

**Joint Meeting of Burlington City Council Ordinance Committee and Community Development
& Neighborhood Revitalization Committee**

Draft Meeting Minutes

Tuesday, October 16, 2018

City Hall
149 Church Street
Conference Room #12, First Floor
Burlington, VT
5:30 p.m.

CDNR Committee

City Councilor Brian Pine (Ward 3) (Chair)

City Councilor Adam Roof (Ward 8)

City Councilor Karen Paul (Ward 6)

Ordinance Committee

City Councilor William "Chip" Mason (Ward 5) (Chair)

City Councilor Sharon Bushor (Ward 1)

City Councilor Jane Knodell (Central District)

City Staff in attendance: David White, Anthea Dexter-Cooper, Todd Rawlings, Ian Jakus

Public in attendance: Joe Speidel, Stephen Marshall, Erhard Mahnke, Eric Simendinger, Ted Wimpey, Kenda Tucker, Colin Hilliard, Kevin Pounds

Meeting commenced at 5:37 PM

Chair Chip Mason explained that he and Chair Brian Pine would be co-chairing the joint committee, that Chair Brian Pine would be chairing the first meeting.

1. Agenda

Councilor Adam Roof moved to adopt the agenda, Councilor Mason seconded.

2. Public Forum

Eric Simendinger stated that he does not want 5G cell towers in residential areas. Some towns are creating ordinances to block their development in residential communities over safety

concerns. He also said that living on South Prospect St. he had dealt with stray voltage in his apartment. Voltage can build up in cold weather and this is common on dairy farms. He is concerned for his safety and would like to know who could address this.

Councilor Roof suggested bringing the issue to the Public Works Commission.

Chair Brian Pine stated that as a matter of order, the joint committee is here primarily to deliberate as a committee and should have the dominant part of the discussion, and would prefer public forum at the beginning of the meeting rather than questions throughout.

Colin Hilliard from Burlington Business Association submitted a document to committee members regarding the Inclusionary Zoning (IZ) review process that can be found attached to the agenda.

3. Presentation / For Committee Discussion

3.01 Overview of IZ Working Group (IZWG), and IZWG Report by City of Burlington Staff

Chair Brian Pine said that the process the City has gone through over the past several years has been to update and modernize the ordinance to make it more consistent with best practices and with land use recommendations. There weren't a lot of models when the ordinance was enacted in 1990 after the discussion was started in 1985 and took 5 years to get done.

He explained that the current effort to review the IZ ordinance was to balance requirements that could deter development while ensuring a continued commitment to inclusive communities and neighborhoods. The development bonus included in the original ordinance was intended to offset the burden on developers by allowing additional units. Although, he noted that production was not the intention of the ordinance, the intent was to ensure that new development does not exclude low income people.

Todd Rawlings, CEDO Housing Programs Manager, made a presentation overview found attached to the agenda.

Councilor Adam Roof asked if the City monitors the current income status of IZ renters and homeowners.

Chair Brian Pine responded the intention of the ordinance is to require income qualification only at the time of move in.

Councilor Sharon Bushor stated concern over projects where the inclusionary zoning units were not in the same building as the market rate units.

Todd Rawlings stated that integration in the same building is more common with condo projects. The rental units are less likely to be physically integrated.

Chair Brian Pine acknowledged that with some newer projects IZ units are in different buildings but are still in the same neighborhood meeting the intent, but that separate buildings also allow more overall affordable units. He said that typically Champlain Housing Trust manages the homeownership units even if they are part of a private development.

Chair Chip Mason asked if the IZWG decided that inclusion was still the primary intent of IZ?

Chair Brian Pine responded that the IZWG felt it was outside of their purview to review the intent of the ordinance.

Joe Speidel, reviewing the chart of IZ production over time, asked why there were few IZ units in 1999 despite having a high number of overall units.

Chair Brian Pine responded this was due to the College and Battery project which paid entirely through payment in lieu.

Councilor Sharon Bushor asked of the 545 housing units produced in Burlington from 1995 - 2015 that were part of non-IZ projects, how many of those were small projects and would the payment in-lieu money be available to a smaller project down the road?

Councilor Jane Knodell stated that on page 7 - Income Standards - of the attached IZ recommendation Chart should be changed to "Yes" as part of the contained in ordinance category (revised version posted).

Chair Chip Mason said there seems to be a big jump in cost between the small and medium project size classification for payment in lieu, he suggested it be more graduated.

Chair Brian Pine responded that he thought the vast majority of projects are around 10 or 12 units and that \$35,000/unit is less of a drag on the operating pro forma.

Councilor Jane Knodell said that with the medium size projects, it should be made relatively less attractive because it is more important to keep affordable units on site at that scale.

Councilor Karen Paul asked if the 'more inclusive' or 'less inclusive' areas are defined already.

Councilor Jane Knodell said that the IZWG showed one way to do this in the recommendations, but that this group should discuss exactly how this should be determined.

Todd Rawlings clarified that in the presentation 'Offsets' is a term that refers to bonuses.

Councilor Sharon Bushor asked if the experience for developers is that they don't realize the bonus?

David White responded that projects are often reduced in their overall size and cannot realize the bonus as part of the permitting process.

Chair Chip Mason asked how the bonus works with form-based code, which is supposed to clarify allowable density.

David White responded that the IZ bonus is included in the form based code.

The committee broke to discuss process and the timeline. There was concern over the ability to meet the December deadline for reporting back to City Council. They clarified that they would not be writing ordinance language but making a policy recommendation to the planning commission that would then develop language and refer to City Council and the ordinance committee.

Councilor Sharon Bushor stated she would like the Housing Trust Fund committee to be included in the discussion as they would be implementing much of this.

3.02 Discuss IZWG Report, Including Recommendations

The committee decided to begin reviewing each recommendation from the Chart of Recommendations attached to the agenda (recommendation headings in bold).

Adjust development threshold

Chair Brian Pine said that the core issue is that small projects are hampered by IZ, and the IZWG determined this was true.

Councilor Jane Knodell stated that anything that pertains to the ordinance can be considered but the IZWG spent an absurd amount of time on the development threshold. There was a subcommittee to help determine this recommendation. The IZWG tried to approach this from a data driven standpoint, but there was still no clear standard. The solution ended up being to adjust the payment in lieu to address the issue. Additionally there are not many large developable sites left in the City so if the threshold is increased the majority of projects may bypass IZ altogether.

Generalize Unit Comparability

Councilor Sharon Bushor asked what the recommendations for minimum unit sizes were based on?

Chair Brian Pine responded that they were based on current development project unit sizes.

Councilor Adam Roof explained that he is concerned that developers could exploit the recommendation that the IZ units can be as small as the smallest market rate unit in the building.

Todd Rawlings suggested the committee can consider other options such as having the minimum for an IZ unit be the average size of the market rate units in the building.

Councilor Sharon Bushor said that she supports reducing the minimum unit size to reflect current development, but the committee should reconsider whether the minimum should be tied to an average size.

Chair Chip Mason had concerns over using average size without delineating the number of bedrooms that the equation should take into account unit mix.

Chair Brian Pine commented that it is not likely that a developer would chop up a building to add one smaller unit to exploit this recommendation but that Todd Rawlings should assist with developing an alternative proposal to consider.

Monitoring

Todd Rawlings stated that this is an ongoing effort, that CEDO recently finished the first year of monitoring and have over 90% compliance for rents and income qualified occupancy at time of rent or purchase. For both rental and homeownership.

Chair Chip Mason asked what the enforcement method is for ongoing IZ compliance.

David White said that noncompliance is a zoning violation.

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Provide Density Bonuses by Right

Joe Speidel asked if concerns over neighborhood character are taken into account by the DRB.

David White explained that if a developer proposes a hypothetical 4 story building with a large mass and because of neighborhood opposition the Development Review Board (DRB) says the mass needs to be reduced – this can reduce the total number of units. In addition to this sort of reduction in density, the parking requirements are the greatest limiting factor to achieving the density bonus.

Councilor Sharon Bushor said that she is unsure about this recommendation including reduction of the parking requirement or height and mass increases as part of a density bonus.

Chair Brian Pine said that the current parking waiver is a 50% waiver. The IZWG was unanimous that developers need to be able to receive a bonus to offset the cost of IZ units as originally intended.

David White suggested the DRB be precluded from limiting the overall size of the building of an IZ project. Design issues should still be considered. This is would be based on the density bonus called an 'allowance' in the existing IZ ordinance.

Erhard Mahnke stated that this issue is really important to the success of this ordinance. He explained that the reason the density bonus was in there was because developers have fixed costs, and if you have more units you are saving dollars and that allows you to finance the IZ units. It ultimately becomes a financial exercise, and without the bonus it is much more difficult for the project to pencil out. One of the principles of IZ is to increase inclusivity without additional public dollars and this is achieved through the density bonus.

Councilor Jane Knodell pointed out that the recommendation document should refer to section 9.1.12 of the CDO not 9.1.14.

Erhard Mahnke said there also needs to be a discussion about how the current zoning densities don't match existing neighborhood densities. If the actual built environment is denser than the current zoning that is an issue that should be corrected. Current areas that may be zoned low density should reflect what they actually are currently, and would help to achieve the density bonus.

Councilor Sharon Bushor said she would follow up with Planning & Zoning staff to educate herself on this density bonus issue.

Councilor Jane Knodell said she would like to know what language would restrict the DRB from reducing the density bonus.

Lower the Payment in Lieu

Chair Brian Pine proposed there may be a more graduated approach to the recommendation.

Councilor Sharon Bushor pointed out that if she was a developer and could stay under the 17 unit threshold where the proposed payment in lieu becomes \$70,000/ unit she would be incentivized to build less units. How many projects are right at this threshold around 16 or 17 units?

Todd Rawlings explained that an analysis of all the IZ projects was completed for the evaluation report and this could be considered.

Councilor Jane Knodell said based on that analysis 16 of the 55 IZ projects had under 10 units.

Councilor Karen Paul asked what the opinion of the developers was on this issue. What is the current payment in lieu?

Councilor Jane Knodell said that IZWG had a lot of discussion but had complete agreement on these numbers. The not for profit and private developers felt they were feasible. The current payment in lieu is roughly \$180,000 / unit.

Todd Rawlings said the recommendation was informed by what a non-profit would need as subsidy to make a unit affordable.

Councilor Sharon Bushor asked how the payment in lieu would make another unit affordable 'in lieu' of the unit being built by the developer.

Chair Brian Pine said this money would be able to be used by a nonprofit to make an extra affordable unit. CHT has felt that the payment in lieu funds could allow them to make more affordable units.

The committee discussed the geographic aspect of past IZ projects as well as the proposed use of 'more inclusive and 'less inclusive' designated areas included in the IZWG recommendations. The map in the IZWG recommendations was an example of one way this could be accomplished. The proposed map used HUD Low/Mod Income Summary Data at the census block group level. Low/mod income is defined by HUD as having an income below 80% AMI. The calculations are based on the 2010 5-year American Community Survey as follows:

) If at least 51% of the area's residents are low/mod income the census block group is designated as 'more inclusive' where payment in lieu is allowed for all projects.

) If less than 51% of the area's residents are low/mod income the census block group is designated as 'less inclusive' where payment in lieu is not allowed for medium and large size projects.

Chair Brian Pine acknowledged the potential for less new IZ units in the 'more inclusive' areas where payment in lieu is allowed, but added that the majority of past IZ projects and affordable projects have been built there so there is considerable affordable housing stock and the neighborhood is largely built out.

David White pointed out that the concentration of IZ units in the downtown and Old North End is also a product of the zoning, which only allows multi-family buildings primarily in those areas.

Todd Rawlings stated that The Housing Trust Fund could make it a priority to fund projects in areas lacking affordable housing.

Councilor Sharon Bushor agreed with the concept that this type of change will lead to more money added to the Housing Trust Fund to support more affordable housing overall.

Erhard Mahnke raised concern about gentrification due to a high quantity of high end market rate units utilizing payment in lieu fee raising the rent of other apartments in the neighborhood.

Councilor Jane Knodell said that she does hear from constituents that say that not all affordable housing should be concentrated in the Old North End.

Councilor Sharon Bushor asked who is on the Housing Trust Fund administrative committee. Does this committee make reports to the City Council? Does the makeup and organization of this committee make sense?

Chair Brian Pine explained that currently the committee is comprised of the CEDO Director, the chair of the CDNR Committee, and the Housing Program Manager. The intention was to have the Trust Fund not be tied down by additional reporting requirements due to the need for housing development related funds to move quickly as necessary.

4. Discuss next steps and process

5. Next meeting and items to review

Next meetings to be tentatively held:

October 30th 5:30 – 7:30 PM

November 19th 5:30 – 7:30 PM

6. Adjournment

Chair Mason made a motion to adjourn at 7:28 PM, unanimous approval.