

**Montpelier Planning Commission**  
**November 28, 2005**  
**City Council Chambers, City Hall**

*Subject to Review and Approval*

**Present:** Marjorie Power, Chair; Carolyn Grodinsky, Vice-Chair; David Borgendale; Anne Campbell; Craig Graham; Ken Jones; Richard Sedano  
Staff: Valerie Capels, Planning & Community Development Director

**Call to Order**

The meeting was called to order at 6:00 by Ms. Grodinsky. She said that she would chair the meeting until Ms. Power arrived.

**Minutes of November 7, 2005**

The commission deferred action on the minutes.

**Review of agenda**

Concern was expressed that there were too many items on the agenda for Commission to work through in one evening. Ms. Campbell referred to agenda item #9, building form/design review. Ms. Capels suggested that be combined with agenda item #8 since there was nothing yet to review. Ms. Power said she would like to move the discussion of schedules to the end of the agenda since the commission tends to spend too much time discussing and revising schedules.

**Public Appearances**

Robert Lorenz of Lague Drive proposed that the City adopt a bonding requirement for developers. He had a telephone line torn down by a trailer delivering a double wide trailer to a nearby lot on Overlook Drive. He said the responsible parties have not paid for the damage. He was concerned that an electrical line could have been torn down, resulting in frozen pipes and other damage. Mr. Lorenz said the permit process should include bonds to pay residents back for out of pocket expenses when such incidences occur. He was also working with Motor Vehicles on the issue and was looking into the minimum allowable height for overhead communications wires. Ms. Power suggested calling the Consumer Affairs Division at the Public Service Department. She asked Ms. Capels whether the City has any requirements related to utility disruption. Ms. Capels said she was not aware of any. Mr. Jones asked what type of bonding would be required of a developer who was installing a double wide. Ms. Capels said the bonding would generally be limited to ensuring that infrastructure, like road improvement, is completed properly. She would review the issue with the City Attorney. Mr. Jones suggested that bonding should include repair of potential damage to public property like curbing. Ms. Power said that the commission would take the comments under advisement and review what the City should be doing in similar cases.

**Master Plan Amendments for Child Care and Data Updates**

Ms. Capels summarized the draft documents that were mailed to the Planning Commission. The child care revisions acknowledge the importance of child care to the community. There are some blanks where the data is not available yet and those blanks will either be filled in or the sentences will be revised before the draft is finalized. She has new information regarding the Family Center that also needed to be added.

Ms. Power said the first paragraph of section 7.18 should be reorganized to start with the statement on the importance of day care to children. The discussion of family care homes

should also be removed since they are quite different from child care providers. Ms. Capels agreed, saying that was an error that occurred while she was cutting and pasting sections. Mr. Graham said the table refers to a child care facility, but it is not included in the definitions. Ms. Capels said she was pointing out that article 13 has different definitions of the same terms that should be reconciled.

Ms. Power said that recommendation "b" in section 7.8 should use the term "encourage" rather than "allow." She added that "office park district" should be replaced by "major centers of employment." Ms. Campbell recommended some wording to encourage persons seeking childcare to look into the resources at the Family Center. Ms. Power said that employers should be added to recommendation "c."

Ms. Capels said the other Master Plan addendum compiles new demographic information. She pointed out that the table with highlighted figures regarding employment might be deleted if the information cannot be made readily available. Ms. Capels also gave the commission a draft of the Planning Commission's report on these changes. Since no land use changes are proposed, most of the issues required to be addressed do not apply and it seems to be more of a transmittal document. A public hearing could be warned for January 9, 2006, which would require that a draft of the revisions and the report be available for the public by December 8. Mr. Jones asked whether there was really a need for a second hearing since the revisions were not that controversial. Ms. Capels said that the second hearing was not explicitly required, but it had been the commission's practice to hold two. Ms. Power said she thought Ms. Capels should review the housing text in the Master Plan to make sure that there are no inconsistencies with the new documents. Ms. Capels said that would be a larger project than she could take on at this point. The tables are intended to either replace or supplement the existing tables in the Master Plan so that the existing text still pertains to the information in the Plan. Ms. Campbell asked what the time pressure was on these changes. Ms. Capels said the intent was to comply with the requirements to have an approved Master Plan as soon as possible to avoid potential problems. Mr. Jones suggested holding the hearings, but not encouraging the advocates to open the document up to a lot of changes. Mr. Graham said that the changes seemed to be straightforward and should not require excessive amounts of time from the Planning Commission.

MOTION: Mr. Sedano made a motion to adopt the report, data addendum and child care addendum with the modifications that were discussed for notice of a public hearing on January 9, 2006. Mr. Borgendale seconded the motion. The motion was approved unanimously.

Ms. Capels agreed to e-mail the revised draft to commissioners prior to December 8.

### **Community Resource Overlay Subcommittee Report**

Mr. Jones referred to an outline that the subcommittee had proposed for implementing the community resource overlay approach. He described the proposed steps. He had not fully discussed the concept with the subcommittee, but his recommendation was that the DRB not independently review the ad hoc committee's findings regarding the balancing of resource values. Ms. Campbell said she would recommend that the process function like the design review process where the Design Review Committee advises the DRB, but the DRB is responsible for making the final decision. Ms. Power asked why the committee would be ad hoc rather than using an existing committee like the Conservation Commission. Ms. Campbell

said the review of the community resource inventories would require expertise that might not exist within the Conservation Commission.

Ms. Power said she had understood that every development proposal over a certain size is required to submit a resource inventory. She presumed the inventory will be done by experts, but the subcommittee report seemed to say that the inventory will then need to be reviewed by experts. Mr. Jones said the inventory report will describe potential changes to the resources. There then has to be a balancing of the impacts to the resources by trained eyes. Ms. Power suggested that such judgements should be made by the community. Mr. Sedano said it seemed that it would be better to provide the inventory without judgements and allow the DRB to do the balancing. Mr. Jones said this concept was his idea and was not discussed with the subcommittee, but he was thinking the recommendation from the ad hoc committee would not mean that the project should be built. The DRB would still review the project for compliance with all the other provisions of the zoning ordinance.

Ms. Campbell suggested that Mr. Matzner and Geoff Beyer join the discussion since they worked with the subcommittee. Mr. Matzner said the DRB can identify problems with a development proposal, but can not mandate how the problems should be fixed. The ad hoc committee could provide the DRB with recommendations on how to fix a problem. Ms. Power asked how the ad hoc group would be described and constituted. Mr. Matzner said they should have experience with the resources in question since the questions will be technical. The need for the ad hoc committee would not come up often, so it would not make sense to have a standing committee. The ad hoc committee could be put together as needed. The idea is used in Woodstock. Mr. Borgendale asked how it works there. Mr. Matzner said he did not know. Ms. Grodinsky said that she could follow up on that.

Ms. Power said that this outline seems to conflate the Master Plan conservation areas with a zoning plan conservation overlay district. She had not understood the terms to be equivalent. A conservation overlay could be assigned to an area, but the area would not necessarily cover all of the conservation area on the Master Plan. Instead, she said the conservation overlay would be created based on knowledge of a property or as a result of an inventory. Mr. Jones explained the reason for the situation is that the Commission has before it a delineated conservation area for a specific property. The City is not close to completing an inventory of the entire city that would be needed to establish overlay districts throughout the city.

Geoff Beyer passed out a copy of a map that illustrated the natural resource aspects of a conservation overlay. He said it was prepared using existing maps and information. Ms. Campbell said it shows areas where the City needs to be careful in how development occurs. Ms. Grodinsky said those could be areas where the city needs to use its tools. Ms. Power said that was where incentives could be used to encourage development in more suitable areas outside of the overlay. Ms. Campbell said the subcommittee's understanding was that the overlay district would not necessarily create incentives to move development elsewhere, but that the resources would be considered in the design of development. Ms. Power said her concept was that the community resource overlay would encourage the shifting of development to the parts of the property outside of the overlay when there was land outside of the overlay. Mr. Jones said the Planning Commission does not have the information needed to identify those areas of the city that should not be developed. He did not believe the incentives will be that effective in getting developers to transfer density. Ms. Power said it seems reasonable to

create incentives to move development from the upper pasture to the lower pasture. She did not see it as a problem.

Ms. Grodinsky said she always thought that the commission needs to vet the proposal with developers. The commission needs to know if the ideas will actually function as incentives.

Mr. Borgendale asked what the objective was and whether commission members felt the purpose of the community resource overlay is to prevent development within the overlay, if possible. Mr. Jones said he wants to see more conserved resources in Montpelier while recognizing that land is in private ownership. The link is that the owner does some development and conserves some resources, but he was unsure of whether incentives would achieve that. Ms. Power asked whether the concept was that the areas within the community resource overlay could be developed only after balancing resources. Mr. Jones said that was correct. The developer would need to give something back. Ms. Power said she thought that this approach would almost guarantee that there would be some development of the upper pasture. She said it would be possible for a developer to, first, propose development of the lower pasture as a PUD and, second, come back with a proposal for balancing development and resource protection on the upper pasture. Ms. Campbell said that, unless the land is purchased, that scenario is always possible. Ms. Power said that incentives and disincentives could be used to drive development to the lower pasture. Geoff Beyer said there needs to be a provision that the whole property be addressed. Ms. Grodinsky said the land owner cannot be permitted to do piecemeal subdivisions. Mr. Beyer said the proposal requires a community resource overlay for a subdivision. Ms. Power asked what prevents the owner from splitting off sensitive land in a subdivision with no proposed developing and then subsequently developing the rest at the underlying density.

Mr. Matzner said that, in the case of Sabin's Pasture, that situation would not occur because a visibility analysis is required. He said the proposal is an attempt to balance controls and flexibility. Ms. Power said the developer would find a place on the upper pasture with less visibility for development. Mr. Beyer said he did not see a way out of that situation without having some density transfer ability. Ms. Grodinsky said there would have to be an easement or other tool for preventing developer from going back to do more development later. Ms. Power said that only works if the PUD applies to the entire parcel. Ms. Capels said that the rules do require PUD applicants to address plans for other adjacent lands that they own. Mr. Jones said that the question is what happens when development is proposed on lands with natural resource value.

Mr. Borgendale said that the commission is faced with the feeling that it is not comfortable with an absolute prohibition of development on a property. The commission has spent a year and one half trying to create onerous conditions to prevent development and then worrying about whether there are any loopholes that would allow any development. The Commission should stop doing that. If the Commission is going to do something that is legal and will be supported by the community, it will have to recognize that there is the possibility that there could be some development on the upper pasture. Ms. Power said she believed that it would be perfectly legal to say that absolutely no development may occur on a portion of that property. Mr. Borgendale said that he used the term "legal" too loosely. He felt the commission needs to get on with this concept and not spend any more time worrying about whether a loophole has been left.

Ms. Power said that Ms. Grodinsky had raised a good issue regarding whether incentives will be commercially good enough to get developers to put development where the community wants it to go. Ms. Power said she was prepared to offer all sorts of incentives to achieve this, but would want to know whether they were viable. Ms. Campbell questioned what the commission would do differently if the incentives do not create a commercially viable drive to shift density. Ms. Grodinsky said the rules could provide for increased density on the lower pasture if a protection easement is created on the upper pasture. Ms. Campbell said that is built into the subcommittee's proposal. The community resource overlay provisions are to be incorporated into the PUD rules.

Ms. Power said that commissioners needed to read the subcommittee report and prepare their thoughts for the next meeting. Mr. Jones said he had hoped the outline could be translated into ordinance language. The subcommittee cannot move forward until the full commission comments on the direction. This will affect the schedule. Ms. Power suggested moving on and holding the discussion of the schedule until later in the meeting.

#### **Report on Chapter 117 Workshop**

Ms. Power said she wanted to report on one point that was discussed at a presentation on the Chapter 117 amendments she attended where Steve Stitzel said that changes in the statute would make it more difficult for neighbors to oppose conditional use development proposals based on the development being incompatible with the character of the neighborhood. She understood that it is now the character of the area based on the purpose statement of the zoning district that must be considered. For example, in a generally-described mixed use zone, a commercial conditional use would be allowed on a street that was entirely residential in character. She said Mr. Stitzel recommended that planning commissions look carefully at the purpose statements for specificity as to the circumstances under which conditional uses will be allowed. Neighborhood concerns about the character of the area cannot be relied upon to control the types of uses that are allowed.

#### **Sabin's Pasture / Planned Development Zoning**

Ms. Power noted that the Commission had received a copy of language prepared by the Friends of Sabin's Pasture and transmitted by Carol Dorlein. Mr. Jones said that it appeared to create a special zoning district. He was not comfortable with that approach. Mr. Borgendale said the language also seems to take back some of the DRB functions and give them to the Planning Commission. He said the Commission had previously decided that it would not be appropriate to do that.

Application Matrix: Ms. Capels said that she had revised the matrix on application requirements. She intended the matrix would replace some sections of the draft. The draft matrix still used the terms "natural resource inventory" and "cultural resource inventory" because there might be some benefit to keeping the terms separate rather than consolidating them into a "community resource inventory." Ms. Power suggested that, for now, the terms be treated the same. Ms. Capels noted that one change was that the inventories would now be required at the start of the application process. Ms. Campbell said she had previously expressed concern about requiring the inventory at the sketch plan review stage. She would like to require some impression of these things for the sketch plan stage and require a complete inventory at the conditional review stage. Ms. Power said that the information is needed to do good planning for the sketch plan. She said the DRB would need to know what the balance of resources was. Ms. Campbell

said that, if the resources were taken into consideration at the sketch plan stage, the plan would provide a good impression of the resources of concern without going to the expense of a complete inventory at that early stage. Ms. Power said that one of the City's problems in conducting inventories has been getting landowners to allow access. This requirement could be an incentive to allow access. Mr. Beyer said that Sabin's Pasture is a good example of wasted expense when a development plan that is done without an inventory. That expense could be avoided if an inventory had been done at the outset. Ms. Capels said the article by Randall Arendt about flawed subdivision processes she copied for a previous commission meeting recommended that this type of information be required at the initial stage. Ms. Campbell said she was convinced. Mr. Jones said that it would be good to highlight areas like this where the commission would like to get input from the public at the hearings.

Mr. Graham noted that the matrix said that the traffic impact analysis could be waived by the DRB. He asked whether that provision was in the current rules. Ms. Capels said that it was. Ms. Power said that she would like to see some preliminary information on traffic at the sketch plan review stage. That information would help the DRB in any decision on whether to waive a full traffic study. Ms. Campbell said she was concerned that under item 3, the DRB could waive the description of future plans for adjoining lands. Ms. Power said that she did not think there should be the ability to waive that requirement. Mr. Jones agreed. Mr. Borgendale said that he agreed, but the language needed to be clarified as it did not sufficiently address the subdivision issue. Ms. Capels said that language was not originally intended to apply to subdivision and she would like to get some guidance from the City Attorney. Ms. Power agreed that Ms. Capels should get that advice, but noted that there was a consensus within the commission that it should be addressed.

### **Scheduling**

Ms. Power said that the next two scheduled meeting dates were December 12 and December 26. Ms. Capels said that she will not be available from December 21 to December 31. The Commission agreed to reschedule the December 26 meeting to December 19.

Ms. Grodinsky said she would like to get some input on community resource overlays from the stakeholders. Mr. Sedano suggested the commission offer an open house from 6:00 to 7:00 before the meeting to invite people to come in and talk informally to the commission members. The commissioners agreed that an open informal discussion would be scheduled before the meeting on December 19. They agreed that the discussion session would be from 6 p.m. to 7 p.m. with the regular meeting beginning at 7 p.m. Ms. Grodinsky said she would e-mail the commissioners some ideas on how to let the public know of the informal discussion session.

Ms. Campbell said that she was concerned about how the Commission could meet the schedule for the January 23, 2006 meeting. Ms. Power asked Ms. Capels whether she could do the preparatory work in time. Ms. Capels said it was possible. She said the draft documents and report would have to be available for the notice 15 days prior to the meeting. She noted that the report would have to be fairly extensive. Mr. Jones said that he did not think that it was possible for the Planning Commission to finish and agree upon the drafts in time. Ms. Power said that the form-based part of the draft could generally state that the development must "look good" rather than specify design controls like minimum roof pitches. Mr. Jones expressed concern that the approach would add a new design aspect to the Development Review Board's

duties. The subcommittee working on the form-based approach agreed to meet on December 8 at 6:00 p.m. to work on the draft.

**Other**

Mr. Jones reminded the Commission of the conference that they were invited to attend on December 2 to look at trends in housing, transportation and land use. He said that a background discussion would begin at 2 p.m. and the working session on Montpelier would begin at 4 p.m.

**Adjournment**

MOTION: Mr. Sedano made a motion to adjourn the meeting at 9:45 p.m. Ms. Grodinsky seconded the motion. The motion was approved unanimously.

Respectfully submitted,

Valerie Capels

*Transcribed by Kathleen Swigon*

*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.*