

March 16, 2017

By Email

Austin Hart, Chair
City of Burlington Development Review Board
City Hall
Burlington, VT 05401

Re: DRB Proceedings, Permit Application #17-0662CAIMA

Dear Mr. Hart,

I write on behalf of BTC Mall Associates, LLC (“BTC”) in reply to an email from Mr. Long concerning permit application #17-0062CA/MA dated March 12, 2017. Mr. Long’s request to re-open the evidentiary hearing in this matter before the Development Review Board (“DRB”) must be denied.

As an initial matter, Mr. Long is not an interested party before the DRB in this matter, and so has no standing to make such a request. Mr. Long signed a petition to seek to become an interested person; however, the petition he signed was not submitted to the DRB until February 28, 2017, after the date on which the evidentiary hearing closed on February 21, 2017. As such, Mr. Long failed to participate in this matter before the DRB. *See* 24 VSA § 4465(b)(4); *Zaremba Group CU - Jericho*, No. 101713, 2014 WL 2134423 (Vt. Super. Ct. Envtl. Div. Apr. 21, 2014) (rejecting interested person status when petition submitted to DRB after evidence closed).¹

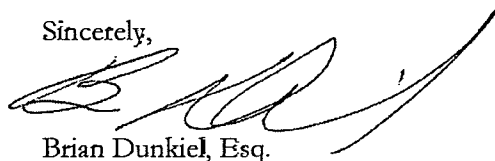
Even if a request to re-open were to be considered, there is no basis to re-open this matter before the DRB. Mr. Long refers to a Letter to the Editor in a local newspaper as “new information.” The letter comments on an image of the project that appears in a previous edition of the publication. It is not known if the letter references any evidence that is before the DRB, or relied on the DRB, and the letter writer seems unaware of the four-season, morning/noon/evening sun studies that were presented in multiple public meetings for the Planning Commission and City Council consideration of the DMUC zoning. In any event, any comments in the letter are irrelevant and are not a basis to reopen the hearing in this matter because the renderings for the project are not “new information.” Indeed, project renderings were part of the application materials submitted in December, and any interested person had three hearings to bring concerns to your attention. However, no interested person made any effort to raise such concerns, and no expert—or any other testimony, for that matter—was submitted during the hearings concerning any of the renderings or other images furnished by the Applicant.

¹ In addition, under the statute, the petitioners “must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.” 24 V.S.A. § 4465. Mr. Long is neither an interested person, nor a representative of petitioners, and his email should be disregarded by the DRB.

In closing, for the record, BTC categorically rejects Mr. Long's accusations, and represents that all its renderings and all other project materials submitted to the DRB were prepared by professionals following industry standards.

Thank you for your consideration of this matter. Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Dunkiel". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Brian Dunkiel, Esq.

DUNKIEL SAUNDERS ELLIOTT RAUBVOGEL & HAND, PLLC

Cc: Noelle MacKay, Director, Burlington Community & Economic Development Office
Richard W. Haesler, Esq., Assistant City Attorney, City of Burlington
Kimberlee Sturtevant, Esq., Assistant City Attorney, City of Burlington