

**Montpelier Planning Commission**  
**January 03, 2006**  
**Community Room, Police Department, Pitkin Court**

*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 by Ms. Power at 6:00 p.m.

**Minutes**

Mr. Sedano made a motion that the minutes of the December 12, 2005 Planning Commission meeting be approved. Mr. Graham seconded the motion. Ms. Campbell questioned the accuracy of certain statements in the last paragraph on page 1. After some discussion, the Commission affirmed the paragraph accurately reflected the discourse. The Commission approved the minutes by a vote of 4-0 (Ms. Grodinsky and Mr. Jones abstained).

**Review of Agenda**

Ms. Grodinsky noted that Yvonne Bird of the Capital Justice Center was present and recommended she and the discussion of the public information be added to the agenda. Commissioners concurred.

**Public Appearances**

There were no public appearances.

**Discussion Public Informational Meeting**

Ms. Grodinsky said that she had sent a proposal by e-mail to commissioners about the public meeting. Ms. Capels said she had copies if any members of the public wished to see the proposal. Ms. Grodinsky introduced Yvonne Byrd to discuss the possibilities for the meeting.

Yvonne Byrd said she understood the Planning Commission is interested in a process that would maximize the understanding between the Planning Commission and the public. She proposed the meeting have structure, but also a lot of opportunities for people to be heard and to have questions answered. She suggested a circle process where a talking piece would be used to designate whose turn it is to talk. She was still working on the talking points, but had developed the following ideas for the Commission:

- What has been your intent in preparing this zoning revision?
- What is new, what is the same?
- What ideas have been discussed, but not included?; and why not?
- What benefits will come to Montpelier as a result of this plan?
- What are you concerned about in presenting the proposal?
- What has been the greatest challenge in revising the zoning by laws?

Ms. Byrd said she would invite the public to write questions on note cards that could be collected grouped by similar topics and discussed. She suggested the meeting be broken into smaller circles with at least one Planning Commission and City Council member in each group to listen and take notes. She suggested the following questions for the smaller circle discussions:

- What is the heart of the matter for you?
- What about the plan will benefit the city?
- What are the risks?
- If you were a paid consultant advising the Planning Commission, what advice would you give them about balancing the various interests?

Ms. Byrd said that each Commissioner could then be given a chance to describe the aspects of the discussions that struck them particularly. It is important that notes be taken so that people will know they are heard and do not need to make speeches at the hearing. People should be given a sense of the steps in the process and how the meeting will fit into the process. She would put together a summary of the discussions.

Ms. Byrd recommended that the public hearing be structured in a similar manner so that unconstructive debate might be avoided. The microphone could be used as the talking piece. This type of structure might invite people to speak who might not do so in the typical process.

Ms. Byrd suggested that the Commission allow her to facilitate a true circle process with the council after the hearing. Ms. Grodinsky asked the Commission whether there would only be one public hearing. Ms. Capels said that only one hearing had been scheduled. Ms. Power said that the Commission had not scheduled a hearing for the week following the hearing because there did not seem to be enough time for the Commission to digest the information from the first hearing in that time period. Mr. Sedano said there is a constraint on the timing. The circle with the Council would have to fit into the time frame for the overall process. Ms. Campbell said that the only decision before the Planning Commission that night was whether to proceed with the public meeting. The Commission could decide how to proceed from there based on the results of that process.

Ms. Power said she wanted to be clear that people are welcome to also come and comment in the formal public hearing even though the Commission will consider everything said in the informal process. Mr. Jones said suggested the Commission urge people to attend the informal circle so that comments at the hearing will be more informed. Ms. Byrd said that the Commission could present a summary of the discussions from the informal meeting at the start of the public hearing. Ms. Capels said that would also be a good way to get those discussions into the formal hearing record. Ms. Power said the Commission could decide how to proceed after the circle discussion. Mr. Borgendale said he hoped the Commission will adopt ground rules for both sessions that establish that the Commissioners' roles are to listen and explain but not advocate a particular opinion or engage in debate. It would also be good to summarize the issues raised in broad categories, but not necessarily include conclusions.

The Commission asked the public for their thoughts on the idea of the informal meeting with the public. Jim Fecteau said the meeting would be a good idea. He had participated in a similar process in Barre. Lyman Castle said he thought it was an excellent idea. He said the Planning Commission should report back at the next meeting with its feedback on the public input. Josh Nicosia said he thought the meeting would provide for a more open discourse. Rick DeWolfe said he thought the meeting would be a good idea. He had participated in similar processes and found they give a better understanding of where the other side is coming from. He noted that the process will not be official and said that anything coming out of the process must be brought into the public hearing. Ms. Power said that the hearing is the minimum requirement of

the statute. There is nothing to prevent the Commission from taking input in additional forums. Mr. DeWolfe said that anything that the Planning Commission can do to get the information out will help the public to understand the proposal.

The Planning Commission agreed to hold the informal public meeting on January 17 from 7:00 p.m. to 10:00 p.m. with displays and informal discussion beginning at 6:30 p.m.

### **Review/Discussion of Compiled Zoning Revisions Draft**

Ms. Power said that Mr. Sedano and Mr. Graham had sent e-mails with their comments. Ms. Capels said she had just sent a response to Mr. Sedano's comments that commissioners will not have seen, so she distributed copies. Ms. Power noted that the commissioners' packets also contain an updated Sabin's Pasture map. Copies were shared with the members of the public in attendance. Mr. Borgendale said the map reflects the Commission's recent discussion. Ms. Power said that she agreed.

Mr. Graham summarized his memo. He said that Councilor Golonka had expressed some concerns about the community resource overlay provisions of the proposed zoning. Mr. Graham said he shared a concern expressed by Councilman Golonka that the community resource overlay concepts will place more duties on the permanent City staff. Mr. Graham said that Councilman Golonka also feels that the Planning Commission is rushing the work to meet the deadline. Mr. Sedano asked whether the Councilman understood the number of things that will be allowed as development by-right. Ms. Campbell asked whether he understood that the only additional staff needs would be for one more person on the technical review committee.

Mr. Graham said Councilman Golonka said he and other council members were concerned that the community resource overlay provisions might hinder development that might help to reduce the tax burden. Mr. Borgendale said the idea of growing your way out of a tax problem is a concept that is really questionable. Mr. Jones said a study of the impacts of growth on the city was previously done. Mr. Borgendale said the study showed that the effects of growth on taxes would basically be neutral.

Ms. Power said that any significant land use change in the city is a "hard sell." Mr. Jones asked whether the planning office is concerned about an increase in work load due to the new community resource overlay process. Ms. Capels said that the staff was concerned with the earlier idea of creating a new committee. It remains to be seen how the current proposal could affect the workload, but expected that staff would need to spend more time working with applicants through the new process. Mr. Jones pointed out that only a small number of applications will go through the new process. Ms. Power said she hoped that the overall process for those applications will be shortened because issues will be identified up front, resulting in less need for multiple revisions and multiple hearings. Ms. Capels said the impact of the viewshed analysis and other provisions proposed in the inventory on the part-time GIS staff has not been determined. Ms. Power said that she would not want to be sandbagged by the planning office raising new staffing issues at the point that the proposal goes to City Council. Ms. Capels said that the GIS staff member expressed concern, but she has not had a chance to more fully discuss the proposal with him.

Ms. Grodinsky suggested continuing with the discussion of the zoning draft. She believed the last discussion had ended at page 2-23 regarding accessory structures. Mr. Jones added that

commissioners had agreed that the ongoing discussions would be limited to the big issues. Ms. Power noted that both Mr. Sedano and Mr. Graham had expressed some concerns about setbacks. Ms. Capels referred to Table 207 on page 2-38. She was recommending a 10-foot minimum be established for the front yard setback in the MDR zone. Ms. Power said that there were really two situations. She said that, first, infill development should match the front setback of other buildings in the area and, second, new development should meet the minimum setbacks. Mr. Borgendale said that the language in the table for CB-II, "to match the building line of older adjacent buildings and at least 10 ft" would address that issue. The question is whether to require 40 feet in the LDR zone. Rick DeWolfe said the Commission needs to consider the activities like parking that take place in the setback. Ms. Power said that parking is not currently permitted in the front yard. Mr. DeWolfe said that people will want to park in front of their garages. Ms. Power said the garages would then have to be set back. Mr. Borgendale said a goal of the revisions is to discourage vehicle storage in the front yard. Ms. Power said the Commission was actually trying to encourage more dense development by giving the developer more flexibility in designing the lots to address terrain and other site conditions. The Commission agreed to use a 10' setback in the MDR zone with the language that Mr. Borgendale suggested for infill situations.

Ms. Capels said she had recommended the side yard in the LDR be established at 40' or reduced to 30'. The Commission generally agreed to the suggestion. Mr. Sedano asked why the City should care about large rear yard setbacks for sheds and other similar structures. Ms. Capels said she believed there is an existing provision to allow sheds in the rear yard setback if the neighbor does not object. Other structures like garages could raise privacy issues if they are permitted close to the rear lines. Ms. Power said Mr. Sedano raised a valid question for zones that have large rear yard setbacks. She asked why the City should care provided that the garage is not too close to the property line. Mr. Borgendale said the challenge is to allow flexibility but recognizing that it is not good to create situations where some houses in a neighborhood are set way back on the lot when other houses are 10 feet from the street. He said that the rear setbacks work to prevent those situations. Mr. Jones suggested that the rear yard requirements be left alone for now, unless there is some compelling reason to make changes. The Commission agreed. Ms. Capels asked whether the provision allowing porches and stoops in the front yard should apply outside of the PUDs. Ms. Power said that might not be appropriate when the setback is only 10 feet. She said that it would be better to leave that question alone for now.

205.D.3.a: Mr. Borgendale asked why the creation of accessory apartments as a matter of right should be limited to structures that existed as of July 1, 2004. Ms. Capels said the accessory apartments are permitted as conditional uses in a new structure. The presumption was that there would be less impact if the accessory apartments were placed in existing structures. Mr. Jones said the limitation prevented a loophole that would allow the creation of a new structure on a lot for the purpose of adding an accessory apartment. Mr. Borgendale said he thought this question could be revisited at another time.

304.A.2: Ms. Capels described an alternative that could be considered that would allow for enlargements to be approved administratively. The Commission agreed to use the alternative.

402.D: Ms. Campbell said she wondered if the appropriate threshold for PUDs should be three lots instead of four since a four-lot subdivision seems more like a development. Ms. Power said

she was thinking about just putting in an acreage threshold. Mr. Jones asked what the issue would be with going through the Planned Development process. Mr. DeWolfe said that an applicant can usually go through the subdivision process themselves. The Planned Development process would require that they hire a consultant. Ms. Power said she understood Mr. DeWolfe's point to be that the Planned Development process would be more trouble than a simple subdivision. Ms. Capels said that there still are requirements for a subdivision including some provisions relating to open space. Mr. DeWolfe said that a simple three-lot subdivision would require the hiring of a surveyor, but the applicant could go through the hearings themselves. A four-lot subdivision would require wetlands delineation, wildlife assessment, drainage plans and other items that would have to be prepared by a consultant. The applicant would also have to pay the consultant to attend the hearings. The cost would not work economically for a four-lot subdivision. He suggested that the Commission look at the larger undeveloped parcels in the city to identify the threshold that would capture the types of parcels that the Commission is concerned about.

Fred Connor asked whether the community resource overlay was one of the districts discussed in the State law. Ms. Capels said that the statute allows for a variety of overlay districts. She said the community resource overlay would meet the State definition. Mr. Connor said he believed that the State law kept the PUD as optional, but that the proposed ordinance would make it mandatory. Ms. Capels said that the statute allows the municipalities flexibility to decide what provisions should be mandatory or optional. Mr. Connor asked who would own the open space that is set aside to meet the PUD provisions. Ms. Power said that section still needed some work and the Commission would address that question when it gets to the section. Mr. Connor noted that the proposal established another committee to comment to the DRB. Ms. Power said the Commission had already agreed to eliminate that provision. Mr. Connor said the definition of lot coverage has been changed to include all impervious surfaces instead of the area of the building. He said that could create many existing nonconforming structures. Mr. Borgendale said that was a good point. Ms. Power agreed.

Ms. Power asked Ms. Capels if she could get a map of the larger parcels. Mr. Borgendale said it seemed to be counterproductive to use the number of lots as a threshold since the Commission wants to promote density. Mr. Nicosia suggested leaving the PUD as an option to create incentives for developers to come in under that option. Ms. Power said the Commission wants PUDs in order to have a more rational planning and design process. Ms. Capels said that PUD provisions became mandatory some years ago to replace the major development review process. Ms. Power said that it could also be made available as an option for those who do not meet the threshold for Planned Development. Mr. Jones said if the threshold is set based on parcel size, a developer could propose a 20-unit subdivision on a 5 acre lot (or whatever threshold is established) and would not have to do a Planned Development. Ms. Power asked how many such lots exist in the HDR. Ms. Capels said that she would try to get an answer. Ms. Campbell suggested using thresholds of a parcel size of 10 acres or more or subdivision into three or more lots. Ms. Power said the provision could also state that anyone who wants to do a Planned Development can do that. There was general agreement among the Commissioners to use that language for the time being.

405.A.3: Mr. Borgendale said the failure of the applicant to properly identify the owners of abutting land and to provide them with notice should be considered to be a fatal application defect. Ms. Capels said the proposed language was taken from the statute. She said that

notice is also provided in the newspaper and by posting the "Z" form on the site. Staff tries to check the records with the tax assessor when there is time, but the applicant is responsible for developing a list from the assessor's records. Mr. Borgendale said he was concerned that errors are resolved in favor of the applicant. Ms. Power said the alternative approach would require more staff time to double check the lists. Mr. Borgendale said that this issue may not be resolvable at this time.

508.A.2: Mr. Graham said that the references to academic institutions should be deleted because those uses are addressed in a later section. The other commissioners agreed.

508.A.2.b: Mr. Sedano said he was concerned that this section implied that open space had to be intensively used. Ms. Power suggested revising it to say "intensively used and other open space." The Commission agreed to use that language.

508.A.2.f: Ms. Capels said this section should be deleted.

508.A.2.g: Ms. Grodinsky said that the phrase "and preserve" should be deleted.

508.C.1: Mr. Sedano said that he wanted to be sure that the rules were not creating confusion between the terms "Planned Development" and "Planned Unit Development." Ms. Capels said that the terms are defined elsewhere in the document. Ms. Power suggested just using "Planned Unit Development" to avoid any potential confusion. The Commission agreed to the change.

508.F: Ms. Capels suggested this section refer to "AI-PUD Application Materials." The Commission agreed.

508.G: Mr. Jones said he had previously provide alternative language for this section. He read his suggested language. Ms. Power said she recalled suggesting some changes to that language. Ms. Capels asked whether the idea was to replace the entire paragraph with the alternate language. Ms. Power said that Mr. Jones' language, as revised by Ms. Power, should replace the entire paragraph. The Commission agreed to the change.

Fred Connor asked whether the community resource overlay mapping or the inventory would be done first. Mr. Jones said the delineation of the community resource overlays exists as the Conservation Lands in the Future Land Use Map of the Master Plan. Ms. Power said the idea is that, as inventories are completed, the overlays can be better defined and may be changed on the zoning map based on new information. She said that, presently, except for Sabin's Pasture, the community resource overlays are coterminus with the Conservation Land on the Future Land Use Map, but the Commission's expectation is that situation will change as the inventories are done. Ms. Capels said that, as proposed, a natural and cultural resource inventory will be required for any subdivision or Planned Development at the sketch plan stage. Mr. Connor said that requirement would shut the city down. Ms. Capels said that most of the natural resource information is required by the current rules. Mr. Jones said the proposed rules would not prevent development in the community resource overlay, but applicants would have to show that important resources will be protected. The expectation is that the City will do the inventories if access to private property is granted. Mr. Borgendale said there are really two pieces. The first is whether there is a community resource inventory for the property and the

second is what conditions will be imposed on the community resource overlay area. Initially, the approach is to require an inventory on the lands within the Conservation areas on the Master Plan map, but, if the inventory shows that it is not appropriate for a parcel to be in the community resource overlay, the designation will be changed. Lyman Castle asked who will do the inventory. Ms. Capels said the City has a grant to hire someone to do the inventories.

508.H.1: Ms. Grodinsky said that the last sentence of this section should be changed. Ms. Power suggested deleting the sentence completely. The Commission agreed.

508.H.2: Mr. Borgendale asked why the Conservation Commission needed to approve the professionals. Ms. Campbell said the provision should state that the professionals conducting the inventory shall be selected from the approved list of experts. Ms. Capels said the provision could simply require that the inventory be done by qualified professionals. Mr. Sedano said that, typically, the regulator would review the qualifications of the person to make sure that they have expertise. Ms. Power said the provision could allow use of someone from the pre-qualified expert list or the qualifications of another person who is not on the list could be provided. Mr. Jones added that the real hope is that the process will be completed for the entire city using the grant funds. The Commission agreed that the draft language should be revised. Mr. Sedano said it should be left up to the DRB to determine that experts have the appropriate expertise. Ken Matzner said the DRB would need a list of areas of expertise. The Commission agreed.

508.H.3.m.iv: Mr. Graham said the visual analysis should be listed in the matrix of requirements. Ms. Capels said that it was included in the view shed section of the matrix.

508.H.3.l: Ms. Grodinsky asked why the elevation was referred to in the forest and meadow resources section. Mr. Matzner said the elevation related to the high meadows. He was still discussing the distinction between the 700 and 800 foot elevation, but it may be moot. Mr. Sedano said the point is that the City wants to protect the high meadows. Ms. Power suggested leaving the provision as written with the understanding that it could be changed if there was new information or objections.

508.H.3.d: Mr. Borgendale said he did not like the end of the last sentence which requires and assessment of species and natural communities that are unique to Montpelier. Ms. Power said the section just requires that the inventory note the existence of any species or communities that are unusual.

Staff notes: Ms. Capels asked whether the Commission wanted the staff notes included in the draft that is provided to the public. Mr. Sedano said that the notes should be taken out of the draft but the explanatory notes should be included in a memo that accompanies the draft. He said that way the public would have a copy of the document as it is actually proposed. The Commission agreed.

Mr. Borgendale said he would have to leave the meeting shortly, but would try to stay long enough to vote on the draft.

MOTION: Mr. Borgendale made a motion that the Planning Commission release the documents as revised pursuant to the Commission's discussions. Mr. Sedano seconded the motion. Mr. Sedano said that he would like to finish the discussion before taking the vote.

802.B.12: Mr. Sedano responded to the staff note regarding the lack of planting strips in Montpelier's existing neighborhoods by saying that he did not feel that the City needed to regulate trees. Ms. Power said she did not think there should be a requirement for planting strips. Ms. Campbell said that they make a city more appealing and, thereby, more viable. Mr. Sedano suggested that the language in 12.b.iii be used with the "or" deleted. The Commission agreed.

812.B.1: Mr. Sedano suggested that the effective date of the amendments be used instead of July 1, 2004. Ms. Capels explained that it was the date several statutory changes took effect. Ms. Power said that there was no reason to use the retroactive date. The Commission agreed.

813.A.3: Mr. Graham said he did not think that the ordinance should list skylines viewable from individual streets. The sentence should stop at high meadows and the subsequent language should be deleted. Ms. Grodinsky said she thought that the list of streets was generated by the subcommittee. Mr. Borgendale said he liked the idea of listing the viewpoints to avoid arguments about which views are important. Mr. Sedano said the list of the viewpoints would eliminate the guess work about which views are important. Mr. Graham said the Commission should then be prepared to explain the basis for the list. The Commission agreed to keep the language as proposed.

813.B.3: Mr. Graham said that definitions were needed for the terms "park", "recreational facility" and "playground." He said that there also should be provisions for who will own the facilities that are to be public. Ms. Capels said that the homeowner's associations would typically own the facilities. Ms. Power said that ownership by the homeowners association would not necessarily protect the land from future development. Mr. Borgendale said it also does not create a public use of the land. Mr. Jones said the intent was to have new development have access to the facilities. Ms. Power said that would create liability issues. Ms. Campbell said it did not appear that the intent of this section was to create a public playground. She suggested deleting the phrase "designed for public use." The Commissioners discussed the intent of this section. Ms. Capels suggested using Ms. Campbell's suggested change so that the section would read ". . . At least one play ground, or other form of recreational facility if none is available within a quarter mile." The Commission agreed.

813.D.1.b.x: Mr. Sedano said he wondered if there should be a limit for the definition of the allowable office use in mixed use planned development situations. Ms. Power asked whether there should be size limits to ensure that the uses are compatible with residential uses. Ms. Capels said that she could review the SmartCode draft to see if it had any helpful concepts regarding this question. She said that she could e-mail a suggested definition to the Commissioners.

813.D.2.b: Mr. Sedano suggested that the applicant be required to submit a letter stating that the ADA requirements have been addressed. The Commissioners agreed.

Mr. Borgendale said that he needed to leave, but was voting in favor of the motion that was on the table.

813.E: Mr. Sedano said he wanted to be sure that the purpose statement regarding cluster development was sufficiently clear about density. Ms. Power said that density is addressed elsewhere. Ms. Capels said that cluster development may not necessarily increase density. Ms. Power said she would like to say that the general principle is to use the land in the optimal configuration. Mr. Jones said that "optimal" is open to interpretation. Mr. Graham said that the last two sentences of 813.E.1 regarding permanent protection of open space may be lightning rods. Ms. Power said that was the way that PUDs worked. Mr. Sedano said the developer does not have to take advantage of density transfers, but if they do, the remaining land cannot be built upon. Ms. Power said that the language needs to be clear that there is no requirement for a minimum amount of open space. Mr. Graham said that the Commission should be prepared to explain the provision.

902.1: Mr. Graham asked why there was no requirement for a Certificate of Compliance for single family dwellings. Ms. Capels said that is the current regulation. The building inspector does issue a Certificate of Occupancy for single family dwellings.

Ms. Capels said that she would also need the Commissioners' comments on the report by Thursday.

VOTE ON MOTION: The Commission called the vote on the previously proposed motion that the Planning Commission release the documents as revised pursuant to the Commission's discussions. The Commission voted unanimously to approve the motion.

### **Adjournment**

Mr. Sedano made a motion to adjourn the meeting at 10:30 p.m. Mr. Graham 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.*