

Burlington Planning Commission

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Bruce Baker, Vice-Chair
Yves Bradley
Alexander Friend
Emily Lee
Harris Roen
Jennifer Wallace-Brodeur
Eamon Dunn, Youth Member*



Burlington Planning Commission Joint Meeting with DAB, DRB, & Conservation Board

Tuesday, January 30, 2018, 5:00 P.M.
Contois Auditorium, City Hall, 149 Church Street

AGENDA

I. Agenda

II. Public Forum- Time Certain 5:00 p.m.

III. Welcome from the Director

IV. Permit Reform Study

The Planning Director will provide an update on the Permit Reform Study recommendations and the working group activities.

V. The Neighborhood Project

Staff will provide an update on The Neighborhood Project, an initiative to develop recommendations to enhance quality of life in near-campus neighborhoods.

VI. Non-Conformities & 15 Year Statute of Limitations

Staff will provide an overview of pre-existing nonconformities (i.e. grandfathered items) and the 15-year statute of limitations for zoning violations.

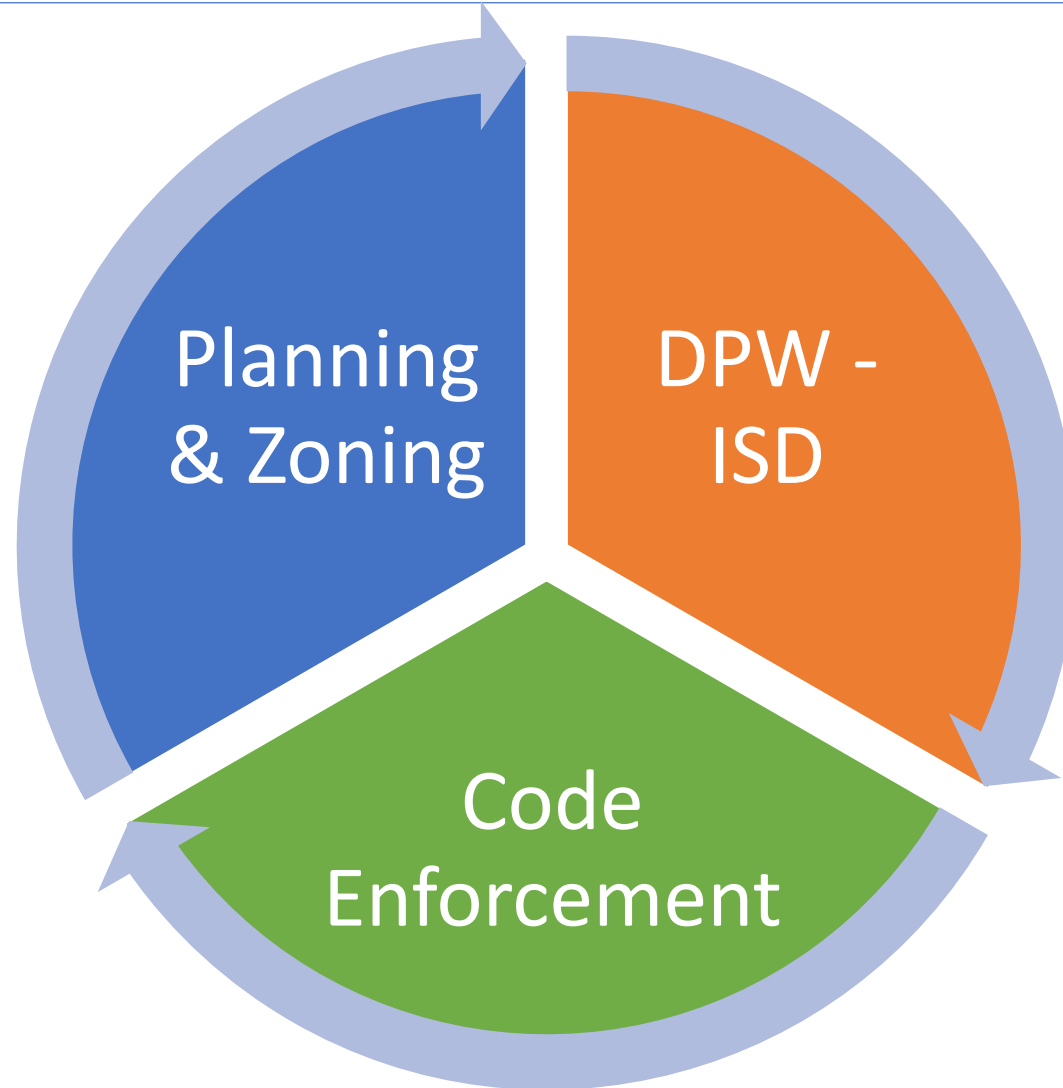
VII. Board Discussion

The boards are invited to share observations regarding the interpretation and application of the *Comprehensive Development Ordinance (CDO)*, and discuss whether there are areas of the *CDO* in need of clarification or modification.

VIII. Adjourn

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.

Development Permitting Process



Overview

While Individual departments have led a number of improvements to the permitting process over the past several years, the Council passed a resolution on Sept 22 2014 which initiated the current permit reform effort – previous efforts go back decades.

- Matrix Consulting Group hired in February 2016
- Project team worked with the consultants to share information and ensure the recommendations were based on an understanding of State requirements, local ordinances, and our practices
 - Team included staff from DPW Inspection Services, Planning and Zoning, City Attorney, Fire Marshal, Water Resources, Burlington Electric, and I&T
- Historic Preservation review was performed by another firm, Calfee.
- Recommendations accepted by City Council last summer
- Mayor-appointed Permit Reform Advisory Committee started in Oct 2017

Project Goal

To develop an improved permitting process that is:

- Consistent, efficient, transparent, and predictable
- Ensures public health and safety
- Supports energy efficiency, and
- Encourages investment and reinvestment

Research and Information Gathering

- Interviews with all staff involved in the permitting process
- Reviews of data and sample reports regarding services, volume of work, and timeframes for delivery
- Public engagement process through June 2016, which included:
 - **Online public survey** that received 614 responses
 - **Three public forums**, which attracted over 40 attendees
 - **Five focus groups** targeted to specific segments (Real Estate Professionals, Architects, Contractors/Developers, Home Owners, and Business Owners)
 - In addition, many individuals spoke separately with the consultants or the CIO to share their challenges and ideas
- Comparison of Burlington's practices against 'best management practices' from other communities

Key Findings: Strengths of Current Process

- Staff are generally available on a walk-in basis to provide feedback and information to members of the public
- Educational materials are available online and at offices, including copies of codes and ordinances
- Informal pre-application meetings with planning staff are encouraged for applicants to discuss their project and gain input from staff
- Many building permits are issued same-day, and few require revisions and resubmissions by applicants. Trades staff assist applicants, many with little experience in the trades, with understanding the code requirements and achieving approval
- Trade inspections are scheduled for specific times

Key Findings: Opportunities for Improvement

- Separation of functions and locations create challenges for applicants
- Opportunities to further improve Interdepartmental cooperation exist
- There are many opportunities to streamline efforts and improve service levels
- A focus on “customer-centered” service should be a priority
- Technology utilization is not meeting the needs of staff or applicants
- Adopted codes and ordinances should be reviewed and updated regularly
- Additional training and educational materials are needed for staff and applicants
- Some additional staff and changes to existing staffing could greatly enhance service levels
- Current resources are insufficient to implement all recommendations in a timely manner

Recommendation Themes

- **Organizational Structure:** Enhancing organizational structure to encourage operational efficiency and accountability, and to improve the customer experience
- **Process:** Improving and streamlining processes to improve efficiency, decision-making, and service delivery
- **Customer Service:** Providing better education and materials and developing a culture focused on customer service to improve the customer experience
- **Technology:** Better utilizing technology to improve internal efficiencies and provide enhanced customer capabilities
- **Fees:** Ensuring fees charged cover all direct and indirect costs associated with permitting operations, allow for the ongoing support and enhancement of operations and technology, and are clear and predictable for applicants
- **Solar:** Minimize the difficulty and time of permitting solar projects to make solar energy more accessible and affordable

Key deliverables – Organization

Organizational Structure

- **Consider creation of a consolidated department responsible for all Zoning and Inspection Services activities (1, 2)**
 - *Arrange for P&Z, ISD and Code to offer combined, co-located office hours (3)*

Development Permitting Process

Now: 2 permits, in 3 steps, in 2 places...

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Zoning Permit

(Planning & Zoning in City Hall)

PERMIT

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Trades Permits

(DPW-ISD on Pine Street)

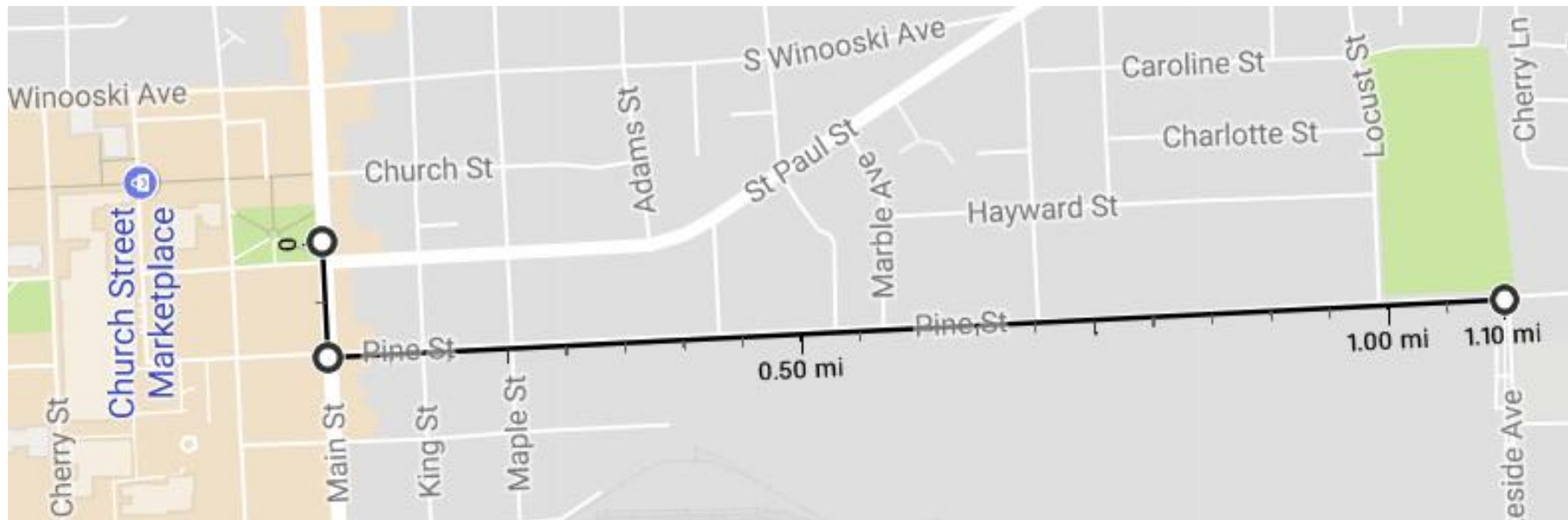
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(Code Enforcement on Pine Street)

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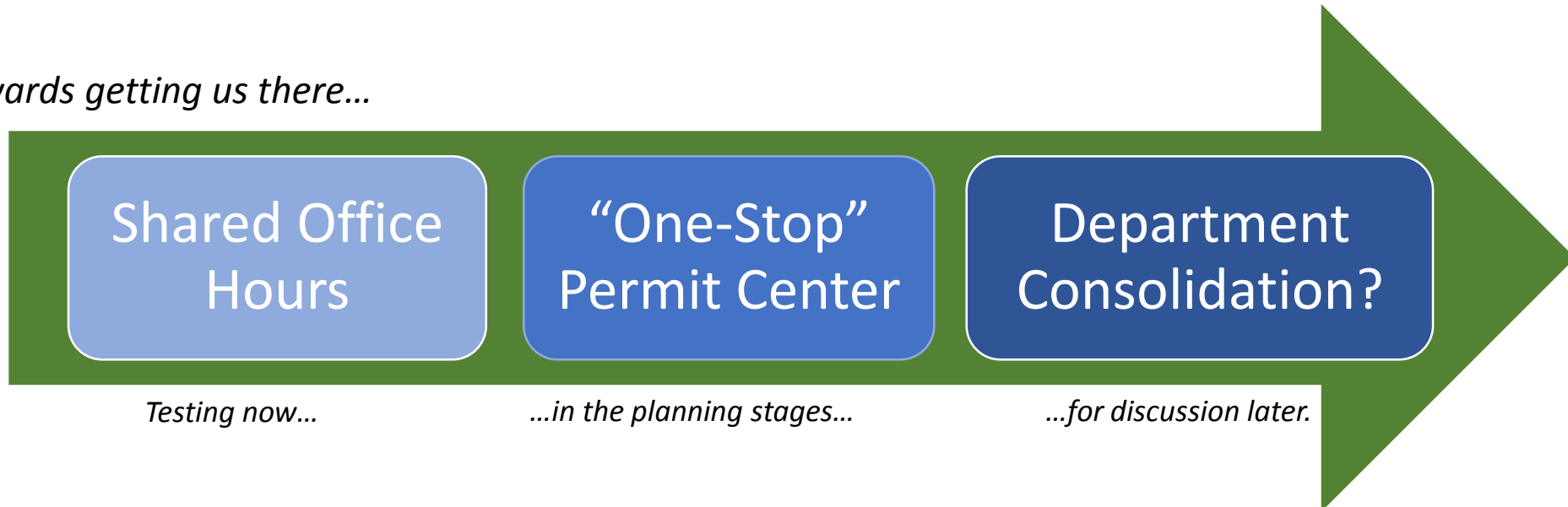
Development Permitting Process - Goal

... in the future, one permit in one place as part of a single continuous process,

APPLICATION



Steps towards getting us there...



Key deliverables – Process

Process

- *Develop a plan to improve the Technical Review Committee's (TRC) process (12, 13)*
- ***Begin streamlining duplicative permits (15)***
- **Develop a process for regular review of codes and ordinances to ensure currency (53)**
- *Develop a plan for issuing the UCO upon completion of all inspections (17, 18)*
- Zoning
 - ***Hire a planning technician at Planning & Zoning (5)***
 - *Develop a plan to transition responsibility for UCO inspections from Code to P&Z (19, 20)*
 - ***Propose changes to increase the threshold for administrative review (14)***
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 - ***Research and implement improvements to trades inspection scheduling (23)***
 - ***Explore the value of adopting the International Residential Code (29)***
 - Hire a permit technician to provide improved service to applicants at ISD (4)
 - Implement a specified time standard for trades inspections (24) and contract or hire staff to support the additional workload, if necessary (25)
 - **Explore offering over the counter permits to streamline the customer experience (16)**

Key deliverables – Customer Service

Customer Service

- *Ensure regular customer service trainings for staff (9) to further **enhance customer-focused culture** (8)*
- ***Develop a plan for performing an annual customer survey** (33)*
- ***Make all forms available online as fillable PDFs** (36)*
- ***Catalog and post online all interpretations and determinations** (10, 37)*
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- ***More proactively notify customers of open permits to ensure permits are not left for future problems** (22) **evaluate the benefit of cleaning up aged permits** (21)*
- Create a development guide (34) and process matrix (35) to provide customers with an easy-to-use guide to the permitting process

Key deliverables – Technology & Fees

Technology

- ***Provide the ability for inspectors to complete data input from the field (27)***
- Identify and implement the most appropriate and cost-effective permitting application through a formal RFP, and provide staffing to support ongoing maintenance of the application (39, 40)
- Provide an online portal to allow applicants to submit applications, track progress, and schedule inspections online (26)
- ***Explore and develop a proposal to address the need to improve GIS accuracy (41)***

Fees

- Begin an evaluation of fees to ensure they cover all direct and indirect costs (28)
- Ensure fees charged support the procurement and ongoing support of technology necessary to support staff activities and increased customer functionality (42)

The Neighborhood Project: An Update



Based on a presentation by:

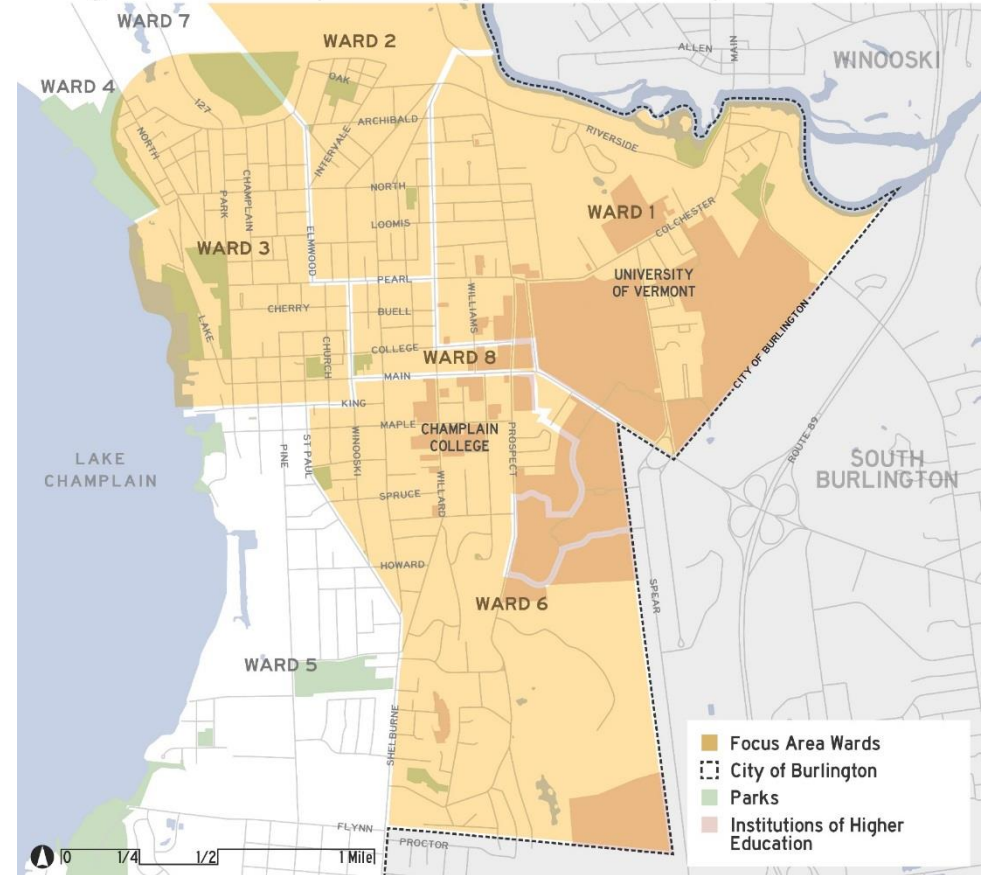
Gillian Nanton, Community & Economic Development Office

For Council CDNR Committee January 25, 2018

The Neighborhood Project

- The Neighborhood Project (TNP) is one of 22 proposals in Housing Action Plan, and emerged as part of the settlement of the appeal of the Champlain College Eagle's Landing project
- Purpose of TNP is to **develop an actionable strategy and toolkit of policies for neighborhood stabilization** in historic near-campus neighborhoods
- Project Partners include Champlain College, UVM, Preservation Burlington, & City of Burlington (CEDO, Code, Planning & Zoning)

Neighborhood Project Study Areas | Burlington, VT

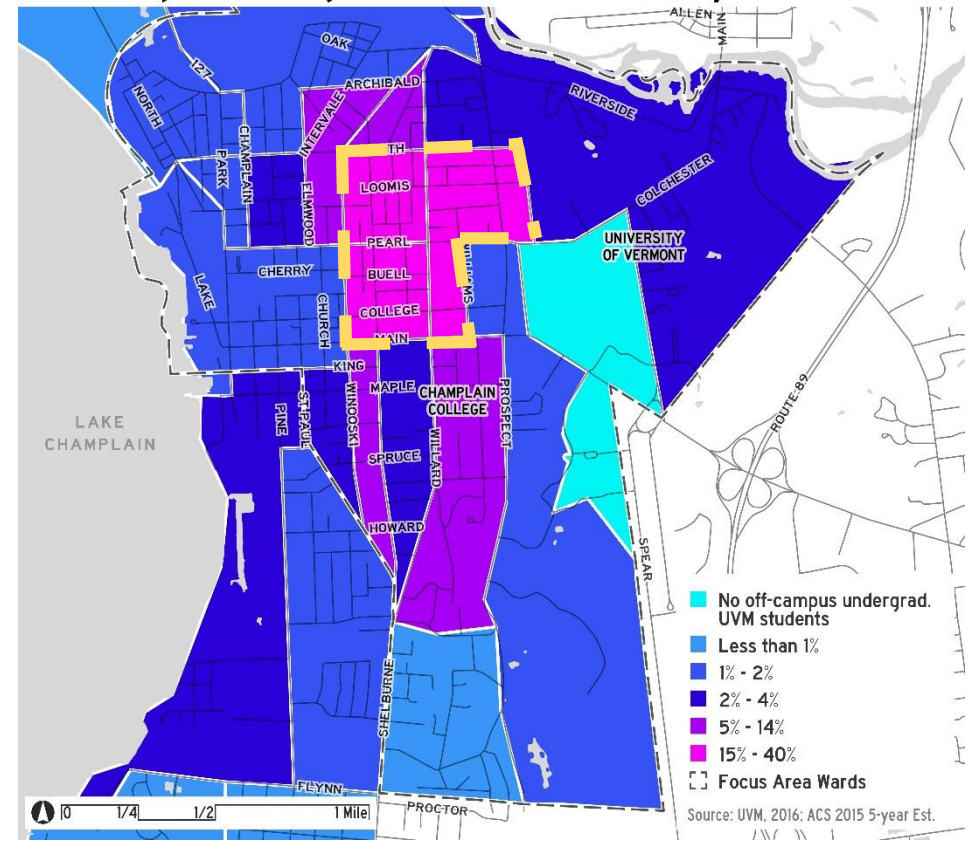


What came before TNP?

Overtime the City has pursued strategies to address quality of life challenges, such as:

- Minimum Rental Housing Ord.
- Noise Ordinance
- 4-Unrelated zoning provision
- Agreements between City & institutions around housing
- UVM & Champlain College – host of programs aimed at improving quality of life

Percent of Burlington Residents Who Are Off-Campus Undergraduate UVM Students by Census Tract



Three broad strategies of TNP



TNP – Community Open House, December 12, 2017

- **Enhance quality of life initiatives**
(e.g. Reviewing city's QoL policies, ordinances etc. to make them clearer, easier to enforce; building on current renter education programs)
- **Contain & slow down conversions of single family homes to rentals**
(e.g. Creating more student housing adjacent to campuses – explore potential Trinity campus; create property acquisition fund to acquire single family homes; explore employer assisted housing program)

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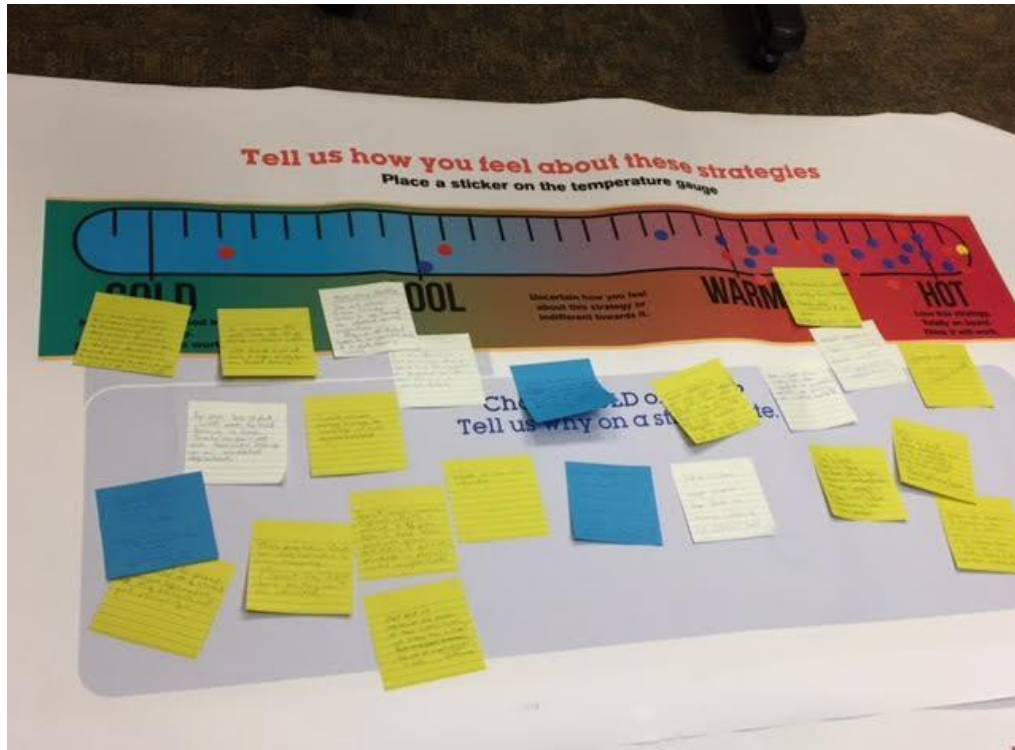
- **Convert selected primarily student rental properties to non-student housing while maintaining affordability**

(e.g. create a fund to acquire student rental properties; create a targeted rehab loan program; institute employer assisted housing program)



TNP – Community Open House, December 12, 2017

Early Feedback on Strategies



Participants provided feedback on proposed strategies at Community Open House, December 12, 2017

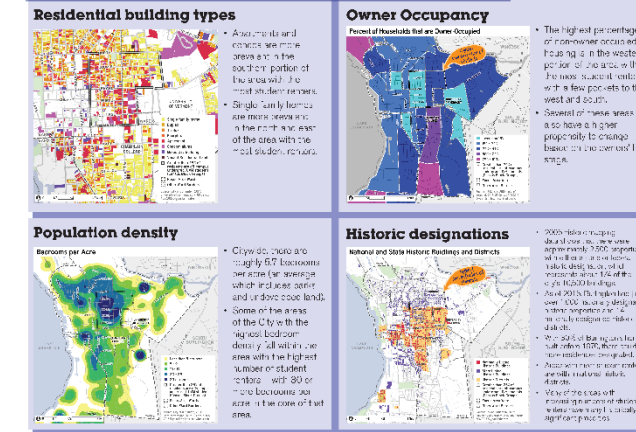
- Support for enhancing quality of life initiatives, specifically to increase accountability and encourage proactive “community building”
- Relatively strong support for containing and slowing down conversions of single family homes to rentals, with questions about how to apply some of the ideas and to what parts of the City
- Some support for conversion of selected student rentals to non-student housing while maintaining affordability, with questions about how these ideas are funded

Next Steps

- Survey on these potential strategies available at: <https://www.burlingtonvt.gov/CEDO/The-Neighborhood-Project>
- Survey closes on February 16
- Based on feedback City and partners will determine priority actions, next steps, and timelines
- City Team is being assembled to begin reviewing quality of life tools within the City's realm, to address concerns and simplify and communicate these more effectively

Housing Market

What are the factors affecting the housing market?

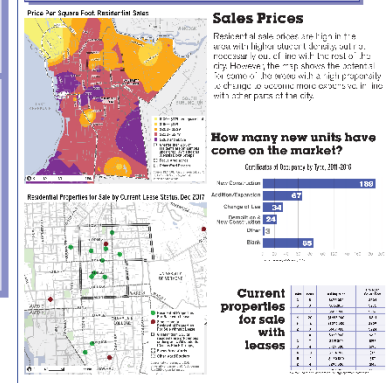


Notes from the field

Not everyone can affordably living back over of their house. They have been so out of the market and not been very well maintained.

The neighborhoods are phenomenal and these should be attractive to all.

What's happening with the current housing market?



Poster from Community Workshop- Available on website as part of survey

Zoning
Grandfathering vs.
Statute of Limitations

Grandfathering

- Pre-Existing Non-Conformities
 - A use of land, structure, lot or parcel that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including one improperly authorized as a result of error by the administrative officer. 24 V.S.A. §4303(13)-(16).
 - Special considerations may be given to these properties within a municipality's bylaws pursuant to 24 V.S.A. §4412(7).

Phase Out Policy

- “The prime purpose behind zoning is to bring about the orderly physical development of a community by confining particular uses to defined areas. A goal of zoning is to gradually eliminate nonconforming uses because they are inconsistent with this purpose. The public interest in the regulation and gradual elimination of nonconforming uses is strong, and zoning provisions allowing nonconforming uses should be strictly construed.” Badger v. Town of Ferrisburgh, 168 Vt. 37, 39 (1998) (internal citations omitted).

Bianchi

- The Vermont Supreme Court in the Bianchi case in 1997 held that permit violations could affect the marketability of title to property.
- In response to concerns about the effects on the real estate market, the Vermont legislature established a statute of limitations for permit violations.

Statute of Limitations

“An action, injunction, or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required municipal land use permit may be instituted under section 1974a, 4451, or 4452 of this title against the alleged offender if the action, injunction, or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred and not thereafter, except that the 15-year limitation for instituting an action, injunction, or enforcement proceeding shall not apply to any action, injunction, or enforcement proceeding instituted for a violation of subchapter 10 of chapter 61 of this title. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.” 24 V.S.A. §4454(a).

Distinction Between the Two

A property that has a violation that occurred more than 15 years ago is not truly a “grandfathered” property. That is, if the property was in violation of an ordinance provision in 1997, for example, it remains in violation, and the violation does not become grandfathered, as the violating condition was not legally existing in 1997. This is simply a violation that cannot be enforced under state statute. In contrast, if a condition was legal in 1997, but the ordinance changed after that, the condition would be considered grandfathered.

Exceptions to the Statute of Limitations

Included within the types of zoning violations that continue to be enforceable are:

- Public health risks or hazards.
- 24 V.S.A. §4470(b).
- Use violations.

Public Health Risks or Hazards

- Unpermitted development typically characterized by dangerous conditions such as inadequate life safety features and/or lack of potable water or wastewater service.

24 V.S.A. § 4454 Does Not Limit Municipal Enforcement Authority Under Other Statutory Provisions

“(c) Nothing in this section shall prevent any action, injunction, or other enforcement proceeding by a municipality under any other authority it may have, including a municipality’s authority under Title 18, relating to the authority to abate or remove public health risks or hazards.”

24 V.S.A. §4470(b)

“A municipality shall enforce all decisions of its appropriate municipal panels, and further, the Superior Court’s Civil or Environmental Division shall enforce such decisions upon petition, complaint or appeal or other means in accordance with the laws of this state by such municipality or any interested person by means of mandamus, injunction, process of contempt, or otherwise.”

Environmental Court cases support that §4470(b) is an exception to the 15 year statute of limitations.

- No provision for penalties.
- Refers to violations of board decisions; therefore, notice has been provided by way of the decisions.
- Not modified under Act 115.

Use Violations

- The premise that the statute of limitations does not apply to use violations is supported by case law.
- Use violations are considered ongoing and create a new violation each day the illegal use continues.
- In contrast, a construction violation occurs at the time of construction and does not continue. So, as long as the use being made of that illegal construction is legal, that violation becomes unenforceable after 15 years (absent another exception—e.g., public health).

Tolling of The 15 Year Statute of Limitations

- “24 V.S.A. § 4454 does not require municipalities to complete all of their enforcement actions within the fifteen-year time period; rather, the statute only requires that such enforcement be “instituted” within this time period. In other words, as soon as a municipality begins an enforcement action, it can look back 15 years from the date of beginning that action, no matter how drawn out the subsequent proceedings are.” *In re Hale Mountain Fish and Game*, Nos. 149-8-04 and 259-12-05 Vtec, slip op. at 7 (Vt. Env'tl. Ct. Nov. 21, 2008) (Durkin, J.).

What Is the Effect?

- The CDO addresses non-conformities and “Bianchi” controlled uses, structures and lots in Article 5, Part 3.
- A pre-existing legal non-conformity (grandfathered condition) has an identified legal status with defined opportunities to change.
- A “Bianchi” situation is an unenforceable violation, not entitled to the protections/opportunities for legal non-conformities.
- The City has no legal duty to legitimize a “Bianchi” situation with a zoning permit or certificate of compliance. At the same time, it cannot enforce against that condition, absent one of the exceptions (e.g., public health concerns).

Differences : Discontinuance

- For a grandfathered situation, under state enabling legislation, a municipality can set a time for discontinuance so long as it is not less than 6 months. Burlington has generally set the time for discontinuance as one year.
- For statute of limitations, there is no statutory discontinuance timeframe set, however, the CDO sets it as 60 days.

Differences : Enlargement

- Some grandfathered situations may be enlarged within the limitations established in the CDO.
- Situations that are barred from enforcement by the statute of limitations may not be enlarged.

Differences : Ability to Use for Requirements

- Grandfathered situations may be counted toward requirements of a new application. For instance, if you have 4 parking space that are recognized as grandfathered, you may use them toward the parking requirement for a new application.
- Parking spaces that are not grandfathered, but rather are unenforceable zoning violations may not be used toward the requirements for a new application.

Differences: Burden of Proof

- In order to be grandfathered, evidence must demonstrate the condition has been continuous back to the point wherein the condition was legal.
- In order to be unenforceable under the statute of limitations, evidence must demonstrate the condition has been continuous for at least 15 years after the violation was known to the City.
- Burden of proof is on the property owner in both cases.

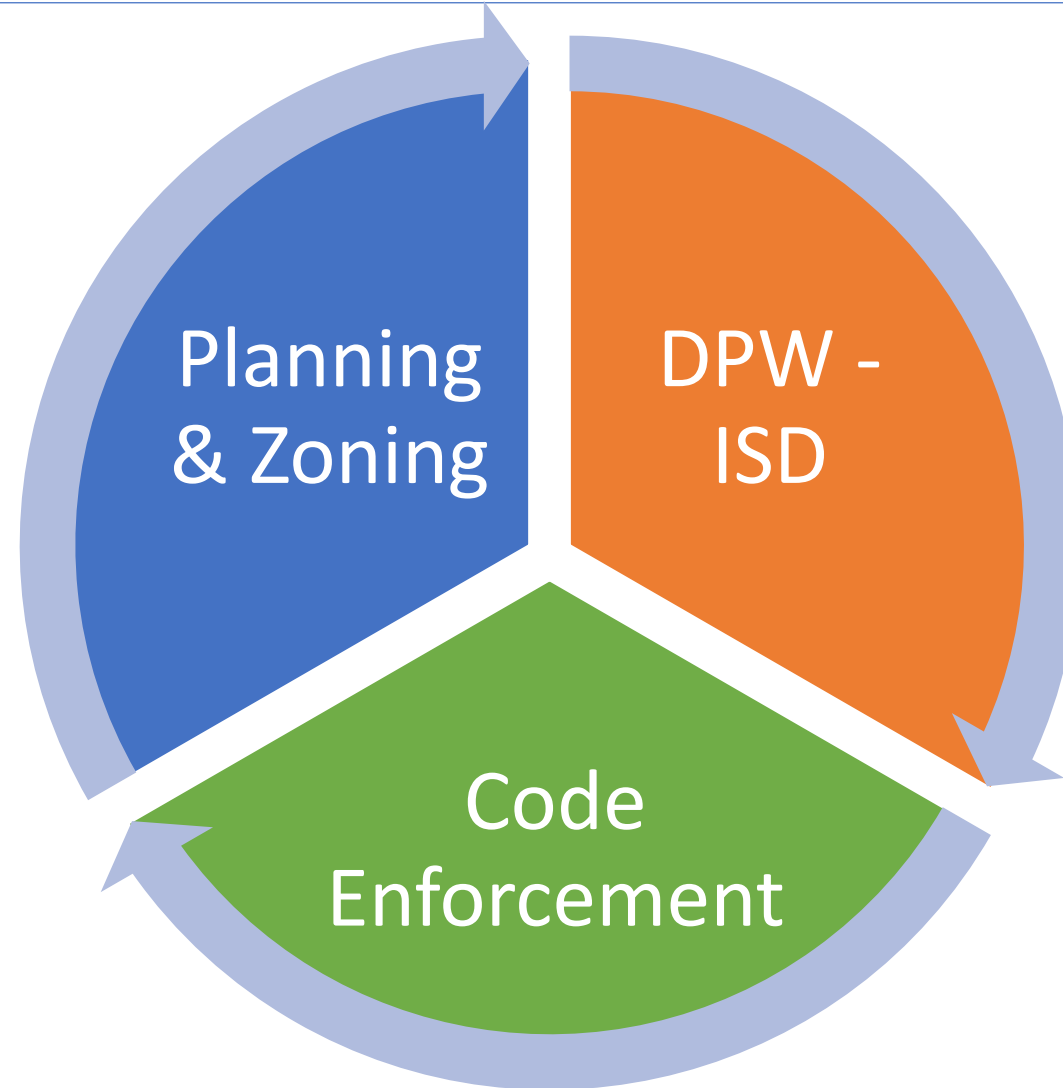
Why Are There Differences?

- Differences in the treatment of grandfathered and statute of limitation situations stem from the fact that grandfathered situations were legally existing at one time and the ordinances changed. Situations that benefit from the statute of limitations were never established as legal.

In Summary

- The City has a vested interest in achieving compliance with its zoning bylaws.
- Non-compliant conditions must be corrected.
- Status as a grandfathered condition or as an unenforceable violation may be achieved only after evidence satisfies the burden of proof.

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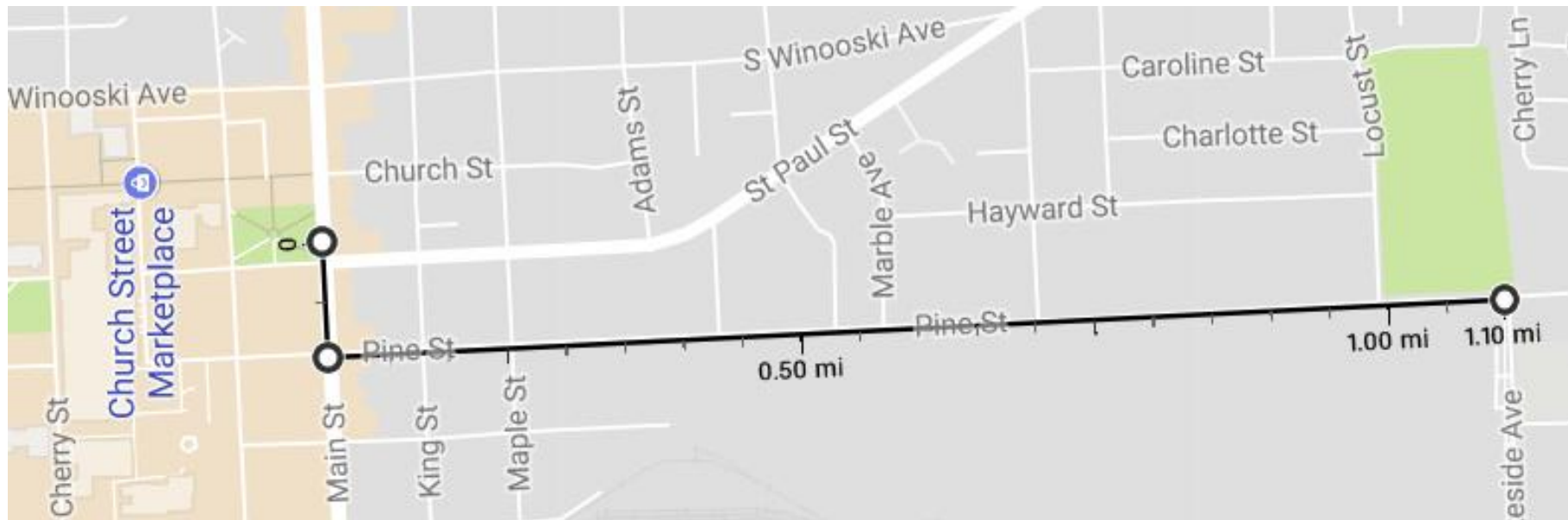
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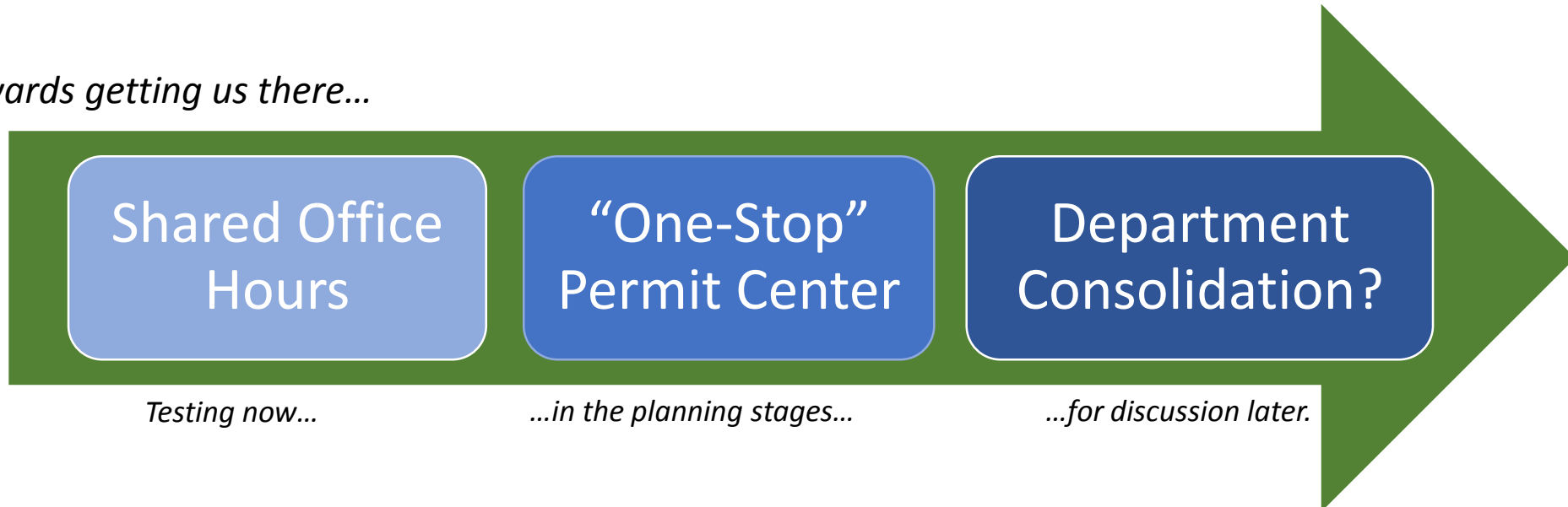
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Testing now...

...in the planning stages...

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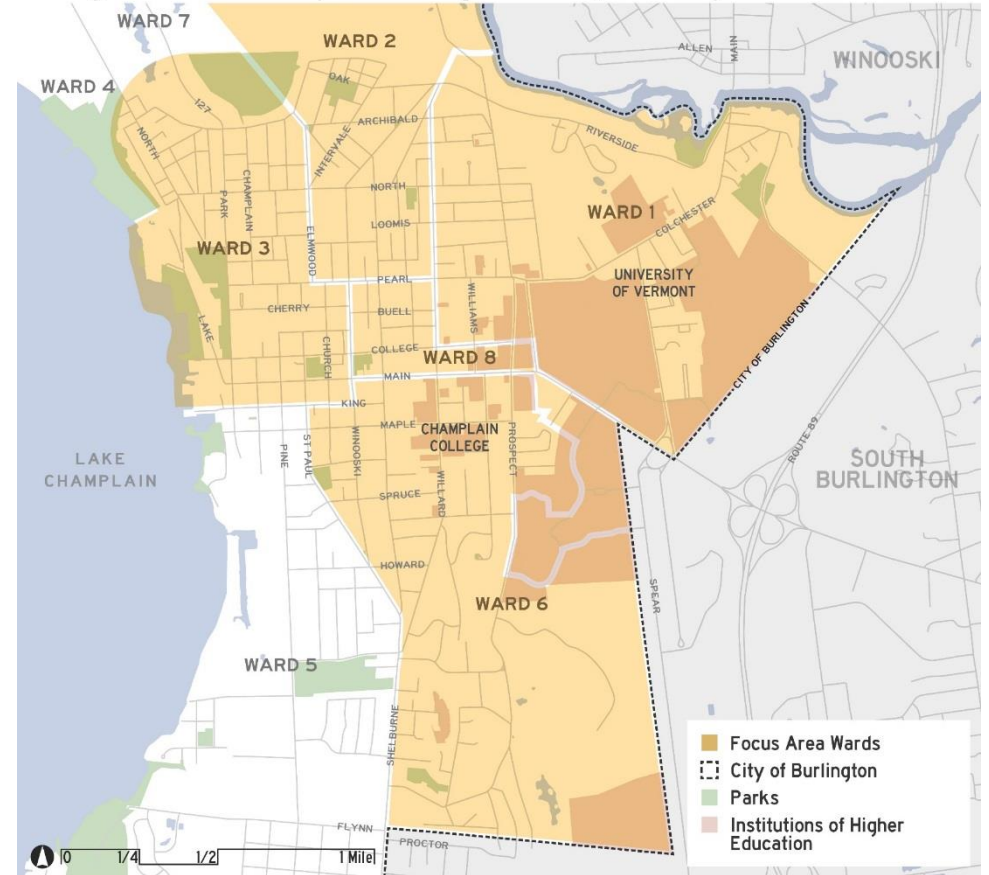
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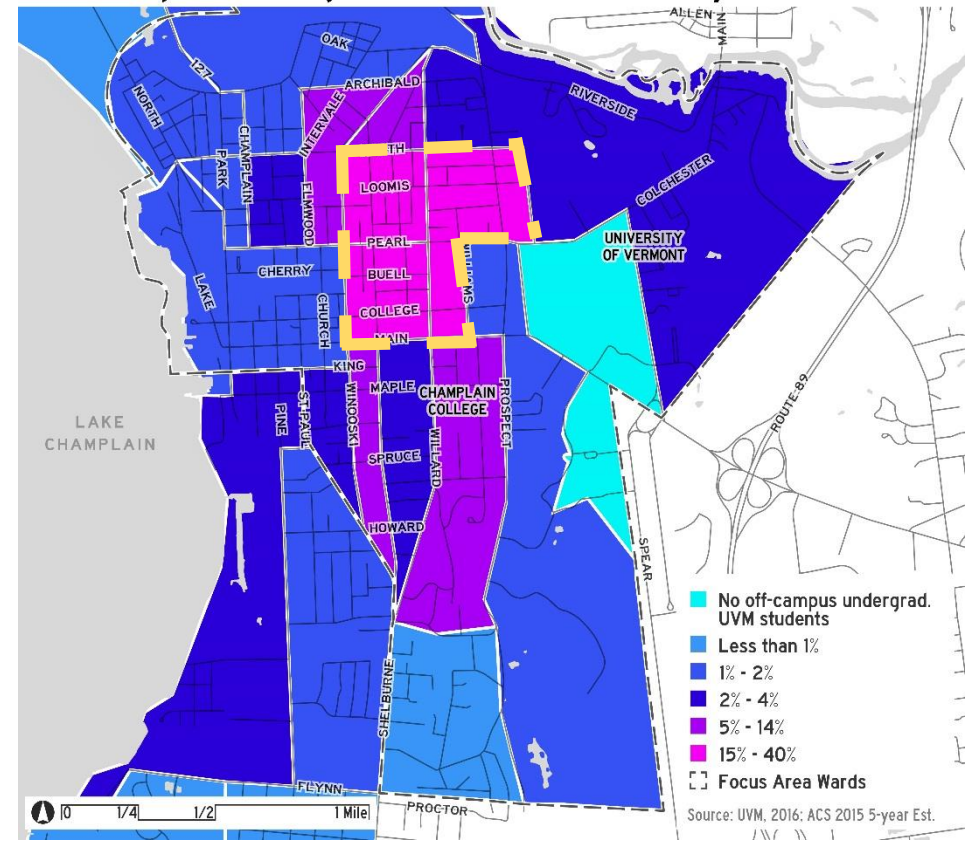


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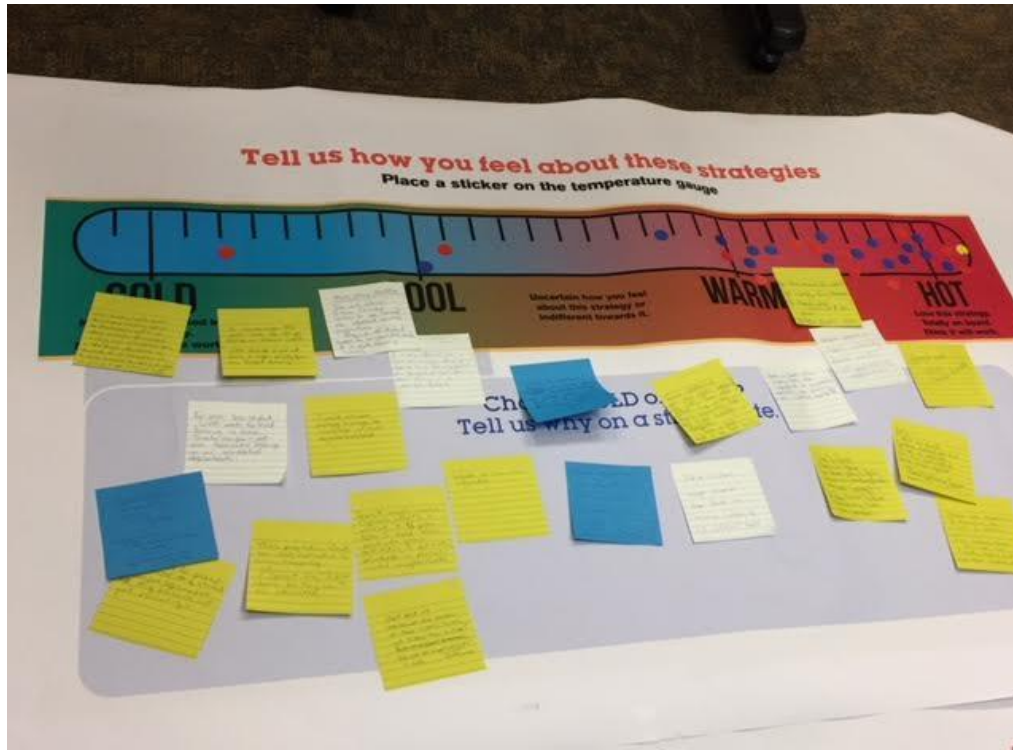
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Early Feedback on Strategies



Participants provided feedback on proposed strategies at Community Open House, December 12, 2017

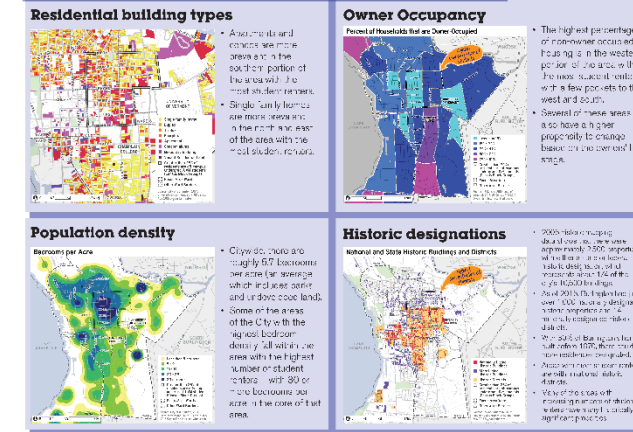
- Support for enhancing quality of life initiatives, specifically to increase accountability and encourage proactive “community building”
- Relatively strong support for containing and slowing down conversions of single family homes to rentals, with questions about how to apply some of the ideas and to what parts of the City
- Some support for conversion of selected student rentals to non-student housing while maintaining affordability, with questions about how these ideas are funded

Next Steps

- Survey on these potential strategies available at: <https://www.burlingtonvt.gov/CEDO/The-Neighborhood-Project>
- Survey closes on February 16
- Based on feedback City and partners will determine priority actions, next steps, and timelines
- City Team is being assembled to begin reviewing quality of life tools within the City's realm, to address concerns and simplify and communicate these more effectively

Housing Market

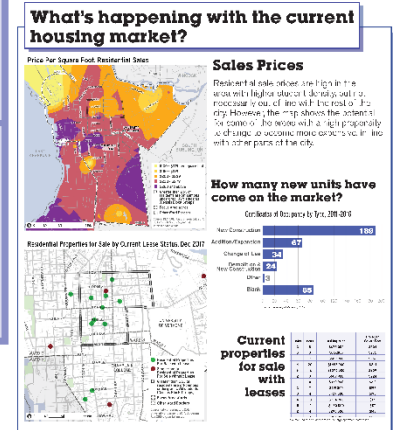
What are the factors affecting the housing market?



Notes from the field

Not everyone can affordably living back over of their house. They have been so far away and not been very well maintained.

The neighborhoods are phoned out and these should be attractive to all.



Poster from Community Workshop- Available on website as part of survey

Zoning
Grandfathering vs.
Statute of Limitations

Grandfathering

- Pre-Existing Non-Conformities
 - A use of land, structure, lot or parcel that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including one improperly authorized as a result of error by the administrative officer. 24 V.S.A. §4303(13)-(16).
 - Special considerations may be given to these properties within a municipality's bylaws pursuant to 24 V.S.A. §4412(7).

Phase Out Policy

- “The prime purpose behind zoning is to bring about the orderly physical development of a community by confining particular uses to defined areas. A goal of zoning is to gradually eliminate nonconforming uses because they are inconsistent with this purpose. The public interest in the regulation and gradual elimination of nonconforming uses is strong, and zoning provisions allowing nonconforming uses should be strictly construed.” Badger v. Town of Ferrisburgh, 168 Vt. 37, 39 (1998) (internal citations omitted).

Bianchi

- The Vermont Supreme Court in the Bianchi case in 1997 held that permit violations could affect the marketability of title to property.
- In response to concerns about the effects on the real estate market, the Vermont legislature established a statute of limitations for permit violations.

Statute of Limitations

“An action, injunction, or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required municipal land use permit may be instituted under section 1974a, 4451, or 4452 of this title against the alleged offender if the action, injunction, or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred and not thereafter, except that the 15-year limitation for instituting an action, injunction, or enforcement proceeding shall not apply to any action, injunction, or enforcement proceeding instituted for a violation of subchapter 10 of chapter 61 of this title. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.” 24 V.S.A. §4454(a).

Distinction Between the Two

A property that has a violation that occurred more than 15 years ago is not truly a “grandfathered” property. That is, if the property was in violation of an ordinance provision in 1997, for example, it remains in violation, and the violation does not become grandfathered, as the violating condition was not legally existing in 1997. This is simply a violation that cannot be enforced under state statute. In contrast, if a condition was legal in 1997, but the ordinance changed after that, the condition would be considered grandfathered.

Exceptions to the Statute of Limitations

Included within the types of zoning violations that continue to be enforceable are:

- Public health risks or hazards.
- 24 V.S.A. §4470(b).
- Use violations.

Public Health Risks or Hazards

- Unpermitted development typically characterized by dangerous conditions such as inadequate life safety features and/or lack of potable water or wastewater service.

24 V.S.A. § 4454 Does Not Limit Municipal Enforcement Authority Under Other Statutory Provisions

“(c) Nothing in this section shall prevent any action, injunction, or other enforcement proceeding by a municipality under any other authority it may have, including a municipality’s authority under Title 18, relating to the authority to abate or remove public health risks or hazards.”

24 V.S.A. §4470(b)

“A municipality shall enforce all decisions of its appropriate municipal panels, and further, the Superior Court’s Civil or Environmental Division shall enforce such decisions upon petition, complaint or appeal or other means in accordance with the laws of this state by such municipality or any interested person by means of mandamus, injunction, process of contempt, or otherwise.”

Environmental Court cases support that §4470(b) is an exception to the 15 year statute of limitations.

- No provision for penalties.
- Refers to violations of board decisions; therefore, notice has been provided by way of the decisions.
- Not modified under Act 115.

Use Violations

- The premise that the statute of limitations does not apply to use violations is supported by case law.
- Use violations are considered ongoing and create a new violation each day the illegal use continues.
- In contrast, a construction violation occurs at the time of construction and does not continue. So, as long as the use being made of that illegal construction is legal, that violation becomes unenforceable after 15 years (absent another exception—e.g., public health).

Tolling of The 15 Year Statute of Limitations

- “24 V.S.A. § 4454 does not require municipalities to complete all of their enforcement actions within the fifteen-year time period; rather, the statute only requires that such enforcement be “instituted” within this time period. In other words, as soon as a municipality begins an enforcement action, it can look back 15 years from the date of beginning that action, no matter how drawn out the subsequent proceedings are.” *In re Hale Mountain Fish and Game*, Nos. 149-8-04 and 259-12-05 Vtec, slip op. at 7 (Vt. Env'tl. Ct. Nov. 21, 2008) (Durkin, J.).

What Is the Effect?

- The CDO addresses non-conformities and “Bianchi” controlled uses, structures and lots in Article 5, Part 3.
- A pre-existing legal non-conformity (grandfathered condition) has an identified legal status with defined opportunities to change.
- A “Bianchi” situation is an unenforceable violation, not entitled to the protections/opportunities for legal non-conformities.
- The City has no legal duty to legitimize a “Bianchi” situation with a zoning permit or certificate of compliance. At the same time, it cannot enforce against that condition, absent one of the exceptions (e.g., public health concerns).

Differences : Discontinuance

- For a grandfathered situation, under state enabling legislation, a municipality can set a time for discontinuance so long as it is not less than 6 months. Burlington has generally set the time for discontinuance as one year.
- For statute of limitations, there is no statutory discontinuance timeframe set, however, the CDO sets it as 60 days.

Differences : Enlargement

- Some grandfathered situations may be enlarged within the limitations established in the CDO.
- Situations that are barred from enforcement by the statute of limitations may not be enlarged.

Differences : Ability to Use for Requirements

- Grandfathered situations may be counted toward requirements of a new application. For instance, if you have 4 parking space that are recognized as grandfathered, you may use them toward the parking requirement for a new application.
- Parking spaces that are not grandfathered, but rather are unenforceable zoning violations may not be used toward the requirements for a new application.

Differences: Burden of Proof

- In order to be grandfathered, evidence must demonstrate the condition has been continuous back to the point wherein the condition was legal.
- In order to be unenforceable under the statute of limitations, evidence must demonstrate the condition has been continuous for at least 15 years after the violation was known to the City.
- Burden of proof is on the property owner in both cases.

Why Are There Differences?

- Differences in the treatment of grandfathered and statute of limitation situations stem from the fact that grandfathered situations were legally existing at one time and the ordinances changed. Situations that benefit from the statute of limitations were never established as legal.

In Summary

- The City has a vested interest in achieving compliance with its zoning bylaws.
- Non-compliant conditions must be corrected.
- Status as a grandfathered condition or as an unenforceable violation may be achieved only after evidence satisfies the burden of proof.

Burlington Planning Commission

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Emily Lee
Harris Roen
Jennifer Wallace-Brodeur
Eamon Dunn, Youth Member*



Burlington Planning Commission

Joint Meeting with DAB, DRB, & Conservation Board

Tuesday, January 30, 2018, 5:00 P.M.

Contois Auditorium, City Hall, 149 Church Street

Minutes

Planning Commission Members Present: A Montroll, B Baker, E Lee, H Roen, A Friend
Development Review Board Members Present: A Hart, B Rabinowitz, G Hand, S Tiltson,
A Zipparo, J Drummond
Design Advisory Board Members Present: L Sprinzen, R Wanamaker, S Offenhartz, Tom Cullins
Conservation Board Members Present: S Mapes, J Severson, M Moore
Staff Present: D White, M Tuttle, S Gustin, M O'Neil, R Morrison, A Wade

I. Agenda

The Chair called the meeting to order at 5:14pm with introductions by members. There were no changes to the agenda.

II. Public Forum

There were no members of the public who wished to speak.

III. Welcome from the Director

D White: Purpose of this annual meeting is for Commission and Boards to discuss common issues and challenges. The Planning Commission is responsible for development of policy forwarded to City Council and the DAB, DRB, and Conservation Boards are responsible for the implementation of those policies.

IV. Permit Reform Study

D White: Last 10-15 years P&Z, Public Works, Code Enforcement working together to improve the work flow process and information collection and management process for development permits. In 2014, City Council enacted a permit reform initiative, which was first time funds budgeted and a work plan prepared to do the plan to look at how P&Z, DPW, Code Enforcement, Burlington Electric play a role in the development review process. A separate piece looked at historic preservation regulations and made recommendations. In October, 2017, the Mayor appointed an advisory committee to direct ongoing permit reform initiatives.

A Zipparo: What engagement process did the consultant use?

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.

D White: Important part of process was that it was conducted by outside third party to interview staff, review forms, and processes, conduct online surveys, and engage the public to get unbiased input.

A Zipparo: Do you do regular customer surveys through calls or emails?

D White: A recommendation of the study was to do so on an annual basis. Report highlighted what we do well, and areas for improvement compared to best practices in other communities. The report presented fifty recommendations in 6 themes: organizational structure, process, customer service, technology, fees, and solar permitting. One of the key recommendations was to look at one stop permit center, and potentially consider a future consolidation into a single department. P&Z now holding office hours at DPW to help improve process, and hired a planning technician who helps more with administrative review. Amendments to DRB bylaws are also allowing more projects to be reviewed administratively. Inspection services is offering scheduling online for trade inspections, and certain permits can be offered over the counter same day. Technological improvements difficult due to current system, but making all forms PDF's, putting zoning interpretations online, and inspectors now have tablets to input information in the field. Through "Clean Hands" policy, closing old permits. Looking into codes and ordinances that have kept up with state requirements. Training and education are needed for staff and applicants, possibly need additional staff. Looking into annual customer survey.

A Hart: How do you regulate historic properties?

D White: We administer state building and life safety codes and have expanded this to include the standard residential codes. Need a comprehensive preservation plan under the municipal development plan.

V. The Neighborhood Project

R Wanamaker: Committee member for the project. Was born out of negotiations around the Eagle's Landing development. Partners include the City, Champlain College, and UVM, and Preservation Burlington to develop a neighborhood stabilization plan.

M Tuttle: In 2015, Council passed the Housing Action Plan with 22 strategies regarding availability and affordability of housing. Project reviewed quality of life issues and other conditions in near campus neighborhoods, recently adopted ordinances and other initiatives including those of institutions, and market conditions to address these issues. Developed three broad strategies. First is to explore whether there are any ordinances that need to be clarified or improved regarding quality of life. Second is a goal to slow the conversion of single family homes into rental units near campus. The focus is on targeted areas closer to campus, where a single family could convert into student housing. Third is to increase opportunities to recapture single family homes and make them more available by creating assistance with the cost of ownership such as rehabilitation, loan resources and employer assistance programs. There is support for quality of life initiatives, but feedback suggests needing to think bigger perhaps looking at an acquisition program.

A Friend: Have been involved, encourage to everyone to look at the website and provide comments

S Tiltson: Any discussion about the future of homeownership for young families with student debt, day care and other expenses? I live in Ward 1 and our street has had conversion happening, but not everyone can afford to buy.

M Tuttle: Have had the conversation through this project about what does it mean to have a balanced neighborhood, and that may mean many things to many people. Within the strategies, we are looking at some that could apply to rentals, too, such as some models of employer assisted housing programs. As the strategies develop, may find that we are more concerned about the condition and livability of a property than whether its owner or renter occupied.

E Lee: In my experience as a finance professional, the number one way to build wealth is in a home; an entire generation is not buying or putting it off until later which is concerning.

S Tilton: This is a bigger issue; looking at improving neighborhoods is good start, but need strategies to align with reality.

B Rabinowitz: One of the biggest channels to affordable homeownership is through CHT. This is not about building wealth for the owner, but a pathway to meeting a housing need.

A Zipparo: How are you considering the needs of seniors?

M Tuttle: This project is one of 22 strategies in the Housing Action Plan. Committee has been focused specifically on the task of how to create neighborhood balance near campus. Obviously want to ensure relationship to the other plan themes, but trying to stay focused. There is an entire strategy about affordable housing, aging in place, etc.

J Drummond: What are other quality of life issues?

M Tuttle: In addition to noise, calls for service, maintenance and upkeep of properties. The availability of housing and parking issues.

E Lee: Specific to the police reports, the correlation of calls for service in these neighborhoods is an obvious and expensive problem for everyone that we need to address.

J Speidel: We are tracking this and not sure this is true; found that only a third are students. With quality of life, we look at noise and safety, track data. Code Enforcement, UVM and DPW, agree that we need more housing. Both UVM and Champlain College have created more housing. How do we provide affordable housing and where are the resources? Are there places where we create more housing?

M Tuttle: Created heat maps that show some of these data points. There is definitely an increase in density of calls for service, but there are other locations, too, like downtown and at the hospital where issues are first reported.

A Zipparo: Has student population increased over that time?

J Speidel: We have built more beds than we have admitted students.

A Montroll: We know this is a problem that has been going on for many years and why we continue to work on it. Thank you for all those efforts.

VI. Non-Conformities & 15 Year Statute of Limitations

K Sturtevant: Providing information about the differences between a legal non-conformity ("grandfathered") and illegal situations that are subject of the statute of limitations. Nonconformity pertains to a use, structure or parcel that was legal at one time, but does not conform with present bylaw. There are special considerations within Article 5 of the CDO that pertain to these. Overall, goal is eventual elimination of

nonconformities. 1997 case now known as Bianchi law, concerned violations which could affect the marketability of the title. Legislation was passed putting a limitation the period of time for enforcing and causing the correction of violations. There are exceptions to the statute of limitations allowing enforcement of public health risks, life safety issues, and use violations. In Burlington, a nonconformity expires if it is discontinued for a year, with the burden of proof on the owner to prove the condition was legal and continuous, and has provisions for enlargement of the use. Under the statute of limitations, it must be proved that the condition has been continuous for at 15 years after the violation was known to the City, since the use was never established as legal, expires if discontinued for 60 days, and has no provisions for enlargement.

S Offenhart: How do you define "known to the City"?

K Sturtevant: Typically look at zoning permits, and at other departments' records.

B Rabinowitz: DRB generally doesn't pay attention to what other departments have. Would be great to have guidance on this—currently look at the materials the applicant presents which isn't always clear.

B Baker: Title attorneys were concerned because they knew municipalities were not keeping permanent records and that it became difficult to find permits. Experience with incomplete records at the building department. I want to encourage the City to work on this and would like to see more consistency. Some people have violations but they don't know how to prove their existence.

M O'Neil: Due to case law, the city is learning, too, what we needed to keep. Some records were lost in a fire.

L Murphy: The intent of the Bianchi law, which was to try to bring old zoning violations into a nonconforming status, has not been carried out. The fundamental problem is burden of proof, because permits are not secure and scattered everywhere. There needs to be a path to resolve the problem, otherwise left in limbo with no enforcement action. Benefits the City as a whole to allow for a process that affords 20+ year violations legal nonconforming status. Pick a time period, and move forward.

B Demas: Concern is that the enforcement of the zoning regulations makes it difficult to keep housing affordable in Burlington. There needs to be reconciliation for small owners of affordable units and for landlords to hold onto their properties. It is frustrating to find permits and land records.

K Sturtevant: Indexing land records and permits into the system has been occurring. They are searchable showing when they were listed and uploaded.

B Rabinowitz: Proving continuity is a particularly difficult issue.

D White: We recognize the challenge is to find a path forward for certainty and over course of next few months we are going to revise these things and bring back to City Council to further this discussion.

A Montroll: The Planning Commission spent time a fair amount of time on this last year, but it's important and we need to keep working on it.

VII. Board Discussion

A Zipparo: Asks everyone to work together to recruit women, people of color, physical disabilities, LGBTQ for positions on the Board. Burden is on City Council to appoint, but Boards can help make more diverse representation.

E Lee: Encourage everyone, even subcommittees, to look at who you can invite to make sure there is a spectrum of people at the table.

S Offenhartz: Any updates to appropriate replacement materials?

A Montroll: Planning Commission did recommend materials and sent to City Council but they did not take it up.

J Drummond: Not sure about having ironclad rules about acceptable materials. Technology changing, and the rules the Board applied a few years ago may not be in line with construction industry tomorrow.

S Offenhartz: Boards and residents need clarity to know what they can do and to make decisions.

D White: Will ultimately follow a comprehensive historic preservation plan in the next several years.

Adjournment

The Chair adjourned the meeting at 7:00pm.



Andy Montroll, Chair

Signed: February 13, 2018



Anita Wade, Planning Commission Clerk