

Montpelier Planning Commission
January 30, 2006
Memorial Room, 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 by Ms. Grodinsky at 6:10 p.m.

Minutes

Mr. Borgendale made a motion that the minutes of the January 23, 2006 Planning Commission meeting be approved. Ms. Grodinsky seconded the motion. She wished to clarify her statement in the second paragraph under "Next Steps" in that she actually said "community resource" was offensive to some. Mr. Borgendale clarified that his point in the same paragraph was that re-labeling the concept would be a cosmetic change. The Planning Commission voted unanimously to approve the minutes with those clarifications.

Review of Comments on the Draft Zoning Proposal

Ms. Grodinsky suggested that the Commission try to group the comments from the public hearing along common themes and then decide what changes it wants to incorporate. Mr. Borgendale said he would like to reach some agreement on the philosophical underpinnings for what the Commission wants the zoning amendments to do. That would give the Commission a framework for where it wants to get into specifics. Ms. Capels reminded the Commission that there were other aspects of the proposal that they needed to discuss, like the changes to address Chapter 117. Mr. Jones said that he would like to address the zoning revisions first in order to prepare for the meeting with the City Council. The Commission agreed to do that first.

Mr. Borgendale said that he thought that there is a great deal of confusion on the part of the public and within the Commission on the purpose of the community resource overlay. One view was that the purpose is to prohibit development on land that is in the community resource overlay with the transfer of the development rights elsewhere. The second view is that the purpose is to impose additional conditions on development in the community resource overlay in order to mitigate the impact of development. He would add the view that the purpose is to provide the DRB additional guidance for the review of development in the community resource overlay areas, but not to identify the specific development techniques. Ms. Grodinsky noted that the Development Review Board members who will review the development proposals are not biologists. She said the situation was different from the Act 250 process where the review is conducted by professionals. Mr. Borgendale said the Commission needs to be clear on its intent. Mr. Sedano said he thought that the Commission had clearly agreed that its intent was the view that Mr. Jones had described. Several Commissioners agreed. Mr. Borgendale said that, if that is the case, the Commission was not clear in its proposal because the public does not understand that. Ms. Grodinsky said the Commission had not done an adequate job of educating the public about the proposal. Mr. Borgendale questioned whether the problem was a lack of education or a lack of clarity.

Mr. Jones asked which parts of the proposal would create the first view that Mr. Borgendale had described. Mr. Borgendale said one example was the rule that would restrict subdivision for ten

years for land that includes a community resource overlay. That regulation was all about preventing a landowner from avoiding the requirements to transfer development rights.

Mr. Borgendale asked if the proposal included a statement of the purpose of a community resource overlay. Ms. Capels referred the Commission to page 2-4. Mr. Sedano said it would be possible for the statement to be more clear about the fact that the land is privately owned. Ms. Grodinsky said she thought that the overlay should stick to natural resources because the other resource issues are very contentious. Mr. Jones said that raises a philosophical question of whether the Council is willing to accept a review process that addresses a limited number of attributes. Ms. Grodinsky added that the question was also whether it was acceptable to address a list of attributes that do not reflect all of the concerns (like views, vistas and ridge lines) that the community said that they wanted to address in the Master Plan. Mr. Borgendale said the Commission should decide whether it was willing to accept that limitation before it asks the Council. Mr. Jones said that there seemed to be broad support for the protection of open space for public parks. Ms. Grodinsky and Mr. Borgendale said that might make landowners more angry.

Ms. Campbell said the Commission's original charge was to revise the zoning for Sabin's Pasture. The Commission has been receiving input for more than three years that there is a large consensus to preserve the upper pasture to the extent possible and to develop the lower pasture. If the rules are limited to natural resources only, they may not result in the desired protection of the upper pasture. Consideration of the citywide changes should be secondary to the original charge.

Mr. Sedano said the Commission needed to develop a list of topics for discussion. The Commission agreed to the following:

1. The purpose of the community resource overlay
2. Natural resources versus other community resources
3. Primary focus on Sabin's Pasture
4. "Nits" - Small issues that are important to some.
5. Overall burden of the inventory and overlay process.
6. How specific the rules are for the DRB's review of the CRI results
7. Are any changes to the map needed.
8. Community resource overlays, community resource inventories and PUDs

Ms. Grodinsky asked if everyone was satisfied with the purpose statement. Mr. Jones said that the purpose was to provide guidance to the DRB so they can evaluate development proposals in the overlay district. Ms. Campbell said that is different from the current purpose statement. Mr. Jones said that was not necessarily the case. Mr. Sedano asked whether there should be a better definition of community resources. People seemed to be reacting to their worst fear about what it might mean. Mr. Jones said that he would rather have a broad definition. The definition recognizes that an important resource on a site would be a community resource, but the rules would not say that the site could not be developed. Ms. Grodinsky said she could see the land owners having issues with the designation of resources as community resources. Mr. Sedano said the term could be "privately owned community resources." Ms. Capels said that she did not think that was necessary since there were also public lands within the community resource overlays. She had heard concerns over the cultural aspects like trails and sledding hills that were

included in the term. Mr. Borgendale said the concerns were very much colored by the Sabin's Pasture experience.

Mr. Jones said he thought that the upper pasture cannot be fully protected through the existing tools. This is a leadership issue for the Council. Ms. Capels said the Commission has acknowledged that the current zoning district boundaries are not rational. Even if the current tools cannot provide absolute protection of the upper pasture, the Commission can agree that the current regulations can be improved through better articulation of the standards that are included in the draft proposal. That would represent an improvement over the existing situation. Mr. Jones said he thought that the proposal included a list of additional requirements for development within the community resource overlay. Mr. Borgendale said that some of those requirements were listed under cluster development in Section 813.E.

Ms. Grodinsky asked whether the commissioners wanted to discuss what to include under the community resource designation. She believed that the natural resources should be included. Mr. Sedano said that the natural resources were listed in Section 813.A.3.a. Ms. Grodinsky agreed and said that they are referred to as natural features. Mr. Jones said he thought the Commission should go through the list with the City Council. The Commission agreed. Mr. Sedano asked what the other commissioners thought about striking the second line in 813.A.3.a.vi which referred to sledding, skiing and hiking. The Commission agreed.

Ms. Campbell asked whether the Commission felt that the "community resource" term was inflammatory. Ms. Grodinsky said she thought that "conservation resources" would be a better term. Mr. Jones said that the term did not make sense. Ms. Grodinsky suggested using "conservation land overlay district" as an alternative. Mr. Sedano suggested "conservation overlay district." Ms. Grodinsky agreed with that term. The Commission expressed general agreement with Mr. Sedano's suggestion.

Ms. Grodinsky said that the next question to consider was the Sabin's Pasture rezoning. Mr. Borgendale said he had agreed to serve on the Planning Commission because he was asked to and because he thought the zoning that was in place for Sabin's Pasture was wrong. He started to have problems when the Friends of Sabin's Pasture decided that the upper pasture should be a park and asked the Council and Planning Commission to use the City's police powers to reduce the development rights to accomplish that. Mr. Borgendale said the City should not use zoning to turn the area into a park because it would be immoral and of dubious legality. He did not think the Commission could do anything in the zoning proposal that would result in that outcome. Ms. Campbell said the Commission had to address the interim zoning that will expire on May 23. Mr. Jones said he thought the Commission could focus the discussion of the ramifications of the proposal on how it would affect Sabin's Pasture. The proposal would not result in the entire upper pasture as a park because the Commission did not have any special tools that would cause that result. Ms. Grodinsky said that Sabin's Pasture was an opportunity for the commission to look at significant natural resources on the site. The recent clear cutting of the site removed those resources and that was why she was concerned about removing the provision addressing clear cutting from the proposal. Ms. Campbell said she believed that the Commission members were in agreement that it was their responsibility to protect important resources. Mr. Sedano said there was not sufficient leadership in the City to make a zoning solution work. The Planning

Commission's zoning proposal will not lead to protection of the upper pasture with enough certainty for some people.

Ms. Grodinsky said the next question for discussion was related to the small details. Mr. Jones said one comment that the Commission had heard was the PUD process was difficult and the proposed changes would make it more difficult. Ms. Campbell said that one of the details to be addressed was the removal of the stipulation that a landowner go through the PUD process for a subdivision for family members. She asked what the ramifications would be if section 402.D.5 ("If any part of a parcel proposed to be subdivided is within a Community Resource Overlay District") were deleted. Mr. Borgendale said he would like to eliminate the requirement for the PUD review and resource inventory when a proposal is for subdivision only. Mr. Jones said that a subdivision involving conservation land should go through a PUD review. Mr. Sedano said the reason for that was that a project could bypass the inventory requirement otherwise. Mr. Borgendale said he was troubled by situations where land is partly in a community resource overlay and the subdivision will only involve land outside of the community resource overlay. Mr. Jones said he was concerned that even one house could be located on a parcel in a way that would unnecessarily impact a resource like a wildlife corridor.

Ms. Capels said a lot of the information required in the natural resource inventory is already required under the existing planned development and subdivision process. Mr. Jones said the proposal would add a new requirement that any subdivision covered by 402.D.1 must go through the planned development process. He asked what would happen if that requirement was eliminated from the proposal. Ms. Capels said that, if the community resource overlay designation remains, the subdivision would be required to go through the planned development process. She said that, if the community resource overlay was eliminated, there is currently no means of requiring a subdivision to go through the planned development process. Mr. Borgendale said he definitely wanted to eliminate 402.D.5. Mr. Sedano suggested rewriting it since it is the only place where the community resource overlay is mentioned. Mr. Borgendale said that would be acceptable. Ms. Campbell said she wanted the Commission to get input from Geoff Beyer because he had a strong opinion about that provision. She called him on her cell phone at the meeting and said that Mr. Beyer was questioning how clustering could be encouraged if the developer is permitted to fully develop the part of a site that is outside of the community resource overlay. Mr. Jones said the Commission was thinking about a situation where a site was entirely in a community resource overlay and the owner wanted to split off a lot for a family member. He did not find the scenario that Mr. Beyer described to be that troublesome. Mr. Jones said that he thought that 402.D.5 could be eliminated.

Mr. Jones said he felt that the City should do the inventory of all parcels that are proposed for development. Ms. Campbell asked what would happen if the property owner denied the City access to the property. Mr. Sedano said the inventory should be required for development and if the City does not do it, the landowner would have to. Getting the inventory was the issue rather than whether the project goes through the PUD process. Mr. Jones said that once the inventory is completed, it would become part of the City's mapping. Ms. Capels observed that the proposal is an attempt to do planning at the time that an application is submitted. That situation is not optimal. Other municipalities that used overlay concepts typically did the mapping before the overlays were created. Those municipalities either hired consultants or used the best information

available and mapped the resources before drafting the regulations to implement plans for protecting the resources.

Ms. Campbell asked whether there was agreement with striking 402.D.5. Mr. Sedano said he would agree with that only if the Commission can request an inventory somewhere else in the process so that the DRB will have the information to consider. Mr. Borgendale suggested saying that, for land in the overlay area, an inventory will be required for the house, lawn and driveway. Mr. Jones said that would put the application through the development review process and that worked for him. Ms. Capels pointed out that comment #8 of her memo raised the issue of what review process would apply. She said that once that decision is made, the inventory can be added to the application requirements for that process.

Mr. Borgendale said that, on a 100-acre parcel in the resource overlay where only one house is proposed, the inventory should only be required for the area of disturbance. Mr. Sedano said he thought that once any development was proposed in the community resource overlay, the entire parcel should have to be inventoried. How else could the necessary balance be determined. Mr. Jones said this will not be an issue if the City can be responsible for the inventory. Mr. Sedano asked whether that meant development in the overlay district would have to be reviewed by the DRB. Ms. Campbell said that was addressed in 508.G and H. Mr. Borgendale said he would want to have a means of doing administrative approvals if the inventory shows that there are no significant resources. Mr. Sedano said that was acceptable to him, but he wanted to know that there is a way to require the review for other applications.

Ms. Capels said that the City's grant is for the inventory of natural resources. The City does not have the resources to inventory other resources like cultural resources except by using existing maps. Mr. Jones said the process starts with the natural resource inventory. The inventory information could be expanded in the coming years. Ms. Campbell said the Commission had received a great deal of input at the hearing that said that the Commission should slow down and do this right. She asked whether the Commission wanted to consider doing the work over a number of years as Ms. Capels said that other towns have done. Mr. Jones said the City needed to meet the three-year deadline, but he thought that the Commission could talk about the inventory and then go back to address Sabin's Pasture. Ms. Campbell asked whether the requirement could be mandated for Sabin's Pasture before it is developed citywide. Mr. Jones said the existing inventory could be used with the understanding that it will be expanded over time and the first part that will be done will be the natural resource inventory of Sabin's Pasture. Ms. Campbell said she still did not know whether the Commission could meet the three-year deadline and do the inventory for Sabin's Pasture before moving ahead citywide. Mr. Jones said he did not know what would happen if the development application is submitted before the City does the inventory. Mr. Sedano said the inventory is an application requirement that the applicant will have to complete if the City has not yet completed it. Ms. Power said that approach would avoid situations where archaeological resources are discovered during construction. Ms. Capels said these rules do not address subsurface investigations.

Ms. Campbell asked whether there was agreement on striking 402.D.5. Mr. Borgendale said there was agreement that the language has to be reworked. He said the Commission had previously agreed that it would not wordsmith at this meeting.

Mr. Borgendale said the next question was related to the burden of compliance. The Commission had talked about the inventory and its burden on applicants and had also discussed subdivisions and the burden of those applications. The Commission agreed that it had covered those topics.

Ms. Grodinsky said the next topic was how the DRB will apply the rules. Ms. Power said the DRB's job is to balance the virtues and vices of each application when the inventory and analysis are done. Ms. Campbell said the proposal spells out that a professional will make recommendations and the TRC will also make recommendation to the DRB. Mr. Jones said that many people have said the process duplicates criteria #8 of Act 250. That meant that going through the process with Montpelier will put an applicant in a better position to go through Act 250. Ms. Power said the City will grant a permit and the applicant will be able to tell the Act 250 reviewers that the citizens of Montpelier have found the proposal to be acceptable. Ms. Capels noted that there is a provision in Chapter 117 that says that the City's decision could be a rebuttable presumption for the Act 250 review provided that certain procedures are followed. She said that those procedures would require extra work by the DRB. Mr. Borgendale asked whether those procedures had to be part of the zoning regulations. Ms. Capels said that she would check on that. Ms. Power said that could remove the argument that the proposal is duplicative of Act 250.

Ms. Campbell said she did not see how the inventory process was different from the other technical recommendations that the DRB receives. Ms. Capels said the DRB does not typically scrutinize the quality of application materials like an inventory. Their focus is on applying the standards and whether they have enough information to apply them. Mr. Borgendale said it seemed that the proposal was asking the DRB to make value judgements and that is part of their job. Ms. Power said that is the quasi-judicial role of the DRB.

The Commission discussed the zoning map. Mr. Jones asked whether the Commission had been unclear in what it intended to accomplish. Ms. Power said there were two types of comments. The first was that the incentives were not good enough to force development off of the upper pasture. The second was that the design controls are not adequate to ensure that development in the most dense zone will be complementary to adjoining neighborhoods. Ms. Grodinsky said it was suggested that a transition zone was needed. Ms. Power said the issue seemed to be the potential for apartment buildings near Sabin Street. She asked whether there was a difference in whether they would be permitted under the HDR or MDR zone. Ms. Capels said that apartments are conditional uses in the MDR zone. Ms. Power said she had wanted to use the MDR zone rather than the HDR zone and provide incentives by saying that if all development is outside of the community resource overlay, the developer could do what he wanted as long as the development looked good and did not create unacceptable impacts like traffic impacts. Ms. Campbell said the MDR zoning would allow 119 units and the 25% density bonuses would bring the number up to 149. Mr. Jones said he felt that the use of the HDR zoning might not have created enough incentives. Mr. Borgendale said he did not think that development of the upper pasture could be entirely prevented through zoning or incentives. Ms. Campbell said that she thought the Commission agreed that it wanted to zone the parcel to reflect how it should be developed. Mr. Sedano asked whether the Council knew that the proposal would allow up to 487 units. Ms. Capels said she did not think they had that information. Mr. Jones said the Commission could tell the Council that a change to MDR might reduce the number of units allowed.

The Commission discussed the city wide map. Mr. Borgendale said he would like the Commission to reconsider the decision to make all of the Conservation Land into community resource overlays. The Future Land Use Map was inherited from the old Master Plans so the Commission did not know if the lines on the map are what they should be. Mr. Jones said the Conservation Commission went through the existing inventory information six weeks ago and mapped where the emphasis on natural resources should be. Their map looks almost identical to the Conservation Land lines. Mr. Borgendale said that did not make sense since some of the lines follow property lines. Ms. Campbell added that some of the backyards of private land are included in the community resource overlays. Mr. Jones said those areas adjoin larger undeveloped parcels. Ms. Power said the Commission has to start somewhere. The map of the community resource overlay districts can be refined when the inventories are completed. Mr. Sedano said there were two choices – to use the information that is currently available to apply overlays city wide or to only apply the overlay to Sabin's Pasture and immediately provide notice of a process for expanding the overlays for the rest of the city. Mr. Jones said the risk is that an application on a large parcel could be submitted in the meantime. Ms. Grodinsky suggested the Commission go forward with the map and explain the alternative. Mr. Borgendale said that it looks bad when zoning districts are based upon property lines. The Commission agreed to base the zoning on what made sense regardless of property lines. Ms. Grodinsky asked whether the Commission wanted to go forward with the proposed map. Ms. Campbell and Mr. Borgendale said that they did not, but the other Commissioners agreed to go forward with the map.

Mr. Jones asked whether the Commission was going to ask the Council to have the City take the responsibility to do the inventories, including views and vistas and recognize that the property owner will have to do the inventory if the City has not yet done it. The Commission agreed.

Ms. Grodinsky said she would write up a summary of the decisions and e-mail it to the Commission members. The Commissioners agreed that they would try to arrive at 7:15 p.m. on Wednesday in order to have a few minutes before the meeting with the Council.

Election of Officers

Ms. Power said that she was not planning to continue on the Planning Commission after July. The Commission might want to elect a new Chair, but she was willing to serve as Chair until July if the Commission wanted her to. Mr. Sedano said the election of officers had to occur in January, but changes could be made after that. Mr. Jones said it might be better to keep the same Chair until the rezoning process is completed. Mr. Sedano suggested that Ms. Power remain as chair until this work is completed.

MOTION: Mr. Borgendale made a motion that the Commission re-elect its current officers. Ms. Grodinsky seconded the motion. The motion was approved unanimously.

Other

The Commission agreed to meet at 6:00 p.m. on February 6. There was a question as to whether a quorum of Commissioners would be available for the hearing on February 27. The Commission agreed to discuss that matter further at the next meeting.

Adjournment

Ms. Campbell made a motion to adjourn the meeting. 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.