

## Burlington Planning Commission

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Yves Bradley, Chair  
Bruce Baker, Vice-Chair  
Lee Buffinton  
Emily Lee  
Andy Montroull  
Harris Roen  
Jennifer Wallace-Brodeur  
vacant, Youth Member



## Burlington Planning Commission

### Regular Meeting

**Tuesday, January 12, 2016 - 6:30 P.M.**

Conference Room #12, Ground Floor, City Hall, 149 Church Street

### **REVISED AGENDA**

Note: times given are approximate unless otherwise noted.

**I. Public Forum - Time Certain: 6:35 pm**

The Public Forum is an opportunity for any member of the public to address the Commission on any relevant issue.

**II. Report of the Chair (5 min)**

**III. Report of the Director (5 min)**

**IV. Agenda**

**V. Health Impact Assessment of planBTV South End (20 min)**

Representatives from the Vermont Department of Health will present the findings from the Health Impact Assessment (HIA) that was completed for *planBTV: South End*. An HIA is an approach used to consider the effects of a policy, plan or project on the health of a population. The HIA for *planBTV: South End* is available online at: [http://healthvermont.gov/pubs/healthassessments/documents/HIA\\_planbtv\\_southend.pdf](http://healthvermont.gov/pubs/healthassessments/documents/HIA_planbtv_southend.pdf)

**VI. Proposed CDO Amendment: 15 Year Statute of Limitations**

The Commission will continue its discuss a proposed amendment to Part 3: Non-Conformities, of the Comprehensive Development Ordinance, to introduce additional provisions regarding zoning violations on uses, structures and lots which are deemed to be controlled by the statute of limitations within 24 V.S.A. §4454 (so-called *Bianchi* controlled uses, structures and lots). The Commission may convene to an Executive Session for confidential attorney/client communications.

**VII. Proposed CDO Amendment: Low Impact Design (TIME PERMITTING)**

The Commission will discuss a proposed amendment to allow an additional 10% lot coverage in RL and RM zones for pervious pavement. This amendment intends to provide a small incentive for installing pervious pavement for improved on-site stormwater management. The PC Ordinance Committee recommended approval of this amendment at their December 3, 2015 meeting.

**VIII. planBTV South End Master Plan Draft Update/Revisions (TIME PERMITTING)**

The Commission will discuss the Mobility section of the draft plan BTV South End Plan and identify any changes to be made to these recommendations.

**IX. Committee Reports (5 min)**

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**X. Commissioner Items (5 min)**

**XI. Minutes/Communications (5 min)**

The Commission will review communications and approve minutes from the December 8, 2015 meeting.

**XII. Adjourn (8:30 p.m.)**

To: Planning Commission  
From: Kimberlee Sturtevant, Assistant City Attorney  
Date: January 11, 2015  
Re: Proposed Amendment to CDO Regarding So-Called Bianchi Controlled Situations  
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Pursuant to the request of the Planning Commission and the suggestions/comments received from the Planning Commission Ordinance Committee and the Planning Commission, the following amendment has been drafted to address so-called Bianchi controlled situations where a zoning violation has existed for more than 15 years. This amendment is not drafted to address or modify the City’s treatment of legal pre-existing non-conformities (grandfathered situations), just those that potentially fall within a 15 year statute of limitation.

### **PART 3: NON-CONFORMITIES**

#### **Sec. 5.3.1 Purpose**

These regulations are enacted for the purpose of governing all aspects of nonconformity, regardless of whether it is a use, a structure or a lot. As defined under Article 13, nonconformity means a use, structure or lot that was legal at the time it was constructed or laid out, but would not be lawful under the requirements of this ordinance as currently in effect. This Part will also address “*Bianchi*-controlled Situations”, in which a zoning violation may not be subject to enforcement under the standards set forth by the Vermont Supreme Court in the case entitled *Bianchi v. Lorentz* and later codified in 24 VSA Sec. 4454.

In combination, these standards are intended to establish the property rights of individuals and organizations in a manner consistent with the overall goals of zoning and to promote the City's general health, safety, and welfare.

#### **Sec. 5.3.2 “*Bianchi*” controlled uses, structures, and lots.**

Although not subject to enforcement action pursuant to Article 2, uses, structures, and lots which are deemed to be controlled by the *Bianchi* decision, and the subsequent enactment of 24 VSA Sec. 4454, Enforcement; limitations, are shall be considered violations and do not have any legal protection that are not considered legal to any extent. The following apply to so-called *Bianchi*-controlled uses, structures, and lots:

- (a) Any zoning violation determined to be unenforceable under 24 V.S.A. §4454 shall not be “grandfathered” as a legally pre-existing nonconformity and, therefore, shall in not event be granted the consideration or allowances of nonconforming structures, uses, and lots.
- (b) If a property owner can demonstrate that a zoning violation, use or dimensional, has occurred continuously for 15 years or more, and the City’s Department of Planning and Zoning, Code Enforcement Office, Inspection Services Division of the Department of Public Works or Assessor’s Office has been made aware of the violation throughout the 15 years as demonstrated by written city records within those departments, the City shall take no enforcement action.
- (c) Notwithstanding (b) above, where City records conflict (i.e. the zoning records identify a property as a single family home while the Assessor’s records identify it as a duplex), the zoning records shall control and an enforcement action shall still be appropriate.

- (d) ~~Thus, n~~ No change, alteration, enlargement, ~~or~~ and reestablishment after discontinuance for more than sixty (60) days or reconstruction after an occurrence or event which destroys at least 50% of the structure in the judgment of the city's building inspector shall be permitted, except to a conforming use, structure, or lot.
- (e) No violation that has been determined to be unenforceable may be used to count towards the requirements for a new application (i.e. an illegal parking space while unenforceable, is not legal and cannot be used toward the parking requirements for a new application).
- (f) Nothing in this section shall prevent any action, injunction, or other enforcement proceeding by the city under any other authority it may have, including, but not limited to its authority under Title 18 of the Vermont Statutes Annotated (abatement or removal of public health risks or hazards).

## Department of Planning and Zoning

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*Jay Appleton, GIS Manager*  
*Scott Gustin, AICP, Principal Planner*  
*Mary O'Neil, AICP, Principal Planner*  
*Anita Wade, Zoning Clerk*  
*Elsie Tillotson, Department Secretary*



**TO:** Planning Commission  
**FROM:** Scott Gustin  
**DATE:** December 4, 2015  
**RE:** Low Impact Development (LID) Amendment to CDO

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Following several reviews and iterations beforehand, the Planning Commission Ordinance Committee recommended approval of this LID amendment at their December 3, 2015 meeting.

This amendment simply allows an additional 10% lot coverage in RL and RM zones for pervious pavement. The purpose of the amendment remains to provide at least a small incentive for installing pervious pavement for improved onsite stormwater management. The amendment merely affords an extra 10% for pervious pavement, like the provisions for decks, patios, and the like.

Proposed CDO Language:

### **Article 4: Zoning Maps and Districts**

#### **Sec. 4.4.5, Residential Districts**

##### **(d) District Specific Regulations**

##### **3. Lot Coverage**

##### **A. Exceptions for Accessory Residential Features**

i – vi as written.

vii. Walkways; ~~and/or,~~

viii. Window wells; and/or,

ix. Pervious pavement designed and maintained to infiltrate the 1-year storm event onsite, subject to review and recommendation by the Stormwater Administrator.

### **Article 6: Development Review Standards**

#### **Part 2: Site Plan Design Standards**

##### **Sec. 6.2.2, Review Standards, (i) Vehicular Access:**

Paragraph 1: as written.

Residential driveways shall be a minimum of 7 feet in width or consist of two 2' driveway strips made of pavement or pervious pavement. ~~Driveway strips shall be accompanied by a paved area for the parking and/or storage of motor vehicles.~~ The maximum width for single or shared access driveways shall be 18'. In a residential district, driveways and parking areas shall be set back a minimum of 5' from side and rear property lines. Driveways that have a slope of 5% or greater (towards the right of way) shall be made of a solid surface including conventional pavement, pavers or pervious pavement.

Paragraph 3: as written.

## Article 13: Definitions

**Stormwater Administrator:** The administrative officer of Chapter 26: Wastewater, Stormwater, and Pollution Control for the City of Burlington.

**Pervious pavement:** Pervious pavement is a permeable pavement surface with an underlying stone reservoir that temporarily stores surface runoff before infiltrating into the subsoil. Pervious pavement includes porous asphalt, pervious concrete, grass pavers, and plastic grid systems, or their equivalents as deemed acceptable by the Stormwater Administrator.

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### Summary of Public Comments on Draft Plan

The **Draft planBTV South End** document was released at two events on June 16 and 17, 2015. The Draft Plan was available for public comment online and around the community until October 1, 2015. The comments received on the Draft Plan during this period have been posted in their entirety on the planBTV South End website at: <https://www.burlingtonvt.gov/planBTV/planBTV-South-End-Draft-Public-Comment#overlay-context=> This document provides a summary of these comments for the Planning Commission's use in its upcoming discussions of the Draft Plan. The comments are organized topically, according to the sections of the Plan.

Over the next several meetings, the Planning Commission will review sections of the draft Plan, public comments on these sections, and receive staff recommendations, if any, on modifications to these sections. The Planning Commission, following discussion, will instruct staff on items that they feel should be updated in a final draft of the Plan. Staff proposes the following schedule for reviewing the Plan's topical sections:

- October 27, 2015: Housing
- November 10, 2015: Economic Development & Arts and Affordability
- November 24, 2015: Mobility
- December 8, 2015: Open Space, Stormwater & Brownfields/Superfund Site

The second part of the Plan applies these topics to specific locations within the focus area. During each topical discussion above, the geographic location in which the recommendations apply will be noted.

### General Comments on the Plan

- The draft Plan is titled "planBTV South End;" however, the Plan seems to focus its physical and policy recommendations on the focus area defined by the Enterprise Zone. Questions were raised on whether the Plan should either 1) expand the focus to be more explicit about recommendations for the entire South End area, or 2) be renamed to reflect that the Plan is primarily for the Enterprise Zone.
- The Plan is too "glitzy," with colors, fonts and layouts that make the Plan's recommendations difficult to read and interpret. Additionally, it was felt that the draft Plan lacks a strong Executive Summary and Conclusion.
- There was some desire to slow down the adoption process and establish a multi-disciplinary working group including stakeholders from the South End to make revisions to the draft Plan and bring it to completion.
- Concerns were expressed that the Plan is not a reflection of public input, but rather a statement of the City's agenda. In particular, the public process demonstrated that the opinions of the community vary widely on important elements, such as housing and the Champlain Parkway, but the policy recommendations in the

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draft Plan do not necessarily reflect the degree to which these opinions vary. Others, however, note that the Plan has done a good job of balancing the polarized opinions regarding the future of the South End.

- Some felt that the Plan needs bigger goals and smaller first steps. In particular, concerns were shared that the Plan does not seem visionary enough when considering climate resiliency, green infrastructure, alternative transportation, and community health in the 21<sup>st</sup> Century. Suggestions were shared that a model like Energy 2030 Districts or Eco-Districts should be the focus of the future, rather than New Urbanist principles.
- Concerns were expressed regarding the intent and scientific validity of the artists' survey from Phase I, and comments were shared that statistics in the draft Plan do not accurately represent artists' demand/desire for housing and workspace in the South End.
- There were general comments about missing references throughout the Plan to items such as artists' role in the industry sectors, public health, and Burlington Electric Department as an employer in the South End.

### **Economic Development**

- Many comments were shared that the key to economic development in the South End is through the preservation of space exclusively for industry and the current zoning which protects this area.
- The draft Plan does not place enough recognition on the continued presence and significance of manufacturing/industry in the South End. In addition to resources to support the growth of the arts and maker industries, there should also be resources and tools available to support existing manufacturing jobs and ensure the South End's sustainability as a location for this industry. Additional research is needed on what "messy/noisy" jobs could be brought to the South End to replace businesses as they leave.
- Money should be allocated to assist with arts and entrepreneurship as a business growth opportunity, as well as to use as an incentive to attract/support industry.
- Some felt that a better job could be done with marketing and signage to promote the South End to tourists much like the activities downtown and on the waterfront.
- General support for the location of City Market in the South End, but a caution about any zoning changes that emphasize retail so that 1) the character of the district for industry is not jeopardized and 2) the area does not become an "entertainment district" with such unintended consequences on the surrounding residential areas as noise and parking.

### **Preservation of Arts & Affordability**

- Concerns were expressed that the area is already becoming unaffordable and difficult to find space for arts and industry to grow, and that the market pressure introduced by allowing housing in the Enterprise Zone will drive out the presence of these uses. In fact, some felt that the recommendations to introduce housing in the Enterprise Zone directly contradicted the state goals/policies in this section of the Plan.
- Some shared the idea that perhaps the Enterprise Zone's regulations could be stricter.
- Some supported the Plan's recommendations for preserving affordability, such as the incentives to property owners to improve spaces without raising rents; others offered ideas for alternative ownership models, such as a Champlain Housing Trust model for arts space.
- A general comment was made that it needs to be recognized that needs for art space includes all forms of art- including performance spaces.

## **Mobility**

- In general, there were mixed reactions to the Plan’s recommendations for vehicular and alternative transportation improvements, new street and bike path connections, and new parking resources in the South End.
- Opponents of the Champlain Parkway feel that the connection will increase traffic congestion on Pine Street and other streets throughout the South End. Many comments referred to the Parkway as “20<sup>th</sup> Century” transportation planning, and expressed frustration that the design of the Parkway was not open to discussion in the South End planning process. Furthermore, the comment was made that any references to the Parkway should indicate “proposed” rather than “future.”
- Supporters of the Champlain Parkway feel that the connection, while it might impose some challenges in the short term, could be a long-term solution to traffic congestion on Pine Street, and that if planned properly, bike, pedestrian and vehicular safety elements could become a critical benefit of the connection.
- Still others felt that the Champlain Parkway may not provide significant enough a benefit to justify the expense, but provided input on its design should it continue to move forward. These comments were primarily regarding bike and pedestrian facilities and neighborhood street connections.
- There was generally support for recommendations that will make the Pine Street corridor more like the “complete street” proposed for North Avenue and that will promote traffic calming throughout the South End. Some comments suggested that the Plan should do more to emphasize transportation improvements not related to single occupant vehicles (SOV) and advocated for improved bicycle facilities along the length of Pine Street.
- Opponents of new parking facilities in the South End cited these facilities as encouraging SOV use and not being forward thinking for the future of transportation. Additionally, some felt that the Plan should give more consideration to shared parking lots rather than new parking structures and that parking structures shouldn’t be built on valuable lots in the South End. Supporters felt that this could help attract businesses in the South End, and that the garages could utilize solar power to provide electric car charging stations.
- Many comments were shared about improving the access to and frequency of transit in the South End. Several ideas were shared about a South End shuttle to connect the furthest extents of the South End to downtown and the waterfront. This was also tied to suggestions about a Park & Ride station either on a lot in the South End or on the improved area that is intended to become the Champlain Parkway.
- Some felt that elements of mobility were missing or underrepresented in the Plan, such as ADA improvements and access to transit for the elderly and disabled, and the future of the railyard and the potential to reestablish rail service to Montreal.

## **Public Open Spaces & Connections**

- In general, comments supported the Plan’s recommendations for preservation of existing open spaces and locations of new ones, such as a new open space on the Barge Canal site and on part of the Blogett Factory site.
- Many users submitted comments about a community center, like the Miller Center, for the South End. This was especially desired by residents living in units operated by the Housing Authority, who felt that the community spaces and programs in their residential communities weren’t sufficient. Some comments mentioned that kids want a pool in a park in the South End.

- There were several comments submitted that the Plan should put more emphasis on sustainable/green infrastructure and demonstration projects in the South End.

### **Brownfields & a Superfund Site**

- There were mixed reactions to the consideration of the Barge Canal site for anything other than an urban wild area. Opposition stated that the superfund site should not be disturbed for anything more intensive than a potential bike/pedestrian connection to the lake. Supporters felt that the site could be a key location for infill to achieve some of the Plan’s goals without taking industrial properties for redevelopment.
- One comment indicated that resources like the CSWD Drop-Off Center and Resource should be preserved somewhere in the South End, while things like the Flynn Ave mini-storage and the tank farm could be removed.

### **Managing Stormwater**

- A comment was shared that the recent stormwater/streetscape elements in St. Albans could be used as a model for the South End.
- Comments reiterated concerns about the health of Lake Champlain due to stormwater runoff and incidents of flooding near the Pine Street/Lakeside Ave intersection.

### **Housing**

- In general, reactions to housing in the South End and the Enterprise Zone were mixed. While there was recognition that the City needs more housing, reactions to the recommendations to selectively introduce some of this housing into the South End were wide-ranging. Regardless of whether or not comments supported or opposed housing in the Enterprise Zone, comments all referenced the need for affordable/workforce housing and housing for families and professionals in the “middle”—making too much to receive housing assistance, but not enough to afford market rate.
- Opponents agreed that there is a need for housing, but are specifically opposed to housing in the Enterprise Zone. These comments cite statistics about the small percent of the city’s land area to which this zoning applies, and expressed the concern that the introduction of housing will drive up the costs of land and space, pushing out industrial and arts uses. Furthermore, many comments questioned the actual demand for housing in the Enterprise Zone, stating that the results of the artists’ survey were misrepresented to make a case for housing, and that some employers stated housing was not a concern in their ability to recruit employees.
- Proponents note that a mix of uses is vital to a healthy neighborhood, that nearly all employers cite a lack of quality, affordable housing as an obstacle to attracting qualified employees and that housing where jobs are located can help support other Plan goals for economic development, alternative transportation and sustainable development. Some shared comments that instead of saying “no” to housing in the Enterprise Zone, there should be a careful, strategic discussion about sites that make sense for housing—such as near bus stops and bike routes.
- Other shared comments in the middle, that housing in the South End was a good thing outside of the Enterprise Zone, and supported recommendations for multi-family housing behind Champlain Elementary

and other infill sites outside the district. Some comments even suggested potential housing on underutilized sites along Shelburne Road and in South Burlington.

- Some comments were shared that it seems the City is focusing too much on “big development” and that an analysis of sites currently zoned for residential use with the capacity to be redeveloped should be completed, prior to entertaining any changes to the Enterprise Zone.

### **Reinforced Arts Hub: Maple Street to Locust Street**

- Several comments regarding the use of the Barge Canal were shared—primarily regarding leaving the site untouched.
- A comment cautioned against infill development just for the sake of development without first knowing what uses will be accommodated.
- A comment was shared that some of the new street connections didn’t seem to be a good resource, and stated that part of the appeal of the South End is exploring it on foot and by bike.

### **Maker’hood Center: Locust Street to Sears Lane**

- Comments acknowledged that many of the uses allowed in the Enterprise Zone today aren’t allowed elsewhere in the City, so the preservation of that area is important. Instead of encouraging higher end uses, the focus should be on helping the traditional industries in the area thrive/regenerate.
- There was some support for the use of parking lots as locations for new buildings or parks, but there was concern that it would be too expensive to be feasible.
- Some supported recommendations for sidewalks on Sears Lane and the proposed emergency connection into the Lakeside neighborhood. Others shared support for City Market opening a new location in this area.

### **Eclectic Ecosystem: Sears Lane to Home Avenue**

- If the Parkway gets built, need to make sure that a connection to the lake is maintained.
- Should add a crosswalk at the intersection of Home Ave & Wells St.

### **R&D- Room to Grow: Home Ave to Queen City Park Road**

- Concerns were shared that if the Parkway is going to be designed as more of a neighborhood street, with lower design speeds, then a cul-de-sac at the end of Pine Street doesn’t make sense. It was suggested that a traffic light could be included, potentially as a traffic calming strategy.
- There was some opposition to locating a parking structure on the last unused plot of land on Industrial Parkway.
- A comment was made that there should be a reference to Red Rocks Park, even though it is located in South Burlington.

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Jennifer Wallace-Brodeur  
Holly Ransom, Youth Member*



# Burlington Planning Commission

## REGULAR MEETING

**Tuesday, December 08, 2015 - 6:30 P.M.**

Conference Room #12, Ground Floor, City Hall, 149 Church Street

## MINUTES

**Present:** B. Baker, A. Montroll, H. Roen, L. Buffinton, J. Wallace-Brodeur

**Absent:** Y. Bradley, E Lee

**Staff:** D White, M Tuttle, E Tillotson

### **I. Report of the Chair**

B. Baker opened the meeting at 6:00 pm. A little bit too early to start public forum, so move to reports. The Chair is absent and the Vice Chair has no report.

### **II. Report of the Director**

D White outlined many ongoing projects of the Planning & Zoning department.

M Tuttle is organizing event on January 5<sup>th</sup> for the Burlington Mall which will include updated design and associated information. The meeting will be held at 5:30 in the Mall.

Form Based Code (FBC) work continues, several more meetings are anticipated before the public process begins. A Montroll reports that they are making progress on the public process portion.

The Burlington College agreement was approved by the City Council at their last meeting.

I Avilix: Is there a meeting regarding the mall next week?

D White: A meeting of the DAPAC is scheduled for Dec 22. It will be announced on the City's event calendar.

M Tuttle: There is a meeting about the Railyard Enterprise Project on Wednesday at 6:30pm at ArtsRiot.

D White: Also of note, on Tuesday, Dec 15<sup>th</sup>, there is a joint meeting of the Boards involved with the planning and zoning process to update on projects.

### **III. Public Forum**

B Baker opened the Public Forum at 6:36 pm.

S Bushor, City Councilor, Ward I: Ms. Burshor addressed the Commission regarding email chatter about proposed changes in the process for development projects and the consensus that the changes are being driven by the Planning and Zoning Director. She has been asked to speak at the Ward 1 NPA and doesn't wish to add to confusion, but it appears that people are concerned about being shut out from the process. She has also been on the other side before that and experienced not being heard at public meeting which was a motivator for her to run for the City Council. She recognizes the struggles that staff and the community go through to make projects better. There is great concern from the public about the process. The City Council

Tuesday, December 8, 2015

has asked for streamlined permitting process but she would like more clarity from the Director since this is a really important topic. It appears that some specific proposal has sparked this dialogue.

D White: At the last Planning Commission meeting, a proposed amendment to the Major Impact process was reviewed and it seems this kicked off the chatter. He shared an email with Councilor Coburn, explaining that the changes are an attempt to eliminate duplication and redundancy in the process. It doesn't affect the public's ability to participate, but rather changes thresholds for when a project must go through the Major Impact review process.

S Bushor: It is important that the City Council understand that. The NPAs city-wide will be discussing this and the changes need to be clarified. A chart showing the changes, the process and opportunities for public participation would be a great help.

Maggie Standley, Ward 3: Ms. Standley presented information to the Commission members regarding zoning ordinance definitions for day care facilities. She discussed that she has been trying to resolve an issue with her neighbor's home occupation for the last year and a half. She requested that the Commission revise requirements of day care centers operated out of homes, by having all daycares as a conditional use, and requiring a schedule that is agreed upon with their neighbors. She suggests that the Commission revise the code to include some way to verify conditions and provide protections for homeowners.

I Avilix: This conversation and the email chatter also have a relationship to Form Based Code; it's a part of the same concern. The more clarity before the City Council vote, the better.

L Buffinton: It seems that these are good points from M Standley, perhaps this is a subject for the Ordinance Committee. Thought that Police Department had a decibel reader; if it is part of the ordinance, it would seem necessary.

B Baker: Presently, there is a City-wide ordinance that governs noise, not the zoning ordinance.

L Buffinton: That works during the day when there is someone to enforce them, but what about when the Code Enforcement staff is not working.

D White: The Noise Ordinance is enforced by the Police Department, not Code Enforcement. The zoning ordinance currently doesn't apply standards for noise, but could look at tying some type of performance standards to this use if desired.

#### **IV. Agenda**

No changes.

#### **V. Committee Reports**

Ordinance Committee – A Montroll: Met last week and discussed two items. Shared parking, which has come to the Commission previously, is almost done, but waiting for B Baker to attend to have a discussion about the leasing aspect. Also continued discussion Low Impact Design ordinance, reworked it to focus on RL and RM only. Will come back to the Commission in January.

Long Range Planning Commission – H Roen: This committee hasn't met since the last meeting. M Tuttle is trying to find a schedule for the group to meet based on the Commission's discussion of the economic development element of planBTV South End.

The Joint FBC Committee – Provided by D White's report.

#### **VI. Commissioner Items**

None.

## **VII. Minutes/Communications**

On a motion by A. Montroll, seconded by J Wallace-Brodeur, the Commission unanimously accepted the minutes of November 24, 2015.

## **VIII. Proposed ZA-16-03: Grocery Stores in ELM Public Hearing**

B Baker opened the public hearing at 7:00 pm.

D White: This proposed ordinance change makes specific changes to the ELM district at the request of City Market as part of their proposal to establish a second store on Flynn Avenue. It allows for a large grocery, more than 10,000 sq.ft. as a conditional use in the ELM zone only between Home Avenue and Flynn Avenue provided that it does not to exceed 30,000 sq.ft. There is a new footnote #26 to reflect this.

I Avilix: There is a lot of power to be had in changing ordinances. Ward 5 NPA meeting was very supportive of City Market, as is Mr. Avilix. However he also loves Dave's Antiques and the Missing Piece. There is a lot of room on the site and the grocery could be shifted back to maintain the existing buildings. It would be good to give the public, as well as the Commission, a choice through the zoning ordinance to maintain existing uses as well as adding new. Mr. Avilix would like to see a feasible way for the existing businesses to coexist with the proposed grocery store. The buildings represent the South End character, and the having both would provide the multi-use aspect that's discussed. They are allowed uses now, and permitting grocery stores will drive them out. Mr. Avilix hopes the Commission will ask to see an alternative which would examine how the proposed plan and existing businesses can coexist.

C Bates, Ward 3: Ms. Bates is a long-standing City Market member, but completely agrees with Mr. Avilix that she would like to have the existing buildings maintained. She would also like City Market to have a pharmacy and appreciates all the time the Commission has spent on this issue.

LBuffinton: The proposal doesn't limit mixed use, and other uses can continue as far as the Commission is concerned. It is a private decision to relocate those businesses. However, question why the proposal allows grocery stores only 10,000 sq. ft. and larger, but not less than 10,000 sq.ft.? Small markets could be welcome, too.

A Montroll: It doesn't make sense not to include both.

M Standley: Her business is in Ward 5 and she has been active in planBTV South End project as well as being an advocate for the Old North End. She would like clarify that the proposal does include all existing businesses.

M Tuttle: The change does not affect existing uses. Without this ordinance change, a grocery store would not be permitted and City Market may not be submitting a proposal for it. However, another permitted use might make a proposal that would impact the business instead. What businesses the property owner wants on the property is a private decision.

I Avilix: The change would permit the grocery store use, and City Market's plans show the elimination of two small businesses.

C Bates: Can't zoning just allow grocery stores on one part of the property to maintain the existing businesses?

D White: We can't rezone just one small area.

I Avilix: There could be some language for supporting the coexistence of businesses. This is the beginning of changing the way the district is used. How do we value architectural history and mixed use?

A Weinhagan, City Market: Could D White describe the process following this zoning piece? Seems more appropriate for a discussion of the Market's proposal and what mix of uses to occur during the plan review process rather than this zoning amendment.

D White: Creating areas with a mix of uses is the responsibility of the broader context of zoning. The purpose of this hearing is not to address specific design for the proposal, but whether or not this use should be permitted. Design is best explored with the property owner. It is good to raise concerns early in order to engage the property owner and the developer.

B Baker: Somehow need to reach out to the parties involved since we can't zone based on individual lots.

H Roen: I support this change because Ward 5 showed support for the project at the meeting.

B Baker closed the public hearing.

On a motion by L Buffinton, seconded by A Montroll, the Commission unanimously voted to forward the proposed amendment to Council with the addition small grocery stores added as a conditional use in the ELM district between Home and Flynn Avenues.

## **IX. Proposed CDO Amendment: UVM Medical Center**

D White: This is not a public hearing, but a discussion on a number of proposed ordinance changes requested by UVM Medical Center. The Executive Committee directed staff to take on three of the four requests from the hospital. These include:

- Fletcher Allen (FAHC) is now UVM Medical Center (UVMC), so all references to FAHC need to be updated.
- A mistake was discovered in the sign table that conflicts the text, so the correction is recommended to be made to move institutional zones into the mixed use category for sign provisions rather than the residential category.
- A property line was moved that impacts the boundary between UVMC and UVM Core Campus, as well as a piece of land changed hands between the two institutions. It is recommended to change the boundaries of the two overlays to reflect the current ownership.

L Buffinton: So there are two different boundary changes?

D White: One proposed change extends the UVMC overlay boundary and the other extends the UVM Core Campus overlay boundary.

A Montroll: Can you remind us of the differences between the two overlays?

D White: An overlay district modifies the underlying zoning district. Height, the mechanism for measuring height, use, setbacks and lot coverage are the differences. The core campus overlay allows greater lot coverage, restrictions on parking, and building height.

M Lang, Ward 1: Ms. Lang attempted to initiate a dialogue with UVMC in February to point out that a hospital cannot be built on this piece of land. After attempting to settle with FAHC, she appealed to environmental court because FAHC did not ask for a change of use, whether it was a misstatement or oversight. Permits given under false pretenses are not retroactive. Ms. Lang asked the Commission delay this change or require UVMC to reapply and be truthful on their application. The Green Mountain Care Board can take away their CON since the hospital stated that all permits were in place when they applied; the environmental court could adversely affect this.

L Buffinton: If there is a legal case pending, do we compound this if we take action?

D White: Changing the ordinance now doesn't affect the past. The Institutional zone allows hospitals—there is a difference of opinion between the parties. Despite being in two overlays, the hospital was permitted because the height did not exceed the lower of the two overlay provisions. We had not made the overlay boundary change because we had been waiting to see where the hospital expansion would be located.

I Avilix: How is this different from spot zoning?

D White: A hospital use is allowed in either overlay zone. The boundary change does not meet the many tests that apply to spot zoning. There are large swaths of land to which these provisions apply.

M Tuttle: These properties are already contiguous to the overlay that is proposed in each of the changes. Not a small "spot" of zoning that is vastly different from what is surrounding.

I Avilix: Where would there be a definition of spot zoning?

B Baker: It is based on case law, but some basic information could be found online.

H Roen: Would it make sense for the City Attorney to give an opinion on whether this is a change of use?

D White: M Lang's issue is whether the permit constitutes a change of use, not the ordinance change.

On a motion by J Wallace-Brodeur, seconded by H Roen the Commission unanimously agreed to warn a public hearing on the proposed changes.

## **X. planBTV: South End Master Plan Draft Update/Revisions**

M Tuttle: At our last meeting economic development was discussed. At the conclusion of the meeting there was some good direction on a discussion of the Shelburne corridor as a business area as well as a transportation corridor, and some consensus to look at a strategy regarding the policies for land use throughout the Enterprise Zone. Other strategies recommended by staff are to help the plan more explicitly state other goals, such as prioritizing redevelopment and infill sites.

J Wallace-Brodeur: During the process, we heard comments from the public about a conflict between a brewery and a neighborhood. Is there any way to speak to how to mitigate those issues in the plan?

M Tuttle: One element in the reworked housing element is to consider the zoning on the periphery of the ELM district and determine what is most appropriate for a transitional area to create a buffer.

J Wallace-Brodeur: That works for new or redeveloped neighborhoods, but what about existing neighborhoods that aren't likely to change.

D White: There may be a need for a transitional area with some performance standards within the ELM. The City Council is responsible for granting alcohol and special event permits, though.

S Bushor: Remembers when Riverside Avenue became commercial. There were lots of lessons learned at that time which might fit nicely with the South End corridor. Presently we are reacting to a situation; perhaps we can try to integrate activities within neighborhoods in advance of any issues.

L Buffinton: It is really important to incentivize results that we do want and not make the definition of sub-areas too restrictive. Are schools allowed in ELM? Having skills-based schools could help with workforce development.

D White: Vocational and professional schools are allowed, like Champlain's Emergent Media Center.

L Buffinton: Noted a grammatical error on page 11 of the agenda.

J Wallace-Brodeur: Page 40 of the plan talks about setting up for success, but we want technical assistance for more than just artists.

M Tuttle: This is a summary of the arts and affordability tool kit, but it could be better defined within the context of the Plan. Ultimately, the Arts & Affordability toolkit will likely be an appendix to the plan.

D White: There is a need for technical assistance in the arts and for the development to create affordable spaces. The tool kit will bring them together, create new approaches and alliances.

M Standley: At the last LRPC meeting the arts tool kit seemed to be presented as more of an implementation plan. A more diverse group of people involved would improve its function.

M Tuttle: As we discussed, it recommends a number of strategies that will help with the transition to implementation. The toolkit starts with a recommendation to form a collaborative working group.

M Standley: Would like input on the working group members.

M Tuttle: LRPC is working through the draft right now and strengthening the strategies in the plan. This is somewhat different than the working group for implementation.

I Avilix: So then in the future, does the public have to ask to have an item on the Long Range Planning Committee agenda?

M Tuttle: The LRPC will not become the implementation working group. The public can form a working group. The important part is activating the partners that have been involved in this planning process to lead that forward. This can and should have involvement and support from the City in some way, but will not necessarily be led by it.

S Bushor: Did CEDO play a role in other plans that have been developed? Perhaps they should be involved in the next step after this.

C Bates: Has the Blodgett oven property been sold?

D White: It is unclear.

C Bates: Would like to get the steering committee going now.

M Standley: Would second that.

H Roen: Yes, it is good to have an implementation committee.

D White: Would suggest the arts community and SEABA join together to get this to happen, but this is independent of the LRPC.

M Tuttle: LRPC revised the draft housing piece and circulated it to a lot of stakeholders. We envision doing the same thing when we have a revised version of the economic development section. Purpose is to get feedback as we are rewriting the draft.

H Roen: Having the City Council involved as well would be recommended.

L Buffinton: The process needs to be as inclusive as possible.

M Standley: Would suggest asking major businesses to send delegates to meetings of this steering committee.

M Tuttle: Suggests that the Commission continue to work through this element of the draft plan so the LRPC can work on an update.

A Montroll: It the steering committee proposed to be a strategy included in the plan?

D White: Yes.

I Avilix: There should be a detailed list of who should be on this committee and there should be funding available to help these individuals with the transition to implementation.

H Roen: Agrees that the more it can be fleshed out the better.

B Baker: Purpose of the plan is to describe the program at a broader level, not to include all of that detail. If one of the organizations changes, then the plan is out of date.

J Wallace-Brodeur: This is a very comprehensive plan that needs multiple stakeholders stepping up, all sectors need to be involved so that it is a collaborative effort to get things done. There is a difference between articulating strategies in the plan and setting up a steering committee for implementation, which is more related to our outreach strategy.

D White: The parking studies going on now is a good example. The downtown and waterfront plan talked about the need for a parking study, but was not specific to what those parking needs were.

M Standley: Thanks for the comments from J Wallace-Brodeur. M Standley feels that all parties are ready to come together, and as has been happening for over a year now. She hopes there is some funding left to help support the work and input of these smaller entities.

M Tuttle: Is the Commission ready to refer these elements to the LRPC to rework?

Nods of general agreement by the Commission members.

**XI. Adjourn**

On a motion by L Buffinton, seconded by A Montroll, the Commission unanimously adjourned at 8:34 pm.

Bruce Baker, Vice Chair

Signed: December XX, 2015



Elsie Tillotson, Recording Secretary