



Board of Civil Authority Meeting - Monday, January 25, 2016 - Contois Auditorium, City Hall - 1/25/2016

MINUTES SUBJECT TO CORRECTION BY BURLINGTON CITY COUNCIL. CHANGES, IF ANY, WILL BE RECORDED IN THE MINUTES OF THE NEXT MEETING OF THE CITY COUNCIL.

BURLINGTON BOARD OF CIVIL AUTHORITY

CONTOIS AUDITORIUM, CITY HALL

BURLINGTON, VERMONT

MINUTES OF MEETING

January 25, 2016

APPROVED

MEMBERS PRESENT: Jane Knodell (Council President) – Central District

David Hartnett – North District

Joan Shannon – South District

Selene Colburn, East District

Sharon Foley Bushor – Ward 1

Max Tracy – Ward 2

Sara Giannoni - Ward 3

Kurt Wright – Ward 4

William “Chip” Mason – Ward 5

Karen Paul – Ward 6

Tom Ayres – Ward 7

Adam Roof – Ward 8

ADMINISTRATION: Miro Weinberger, Mayor

Eileen Blackwood, City Attorney

Richard Haesler, Assistant City Attorney

Bob Rusten, CAO

Rich Goodwin, ACAO



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Jennifer Kaulius, Mayor's Office

Brian Lowe, Mayor's Office

Lori Olberg, Clerk/Treasurer Office

OTHERS PRESENT:

Andy MacIlwaine, Esq.

Liam Murphy, Esq.

Eric Hoekstra, Redstone

John Leshner

George Rutherford

Rosemary Oberson

Andrea Todd

RJ Laluminere

Phil Hammerslough

Jennifer Ely

Tony Bell

Tom Morley

Gary Dion

Emily Bodecker

Jason Van Driesch

James Palmer

Daniel Webber

Anya Jokela

Trish O'Kane

Jim Carrier

Charlene Wallace

Lola Houston

Nick Branch

John Ware



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Brendon Guerier

Abby Kenney

Jennifer Tomjack

Julie Campoli

Scott MacIntyre

Elena Korshak

1.0 CALL TO ORDER and AGENDA

Mayor Weinberger called the meeting to order at 7:06 PM on January 25, 2016.

1.01 Agenda

MOTION by Councilor Knodell, SECOND by Councilor Shannon, to approve the agenda as presented.

VOTING: unanimous; motion carried.

2.0 REQUEST TO REVIEW BTA DECISION

2.01 WR Vilas, LLC, 258 North Winooski Avenue, 044-3-151-000

Attorney Andy MacIlwaine advised:

- The appellant is presenting argument as to why the Board of Tax Appeals (BTA) decision was erroneous and a full review hearing should be held.
- The appellant and the city will present their positions and the BCA can decide if a full review will be granted. Deliberative session, if held, would be a closed session.
- The purpose of the hearing is very limited and the format may be unusual. The appellant raised some concerns about ensuring the right to be heard prior to a determination by the BCA. The city has agreed it is willing to go forward with a hearing that is limited in scope so the parties can present their positions and the BCA can be informed on how to resolve the question of review of the matter.
- Regarding the issue of whether the BTA decision was unanimous or erroneous, two of the three board members were present and both members were in agreement on the decision so the dispute is whether the lower decision was erroneous.



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- It is the BCA's prerogative whether to allow testimony and hear oral argument from the appellant. The BCA could decide not to grant a full review of the decision.

Councilor Bushor felt the BCA should decide on having preliminary discussion before deciding on holding a hearing. Mayor Weinberger urged hearing the oral arguments.

MOTION by Councilor Shannon, SECOND by Councilor Knodell, to move the matter forward and hear from both parties. VOTING: 11 ayes, one nay (Bushor); motion carried.

Liam Murphy, attorney for the appellant (WR Vilas), outlined the following:

- Regarding due process and whether there was unanimous decision by the BTA, there were only two members of the committee making the decision of a seven member board. Decision is needed on whether there was a unanimous decision of the Board of Tax Appeals or the committee of the BTA.
- Regarding the decision being erroneous, Eric Hoekstra with Redstone explained the property owner, WR Vilas, could have gone to the court with the appeal, but thought it was important for the BCA to understand the policy implications of the decision. For 30 years there was no new market rate rental housing developed in the city because market rate rental housing was financially infeasible. The precedent of the assessment makes future rates of market rate rental housing in the city infeasible. All that was done in the last five years was done before the assessment. The city has put much effort into the Housing Action Plan to address the housing crisis in Burlington and if the assessment remains there will be no one developing market rate rental housing in the city. The BTA did not make a decision, but upheld all that was presented to them by the City Assessor and the assessor's assessment was clearly erroneous.
- In the assessment of commercial property the number of units, income, expenses, the neighborhood, cap rate, and adjustments are all considered. The appellant if given the chance will demonstrate that the total assessment was clearly erroneous due to the multiplication of many different factors that led to a clearly erroneous decision. The appellant is asking for a hearing to present the evidence in detail.

Richard Haesler, attorney representing the BTA, stated:

- The standard for 'clearly erroneous' is a high bar. The BCA must give substantial deference to the panel/court that made the original decision. In order to make an erroneous decision the decision had to have been made without any credible evidence to support the decision. The BTA took evidence from both parties and found on all eight items based on the evidence from the parties and substantially decided in favor of the City Assessor on seven of the points. The decision referenced that the decision was based on evidence presented. The panel had three members that relied on the evidence and made findings based on the evidence.
- The appellant came without prejudice to future appeal rights. If the BCA in its discretion decides not to take up a hearing the appellant is left to his appeal rights.
- The issue of unanimous decision was not raised in the original request for a hearing so it is not certain to be properly before the BCA. The city charter is clear that a panel of three can hold a hearing and decide. It is beside the point that only



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two members were present and the third member recused because three is not a majority of seven and a unanimous decision is when a body decides with one voice. There were two votes in support and one recusal.

- A charter change would be necessary to reconfigure to have a committee of seven rather than three.

Councilor Knodell spoke in support of holding a deliberative hearing based on the November 20th report from the BTA which reached conclusion on a number of points. Simple assertions were made without argument or evidence which makes it impossible to make judgment on conclusions being erroneous or not.

MOTION by Councilor Knodell, SECOND by Councilor Shannon, that the BCA move forward with a deliberative hearing on February 8, 2016. VOTING: 11 ayes, one nay (Bushor); motion carried.

3.0 ADJOURNMENT

With no further business and without objection the meeting was adjourned at 7:34 PM.

RScty: MERiordan