

## Burlington Planning Commission

149 Church Street  
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[www.burlingtonvt.gov/pz](http://www.burlingtonvt.gov/pz)

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



## Burlington Planning Commission

### Regular Meeting

**Tuesday, January 26, 2016 - 6:30-8:00 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. Proposed CDO Amendment: Animal Boarding/Kennel/Shelters (5 min)**

The Planning Commission will discuss a proposed amendment to permit animal boarding/kennel/shelter use as a conditional use in downtown mixed use zones.

**VI. Proposed ZA-16-04 Zoning Administrative Officer Public Hearing Time Certain: 7:00pm**

The Planning Commission will hold a public hearing on a proposed amendment to reflect the Council-approved reorganization of the Planning & Zoning Department, and to conform to state statute regarding the appointment of the Administrative Officer.

**VII. Proposed ZA-16-05 UVM Medical Center Public Hearing Time Certain: 7:05pm**

The Planning Commission will hold a public hearing on a proposed amendment to: reflect the name change from Fletcher Allen Health Care to University of Vermont Medical Center; modify the boundary between UVM Central Core Campus Overlay and the UVM Medical Center Core Campus Overlay to reflect a recent property line adjustment; and more a correction with regard to the regulation of signs in the Institutional District.

**VIII. 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.

**IX. 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

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pavement for improved on-site stormwater management. The PC Ordinance Committee recommended approval of this amendment at their December 3, 2015 meeting.

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

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

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

The Commission will review communications and approve minutes from the December 8, 2015 and January 12, 2016 meetings.

**XIII. Adjourn (8:00 p.m.)**

**Department of Planning and Zoning**

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*Elsie Tillotson, Department Secretary*



**TO:** Planning Commission  
**FROM:** Scott Gustin  
**DATE:** January 8, 2016  
**RE:** Animal Boarding/Kennel/Shelter in Downtown zones

Megan Stearns has requested that the Comprehensive Development Ordinance (CDO) be amended to allow for animal boarding/kennel/shelter use in the city’s downtown zones. This use is already defined within the CDO, but it is presently not allowed in the downtown zones. Following favorable consideration by the Planning Commission on October 6, 2015 and by the Planning Commission Ordinance Committee on December 3, 2015, the Ordinance Committee voted January 7, 2016 to forward the amendment to the full Planning Commission.

The requested animal boarding/kennel/shelter use would be allowed as a conditional use in the downtown mixed use zones, subject to certain criteria aimed at lessening the potential for offsite impacts. New language is shown in red, and deleted language is ~~crossed out~~.

Proposed CDO Language:

**Appendix A – Use Table – All Zoning Districts [excerpt]**

	<b>D</b>	<b>DW</b>	<b>DW-PT</b>	<b>DT</b>	<b>BST</b>
Animal Boarding/Kennel/Shelter	<del>N</del> <u>CU</u>	<del>N</del> <u>CU</u>	N	<del>N</del> <u>CU</u>	<del>N</del> <u>CU</u>

Footnotes

1-26 as written.

29. Must be fully enclosed within a building and is subject to licensure by the City Council.

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# Burlington Planning Commission Report Municipal Bylaw Amendment

## **ZA-16-04 – Zoning Administrative Officer**

This report is submitted in accordance with the provisions of 24 V.S.A. §4441(c).

### ***Explanation of the proposed bylaw, amendment, or repeal and statement of purpose:***

This proposed amendment removes reference to a “Chief Assistant Administrative Officer” reflecting the Council-approved reorganization of the Planning & Zoning Department, and to conform to state statute regarding the appointment of the Administrative Officer.

### ***Conformity with and furtherance of the goals and policies contained in the municipal development plan, including the availability of safe and affordable housing:***

This proposed amendment to the Comprehensive Development Ordinance (CDO) is administrative only and does not directly relate to implementation of the City’s Municipal Development Plan

### ***Compatibility with the proposed future land uses and densities of the municipal development plan:***

This proposed amendment is not applicable to future land uses and densities of the Municipal Development Plan.

### ***Implementation of specific proposals for planned community facilities:***

This proposed amendment is not applicable to any plan for community facilities.

***Burlington Comprehensive Development Ordinance***  
**PROPOSED: ZA-16-04 – Zoning Administrative Officer**

*As approved for the Planning Commission Public Hearing – 24 Nov 2015.*

Changes shown (underline to be added, strike-out to be deleted) are proposed changes to the Burlington Comprehensive Development Ordinance.

Purpose: This amendment is to revise the BCDO to remove reference to a “Chief Assistant Administrative Officer” reflecting the Council-approved reorganization of the Planning & Zoning Department, and to conform to state statute regarding the appointment of the Administrative Officer.

**Article 2: Administrative Mechanisms, Part 3: Administrative Officer**

**Sec. 2.3.1 Authority**

This part is enacted under the provisions of 24 V.S.A. Section 4448.

**Sec. 2.3.2 Appointment**

The director of planning and zoning shall serve, ex officio, as the city’s zoning administrative officer (ZAO or administrative officer), and upon the recommendation of the planning commission shall be appointed by the legislative body for a term of three years. The ZAO may be removed for cause at any time by the legislative body after consultation with the planning commission.

~~A chief assistant administrative officer shall be appointed annually by the city council upon the recommendation of the ZAO and the planning commission. Additional assistant administrative officers may also be appointed by the city council upon the recommendation of the ZAO and planning commission. Any and all references in this ordinance to the ZAO or administrative officer shall mean to include the chief assistant administrative officer and any other assistant administrative officers assigned to a matter by the administrative officer unless otherwise specified in this ordinance.~~

**Sec. 2.3.3 Powers and Duties**

The administrative officer shall administer the provisions of this ordinance and any amendments thereto and other applicable bylaws literally, and shall have no power to permit any land development that is not in conformance with this ordinance.

**(a) Referrals.**

The administrative officer may refer questions of interpretation to the DRB if it is determined that the answer to the question has a bearing upon the jurisdiction of the

DRB. Any such referral shall be considered an appeal of a decision of the administrative officer.

**(b) Zoning Enforcement.**

The administrative officer shall have ultimate responsibility for all matters relating to the enforcement of the zoning ordinance pursuant to **Part 7** of this article. While protocols may be adopted by which the city's code enforcement office assists in zoning enforcement, the administrative officer shall retain the exclusive jurisdiction to make administrative interpretations (subject to appeal) concerning the terms of such ordinance.

**(c) Assistant Administrative Officers**

~~The chief assistant administrative officer and other a~~ One or more assistant administrative officers maybe appointed by the ZAO, and shall have such authority and duties as shall be delegated to them by the ZAO.

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Elsie Tillotson, Department Secretary



# Burlington Planning Commission Report Municipal Bylaw Amendment

## ZA-16-05 – UVM Medical Center

This report is submitted in accordance with the provisions of 24 V.S.A. §4441(c).

### ***Explanation of the proposed bylaw, amendment, or repeal and statement of purpose:***

This proposed amendment (1) reflects the name change from Fletcher Allen Health Care to University of Vermont Medical Center; (2) modifies the boundary between the UVM Central Campus Core Campus Overlay and the UVM Medical Center Campus Core Campus Overlay to reflect a recent property line adjustment; and (3) makes a correction with regard to the regulation of signs within the Institutional District.

### ***Conformity with and furtherance of the goals and policies contained in the municipal development plan, including the availability of safe and affordable housing:***

This proposed amendment to the Comprehensive Development Ordinance (CDO) reflects a recent name change and minor property boundary adjustment for the state's academic medical center, and conforms with the goals and policies contained in the City's Municipal Development Plan. The proposed amendment does not limit the ability to provide safe and affordable housing within the community.

### ***Compatibility with the proposed future land uses and densities of the municipal development plan:***

This proposed amendment is consistent with the proposed future land uses and densities of the Municipal Development Plan by enabling concentrated institutional development within institutional core campuses.

### ***Implementation of specific proposals for planned community facilities:***

This proposed amendment is consistent with plans for concentrating and expanding community medical and health care facilities within institutional core campuses.

# **Burlington Comprehensive Development Ordinance**

## **PROPOSED: ZA-16-05 – UVM-MC**

*As warned for the Planning Commission Public Hearing – 08 Dec 2015.*

Changes shown (underline to be added, strike-out to be deleted) are proposed changes to the Burlington Comprehensive Development Ordinance.

Purpose: This amendment is to revise the BCDO generally to reflect the name change from Fletcher Allen Health Care to University of Vermont Medical Center; to modify the boundary between the UVM Central Campus Core Campus Overlay and the UVM Medical Center Campus Core Campus Overlay to reflect a recent property line adjustment; and to make a correction with regard to the treatment of signs within the Institutional District.

### **Sec. 4.3.2 Overlay Districts Established:**

Overlay districts are overlaid upon the base districts established above, and the land so encumbered may be used and altered in a manner permitted in the underlying district only if and to the extent such use or alteration is permitted in the applicable overlay district. The following districts are established as overlay districts as further described in **Part 5** below:

(a) A **Design Review Overlay (DR)** district;

(b) A series of five (5) **Institutional Core Campus Overlay (ICC)** districts, as follows:

- ~~FAHC-UVM~~ Medical Center Campus (ICC-~~UVM~~~~MC~~~~FAHC~~);
- UVM Central Campus (ICC-UVM);
- UVM Trinity Campus (ICC-UVMT)
- UVM South of Main Street Campus (ICC-UVMS); and,
- Champlain College (ICC-CC);

(c) *through (g) remain unchanged*

### **Sec. 4.5.2 Institutional Core Campus Overlay Districts**

(a) *Purpose*

The Institutional Core Campus Overlay (ICC) districts are intended to provide for reasonable future growth for institutions within the core of their respective campuses without further intrusion into surrounding residential neighborhoods. This overlay allows increased development than would typically be found in the underlying districts. Development is intended to be more intense than the surrounding neighborhoods with higher lot coverage and larger buildings. New development should provide sensitive transitions to the historic development pattern and scale of the surrounding campus. Buildings both large and small should be designed with a high level of architectural

detailing to provide visual interest and create enjoyable, human-scale spaces. Sites should be designed to be pedestrian friendly and encourage walking between buildings. Circulation should largely emphasize the needs of pedestrians and bicycles, and parking should be very limited and generally provided offsite. Where parking is provided, it should be hidden either within or underneath structures.

(b) *Areas Covered.*

The Institutional Core Campus Overlays as delineated on **Map 4.5.2-1**, and are further described as follows:

1. ~~Fletcher Allen Health Care~~**University of Vermont Medical Center Campus (ICC-UVMCFAHC)** allows for an increased development scale and intensity than would typically be found in the adjoining and underlying districts to support continued growth and expansion of the state's academic medical center. As a regional tertiary-level care facility, on-site parking is expected to play a larger role than otherwise would be expected for other institutional campus overlays in order to accommodate the needs of patients and visitors. While outdoor spaces and circulation systems should be inviting and accommodating for pedestrians, the overall development of the campus would be expected to emphasize the needs of internal circulation and functions in order to meet patient care requirements;

*2 through 5 remain unchanged*

(c) *District Specific Regulations: ~~Fletcher Allen Health Care~~University of Vermont Medical Center Campus (ICC-~~UVMCFAHC~~);*

1. Transitional Buffer:

- A. The Transitional Buffer shall include all property within the area as measured from the centerlines of Colchester Avenue and East Avenue, and extending 150 feet into the ICC-~~FAHC-UVMC~~ District as delineated on **Map 4.5.2-2 Transitional Buffer**.
- B. Lot coverage shall not exceed 40% for the aggregate of all land owned by an institution and located within the Transitional Buffer.
- C. Unless replaced on site, no housing unit in a residential structure located within the Transitional Buffer shall be demolished or converted to a nonresidential use, except for housing units which are exempt from the provisions of **Article 9**. The Housing Replacement standards of this ordinance shall apply to any such activity.

2. Lot coverage

Maximum lot coverage shall be applied to the aggregate of all lots owned by a respective institution and located within the ICC-~~FAHC-UVMC~~ District. Lot coverage shall not exceed 60% except as provided below.

The maximum lot coverage for the entire tract of land owned by an institution within the ICC-~~FAHC-UVMC~~ District may be increased by one percent for each one percent that the Transitional Buffer coverage is less than 40%, up to a maximum of 65%.

3. Setbacks

Minimum side and rear yard setbacks in the underlying zoning district shall not be applicable within the ICC-~~FAHC-UVM~~ District.

Front setbacks shall be fifteen (15') feet measured only along any street defining the Transitional Buffer.

4. Surface Parking

No new outdoor surface parking spaces shall be permitted unless the number of the new outdoor surface parking spaces is offset by a corresponding removal of outdoor surface parking spaces existing as of January 1, 2007, and upon the approval by the DRB.

5. Building Height

No portion of any building within the ICC-~~FAHC-UVM~~ Height Overlay (as delineated on **Map 4.5.2-3 ICC-~~FAHC-UVM~~ Height Overlay**) shall exceed the elevation of a plane running parallel to the earth at 540-feet above mean sea level. The provisions of **Sec. 5.2.5 Building Height Limits** shall not be applicable within the ICC-~~FAHC-UVM~~ Height Overlay.

No portion of any building outside of the ICC-~~FAHC-UVM~~ Height Overlay may exceed the elevation of a plane running parallel to sea level from the highest point of the tallest structure at the highest elevation within the ICC-~~FAHC-UVM~~ District as depicted as of January 1, 2009.

6. Density

In the ICC-~~FAHC-UVM~~ District, density restrictions set forth in **Article 4, Sec. 4.4.4** shall not apply to dormitories and rooming houses as defined in **Chapter 18 of the Burlington Code of Ordinances**. The restrictions on the non-residential equivalent set forth in **Art. 5, Sec. 5.2.7 (a) 2** shall not apply in the ICC-~~FAHC-UVM~~ District.

*(d) through (g) remain unchanged*

All of the following maps are also changed to reflect the name and boundary change

- Map 4.5.2-1: Institutional Core Campus Overlay
- Map 4.5.2-2: Transitional Buffer
- Map 4.5.2-3 ICC-FAHC Height Overlay
- Map 4.5.2-4 ICC-UVM Central Campus and Height Overlay

## Sec. 7.2.1 Regulation by District

Signs shall be permitted in each district as specified in [Table 7.2.1-1](#) below and as further regulated by the provisions of this Part. Where other provisions in this Article are more restrictive than [Table 7.2.1-1](#), the more restrictive provisions shall apply.

Table 7.2.1-1: Sign Regulation Summary					
Sign Type	Dimensional Requirements	Zoning District <sup>4</sup>			
		All RCO <u>and</u> , Residential, <u>and</u> Institutional Districts	All Mixed Use <u>Districts and</u> Institutional Districts	All Enterprise Districts	(Reserved)
Parallel	Size	20-sf	2-sf <sup>1</sup>	2-sf <sup>1</sup>	-
	Maximum Height	14-ft <sup>2</sup>	14-ft <sup>2</sup>	14-ft <sup>2</sup>	-
	Illumination	No	Yes	No	-
Projecting	Size	4-sf	4-sf	4-sf	-
	Maximum Height	12-ft <sup>2</sup>	14-ft	14-ft	-
	Illumination	No	Yes	No	-
Freestanding	Size	20-sf	½-sf <sup>1</sup>	1-sf <sup>1</sup>	-
	Maximum Height	6-ft	14-ft	6-ft	-
	Illumination	No	Yes <sup>3</sup>	No	-
<ol style="list-style-type: none"> <li>1. Size is determined per each linear foot of building frontage allocated to the establishment</li> <li>2. Or ceiling height of the first floor, whichever is less, except in D, D-T, E-LM and NMU-NAC where the sign may be above 14 feet as per <a href="#">Sec 7.2.3(a)4</a>, <a href="#">Sec. 7.2.4 (c)2D</a>, or <a href="#">Sec. 7.2.4(c)6C</a>.</li> <li>3. Illuminated freestanding signs are not permitted in NMU district.</li> <li>4. No signs shall be permitted in the Urban Reserve District.</li> </ol>					

**University of Vermont Medical Center**  
**Comments on Proposed Amendments to the City of Burlington**  
**Comprehensive Development Ordinance (CDO), Last Updated July 18, 2014**  
January 15, 2016

We have noticed that there are several minor references regarding the UVM Medical Center name change that need to be incorporated into the proposed CDO changes as follows.

***PROPOSED: ZA-16-05 – UVM-MC***

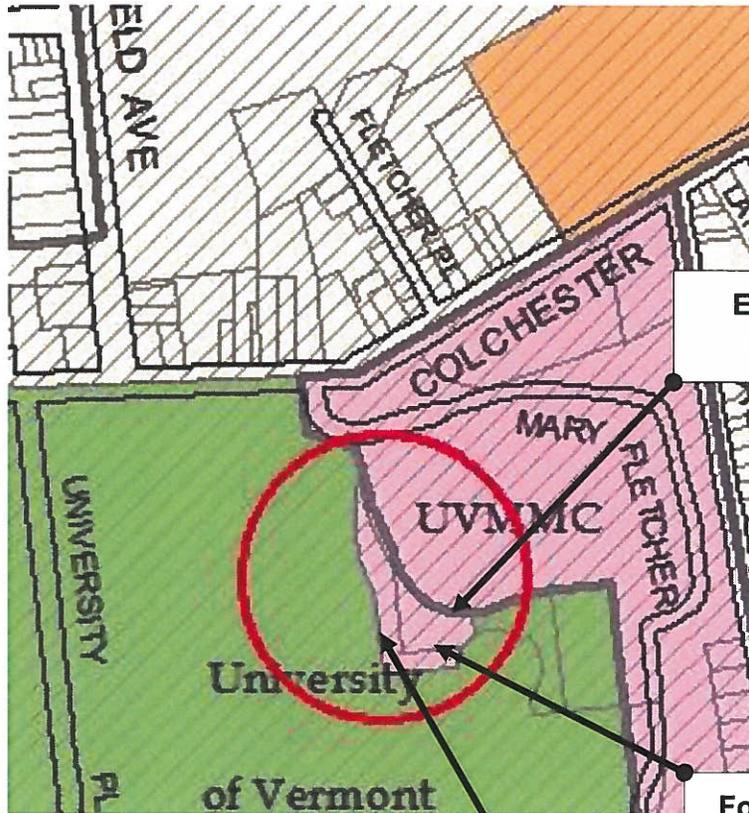
*As warned for the Planning Commission Public Hearing – 26 January 2016.*

Purpose: This amendment is to revise the BCDO generally to reflect the name change from Fletcher Allen Health Care to University of Vermont Medical Center; to modify the boundary between the UVM Central Campus Core Campus Overlay and the UVM Medical Center Campus Core Campus Overlay to reflect a recent property line adjustment; and to make a correction with regard to the treatment of signs within the Institutional District.

- A. In **Sec. 4.5.2 Institutional Core Campus Overlay** Districts, under (b) Areas Covered, Section 2 needs to change as follows:
2. **UVM Central Campus (ICC-UVM)** allows for an increased development scale and intensity than would typically be found in the adjoining and underlying districts to support continued growth and expansion of the state's flagship academic institution. In contrast to the ICC-~~FAHC~~UVMMC, this core campus would be expected to be dominantly pedestrian-oriented, with all but the most essential parking provided off-site. Development within this core campus should reflect the institution's core educational values in both design and quality;
- B. Proposed Map changes are shown correctly on the Institutional Core Campus Overlay District map, but are labeled incorrectly on the enlargements. See the marked up map with comments.
- C. Other changes needed for where FAHC is used:

**Appendix B – Dimensional Standards – All Zoning Districts**

Under Institutional Districts, ~~FAHC~~UVM Medical Center Core Overlay needs to be changed in chart.



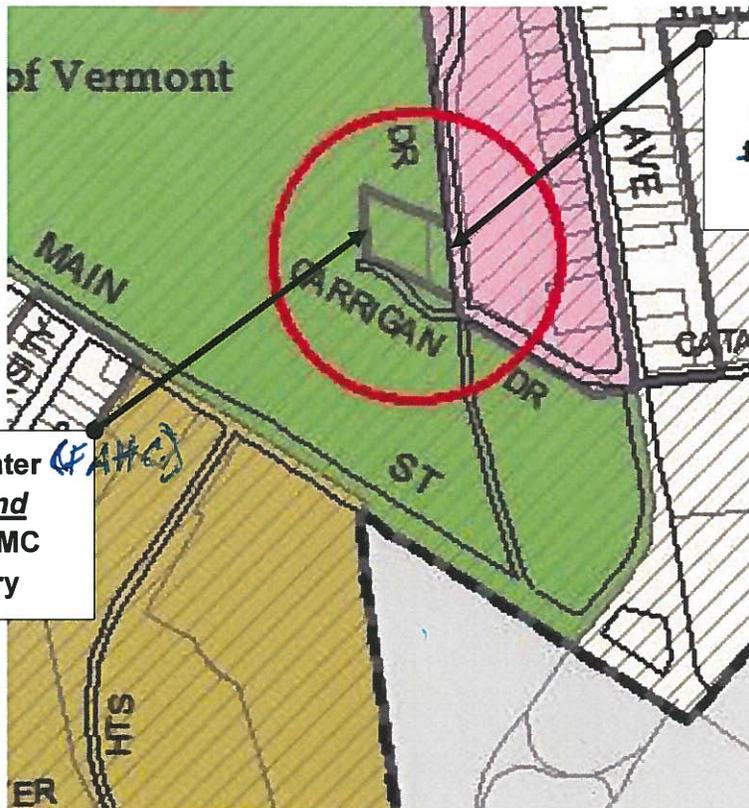
Existing UVM Medical Center (FAHC) ICC Overlay boundary

Former UVM Medical Center property boundary

New UVM Medical Center property boundary and PROPOSED new UVM Medical Center ICC Overlay boundary

*1/14/16  
Changes  
Needed to  
map*

*PROPOSED  
New*



Existing UVM Medical Center (FAHC) ICC Overlay boundary and former UVM Medical Center boundary

*Existing*

New UVM Medical Center property boundary and PROPOSED new UVM Medical Center ICC Overlay boundary

*former*

To: Planning Commission  
From: Kimberlee Sturtevant, Assistant City Attorney  
Date: January 11, 2015  
Re: Proposed Amendment to CDO Regarding So-Called Bianchi Controlled Situations  
\*\*\*\*\*

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).

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**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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# 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

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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 (UVMCMC), 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 UVMCMC 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 UVMCMC 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 UVMCMC 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 UVMCMC 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

DRAFT

## Burlington Planning Commission

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Jennifer Wallace-Brodeur  
Vacant, Youth Member*



## Burlington Planning Commission Minutes

**Tuesday, January 12, 2016 - 6:30 pm,**

**PC Present:** L. Buffinton, H. Roen, J. Wallace-Brodeur, Y. Bradley, A. Montroll, B. Baker, E Lee  
**Staff:** D White, M Tuttle, E. Tillotson, S Gustin

### I. Public Forum

Y Bradley opened the public forum at 6:35 pm.

John Alden, representing Rick Bove: Bove is owner of a property on George Street. This property is under appeal from a Development Review Board decision. Alden presented a four page request to the Planning Commission to move the zoning boundary line in relation to the Bove's property on the Pearl Street corridor. Alden stated that the area is not as vibrant as it should be and requested that the Planning Commission evaluate this request.

Y Bradley: Which Planning Commission committee should receive this request?

Commissioners referred the request to its Ordinance Committee to review and return to the Commission with a recommendation.

### II. Report of the Chair

Y Bradley reported that the Commission has been preoccupied with form based code and planBTV South End discussions, and that he appreciates the Commission's diligence in the proceedings. Y Bradley also reported that there is a long list of additional items that will be coming before the Commission.

Finally, Y Bradley reported that he, A Montroll, and D White met with the Mayor and Lee Einsweiller, a consultant for form-based codes and that it should be a great public discussion regarding the code on Wednesday evening.

### III. Report of the Director

D White reported that the last few weeks had been very busy with mall and form-based code meetings. The Burlington Town Center redevelopment presentation on January 5 was a very positive evening. Due to lack of space for all who wanted to attend, there will be another open house on January 21, 5:00 pm in Contois Auditorium. This week has included many form-based code meetings. The next two mornings are an open Q & A with area planners and design professionals.

A Montroll: When will the mall project come to the Planning Commission?

D White: After the City and the owner have established a Memorandum of Understanding.

A Montroll: What changes are proposed?

D White: Building height and encroachment into the view corridors are the biggest concerns.

J Wallace-Brodeur: Are there categories of public concerns about the project?

D White: As this point, height, including concerns about uphill residents' views being blocked by a large structure, and the Pine Street Arcade. There have been questions about whether the City could do more to support a vehicular connection at Pine. D White and the directors of Public Works and CEDO spent

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discussing the possibilities and will ask the Technical Team to continue to consider this challenging and complex issue.

M Tuttle: Concerns have also been shared about how the Mall will manage the retail sector in the interim and how implementation of the affordable housing requirements will occur.

L Buffinton: When Pine Street is being considered, will we look at all possibilities?

D White: Yes.

#### **IV. Agenda**

No changes.

#### **V. Health Impact Assessment of planBTV South End**

Amy Malinowski, VT Department of Health: A Malinowski provided a presentation about planning for community health and the Health Impact Assessment (HIA) tool.

She shared that in 2015, the department conducted an assessment of the South End in conjunction with the planBTV South End process. The HIA examines planning, the built environment, and behavior/lifestyle in a systematic process. planBTV South End was the third HIA that the local office has conducted. For Burlington, improving physical activity and mental health were determined to be the most important aspects for health. Street connectivity, the opportunity for recreation and affordable housing were the components with the strongest interest expressed by the public.

L Buffinton: Are recommendations about increased connectivity incorporated into planBTV South End?

D White: Yes. Important for the Commission to be thinking broadly about we make plans and how that impacts the health of the community when we're building new places.

A Malinowski: One aspect is to include health-supporting language in the master plan which at present is not explicitly stated. Full report of recommendations on the planBTV South End Health Impact Assessment have been submitted to the Planning Department and on the online tool.

D White: Affordable housing impacts mental health in terms of the stress associated with ensuring a safe and affordable place to live.

A Malinowski: Recreation recommendations, the concept of blue space, (Lake Champlain) is a great resource. Community services could be enhanced to allow people to be able to enjoy the lake.

M Tuttle: The report and specific feedback has been provided on the website where all feedback on the plan have been posted.

A Malinowski: While this tool does not need to be used for every study or plan, this is a great use of the state health department. Please contact in the future.

Y Bradley: Thanks for great presentation.

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

M Tuttle: You received a memo on this item in the revised agenda this morning.

Kim Sturtevant, City Attorney: Would we like to have a background discussion on this proposed amendment?

B Baker: I assume that Marc Weiner who is a title attorney is here for this discussion?

M Weiner: Affirmative

K Sturtevant: This is the third discussion of this issue. The draft was initiated by the Commission in an attempt to address the interpretation of statute of limitations, relative to continuing violations. These changes apply to the non-conformity section. Does not eliminate non-conforming uses or change enforcement of Bianchi-controlled violations. Language is an attempt to establish a bright-line for the 15 year statute of limitations.

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L Buffinton: In section b, of the proposed language, says “throughout” 15 years, which seems problematic due to implied continuity.

D White: That is the intent. It refers to the continued activity associated with the violation.

L Buffinton: Implies continued awareness on the part of the City. Also, section c, the statement about conflicting records, seems to be problematic, in the example of zoning records conflicting with a tax record. And finally, concerned with section d, if a historic building burns down, are we saying that it can't be rebuilt the way that it was?

E Lee: Does a complaint about a property initiate the 15 year clock? Property for which neighbors have submitted a complaint as an example.

Commissioners discussed whether or not a specific example should be discussed to help the Commission understand the discussion; Commissioners permitted E Lee to share materials brought to the meeting.

E Lee: Provides an example of a property for which the site plan permits five cars, with photos of 14 cars. Neighbors have filed with Planning & Zoning in 2012, but no response. Does this 2012 letter begin the 15 year clock for something that is illegal to be permitted?

D White: As an example, if there is no zoning permit on file, but 20 years ago there was a building permit issued or a minimum housing inspection that ensures that this “thing” that was built was safe and routinely inspected. That is the kind of documentation that the City would use to determine whether or not the 15 years had been met. Additionally, the clock doesn't start when the City learns about it, but rather, look back into historical records to see when the “thing” started.

Y Bradley: We need to address E Lee's question about whether a complaint does/does not start the clock.

D White: Need to provide clarifying language about what constitutes notification of a violation.

B Baker: Official submissions should matter.

E Lee: What about situations in which someone doesn't get a permit for something and a neighbor complains but the City never acts on it?

B Baker: Need a legal standard for what constitutes awareness.

J Wallace-Brodeur: There is a difference between a letter of complaint and an actual notice of violation. Just because a neighbor complains about a violation, doesn't mean there's actually a violation. Filing a letter of complaint is questionable in terms of how it is used in this case.

H Roen: There is agreement that we are talking about a zoning violation as notification, not a letter of complaint.

E Lee: How is a decision made to determine whether or not the violation has taken place?

B Baker: The point is that Planning & Zoning and Code Enforcement have to evaluate whether or not they act on a complaint.

M Weiner: Issue is if we know there's a problem and we haven't done anything about it for 15 years, that's the point when the homeowner needs relief from potential enforcement of a violation. 15 years is a long time to not do anything.

B Baker: It is easy to write a violation memo. This memo and associated fines exerts enormous pressure on a property owner to settle a problem. City should be obligated to write that letter.

D White: Yes, the City should respond either as a notice of a violation or that there's no violation. We are not making these things legal; we're just not enforcing them. They do not enjoy the benefit of being non-conforming, which is that it is legal. These situations do not get to rebuild if it is lost, where non-conforming uses are entitled to.

K Sturtevant: They enjoy provisions to be expanded, to count towards a new use of property, to rebuild.

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B Baker: Can we agree that complaint submitted to the City should not be deemed a city record?

A Montroll: Unless the City responds to a complaint to confirm it as a violation.

Y Bradley: In reality we're talking about the principle of what does the city know and do? There are a tremendous amount of properties which are non-conforming. 15 year status goes hand-in-hand with the Clean Hands issue. There are problems with the City's records. Title's need to be certified and this seems too murky for that to happen.

B Baker: When the Bianchi ruling first came out it was difficult to have access to zoning records; it is somewhat easier now. One thing that is concerning is that advisory opinions have been relied on for years.

M Weiner: Problems with records are another reason to allow relief to the owner after 15 years; not appropriate for innocent property owner to be penalized for poor records. Some owners want more than an advisory opinion, should ask for a formal determination.

D White: Every question that gets asked of the Planning & Zoning Office takes the form of an opinion or interpretation. When we're talking about these issues, should be applying for a decision. This gives the office a mechanism to answer questions about these issues, by giving a determination.

B Baker: But the Department has been issuing advisory opinions and leading people to believe that they're determinations. People haven't been led to believe that they need to follow a process for getting a determination. This is the problem.

S Gustin, Planner: For a determination depending on where you look, you find different answers. The records are inconsistent. When someone comes in to request a determination, there is notice to their neighbors. Advisory opinions can be issued at any time.

B Baker: Should include a disclaimer that if want a formal determination, need to request one.

D White: This all speaks to why we need to outline this process.

L Buffinton: Confusion about the difference between written opinion and a determination. Has an opinion or determination ever been reversed or do they stand?

D White: A determination ought to stand on its own.

K Sturtevant: They're made based on the information provided and available.

A Montroll: But if there's no notification about an opinion, and there's an oversight in information provided, there's no mechanism for a neighbor or other party to weigh in.

Y Bradley: We are talking about two different things. Concern is in the transfer of a property and you have something in writing that says one thing, but find out that it's not. Saying it's not a determination and doesn't have weight is not acceptable. Will need to continue this discussion; however, not willing to live with section c in the proposed language. Planning & Zoning should not trump Assessor's Office just because there isn't a zoning permit.

J Wallace-Brodeur: We have to pick one source as the authority. We may disagree with how this is written, but we do need to say which document will provide the foundation to resolve the issue.

D White: The assessor's record is based on actual inspections; it is what exists, not what may have been permitted to exist. The conflicting nature of these records could be the proof of a violation.

A Montroll: Section c is simply saying there is saying there is a conflict between two sources of city records. We need to answer the question about how do we resolve the conflict.

B Baker: The principle of the Bianchi ruling is that the City does know, but does not act. Therefore, needs to be resolved in favor of the property owner. If the City has known about it consistently for 15 years and has not acted on it, then they're not able to enforce it.

K Sturtevant: We need to know whether there's direction for the City to revise this language. E Lee provided language about notifications and a response-back trigger.

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D White: Points of discussion include: resolution of conflict in City records and that complaints that have not been responded to do not constitute knowledge on the part of the City.

Y Bradley: This discussion will continue at our next meeting. This will be the first agenda item on the next meeting.

D White: Two public hearings at next meeting so this will follow.

**VII. Proposed CEDO Amendment: Low Impact Design (LID)**

Deferred to next meeting

**VIII. planBTV South End Master Plan Draft Update/Revisions**

Deferred to next meeting.

**IX. Committee Reports**

No reports.

**Commissioner Items**

No reports.

**X. Minutes/Communications**

No action.

**XI. Adjourn**

On a motion by A Montroll, seconded by L Buffinton, the Commission unanimously adjourned at 8:07 pm.

\_\_\_\_\_  
Y Bradley, Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
E Tillotson, recording secretary

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