

STATE OF VERMONT
SUPERIOR COURT, ENVIRONMENTAL DIVISION

In re Howard Center Renovation)	Docket No. 12-1-13 Vtec
Permit)	
)	

**MEMORANDUM OF HOWARDCENTER, INC. IN OPPOSITION TO
“APPELLANT’S MOTION TO STRIKE CITY OF SOUTH BURLINGTON’S
RESPONSE TO HOWARDCENTER’S REQUESTS FOR ADMISSION”**

HowardCenter, Inc. (“HowardCenter”), by and through its undersigned attorney, opposes the School District’s “Motion to Strike” dated February 22, 2013, for the reasons that follow.

**1. The Requests for Admission and the City’s Response are
Appropriate and Timely under the Rules, Reasonably Construed.**

The civil rule of general applicability authorizes the service of requests for admission upon any party “after service of the summons and complaint...” V.R.C.P. 36(a). Reasonably adapted to the circumstance, this condition was satisfied when the City received the School District’s Notice of Appeal to this Court. While it is true that V.R.E.C.P. 2(c) contemplates a discovery order “limiting” discovery, that is a fail-safe provision which the parties can avoid if they “otherwise agree.” *Id.* Here, by responding to HowardCenter’s Requests for Admission, the City has “agreed.”

The one case cited by the School District, Schwarzkopf Sub. Application, No. 94-6-10 Vtec, is not to the contrary: the motion to authorize discovery in that case was denied primarily based on the

oppressiveness, lateness, and lack of necessity for it, as well as the failure of the moving party to seek the information by agreement. The lack of a prior discovery order was incidental. In our case, as noted above, and significantly unlike Schwarzkopf, supra, the City was willing to provide the requested confirmations without an order. As to “necessity,” the City’s Admissions supply basic neutral data for which the City is an official source and, in addition, they advise the Court of facts about the administration of the City’s zoning laws in general and in this case that are pertinent to the argument made in HowardCenter’s opposition to the Motion for Stay.¹

2. The City is a “Party” for Discovery Purposes.

Pursuant to statute, the City is entitled to intervene because it is an “interested person” within the meaning of 10 V.S.A. § 8504 (n) (5) and 24 V.S.A. § 4465 (b) (2). If a “person” is sufficiently “interested” to intervene and enjoy the privileges of a party – to speak to issues, to be served with all documents, to attend depositions -- then that person ought to be deemed enough of a party to be required to respond to discovery, at least on a limited basis. Schwarzkopf, supra, supports that inference. In that case, the discovery in question was directed, in part, at an “interested person,” but the Court did not cite that fact as relevant to

¹ For example, in its Opposition to the Motion for Stay, HowardCenter argues that the City’s consistent interpretation of its ordinance over a course of many years is relevant to the Court’s interpretation of the same ordinance. That is a question of law; however, the *substance* of the City’s interpretation is a matter of historical fact to which the Admissions attest. Because the Court must make at least a preliminary evaluation of the merits in order to decide the Motion to Stay, it is information that is immediately relevant. Furthermore, it is factual information that will remain relevant throughout this proceeding regardless of its *de novo* nature.

its decision to deny the motion. Implicitly, had the discovery not failed for all of the reasons noted above, the “interested person” would have been a proper respondent. See Schwarzkopf, supra.

3. The School District Has no “Standing” to Object to the Response.

It is difficult to see on what ground the School District stands for advancing its Motion to Strike. If the City itself doesn’t object to providing the information, who is harmed? The Response does not bind the School District. If it has evidence to the contrary, it is free to contravene the facts admitted by the City, both now and at any other point in the overall proceeding.

4. Conclusion

For the reasons stated above, the School District’s Motion to Strike should be DENIED.

Dated at Burlington, Vermont this 24th day of February, 2013.

Respectfully submitted,

HowardCenter, Inc. by its
Attorney:


Franklin L. Kochman

STATE OF VERMONT
SUPERIOR COURT, ENVIRONMENTAL DIVISION

Howard Center Renovation Permit

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Docket No. 12-1-13 Vtec

CITY OF SOUTH BURLINGTON'S RESPONSE TO HOWARDCENTER INC.'S
REQUESTS FOR ADMISSION

NOW COMES, the City of South Burlington, by and through its attorneys, Stitzel, Page & Fletcher, P.C., and responds to HowardCenter Inc.'s Rule 36 Requests for Admission as follows.

1. Raymond J. Belair is the Administrative Officer for the City of South Burlington (the "City"). He has held this position since 1999.

Response: Both sentences are admitted.

2. Attached hereto as Exhibit A is a true copy of HowardCenter, Inc.'s application for the zoning permit (the "Permit") that is the subject of the captioned matter, as filed with the office of the Administrative Officer, being an application for interior improvements to Suite 101 (the "Premises") at 364 Dorset Street (the "Building"). The Building is one of several buildings situated on a 2.2 acre parcel of land (the "Property").

Response: Both sentences are admitted.

3. Attached hereto as Exhibit B is a true copy of the Permit, as issued by the Administrative Officer on August 24, 2012.

Response: Admitted.

4. Attached hereto as Exhibit C is a true copy of the South Burlington School District's Notice of Appeal to the South Burlington Development Board (the "DRB") challenging the issuance of the Permit, as filed with the office of the Administrative Officer on September 7, 2012.

Response: Admitted.

5. The Administrative Officer issued the Permit as a matter of right based on his determination (a) that the Premises are located in the CD 2 zoning district, (b) that "medical office" is a permitted use in the CD 2 zoning district, (c) that the use proposed for the Premises was a "medical office," as defined in the current South Burlington Land Development Regulations (the "LDR"), (d) that the most recent previous use of the Premises had been as a permitted "medical office," and that (e) the Premises are not located in the South Burlington Traffic Overlay District.

Response: Admitted.

6. In connection with the issuance of the Permit, the Administrative Officer did not review for vehicle trip ends because, as calculated under the methodology specified in the LDR, where there is no change in use, there is no change in vehicle trip ends.

Response: Admitted.

7. Attached hereto as Exhibit D is a true copy of page 2-25 of the LDR, which includes the definition of "Office, Medical."

Response: Admitted.

8. The Property fronts on a portion of Dorset Street (the "Road Segment") on the easterly side of the street across from Green Mountain Suites, between the intersection of Dorset Street and Williston Road to the North and the I-189 interchange to the south.

Response: Admitted.

9. By reason of Section 3.02 B of the LDR, attached as Exhibit E, the City's current Overlay Districts Map, displaying, among other overlay districts, its traffic overlay district, is incorporated by reference in the LDR.

Response: Admitted.

10. The most recent version of the City's Overlay Districts Map became effective on January 9, 2012. Because it is color-coded, it requires full color reproduction to be understood. It can be viewed in full color by entering "South Burlington Overlay Districts" in the Google search engine and following the first or second link displayed.

Response: Each sentence is admitted.

11. According to the City's current Overlay Districts Map, the Premises fall outside the City's traffic overlay district.

Response: Admitted.

12. Since the mid-1990's, when Dorset Street was expanded from a two-lane road to a four-lane road, properties lying within the Road Segment

have not been deemed to fall within the City's traffic overlay district. During his tenure as Administrative Officer, the Administrative Officer has consistently applied this understanding of the boundaries of the traffic overlay district, and the DRB, which has considered a number of applications for properties lying within the Road Segment, including the Property, has never held otherwise.

Response: Each sentence is admitted.

DATED at Burlington, Vermont this 21 day of February, 2013.

CITY OF SOUTH BURLINGTON
By: Stitzel, Page & Fletcher, P.C.,
Its Attorneys



Joseph S. McLean

LAW OFFICES
F. L. KOCHMAN, INC.

30 ELMWOOD AVENUE P.O. BOX 8084 BURLINGTON, VERMONT 05402-8084
TEL. (802) 863-2640 FAX: (802) 660-2477 E-MAIL: frank@kochmanlaw.com

August 7, 2012

Ray Belair, Zoning Admin
Dept. of Planning and Zoning
575 Dorset Street
South Burlington, VT
05403

HAND DELIVERY

Re: Withdrawal of Pending Application and Application of HowardCenter, Inc. for interior renovations to existing medical facility At 364 Dorset Street, Suite 101

Dear Ray:

On behalf of my client, HowardCenter, Inc., please be advised that HowardCenter, Inc. hereby withdraws its pending zoning application for a facility at 364 Dorset Street filed on or about July 24, 2012. Enclosed please find its new application for interior renovations to its leased medical facility at the same address, Suite 101 only (the "Facility"), countersigned by the owner of the building.

For zoning purposes under the LDR, the Facility is indistinguishable from the cardiology practice that most recently occupied the same space and from the Ob-gyn oncology practice that currently occupies space above it, both zoned as medical offices.

The requested renovations are 100% internal to an existing building or structure. LDR §14.03 B. (5). They involve no change of use or expansion of use. §14.03 A. (1). They involve no alteration or change to an approved site plan. §14.03 A. (3). They involve no new parking lots or expansions of existing parking lots. §14.03 A. (4). Accordingly, as we read the LDR, including §3.04 B, no site plan review is required.

Because the previous application included language that may have led you to believe the facility would be used more broadly than it will be, I have included with this letter an accurate Facility Description by Dr. John Brooklyn, the supervising physician for the Facility.


We recognize that it would be disingenuous to fail to comment on the "program description" that was sent along with the withdrawn application. It was sent in error. Because of scheduling and vacation issues, the compilation and filing of the previous application was left to non-clinical staff who had no guidance except an off-the-shelf "program description" prepared for other purposes, including fund-raising. In hindsight, that was a mistake. The broad and "soft" emphasis on "goals" and "philosophy" in the

Letter to Ray Belair, Zoning Administrator
August 7, 2012
Page 2

generic "program description" had no relevance to a facility description for a zoning application -- properly concerned only with use. For that, you may rely on Dr. Brooklyn's enclosed description. As I'm sure you know, HowardCenter is a large organization with many programs and physical facilities, some of which can and do serve to fulfill the non-medical goals of this particular program. The sole purpose of the facility at 364 Dorset is medical treatment. All activities within the facility, as with any other medical office, will be incidental to and under the supervision of the doctor in charge.

Since the estimated cost of the improvements has not changed, I understand from our conversations that the fee submitted with the now-withdrawn application can and will be credited to this one. Thank you for that consideration. Please let me know if I can provide any other information you deem necessary.

Very truly yours,
F.L. KOCHMAN, INC.



Franklin L. Kochman, attorney for
HowardCenter, Inc.

enclosures

c: (via email only, with enclosures)

John Brooklyn, M.D.
Robert Bick
Charles Stringer
John Jaeger

HowardCenter, Inc. Facility at Suite 101, 364 Dorset Street

HowardCenter's leased space at Suite 101, 364 Dorset Street (the "Facility") will be used for the exclusive purpose of providing medical treatment to persons who are dependent on opioids. Under the direct supervision of medical doctors and nurses, treatment will include medication maintenance therapy, medically supervised withdrawals, medical (including psychiatric) evaluation and referral as needed, and incidental ancillary services, including disease-specific education, HIV and hepatitis education and testing, and urinalysis screening.

In addition, under my direction, behavioral intervention services will be provided to reduce the manifestations of the medical disorders being treated.

To the extent that behavioral intervention services are provided, they will be of the type that accompanies any serious illness and would be irresponsible for a treating physician to forego. For example, the previous tenant of this space, a cardiologist, routinely would have provided behavioral intervention counseling to reduce the severity of heart disease and minimize the likelihood of heart attacks. Similarly, another tenant of 364 Dorset, an oncologist, would normally provide advice and education on issues co-occurring with specific malignancies -- side effects of medication, risk of depression -- together with appropriate referrals to other providers for treatment of those issues. The advice and education provided at the Facility will be of the same general type, but specific to opioid dependency.

The offices within the facility will be used exclusively to provide the services described above and for administrative purposes in direct support of the medical mission, such as reception, bookkeeping, billing, etc.

Dated at Burlington, VT this 6th day of August, 2012.

HowardCenter, Inc.

By

John Brooklyn, M.D.

Supervising physician for the Facility

CITY OF SOUTH BURLINGTON
ZONING PERMIT APPLICATION

ATTN: Robert Bick

Applicant: HowardCenter, Inc. Application No: _____
[office use only]

Applicant Address: 208 Flynn Ave., Suite 3J, Burlington Daytime phone: 488-6125

Property Street Address: 364 Dorset St., Suite 101, So. Burlington VT 05403

Property Owner: Dorset Street Real Estate Holdings, LLC

Address: c/o So. Burlington Realty, LLC
P.O. Vox 2204, So. Burlington, VT 05403 Tax Parcel ID No. 0570.00366 C

Parcel Size: 2.3 ac.

1. PROPOSED project including building dimensions (describe): Interior renovations to Suite 101.
Suite 101 is on the first floor of the building and consists of 9,696 sq.ft.

2. Present use of property (e.g. single family home, garage, commercial building, etc): _____
Medical office (last use)
Present structure(s) on property (describe including dimensions or square footage): _____

3. PROPOSED use of property (please describe in detail any change in use of property): _____
Medical use

4. ESTIMATED total cost of improvements: \$ 103,200.00

ATTACH SKETCH PLAN (see attached sketch plan instructions) OR SITE PLAN.

5. Building footprint - i.e. size in sq.ft of main floor of house and all attached and detached structures including enclosed breezeways, garages, and sheds (describe):
10,000 sq.ft., more or less.
Total square feet of other impervious surfaces on site (i.e. driveways, patios, decks) 84,007 sq.ft. total

6. APPLICANT/OWNER CERTIFICATION

The undersigned property owner hereby consents to submit this application and understands that if the application is approved the Zoning Permit and any attached conditions will be binding on the property

[Signature] John G. Jaeger
 Property Owner Signature
 authorized agent
 PRINT NAME
 Date: 8/6/2012

The undersigned applicant hereby affirms that the information presented in this application is true, accurate and complete

[Signature] John Brooklyn
 Applicant Signature
 authorized agent
 PRINT NAME
 Date: 08/06/2012

OFFICE USE ONLY - ADMINISTRATIVE OFFICER ACTION - OFFICE USE ONLY

DATE Received _____ FEE Received \$ _____ Identification of zoning district _____

Identification of proposed use	Permitted	Conditional
PROPOSED USE TYPE	_____	_____
Date of SITE PLAN approval/denial	Approval Date _____	Denial Date _____
Date of SUBDIVISION approval/denial	Approval Date _____	Denial Date _____
Date of CONDITIONAL USE approval/denial	Approval Date _____	Denial Date _____
Date of appeal VARIANCE approval/denial	Approval Date _____	Denial Date _____
Date of MISCELLANEOUS approval/denial	Approval Date _____	Denial Date _____

**FINAL ADMINISTRATIVE OFFICER ACTION
 ZONING PERMIT**

APPROVED _____
 Approval Date _____ Administrative Officer's Signature _____
 Permit EFFECTIVE date _____ Permit EXPIRATION date _____

DENIED _____
 Denial Date _____ REASON for DENIAL _____
 Administrative Officer's Signature _____

Notice of Appeal Rights: Any interested person may appeal this decision by filing a written Notice of Appeal with the clerk of the Development Review Board within fifteen (15) days of the date of this decision. The notice of appeal must be accompanied by a filing fee of \$113.00

This permit does NOT authorize commencement of any development activity approved by the permit until the permit takes effect as set forth above. Site modifications and improvements made prior to this permit becoming effective may be subject to removal and site restoration if a timely appeal is commenced.

The applicant or permittee retains the obligation to identify, apply for and obtain relevant state permits for this project. Call (802) 379-5676 to speak with the regional Permit Specialist.



southburlington
PLANNING & ZONING

NOTICE OF ZONING PERMIT

PROPERTY OWNER DOLSET STREET REAL ESTATE HOLDINGS

PROPERTY ADDRESS 364 DOLSET ST, STE 101

THIS PERMIT AUTHORIZES THE FOLLOWING WORK:

INTERIOR RENOVATIONS FOR MEDICAL OFFICE USE

ISSUE DATE 8/24/12 PERMIT NUMBER ZP 12-252

EFFECTIVE DATE 9/9/12

[Signature]
ADMINISTRATIVE OFFICER

This permit will be issued in accordance with the South Burlington Land Development Regulations.

Post this card on the construction site in full view of the public.

All work authorized by this zoning permit must start within six (6) months of the effective date of the permit.

This permit shall take effect on the effective date above, unless appealed to the South Burlington Development Review Board prior to that date.

The applicant or permittee retains the obligation to identify, apply for, and obtain relevant state permits for this project. Call 802.879.5676 to speak with the regional Permit Specialist.

South Burlington School District
9/7/2012
check #000110515
\$233.



southburlington
PLANNING & ZONING

Application #AO - 12-02
(office use only)

NOTICE OF APPEAL

All information requested below must be completed in full. Failure to provide the requested information on this notice will result in rejection of your application and delay in the review of the appeal before the Development Review Board.

I understand:

- the presentation procedures required by State Law (Section 4468 of the Planning & Development Act);
- that the Development Review Board holds regular meetings twice a month;
- that a legal advertisement must appear a minimum of fifteen (15) days prior to the hearing on my appeal.
- I agree to pay the required fee to offset the cost of the hearing on my appeal.

1) NAME AND ADDRESS OF APPELLANT(S):

South Burlington School District

1a) EMAIL ADDRESS OF APPELLANT(S)

dvoung@sbschools.net

2) LOCATION AND BRIEF DESCRIPTION OF PROPERTY AT ISSUE IN THIS APPEAL:

The Frederick H. Tuttle Middle School and the South Burlington High School (500 to 550 Dorset Street) are located within 1000 feet of the proposed Methadone Clinic.

3) WHAT ACTION OF THE ADMINISTRATIVE OFFICER ARE YOU APPEALING?

Issuance of a permit for application number ZP-12-292. Appellant is concerned about a failure to recognize the proximity of the Methadone Clinic to South Burlington High School and Frederick H. Tuttle Middle School and the increased traffic volume in an already congested area.

4) WHAT PROVISIONS OF THE LAND DEVELOPMENT REGULATIONS ARE APPLICABLE TO THIS APPEAL, IF ANY?

The Clinic is located on Dorset Street to the north of I-189, which places it in Traffic Overlay Zone 2. See LDR 10.02 E (2). The Methadone Clinic is expected to serve an estimated 400

patients per day, with an additional 580 on a wait list, which will result in increased walking, car, and CCTA traffic which poses significant concerns. It does not appear the sufficient consideration of the traffic generated and impacts on City access management Goals has been given to this permit application as required by LDR 10.02 E, F and G.

In addition, the proposed location of the Methadone Clinic is within 1000 feet of the two schools with more than 1,400 students and 350 employees. Appellant is concerned that not enough analysis of potential safety concerns was done given the proximity of the Methadone Clinic to a vulnerable population. Individuals needing this service may likely need other supports which also increases Appellant's concern for student and staff safety.

5) WHAT RELIEF DO YOU WANT THE DEVELOPMENT REVIEW BOARD TO GRANT?
Appellant requests that the permit be denied.

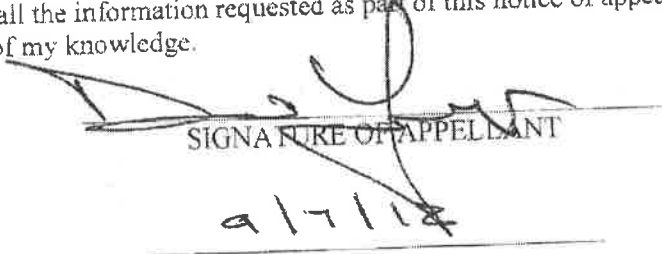
6) WHY DO YOU BELIEVE THAT THE RELIEF REQUESTED IN NUMBER 5, ABOVE, IS PROPER UNDER THE CIRCUMSTANCES?

As noted above in paragraph 4, Appellant is concerned that a proper review of the requested permit did not include an analysis under LDR 10.02 concerning an influx of clinic patients and the attendant increase in automobile and foot traffic.

Additionally, due to the proposed location of the Methadone Clinic to the South Burlington High School and Frederick H. Tuttle Middle School campus, Appellant is concerned with the real potential for inappropriate interactions between patients and students, which may put the student at risk.

NOTE: NOTIFICATION of ADJOINING PROPERTY OWNERS: Notification of adjoining property owners, in accordance with 24 V.S.A. §4464(a) and Section 17.06(B) of the South Burlington Land Development Regulations, is the responsibility of the appellant. After deeming a request complete, the Administrative Officer will provide the appellant with a draft meeting agendas or public hearing notice and sample certificate of service. The sworn certificate of service shall be returned to the City prior to the start of any public hearing.

I hereby certify that all the information requested as part of this notice of appeal has been submitted and is accurate to the best of my knowledge.


SIGNATURE OF APPELLANT

9/17/14
DATE

Natural materials. Indigenous materials such as plants, shrubs, trees, wood that is stained or painted a neutral brown or grey color, unpainted stone, and unpainted brick. "Natural materials" shall not include glass or concrete for purposes of these Regulations.

Night club or private club. An establishment dispensing liquor and/or meals and in which music, dancing, or entertainment is conducted.

Nonconforming lot or parcel. A lot or parcel that does not conform to the present Regulations covering dimensional requirements but that was in conformance with all applicable laws, ordinances and regulations prior to the enactment of the present bylaws, including a lot or parcel improperly authorized as a result of error by the administrative officer.

Nonconforming use. A use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present Regulations, including a use improperly authorized as a result of error by the administrative officer.

Nonconforming structure. A structure or part thereof that does not conform to the present Regulations but was in conformance with all applicable laws, ordinances and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the administrative officer.

Nonconformity. A nonconforming use, structure, lot, or parcel.

Non-point runoff. Surface water entering a stream or drainage way from no definable discharge source.

Not-for-profit organization. An entity organized, managed, and existing as a nonprofit or not for profit corporation under Title 11B, Chapter 1, of the Vermont Statutes Annotated.

Nuisance element. Any environmental pollutant, such as noise, radioactivity, vibration, glare, smoke, odor, air pollution, dust, liquid waste, solid waste, or heat.

Nursery. See commercial greenhouse.

Nursery school. See day care facility.

Nursing home or convalescent home. See skilled nursing facility.

Office. A room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government.

Office, medical. Any establishment where human patients are examined and treated by doctors, dentists or other medical professionals but not hospitalized overnight. Medical office may include as an ancillary use the assembly, fitting, testing and sale of products directly related to the medical service provided in the same establishment.

in and on the above referenced studies and maps as Zones A, AE, or A1-30.

- (b) **Floodplain Overlay (Zone 0.2%) Subdistrict.** The boundaries of the Floodplain Overlay (Zone 0.2%) Subdistrict shall include those areas of special flood hazard designated in and on the above referenced studies and maps as Zone 0.2%.

(2) **Traffic Overlay District.**

- (a) The boundaries of high-volume roadway segments and the balance of restricted roadway segments within the Traffic Overlay District shall include the entire right-of-way of all delineated roadway segments. Cross-streets are not included.

- (b) The boundaries of major intersections within the Traffic Overlay District shall include all approaches to the intersection. Any dimensional approach as shown on the Traffic Overlay Zone Map shall be measured from the point of intersection of the street centerlines at the major intersection. The first fifty (50) feet of un-dimensioned minor cross-streets shall be included within the boundaries of the major intersection.

- (3) **Park and Recreation District.** The boundaries of the Park and Recreation District shall include all City owned or leased parkland and all lands owned by the Winooski Valley Park District; also, all future land granted to or purchased by the City for use as public parkland shall be included in the Park and Recreation District at the time of the grant or purchase.

- (4) **Airport Approach Cone.** The boundaries of the Airport Approach Cone, as shown on the Official Zoning Map, include all approaches to the runways at the Burlington International Airport. Angles and widths of the approach cones are more specifically defined in the 1991 Airport Master Plan Update Burlington International Airport, or most recent update.

3.02 Official Maps and Other Maps

A. Official Zoning Map. The Official Zoning Map describes the different and separate districts of the City of South Burlington set forth in Section 3.01. The Official Zoning Map is filed in the office of the City Clerk and is incorporated herein by reference.

B. Overlay Districts Map. The Overlay Districts Map describes the different and separate overlay districts of the City of South Burlington set forth in Section 3.01. The Overlay Districts Map is filed in the office of the City Clerk and is incorporated herein by reference.

