

MEMORANDUM

Project Name: CityPlace  
Project Number: A1947.00  
Date: 16 July 2020

Freeman French Freeman Inc. | Architecture · Planning · Interiors  
81 Maple Street · Burlington Vermont 05401  
802-864-6844 · www.fffinc.com

freeman | french | freeman

To: P&Z Department- Scott Gustin  
From: Jesse Beck, FFF  
Re: Construction Phasing/TCO Plan

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JUL 16 2020

BURLINGTON  
PERMITTING & INSPECTIONS

Phased occupancy based on the following:  
Construction Start – September 30, 2021  
Completion (Phase 1, 27 months) – December 31, 2023

North Block- Phase1/TCO1 (27 mos.) December 31, 2023

Basement level- Mech./Utilities/Storage/Parking  
Garage Floors L1-L4 North of Hotel Garage Break line  
Residential floors L1, 2, 3.  
Retail – Cherry Street.

North Block- Phase2/TCO 2 (+6 mos.) July 1, 2024

Residential Floors L4 to L8  
Res. Amenities L9  
Mechanical L9

South Block- Phase3/TCO3 (+3 mos.) October 1, 2024

Retail on Bank and hotel lobby.  
Parking Garage - South Section under Hotel.  
Hotel Amenity L1

South Block- Phase4/TCO4 October 31, 2026

Construction start October 31, 2024  
Completion (24 months) October 31, 2026  
Hotel L2 to L7  
Restaurant and Observation Deck on L8; Mechanical L9.  
New St. Paul and NE Pine Ground Level Spaces.

CC

File A1947.00			

## Scott Gustin

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**From:** Jesse Beck <jbeck@ffinc.com>  
**Sent:** Thursday, July 16, 2020 3:33 PM  
**To:** Scott Gustin  
**Cc:** Mary O'Neil  
**Subject:** re: CPB P&Z extension  
**Attachments:** CPBTimelV2.docx

[WARNING] External Message

Scott,

Consider this email our request to extend our deferral by 3 months. Please use the above timeline for the DRB hearing August 4<sup>th</sup>. We will be present for the hearing to answer any questions the DRB may have.

If there is anything else you need please let us know.

Best,  
Jesse

**Jesse Beck**

President, AIA, NCARB

**Freeman French Freeman, Inc.**

Architecture + Interior Design + Planning

81 Maple Street, Burlington, VT 05401

802-864-6844

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## Scott Gustin

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**From:** Scott Gustin  
**Sent:** Monday, July 13, 2020 10:47 AM  
**To:** Jesse Beck; Mary O'Neil  
**Subject:** RE: DRB hearing date change

Good morning Jesse,

Application time limits prevent pushing this item further back. It needs to occur on August 4. Alternatively, you'd need to seek a 3-month extension from the DRB to keep the application pending. That request would need to occur on August 4 before the application expires. Let me know what you'd like to do ASAP. I'm in the office today if you'd like to chat.

Scott

Scott Gustin, AICP, CFM  
Principal Planner & Asst. Administrative Officer  
Dept. of Permitting & Inspections  
645 Pine Street  
Burlington, VT 05401  
(802) 865-7189

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**From:** Jesse Beck [mailto:jbeck@fffinc.com]  
**Sent:** Friday, July 10, 2020 12:20 PM  
**To:** Scott Gustin <SGustin@burlingtonvt.gov>; Mary O'Neil <MCOneil@burlingtonvt.gov>  
**Subject:** re: DRB hearing date change

**WARNING: External Message**

Scott & Mary,

This email follows my conversation with Mary regarding a request to change the August 4<sup>th</sup> DRB hearing regarding the City Place Burlington timeline/Phasing/TCO schedule extension.

BTC Mall Assoc. request that the scheduling for the August 4<sup>th</sup> DRB hearing be changed to September 15<sup>th</sup>. BTC Mall Assoc. believes it's in everyone's best interest to have the amended project application reflecting the new project direction submitted prior to the DRB hearing regarding the timeline extension. Due to the COVID pandemic we have been delayed on assembling and finishing project information and are striving for an early September submission.

Thank you,  
Jesse

**Jesse Beck**  
President, AIA, NCARB

**Freeman French Freeman, Inc.**  
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## Scott Gustin

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**From:** Jesse Beck <jbeck@ffinc.com>  
**Sent:** Thursday, January 30, 2020 5:00 PM  
**To:** Scott Gustin  
**Subject:** RE: city place phasing app

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External Message

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Scott,  
Sorry for the delay. Just got word back from our Client that they want to submit the Construction Phasing & TCO schedule with the new application. No need to have a separate hearing on the schedule alone and this pending application can be deferred.

Thank you for the reminder.  
Best,  
Jesse

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**From:** Scott Gustin [mailto:SGustin@burlingtonvt.gov]  
**Sent:** Thursday, January 30, 2020 4:35 PM  
**To:** Jesse Beck  
**Subject:** city place phasing app

EXTERNAL - Be aware of the source

Hi Jesse,  
I've not seen a request from you to defer the pending City Place phasing application. Has there been a change in thinking as to this application?  
Scott

Scott Gustin, AICP, CFM  
Principal Planner & Asst. Administrative Officer  
Dept. of Permitting & Inspections  
645 Pine Street  
Burlington, VT 05401  
(802) 865-7189

Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act.

LAW OFFICES  
OF  
**JOHN L. FRANCO, JR.**

110 Main Street, Suite 208  
Burlington, Vermont 05401-8451  
Telephone (802) 864-7207 FAX (802) 859-1876  
email: [johnfrancolaw@aol.com](mailto:johnfrancolaw@aol.com)

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DEC 23 2019

BURLINGTON  
PERMITTING & DEVELOPMENT

December 16, 2019

City of Burlington, Vermont  
Development Review Board and  
Department of Planning and Zoning  
City Hall  
149 Church Street  
Burlington, VT. 05401

Re: *Permit Amendment Application #17-0662CA/MA*  
Folder RSN378766, ZP Number20-0522CU  
75 Cherry Street

To Whom It May Concern:

Barbara McGrew of 76 St. Paul Street, Apt. 8 NW, Burlington, Steven Goodkind of 260 Ethan Allen Parkway, Burlington, Michael Long of 55 Henry Street Burlington, and Lynn Martin of 101 College Street #211, Burlington hereby enter their appearances as interested persons in the proceedings before the Development Review Board in the above captioned matter. They had brought a series of legal challenges to the redevelopment being proposed for the former Burlington Square Mall at 75 Cherry Street.

- Barbara McGrew individually and Steven Goodkind on his own behalf and on behalf of a group of individuals had brought an appeal in *Devonwood Investors, LLC (75 Cherry Street)*, Vermont Superior Court, Environmental Division, Docket Number 39-4-17 Vtec regarding the local land use approval issued by the Burlington Development Review Board (DRB) on March 17, 2017 to Devonwood Investors, LLC on behalf of the property owner BTC Mall Associates, LLC.
- Barbara McGrew individually brought the appeal *Devonwood Investors, LLC JO 4-255*, Vermont Superior Court, Environmental Division, Docket Number 63-5-17 Vtec claiming that Act 250 had jurisdiction to also review the proposal.
- Steven Goodkind, Michael Long and Lynn Martin in Counts I, II, and III of *Long et. al. v. City of Burlington et. al.* Vermont Superior Court, Civil Division, Docket No. 996-11-16 Cncv brought a taxpayer challenge to \$22 million in Tax Increment Financing (TIF) provided by State and City property taxpayers to BTC Mall Associates to subsidize the project, and in Count IV of that action also as individual plaintiffs challenged a denial of a request for public records regarding that subsidy.

The claims were all settled and compromised in a global *Settlement Agreement* between the plaintiffs and the developer mediated by former Burlington Mayor Peter Clavelle. These actions were each dismissed by the plaintiffs with prejudice and/or they individually withdrew as per the *Settlement Agreement* in exchange for the conditions in that *Settlement Agreement*. Paragraph 3 of that *Settlement Agreement* incorporated by reference a *Stipulation for Final Judgment* along with a *Proposed Judgement Order*. The *Stipulated Findings of Fact Supporting Final Judgment* were approved and signed by the plaintiffs, the developer and the City. The *Proposed Judgment Order* was adopted by the Vermont Superior Court Environmental Division as a *Judgment Order* on July 17, 2017 in Docket 35-4-17 Vtec.

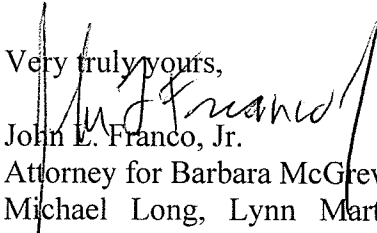
This gives them both contract rights and *res judicata* rights in any proposed changes to the project. They contend that the proposed project amendment(s) violate those rights.

- This is bait and switch permitting. The developer acted on this *Settlement Agreement* and the zoning permit issued by the Environmental Division thereunder to proceed with construction of the project in November of 2017. That construction commenced with demolition including of the former 567 space public parking garage. Now that that parking has been demolished and is a *fait accompli*, the amendments propose to make a 45% reduction in the gross floor area devoted to off-street parking, but only a 15% reduction in the floor area of the other elements. The developer is equitably estopped from doing this.
- The amendments are premature because according to ¶9 the *Settlement Agreement* “may not be amended, modified, or terminated except by written consent signed by all the parties hereto.” No such written consent has been obtained from my clients for these amendments.
- These amendments consequently violate the finality requirements of *res judicata* because they fail to qualify for a zoning permit amendment under Vermont case law which require a showing that the permit amendments are justified by either (a) changes in factual or regulatory circumstances beyond the control of the permittee; (b) changes in the construction or operation of the permittee’s project not reasonably foreseeable at the time the permit was issued; or (c) changes in technology. If approved the amendments will not be in accord with the applicable policies, purposes, or terms of the plan and/or bylaws of the City of Burlington.

Please provide us with actual notice of any and all actions taken on this application, including but not limited to advance notice of the dates and times of all hearings before the DRB.

Thank you for your attention to this matter.

Very truly yours,

  
John L. Franco, Jr.

Attorney for Barbara McGrew,  
Michael Long, Lynn Martin, and  
Steven Goodkind

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**BURLINGTON  
PERMITTING & INSPECTIONS**

Phased occupancy based on the following:

Construction Start – August 2020

Completion (30 months) – February 2023

**Phase 1 /TCO 1 (18 mos.) February 2022**

Basement level- Mech./Utilities/Storage/Parking  
Garage Floors L1-L4 North of Hotel Garage Break line  
Residential floors L1, 2, 3.

**Phase 2 / TCO 2 (+6 mos.) August 2022**

Residential Floors L4 to L8  
Res. Amenities L9  
Mechanical L9

**Phase 3/TCO 3 (+3mos.) November 2022**

Retail on Bank  
Parking Garage - South section for Hotel.  
Hotel Amenity L1

**Phase 4/ TCO 4 (+3 mos.) February 2023**

Hotel L2 to L7  
Mechanical, Community, restaurant L8, L9.

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**BURLINGTON  
PERMITTING & INSPECTIONS**



Department of Permitting and Inspections

149 Church Street, City Hall
Burlington, VT 05401-8415
Phone: (802) 865-7188
Fax: (802) 865-7195

www.burlingtonvt.gov/pz

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BURLINGTON PERMITTING & INSPECTIONS

Zoning Permit Application

Use this form for ALL zoning permit applications. See the relevant checklist for specific requirements.

PROJECT LOCATION ADDRESS:

PROPERTY OWNER\*:

BTC MAN ASSOC LLC (DON SINGER)

\*If condominium unit, written approval from the Association is also required

APPLICANT:

FFF, INC. (JESSE BEZE)

POSTAL ADDRESS:

101 CHERY ST, SUITE 440

CITY, ST, ZIP:

BURLINGTON, VT 05401

DAY PHONE:

802 658-2545

EMAIL:

dsinger@devonwoodinvestments.com

SIGNATURE:

[Signature]

I am the owner. In addition, I duly authorize the applicant (if noted) to act on my behalf for all matters pertaining to this zoning permit application.

POSTAL ADDRESS:

81 MAPLE ST.

CITY, ST, ZIP:

BURLINGTON, VT. 05401

DAY PHONE:

802 864-6844

EMAIL:

jbeck@fffinc.com

SIGNATURE:

[Signature]

Description of Proposed Project: THIS APPLICATION APPLIES TO BURLINGTON TOWN CENTER PIZ FILE ZP 17-0662 CA/MA TO AMEND D.R.B APPROVED PHASING/TCO SCHEDULE ATTACHED

Existing Use of Property: [ ] Single Family [ ] Multi Family: # \_\_\_ Units [X] Other: RETAIL, PARKING

Proposed Use of Property: [ ] Single Family [X] Multi Family: #3 Units [ ] Other: RETAIL COMMERCIAL, PARKING

Does your project involve new construction, addition, alteration, renovation, or repair to a structure that is heated or cooled? Yes [X] No [ ]

(If yes, the Vermont Residential/Commercial Building Energy Standards (VRBES/VCBES) apply. Please visit the following links for more information: http://publicservice.vermont.gov/energy\_efficiency/rbes or http://publicservice.vermont.gov/energy\_efficiency/cbes)

Will 400 sq ft or more of land be disturbed, exposed and/or developed? Yes [ ] No [ ]

(If yes, you will need to submit the 'Erosion Prevention and Sediment Control Plan' questionnaire, with a site plan)

For Single Family & Duplex, will total impervious area be 2500 sq ft or more? Yes [ ] No [ ]

(If yes, you will need to submit the 'Stormwater Management Plan' questionnaire, with a site plan)

Are you proposing any work within, below, or above the public right of way? Yes [ ] No [ ]

(If yes, you will need to receive prior approval from the Department of Public Works)

Are you proposing any onsite food or beverage production/manufacturing? Yes [ ] No [ ]

(If yes, you will need to consult with Water Resources Division at the Department of Public Works: 863-4501)

Estimated Construction Cost (value)\*: \$ NO CHANGE

(\*Estimated cost a typical contractor would charge for all materials and labor, regardless of who physically completes the work)

Within 30 days of submission, the permit application will be reviewed for completeness, and, if complete, will be processed administratively or referred to a board for review. All permit approvals or denials are subject to an appeal period (15 days for administrative permit; 30 days for board permit). A building (and/or electrical, mechanical, plumbing, curb cut) permit will also be required. Contact the Department of Public Works at 802-863-9094 to inquire. Please ask for assistance if you have any questions about filling out this form. Call the Zoning Division at 802-865-7188, or visit the office in the lower level of City Hall, 149 Church Street.

Office Use Only: Zone: FD6 Eligible for Design Review? 4 Age of House 1976 Lot Size 56117
Type: SN \_\_\_ AW \_\_\_ FC \_\_\_ BA \_\_\_ COA 1 \_\_\_ COA 2 \_\_\_ COA 3 \_\_\_ CU \_\_\_ MA \_\_\_ VR \_\_\_ HO \_\_\_ SP \_\_\_ DT \_\_\_ MP \_\_\_
Check No. CASD Amount Paid 155 Zoning Permit # 20-05220