

**From:** Shems, Ron  
**Sent:** Tuesday, July 31, 2012 3:00 PM  
**To:** MacLean, Alex  
**Subject:** Burlington Waterfront -- CONFIDENTIAL

Hi Alex,

I just spoke with Brian Dunkiel. But first as we discussed yesterday, the assertion of Act 250 jurisdiction is based on a well-established and commonly-applied principle: An unpermitted parcel developed to serve or expand a permitted parcel's development would fall under Act 250. For example, Walmart buys a nearby or adjacent lot that is not currently subject to Act 250 to expand its parking lot. Walmart would have to amend its Act 250 permit before developing the new lot because both lots serve the permitted development and are under common control or ownership.

Burlington disputes the facts on which the JO is based, namely that the proposed skate park is part of, or serves the Waterfront Park (that is already subject to Act 250).

Brian and I agreed to the following process that could resolve this matter:

1. In the context of the current appeal, we will work with the City to further develop *objective* and more detailed facts. We will agree to vacating the JO and dismissal of the appeal *if* the facts do not support jurisdiction. (The NRB does not have the authority to reverse a JO; we have to use the appeal process.)
2. Alternatively, we will endeavor with the City to process any application in the timeframe set by the FHWA grant (and presumably, the City could choose to pursue the appeal.

Brian seemed satisfied with this process and will inform Miro et al.

Two other points regarding the JO:

First, it was not a "reversal." The original JO was based on the fact that the Park and Moran parcels are not bound by a master plan. Based on more recent facts, the new JO found that the skate park is effectively an expansion of the Waterfront park.

Second, I do not see this as a slippery slope to claiming the bike path (or any other project) needs an Act 250 permit. The principle described above is commonly applied and has not served to establish jurisdiction over distinct projects such as the bike path.

Please let me know if you have questions.

--Ron

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