

# **FREQUENTLY ASKED QUESTIONS**

## **Colchester Recreation Center**

### **1/24/23**

#### **PROJECT DEFINITION AND PURPOSE**

##### **1. What is the Colchester Recreation Center?**

The Colchester Recreation Center will be considered by voters on the Town Meeting Day ballot in March 2023. The construction of the Recreation Center, a 29,427 square foot multi-generational facility, responds to a community need that has been identified over the past 20 years through multiple surveys, community outreach and engagement.

The Recreation Center will include:

- Full-size, multi-purpose gymnasium
- Elevated walking/running track
- Locker rooms
- Kitchen
- Classroom and studio space
- Cardio/weight room

##### **2. Where will the Recreation Center be located?**

The Colchester Recreation Center will be located on the town-owned 14-acre parcel, known as the Bayside-Hazelett property, with proposed access on Blakely Road, directly across from Laker Lane. This land was purchased by the town with voter approval in 2004.

#### **PROJECT HISTORY**

##### **What is the history of the Recreation Center?**

- 2001: Community Survey identified need for a Recreation Center.
- 2002: Recreation Center Committee was formed.
- 2004: Bayside/Hazelett property purchased by town, with voter approval.
- 2005: The Planning Commission conducted a survey which identified a multi-generational recreation center as the best use for the Bayside/Hazelett property
- 2016: Conceptual planning took place with focus groups and a survey which again identified the need for a Recreation Center.
- 2017: Planning continued with public input and identified the desired amenities for a Recreation Center.
- 2020: The Bayside/Hazelett parcel was determined as the best location for the Colchester Recreation Center and the Selectboard authorized funding for its design.
- 2022: Colchester Recreation Advisory Committee recommended the proposed project to the Colchester Selectboard which in turn, approved the project for a public vote.

##### **Is the Colchester Recreation Center a new idea?**

The Colchester Recreation Center has been a community discussion since 2001.

### **When was the Bayside/Hazelett Property purchased?**

The fourteen-acre parcel was purchased with voter approval in 2004 for \$1.1 million dollars. It has road frontage on East Lakeshore Drive and Blakely Road. The amount owed as of 6/30/22 is \$153,078. The bond will be paid off on 11/15/24.

The Colchester Planning Commission conducted a public survey which identified the property to be best suited for “public use” and a multi-generational Recreation Center.

### **Was there any community outreach about the Recreation Center?**

There was a community survey in 2001 and again in 2016. Public meetings and focus groups were held in 2016, 2017 and 2018. This was a topic of multiple Selectboard meetings, including [December 13, 2022](#), [September 27, 2022](#), [June 25, 2019](#), [April 10, 2018](#), [September 27, 2016](#), [August 23, 2016](#), [June 28, 2016](#), [April 12, 2016](#), [February 9, 2016](#), [September 9, 2014](#), [July 8, 2014](#), [April 29, 2014](#), [December 10, 2013](#), [August 12, 2013](#), [March 12, 2013](#), [February 9, 2010](#), [October 8, 2008](#), [September 17, 2008](#), and [January 13, 2004](#). It was also a topic of several Planning Commission meetings, including [November 1, 2022](#), [June 19, 2018](#), [December 19, 2017](#), [January 15, 2013](#), [May 1, 2012](#), and [November 15, 2011](#), as well as 72 Recreation Advisory Meetings that had the Recreation Center on the agenda.

## **PROJECT DETAILS**

### **Where will the Colchester Recreation Center be built?**

The Recreation Center will be built on the Bayside/Hazelett Property that the town purchased in 2004 with voter approval. It is a fourteen-acre parcel that has road frontage on Blakely Road and East Lakeshore Drive.

### **What size is the building?**

The Colchester Recreation Center will be 29,427 sq. ft.

### **What amenities will be in the Colchester Recreation Center?**

The Colchester Recreation Center will have a full-size multi-purpose gymnasium, classroom and studio spaces, cardio/weight room, locker rooms, small kitchen and an elevated walking/running track.

## **PROJECT COST and FUNDING**

### **How much will the Colchester Recreation Center cost?**

The construction cost including site development, building, equipment and solar arrays is \$15,907,000.

### **How will the Colchester Recreation Center be paid for?**

The construction of the Colchester Recreation Center will be repaid with from current and future proceeds generated from the existing 1% Local Option Tax (LOT).

### **What is the Local Option Tax?**

The 1% Local Option Tax is a tax applied to all taxable goods sold in the Town of Colchester that was approved by Colchester voters on Town Meeting Day 2015. LOT proceeds may only be used for voter approved capital projects.

### What are the exact funding plans for the Colchester Recreation Center?

\$9,000,000 in available proceeds from the LOT as of 6/30/2023

\$6,907,000 loan which will be paid from LOT proceeds over a ten-year period

\$15,907,000 paid entirely from Local Option Tax Proceeds

### Will any property taxes be used to fund the construction?

Property taxes will not be used for this project.

### PROJECT COST

The Colchester Recreation Center's cost was estimated in December 2022, assuming construction would take place in 2024 and 2025, at \$15,907,000. We waited until then to provide the estimate, understanding that costs were changing as the design evolved and time passed.

Below is additional information with eight areas of cost which include contingencies and inflation. Additional detail is not subject to disclosure under the Vermont Public Records Act as it would disadvantage the town in obtaining fair pricing and negotiating fair contracts on the project.

An individual or private business would not share how much they have in the bank with contractors giving pricing for a replacement roof. If they did, they would likely pay more than fair market value. The same is true for the Town.

<b>Colchester Recreation Center Capital Cost Detail</b>	
Estimated December 2022 assuming 2024-2025 construction	
Site development costs	\$ 2,978,000
Building	\$ 7,494,270
Interior finishes/fitness	\$ 394,270
Elevator/HVAC/electric/sprinkler	\$ 2,771,549
Solar	\$ 1,225,000
Insurance/permits	\$ 211,898
Consultants/engineers	\$ 440,213
Intersection/traffic signal	\$ 391,800
<b>Total</b>	<b>\$ 15,907,000</b>

## **TAXES**

### **Will property taxes be used to pay for operating costs?**

Property taxes will not be used to pay for operating costs of the Recreation Center.

### **How will the operating costs be paid for?**

Membership and facility use fees will fund the ongoing operating expenses.

### **What will the memberships costs be?**

<b>Annual Membership</b>	<b>Resident</b>	<b>Non-Resident</b>
Adult (18-62)	\$600/\$50 month	\$780/\$65 month
Senior (62+)	\$504/\$42 month	\$604/\$51 month
Family	\$1200/\$100 month	\$1440/\$120 month
Youth	\$360/\$30 month	\$432/\$36 month

<b>3-month Membership</b>	<b>Resident</b>	<b>Non-Resident</b>
Adult (18-62)	\$200	\$240
Senior (62+)	\$144	\$173
Youth	\$105	\$126

<b>Daily Admission</b>	<b>Resident</b>	<b>Non-Resident</b>
Adult (18-62)	\$15	\$18
Senior (62+)	\$12	\$15
Family	\$28	\$34
Youth	\$10	\$12

<b>10 Punch Pass</b>	<b>Resident</b>	<b>Non-Resident</b>
Adult (18-62)	\$120	\$144
Senior (62+)	\$100	\$120
Youth (15-17)	\$80	\$96

## **NEXT STEPS AND SCHEDULE**

If approved by Colchester voters on the Town Meeting Day ballot, March 7, 2023, construction is anticipated to be completed by spring of 2025.

From: Paul Simon  
Sent: Thursday, March 19, 2015 5:42 PM  
To: Sarah Hadd  
Cc: Kathi O'Reilly; Dawn Francis  
Subject: Act 250 jurisdiction for municipal projects (involving land physically disturbed)

Hi Sarah,

This is the email from Lou Borie regarding my question as to municipal projects involving ACT250 only when disturbing more than 10 acres. The text below is all from Lou; the highlighted items were also highlighted by Lou Borie. Looks like corridor projects such as bike, roadway and trail projects have been cited... but I don't think this fact would limit "involved land" "physically altered" to corridor projects alone. In my conversations with Lou he understands this is a town owned parcel. His guidance is the same in that ACT250 will only have jurisdiction (on municipal owned projects) if the proposal includes physically altering land greater than 10 acres.

-Paul Simon

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Hi Paul – Jurisdiction for municipal projects is based on the Act 250 statute and Act 250 Rules. See below. I hope this helps clarify the basis for jurisdiction. Please let me know if you have any other questions or you can also call either Stephanie Monaghan (879-5662) or Peter Keibel (879-5658), the Act 250 District Coordinators in the Essex Junction office.

Lou

Act 250 Statute: 10 V.S.A. § 6001(3)(A)(v):

(v) The construction of improvements on a tract of **land involving more than 10 acres** that is to be used for municipal, county or state purposes. In computing the amount of land involved, land shall be included that is incident to the use such as lawns, parking areas, roadways, leaching fields and accessory buildings.

Act 250 Rule 2(C)(5)(b):

(5) "Involved land" includes:

(b) Those portions of any tract or tracts of **land to be physically altered and upon which construction of improvements will occur for state, county, or municipal purposes including land which is incidental to the use such as lawns, parking lots, driveways, leach fields, and accessory buildings,** bearing some relationship to the land which is actually used in the construction of improvements, such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by reason of that relationship. In the case where a state, county or municipal project is to be completed in stages according to a plan, or it is evident under the circumstances that the project is incidental to or a part of a larger undertaking, all land involved in the entire project shall be included for the purposes of determining jurisdiction.

In addition, numerous Environmental Board and Court cases have clarified this jurisdiction. Below is a section from the E-Note Index (<http://www.nrb.state.vt.us/lup/publications/enotesapril2014.pdf>) which cites these court cases:

#### 75.2.4. State, county and municipal projects

See old EBR 2(V)(2) and new EBR 2(C)(14) and their reference to 1 VSA 126 for the definition of "municipality"

\* Fact that crushed rock was eventually used in a municipal road repair project does not mean that activities at site were not for a private commercial purpose (the sale of crushed rock).. ANR v. Duranleau, 159 Vt. 233, 238 (1992)

\* State development projects (such as highway projects) involving more than ten acres of land require a Act 250 Land Use Permit. In re Agency of Transportation, 157 Vt. 203, 207 (1991); 10 V.S.A. § 6001(3).

\* "Development" for municipal or state purposes. In re Agency of Administration, 141 Vt. 68 (1982).

\* VAST trails organized for a public purpose pursuant to the Vermont Trails System Act exist for a state purpose under Act 250. Re: Vermont Association of Snow Travelers (VAST), DR #430, FCO at 9 (3/11/05).

\* "Involved land" for state, county and municipal projects means only land that is physically disturbed by the project. Re: Town of Barre Millstone Hill West Bike Path, DR #440, MOD at 3 (1/3/05); Re: Town of Williston Road Improvements, DR # 381, FCO at 7 (1/13/00); accord, Dover Valley Trail, No. 88-4-06 Vtec, Decision at 5 (1/16/07). But note ENote 266.1 (portions of a town project that cross already permitted lands are subject to material change review, even if the project disturbs less than 10 acres)

\* With regard to state, county and municipal projects, EBR 2(F) does not provide a basis for asserting Act 250 jurisdiction independent of 10 V.S.A. § 6001(3). The Board will no longer follow decisions that have suggested otherwise, e.g., Village of Ludlow. Town of Williston Road Improvements, DR # 381 (1/13/00).

\* Language in EBR 2(F)(3) requiring that "all land involved in the entire project" be counted when proposed improvements are part of a larger plan or undertaking may only be interpreted to mean that all land physically involved in the project is counted. Town of Williston Road Improvements, DR # 381, (1/13/00).

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**Natural Resources Board  
111 West Street  
Essex Jct., VT 05452**

## Act 250 Jurisdictional Opinion

**This is a Jurisdictional Opinion based upon available information and a written request from the Landowner/ Agent or Other Person. Any Notified Person or entity will be bound by this opinion unless that person or entity files a request for reconsideration with the District Coordinator (10 V.S.A. § 6007 (c) and Act 250 Rule 3 (b)) or an Appeal with the SUPERIOR COURT, Environmental Division within 30 days of the issuance of this opinion**

I hereby request a jurisdictional opinion from the District Coordinator or Assistant District Coordinator regarding the jurisdiction of ☒ V.S.A. Chapter 151 (Act 250) over the project described below: **Claudine Safar, Monaghan, Safar Ducham PLLC**

### PROJECT DESCRIPTION:

The proposed project includes the construction of a community park at the Bayside Hazelett Park at 0 East Lakeshore Drive in Colchester, Vermont. The property is owned by the Town of Colchester and is comprised of approximately 14 acres that spans the northerly and southerly sides of East Lakeshore Drive. The proposed community park will include a basketball court, tennis courts, pickle ball courts, frisbee golf course, kids play area, open play area, two pavilions, a dog park, bicycle pump track, ice skating area, maintenance building, and parking areas. The project will include 9.9 acres of ground disturbance.

Existing Act 250 permit: No Act 250 permits were found for the property

Project Type:	<input type="checkbox"/> Commercial	<input type="checkbox"/> Residential	<input checked="" type="checkbox"/> Municipal/State	<input type="checkbox"/> Mixed
	<input type="checkbox"/> Agriculture	<input type="checkbox"/> Silviculture	<input checked="" type="checkbox"/> Other	
Has the landowner subdivided before?	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	N/A
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**AN ACT 250 PERMIT IS REQUIRED:**      **YES**      **NO**  
☐      ☒

### BASIS FOR DECISION:

Provided that the proposed municipal project includes less than 10 acres of disturbance, the project does not constitute development pursuant to 10 V.S.A. §6001(3)(A)(v).

SIGNATURE: /s/ Rachel Lomonaco      DATE: 3/11/2020

Rachel Lomonaco, District Coordinator  
Environmental Commission District #4  
111 West Street, Essex Junction, VT 05452  
802-879-5658  
[rachel.lomonaco@vermont.gov](mailto:rachel.lomonaco@vermont.gov)

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(B). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. As of May 31, 2016, with the passage of Act 150, Act 250 Rule 3(C) (Reconsideration by the Board) is no longer in effect. Instead, any appeal of this decision must be filed with the Superior Court, Environmental Division (32 Cherry Street, 2<sup>nd</sup> Floor, Ste. 303, Burlington, VT 05401) within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 which is \$295.00. The appellant also must serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Edward G. Adrian (Of Counsel)  
Christian S. Chorba  
James F. Conway, III\*  
Steven R. Ducham  
Brian P. Monaghan  
Claudine C. Safar\*  
Kristen E. Shamis

\*Also licensed in New Hampshire  
and Maine

\*Also licensed in Massachusetts

March 10, 2020

**VIA ELECTRONIC AND FIRST CLASS MAIL**

Rachel Lomonaco  
District #4 Coordinator  
111 West St.  
Essex Junction, VT 05452  
rachel.lomonoco@vermont.gov

*Re: Request for Jurisdictional Opinion – Hazelett Park, Colchester, Vermont*  
Parcel ID's #66-021013-0000000, SPAN #153-048-16909; and ID#66-006013-0000000, SPAN#  
153-048-16908

Dear Rachel:

I write on behalf of the Town of Colchester, Vermont in regards to their property located at 0 East Lakeshore Dr., Colchester, Vermont ("the Property")<sup>1</sup>. Pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3, we respectfully request a jurisdictional opinion as to whether activities taking place at the Property are subject to the jurisdiction of Chapter 151 of Title 10 of the Vermont Statutes.

*I. Statement of Facts*

1. The Town of Colchester, Vermont, is a Vermont municipal corporation having offices located at 781 Blakely Road, Colchester, Vermont (hereinafter "the Town").
2. The Town owns property located at 0 East Lakeshore Dr., Colchester, VT, that is also referred to as the Bayside Hazelett Park.
3. The Property is comprised of total 14.0 acres and spans the northerly and southerly sides of East Lakeshore Drive.

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<sup>1</sup> See Master Plan attached as Exhibit 1.



4. The Town seeks to develop the Property as a community park per the attached plan entitled Colchester Bayside Hazelett Park Master Plan (“Master Plan”) by VHB dated March 5, 2020. Master Plan attached hereto as Exhibit 1.

4. Although the Town owns the 14 acres that comprises the Property, it only intends to develop 9.9 acres.

5. The Master Plan (the “Project”) will include the construction of tennis courts, pickle ball courts, parking areas, kids play areas, an ice skating area, open play areas, two pavilions, a dog park, a bicycle pump track, an overlook seating area, a basketball court, a maintenance building, and a frisbee golf course.

## *II. Memorandum of Law*

### *A. Authority*

The District Coordinator may be asked to issue a jurisdictional opinion regarding whether certain activities are subject to the jurisdiction of the Natural Resources Board and Chapter 151 of Title 10 of the Vermont Statutes. *See* Act 250 Rule 3 (“Any person seeking a ruling as to whether an activity constitutes a development, subdivision, material change to a permitted project, substantial change to a preexisting project, or is a downtown development pursuant to 10 V.S.A. § 6086b, subject to the jurisdiction of 10 V.S.A. Ch. 151 (Act 250), may request a jurisdictional opinion from a district coordinator or an assistant district coordinator (“Coordinator”) in the environmental district where the potential project is located pursuant to the provisions of 10 V.S.A. § 6007(c); *see also* 10 V.S.A. § 6007(c).

### *B. Argument*

The Natural Resources Board (“NRB”) has jurisdiction over, among other things, development. Act 250 Rule 2(A) (“The term ‘development,’ relating to Act 250 jurisdiction, is defined as 10 V.S.A. §§ 6001(3)(A) . . .”). In pertinent part, “development” as it relates to a municipal project is defined as follows:

The construction of improvements on a tract of land involving more than 10 acres that is to be used for municipal, county, or State purposes. In computing the amount of land involved, land shall be included that is incident to the use such as lawns, parking areas, roadways, leaching fields and accessory buildings.

10 V.S.A. § 6001(3)(A)(v).

“Involved land” related to a municipal project is defined in Act 250 Rule 2(C)(5)(b), which provides that:

Those portions of any tract or tracts of land to be physically altered and upon which construction of improvements will occur for state, county, or municipal purposes including land which is incidental to the use such as lawns, parking lots, driveways, leach fields, and accessory buildings, bearing some relationship to the land which is actually used in the construction of improvements, such that there is a demonstrable likelihood that the impact on the values sought to be protected by Act 250 will be substantially affected by reason of that relationship. In the case where a state, county or municipal project is to be completed in stages according to a plan, or it is evident under the circumstances that the project is incidental to or a part of a larger undertaking, all land involved in the entire project shall be included for the purposes of determining jurisdiction.

The former Environmental Board<sup>2</sup> more specifically held that “involved land” in state, county and municipal development projects means only land that is physically disturbed by the project. *Town of Barre Millstone Hill West Bike Path*, Declaratory

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<sup>2</sup> Environmental Board “shall be given the same weight and consideration as prior decisions of the environmental court.” 10 V.S.A. § 8504(m).

Ruling No. 440, Memorandum of Decision at 2 (Jan. 3, 2005) (citing *Town of Williston Road Improvements, Declaratory Ruling #381, Findings of Fact, Conclusions of Law, and Order at 7* (Jan. 13, 2000) (*emphasis added*)). Equally, in *Village of Waterbury Water Commissioners, Declaratory Ruling #227, (Feb 5, 1991)* the Environmental Board concluded that certain lands were not involved lands because they were not being physically altered. *See also City of Montpelier, Declaratory Ruling #220 (July 13, 1990)*. Therefore, involved land for municipal or state purposes does not include the entire tract acreage, but rather limits the acreage to land that is incident to the use meaning somehow physically changed. The legislature and former Board believed this was a necessary difference in asserting Act 250 jurisdiction because government entities often own a great deal of land and a broader interpretation of land ‘incident to the use’ would lead to unmanageable extensions of jurisdiction. *See City of Montpelier, Declaratory Ruling #220, July 13, 1990*.

Accordingly, it is our position that Natural Resources Board does not have jurisdiction over the instant Project and Property because the Town intends to develop only 9.9 acres of the Property for the Bayside Hazelett Park as depicted on the Master Plan. The Town hereby seeks a jurisdictional opinion consistent therewith.

### *III. Conclusion*

The Natural Resources Board does not have jurisdiction over the instant Property because the area disturbed for the park is 9.9 acres. The Town, therefore, respectfully request that you, as District Coordinator, issue a jurisdictional opinion stating that the proposed future development for the Bayside Hazelett Park on the Property is not



subject to Chapter 151 of Title 10 of the Vermont Statutes and the jurisdiction of the Natural Resources Board.

Please feel free to contact me if you have any questions or need any additional information.

Sincerely,

MONAGHAN SAFAR DUCHAM PLLC



Claudine C. Safar, Esq.  
Attorney for the Town of Colchester

cc: Client



# Colchester Bayside Hazelett Park Master Plan

Concept Plan with Disc Golf Course Overlay | March 5, 2020

