

MEMORANDUM

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

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

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

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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.)December31,2023

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 (+6mos.)July1,2024

Residential Floors L4 to L8  
Res. Amenities L9  
Mechanical L9

South Block- Phase3/TCO3 (+3mos.) October1,2024

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

South Block- Phase4/TCO4 October31,2026

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			

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

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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.

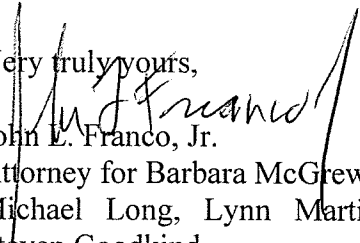
This gives them both contract rights and *res judicata* rights in any proposed changes to the project. They contend that the proposed project amendment(s) violate those rights.

- 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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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 (+3 mos.) 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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