

Burlington Planning Commission

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7144 (TTY)
www.burlingtonvt.gov/pz

*Yves Bradley, Chair
Bruce Baker, Vice-Chair
Lee Buffinton
Emily Lee
Andy Montroll
Harris Roen
Jennifer Wallace-Brodeur
vacant, Youth Member*



Burlington Planning Commission

Regular Meeting

Tuesday, March 8, 2016 - 6:30-8:00 P.M.

Conference Room #12, Ground Floor, City Hall, 149 Church Street

AGENDA

*Note: times given are
approximate unless
otherwise noted.*

I. Public Forum - Time Certain: 6:35 pm

The Public Forum is an opportunity for any member of the public to address the Commission on any relevant issue.

II. Report of the Chair (5 min)

III. Report of the Director (5 min)

IV. Agenda

V. City of Burlington Permit Reform Project (15 min)

An interdisciplinary team of City departments will be working with Matrix Consulting Group and Graydon Land Use through August 2016 to complete activities outlined in an RFP for the permit reform project. The consulting team will attend the Planning Commission meeting to be introduced and provide an overview to this project. A memo and Council resolution for the project are provided on pages 3-9 of the agenda packet.

VI. Proposed CDO Amendment: NAC-Riverside Boundary (15 min)

In April 2015, the Planning Commission received a request to rezone the properties located at 189 through 245 Riverside Avenue to the original general commercial zoning. Staff has provided a recommendation for the Planning Commission to review and discuss. A memo and maps are provided on pages 10-13 of the agenda packet.

VII. Proposed CDO Amendment: 15 Year Statute of Limitations (30 min)

The Commission will conclude its discussion of a proposed amendment regarding the 15 Year Statute of Limitations. Revised text for the proposed amendment will be provided in advance of the meeting.

VIII. Committee Reports

IX. Commissioner Items

This agenda is available in alternative media forms for people with disabilities. Individuals with disabilities who require assistance or special arrangements to participate in programs and activities of the Dept. of Planning & Zoning are encouraged to contact the Dept. at least 72 hours in advance so that proper accommodations can be arranged. For information, call 865-7188 (865-7144 TTY). Written comments may be directed to the Planning Commission at 149 Church Street, Burlington, VT 05401.

X. Minutes/Communications

The Commission will review approve minutes from the February 23, 2016 meeting which are provided on pages 14-22 of the agenda packet.

XI. Adjourn - 8:00 p.m.

Burlington Planning Commission

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7144 (TTY)
www.burlingtonvt.gov/pz

*Yves Bradley, Chair
Bruce Baker, Vice-Chair
Lee Buffinton
Emily Lee
Andy Montroll
Harris Roen
Jennifer Wallace-Brodeur
vacant, Youth Member*



Burlington Planning Commission

Regular Meeting

Tuesday, March 8, 2016 - 6:30-8:00 P.M.

Conference Room #12, Ground Floor, City Hall, 149 Church Street

AGENDA

*Note: times given are
approximate unless
otherwise noted.*

I. Public Forum - Time Certain: 6:35 pm

The Public Forum is an opportunity for any member of the public to address the Commission on any relevant issue.

II. Report of the Chair (5 min)

III. Report of the Director (5 min)

IV. Agenda

V. City of Burlington Permit Reform Project (15 min)

An interdisciplinary team of City departments will be working with Matrix Consulting Group and Graydon Land Use through August 2016 to complete activities outlined in an RFP for the permit reform project. The consulting team will attend the Planning Commission meeting to be introduced and provide an overview to this project. A memo and Council resolution for the project are provided on pages 3-9 of the agenda packet.

VI. Proposed CDO Amendment: NAC-Riverside Boundary (15 min)

In April 2015, the Planning Commission received a request to rezone the properties located at 189 through 245 Riverside Avenue to the original general commercial zoning. Staff has provided a recommendation for the Planning Commission to review and discuss. A memo and maps are provided on pages 10-13 of the agenda packet.

VII. Proposed CDO Amendment: 15 Year Statute of Limitations (30 min)

The Commission will conclude its discussion of a proposed amendment regarding the 15 Year Statute of Limitations. Revised text for the proposed amendment will be provided in advance of the meeting.

VIII. Committee Reports

IX. Commissioner Items

This agenda is available in alternative media forms for people with disabilities. Individuals with disabilities who require assistance or special arrangements to participate in programs and activities of the Dept. of Planning & Zoning are encouraged to contact the Dept. at least 72 hours in advance so that proper accommodations can be arranged. For information, call 865-7188 (865-7144 TTY). Written comments may be directed to the Planning Commission at 149 Church Street, Burlington, VT 05401.

X. Minutes/Communications

The Commission will review approve minutes from the February 23, 2016 meeting which are provided on pages 14-22 of the agenda packet.

XI. Adjourn - 8:00 p.m.

To: Burlington City Council
From: Beth Anderson, Chief Innovation Officer
Date: February 16, 2016
Subject: Update on Permit Reform Efforts

Improvements in the City's permitting system have long been a goal of the Mayor and City Council. In September 2014, the Burlington City Council passed a resolution for *Reforming Burlington's Permit System*, which called for a "soup to nuts" reform of our permitting system. Over the years, numerous parties have raised concerns about the manner in which the City has chosen to create and implement its building code. Beginning in 2012, the Administration took a number of steps to promote improving the permitting system as a whole, including adding a second building inspector to be more responsive to the public, taking some steps to streamline solar and hot water energy installations, and improving the important integration between the City's permitting system and its land records.

Following the 2014 Council resolution, a team was created to move the project forward, which includes representation from the Departments that will be most impacted by the effort. The Departments involved are Planning and Zoning, Inspection Services, Code Enforcement, Fire, Community and Economic Development, Burlington Electric, City Attorney, and Innovation and Technology. \$100,000 in funding was allocated for the project in the fiscal year 2016 (FY16) budget, and an additional grant of \$26,000 was awarded by the Department of Energy under the SunShot initiative to encourage solar installations.

The team began work to develop an RFP in September in order to identify an objective party to help develop a permit process that is efficient, transparent, and predictable, and encourages investment and the improvement of buildings in Burlington. The team created a comprehensive scope of work for the project, which included five key activities:

1. Identify public perceptions and expectations through a series of public forums, interviews, and surveys;
2. Redesign the complete process for permitting of construction projects, from education about applying for a permit through issuance of a certificate of occupancy;
3. Ensure construction-related codes and standards adopted and applied by the City truly reflect its goals;
4. Streamline the permitting process and codes that affect the installation of grid-connected photovoltaic (PV) systems; and
5. Evaluate historic preservation regulations within zoning and identify opportunities or best practices that may be applicable to Burlington.

This scope was incorporated into a formal request for proposals (RFP), issued on December 3, 2015.

Proposals were received on January 11, 2016. Project team participants reviewed the responses, and a subset of the team representing the key Departments performed an in-depth review. After

narrowing down the options, the team spoke with references for and reviewed sample work product from the vendors. The team agreed to move ahead with two vendors to perform the work in partnership:

- Matrix Consulting Group to complete activities 1-4 of the scope of work.
 - o Matrix was selected due to their experience with similar cities and with Vermont towns, the subject matter expertise of their staff, the quality of their sample work and references, their approach to the engagement, and their competitive pricing.
 - o The contract is fixed fee of \$59,500.
- Graydon Land Use was selected to complete activity 5.
 - o Though not the lowest cost proposal, the Graydon team had by far the most experience with the subject matter and their proposed approach was most inline with the RFP.
 - o The contract is fixed fee of \$27,000.

Matrix and Graydon have already begun conversations to develop a plan for a single, coordinated public engagement process, and to ensure that recommendations are complementary and implementable.

On February 8, the Board of Finance approved allowing the Chief Innovation Officer to negotiate a contract with Matrix. As the Graydon contract is under \$50k, it was not required to go forward for approval. The team is working to quickly negotiate the contracts to get the engagement underway, as the SunShot funding requires that recommendations for improving solar permitting be submitted by the end of March 2016. An extension to that deadline has been requested, but a final decision is pending.

The project with Matrix will occur over an estimated 18 weeks. It is anticipated work will begin by the end of February, with a completion in July. Matrix has committed to completing the solar permitting piece in March as required. Their workplan is below:

Task	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1. Data Collection and Profile																		
2. Stakeholder/Public Input																		
3. Employee Input																		
4. Best Practices/Comparative																		
5. Process Evaluation																		
6. Report Development																		

Graydon's initiative will begin in the same timeframe, with an expected August completion:

Activity	Est. Timing
Meet staff/tour City Review ordinances, processes, documentation Public engagement and key stakeholder interviews	Feb – Mar
Draft diagnostic memorandum outlining key issues, review with City team	Apr – May

Draft recommendations related to key issues, review with City team	Jun – Jul
Final presentations with City team, officials, and key stakeholders	Jul - Aug

Once the engagements are kicked-off, the project team will continue to actively participate in and manage the engagement to ensure the consultants have access to staff; lead a robust, effective public engagement process; explore all facets of permitting processes, ordinances, codes and regulations; and deliver clear, prioritized, implementable recommendations. Once the engagements are complete and the recommendations are reviewed, the team will work to develop a plan for their implementation, as well as a structure to ensure the work is coordinated and kept on track.

Resolution Relating to

REFORMING BURLINGTON'S PERMIT SYSTEM

RESOLUTION 7.05

Sponsor(s): Councilors Wright,
Knodell, Hartnett

Introduced: 09/22/14

Referred to: _____

Action: amended; adopted

Date: 09/22/14

Signed by Mayor: 10/06/14

CITY OF BURLINGTON

In the year Two Thousand Fourteen

Resolved by the City Council of the City of Burlington, as follows:

That WHEREAS, a resolution passed by the City Council in 2011 called for reform of the permit system in Burlington; and

WHEREAS, many City Councilors have heard numerous complaints over the years, which continue today, about Burlington's permit system, both from home owners as well as small and large developers; and

WHEREAS, the system has often proved to be a burden to residents trying to improve their property, or make an addition to their property; and

WHEREAS, the Housing Strategy Report has found that very few market rate rental units were built in downtown Burlington over a period that saw housing booms in cities similar to Burlington; and

WHEREAS, in addition to frustrating homeowners, an overly burdensome permit system is one of the most significant barriers to building more housing in Burlington, which could bring down the cost of housing in Burlington and allow employment to expand in Burlington; and

WHEREAS, another part of the criticism involves users of the system having to go from one department to another, and receiving conflicting answers to questions, leading to more frustration and adding to an image of Burlington as an "unfriendly place to do business;" and

WHEREAS, Burlington should strive to have a permit system that is fair and predictable for everyone; and

WHEREAS, the City will be considering whether to adopt a "form-based code", which in itself will not fix all aspects of the permit system;

NOW, THEREFORE, BE IT RESOLVED that the Burlington City Council requests the Weinberger administration to develop a plan to reform our permit system from "soup to nuts" (from project application to the granting of certificate of occupancy or other final approval) to make it more fair, more efficient, and more predictable, with a goal of eliminating duplication and combining offices into a "one stop shop" and to provide the Council with a status report no later than the last meeting in January 2015; and

DISTRIBUTION:

I hereby certify that this resolution
has been sent to the following
department(s) on

RESOLUTION RELATING TO

.....
.....
.....

.....

Adopted by the City Council

....., 20.....

..... Clerk

Approved....., 20.....

Attest:

..... Mayor

Vol. Page

* * * * *

Page 2
Resolution Relating to

BE IT FURTHER RESOLVED that as part of the deliberations in regard to “form-based code,” the City Council asks the Weinberger administration to explain how a “form based code” would increase the predictability of the development review process as compared with our current zoning code; and

BE IT FURTHER RESOLVED that the City Council will plan a special public hearing at Contois auditorium on reforming Burlington’s permit system to hear the public’s concerns and ideas to be held no later than December 1, 2014.

lb/EBlackwood/Resolutions 2014/Planning & Zoning, DPW - Reforming Burlington’s Permit System; Form Based Code
9/16/14 amended; adopted lo 09/22/14

DISTRIBUTION:

I hereby certify that this resolution
has been sent to the following
department(s) on

Mayor's Office
City Attorney's Office, Linda Blanchard

RESOLUTION RELATING TO

Reforming Burlington's Permit System

.....
.....
.....

Aug Amended
Adopted by the City Council

.....
September 22, 2014

.....
..... Clerk

Approved *October 6*, 2014

.....
..... Mayor

Vol. Page

Attest:
[Signature]
Kori Olberg
Licensing, Voting and Records Coordinator

* * * * *

Department of Planning and Zoning

149 Church Street, City Hall
Burlington, VT 05401
www.burlingtonvt.gov/pz
Phone: (802) 865-7188
Fax: (802) 865-7195

David White, AICP, Director
Meagan Tuttle, AICP, Comprehensive Planner
Jay Appleton, GIS Manager
Scott Gustin, AICP, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Assistant Planner
Elsie Tillotson, Department Secretary
Anita Wade, Zoning Clerk



TO: Planning Commission
FROM: Planning Staff
DATE: March 22, 2016
RE: Rezoning request for 189-191, 199-215, 237-241, and 245 Riverside Avenue

In April 2015, the Planning Commission received a request from Mark Furnari, on behalf of the four property owners for the Riverside Avenue properties mentioned above, to restore the original General Commercial zoning to these parcels. Mr. Furnari asserts that the change from General Commercial to NAC- Riverside/ RCO- Conservation has restricted development to only the first 75 feet of these properties, when up to 150 feet could be reasonably developed, and has reduced potential residential density from 25-30 units/acre to 10-12 units/acre.

Parcels & Zoning District Purpose

A map of these parcels is attached to this memo outlining the current zoning boundaries, overlays and other conditions which impact the properties.

Property	Current Zoning	Other Restrictions	Development on Site Today?
189-191 Riverside	RCO	Nearly all of property within NR Overlay	Yes- within first ~100 feet from property line
193 Riverside (not part of requested change)	RCO & NAC-Riverside	Except southwest corner, property in NR Overlay	Yes- within first ~85 feet from property line
199-215 Riverside	RCO & NAC-Riverside	All but first ~65 feet from property line in NR Overlay	Yes- within first ~100 feet from property line
237-241 Riverside	RCO & NAC-Riverside	Roughly $\frac{3}{4}$ of property in NR Overlay	Yes- within first ~75 feet from property line
245 Riverside	RCO & NAC-Riverside	Roughly $\frac{3}{4}$ of property in NR Overlay	No

NAC-Riverside: Purpose is to allow commercial development already predominantly built along this transportation corridor, but to encourage emerging mixed-use development and walkability. Zoning permits up to 2.0 FAR, 80% lot coverage and 20-35 ft building height by right. Bonuses may be granted up to 3.0 FAR, 90% lot coverage and 45 ft building height.

The programs and services of the City of Burlington are accessible to people with disabilities. For accessibility information call 865-7188 (for TTY users 865-7142).

RCO-Conservation: Purpose is to preserve the function, integrity and health of the City's significant natural areas; may contain passive recreation when these activities are compatible with the protection of natural features.

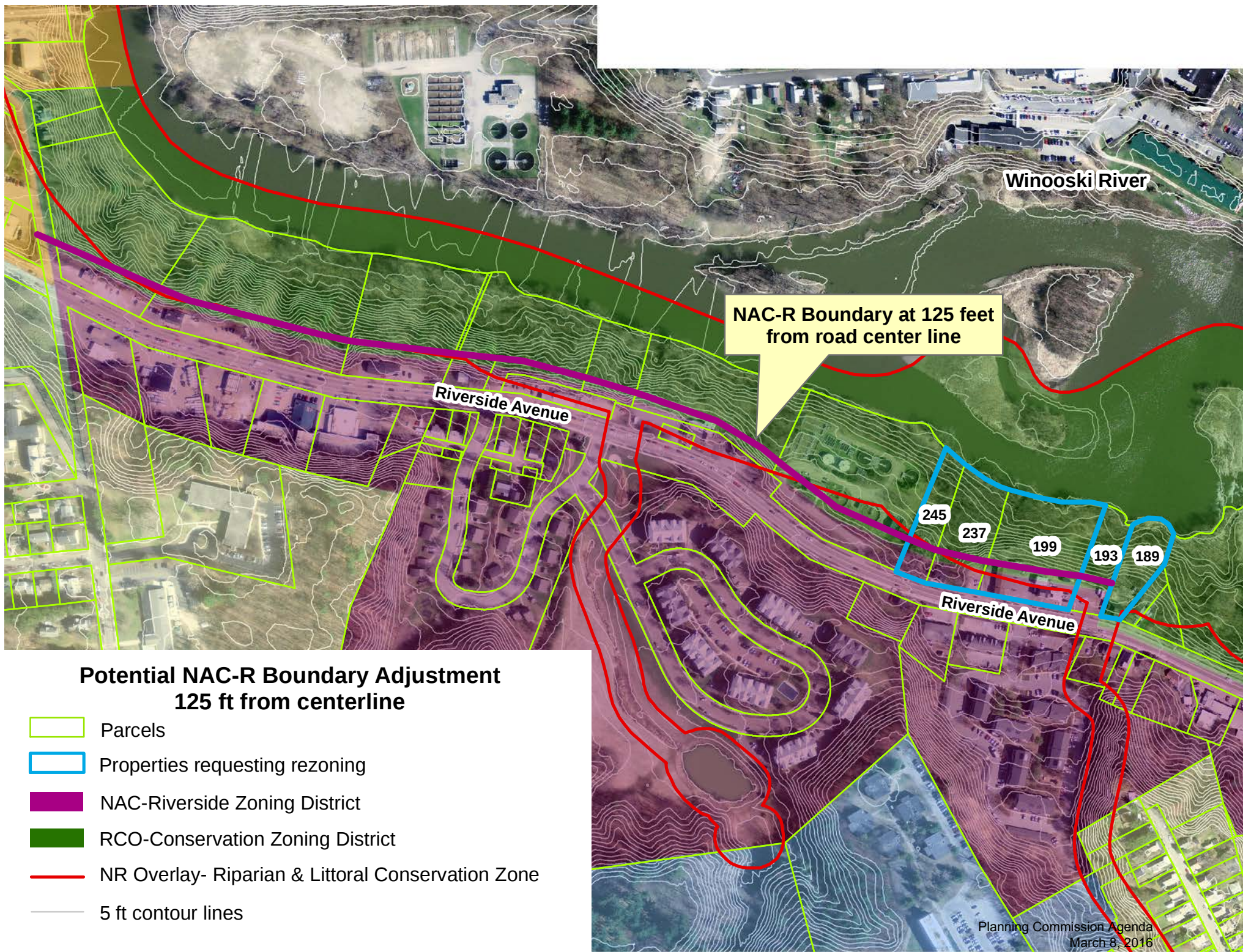
NR Overlay- Riparian and Littoral Conservation Zone: Purpose is to protect and preserve the city's surface waters and upland areas from encroachment by development and from sources of non-point pollution, and to assure that development occurs within flood/hazard areas in a way that minimizes or eliminates potential for flooding or loss/damage to life or property. This overlay applies within 250 feet of the Winooski River.

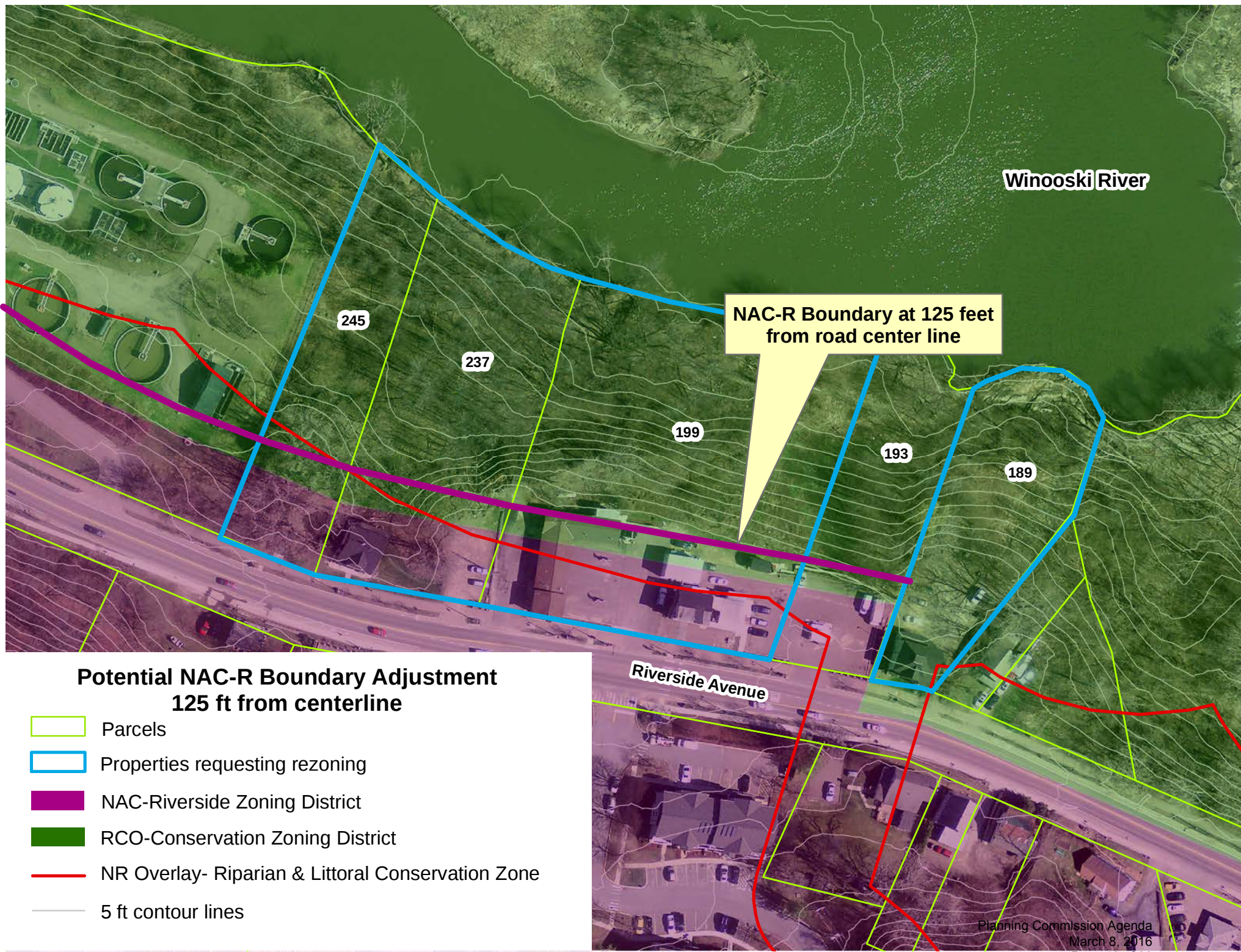
Modification to the NAC-R boundary

The request to restore the general commercial zoning to these properties as requested by the property owners is not recommended by staff; this district was eliminated when the CDO adopted in 2008. Instead, staff recommends that the Planning Commission amend Map 4.4.2-1 Neighborhood Mixed Use Districts, and Map 4.4.6-1 Recreation Conservation, Open Space Districts to extend the NAC-Riverside zoning district boundary to 125 feet from the street center line on the north side of Riverside Avenue. Currently, the boundary is 100 feet from the street center line. A map is attached to illustrate the change to the NAC-R boundary.

This modification includes a conservative increase in the developable area of all sites along the northern side of Riverside Avenue in order to achieve the NAC-R district's purpose of encouraging mixed-use development. This change would permit development on the properties from 193-245 Riverside Avenue that is generally consistent with where development is occurring on the properties today. However, it continues to limit the extent of development along Riverside Avenue in order to preserve the integrity of the bank of the Winooski River and to uphold the purpose of the RCO-C and NR Overlay districts.

The property located at 189-191 Riverside Avenue was included in the request to be rezoned. Unlike the other properties included in Mr. Furnari's request, the property is currently zoned RCO-Conservation, with no portion of the site currently zoned for NAC-R. Furthermore, nearly the entire site is located within the Natural Resource Protection Overlay: Riparian and Littoral Conservation Zone. Therefore, it is not recommended that the NAC-R boundary be extended to the east to include any portion of this property.





Burlington Planning Commission

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7144 (TTY)
www.burlingtonvt.gov/pz

Yves Bradley, Chair
Bruce Baker, Vice-Chair
Lee Buffinton
Emily Lee
Andy Montroll
Harris Roen
Jennifer Wallace-Brodeur
vacant, Youth Member



Burlington Planning Commission Minutes

Regular Meeting

Tuesday, February 23, 2016 - 6:30-8:00 P.M.

Conference Room #12, Ground Floor, City Hall, 149 Church Street

Present: J Wallace-Brodeur, H Roen, A Montroll, E Lee, Y Bradley, L Buffinton
Absent: B Baker
Staff: D White, M Tuttle, K Sturtevant, E Blackwood

I. Agenda

There were no changes to the agenda.

II. Report of the Chair

The Chair had nothing to report.

III. Report of the Director

David White, Planning & Zoning Director: Council Ordinance Committee took up the proposed CDO Amendment for Major Impact. Ordinance Committee Chair postponed for continued conversation. There was a lot of misunderstanding about what the amendment says, namely the misperception that large projects won't get reviewed and that public won't have an opportunity to participate. Will have to keep working with the Committee on this. planBTV South End, Form-Based Code and changes to the Downtown parking requirements continue to be on the plate.

Y Bradley: It is the Planning Commission's responsibility to help educate the Council and community on zoning amendments; let the Commission know if there is anything that can be done to help.

IV. Public Forum

The Chair opened the public hearing at 6:35p.m.

Pam Mackenzie, Interim CEO of Greater Burlington YMCA, and Corey Mack, Traffic/Transportation Engineer of RSG: 298 College St. was purchased to be the new YMCA. Have been working on a plan and working with the neighbors. Running into some difficulties based on YMCA's actual functions versus the confines of the current CDO. Requesting an amendment to define "Recreational Community Center" as a use, and add parking and trip generation rates for this use. Based on ITE, the YMCA's services fits into this land use category. Data from a recent survey of members was consistent with national guidance.

D White: Have been in current location for 80 years with no member parking; have a precedent so now we need to see how it can fit into the CDO.

Y Bradley: Seems like this should be put on an agenda to discuss options.

A Montroll: To be clear, request is for a lower parking requirement?

C Mack: Asking for a new land use category, with its own parking requirements, as well as the ability to waive those requirements.

E Lee: Will recuse from discussion because could be a perceived conflict of interest as a neighboring property owner who has been working with the YMCA. As a community member, thrilled about the YMCA's move and couldn't support it more.

Y Bradley: Represented the YMCA on the sale of the old property, but completely disconnected from the planning and fundraising for the new location. Does the Commission feel that there's a conflict?

Commissioners did not raise a conflict.

Y Bradley: Will get to it as quickly as possible.

A Montroll: When this comes to an agenda, it would be helpful to have recommendations from staff.

D White: Staff has been in contact with Pam and Corey and generally support the direction of the request.

With no other items to discuss, the Chair closed the public form at 6:49p.m.

V. Low Impact Design

D White: This amendment was recommended by the Ordinance Committee. Commission has seen versions in past. Current allows 10% additional lot cover for pervious paving only in the RL and RM zones.

Joel Rippa, property owner: Does the whole lot need to be pervious to get the 10%, or does just the 10% additional have to be pervious?

A Montroll: The way this is written, it only says the additional 10% must be pervious. Would have liked to see requirements about replacement of some existing paving with pervious in order to qualify for the bonus. Committee left it at this for now.

The Commission unanimously approved a motion by L Buffinton, seconded by A Montroll, to warn the proposed amendment for a public hearing.

VI. NR Overlay District

D White: In 2015, the City was delegated regulatory authority of the Shoreland Protect by Vermont Agency of Natural Resources (ANR), as a result of the statewide 2014 legislation. ANR worked with the City to determine what CDO amendments would be necessary to make local delegation possible. Important to the City, because otherwise, owners doing work on properties covered by this legislation would need both city and state permits. Biggest change from current is 95.5 feet above sea level versus 100 feet. Working with the RPC to develop a contour to add to GIS. Added language regarding purpose of NR Overlay to conform to ANR standards.

Y Bradley: Does vegetative cover include trees?

D White: Yes.

HR: Is the area north of Moran to Roundhouse Point exempt from this ordinance?

D White: Yes, exempt because it is previously developed area on filled land and the stormwater infrastructure is different than what would exist in a vegetated area.

The Commission unanimously approved a motion by J Wallace-Brodeur, seconded by Lee Buffinton, to warn the proposed amendment for a public hearing.

VII. Duplexes on existing lots

D White: Current ordinance does not allow for duplexes on a new lot, only existing lots, despite the purpose of the RL and RL-W zones being for single family and duplexes. Not enough institutional history to know why it is this way, so cleaning it up to remove the footnote.

L Buffinton: Sentence in the memo "however, duplexes will be allowed as a conditional use..." seems to be incorrect.

D White: Duplexes are already treated as a conditional use on existing lots, so this change means that duplexes would be allowed as a conditional use on any new or existing lots.

A Montroll: What does the conditional use mean?

K Sturtevant: It means that duplexes as a conditional use only applies to existing lots today. The change means that it becomes a conditional use on any lot.

A Montroll: There's a footnote that says minimum lot size is 10,000 sq.ft. If we remove the footnote, is that somewhere else?

D White: Yes, Section 4.4.5-1 establishes minimum lot sizes.

The Commission unanimously approved a motion by E Lee, seconded by L Buffinton, to warn the proposed amendment for a public hearing.

VIII. 15 year statute of limitations

J Wallace-Brodeur: Bring the Commissioners up to speed so we don't recover ground from last week?

Y Bradley: B Baker, S Gustin, K Sturtevant, D White and myself met to hone in on the proposed language from the attorney's office to make sure that it's not confusing. Think it encapsulates what the Commission wanted to see.

K Sturtevant: Will walk through changes. First paragraph clarifies what is meant by a "known violation" when the City doesn't take action. Added a definition of "stabilized."

Y Bradley: Also added that this refers only to violations that are not a matter of health and safety.

L Buffinton: Can we add a definition of "stabilized" and put it in the definitions section?

Minutes approved by the Planning Commission on March XX, 2016

Y Bradley: That is what first paragraph is. Not sure it is necessary in definitions.

L Buffinton: Think the language could be clearer, maybe by saying "as defined above."

K Sturtevant: Cleaned up section regarding burden of proof and tweaked language regarding what constitutes known.

Y Bradley: Spent some time on this to strengthen the language regarding preponderance of evidence.

K Sturtevant: Added language regarding a health and safety concerns. Burden is on the property owner to demonstrate that it's not a health safety violation in order to be stabilized.

E Lee: Many units don't meet current building code. Would those be considered health/safety risks? There's ambiguity now, but if it is not being changed substantially, then don't have to bring it to code. Want to see things brought up to code.

K Sturtevant: We have a case where something was built, but there are no records, so they have to meet current ordinance and treat it like its new.

Y Bradley: Seems like a reach to make all units come up to code.

D White: These units would have met code at time built, because there was a permit issued.

E Lee: Sympathetic to lost records, but what about people that just do things without any permits?

D White: If there were no permits at all, then there was no city knowledge, so the statute wouldn't apply and it would be treated as a new unit required to meet current code.

L Buffinton: We need to define what city health and safety standards are.

K Sturtevant: We would apply fire, building, minimum housing codes, etc. that we already enforce.

Y Bradley: What about cases where a known violation has occurred for 15 years or more, it is not considered a significant health/safety hazard, but it was built 45 years ago with no building permit? That would be treated as a new unit?

D White: If it was built that long ago, it would have been when P&Z issuing its own building permits. Lots of the units in violation that we're talking about were built in the 1970s and 1980s. The situation being described by E Lee is different and wouldn't be covered by the 15 year statute.

K Sturtevant: Next section covers determination and effect. Stabilized determination goes through the same process as administrative approval process.

D White: Addresses the Commission's point about needing something that the property owner can rely on.

H Roen: If property changes hands but use doesn't change, is that considered to be a discontinuation?

D White: No.

Minutes approved by the Planning Commission on March XX, 2016

K Sturtevant: This is similar to the language for non-conforming, but discontinuation is determined administratively rather than through the DRB.

L Buffinton: In the section regarding rebuilding after catastrophe for non-conforming uses, there's a distinction made between residential and non-residential and properties eligible for historic listing. Does this apply to the statute of limitations?

K Sturtevant: No, those provisions are for non-conforming, which means they were legal at some time and have rights to rebuild.

L Buffinton: There's a discrepancy between the chart and the language in the following section. The way this is written makes it seem like nothing can happen on a non-conforming property after a catastrophe.

A Montroll: For example, the violation might be that a property has too many units. Following catastrophe, the statute requires them to build the right number of units.

L Buffinton: This says that they have to become conforming.

D White: I think this is primarily related to uses.

A Montroll: Cross reference the non-conforming section and add, "except as might be permitted under the non-conforming language." This would allow a property that might be non-conforming and have a violation, to rebuild back to the non-conformity, while requiring the elimination of the violation.

Y Bradley: Section regarding sufficient documented evidence of continued use is too harsh. Not unusual for something to be vacant for more than 60 days. 120 or 180 days feels more appropriate.

E Lee: I disagree, maybe 60 days is too long.

K Sturtevant: Applies to something that is already illegal. Burden is on owner to establish & maintain. We do not want to burden to be on the City to prove continuation.

D White: The public policy is for non-conformities to eventually be discontinued, but we allow for lease to let it happen over time. But for violations, the policy is to get rid of them and that's what this language has to address. The property owner has to demonstrate that the use hasn't been discontinued.

A Montroll: Need to define what discontinue means.

J Wallace-Brodeur: Just because a unit is not being rented doesn't mean it's no longer there; seems more like an issue if they're changing the configuration. Not clear what would cause a discontinuation.

D White: In that case, we define discontinue as not occupied.

A Montroll: Regarding housing replacement, if a unit is eliminated because it is discontinued, is there now an obligation to pay to replace the unit?

E Lee: What about a scenario when a single family home has 6 rooms for rent, but are only renting 4 because they can't find tenants. If a long time passes, they shouldn't be able to preserve the ability to rent to 6 college students. The 4 unrelated limit should be considered a use that applies under this statute.

D White: Proof of who was living there is a very difficult test, especially whether or not they were related.

K Sturtevant: It is easier to prove now, based on rental registration forms as long as the forms are filled out honestly.

E Lee: I have a lot of challenges with this ordinance. It feels like it's a catch-all that could be really harmful.

A Montroll: Regarding annual rental registration forms, we should make sure unenforceable violation doesn't cover a scenario where they've been falsifying information to cover up over-occupancy and want to restore the number of tenants by providing leases to prove occupancy.

K Sturtevant: That scenario would be a misrepresentation of information and would not be covered under the statute of limitations.

J Rippa: Why not make the time period for discontinuation 6 months? These violations have been happening for decades, and no one has a good grasp on what discontinuation means. If it's 60 days, a lot of people will get upset, but less likely if it's 6 months.

Y Bradley: What time frame feels right?

K Sturtevant: To clarify, our ordinance today says 60 days versus legal non-conformities, which is one year. State statute says 6 months or more. One of the distinctions for discontinuation of violations at 60 days was because they were never legal.

A Montroll: Maybe 90 days.

Y Bradley: Disagree that if it's illegal, given the housing market in Burlington, it should just go away. We need housing. If the market was someday stronger and we didn't need these units, I could understand a more strict policy.

D White: If the units meet all applicable codes, the alternative is they could just permit it and don't have to worry about the violation anymore. That happens with some regularity.

H Roen: The statute of limitations situation seems like it is helpful if someone is selling and find out something unexpected.

D White: If zoning permits it, they can do it. Statute is talking about cases where something isn't allowed to happen. Between 1946 when zoning was first adopted and the 1970s, there was not a proliferation of illegal units being created. It was post 1970 when these situations started cropping up.

Y Bradley: Andy suggested 90 days, any agreement?

The Commissioners expressed agreement.

D White: Other modifications to the draft include clearer language that we're focused on use for provisions to rebuild after catastrophe, and clarify that good faith means you're either listing it or working on it.

E Lee: In the section about conflicting records, statement that the administrative officer "should have known" should be removed because it's vague. The process for stabilized determination should happen in public sphere, not in administrative offices.

K Sturtevant: Notice will be required like it is today, through a Z-card and on the website.

E Lee: There will be push back from people who have complained about issues and P&Z hasn't done anything.

D White: The process will have grounds for appeal based on whether or not the appellant believes there is evidence that it is stabilized. Then it will go to the DRB and staff will present the research.

Y Bradley: Reminder that this is not about penalizing property owners just because P&Z didn't know about something.

D White: Ultimately, it is a requirement of state law that violations older than 15 years have a statute of limitations. We just have to decide how we work within that.

E Lee: So people could appeal to environmental court?

K Sturtevant: They could argue that our ordinance doesn't fit within the state requirements.

J Rippa: Provided example of his property's violation and how it was discovered.

L Buffinton: It seems that there are a lot of nonconforming lots in the City that can't be expanded.

D White: Ultimately we want to be able to reduce non-conformities.

Y Bradley: L Buffinton raises a good point, but seems like a separate issue.

L Buffinton: Should be a future discussion item.

J Rippa: This discussion has been going on for a long time, and I don't know if there will ever be 100% agreement. Can't we just call it good and move on?

Y Bradley: Agree about the length of time, but in fairness we need to live with the decision so it needs to be right. We're getting closer.

A Montroll: I think we're asking for a next draft.

IX. BTC Update

J Wallace-Brodeur: Developer made a presentation to Council, which was a big milestone.

D White: Council received the presentation and held an executive session to go over the elements of the development agreement.

J Wallace-Brodeur: The next step is to talk about the elements of the MOU with developer to move toward a development agreement. There are pieces that will require action by the Commission to enable the project. Process has been set up so that we could move it quickly to help keep things on track.

D White: Ordinance piece will be to create an overlay to allow for taller buildings, but the height continues to remain a question. It also needs to allow height without bonuses, remove existing view corridor setbacks on Cherry Street, and establish form-based elements to activate street. It also needs to establish discussion about how parking gets managed within the downtown parking management plan, and some clause about public improvements as a condition of approval.

A Montroll: When this comes to us, will we need to meet in executive session? This need to happen in the public or it won't go over.

D White: No, it will be public. It's been clear from beginning that zoning needs to change in the following ways. We've been working on a draft of the update and are getting feedback from within the office.

J Wallace-Brodeur: MOU doesn't commit the City to an outcome, but commits to considering the issues through our process.

X. Committee Reports

Long Range Planning Committee:

J Wallace-Brodeur: Committee met last week, still working on the economic development and arts sections. Struggle with the framework of how the sub-areas are articulated. Don't think there's opposition to sub-districts, but think we should look at form and then use rather than specifics. Spinning our wheels and don't feel like its gelling. We also need to talk about transportation elements rather than seeing the sections in a silo.

A Montroll: Commissioners have been getting a lot of emails about a rotary at Pine and Maple. At the last meeting, we discussed that although the Champlain Parkway says it will install a traffic signal at this corner, we need to make this a recommendation that addressing traffic here is a high priority. PlanBTV South End should say that there should be a traffic light there regardless of whether the Parkway gets built.

J Wallace-Brodeur: I would want to see something that says a traffic light would improve traffic; we're not qualified to say what the mitigation should be.

A Montroll: Agree, I don't want to put something in the plan that is not going to work.

J Wallace-Brodeur: I think we've gotten into the weeds and are being too prescriptive in many sections of the plan. We need to take it a level up and talk about a vision. We should say that we need a strategy that relieves traffic on Pine Street.

A Montroll: The point is about timing, and that we shouldn't wait for the Parkway to be built before we alleviate traffic.

Y Bradley: Perhaps the recommendation we make is that DPW should find an appropriate measure and install in advance of the Parkway, if possible. What we don't want to do is put the opportunity out there that we're changing the design of the Parkway, and we need to be realistic about the permitting of the project.

D White: The new signalized intersection at Lakeside and Pine is an example of City stepping in to say we need to do something and we footed the bill. We can discuss this as a priority, but be mindful that it may not necessarily have the same outcome.

A Montroll: We would be remiss to not say traffic should flow better as part of our planning exercise.

L Buffinton: This also ties into the Railyard Enterprise Project options. Will the Commission get to review the alternatives? Certainly has a land use context.

D White: The Council sent on three alternatives for further study. Likely will review when that is complete.

XI. Commissioner Items

L Buffinton: Two issues anxious to bring to the Commission: increase lot coverage in RM zones should go to the ordinance committee with the next few months, and based on tonight's discussion, greater flexibility for expansion on non-conforming lots.

XII. Minutes/Communications

The Commission unanimously approved a motion by A Montroll, seconded by H Roen, to approve the minutes of the February 9, 2016 meeting and accept minutes.

XIII. Adjourn

The Commission unanimously approved a motion by L Buffinton, seconded by J Wallace-Brodeur, to adjourn the meeting at 8:26p.m.

Y Bradley, Chair

Date

E Tillotson, Recording Secretary

Burlington Planning Commission

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7144 (TTY)
www.burlingtonvt.gov/planning

*Yves Bradley, Chair
Bruce Baker, Vice-Chair
Lee Buffinton
Emily Lee
Andy Montroll
Harris Roen
Jennifer Wallace-Brodeur
vacant, Youth Member*



Burlington Planning Commission

Tuesday, March 08, 2016 - 6:30 P.M.

Conference Room #12, Ground Floor, City Hall, 149 Church Street

MINUTES

Present: Y Bradley, B Baker, L Buffinton, E Lee, A Montroll, H Roen, J Wallace-Brodeur

Absent: None

Staff: D White, M Tuttle, E Tillotson, K Sturtevant

I. Public Forum

Michael Long: Provided comments regarding the 15 year statute of limitations amendment. Attorney Norm Williams has provided a letter analyzing the Bianchi ruling as applied to structures, which M Long recommends the Commission read. M Long has sent communications regarding this issue to the Commission in the past several years regarding his position that this should apply to structures, but not to uses or parking. M Long endorses breaking down the zoning ordinance, which is not predictable in particular zones, and is against this amendment because the standard of proof has been very low.

II. Report of the Chair

Y Bradley: Attended a very interesting meeting of real estate professionals during which Kevin Dorn, City of South Burlington, discussed plans for City Center and redevelopment of the Burlington Square Mall. Real estate professionals are seeing a growing pattern of malls turning themselves into downtowns, which is something to be aware of, especially in light of the Burlington Town Center redevelopment.

III. Report of the Director

D White: On March 7 Devonwood Associates presented a variety of views of the Burlington Town Center redevelopment. At March 22 Commission meeting, will begin discussing outline of the zoning ordinance amendment. D White's job is to develop a zoning amendment addressing the height and bulk of buildings by right in a downtown overly, as well as other considerations, such as form-based elements.

L Buffinton: Will we get a presentation on the designs as part of this discussion?

D White: It is on the City's website. Also currently working on a zoning amendment proposal for the Burlington College, St Joseph's Orphanage site where the City just purchased 12 acres. Also editing a report regarding on-site parking requirements in downtown.

M Tuttle: Interviewing consultants for the Great Streets project for downtown to create street design standards as well as construction documents for key streetscape projects. There will be public meetings scheduled in the future.

IV. Agenda

No Changes

V. City of Burlington Permit Reform Project

D White: City's permit reform project is being led by Beth Anderson, considering all aspects of permitting from application to certificate of occupancy. Introduced the consultant team from Matrix Consulting and Graydon Land Use.

Alan Pennington and Jocelyn Mathieson, Matrix Consulting: Have extensive national experience with permit/process reform. Will be meeting with stakeholders one-on-one next week to understand the Burlington process. Over the next 18 weeks, there will be an extensive public outreach process, consultation with all City departments involved in process, and best practices research. This will inform the development a profile of the current processes, as well as observations and analysis about where code/regulations differ from any requirements. They strongly wish to keep the Commission in the loop

L Buffinton: Will members of the public be able to submit written comments?

A Pennington: An on line survey process will be part of the process so input is available to everyone.

Sean Suder & Brandon McCuin, Graydon Land Use: On team to evaluate historic preservation processes, to facilitate reviews, with the final product being a recommendation for best practices. Burlington has a wonderful heritage, unique, historic, varieties of architecture. Will be looking at how our codes address these characteristics.

H Roen: Is really glad this reform is going forward, it's an area where there have been some big problems. It's really important to get feedback from public.

L Buffinton: Is the feedback confidential?

Y Bradley: This is important because there is a fear that if you are open with your opinion about the City's processes, you will pay later.

A Pennington: Input will be summarized by key themes, and there will be anonymity. Typically find that stories aren't always 100% accurate when team does fact checking, but they will reflect the general perceptions. The more public participation the better to make sure hearing about all of the issues that exist today.

B Baker: You will speak with each of the different permitting entities? Just last week I experienced problems with permitting.

Y Bradley: Was asked to write a developers guide to the permitting process in Burlington in 1984 for a college class! This is a long standing issue, tremendous amount of possibility for streamlining. The victims of the inefficiency are the general public.

D White: Our goal is to make the process predictable so that applicants understand how to get from A to Z; we need to maintain the possibility of change and improvement.

E Lee: There is a lot of mistrust in the community about consultants and where it appears to go wrong is acknowledgement of public input. It is important for Burlington citizens to feel they have been heard and that the end result is not predetermined.

VI. Proposed CDO Amendment: NAC – Riverside Boundary

D White: Originated as a request from affected property owners along Riverside Avenue.

M Tuttle: Outlined existing zoning of the area, and discussed the purpose of the NAC-R, RCO-C and other overlays. Presented a staff recommendation to move the NAC-R boundary another 25 feet north of Riverside

Avenue, to achieve the purpose of the district, but not impact the river bank. However, 189 Riverside is the farthest east, is not presently zoned NAC-R, and is not recommended to be changed.

A Montroll: There are two different maps, are they the same?

M Tuttle: Yes, one shows the extent of the NAC-R on the north side of Riverside Avenue, the other zooms in to the properties requesting the changes.

A Montroll: This has what effect on the corridor?

M Tuttle: This incorporates currently developed area of these properties into the NAC-R without significantly increasing development potential on the north side of street. However, change will have more impact on the steep slopes west of the water treatment plant.

L Buffinton: Not sure this is a good solution given the impact on the slopes to the west.

Laurie Smith: Has development background and previously served on the DRB in Shelburne. As an environmental engineer, he understands the issue of the stability of the bank, but the topography west of the plant is very different from the east end. The Town of Shelburne uses a gradient factor to address these situations. This has the potential to be a beautiful recreation area, and still serve as a buffer and recreation access area. Proposed a combination of gradient factor and an easement from the river might be a way to work forward and still retain development potential.

J Wallace-Brodeur: The plateau behind sewage treatment area to east has potential for redevelopment if the plant ever moves.

L Smith: It is actually a beautiful piece of land. It also sits high enough so that it does not disturb the river and the wildlife corridor.

H Roen: Likes the creative thinking from staff about the solution, but has concerns about the western area along Riverside Avenue being included.

A Montroll: Where is the floodplain?

D White: At this point in the corridor, very close to the edge of the river.

L Buffinton: Would like staff to reconsider ideas shared tonight, and a site visit would be great.

A Montroll: We could be open to looking at other options.

D White: Should this come to the full Commission or to the Ordinance Committee?

Y Bradley: Full Commission.

VII. Proposed CDO Amendment: 15 Year Statute of Limitations

A Montroll: Assuming this is adopted there will be a number of properties which will be affected. Should there be a period of time before this goes into effect?

D White: This is about setting administrative procedures to implement state law. There is not a concern from staff about the administration.

E Lee: Shared comments she received from neighbors on this issue, including: this incentivizes property owners to continue to take advantage of the ordinance, there is ongoing litigation right now with the City regarding some of the properties that have been discussed that shows the impact on neighborhoods, takes away a lot of hope for and stability in neighborhoods, properties and uses that would be permitted aren't

positive for the neighborhood or the students that live in them, undermines accessory units as owner occupied, and notice to interested parties is essential. Does not like this and will not support it; this is huge loophole.

D White: This is existing state law that we have to follow; it does not make these violations ok, but articulates that City's enforcement is limited. Aside from the question of use, it is fair to say this is just administrative procedure. The only real policy issue is around whether use should be included in the statute, which the Planning Commission directed staff on previously.

E Lee: If it is state law, then why don't people appeal to the state? Hearing two different things: this is just state law and we are making a process for it, and there is ambiguity in state law around uses and we are clarifying whether this applies to use.

D White: Those are both true.

E Lee: If it is just about structures, then fine. Have a problem with use.

B Baker: Bianchi decision says nothing about use. Other concern is over loss of legitimate units due to the City's historical record keeping. We can't really solve the problem until we know what the problem is.

L Buffinton: What if we move forward with what we all agree on, which is structures and take use out.

B Baker: I think you would lose thousands of units.

A Montroll: This issue seems to have come up more often over last few years. How often are these units discovered?

D White: The question comes up six to twelve times a year, probably. It's not that often than these issues get pursued all the way.

K Sturtevant: Don't have hard numbers, but it is becoming more of an issue. Part of that is because of the approach to enforcement and we are doing more to keep records.

J Wallace-Brodeur: We've set the threshold that an owner has to prove that the City knew about it. They have to go through this process to prove it. They've hit the 15 years, the City knew about, we've outlined how they will prove it. If they can prove it, it is stabilized, but if it doesn't continue in perpetuity, it can be discontinued.

K Sturtevant: State law doesn't say anything about having a determination of "stabilized." We've added that for records for the owner, and to trigger the notification provision.

J Wallace-Brodeur: E Lee, did you explain the process we've outlined? It is really complicated. We are trying to establish a process to move forward that's fair. We run this risk of having situations that we aren't happy with, but it's about a balance, just like any policy. I think this is rational and clear and my inclination is to support this. We need to hold our City accountable to act on violations they know about—if they haven't done it in 15 years we have to have a process to move forward.

D White: Similarly, if the City doesn't act on a zoning permit within a defined period of time, then it is automatically approved. The benefit goes to the owner if the City doesn't follow through.

E Lee: Student group quarters are a big concern, there are too many for the City to handle, and to enforce. Time of sale is a great time for this to change, so biggest concern is the group quarters being covered by this ordinance. It's a shame that people have been notifying the City that violations have been happening, it hasn't been enforced, then a law gets passed to permit it to continue.

A Montroll: If that will be a major point, we could consider pulling out the four unrelated persons as a use that is covered.

K Sturtevant: Suggesting that we have a nuance to a use, that there would be an exception to this for one particular use. If the Commission wants to move that out, we could.

Y Bradley: I think we all agree on that, no one likes the four unrelated. This is a concern, Kim, please look at how it could be excepted.

On a motion by A Montroll seconded by L Buffinton, the Commission unanimously voted to retain the existing language about use with an exception related to four unrelated people in a unit.

H Roen: There should be further discussion about when properties change hand?

D White: No, because everything runs with the land.

L Buffinton: A delay period before starting is a good idea.

K Sturtevant: A DRB decision regarding when to enforce a four unrelated has been appealed to state Environmental court. To clarify, looking at connecting four unrelated to the health and safety aspect or finding a way to make it an exemption.

VIII. Committee Reports

Ordinance Committee: B Baker reports the Ordinance Committee discussed the George Street zoning boundary adjustment. L Buffinton requests a build out to assess impacts of the change. He has also spoken with a citizen who came in to discuss daycare in the residential low density zone and believes the issue has been resolved.

Long Range Planning Committee: H Roen reports that the Committee has met and are still working on a next draft.

Joint Form Based Code Committee: A Montroll reports that the committee met and is anxious to wrap up the draft. There are four or five issues to work through, a final review, and he is quite optimistic that they can wrap up soon. Public process is going to be a big part of this process.

IX. Commissioner Items

None.

X. Minutes/Communications

On a motion by E Lee, seconded by L Buffinton, the minutes of February 23, 2016 with punctuation corrections, were unanimously approved.

XI. Adjourn

On a motion by L Buffinton, seconded by E Lee, the Commission unanimously adjourned at 8:11 pm.



Y. Bradley, Chair

Signed: March 24, 2016



E. Tillotson, Recording Secretary