simon noted that his comments are not personal, but said that MM is shaping the discussion, and there is a real conflict of interest. DM also noted that without MM's participation, there would be no quorum for this item tonight.

MM, relative to authority in BCLF process, we're not abdicating any authority. DM said that we routinely conduct development reviews. We make recommendations to DRB who, in turn, regularly incorporates our input into their decisions.

MM, as for stormwater, he asked BCB members for their comments. DL, are there other similar situations in the city where one property uses another for stormwater management? MW said he cannot think of one offhand, but it's conceivable. Stormwater infrastructure will likely be underground and involve infiltration into very sandy soils. It would be nice to know dimensions of would-be stormwater infrastructure. Can we get a valuation on stormwater services? Would that change the overall valuation of the property? DM, a quick and dirty analysis could be done to get some general numbers. He doesn't think the property will become a marsh. He's got a concern with the potential for a detention pond and an associated swale impacting public open space. DL, within the parameters of the agreement, who determines what infringes or not into public use of the open space? Mr. Bridges, the property owners (including city parties). Mr. Livingston noted that the development will be reviewed by Conservation Board.

ZR, what's the significance of urban wild designation and stormwater management? Mr. Bridges said that urban wild is a designation that entails leaving the land in more of a natural state rather than maintained ball fields or similar.

MM said it's not uncommon to have a stormwater easement across another property. His idea is that the land is conserved in a natural state. He doesn't like the idea of a stormwater pond on the property. Nor a pump station. MW, can we amend the layout to ensure that any stormwater pond and/or pump station remain on the private, developed parcel? MM, perhaps we can make note of that tonight. JS noted that this Board's recommendation will go to City Council. Any comments the Board feels are appropriate can be forwarded along with a recommendation. DM, would it be appropriate to approve the BCLF application with the following comments?

- The Board strongly opposes location of stormwater pond and related surface items/infrastructure on public conserved land.
- We could put other comments.

JS agreed with this format. There's no language that would preclude the Board from sharing its comments.

Mr. Bridges stated that Parks has no desire to maintain a private stormwater pond on public land. That's why we argued for the language in the agreement.

A MOTION was made by DM and SECONDED by ZR:

Approve the application for BCLF monies submitted on behalf of Eric Farrell with the following stipulations.

- The Board strongly opposes location of a stormwater pond and related surface items/infrastructure on public conserved land.

Discussion:

DL has concern with the valuation. Where did \$2M figure come from? How much have other projects cost? Is this proposal proportionately consistent? Mr. Bridges, on a per-acre basis, this is much less than

Archibald St. We're also leveraging other funds, unlike the Myrtle Street project. Waterfront Park is the same size as the acreage in this proposal. Relative to buildable and unbuildable area, it is much better than something like Oakledge Park. Mr. Livingston said the \$2M is based in fair market value, negotiations, and availability of funding. He also said we're buying the most attractive part of the property. City land use policy for this property has long been for fairly intensive residential development. Prior scenarios of the property consumed it with single family homes.

SY, do we have any idea of future BCLF applications? Mr. Bridges, projects in negotiation right now are much less expensive. They would not be jeopardized. One other significant project is Blodgett beach. There has been extensive consideration of other potential projects. Blodgett beach is specifically called out in the draft PlanBTV South End. SY, what if the worst case scenario happens with a stormwater pond on the conserved property? Would it still be considered an urban wild? WM doesn't think a stormwater pond could be sustained on the sandy soils. Maybe a detention basin for infiltration. There could not be a pond unless it was lined. JS referred to language in the development agreement.

Andy Simon, what about sustainability guidelines? Are they close to being formed? Mr. Livingston replied that Mr. Farrell is working on them. They include LEED standards (w/o certification). DL would like to know what they look like. MW, do they have anything to do with the 12 acres? Mr. Livingston, no.

Vote: 5-0-0 (JS & MW recused)

Project Review

- 1. 16-0724PD; 451 Ethan Allen Pkwy (RL, Ward 7N) Ellis/Alles**
Proposed 9-unit planned unit development in 3 buildings and associated site improvements

Doug Henson appeared on behalf of this item.

SG overviewed history and change in layout and zoning standards. This project started sometime around 2000 and originally contained about 30 dwelling units. It was downsized to 9 units, but they were placed on a section of upland about midway back in the parcel. A long driveway through wetlands provided access. It was denied, went to court, and was remanded back to the city. At the city's suggestion, all of the development was pushed up to Ethan Allen Parkway, and a state wetland permit was granted for the new configuration. Preliminary plat approval by the city was granted but expired. This current proposal is essentially unchanged, but it is subject to the Comprehensive Development Ordinance, whereas the prior application was under the previous zoning and subdivision regulations. Most significantly, the CDO contains wetland review standards and buildable area standards. The present application addresses both, but it seems that the buildable area calculation is overly optimistic. He noted that the BCB unanimously recommended preliminary plat approval of the now-expired proposal. That recommendation contained conditions relative to stormwater management and wetland review criteria.

Doug Henson said he's confident in the buildable area calculations. All steep slopes and wetlands have been removed.

DM noted that there are wetland and buffer impacts.

WM, is the state wetland permit still valid? Mr. Henson, it's been renewed.

Mr. Henson said a prior iteration with a retaining wall actually resulted in more significant wetland impacts and so has been eliminated.

JS, at the lower units, is there cut into the existing slope? Will a retaining wall be there? Mr. Henson said is a drainage swale, but no retaining wall. JS, what about the upper units to the south? Mr. Henson, no retaining wall is needed.

DM, instead of a retaining wall, you're building a fill slope. Mr. Henson, yes. DM, would that filling have occurred with the retaining wall? Mr. Henson, yes, it would have been more fill.

DL, did we consider wetland functions and values last time around? JS feels there are several that may be impacted by this project. They did receive state wetland approval. This proposal is less of an impact by far than the prior layout that strung development deep into the property. Wetland impacts could be further reduced.

DL, do the lower units extend impacts into the wetlands? Mr. Henson, yes, but he noted that grades are maxed out to lessen impacts of the project.

DL, are the wetlands affected by the lake level at all? JS, no. There used to be connectivity with interval wetlands before the beltway was built.

MW, there was some concern about keeping lighting glare out of the wetland. Mr. Henson said that there is no lighting leaving the pavement under the present plan.

A MOTION was made by MW and SECONDED by DL:

Recommend preliminary plat approval as proposed.

Vote: 6-0-1 (JS abstained)

Update & Discussion

1. Draft bylaws update relative to seawalls

DL, have all seawall plans been by PE's so far? SG, no. DM, not all have been replacements either. DL, do we need the PE criterion? JS, yes, it is a great improvement. DM, we're not saying the plans need to be signed off by PE, but if it is, we won't review it.

A MOTION was made by JS and SECONDED by MW:

Approve bylaws amendment as drafted

Vote: 7-0-0

Adjournment

The meeting adjourned at 7:25 PM