

Burlington Planning Commission

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Vacant, Youth Member*



Burlington Planning Commission Minutes

Tuesday, August 12, 2014 - 6:35 pm

PC Present: L. Buffinton, H. Roen, J. Wallace-Brodeur, Y. Bradley, A. Montroll

Absent: B. Baker, E. Lee

Staff: D. White, E. Tillotson, K Sturtevant

I. Agenda

Item three will be delayed until the arrival of K Sturtevant.

II. Public Forum

No members of the public were engaged.

III. Statute of Limitation Discussion

K. Sturtevant, City Attorney: If needed we can review this topic.

My understanding is that the conversation is around restraint on the 15 year statute of limitations, relative to violations. In the City, records go back to 1973 but permitting previous to that is applied.

A. Montroll: What happened in 1973?

D. White: There was a new ordinance in 1973 which seems a logical starting point. The question is what did the City know and when did it know it? The records prior to a certain time were not very good. The City should set statute of limitations based on the effectiveness of records which needs examination.

J. Wallace-Brodeur: Isn't this the same conversation that we had previously about when did different departments in the city know?

K. Sturtevant: So currently do you just say that 1973 is a definitive point? Presently, we do not and there is an Environmental Court decision which supports that. This issue has not gone to the Supreme Court. The question is what is the representation to zoning? Another point is about where to draw the line. The question is how to approach the issue, fifteen years does not have to be the point. The date of completion might be the timeline.

J. Wallace-Brodeur: There was a feeling that the public is frustrated that not all City Departments are aware of a situation. Is the property owner responsible for having all information? The perception is that they are proceeding in good faith, but sometimes there is conflicting information.

A. Montroll: So what happens if someone is not in compliance, when do they have to come into compliance? There can't be enlargement of a non compliance.

D. White: There are a couple of different realms, if the condition is older than fifteen years, enforcement? Not at this point, an on-going violation we can't currently address. The present owner has an existing blemish. It can't be used to owners benefit.

Y. Bradley: Where are we going with this?

J. Wallace-Brodeur: We needed B Baker present, he has been a driving force in this conversation.

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Y. Bradley: It sounds as though with smaller violations we would like a little more flexibility, possibly a little more forgiveness. It seems that we should have more dialogue along this line. And it seems clear that we agree that it is not the citizens' responsibility to be fully aware.

K. Sturtevant: This situation is less likely to occur now since the City is using one database.

Y. Bradley: Anything small that is more than fifteen years in existence.....

K. Sturtevant: Under current law, it would still be a violation if there is no existing CO. The problem is where is the line defining egregious vs non egregious.

A. Montroll: If beyond the 15 years, could the CO process be simpler? It would be good to find a way to simplify this type of CO process.

D. White: Some businesses/owners have come in and closed out all old permits. The P & Z staff and the DPW staff work with owners to assist the close out process. Sometimes corrections are necessary. Code Enforcement spends a lot of time going through all permits and tries to address issues all at once.

H. Roen: We seem to see people during the eleventh hour.

D. White: The best remedy is to look at the permit history, and do this early before the sale. One of nuances is if it's a physical change that is visible which is different than illegal units, fire, etc.

K. Sturtevant: State statute indicates that it is 15 years from the time when the community knows about it.

L. Buffinton: Yes if readily visible.

Y. Bradley: Parking on the lawn can be an issue when nobody pays attention. Over time the space can turn into actual driveway all without a permit. Is it possible to pull open permits and run a list?

J. Wallace-Brodeur: The leverage we have is when properties are selling, and not super sympathetic to people who haven't done their homework. This is mostly an older problem.

K. Sturtevant: Yes, owners are now notified that they have current permits that haven't been closed. She can write something up for the Commission to look at.

D. White: The fundamental question is are we saying that these situations are subject to the statute of limitations or that they doesn't require a CO?

K. Sturtevant: If it is a use violation that we knew about or that it is more than 15 years old, are we giving that grandfathered status, are now saying that we are not going to enforce? There is a current pending court case relative to this. As an example, parking spaces existing in a front yard, the City didn't pursue this, the green belt cannot be claimed by adverse possession, pending owner has designated driveway and some parking spaces even though there might not be enough to meet requirements.

A. Montroll: In some ways this is not inconsistent with what we are saying.

L. Buffinton: If they lose the spaces, they lose some required parking spaces.

A. Montroll: He is really clear that people cannot drive over the City's greenbelt.

D. White: All situations are different, each has its own little twists.

IV. Proposed Zoning Amendments

1. Conditional Use & Major Impact

The Ordinance Committee has met to discuss this and to simplify the process. There are three different parts, and in situations that are not truly conditional use, there is no reason to subject applicants to the development review process, one example being inclusionary housing. Five or more housing units is the threshold for the process which is not conducive to progress. Improve the process with clarification and more objectivity.

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Breaks out what triggers Major Impact review downtown. It doesn't make sense to have a five unit trigger, it should be adjusted for each zone and divided into four different categories.

A. Montroll: Beyond what we say we want in planBTV, can schools, water, roads handle the needed capacity? We have already established that downtown is where we want development and we know that there exists capacity from departments.

J. Wallace-Brodeur: There is a capacity to our school system. This approach suggests implied consensus about growth re schools.

A. Montroll: We should figure this out on the front end. PlanBTV says we can handle it.

J. Wallace-Brodeur: Yes downtown is where development should happen, but she questions sewer and school capacity? And what about infrastructure?

Y. Bradley: This is more philosophical than discussion of the ordinance. It is a valid discussion, and all topics are ripe for discussion. The Housing study for planBTV shows that there is a need for housing downtown. The details seem more a philosophical discussion.

J. Wallace-Brodeur: It doesn't seem as if it is going to fly, doesn't work for me.

A. Montroll: Is a little more nuanced than that. The burden is on the City to manage the growth proposed downtown. The City needs to know ahead what the capacities are.

D. White: There is an accumulative impact, the threshold may not have any impact on schools, the distribution system has problems because of its age.

L. Buffinton: There is a need for more growth downtown but we don't always know our capacity which is complicated by a crumbling infrastructure. Repairs, with capital improvements planning is needed. It would be nice to have capacity checks on this when discussing possible development.

D. White: Properly assessing an impact fee will assist infrastructure and pay for the impact on City departments. The suggestion is that downtown we presently have capacity for development.

H. Roen: There might be a way to make this more palatable, how are issues identified?

2. Housing

The state statutes were changed this year and now a municipality can impose inclusionary requirements on duplex and multi-family developments

3. Planned Development

There are no longer major and minor PUDs. The conditional use standards have been slightly modified. They are now compatible with the pattern of development existing but can still need further clarification. The functional family conditions have been relocated to the pertinent portion of the ordinance. Conditional Use requirements have been extracted from all areas where they are not necessary.

A. Montroll: Could the Commission request a cleaner version of revisions?

D. White: I will create one and email that version to the Commission members.

V. Downtown Form-Based Code Review

Postponed to the next meeting.

VI. Committee Reports

Ordinance Committee – discussed items that the committee is to review.

Executive Committee – no report.

As approved by the Burlington Planning Commission on September 23, 2014.

LRPC – Has received materials about choosing a consultant for the South End Plan and H. Roen will review the materials.

VII. Commissioner Items

A. Montroll: Could we have a report of the Chair and the Director?

Y. Bradley, Chair: He has met with a consultant who is working on a report for the South End Plan report. It was interesting, visit and the knowledge of the consultant was more limited than he had anticipated. There is lots of excitement in south end about the project, which includes the Mayor.

D. White: Has been gone a couple of weeks on vacation. The office meeting with HR&A here a couple of days ago also involved meeting with stakeholders, data analysis, etc and was pretty productive. Ultimately there are a variety of possible directions the city might go to be examined regarding development. This meeting is a good basis for an informed conversation.

Interviews are scheduled in two weeks for the consultant team with an interviewer's meeting on Monday the 25th and interviews on Wednesday the 27th. Today and perhaps tomorrow, there has been mediation with Champlain College concerning the St Paul Street property development.

H. Roen: In his neighborhood near Shelburne Road, on the South Burlington side of the road, there is building of only multi-family housing. On the Burlington side of the street, buildings are single family housing. It is interesting that there are two very different approaches with no conversation between the municipalities.

D. White: Last night the City Council approved the existing small lots and the frontage amendments but deferred action on the proposed parking and vertical expansion amendments. The City Council Ordinance Committee will meet Thursday at 5:00 pm to further discuss these proposed amendments and he would encourage any Planning Commission members to attend if possible.

L. Buffinton: At last night's City Council meeting, were there Planning Commission members present?

D. White: I don't believe that there were members other than E Lee, who was present as a dissenting Planning Commission member.

VIII. Minutes/Communications

On a motion by H. Roen, seconded by L. Buffinton, the Commission unanimously recommended approval of the minutes of May 27, June 10, June 24, and July 8, with corrections.

IX. Adjourn

On a motion by L. Buffinton, seconded by H. Roen, the Commission unanimously adjourned at 8:15 pm.



Y Bradley, Chair

September 25, 2014

Date



E. Tillotson, recording secretary

As approved by the Burlington Planning Commission on September 23, 2014.