

## Meagan Tuttle

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**From:** Bob Wolf <bcwolf@burlingtotelecom.net>  
**Sent:** Tuesday, June 28, 2016 8:09 PM  
**To:** 'YvesBradley'; 'Bruce Baker'; 'Lee Buffinton'; 'Emily Lee'; 'Andy Montroll'; 'Harris Roen'; 'Jennifer Wallace-Brodeur'; Meagan Tuttle  
**Cc:** Bushor, Sharon; Maxwell Tracy; Sara Giannoni; Kurt Wright; Chip Mason; Karen Paul; Ayres, Tom; Adam Roof; Selene Colburn; Jane Knodell; Joan Shannon; David Hartnett; Mayor's Office  
**Subject:** Please do not approve Mall exemption

Dear Burlington Planning Commissioners

I attended the 6/9/16 meeting at the Police Station to speak against the proposed 14 story mall, something I have never done in my 25 years living here in Burlington. Unfortunately I didn't arrive in time to speak so I stayed awhile to listen to your group's discussion. Much to my surprise, my takeaway was this is a done deal with the discussion centered on how BPC was going to package it. I also came away with there are some serious flaws in the logic presented by Julie Campanoili and another woman presenting the zoning height pictorial. I personally hope the project doesn't look like the slides Julie presented of Colorado, Seattle, Texas, Copenhagen, etc! One of Julie's points was the 14 story buildings wouldn't be noticed from Church Street; true, but they would be noticed from afar and certainly be disproportional to all surrounding buildings. And the zoning height pictorial assumed the surrounding buildings would be 105 feet, therefore the new mall would only be slightly higher and not a big deal, however this isn't the case given the historical nature of many of our downtown buildings. I hope our downtown will never be made up of 105 buildings! This is not the city I wish to leave my kids.

Another issue for me is the rush to approve by the Mayor and Don Sinex. I heard the Mayor say much of this negotiation was done in Executive Session dating back to November 2014. He should not be surprised then if the public is now critical of only being involved since April 2016 for such a massive project. Also where are the feasibility studies to support or disprove the claims made on both sides of this issue? Is one not required before final approval? There are too many unanswered questions for such a transformative project and we seem to be enamored by someone dangling large sums of money with promises of rainbows and unicorns. I know what Sinex gains from all of this, a large profit; I'm not so sure about the citizens of Burlington though. I do agree the mall needs redevelopment, but let's keep downtown Burlington on a human scale for future generations.

Thanks for listening.

Bob Wolf  
41 Caroline Street

## Meagan Tuttle

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**From:** Carolyn Bates <cbates@burlingtontelecom.net>  
**Sent:** Tuesday, June 28, 2016 5:50 PM  
**To:** Meagan Tuttle; YvesBradley; Bruce Baker; Lee Buffinton; Emily Lee; Andy Montroll; Harris Roen; Jennifer Wallace-Brodeur; Meagan Tuttle  
**Subject:** FAR question to send to planning commission

PLease have this comment be part of the record for the meeting June 29.

I am quite confused  
This is in the overlay play, right?  
The FAR

I keep seeing 8-++ put up side by side with the new 9.5 FAR when David shows his slides and building build outs.

Yet when I read the overlay document it says 5.5  
Why? are we being told it is 8.+++???

See below

**Carolyn L. Bates Photography**

**Email:** [cbates@carolynbates.com](mailto:cbates@carolynbates.com)

**ADDRESS:** PO Box 1205, Burlington, VT  
05402

**(c) District Specific Regulations: Downtown Mixed Use Core Overlay (DMUC) district:**

**1. Dimensional Standards:**

The maximum Building height and mass shall be as prescribed in Table 4.5.8-1 below. Building height and mass in excess of 65-feet and 5.5 FAR shall be allowed by-right and without the necessity of the DRB granting of Development Bonuses/Additional Allowances pursuant to Sec 4.4.1 (d)7.

The Dimensional Standards within the DMUC Overlay District shall be as follows:

<b>Table 4.5.8-1 Downtown Mixed Use Core Overlay (DMUC) District Dimensional Standards</b>	
<b>Building Height</b>	3 stories min. 14 stories not to exceed 160-ft max
<b>FAR</b>	9.5 FAR total max per lot
<b>Floorplate:</b>	
Floors 1-5	100% of lot max.
Floors 6-7	75% of lot max.
Floors 8-11	55% of lot max.
Floors 12+	15,000 sf max per individual floorplate, with individual towers separated by a minimum of 60-ft measured orthogonally.
The floorplate of any floor may not be larger than the floor below.	
<b>Pervious Area<sup>1</sup></b>	10% min
<b>Setbacks:</b>	
- Front	0-ft min, 10-ft max.
- Side/Rear	0-ft min, 12-ft max.
<b>Occupied Build-to Zone<sup>2</sup></b>	100%
<b>Ground Floor Height (floor to floor)</b>	14-ft min
<b>Arcades<sup>3</sup></b>	10-ft clear depth min 14-ft clear height min

<sup>1</sup> Pervious Area is the area of a lot covered by surfaces or materials that allow for the movement or passage of water into soils below. Pervious areas include, but are not limited to, areas of a lot covered by soil/mulch, vegetative matter, permeable pavers/pavement, bio-retention areas, or other materials that allow for the infiltration of at least the first inch (1") of rainfall. For these purposes, green roofs that capture and attenuate at least the first inch (1") of rainfall are also considered pervious area.

<sup>2</sup> Occupied Build-to Zone is the proportion of the linear distance between the maximum and minimum front setback along a front property line that must be occupied by a Building facade. In lieu of a Building facade,

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## Meagan Tuttle

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**From:** Lee Buffinton <l.buffinton@gmail.com>  
**Sent:** Wednesday, June 29, 2016 9:36 AM  
**To:** Meagan Tuttle; David E. White; Yves Bradley; bbaker@cdbesq.com; andym@montrollaw.com; Emily Lee; Jennifer Wallace-Brodeur (jwb@burlingtontelecom.net); Harris Roen  
**Subject:** Communication for discussion at June 29th meeting and for the record

To my fellow Planning Commissioners,

**Vermont Law is very clear- Local zoning regulations must conform to the municipal plan.** For Downtown Burlington that municipal plan is planBTV Downtown & Waterfront adopted after extensive public involvement. Our planning packet materials for the various zoning amendments before us emphasize that it's important to "comply with the Pre-Development Agreement" for the mall project, but what is far more imperative and required by law is that we comply with our municipal plan.

**Clearly plan BTV and all of us on the Planning Commission support a vibrant, mixed-use, mall redevelopment with a healthy mix of retail, commercial, and diverse residential spaces to meet the needs of the city.** The City and the developer deserve credit for working so hard together toward this vision and, in particular, the effort to re-open St. Paul Street and Pine Street as complete, public streets. While these efforts are exactly what plan BTV envisioned, some of the specific zoning amendments as proposed are not consistent with plan BTV and, therefore, should be reconsidered and reconfigured in order to meet the legal requirement, avoid legal wrangling over potential spot zoning, and facilitate redevelopment.

3 areas of concern:

**Proposed zoning amendment to allow post secondary schools and community colleges as a permitted use-**

Under this proposal the entire mall could be turned into a college or university campus, exempt from Inclusionary Zoning requirements and without the conditional use review that is currently mandated. Nowhere in planBTV does it suggest that we put a college campus downtown! A college campus does not align with plan BTV's call for mixed use retail, commercial and diverse residential uses at the mall site. Nor would a college campus address the goal of creating more affordable and moderately priced housing downtown essential for workforce housing, seniors, and others, as prioritized in plan BTV. It's essential to retain conditional use review of any proposed secondary school/college at this site.

**Proposed zoning amendment to raise building height limits from the current 65' by right to 160' (14 stories) by right with no provision for requiring additional public benefits such as affordable or senior housing.**

This proposal represents a dramatic increase in building height and a major change in policy that has little basis in the adopted plan BTV or the draft Form Based Code.

While Plan BTV wisely calls for "larger residential, mixed-use buildings" at the current one-story mall site as well as strategic infill and liner buildings, the plan does not suggest the need for any increase in our current height limits and says; "While allowing for even taller isn't necessarily the answer, efforts to encourage development that more fully utilizes the permitted development envelope need to be supported". Plan BTV seems to be responding to public sentiment and cites its public survey that found only a very small percentage of respondents who were dissatisfied with the scale of buildings downtown. Even the plan's graphic images of

what a redeveloped mall site could look like show new buildings no taller than 6 to 8 stories in keeping with our current height limits.

Furthermore, 14-story buildings towering over historic Bank Street, Cherry Street and the new sections of St. Paul and Pine Streets could block sunlight and increase and alter wind currents and downdrafts at these locations, potentially diminishing the positive pedestrian experience that plan BTV envisions. In addition such heights would seem to be at odds with Section 6 of our current Comprehensive Zoning Ordinance that emphasizes the importance of maintaining neighborhood proportions of scale and mass and sensitive transitions between new buildings and existing neighborhoods.

Under this proposed zoning amendment to allow 14-story buildings by right a developer could put in the bare minimum number of inclusionary zoning units (15-20%) and all of the remaining units (80 to 85%) could be luxury apartments. This fundamental policy shift would be counter to plan BTV's strong emphasis on creating a variety of housing options: "more choices, more types, more affordable, more diversity". Plan BTV calls on us as a city to use "a number of strategies that can and should be employed to encourage the creation of significantly more housing- particularly affordable and affordable market-rate units". Specifically cited in plan BTV's vision for the mall are "downtown workers, young professionals, and empty nesters" who need affordable and moderately priced housing downtown. By adopting a massive height increase with no incentives attached we could lose on an opportunity to get the housing variety that our city needs.

**Proposed zoning amendments that would allow for surface parking lots and a parking garage to be built to the perimeter of a building at any floor except the first floor.**

Surface parking lots, whether on the ground or on the top deck of a parking garage, are completely at odds with 21st century planning and the green roofs and stormwater management called for in plan BTV.

In regard to parking, plan BTV emphasizes underground or wrapped parking where needed, stating: "In all cases, any new facilities should be wrapped with mixed-use buildings to screen the parking and activate the street." Our plan does not say that this only applies at the ground floor level. Lastly, plan BTV emphasizes the need for the city to "work closely with developers to manage their parking needs" and consider alternatives to building conventional parking garages. I urge that we delete the amendment allowing for surface parking and make the parking garage section more consistent with plan BTV objectives.

**In conclusion:**

We as a Planning Commission have been urged to adopt, in their entirety, the zoning amendments to enable the mall redevelopment as proposed. However, we would not be performing our due diligence or meeting our legal obligations if we passed the particular zoning amendments cited above as written. I'm no lawyer, but it seems to me that we need to avoid the potential lengthy legal mess associated with accusations of "spot zoning" by making absolutely sure that any zoning amendments comply with the goals of our publicly supported plan BTV.

Until we go through the public process of changing it, plan BTV is our guide for Burlington's future. The city supports and wants plan BTV. Developers want certainty. We can have both.

I respectfully request of my fellow planning commissioners that we reshape proposed zoning amendments as needed to keep us on solid legal ground and to better reflect the vision and values of Plan BTV and the citizens of Burlington.

Thank you.

Lee Buffinton



## PC meeting notes/comments

Proposed written comments to submit today to PC on the memo from Staff, to be submitted by Don by email - please review and provide any feedback ASAP - Brian needs to look at it for takings comments...

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I am writing to provide brief responses to the most critical issues raised in the summary of your deliberations by City Planning staff, as reflected in the memo sent out in your packet for tonight's meeting.

**Item 2: Official Map.** The provisions of the Predevelopment Agreement (PDA) related to the proposed new streets at St. Paul and Pine between Bank and Cherry were carefully and closely negotiated by the parties. The City successfully sought to increase the Pine Street right of way to a full 60 feet (sufficient for a "complete street"), even though another property owner at 100 Bank is impacted by that requirement, which is outside of my control. Providing that additional right of way required my development team to redesign the project to account for about 1 million lost square footage (roughly calculated at 20 additional feet width X 350' length X 160' height, minus the portion occupied by the adjacent 100 Bank Street not owned by me). Aligning Pine Street north to south on the Official Map, rather than adopting the Official Map attached to the Predevelopment Agreement, is a serious issue that will impact the PDA and my ability to undertake the development for a couple of reasons. First, it would as you know be inconsistent with the PDA adopted, and agreed to by the City and me. Second, any further adjustment east will take additional significant square footage from the program of the Burlington Town Center (BTC) project as planned, at corresponding cost to the project and, if accomplished through a takings as contemplated by state law, to the City. Third, it does not appear to me that Pine Street currently actually aligns straight above and below the parcels in DMUC; this complicates the impact of requiring "alignment" and likely means that a change to the Official Map as contemplated in the staff memo would affect multiple parcels within the proposed overlay. Finally, conditioning the otherwise "by-right" height on the street alignment issue may constitute an impermissible taking without compensation (to any parcel owner, not just me). With respect to St. Paul Street, I had early in the process offered to align this street but that was not welcomed by the City for a couple of good reasons. First, it would require the LLBean building, which I own, to be razed as a part of the current development plan, at significant additional cost given the building's condition and existing tenancies. Second, the new transit center on St. Paul Street north of the BTC will utilize one-way south traffic patterns for the GMT buses; I believe there was real concern by some in the City that aligned streets would actually be less safe and more difficult for traffic than the plan as submitted, which can be signaled and signed to avoid direct conflict if it is "jogged" as shown. I ask that you reconsider this issue and recommend the Official Map as attached to the PDA for these reasons. If the matter as commented on by the PC is adopted I am afraid I won't be able to proceed with the proposed designs and program.

If the Planning Commission recommends adopting the Official Map as attached to the PDA, showing the layout of the streets as agreed to by the City as a part of this process, I would have

no objection to the Planning Commission ensuring that the full district height is utilized only if there is no new building within the street rights of way shown on that Official Map.

**Item 3 and Item 12: Parking Garage.** I urge you to review the information we submitted (from myself and a knowledgeable construction company) at your earlier meeting regarding an underground garage, and I ask that you revisit whether to require a showing that an underground garage is "economically infeasible." That phrase seems to present both a very high and ill-defined bar that I believe will add significant time and cost to any permitting process. There are many reasons, with respect to the BTC project, that a below grade garage did not work, and we understood that the City tech team agreed with this assessment. These included but were not limited to cost - the disruption from the trucking and excavating alone would be very significant. The BTC project is already partially below grade, as shown in the plans and as currently built, and I am not sure that has been understood in the commentary on the garage location.

I am attaching new garage facade views we have submitted to the DAB and DRB recently; I am hopeful you will see that these are significant improvements over the original sketch plan. The feedback we have received has been positive that these are trending in the right direction, and certainly further refinements will occur as we discuss how best to screen the garage with the DAB and DRB. We are also designing the floor to ceiling plates of the garage to full height for residential reuse, if in the future that were possible due to decreased parking spot requirements. (The Planning Commission could consider making that a requirement of any above-ground facility in the DMUC, in my view.) It is unrealistic to require all underground parking the DMUC. Similarly, requiring full use of liner buildings (the "Hotel Vermont" model referred to) is also very challenging - that site was a small, separate lot without any need to connect to other uses and functions, and unless it built as it did, it cannot have properly utilized the Hotel Vermont site.

The additional design and engineering work, entrances, corridors, garage ventilation systems, and exterior structures that would be required to accomplish this would be quite significant. We have already substantially improved the garage facade and have said that we will continue to do so, including investigating whether a liner approach could be used in key areas to help break up the facade and further improve the streetscape - let us continue to work with the DAB and DRB to create an acceptable design, adopting the zoning standards as submitted by planning staff. Please reconsider the showing required to build parking above ground, and reconsider recommending a requirement of full liner buildings for above ground garage floors. These are requirements that will deter development, not encourage it. The DMUC district is intended to encourage development, not deter it.

Thank you for considering my concerns, and for your hard work on this proposed amendment.

Images provided by Devonwood/BTC Mall Team  
For Planning Commission discussion 6/29/2016



Cherry Street Façade



Cherry/St. Paul Perspective



Bank Street Façade



St. Paul/Bank Perspective



Detail of Bank Street Parking level façade



St. Paul Street Facade



Pine Street Facade

Dear Planning Commissioners,

As three members of the Form Based Code (FBC) Committee we felt that it was important to build on the tremendous amount of work the Committee has done in reviewing and refining the requirements of the proposed Form Based Code such that the ordinance changes under consideration by the Planning Commission for this overlay district are consistent with both PlanBTV and with the specific requirements for Form District 6 (The Downtown Core) where the overlay district is located. We appreciate that time is of the essence in your review process and hope that the time we spent reviewing the proposed ordinance compared with the Form Based Code will be helpful. While the draft overlay has included much of the work of the FBC Committee, after careful review we believe the proposal could be brought into further alignment with our committee's discussions if the following changes were made to the requirements of the proposed ordinance:

**1. Amend the proposed Overlay District Map as follows:** Remove the Southern Parking Garage behind People's United Bank (formerly the Chittenden Bank) from the Overlay. Reasons: This is what FBC committee agreed to and it doesn't effect the Mall project in anyway. This will keep all of the tallest buildings in direct alignment with one another minimizing the extent of views that are blocked when looking west along Bank Street.

**2. Remove changes to Church St.** - Any revisions to the current zoning requirements governing development fronting on the Church Street Marketplace deserve significantly more discussion than is afforded by this current request for review/approval by the City Council. It is our understanding that the redevelopment proposal for the BTC site could be accomplished without making changes to the zoning regulations governing Church Street. While the FBC Commission did review the changes proposed for Church Street zoning included in the language of the ordinance change before you, we request that the Planning Commission wait until the Form Based Code Committee has completed their public process and final review before considering these changes since there is no need for these changes at this time.

**3. Lower proposed max. height to 146'** - It has been noted in public discussion that the 160' limit could be exceeded to accommodate rooftop mechanicals. In addition there is an administrative allowance to increase height by 10% to account for grade changes across the site - a concept included in the administrative provisions of the Form Based Code. If the desire is to establish a true maximum height of 160' we recommend lowering the height limit to 146' and allowing the administrative discretion for grade variations, mechanicals, etc. that would then bring the overall height with rooftop mechanicals to 160'.

**4. Assure a minimum of 15' sidewalks.** - This concept was debated at length in the Form Based Code Committee. We came to agreement that it is critically important that wider sidewalks be required and provided where development is more intense and pedestrian activity is greatest on busier streets. As the streets in this district will be rebuilt it is the perfect opportunity to assure-adequate sidewalk dimension is provided in an area that must be pedestrian friendly. This requirement should be coordinated with the planning guidelines and findings of the Burlington Great Streets Initiative currently underway.

**5. Assure that the maximum height is conditioned on getting the streets back** consistent with PlanBTV. If the current proposed mall project does not ultimately move forward to construction, we wouldn't want to allow another development and developer to purchase the property and receive the additional height and density benefits inherent to this overlay district without requiring that Pine Street and Saint Paul Streets be returned to the public domain and the City grid.

**6. Assure that step backs are consistent with those required in Urban Design Standards of Form Based Code.** The proposed massing shown in current design studies appear to be slightly different than that shown in the FBC. We would request that the step-back requirements be

reviewed for consistency.

**7. Require LEED Gold Certification from the USGBC (US Green Building Council) for all buildings in the overlay district over 65'.** This will be a significant measure to assure that the tallest buildings in the state will meet best practice requirements for energy efficiency and sustainable practices. We would recommend that developers in the overlay district be required to provide a performance bond that will be returned to the developer once the project is complete and the LEED standards are shown to be met, or given to the City if the standard is not met.

**8. Parking** – This development proposal includes three (3) stories of parking located at exterior building elevations on the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> floors of the buildings. One of the focuses of the FBC has been to minimize the disruptive influence of parked cars on the character of the urban environment. Example photos of other completed parking structures in downtown areas have been shown that appear to include glazed windows with the cars parked behind, which effectively disguises the nature of the building's use as a parking structure. We would recommend that development in the overlay district be required to meet the examples of these projects and be designed such that areas of the building elevation screening parked cars be fully integrated with the design of the remainder of the building. The effect should be that the elevation areas screening parking are generally indistinguishable from the rest of the building's design.

**9. Remove Surface Parking** - If this is referencing at grade surface parking it should be removed. If it is referencing above ground parking above the 2nd floor it could stay.

**10. Energy Efficiency** - consistent with FBC design standards to allow for high efficiency buildings.

**11. No structured Parking on First or Second floor levels** - Mall developers are proposing structured parking on floors 3-5. That would be better than starting the parking on the second floor, in terms of the street experience. We recommend making it the standard for the district.

Thank you for your consideration of these proposed changes and for all of your work to return the proposed new zoning to the Council expeditiously.

Sincerely,

Joan Shannon  
Form Based Code Committee Member  
South District City Councilor

Richard Deane  
Form Based Code Committee Member  
Principal at Truex Cullins Architects

Emily Lee  
Form Based Code Committee Member  
Planning Commissioner