

July 12, 2016

Dear Planning Commission Members:

Thank you for your review and careful attention to the Downtown Mixed Use Core overlay district (DMUC) zoning amendment that would, if adopted, enable the Burlington Town Center (BTC) redevelopment proposed by my company, Devonwood LLC, as set forth in the May 2016 Predevelopment Agreement (PDA) adopted by the City Council and signed by the Mayor and me. I am writing to provide brief input regarding issues you are considering for inclusion in your letter to the City Council regarding the draft ordinance you voted to send on the City Council at last week's Public Hearing.

I previously submitted comments on a few topics that I repeat and amplify here for your ease, along with a few other comments, tracking the item numbers on the chart you have developed:

Item 1 – DMUC Parcel Boundaries: On this point, BTC supports that boundary as referenced in the PDA. However, we would not be opposed to an expansion of the overlay district if the majority of the City Council supported it. Brian Dunkiel previously submitted analysis of the spot zoning issue and I urge you to take it into account as you formulate your recommendations to the City Council.

Item 2: Official Map. The provisions of the 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 and that parcel 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 BTC redevelopment 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 BTC project as planned, at corresponding cost to the project and, if accomplished through a taking 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 comments would affect development rights of more than just my parcels within the proposed overlay.

Thus, to modify the map as proposed by some Planning Commission members would have the unintended consequence of jeopardizing future zoning permit applications for numerous properties not owned by BTC in the area. Indeed, the DRB could be required by statute to deny

permits and delay project depending on how the map is ultimately modified. Supporting the proposed official map amendment would avoid this consequence.

In addition, 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 is "jogged" and can be signaled and signed to avoid direct conflict.

I ask that you reconsider this issue and recommend the Official Map as attached to the PDA for all of these reasons. If the streets are aligned as commented on by the PC, I am afraid I won't be able to proceed with the proposed designs and program for the BTC.

Item 3: By Right Height and Official Map. I am very concerned that conditioning the otherwise "by-right" height on the Official Map street alignment issue may constitute an impermissible taking without compensation (to any parcel owner, not just me). However, 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 also commenting that the full district height should be utilized only if there is no new building within the street rights of way as shown on that new Official Map, as proposed in your draft letter to City Council.

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 not recommend requiring a showing that an underground garage is "infeasible" or "no viable alternative exists" or similar language. Making that type of showing could present a very high and ill-defined bar that I believe could add significant time, cost, and uncertainty to any permitting process.

Even though we investigated to find a realistic underground garage solution, there are many reasons that a below grade garage did not work for the BTC project, 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. Also, 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. We provided many weeks ago our assessment of this issue; public comments claiming that it has not been considered adequately are not correct.

I submitted to you recently the new garage facade views we provided to the DAB and DRB; 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 understand the City's desire to ensure that any above-ground parking structure is both sufficiently off of street grade to allow for an engaged pedestrian experience and screened well enough that it blends in with the rest of the building.

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 recommending making that a requirement of any above-ground facility in the DMUC, in my view. Many individuals have commented on their desire for less parking downtown; while neither City permitting rules nor the realities of tenant leaseholds make that feasible now, there is no reason why garage floors in above-ground structures can't be built for potential reuse when we achieve the less car-dependent future many envision.

It is unrealistic to require offsite shuttle parking, or 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 could not have properly utilized the site at all. The additional design and engineering work, entrances, corridors, garage ventilation systems, and exterior structures that would be required to accomplish this on other parcels would be quite significant.

Good garage design should indeed be required, but I urge you not to recommend unrealistic conditions that would make it very difficult to construct the the sort of larger mixed-use development contemplated on these key downtown lots. For the BTC project, 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, under the zoning standards as submitted by planning staff. Please reconsider recommending a stricter showing or other requirement to build parking above ground.

Item 14 – Bonding for LEED Gold: The recommendation in the current draft ordinance and as reflected in Planning Commission comments to require a bond 5X the building permit fee for LEED Gold Certification would add a material cost to projects in the DMUC that may not encourage development as the City hopes. I have gone beyond any previous commitment by not only agreeing to construct to LEED Gold standards as stated in the PDA, but also to take the 2030 energy challenge into account. The sort of agreement the City has made with me for these standards is innovative and more appropriate than a zoning ordinance requirement that adds financial burden to already difficult-to-build projects. The bonding cost recommended would in essence become another outlay from a project, raising overall costs and therefore making the finances more difficult.

Item 15 – Inclusionary Housing: I am disappointed in the unfounded claims by some that the inclusionary units I am agreeing to provide – without buyout or other exemption, as expressly

promised in the PDA – somehow do not constitute a public benefit. I worked hard with the Mayor and City Council to find the right balance in the housing mix set forth in the PDA. I believe that the number of student units, which was a compromise with the City Council, will help Champlain College fulfill its plan to take its students out of neighborhoods. I believe the number of inclusionary units – 20 % – will be among the largest influx of privately-developed units Burlington has seen. The balance of the units will be available at market, adding new options to our limited housing stock downtown. I'll continue to work with the City Council to make sure the mix is right as we finalize a Development Agreement. But I urge you not to recommend requiring greater than 20% inclusionary units as a condition in this DMUC zone. A greater percentage will not achieve the City's goal of facilitating development here to help the housing problem Burlington faces. Requiring 20% inclusionary is a big but achievable number; more is not. Also, achieving even that number of units is dependent upon getting enough height to build the units planned, something that cannot happen if the project is lowered as some have asked for. Balance is the key to achieving the City's goals, and changing one element will affect other parts of the program.

Item 16 – Post-Secondary and Community College Permitted Use: I want to assure you that the concerns are unfounded that the entire project – which will be defined by state law as a Priority Housing Project requiring mixed-uses – will somehow become only a downtown college or community college campus. The reason for the requested change from conditional to permitted use is that other educational uses are presently permitted uses, but not post-secondary; it is likely that Champlain College would want to provide some study lab, maker space, or similar educational space in the new project given that a number of Champlain College students will be living in the apartments under a master lease with the College. Just as I would like to provide early childhood education space to support working families in and near the redevelopment, so too would I like to provide the sort of study lab space that likely would benefit the Champlain College students living in the redevelopment's apartments.

My counsel Brian Dunkiel also has a few specific line edit comments to the DMUC draft amendment itself, and he plans to provide these directly to David White and the City Council.

Thank you again for your hard work on this zoning overlay. I have been engaged in the City process every step of the way to help achieve goals the City had well before my project came about - to reconnect its streets, to find greater density in the downtown to support housing and jobs, to fix what has become a blemish of a suburban mall in the middle of Burlington. This has been a long and thorough process, despite claims you have heard otherwise. I am very positive about Burlington, the future of this city, and the benefits this project will bring to it. Thank you for considering my concerns regarding your comments to the City Council on the DMUC overlay.

Sincerely,

Don Sinex
Devonwood Investors LLC