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DRB rejects Dorset Meadows proposal

Miranda Jonswold | The Other Paper
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The Dorset Meadows development proposal is a no-go following a development review board decision made on Feb. 27.

The Development Review Board voted 0-5 to deny the application. Two board members, John Wilking and Brian Sullivan, recused themselves due to conflicts of interest. Former board member Jennifer Smith, who has been involved in earlier project discussions when she served on the board, filled in as an alternate.

Since its introduction to the DRB nearly two years ago, several affected residents have spoken out against the Dorset Meadows for a myriad of reasons, ranging from its environmental impact to its change of character in the neighborhood.



The planned unit development was proposed to sit on two lots at the corner of Nowland Farm Road and Dorset Street in the Southeast Quadrant and consist of over 150 new housing units ranging from single family, two-family, and multi-family homes.

Additionally, the project proposed conservation of 15.8 acres on-site and approximately 55 acres off-site through the purchase of 71 Transfer Development Rights (TDRs).

Prior to closing the final plat application on Nov. 5, the board warned the project team to proceed at its own risk given its similarity to the Spear Meadows – another project proposed in the SEQ, which faced legal challenges.

Spear Meadows was approved by the DRB in 2017 and required use of TDRs. The bylaw was challenged by Daniel Seff of MSK Attorneys, who represented a group of residents, and the Environmental Court ruled the city's TDR bylaw as unconstitutionally vague in February 2019.

One year later, that ruling was overturned by the State Supreme Court on Feb. 21.

TDRs aside, residents opposed to Dorset Meadows — many of whom are also represented by Seff — have been hyper-focused on protection of the “riparian connectivity area,” a primary conservation element outlined in “Map 7” in the Comprehensive Plan.

The planned unit development section of the Land Development Regulations reads that it must “be consistent with the goals and objectives of the Comprehensive Plan for the affected district(s).”

The data used from the map, originally in the 2014 Open Space report, came from the Vermont Agency of Natural Resources' BioFinder mapping tool. “Riparian connectivity” is not defined in the Comprehensive Plan or the LDRs, but within the 2014 Open Space Report, it's defined as “the land along streams, rivers, lakes and ponds occupied by plants and wildlife and also serve as ‘corridors’ for wildlife movement. The connectivity layer consists of the underdeveloped sections of mapped surface water and riparian areas (A1) shown on the Water Resources Map [in the BioFinder Development Report, 2013].”

Each time the subject has surfaced, Paul O'Leary, principal of O'Leary Burke Associates and Dorset Meadows' project manager, has countered that the disclaimer on the map mentions that it is for reference-use only. The project team field-verified all the data, which was conducted by Gilman Briggs Environmental, the state of Vermont and the Army Corps of Engineers.

The board voted to reopen the application for the purpose of defining riparian areas as they relate to Map 7 in the Comprehensive Plan as well as 9.06B(3), the Southeast Quadrant section of the LDRs regarding open space and resource protection. The team needed to prove it had “a plan for the proposed open spaces and/or natural areas and their ongoing management,” including “conservations areas shown in the Comprehensive Plan.”

That hearing was held on Jan. 22, where the project team provided supplemental information. They provided field delineation of natural resources such as river corridors, wetlands, floodplains, existing trees, as well as rare, threatened and endangered species.

However, it wasn't enough to sway the DRB in its favor.

“The applicant did not conduct a field investigation to identify and map or otherwise confirm a valley bottom functional equivalent, nor did the applicant identify and include additional riparian area. Therefore, the applicant has not provided a complete site-specific delineation of riparian connectivity,” according to the board's written decision.

Without a complete analysis of the extent and location of riparian connectivity within the subject property, the applicant cannot demonstrate that it has established a plan for the ongoing management of open spaces and natural areas or that existing natural resources on the subject property are protected through the development plan. Therefore, the Board finds this criterion not met.”

Board members cannot discuss projects while they are still active, which includes the 30-day period following the decision that allows appeals to be filed. Marla Keene, the city's development review planner, was able to “confirm that 9.06B(3), including protection of

conservation areas, is the basis for the denial,” she told The Other Paper.

The Dorset Meadows project team is evaluating its future, given the decision.

“We are disappointed in the DRB’s decision and are still evaluating our options for moving the project forward,” said Peter Kahn of Dorset Meadows Associates LLC.

On the other side, Seff and his clients let out a sigh of relief.

“My clients and I are pleased with the result, which protects critical and sensitive natural resources from the ravages of development,” he wrote. “The fact that the DRB voted 5 to 0 against the proposed 155-unit housing project sends a powerful message that: (A) South Burlington’s protected natural areas are not for sale; and (B) neighbors can make a difference in the municipal permitting process.”

An appeal of the decision may be filed within 30 days of the decision – the deadline being March 28.



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