



PRE-HEARING CONFERENCE REPORT & ORDER

State of Vermont
Natural Resources Board
District 8 Environmental Commission
440 Asa Bloomer State Office Building
88 Merchants Row, 4th Floor
Rutland, VT 05701-5903
<https://nrb.vermont.gov/>

CASE NO: 8B0634

LAW/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 – 6111 (Act 250)

Northeastern Baptist College Inc.
104 Kocher Drive
Bennington, VT 05201

I. Introduction

On July 30, 2020, Northeastern Baptist College Inc. (“NEBC”), 104 Kocher Drive, Bennington, VT 05201 filed an Act 250 application seeking authorization for the construction of a Planned Residential Development to be used for student housing, consisting of nine duplex dwellings (total of 18 single-family, two-bedroom residential units), on an unimproved +/-7.30-acre parcel. The project is located 0.25-miles north of the intersection of Convent Avenue and Main Street in Bennington, Vermont.

A prehearing conference (“PHC”) pursuant to Act 250 Rule 16 was held remotely (due to the coronavirus/“COVID-19”) by Microsoft Teams videoconferencing software on October 8, 2020, for the above-referenced application. The Commission, with Convening Officer and Acting Commission Chair Rick Kobik presiding, explained the purpose of the prehearing conference, discussed the implicated Act 250 Criteria, considered preliminary party status requests, and discussed a site visit and hearing schedule.

II. Party Status and Friends of the Commission

1. The following persons are entitled to party status pursuant to 10 V.S.A. § 6085(c)(1):
 - A. The Applicants, by Mark Ballard and David King (NEBC), Jason Dolmetsch and Abby Chaloux (MSK Engineering and Design), Jeffrey Goldstone (Goldstone Architecture), and David Grayck, Esquire.
 - B. The Agency of Natural Resources (“ANR”), by Jennifer Mojo, Regulatory Policy Analyst, Office of Planning & Policy, in attendance at the PHC, indicated the Agency staff are continuing to review the project, and in particular the Rivers Program is reviewing the sewer connection located in the river corridor.
 - C. The Vermont Division of Historic Preservation (“VDHP”) by Yvonne Basque, in attendance at the PHC, and through an Entry of Appearance dated October 5, 2020, indicated concerns

regarding Precontact archaeological sensitivity on the parcel and requested the Commission allow time for further assessment.

- D. The Town of Bennington was not represented at the prehearing; however, the municipality is a party by right to this proceeding.
 - E. Bennington County Regional Commission was not represented at the prehearing; however, the regional planning commission is a party by right to this proceeding.
2. The following persons were present at the prehearing conference and through their written petitions and/or testimony requested party status. The Commission makes the following preliminary determinations concerning their party status, based upon the information received, to date:
- A. Mary C. McGuinness (140 Convent Ave, Bennington), granted preliminary party status under criteria 5 (Traffic & Safety), 8 (Aesthetics) and 10 (Local and Regional Plans). Denied party status under criteria 4 (failure to demonstrate a sufficiently particularized interest) and 9 (failed to specify precise criteria; failed to demonstrate a sufficiently particularized interest under relevant criteria 9K and/or 9L).
 - B. Heather Raab (129 Convent Ave, Bennington), granted preliminary party status under criteria 5 (Traffic & Safety), 8 (Aesthetics) and 10 (Local and Regional Plans).^a

There were no other requests for party status received by the Commission by mail or made in the course of the prehearing videoconference.

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.

Rule 5(d)(1) of the Vermont Rules for Environmental Court Proceedings sets out how a party or person denied party status may take an interlocutory appeal of a District Commission decision on party status.

3. Friends of the Commission

- A. In all cases where the Commission denied/denies party status, the person is afforded non-party participation under the noted criteria as a 'Friend of the Commission' pursuant to 10 V.S.A § 6085(c)(5), and each is granted the rights of full participation allowed under 10 V.S.A § 6085(c)(5).

^a Adjoining landowner Heather Raab submitted a written party status petition in advance of the PHC; however, Ms. Raab was unable to participate in the PHC due to a personal emergency, and as such, was unable to further articulate her particularized interests under criteria 1G, 4, and 9L, and potentially 9K. The Commission will allow Ms. Raab the opportunity to submit supplemental evidence prior to making their preliminary party status determinations under those criteria, as they determined that Ms. Raab's personal emergency at the time of the PHC constituted "good cause for failure to request party status in a timely fashion, and the late appearance [would] not unfairly delay the proceedings or place an unfair burden on the parties".

III. Preliminary Issues

The Commission intends to narrow the scope of the hearing to the relevant criteria identified at the PHC, namely criteria 5 – Traffic and Pedestrian Safety, 8 - Aesthetics, and 10 – conformance to local and regional plans and local zoning, unless that scope is expanded by the Commission at the hearing. The applicant and all parties should be prepared to provide testimony or submit supplemental documentary evidence (for those criteria on which they have been preliminarily granted party status or Friends of the Commission status) prior to or at the hearing scheduled for December 10, 2020.

IV. Order

A. Additional Evidence

Pursuant to Act 250 Rule 20, the Commission requests submission of the following preliminary information. The Commission reserves the right to request additional evidence from the Parties. Parties and preliminary parties may ask other questions at the hearing.

From the Applicant:

1. Clarify who will be the occupants of the residential housing, the anticipated duration of occupancy (year-round, on a semester basis or school-year basis, until graduation, long-term), and total anticipated and maximum allowable occupancy of the project; representations throughout the application and testimony at the PHC are conflicting.
2. If residents will *not* have a vehicle on-site, describe the methods (pedestrian access) for how residents will get to other campus and downtown locations throughout the year, approximately one mile away. If the student residents are presumed to all have personal vehicles, is there adequate parking at or near the other campus locations?
3. Reconcile the potential number of residents with 27 parking spaces, two of which will be handicap accessible. How will the total number of vehicles be managed, and/or where will potential overflow parking be located?
4. The site plan (Exhibit 006) identifies an electric vehicle charging station—does this station serve one or multiple vehicles for the Project? Will the project include bike racks or bike storage areas for the students?
5. Clarify the construction hours and anticipated duration of construction of the project; representations throughout the application and testimony at the PHC are conflicting.
6. Is any of the exterior lighting (e.g., in the parking area and walkways) expected to be on overnight? Are the lights on motion sensors or timers?
7. Will the project impede or alter sheet flow of stormwater across the site to the east and southeast towards the Walloomsac River, as prior to development?

From Adjoining Party Heather Raab (Section II(2) above):

8. Submission of supplemental evidence showing a particularized interest under criteria 1G (wetlands), 4 (erosion/stormwater), and 9L (settlement patterns), if so desired.

From ANR and VDHP:

9. Filing of respective Entries of Appearance regarding concerns noted above in Section II, and including any additional concerns resulting from Agency review and site visits, and/or any suggested permit conditions.

Filing Requirements and Deadlines:

- The Applicant shall provide a written response to items 1 through 7 above, on or before 4:30PM November 30, 2020.
- Any additional information from Heather Raab under item 8 shall be submitted on or before 4:30PM November 2, 2020.
- Objections to any supplemental evidence submitted by Heather Raab shall be submitted on or before 4:30PM November 9, 2020.
- If the Applicant or Parties intend to present supplemental documentary evidence at the hearing, the Applicant and Parties shall provide those documents to the Commission on or before 4:30PM November 30, 2020. Those documents shall then be uploaded by Act 250 staff to the Act 250 database so that all parties may review the evidence in advance of the hearing and refer to them online during the hearing as necessary.

The Commission requests that documentation filed in response to the requirements above be filed electronically with the District Commission Office and all Parties on the certificate of service, either as an email attachment to the NRB at nrb.act250rutland@vermont.gov, or, if larger than 3 MB in size, uploaded to the NRB ftp site (File Transfer Protocol; see <https://nrb.vermont.gov/sites/nrb/files/documents/application-guide-act-250.pdf>). Any upload to the NRB ftp site should be followed up with an email to the NRB and to the District Coordinator (kim.lutchko@vermont.gov) informing the Commission and Coordinator that the files have been uploaded.

B. Site Visit and Hearing

At the PHC, the Commission discussed a site visit and the possibility of a remote hearing in lieu of an in-person hearing.

1. **SITE VISIT:** The Commission has scheduled a site visit, to be held on:

Date: November 4, 2020

Time: 10:00 AM

All Parties will convene at the **Project Site, 0.25-miles north of the intersection of Convent Avenue and Main Street in Bennington, Vermont**. All Parties intending to participate shall adhere to the following protocols (a through l) prior to and during the site visit:

- a. On or before 4:30 PM on October 30, 2020, all prospective attendees must submit the following information in writing (which may be via email to the District Coordinator kim.lutchko@vermont.gov and NRB Staff NRB.Act250Rutland@vermont.gov):
 - (i) their name and intent to attend the site visit;
 - (ii) affirmation that they will abide by the following protocols:
<https://nrb.vermont.gov/documents/covid19-statement7>
 - (iii) if unable to attend the site visit, Parties may provide the location of points of interest, if any, and a brief description of what they want the Commission to observe during the site visit (at each identified location, as applicable, and which may include locations on the development tract and/or other off-site locations). Any additional locations shall be identified with a street address and accompanied by a written description of the location where the Commission is to stand and observe; it may be supported by a map for additional clarification, if desired. If the point of interest to be observed by the Commission during the site visit is not on the Project tract and is on private property, the requesting party is responsible for ensuring access permission from the landowner (note that all site visit participants may observe the identified points of interest, and thus access may need to allow for persons other than the Commission and Act 250 staff).
- b. No more than 25 people may attend the site visit. If this attendance limit is reached, or expected to be reached, the Commission will limit site visit attendance as necessary and will provide notice to all of the prospective attendees of any site visit limitations.
- c. If any portion of the site visit will be conducted inside, all occupancy limits established by the Agency of Commerce and Community Development must be followed even if that results in a limit of less than 25 people. See <https://accd.vermont.gov/content/maximum-retail-occupant-load-during-covid-19> (last visited October 19, 2020).
- d. No one may attend the site visit who has displayed the following CDC-recognized symptoms of COVID-19: fever (100.4 or higher), cough, shortness of breath or difficulty breathing, chills, fatigue, muscle pain or aches, headache, sore throat, congestion or runny nose, nausea or vomiting, diarrhea, and/or new loss of taste or smell.
- e. No one may attend the site visit if they have had contact with a person diagnosed with COVID-19 unless they have self-quarantined for 14 days following such contact or 7 days followed by a negative COVID-19 test.
- f. No one may attend the site visit unless they are in compliance with the current requirements for cross-state-travel, as applicable. See <https://accd.vermont.gov/covid-19/restart/cross-state-travel> (last visited October 19, 2020)
- g. Everyone attending the site visit must observe strict social distancing of six feet.

- h. Everyone attending the site visit must wear face coverings over their nose and mouth when in the presence of others.
- i. Everyone attending the site visit must have access to either a hand washing station, consisting of soap and water, or hand sanitizer.
- j. Everyone attending the site visit must have completed a VOSHA-approved and employer-sponsored training program regarding COVID-19. Additional information about VOSHA-approved training may be found on the Vermont Agency of Commerce and Community Development's website. See <https://accd.vermont.gov/covid-19/business/restart> (last visited October 19, 2020).
- k. No more than three people shall occupy any single vehicle traveling to or from the site visit.
- l. Everyone attending the site visit must refrain from touching communal objects, including but not limited to site plans, unless they are cleaned and disinfected between each touch.

2. **HEARING:** During the PHC, the Applicant waived their right to an in-person hearing and instead agreed to a process that will allow for the **hearing to be held via Microsoft Teams videoconferencing software**. The Commission has set forth the following hearing schedule:

Date: December 10, 2020

Time: 10:00 AM

The following persons or organizations may participate in the PHC and hearing for this project:

- a. Statutory parties: The municipality, the municipal planning commission, the regional planning commission, any adjacent municipality, municipal planning commission or regional planning commission if the project lands are located on a town boundary, and affected state agencies are entitled to party status.
- b. Those persons granted preliminary party or Friends of the Commission status, under the criteria with respect to which each has been preliminarily granted party or Friends status.

Steps for Participating in the Hearing Remotely

- The platform we will be using is Microsoft Teams. Download the Microsoft Teams free application, which is available for Windows and Mac desktop devices and iOS and Android mobile devices. Create an account once downloaded.
 - **Download here:** <https://products.office.com/en-us/microsoft-teams/download-app>
 - **Microsoft Teams Training Resources:** <https://support.office.com/en-us/article/join-a-teams-meeting-078e9868-f1aa-4414-8bb9-ee88e9236ee4>
- To receive a Microsoft Teams invitation to the hearing videoconference, email the District Coordinator/Act 250 office (kim.lutchko@vermont.gov and Sabrina.urich@vermont.gov) no later than **Monday, December 7, 2020 at 4:30PM**. You will then receive a Microsoft Teams

calendar invitation with both a direct link for participating in the conference via video, or you may use the following call-in information:

Dial-in: 1-802-828-7667

Conference ID: 624 325 647#

If you experience any technical difficulties or need assistance troubleshooting with Microsoft Teams, the District Coordinator/Act 250 office will be available by phone or email beginning at 09:45AM on December 10, 2020 to assist you: Sabrina.urich@vermont.gov / 802-786-5920 or kim.lutchko@vermont.gov / 802-786-5099.

This Prehearing Conference Report and Order is issued pursuant to Rule 16(C) and is binding on all parties unless a written objection is filed by 4:30PM November 4, 2020.

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.

Questions regarding this Prehearing Conference Report and Order can be directed the District Coordinator at 440 Asa Bloomer State Office Building, 88 Merchants Row 4th Floor, Rutland, VT 05701-5903 or kim.lutchko@vermont.gov or NRB.Act250Rutland@vermont.gov.

Dated at Rutland, Vermont this 26th day of October 2020.

By /s/ Rick Kobik

Rick Kobik, Convening Officer and Acting District Commission Chair
District 8 Commission

Other participating Commissioners: Don Miller and Leslie Keefe.

E-Notification CERTIFICATE OF SERVICE #8B0634

I hereby certify that I, the undersigned, sent a copy of the foregoing Prehearing Conference Report and Order on October 26, 2020, by U.S. Mail, postage prepaid, to the individuals without email addresses, and by electronic mail to the following with email addresses. All email replies should be sent to NRB.Act250Rutland@vermont.gov. **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the NRB 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 the District Office of any email address changes.**

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FOR INFORMATION ONLY

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