

F.L. KOCHMAN, INC.
P.O. BOX 8084
BURLINGTON, VT
05402-8084
(802) 863-2640
frank@kochmanlaw.com

July 1, 2020

TO: BURLINGTON DEVELOPMENT REVIEW BOARD

Re: Burton Hub: 180 and 266 Queen City Park Road

Ladies and Gentlemen:

Below is a summary of the major objections of CRZ Group to the Burton Hub project, focused primarily on the proposed new concert venue. An expanded discussion of these objections will be provided at the hearing,

1. In addition to the Conditional Use criteria, the project should be reviewed under the Major Impact standards of the CDO. Under CDO section 3.5.2 (b), because the previous multi-acre site plan project was initiated within the same 12-month period, and because the current application includes the construction of new floor area (a balcony seating area of approximately 2,500 square feet), they must be considered together for the purpose of major impact analysis. (None of the exemptions of section 3.5.3 (b) apply.)
2. The applicant cannot demonstrate the absence of an **undue adverse effect on public safety services and on the City's investment in those services.** (Conditional Use Standard 1 and Major Impact Review Standards 7 and 9.) This is especially so in light of the recent action of the City Council, which will reduce police manpower by 30% over the next two years. In the best case scenario, based on the operator's track record, the venue will require an increase of at least several hundred service calls per year while (according to recent news reports) it is projected that the capacity of the BPD to respond will decline by 6,000 calls per year as a result of the force reduction.

The problems presented by the venue are well-described in Chief Morrison's initial review letter of April 17, 2020 (attached); they will be severely exacerbated by the planned reduction in force. Reliance on private operational management of the issues is unrealistic.

3. The applicant cannot demonstrate the absence of an **undue adverse effect arising from noise and vibrations.** (Conditional Use Standards 3 and 6 and Major Impact Review Standard 1). According to the applicant's Noise Assessment, the venue will generate both concert noise and exterior noise that will be "plainly audible" after 10 PM across the

property line. (See Noise Assessment, pages 16 and 17.) Therefore it will violate the Burlington Noise Ordinance (Code of Ordinances Sec. 21-13 (b) (1). Moreover, the applicant's Noise Assessment makes unjustified assumptions and fails to present material data. Most glaringly, the Noise Assessment fails to provide any data or projections on the instantaneous noise ("Lmax") that the venue will produce, focusing solely on "average" noise ("Leq"). See In Re Application of Lathrop, 2015 VT 49. For local permitting purposes, a noise assessment is fatally defective if it provides no information on "the frequency of loud noise" affecting "the use and enjoyment of nearby residences." In Re John A. Russell Corp., 176 VT 520 520, 527 (1973). Other faulty premises undermine the reliability of the report, including the modeling assumption that nighttime temperatures will be 50 degrees Fahrenheit. (See Noise Assessment, page 34, Table 6, which lists the temperature input as "10° C.") That assumption obviously does not reflect reality in South Burlington for most of the year.

4. The applicant cannot demonstrate the absence of an **undue adverse effect on the transportation system**. (Conditional Use Standard 4 and Major Impact Standard 5.) The applicant's Traffic Impact Study ("TIS") makes unjustified and arbitrary assumptions and fails to provide material information. Even if the TIS is assumed to be reliable, at least until the Champlain Parkway is built, a dangerous bottleneck is inevitable at the one-lane bridge on Queen City Park Road and service levels at significant intersections will be degraded. For example, southbound traffic at Home and Pine – already at LOS "F" – will be further delayed by 100 seconds. Moreover, bicycle and pedestrian conditions will be rendered inadequate by the absence of bike lanes and sidewalks around most of the affected area.

After the Champlain Parkway is built, unacceptable service levels will be generated at the intersection of Home and the Parkway, for which no mitigation strategy is proposed.

5. The applicant cannot demonstrate the absence of an **undue adverse effect on the City's ability to dispose of wastewater** in organic loading or wet conditions. (Conditional Use Standard 1). (See DPW letter of November 26, 2019, attached.)

Thank you for your careful consideration of these points.

Respectfully submitted,

s/Frank Kochman

Frank Kochman, Attorney for CRZ Group

Attachments