

Date: 10/21/2013
To: City Council
From: Tom Papp
Re: South 40 Solar LLC Power Purchase by BED.

Dear Councilors;

Strathmore's Board of Directors has lingering concerns about this proposed solar project. (Strathmore at Appletree Point is a 192 unit development on 77 acres directly downstream of the project parcel in ward 4. The city is co-permittee on our stormwater permit.)

While we applaud Frank Von Turkovich's efforts to go green, the Board has justifiable concerns about this project, just as we did regarding the last 5 housing developments he proposed for this site.

Our primary concerns are around stormwater flow, wetlands, drainage, tree retention & significant natural areas. These are the same Act 250 criteria that caused the DRB to deny the last permit application.

As you may already know, this project will bypass the normal City Conservation Board, DRB process and follow the State PSB Section 248 process. It is that process that the Board is concerned about because it largely bypasses rebuttal and debate, relying more on pre-filed testimony. There may not even be a requirement for stormwater review, despite the fact that over 20 acres of trees will be clear-cut and drainage onto our properties will be affected.

Strathmore is a \$100,000,000 development with over 500 residents. The bottom line to us is that City Council needs to be aware that signing this power purchase agreement signifies that the Council is comfortable with having some responsibility for the risks and impacts that this project may trigger.

The Strathmore Board's suggestion is that at the very least, Strathmore and the City Stormwater Division's Engineers should be given the opportunity to analyze the stormwater design and determine if the stormwater impacts have been mitigated BEFORE the City Council approves a power purchase and passes overall project approval responsibility to the State.

Thank you for your time and attention.

Sincerely,

Tom Papp, President
Strathmore Homeowners Association
802-862-9795 (h)
802-238-0326 (m)

Date: 11/4/2013

From: Tom Papp, President. Strathmore Homeowners Association

To Conservation Board:

Subj: Follow up to the Conservation Board....

The Strathmore Board is not against this project per se. However we have a fiduciary duty to ensure that this project does not negatively impact our property values or damage our properties due to changes in drainage, stormwater, wetlands, etc..

Our concerns are summarized below...

1) Past History/Behavior.

- a. The Injunction in place (See VTEC Read the Environmental Court's Opinion here. (*From VTEC198-8-06 3/21/2010 pp3*))

Keystone represents that it does not have any plans to conduct development work on the property and that a permanent injunction is therefore unnecessary. We applaud Keystone's pledge to abide by the applicable zoning regulations. However, due to its history of actual or threatened non-compliance with applicable zoning laws, which have already supported the propriety of our issuance of the pending Preliminary Injunction, we conclude that the requested permanent injunction is warranted as well.

The propriety of a permanent injunction is also supported by the procedural history of this long-running land use dispute. In a previous Docket, this Court issued a similar preliminary injunction against Keystone. See City of Burlington v. Keystone Dev. Corp., Docket No. 153-8-04 Vtec. The Preliminary Injunction in that Docket was issued against Keystone's planned development activities on September 3, 2004 and remains undisturbed to this day. Regardless, Keystone asserted that the 2004 Preliminary Injunction was dismissed by the Supreme Court, when in fact the Supreme Court dismissed Keystone's appeal, not the underlying Injunction. See Sunset Cliff Homeowners Ass'n v. City of Burlington, 2008 VT 56 ¶ 8 (mem.).

Keystone's past actions provide further support for the issuance of the requested injunction. First, even after its development permit was denied, Keystone began clearing a portion of its land, thereby necessitating the issuance of the 2004 Injunction. Id. at ¶ 8. Second, even with the 2004 Injunction in place, and a specific directive from the City of Burlington Zoning Administrator in August of 2006, Keystone continued to assert its intention to conduct tree-cutting and ditch-digging without a permit. These actions reinforce the need for a clear directive that activities that constitute, or are in preparation for, development must first be subject to zoning permit application proceedings.

- b. *The creation of the BTV tree retention ordinance.*

This ordinance was created to create protections for large tracts of forested land within the city limits and re-emphasize the City's desire to protect them. It is interesting that in the case of a Solar Farm, this Ordinance and its protections will be bypassed. In contrast to this, a housing development would be subject to the ordinance.

- c. *Bond to ensure restoration of the forest should the Solar Farm be dismantled or abandoned. There is the possibility that this Solar Farm is merely being used as a means to cut down 20 acres of forest that would normally fall under the Tree Retention Ordinance's protection.*

2) Significant Natural Areas

a. The Environmental Court's Findings on the Sandy Red Maple Wetland and Pine Grove. See <https://www.vermontjudiciary.org/GTC/Environmental/ENVCRTOpinions2000-2004/ecrt26201.pdf> pp 2-3.

b. Burlington DRB's own findings. (See 05-571CA Minutes/Findings of Fact pp13/17)

(8) *Not have an undue adverse effect on rare, irreplaceable or significant natural areas, historic or archaeological sites, nor on the scenic or natural beauty of the area or any part of the city;*

The parcel contains noteworthy wooded and wetland areas. Much of the proposed development will stay out of the wetlands, in fact, only some infrastructure will intrude into the wetlands. However, extensive tree clearing is proposed, particularly in the grove of mature pines. The extent of proposed tree clearing is excessive and unwarranted. As noted earlier, the applicant has still not shown how the project is designed to preserve this important grove of pines as much as possible. The requested waiver for a tree retention plan is unwarranted.

3) Errors in prior Stormwater Design Work.

a. I would also like to remind this Board that it was only Strathmore's Stormwater Engineers, (not the developer's, city's or state's engineers) that discovered Coincident Peak Discharge for a 2005 proposed development would have exacerbated Strathmore's stormwater problems.

4) Visual Buffers

5) Minimum Distance from Homes to Panels

6) Minimum Distance from Homes to Transformer and Inverter Stations

In closing, my point is that review of any stormwater design should not occur in a vacuum. All downstream impacts should be examined by as many eyes as possible to ensure the design is correct. If this project does get approved, regardless of the final form the design takes, Strathmore requests that its stormwater engineers be allowed to review it and comment prior to approval by the Conservation Board.

Thank you for your time and attention.

Sincerely,

Tom Papp, President
Strathmore Homeowners Association
802-862-9795 (h)
802-238-0326 (m)