

Montpelier Planning Commission
Public Hearing to Consider Proposed Zoning and Map Amendments
December 1, 2004
City Council Chambers, City Hall

Subject to Review and Approval

Present: David Borgendale, Chair; Carolyn Grodinsky, Vice Chair; Anne Campbell; Curt McCormack; Richard Sedano; Irene Facciolo; Marjorie Power
Staff: Valerie Capels, Planning & Community Development Director

Call to Order

The hearing was called to order by Mr. Borgendale.

Comments from the Chair

Mr. Borgendale explained the process that would be followed in conducting the public hearing. He also noted that because concerns about conflicts of interest among planning commissioners have been brought to his attention, he would like to publicly disclose any associations that might be perceived to relate to the hearing subjects. Mr. Borgendale said that, in the past, he was a member of the Friends of Sabin's Pasture. Mr. Sedano said that he lives on Sabin Street, his property abuts the college property and he gave money to the Friends of Sabin's Pasture before he became a Planning Commission member. Ms. Grodinsky said that she is a member of Friends of Sabin's Pasture. Mr. McCormack said that he might be a member of Friends of Sabin's Pasture, but was not sure; he never gave them money.

Mr. Borgendale said that there were two proposed amendments. One amendment proposed changes to the City bylaws and one amendment proposed changes to the zoning map. The Planning Commission would like to hear what the public likes, what it does not like, and what suggestions and ideas the public can offer the Planning Commission. He asked that initial comments be limited to five minutes in order to give everyone an opportunity to speak. He added that there may be an opportunity for commentators to sign up to speak a second time.

Mr. Borgendale introduced Ms. Facciolo and asked her to give some background information. Ms. Facciolo said that the Planning Commission had developed a concern that it did not have the expertise to rewrite Montpelier's zoning to fit into a new model for which Sabin's Pasture would serve as a start. The City Council formed a subcommittee made up of three City Councilors (Chris Smart, David Grayck and Jim Sheridan) and one Planning Commission member (Ms. Facciolo). The subcommittee was formed to look into the Sabin's Pasture zoning and, potentially, city wide zoning and to look for a consultant. The subcommittee sent a request for proposals to consultants across the country. It did not receive any timely responses from interested Vermont planning firms. The subcommittee asked for proposals addressing fees and including copies of actual zoning regulations that the consultants had written. The subcommittee and other citizens looked at the sample ordinances for attributes including clarity and ease of use. The group tested the ordinances with real life examples. The consulting firm, DPZ and their SmartCode, came out at the top of the list. The subcommittee worked with the consultant on the SmartCode and developed a draft for Montpelier. The draft fleshed out an open

space zone and a traditional neighborhood zone that would emulate some of the older neighborhoods in Montpelier. The draft proposal that is the subject of the hearing is the result of the subcommittee's work. They hope it will serve to start the public comment process to serve as the basis for revision. It is also hoped that it will also be the start of a city wide process for rezoning.

Mr. Borgendale acknowledged that it had received written comments including those from the Housing Task Force, Gossen Bachman Architects, Paul Charanahan, Valerie Capels, Steven Syz and Jay Ancel. He then called on the public commentators.

Public Comment

June Bascomb, 11 Sabin Street, said that she would like to remind folks of the Montpelier town meeting where discussion groups were organized. Those discussions represented a broader range of citizens that may be heard from at the public hearings and Planning Commission meetings. The results of the discussions showed that the residents want to preserve open space, provide for low and moderate income housing and, overwhelmingly, to maintain Montpelier in its current form. She believed those three values are compatible. The traditional neighborhood design would provide those benefits for Sabin's Pasture in particular and the city in general.

Jan Mueller, 260 Elm Street, said that he is a resident with a background in landscape architecture and planning, but is speaking as a resident. He is familiar with DPZ's work around the country. He thinks what the City is trying to accomplish is great, but there are more creative tools out there. He would like to see a suite of creative solutions used to achieve the goals, but is not presently seeing that. He added that it is not clear why a special focus is directed to one property when the goals are city wide. He offered to assist the Planning Commission in its work.

Shawn Bryan, Vice President of National Life, said that National Life pays more than \$1.1 million in property taxes to the city. The current Master Plan identifies the National Life property as an area where commercial development may occur. The Master Plan amendment process should precede any zoning amendments. There would be no way to determine whether the zoning amendments were consistent with the Master Plan until the Master Plan amendment process was completed. The zoning approach is complex and there should be an opportunity to hear from everyone who might be affected. He provided a copy of his written comments.

Jim Libby, co-chair of Montpelier Housing Task Force, said that the Housing Task Force (HTF) submitted an alternative proposal a few years ago. The HTF liked the smart growth aspects of the SmartCode, such as the transfer of development rights, more housing options, and inclusionary zoning. The HTF does not think it is appropriate to apply the current zoning proposal to the 112 acres. The proposal does not transfer density, but, instead, sends it off into space. The Master Plan should be amended first and this proposal is not consistent with the current Master Plan. The entire city should be addressed in the zoning. The City should consider purchasing Sabin's Pasture. He provided a copy of his written comments.

Tom McKenna, 203 Bliss Road, said he would like to see the upper part of the pasture preserved and some mixed use along Barre Street. There has been much discussion of affordable housing. Such housing is made affordable by lowering construction standards or providing public subsidies. He did not believe that either approach was good for the city. Almost one half of the city's current housing units are rentals, but home ownership results in better maintenance and upkeep of properties. The City should not seek to expand the number of rental units. Housing does not pay for itself and increasing housing will result in increased demand for services and increased taxes.

Dot Helling, 29 East State Street, read from her written comments. She said that Sabin's Pasture is a lovely place that must be considered in a citywide assessment to reach a balance between open space and housing needs.

Rich Hansen, 5 West Street, said that he was a representative on the Union Institute University and Vermont College and a resident. Union Institute is interested in enhancing a viable campus on its 36 acres. Roughly one half of the property is included in the zoning proposal. The T-1 zoning designation renders most of the property economically neutral. Union Institute does not want the City to take an action that would harm the Institute economically. Union Institute is involved in discussion with the New England Culinary Institute and the Central Vermont Land Trust regarding the construction of housing for NECI on the 18 acres that is currently zoned HDR. Mr. Hansen said that the project is unlikely to be possible under the proposed zoning amendment. He recommended that the current zoning designation be maintained on the Union Institute property. The University has worked with the City under the academic institutional planned development provision of the ordinance. This provision provides flexibility for the Institute and the City and he did not see such a provision in the proposed amendment. The Master Plan needs to be updated first instead of singling out specific properties. The Union Institute will be glad to participate in a solution that allows it to maintain the economic viability of the property.

Jim Abrams, 1 McKinley Street, thanked the Planning Commission for the amount of work that it has done and has planned. He supports preserving some part of Sabin's Pasture for future generations. Mr. Watkins, of DPZ, noted that Montpelier has much of what other communities want to bring back or achieve. The original development proposal for Sabin's Pasture was not in keeping with the character of Montpelier. He suggested that the Planning Commission focus on developing tools to maintain the character and charm of Montpelier as its goal and avoid getting lost in details.

Gordon Hall, 5 McKinley Street, said that he looked at the SmartCode, the revised second version, and the proposed draft. Chris Smart deserves thanks for putting it in a form that fits Montpelier. The City needs to have vision now to create quality open space in perpetuity for future citizens of Montpelier.

Tim King, Director of the Central Vermont Community Land Trust, said that the Land Trust is the owner of property in Montpelier and a developer of affordable housing. He would like to see some development potential maintained on the subject parcels and that the proposed zoning lines do not

allow for the maximum flexibility to accomplish this. He would like to see the process slowed down and the Master Plan completed before the rezoning. He encouraged more density be permitted to allow for cluster density. There is a need for more housing in the city and he sees many first time home buyers who cannot find units in the city.

Rachel Castle, 1 Hopkins Street, read a petition requesting that the City Council suspend the rezoning of any parts of the city until the 2005 Master Plan is completed. She said that more than 500 people have signed the petition. A copy of the petition was provided.

Lyman Castle, 1 Hopkins Street, asked the Planning Commission what the hurry was. He said that Ms. Capels put together a nine-page document in which she voiced real concerns with the proposal. The City hired her as a professional in this field and the Commission should take her comments into consideration. He said that Mr. Watkins said that proposal does not follow SmartCode principles because density should generally be addressed on individual parcels. Mr. Castle said the Commission needs to slow down the process and do this right.

Angeles Zorzi, 367 Barre Street, read from a letter stating that she was born in and lived in Montpelier her entire life. She said that she owns, with her brother, the 95 acres incorrectly referred to as Sabin's Pasture. The property was purchased by her parents 61 years ago. Her father immigrated to this country from Spain when he was 18, worked on his brother's farm and later sold meat from a truck. Her father was well loved by the community. Her mother came to this country at the age of 16. Her parents married and saved enough money to buy Sabin's farm in 1943. Before his death, her father said that, unlike his father, he hoped to leave something to his children. Ms. Zorzi said that she wants everyone to know that the land is posted. She never walked, had picnics or camped on her neighbors yards. She has found chairs, tables, sofas, garbage and shelters placed on her property. She wanted to let everyone know that what has happened to her could happen to others. She said that others may own land for 20 years, pay taxes, and plan retirement only to be told by the neighbors that you cannot sell the land.

Doug Zorzi, 8 Judson Drive, read a letter dated December 1, 2004 signed by Angeles A. Zorzi which raises conflict of interest issues regarding Commissioner Mr. Sedano. A copy of the letter was provided. Mr. Zorzi noted that he was also presenting a letter to Mayor Hooper raising identical issues regarding Councilman David Grayck.

Fred Connor, 228 Maplewood Road, said that the proposal represents a 90% taking of the Union Institute and Zorzi properties without compensation. He read from his letter of December 1, 2004 urging the Planning Commission to suspend consideration of the zoning proposal until the 2005 Master Plan has been completed. A copy of the letter was provided.

Alan Goldman, 1014 Terrace Street, presented a chart summarizing development projects undertaken in Montpelier in the last 15 years. He offered his conclusion that the development that has been occurring is consistent with SmartCode concepts. He said there is no rush because development is

proceeding in a manner that is consistent with the City's goals. The City should extend the interim zoning and take time think about what it is doing.

Eric Seidel, New England Culinary Institute and the Housing Task Force, said NECI is planning to move its corporate administrative functions to the Union Institute campus and the proposed T-1 classification would negate months of planning that would free up 20 rental units in the city. He said that the Master Plan should be revised prior to the rezoning and the entire city should be rezoned at the same time. Additional comments are summarized in his notes, a copy of which was provided.

Eddie Walbridge, 28 Pleasant View, said that he has a nice view of Sabin's Pasture from his property. The Friends of Montpelier have made good points. He would ask the City Attorney whether someone has the right to prevent an owner from doing something on his property because they do not like it.

Sandy England, 749 Towne Hill Road, expressed concern that the zoning proposal would take 85%-90% of the Aja-Zorzi and Union Institute property without compensation. Just because a landowner allows people to use his land, confiscation of his development rights is not justified. He noted that no members of Friends of Sabin's Pasture have offered to give up 85%-90% of their future retirement assets as the Aja family is being asked to do. He urged the Planning Commission to strongly consider the opinions offered at the hearing, to abandon SmartCode and to proceed with the Master Plan update.

Nancy Wasserman, 17 Kent Street, said that she was a former member and chair of the Planning Commission and is familiar with Chapter 117. Her biggest concern is that the goals should be developed in the Master Plan first and the zoning regulations should then implement the Master Plan. Nothing in the current Master Plan contemplates open space on the parcel or speaks of housing on the lower portion of the parcel. She said that the proposed amendment combines the worst of the current zoning scheme with some of the worst ideas out of traditional neighborhood design. The reason to start with the Master Plan is to address infrastructure and companion issues that will help to make zoning meet the goals. Chapter 117 requires that all zoning bylaws apply to all lands in the municipality. She asked the Planning Commission to get a legal opinion to avoid litigation regarding the use of dual zoning rules.

Recess

Mr. Borgendale called for a short recess. After reconvening the hearing, Mr. Borgendale said that the Planning Commission will be meeting on December 3 at 3:00, on December 6 at 5:00, tentatively on December 10 at 4:00 and on December 13, 2004 at 7:00. He said that all of the meetings will be held in the Memorial Room and that public attendance is welcome.

Public Comment

Christine Zachai, 4 Edwards Street, read the statement of the Montpelier Conservation Commission, a copy of which was provided. She said the Conservation Commission supports the balance of conservation and housing that the proposed zoning represents. The Commission supports the adoption

of a version of SmartCode that fits Montpelier. The City needs a diversity of tools including both zoning and conservation and to use conservation overlays to accomplish the land conservation goals.

Aaron Brondyke, 4 Edwards Street, said that his written comments are more extensive than his remarks. A copy of written comments was provided. He said that the community is struggling with its identity, but it is a city. In the city, open space should be subordinate to residential and commercial uses. A portion of Sabin's Pasture should be purchased for use as a public park. DPZ's SmartCode model should be applied citywide and that the application of SmartCode to only the Sabin's Pasture properties is does not reflect the SmartCode principles. The zoning for the upper portion of Sabin's Pasture should eliminate the potential for suburban style development in that area. Parkland is preferable for the upper portions, but even a small lot subdivision would be preferable to a large lot subdivision.

Clare Booth, 4 Blackwell Court, suggested that, if this plan goes forward, the Planning Commission should consider high density to better address sprawl. She said that upper Barre Street has a density of 35 units per acre and the density further down Barre Street is 15 units per acre. The Capitol Apartments are at a density of 25 units per acre. These densities are acceptable to residents of Montpelier. She urged the Planning Commission to consider these types of densities, especially if development is restricted to a small area.

Ken Matzner, 260 Cityside Drive, said that he supports the SmartCode. He said that, if the city burned down today, it could not be rebuilt under the current code. SmartCode would reduce the number of variances issued in the city. Ms. Capels' document indicates that the Master Plan does support the zoning that is being proposed. The Planning Commission should proceed with its work in a collaborative process to make the zoning lines more realistic on the Sabin's Pasture parcel.

Polly Nichol, 11 Lincoln Avenue, said that she is a member of the Housing Task Force. She read from the letter that the Task Force submitted, a copy of which was provided. The Task Force hopes that the Planning Commission will keep the positive aspects of the proposal like the concept of development by right, smart growth concepts, the traditional neighborhood design and density bonuses for affordable housing. The Task Force would support conservation of the upper pasture as long a reasonable density is transferred to the lower pasture. The first step in the process is to revise the Master Plan. She is concerned that the proposal is for one code for the Sabin's Pasture area and another for the rest of the city. The Task Force thinks that the method of calculating density is confusing and that a density of 10 units per acre is too low since the current HDR zone allows 29 units per acre. The current HDR designation should be maintained for the Union Institute and extended across the Zorzi property, but not at the elevation currently proposed which results in too small an area. She raised concerns with the micro-management of design details contained in the code. Some of the required details such as buried utilities or the prohibition on vinyl siding might make affordable housing infeasible. The conservation area should be based upon the natural resources that are to be protected.

Tim Heney, 55 Windham Drive, said that his family has been responsible for the creation of good, affordable housing in the community. He said that is concerned that the current code that has evolved over many years is being thrown out. He suggested that it would make more sense to correct and clarify the existing code. The zoning subcommittee did not seem to use the expertise of the Planning Department. Good process is important to get good policy with public support. He asked the chair to consider asking the City Attorney the question regarding confiscation of private property without compensation. Mr. Borgendale responded that the question and other issues will be discussed with the City Attorney at the upcoming meeting on December 6.

Jack McCullough, 20 Towne Street, said that the constitution provides that the government can take property for valid public use if they compensate the property owner. The Supreme Court has said that if the government removes all use of a land, it is a taking. The Court also rejected the argument that there is not taking if some use of the land is allowed. The second issue relates to spot zoning which has been condemned as a violation of zoning principles and the constitution. This current situation is spot zoning based upon the Vermont Supreme Court definition, which is zoning singling out a small parcel or lot for a use classification different from surrounding land and inconsistent with any comprehensive plan for the benefit of a land owner, or zoning singling out a parcel based on attempts by adjacent landowners to have a parcel reclassified to avoid a use permitted by existing law. He said that is what we have here. In subsequent cases, the court defined spot zoning based upon a four-part test consisting of whether the use of the parcel is very different from the prevailing use of other parcels in the area, whether the area of the parcel is small, whether the classification is for the benefit of the community or only to provide specific advantage to a particular landowner, and whether the change in the zoning classification complies with the Master Plan. Mr. McCullough suggested that the proposal violates all four of these principles and violates the law. He knows there is room for debate on these points, but the City should get legal advice before doing anything. The property owner may decide to litigate because the City's legal position is not a "slam dunk." He added that the basic question is whether this is any way to treat people and said that he did not think so.

Ed Larson, Towne Hill Road, said that he is a resident, a forester, a Montpelier Housing Authority board member, and Montpelier's representative on the Regional Planning Commission. He does not endorse the proposal before the Planning Commission. His sympathies lie with the land owners, not the residents who like to recreate on the property. He supports a viable working landscape. It is appropriate to embrace another opportunity to create a new neighborhood in the city to avoid pushing the housing demand out to surrounding lands that are part of the working landscape. As a Regional Commissioner who wrestles with the questions of zoning and planning, he believes that the Master Plan really should be done first. It is an important tool for considering the impacts of zoning changes on aspects like infrastructure, the economy and neighborhood impacts. The current Master Plan can be adopted for up to five years to allow time for proper planning. He did not consider the proposal as conservation. It is in the best interest of some, but not of the whole city. It will push demand out to other locations and that he did not agree with the zoning technique.

David Kidney, 4 McKinley Street, thanked the Planning Commission for the time and effort that it has dedicated to this issue over the past two years. He did not find that the process has been rushed. There is a lot of common ground between the Friends of Sabin's Pasture, the Housing Task Force and those that disagree. He did not think anyone should be questioning the ethics of the Planning Commission members. The Friends of Sabin's Pasture submitted a petition for rezoning the area and the Housing Task Force did something similar. The Planning Commission responded by saying that the existing zoning did not contain the proper tools to achieve the goals for the site. The Friends of Sabin's Pasture had a consultant develop a plan using the existing code with a conservation overlay. He noted that traditional neighborhood design is another tool to accomplish the goal, which is to achieve a neighborhood like the Meadows while saving the upper pasture. The consultant came up with a zoning line following the 400-foot elevation contour and the Housing Task Force came up with a line on the 600-foot contour. The zoning committee's proposed use of the 610-foot contour seems reasonable. He had submitted a memo on April 14, 2003 addressing the taking and spot zoning issues. He believed that it was a legal "slam dunk." He suggested the Planning Commission ask its attorney for advice but also asked that the memo be considered. He believed that everyone in the room has the interests of the whole city in mind. Housing with green space behind it would be a benefit to the city. The neighborhoods along Barre Street need open space. Delay is not needed, but if there is to be a delay, the interim zoning should be extended to maintain the status quo.

Alan Goldman, 1014 Terrace Street, asked why the Commission does not want to answer the legal questions regarding the T-1 zone now. He asked what the tax implications of applying the T-1 zoning across the city would be. The T-1 zoning means no trails and no recreation, no pedestrian access. He asked how the community as a whole would benefit from this.

Michael Hoffman, 11 Sabin Street, said that he is a professor of architecture at Norwich University. He used to run the Vermont Design Institute that ran workshops with planning commissions that did not have the tools to fully understand the impacts of their decisions on the community. The City has lived with a bad, patched zoning code for more than 50 years. The Commission's path of rewriting the zoning code at the same time as the Master Plan update is an appropriate response to a petition for a change. The discussions at the town meeting were part of the Master Plan process. The Master Plan process is ongoing with the zoning process. The zoning proposal is intended to be part of the city wide zoning implementation. It is not spot zoning, but is piecemeal because of the circumstances that have set it out. This is a powerful and useful circumstance that will allow the city to develop a plan in the interest of the city as a whole for the next 50 years.

Ken Jones, 75 Clarendon Avenue, said that he is a member of the Conservation Commission, but is expressing his opinions as a citizen. He would be disappointed if the Planning Commission either accepted the proposal as it currently exists or totally rejected the proposal. He encouraged the Commission to identify the positive aspects of the proposal and focus on the decisions regarding how to "not develop." There is a lot of room to address the issues of the majority of the residents and move forward. The old Master Plan is not giving the guidance the Planning Commission needs to address Sabin's Pasture. Instead, the Sabin's Pasture process will inform the development of the new Master

Plan. The real measure of success will be whether someone develops the property. Having more housing opportunities will strengthen the city because development that is forced into surrounding communities is putting pressure on City systems and decreasing downtown vitality.

Lyman Castle, 1 Hopkins Street, said that everyone seems to be saying the same things. The community needs to figure this out. He was disgusted by the use of the term "slam dunk" and the idea that this could be decided by two attorneys in court.

Paul Giuliani, said he remembers Mr. Aja as a kind man who allowed all of the neighborhood kids to play on his land. Mr. McCullough's comments were right on point. He urged the Planning Commission to insist on a detailed opinion on conservation and spot zoning as it applies to the T-1 zoning. Those questions must be resolved satisfactorily and the issues are not fully settled in Vermont law.

Sandy England, 749 Towne Hill Road, asked whether the consultant had provided the responses that he had promised at a previous meeting and whether the public could see them. Ms. Capels said that she had not yet received them, but will share them when she does.

Alan Goldman noted that much of what has been happening is based on fear. He said that many large land owners are now fearful and are posting their land. He asked the Commission to consider that situation.

Adjournment

Mr. Borgendale closed the hearing. He said the Planning Commission will take this matter up again on December 3 at 3:00. Ms. Power made a motion to adjourn the meeting. Ms. Grodinsky seconded the motion. The motion was approved unanimously.

Respectfully submitted,

Valerie Capels

These minutes are subject to approval by the Planning Commission. Changes, if any, will be recorded in the minutes of the meeting at which they were acted upon.

Transcribed by Kathleen Swigon