

**Special Meeting of the Montpelier City Council and Planning Commission  
February 1, 2006  
City Council Chambers, City Hall**

*Subject to Review and Approval*

**Present:**

City Council: Mary Hooper, Mayor; Nancy Sherman; Nancy Wasserman; Jim Sheridan; Tom Golonka

Planning Commission: Marjorie Power, Chair; Carolyn Grodinsky, Vice-Chair; David Borgendale; Anne Campbell; Craig Graham; Ken Jones

Staff: Valerie Capels, Planning & Community Development Director

Facilitator: Yvonne Byrd

**Call to Order**

The meeting was called to order by Mayor Hooper at 7:30p.m. She thanked everyone who has been working so hard on this difficult matter.

**Discussion of Draft Zoning Proposal**

Yvonne Byrd explained that she would be facilitating the meeting. She suggested participants begin by stating what they would like to see as the title of the next news story that is written on this subject. Some of the participants' suggestions follow. "Planning Commission, City Council and residents agree on proposed revised zoning"; "Balance and compromise make zoning regulations work"; "Clarity, focus and fairness"; "City will finally be united, everyone unhappy together"; City officials pull rabbit out of hat and please everyone"; "Majority of citizens agree on zoning" and "City Council and Planning Commission agree to work together to come up with fair resolution for all residents of Montpelier."

Ms. Byrd asked for feedback on the agenda. Nancy Sherman said she was hoping to discuss the components of the plan and see if they meet the Council's criteria. Mayor Hooper said she would like to have the map on the table during the discussion. Mr. Jones said the Planning Commission had grouped the comments that it received into broad topics or issues for discussion. Mayor Hooper noted that there were members of the public in attendance. She said the special meeting was intended to be a working session, but it would be good to hear brief comments from the public if time allowed.

Ms Byrd asked the group to discuss what could be concluded about the community interest based on the public input so far. Ms. Grodinsky said that there was a lack of clarity on some parts of the proposal like the community resource overlays. Ms. Power said it was clear that many members of the community regard this as a major change to Montpelier's zoning that many are not comfortable with or even knowledgeable about. Ms. Campbell said the main interests seem to be concern for property rights and concern for the conservation of natural resources. Nancy Sherman said she agreed with Ms. Campbell's observations about those two views. Mr. Golonka said this is a larger project than the City set out upon. There is a lot of confusion regarding the scope and direction of the proposal. There is also a great deal of concern and some anger. Mr. Sheridan said the situation was typical of what is going on in America today with the focus on the individual rather than the community interest. Mr. Borgendale said he had concluded that the interests involved in the core issue were not appropriately addressed by the zoning. He thought the solution proposed was not the right one to address the interests. Mr. Jones said there is an interest in addressing Sabin's Pasture, but a recognition that the method chosen to address Sabin's Pasture will influence the next zoning

issue. Mr. Graham said there is a dichotomy between the desires for growth and for conservation. Mayor Hooper said that, because these are difficult core issues, there is danger of losing sight of what the community values. She said she went back and reviewed the values that were discussed at Town Meeting. The summary was that Montpelier is a vital, viable, small town that values all of its citizens, its downtown, goods and services (including housing for an economically and culturally diverse population), rivers and open areas, an economy that works, neighborly neighbors and recreational and cultural opportunities. That is a good summary of what the community would like to maintain. She hoped to have zoning that would accomplish that. Nancy Wasserman said she had also heard a desire for clarity as opposed to vagueness.

Mayor Hooper asked which areas the Planning Commission had agreement on. Ms. Power said there is general agreement on the aspects of the zoning proposal that do not affect Sabin's Pasture. Nancy Sherman said there seemed to be a lot of change to the PUD section. She said the confusion seems to relate to the intersection of the PUD standards with the overlay provisions. Ms. Grodinsky said the Planning Commission's question to the Council was whether the Council wants to have some tool to address development proposals in the designated Conservation Lands. She added that the second question was whether the Council found the tool that the Planning Commission has chosen to be acceptable. Mayor Hooper said she would like to look at the areas where there is agreement before taking up those questions. She said there is agreement with the provisions regarding accessory apartments, the Chapter 117 changes and the wireless technology issues. She hoped those provisions could move ahead regardless of what is decided on the rest.

Mr. Borgendale pointed out that the Planning Commission had also added a provision that allows encroachments into setbacks for improvements like porches and decks. The Commission has not heard comments on that topic. Nancy Wasserman said she found the provision to be acceptable as long as the provision allowing neighbors to voice objections remains. Nancy Sherman said she thought the inclusion of more types of development that can be approved administratively was an improvement. Ms. Capels noted that the proposal also decreased lot sizes and setbacks. Mr. Jones said some commercial and office uses would also be added in the residential districts.

Mr. Jones suggested using Sabin's Pasture as an example for considering the parts of the proposal that are contentious. Nancy Wasserman said she thought that Ms. Grodinsky's question was important. She said she thought that the community's approach should start with the Master Plan and natural resource inventory. The community should take on the burden to identify the important areas based on an inventory and to identify those areas in the published Master Plan rather than putting the burden on developers. Mr. Jones said the Planning Commission had reached a similar conclusion. Mr. Golonka said he was not a big fan of new tools because they tend to delay and add confusion. This application was too preliminary to put into code. Ms. Grodinsky asked whether there is another tool to give guidance for the Conservation Lands. Mr. Golonka said he would like to see an analysis of the legal ramifications, hear from Ms. Smith on implementation issues, and hear Caroline Lockyer's opinions regarding property assessments. He was not throwing the tool out, but had lots of questions that would have to be answered. Mr. Sheridan said it was not clear how the tool will be developed, used and enforced. It appeared that the tool was applied to the emotional part of Sabin's Pasture. He added that it is not clear how the Conservation Lands were designated in the first place. Nancy Sherman said it would be great for the City to have a completed

inventory, but it does not. She said the proposed list of attributes for the inventory covers all of the concerns and the general map for Sabin's Pasture leaves flexibility for negotiation to make something work. She thought the provisions in the zoning are too specific for inclusion in the Master Plan. The proposed tool was not perfect, but it was the best tool that the City had to accomplish what it needs to do. The key will be that the DRB applies it as it is intended.

Mayor Hooper said she appreciated the efforts of the Planning Commission in working to solve the problem. She did not think that the City should use regulations to drive the gathering of data. The data should be gathered in advance. The community should make decisions about its values and put those values into the zoning regulations. Mayor Hooper said she did not believe the proposed tool was the correct one for the problem. She also believed that the proposed map was seriously flawed. More than 50% of the City would fall into the community resource overlay and said that was too much. The Conservation Lands should be narrowed down to some of the most important areas.

Nancy Wasserman said she was troubled by the dilemma of public use of private land. She did not want an expectation that the public is entitled to use private land to be built into the City code. The regulations should not be used to gain public access to private land.

Ms. Grodinsky said the Commission has discussed the fact that it should focus on the natural resources components of the overlay where there was a stronger consensus. She also wanted to be clear that the requirement for an inventory would not prohibit development on the land, but would identify the important resources so that development could be designed to respect those natural resources. The proposal lists the resources the developers should address and tells the DRB to look at how a proposal balances the impacts to those resources.

Mr. Jones said he had suggested that it would be useful to the discussion if Sabin's Pasture was used as a specific example of how the rules would work. Ms. Campbell said that in the discussions over the past three years the Commission heard a general agreement that some of the resources on the upper pasture of Sabin's Pasture should be protected and that dense development should be allowed in the lower pasture. Mr. Graham said the City needs to focus on that parcel since there is a deadline to address it. There is no tool in the existing regulations to protect the upper pasture. Mr. Sheridan said there is an existing tool in the fact that someone could buy the parcel. Mr. Borgendale said that was not a tool available to the Planning Commission. Mayor Hooper said she thought that there was a need to focus on Sabin's Pasture because real examples were needed to understand how the proposal would work. Mr. Sheridan said he did not like to look at small pieces of a picture. He said this has been made more complicated than it needs to be. In the past, people understood that Montpelier was the hub where people in the area would live. Views and wildlife corridors were two areas of the proposal that will be confusing. He said everyone will think that their own view is important and wildlife will adapt to changes in the landscape.

Mr. Borgendale said he thought that a previous, ill-advised development proposal for Sabin's Pasture generated a lot of resistance within part of the community and resulted in a petition to zone part of that land as a park. He did not think the City could legally do that. Instead, the Commission developed a structure that would allow for some preservation objective to be done while allowing continued development. He said some may not like the proposal, but asked what the Council would have the Commission do differently. Zoning can be adopted just for the

Sabin's Pasture area, but the City will be faced with the same situation on the next development project on another parcel.

Ms. Byrd said she was hearing mixed reactions to focusing on Sabin's Pasture. She asked how the discussion should proceed. Mayor Hooper suggested starting the discussion with the focus on Sabin's Pasture with the understanding that the focus could be changed.

Mr. Jones summarized some of the topics that the Planning Commission had been discussing. He said the Planning Commission has discussed the feeling that the City needs to take responsibility for doing the natural resource inventory. The City has a grant for the natural resource inventory and it appeared that it will be possible to do that this summer. The City will have to figure out how to do the inventory for other criteria like views and vistas, but the natural resource inventory will provide solid information to consider. Nancy Wasserman said the inventory could only be done if the owner grants permission to access the property and there has been resistance by landowners because they fear that they will lose development rights. She said that waiting to require the inventory at the development review stage will be too late because the landowner will not be open to changing plans after spending the money needed to develop the plans for the development review application. That was why the Master Plan should spell out what the City's intentions are. She wondered if there could be a way to allow the City to work with the land owner on a PUD that makes sense. The consensus within the community seems to be that it would be nice for the upper pasture to be protected and to compensate for that protection in some way, either through allowing more units on the lower pasture or some other means. Ms. Power asked what in the Planning Commission proposal would prevent that from occurring. Ms. Wasserman said the issue at Sabin's Pasture is the potential reversion back to underlying zoning. She was not prepared to vote for the proposal with the community resource overlay provisions within the time frame that is needed to address Sabin's Pasture. She did not know if the rest of the Council would vote for the proposal.

Ms. Power said the Planning Commission would like to hear what the Council thinks of the proposal. Mayor Hooper said the proposal was not ready for adoption at this time. Nancy Wasserman agreed. Mr. Sheridan suggested the Council conduct a straw poll. Nancy Sherman said she thought improvements to the proposal could be made within the time frame. Nancy Wasserman said that could be if the Planning Commission was prepared to remove the community resource overlay provisions and have something to the Council by the first week of March. Nancy Sherman asked where else those provisions could be placed. They could not be incorporated into the Master Plan for another year. Mayor Hooper said she could not support the community resource overlay and the zoning map as proposed. A solution would be to go back to the PUD process which can be used to get some of the resource information that would have been required. Mr. Borgendale said that is what the current proposal does. Mayor Hooper said she understood that, but the proposal would also do many other things. She said the proposal lacks clarity and that she could not support it now.

Mr. Borgendale said he has firmly believed that whatever the City does with Sabin's Pasture will set a precedent for other beloved parcels in the rest of the city. That is an important discussion for the community to have. Mr. Jones said the reason for the community resource overlay was to differentiate the process for parcels where the City has identified some resources. That was what the Council did last July for the upper pasture of Sabin's Pasture. He added that the PUD process does not provide for that, but Act 250 does. Mr. Jones said the proposed overlay

process would be similar to review criteria #8 in the Act 250 and would actually add specificity since Act 250 uses language like “undue adverse impacts.” The overlay process would provide for local review of the resources and the DRB findings would carry great weight in the Act 250 review.

Mr. Sheridan said the proposal is too slanted toward natural resources and does not consider people to be a natural resource. Ms. Grodinsky said the Commission was trying to balance the interests by allowing for more density in one area to protect natural resources in another area. Ms. Power said the Commission was thinking in advance about what it really wants to see on the remaining undeveloped land in the city in order to make sure that the City will get development with which it is satisfied in the long term. The City has depended too long on the adversarial process for development. Nancy Wasserman said she thought that some pieces of the community resource overlay concepts could be adopted into the Master Plan. She said that, as a timing consideration, the intent could be implemented if, as a first step, the map was adopted without the green zone and the zoning ordinance was adopted without the changes that related to the community resource overlay. Mr. Borgendale said that could work, but would not be acceptable to those who consider the upper pasture to be beloved.

Ms. Byrd suggested that the group hear Ms. Capels’ thoughts on these issues. Ms. Capels said that, if the community resource overlay process was removed, there were still criteria in the supplemental standards in the proposal that could be added to article 8 and the PUD standards to guide development on any parcel that triggers the PUD process. The current application process asks for a lot of the information that would be required in the natural resource inventory. Some of the other desired elements could be added so they would be addressed in the PUD process. She added that there would also have to be a mechanism to require subdivision applications to go through the PUD process as it is currently optional. Section 402.D of the proposal lists the proposed thresholds that would require the PUD process. The regulations currently require PUDs to be in conformance with the Master Plan, which includes the Future Land Use Map and the recently defined Conservation Lands designation.

Nancy Wasserman said she would like to understand the Planning Commission’s point that the community resource overlay would allow more development to occur than would be allowed under the current process. Mr. Jones said that, using Sabin’s Pasture as an example, it would not be difficult to make an argument that development would negatively impact the resources that are listed in the current Master Plan. The PUD standards require protection of those resources, so it could be argued that the development should not be approved. The community resource overlay process would give the DRB the ability to make the difficult decision that a development proposal that protected some of the resources could be permitted because the proposal allowed for the conservation of other resources. The overlay process creates a mechanism for the DRB to decide the level of protection that is adequate. He added that the procedure will help the applicant when the project goes through the Act 250 review. Mr. Borgendale said the current zoning requires the DRB to look at the fact that land is designated as Conservation Land in the Master Plan, but the zoning provides no guidance as to what the DRB should do with that fact. The Commission has tried to address that situation.

Ms. Wasserman said that Vermont does not have any entitlement to development, so the process could become a tool to prevent development because it does not allow a right to do the development. She noted that neighbors always hate to have new housing next to them. The

community needs to say where it wants development to happen. Mr. Borgendale said he understood putting that into a Master Plan, but there also need to be methods to implement the ideas.

Ms. Campbell said she wanted to return to the earlier question. If a landowner was to submit a development proposal with an inventory and a discussion of resources that would be impacted or protected and any techniques to mitigate impacts, the TRC would review the information and provide its input to the DRB. Mr. Sheridan asked whether the Planning Commission has discussed the proposal with the DRB since they would have to apply it and it will be difficult to apply. He said there was a need to take out the subjective aspects of the proposal and simplify it. Mayor Hooper said she had asked that a copy of the proposal be provided to the DRB, but the Chair felt that it was not appropriate for the DRB to take a formal position on the proposal since they will have to implement it if it is adopted.

Mayor Hooper said the Planning Commission's goals are good ones and she wondered whether the PUD provisions could be used to accomplish them. Ms. Capels said that was possible to a large degree. Ms. Power said she was confused because that was how the Planning Commission's proposal was to be implemented. She asked if the Council wanted the standards to apply to all of the land in the City rather than to the Conservation Lands. Mayor Hooper said she was thinking that a threshold could be established for PUDs and the standards would apply to all proposals that met that threshold. Ms. Power said that could be done, but the method might capture more land than if the map was used. It would enlarge the amount of land that is subject to review under these criteria. She asked whether the problem was with the map. Mr. Golonka said the problem is with the proposal and the timing. He said that three of the Council members present were saying they did not like the community resource overlay process. He agreed with Nancy Wasserman that there could be a two-step process.

Ms. Wasserman referred to pages 8-30 and 8-31 of the proposal. She said that new language there added criteria based on the information that was to be collected. If the new provisions like the community resource overlay requirements were taken out of Article 8 with the general building plan requirements, the view requirements and the community resource inventories, the proposal would be close to being acceptable. Ms. Grodinsky asked what would be left of the proposal. Ms. Wasserman said that would leave the lower threshold for planned developments, all of the accessory use information, the changes to lot sizes and incentives and the map without the green district for now. It would be possible to then revisit whether the Master Plan picks up what the Commission was trying to do with the overlay district. Ms. Grodinsky said that seemed to remove all of the conservation provisions. She asked how that would address Sabin's Pasture. Ms. Wasserman said she recognized that there is a risk that a development proposal could be submitted for Sabin's Pasture and that the upper pasture could be developed.

Ms. Grodinsky said the Commission was trying to balance the interests of conservation and housing development. Removal of all of the conservation provisions would take away that balance by not addressing both interests. Ms. Wasserman said that conservation was still included in the Master Plan and there may be a need to emphasize some additional information there. The City is either going to encourage housing development in appropriate lands or it is not. Ms. Power said nothing would prevent housing from being developed on every single

piece of appropriate land in the city. Ms. Wasserman observed that there have not been proposals for new housing on Conservation Land in the city in recent time.

Ms. Campbell said that the Council asked the Open Space Advisory Committee and Geoff Beyer to give them two lines for the map. Those lines are reduced to the green area on the proposed map. She asked what the Council had intended with its map. Ms. Wasserman said that was what was shown as Conservation Land in the Master Plan. Ms. Campbell asked how that would relate to what is done with the revised zoning. Ms. Capels said that compliance with the Master Plan is required as part of the review of PUDs by the DRB. The regulations should implement the goals and standards articulated in the Master Plan. Ms. Grodinsky said she was confused because the Planning Commission has been working for months on balancing housing with protection of natural resources. The changes discussed would take away that balance. Mayor Hooper said she did not think that a lot of consideration went into the identification of Conservation Lands in the Master Plan years ago. More careful consideration needs to occur before translating those designations into zoning. Geoff Beyer said he recalled that the view was that the designation of Conservation Lands was to get information so the DRB could make decisions.

Mr. Borgendale said that he, personally, had reservations regarding the community resource overlay concept. The Planning Commission has discussed eliminating the idea that the green areas would all be subject to the community resource overlay criteria, but those discussions were confused by the fact that the Council drew a line on the map saying that the area would be considered to be a conservation area. He asked what the Council intended. Ms. Sherman said it meant that any development of the upper pasture should recognize the community and natural resources and be given density bonuses for preserving them. Mr. Borgendale asked what would happen if the developer did not want to use the bonuses. Ms. Wasserman said the Master Plan could say that the community would like the area to be a park. Mr. Borgendale asked what the DRB would do with a development proposal if the Master Plan said that. Ms. Wasserman said that they would have to weigh that information like it does with everything else.

Ms. Byrd noted the time and asked whether anyone thought there was any solution on the table that was worth developing. Ms. Campbell said she was hearing the Council say to remove the community resource overlay and the community resource inventory, but put some of the information into the supplemental standards. Ms. Grodinsky added that the thresholds for the PUDs should be revisited. Ms. Wasserman asked whether the Council should ask the Planning Commission to make the changes or make the changes itself for the Commission to review. Mr. Borgendale said that the Council should give the Planning Commission its feedback and ideas. Ms. Capels said that the schedule was for the Planning Commission to meet on Monday, February 6 to digest the input and decide on changes to the draft for publication by February 9. That would allow for a second hearing on February 27, but that hearing date might have to shift in order to address a potential quorum problem. Mayor Hooper said that she thought that the Planning Commission's desire to hold a second hearing was good, but it might not be necessary to meet the notice requirements since only one hearing is required. The second public meeting could be more of an additional public comment opportunity rather than a formal hearing.

Mr. Borgendale said that he would like to hear from Council again on the map. If the green part is taken away, the parcel would be HDR and LDR. Nancy Wasserman asked why 300 feet was chosen and whether it provided enough area to make development worthwhile. Ms. Power noted that there was no impediment to development outside of the HDR zone since clustering would be permitted. The 300-foot distance picked up the original zoning subcommittee's proposal and the Commission extended the area parallel to Sabin Street to treat it as an extension of that neighborhood. Mr. Jones said that the Commission also looked at the number of units within an acceptable range. He said the number of allowable units actually ended up higher than had been anticipated.

Mr. Golonka asked whether any thought had been given to having a buffer zone between the HDR and LDR districts. He also asked why the lines are so jagged. Ms. Campbell said the line followed the original zoning line on Union Institute. Ms. Power said that HDR was applied to the lower pasture and LDR to the upper part of the pasture. She said the areas that Mr. Golonka was concerned with were probably not developable because of site conditions. Ms. Sherman said it would seem more logical to smooth out the lines.

Mr. Sheridan asked why a line could not be drawn from Kemp Street to the Pioneer Street Bridge. Ms. Power said there are two different neighborhoods in the area: the multifamily houses on Barre Street and the single family houses along Sabin Street. Mayor Hooper agreed that there are two types of neighborhoods. She said she assumed that the map would show HDR following a contour along the lower pasture and MDR up along Sabin Street and Kemp Street. Mr. Borgendale said that the buildout looks like MDR density, but the zone is HDR. Mayor Hooper asked why the HDR did not extend to the east. Mr. Borgendale said that the area is not buildable because of steep slopes and ledge. Mr. Jones added that Country Club Drive is a more rural road along the river.

Mayor Hooper asked for the basis of the 300-foot distance. Mr. Borgendale said that the original concept was that the area would be a PUD with density bonuses to move development down into the HDR. Ms. Campbell said there would be no incentive for the use of the bonuses unless the HDR zone was limited in area. Ms. Capels noted that the density bonuses would not apply if the land was subdivided in a way that does not trigger the PUD process. Mr. Jones said that was why the Commission developed the zoning to reflect the way that the property should be developed. Ms. Wasserman said that she was troubled to see the zoning line following the property line. Ms. Campbell said that was not a property line. Ms. Power said it was the old property line between the two Union Institute parcels.

Mayor Hooper said the group had not finished determining where the HDR zone should go. Ms. Sherman asked whether it had been determined that the community resource overlay and the green part of the map were to go away. Mr. Borgendale said the green would remain on the Master Plan map, but not on the zoning map. Mr. Sheridan said the changes would force the issue for those who want to see the land preserved.

Ms. Byrd invited to public to give brief comments. One member of the public asked whether it was correct that the core of the proposal is in 204.C.5 on page 2-11 that provides that to approve a project, the DRB must determine that the development will result in a net protection of the resources. He said that section seemed totally devoid of content. It also seemed that the City has never asked the land owner what it will take to see that the site is developed in a

way that the City would like to see. Doug Zorzi said the land owners are receptive to that type of discussion. He said that the setback distance should be discussed with Rick DeWolfe to see why he proposed a 500-foot distance.

Mr. Zorzi asked that the Planning Commission consider the definitions of the zones and make sure that the zoning designations for the property make sense.

Tim Carver said the central issue is about the time frame for the expiration of the interim zoning. Sabin's Pasture cannot be treated differently from all other land in the city. The zoning that has been in place for years should not have been changed. The land does not belong to the City. This is a taking issue. He added that he owns 70 acres in Montpelier and is thinking of giving it to a national group who wants to prove that the Constitution still applies.

A member of the audience said he would also like to see a dialogue opened up with the Zorzi family.

Geoff Beyer said that he did not see the City as being eager to take a lot of private land. He said the City currently has the power to take 15% of any new development site through the park impact fee, but that has not occurred in 17 years. Alan Goldman responded that he had offered part of his land in order to get an approval. Mr. Beyer said that was not a taking of land. Mr. Goldman asked where any resources had been lost due to development in the last 20 years. Mr. Beyer said that the intention of the community resource overlay provisions is to provide the City with information to use in planning.

Another member of the audience said that development projects like Murray Hill have caused people to say that the City needs to do planning.

### **Adjournment**

The Mayor proposed adjourning the meeting. The adjournment was approved unanimously. The meeting was adjourned at 10:00 p.m.

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.*