

BURLINGTON COMMUNITY DEVELOPMENT CORPORATION

**MONDAY, MAY 20, 2012
6:30 P.M.
CONFERENCE ROOM 12, CITY HALL**

MINUTES

PRESENT: Mr. Miro Weinberger, Ms. Joan Shannon, Ms. Sharon Bushor, Ms. Jane Knodell, Mr. Paul Sisson

ALSO PRESENT: Mr. Richard Haesler, Mr. Brian Dunkiel, Dunkiel Saunders Elliott Raubvogel & Hand, Bob Roesler, Paul Frank and Collins.

1. Agenda

Ms. Bushor inquired if they should reform the BCDC tonight because they have new membership. Mr. Haesler stated in light of the fact they will have a new CAO, they will hold their annual meeting to elect new officers at a later date. This is considered a special meeting. Ms. Bushor inquired if new members of the Board of Finance need to be elected to the BCDC. Mr. Haesler stated that by being a member of the Board of Finance, a person is also a member of BCDC.

Ms. Bushor and Ms. Shannon made a motion to approve the agenda. The motion passed unanimously.

2. Approval of BCDC Minutes

- a. July 16, 2012
- b. August 6, 2012

Ms. Bushor noted an error in the attendance of the July 16 minutes.

On a motion by Ms. Bushor and Ms. Shannon, the July 16 minutes were adopted unanimously as amended and the August 6 minutes were adopted unanimously as presented. Ms. Knodell abstained from approving the minutes.

3. Private Sidetrack Agreement

Mr. Haesler stated the City entered into an agreement with BCDC in which they acknowledged joint interest in the Champlain Parkway litigation. They need to have separate counsel when two different parties are involved. This agenda item has been entertained for advancing a several acre parcel. The question has been when to move to terminate the sidetrack agreement and prepare the parcel for the long term development interests of the City. They have issues with the quiet title. The quiet title is also a part of the Champlain Parkway litigation.

Councilor Bushor inquired what a quiet title is. Mr. Haesler stated Gilbane has claimed they have some residual rights to the title from when the original transaction with the State of Vermont took properties from GE through eminent domain proceedings.

Ms. Shannon stated the last she heard was that Gilbane was unsure if they have any interest in this and they were told that three owners ago, someone was making a claim on this. That is where their claim came from, since they are a more recent owner. Mr. Dunkiel stated the Champlain Parkway was designed as a four lane highway. In order to complete it, they needed to acquire land. There was a sliver of land that was acquired from GE. This sidetrack agreement is the only evidence they can find that there was an agreement that could relate to any of the successors of interest in that land. The City's name is not there, because at that time the City had no interest. The way property law works is that the deed passes the rights of predecessors and is recorded. The City and BCDC sit as a successors in interest to that sidetrack agreement. This is important because that piece of land has been consolidated into a parcel that is a few acres. Because the sliver of land was acquired through eminent domain proceedings, VTRANS has a lot of control, including whether or not the City can do anything with the consolidated parcel in the future. VTRANS has told the City that it is time to start clearing any cloud on the parcel so that the Champlain Parkway can go through design and right of way acquisition. VTRANS has made it clear that they need to have a clear title before they do anything with the land.

Ms. Shannon inquired if the sidetrack agreement is in the land records. Mr. Dunkiel stated it is.

Ms. Bushor inquired how BCDC got involved. Mr. Dunkiel stated BCDC got involved because they had an interest in the consolidated parcel. This Board needs to have a resolution to make it clear that anyone with a possible interest is in agreement. Mr. Haesler stated VTRANS initially forced the City to move for a quiet title. That is how Gilbane was noticed. VTRANS has since agreed that the City is the rightful owner of the property.

Ms. Shannon inquired what it is that they are giving up and inquired what a sidetrack agreement does. Mr. Dunkiel stated a sidetrack agreement is similar to a road association. It is an agreement between the property owners on the road showing how it will be cared for. This just applies to a rail line and will cover damage to steel, railroad ties, or a washout if there is a flood. If someone were at the end of a rail line and the track was damaged farther up, their ability to get through would be based on someone else fixing the track on their property. Ms. Shannon inquired who the other parties are that the resolution refers to. Mr. Dunkiel stated it would be the four property owners to the east of the property. Ms. Shannon inquired if all they have to do is notify them that the agreement is cancelled. Mr. Dunkiel stated that is correct and is not unusual. He has also had this reviewed by a rail expert. Ms. Shannon inquired if the other parties are aware of this agreement coming before BCDC. Mr. Dunkiel stated he is not sure if they are aware of this specific meeting, but they are very aware of the efforts to acquire their interest. Ms. Shannon inquired what their feedback has been on this issue. Mr. Dunkiel stated if they have a legal interest to the underlying easement the land would be appraised and they would be compensated.

Ms. Bushor inquired if BCDC paid any money for this parcel and inquired if this transaction will result in an exchange of money. Mr. Haesler stated there will be no funds exchanged. BCDC did pay to acquire the 2.47 acres of the Gilbane property and the .85 acres of the

Morton parcel. This was one of the reasons that the City made arrangements years ago to move the parcel back to Burlington via the South End Transit Center. Ms. Bushor inquired if BCDC would be compensated if the City were to sell the land. Mr. Haesler stated there would have to be. Ms. Bushor inquired if the larger acreage would increase the value. Mr. Haesler stated they had to do a separate appraisal. They cannot gain any monetary value for the .85 acres because it was a federal purchase.

Ms. Shannon inquired if executing the sidetrack agreements would allow them to build over or remove the tracks. Mr. Dunkiel stated the railroad has the right to purchase the tracks. However, they will be removed. Ms. Shannon inquired if the portion of the track that is not in the Parkway would be affected by this. Mr. Dunkiel stated the track on the larger consolidated parcel can all be removed. This would ensure that rail operations would not disrupt development. Ms. Shannon inquired if Gilbane disagrees. Mr. Dunkiel stated Gilbane quit-claimed their interest in the sidetrack agreement to the City and BCDC. Ms. Shannon inquired if Gilbane will come back and protest. Mr. Haesler stated they released that right in a previous transaction. Mr. Dunkiel stated they have no legal rights or concerns in regards to this action. It is somewhat unclear what they are claiming, but they feel that they should be able to have the parking lot paved and crossings to occur. The stipulation that they are suing over was never recorded in the land records. That means it does not pass successor interest. In the initial phases of discovery, they have asked for evidence that the right was passed, but they have received nothing. The sidetrack agreement is not an issue in the litigation. The confusion is because it is the same parcel, but the issues are different. This is a complex issue.

Mr. Weinberger inquired if the rails are likely to be purchased and removed. Mr. Dunkiel stated it is unclear what their reaction will be. He expects they will be motivated to determine how they can be compensated and how they can be eligible to use their property rights. Ms. Shannon stated it seems the rails are used just by Vermont Railway. They store cars on them sometimes. Mr. Dunkiel stated they are not servicing any customers and haven't for years. They have been asked if they use the tracks or if they facilitate in railyard operations and they have declined to share information. Ms. Shannon stated she thinks it is a paint shop for cars.

Ms. Bushor and Ms. Shannon made a motion to approve the sidetrack agreement. The motion passed unanimously.

4. Bylaw Amendment Update

Ms. Bushor and Ms. Shannon made a motion to approve the bylaw amendment update. The motion passed unanimously.

Without objection, the meeting was adjourned at 7:01pm.