

Montpelier Planning Commission
April 13, 2009
City Council Chambers, City Hall

Subject to Review and Approval

Present: Karen Vogan, Chair; David Borgendale, Vice Chair; Anne Campbell, Jason Czarnezki, Alan Goldman, and Jesse Moorman.
Staff: Gwen Hallsmith, Director of Planning and Community Development.

Call to Order:
Karen Vogan, Chair, called the meeting of the April 13, 2009 Planning Commission to order at 7:00 P.M.

Approval of Minutes:
Approval of the March meeting minutes was postponed until the next meeting.

Welcome to Jason Czarnezki:
Chair Karen Vogan welcomed Jason Czarnezki as a new member of the Montpelier Planning Commission. Mr. Czarnezki said he resides on Guernsey Avenue in Montpelier. He moved to Montpelier last May and is a law professor at the Vermont Law School teaching environmental law and property law. He grew up in Milwaukee, Wisconsin.

Sabin's Pasture:
Gwen Hallsmith, Director of Planning and Community Development, said the Sabin's Pasture Plan is proceeding toward a hearing on Thursday.

Catherine Cooper of the Trust for Public Lands said they have submitted an Act 250 Master Plan application for Sabin's Pasture. Basically, the plan says they are looking for approval for 145 housing units on 100 acres of property. The 145 units are clustered on about 20 acres of the property and approximately 80 acres of the land would be protected as public open space. The proposal doesn't get into the specifics of exactly how the open space will be used and who will own that public open space basically just because that question is outside the jurisdiction of the Act 250 Master Plan permit process. The plan proposes a mix of different types of housing units within the development and also some commercial space along Barre Street as well. Ms. Cooper said tomorrow night at 7:00 P.M. in City Hall is the pre-hearing conference, the first of several public meetings that Act 250 will be hosting. The dates for the public meetings will be scheduled.

Ms. Campbell said when she said different types of housing, what is she referring to?

Ms. Cooper said the plan proposes some multi-family units, duplexes and single family homes that are joined by garages as well as some stand alone single family homes. The intent is that a good proportion of the housing would be affordable, but that is not directly addressed in the Act 250 application. That is certainly something that is part of the overall vision of the property in the future based on the work they have done in the Sabin's Pasture Working Group and talking with city staff about what is important as far as the plan the city has for housing.

Ms. Campbell said when she refers to a good proportion, is she talking 50 percent?

Ms. Cooper said the Sabin's Pasture Working Group recommendation was that 25 percent of the units would be affordable. Also, there is a grant from the Vermont Housing Conservation Board to support the project, and that grant suggested that a third of the units being affordable would be desirable.

Mr. Goldman inquired if they would be perpetually affordable.

Ms. Cooper said they haven't gotten into the details of what mechanism the housing would be affordable.

Ms. Hallsmith said there are a couple of questions they will have to address as the project moves forward. One is how consistent is the plan with the Master Plan for the city. The Regional Planning Commission is also taking it

up to determine its consistency with the Regional Plan and they have some draft language they circulated on Friday which would say that the Central Vermont Regional Planning Commission finds the Master Plan to be in conformance with the Regional Plan provided it does not permanently restrict future development from the remaining undeveloped portion of the site. This is the Planning Commission's opportunity to give David Borgendale some feedback since he is our representative to the Regional Planning Commission. He also circulated a letter where he raised questions about the Regional Planning Commission coming to that conclusion.

She felt it was worth discussing and was worth looking at the City's Master Plan to see in general how the proposed development fits. Because they don't have the development plans in front of them she didn't expect they would review it in any detail. Sabin's Pasture actually is specifically referenced in the Master Plan on a couple of different occasions. One is on page 12 where it says the city has made an effort to protect outlying areas, such as Upper Elm Street, outer Terrace Street, Towne Hill Road, Sabin's Pasture and Old Country Club Road. They say those areas aren't well served by infrastructure, which is part of the reason it makes them difficult to develop. The Master Plan also called for new development to be based on traditional patterns of neighborhood development, and she knows they made an effort to try and make the new development in Sabin's Pasture match the grid format of the city streets and adjacent neighborhoods.

It also talks about how the current zoning over the years has proved insufficiently flexible for the needs of the city too frequently leaning to piecemeal modifications and zoning variances as it repeatedly proved inadequate to achieve the city's vision of its future. An example was the application of interim zoning to Sabin's Pasture. The city shall begin revising its zoning to better reflect the needs and desires of its residents for future development based on traditional patterns and neighborhood development. The subsequent rezoning of Sabin's Pasture with the high density residential and medium density residential districts that hug near Barre Street and the low density residential up in the middle of the pasture reflected the goals of the Master Plan.

The fact that the development that has been proposed is within those two areas, and there might be a couple of units that have spilled over into the LDR section, she thinks it is consistent for us to say this development that the Master Plan permit would be consistent with our Master Plan. There is also the question of the Regional Plan.

Mr. Borgendale explained that it is a subcommittee of the Regional Planning Commission which is called the Act 250 Committee that took this action. It was news to him that they were taking this position. He had a conversation with Chris Walsh in which he clarified that the language was in fact what had been adopted by the committee. He also had a long conversation with George Malek, who is on the committee, who explained what they meant. Chris thought it would be a good idea for the committee to meet again.

Mr. Borgendale said when there is a review of a town's master plan the representative from the town and from any towns adjacent to that town are invited to sit in on the review committee, but he isn't sure about Act 250. He knows he didn't get any specific invitation to participate. There is a meeting to

revisit this language tomorrow at the Regional Planning Commission and he plans to attend that meeting. He would like advice or consent from members of the Planning Commission about what he would like to talk about.

Ms. Hallsmith said George Malek called her today to talk about this as well and explain the concern about the language around permanently restricted.

Mr. Borgendale said his understanding of what was meant by this language is that they were concerned there would be deeded restrictions on development which would be in place in perpetuity and that could not be changed by any future generation through any sort of public process. They were okay with having an Act 250 condition or zoning bylaws or having city ownership with the city deciding that the purpose was to use it for public open space purposes, but the concern was that if in 50 years people in that generation decide that there is a different and more desirable use that they should be able to make that change and if there was a deeded restriction that would be difficult to do. He happens to think that is good public policy because he doesn't think they have any business deciding forever what land use is acceptable. He doesn't think that the language they propose says that and it needs to be revised. That is what he intends to say to them, and assuming this body is comfortable with that he will do his best to get the language changed.

Ms. Hallsmith said she asked George Malek what was the language in the Regional Plan that led to that condition. It seems to her for them to even request a condition that the deeded restrictions not be put in would take some pretty pointed language in the Regional Plan about making land available for housing. That language would have to be in concert with the city's Master Plan and the Growth Center application the city submitted. Mr. Malek said there was some general language around for infill development and for keeping new development consistent with adjacent neighborhoods, which seemed to be weak language to hang that kind of condition on especially given the city's efforts to designate some of Sabin's Pasture as a growth center and look very carefully at infill development throughout the community as part of the growth center application and the efforts that the Planning Commission has made to make the development there consistent with the adjacent neighborhoods. Given the way this development has been moving forward where the Trust for Public Lands is the lead, and their goal is conservation land, that trying to block that goal because of very weak language in the Regional Plan seems just a bit of a stretch to her. It is stretching beyond the limits of what their planning documents would suggest.

Mr. Goldman asked wasn't the Trust for Public Lands seeking restrictions in perpetuity.

Ms. Cooper said they have always looked at Sabin's Pasture project as a partnership between TPL and the City of Montpelier. TPL envisions that the most likely owner of the open land would be the city, but there are many steps between now and that actually happening. It isn't finalized and determined that it would be a city park. They could potentially convey the land to the city unrestricted and then the city would have to restrict the land in order to have it be part of the park system. They don't necessarily need to restrict the land themselves before committing to the city. Part of their concerns with their conversations with the Regional Planning Commission is a question of whether this is the right time to be determining this level of specificity, and the TPL feels it is not because they don't know exactly who might be the permanent owner of the land, either the development portion or the conservation portion. At this stage a statement of intent is reasonable, but nailing down the specifics could put them in a position where they aren't actually able to do what they want to do. When she says we, she means TPL, the City of Montpelier and others who are interested in seeing the conservation outcomes.

Ms. Campbell said there is no need in the Act 250 review process to nail that down.

Ms. Cooper said not from her perspective.

Mr. Goldman said he would think as part of a Memorandum of Understanding they would have to nail down something.

Ms. Campbell said that something would seem to her to be what TPL has envisioned. She would defer to someone who has more knowledge about the legalities of Act 250 than she.

Mr. Goldman said it may have changed. When he needed a very large permit he had to commit to perpetuity, and one of the reasons he gave the permit back was for that reason because he didn't think they had the understanding to figure out where we are going to be 100 years from now. Does he take 250 acres in perpetuity and make it one thing?

Ms. Cooper said what the TPL is anticipating is that after the Act 250 master plan permit process that Act 250 might say whoever comes back, whether it is TPL or a future developer for final Act 250 approval, at that point there would need to be a plan for how that plan is going to be protected. That kind of process would work fine. It is just having that specificity move to this stage would be problematic.

Mr. Moorman asked if the Regional Planning Commission in exchange for their approval is suggesting this language.

Mr. Borgendale said as part of the Act 250 process the Regional Planning Commission has to render an opinion on consistency of the application with the Regional Master Plan.

Mr. Moorman said it would seem to him that the absence of this provision would not make TPL's plan inconsistent with the Regional Plan. That would surprise him. The question of whether or not there should be a restriction in perpetuity is a legitimate open question, or whether there should be some sort of restriction of non-development based on zoning, his concern is more with the point in time. It seems that later on the city may in fact decide to put the land in perpetuity or prefer to do it through some mechanism such as zoning. He would be curious to know if there was an argument whether this language was required to conform to the Regional Plan.

Mr. Borgendale said his belief is that it is not.

Ms. Hallsmith said George Malek the language in the Regional Plan that they were hanging this particular condition on was language around infill development and trying to make new development consistent with existing neighborhoods. She believes it is a stretch to suggest that they could arrive at this conclusion from that language, especially in light of what the City's Master Plan says and what the recent Growth Center application says. The city has done a lot. They have rezoned the properties since this Sabin's Pasture project started. Now the area that is being discussed as a conservation area is in fact a low density residential district and the development is occurring in the parts of the site that are medium and high density residential.

Ms. Campbell said what George Malek is talking about in terms of infill development is not inconsistent with the city's long term plan and the desire to conserve the upper pasture.

Ms. Hallsmith said Mary Hooper thanked David Borgendale for being on top of this. She is a little stuck on the Regional Planning Commission's problem with a private property owner permanently conserving private property. She guesses that means they don't support any of the farmland acquisition projects over the years, which have permanently conserved property, nor would they support Hubbard Park or North Branch Park. If this is their public policy she would like to see it publicly discussed. If the city decides to participate in some way in the proposed project there will be a public conversation about the use of the land, but until then it seems to her that this is an issue between TPL and whoever they can find to do the development with.

Ms. Hallsmith said Mary went on to say if the Regional Planning Commission is serious about housing development they should be happy with the way the city has moved forward to try and get some affordable housing and housing developed in Sabin's Pasture and that we have found a group willing to make a significant investment to create a project that will create more housing in the city than has been developed in the past 20 years, and will create a park for a portion of the city that is, in some people's views, underserved. If all of the pieces come together, the city will have also significantly improved the city's tax base. She appreciates this may not be a show stopper but she is disturbed that the Regional Planning Commission would comment on something that is outside of their jurisdiction. It isn't whether the question of whether it conforms or not.

She said she thinks they would be hard pressed to say that it does not conform to the Regional Plan.

Mr. Campbell said especially since they approved the city's Master Plan.

Ms. Hallsmith said that doesn't preclude them from being able to comment on its consistency with the Regional Plan, but you would assume in the approval of the city's plan that the city's plan is therefore consistent with the Regional Plan.

Ms. Campbell said that is one of the conditions for approval.

Mr. Borgendale said when the Regional Planning Commission approves a town or city's master plan one of the criteria is consistency with the Regional Plan. He thinks they could argue that a new Regional Plan has been adopted since that happened. He agrees that this language shouldn't be there at all. He is just looking for some kind of an acceptable compromise so there isn't a battle about the whole thing.

Ms. Campbell said her concern with any potential compromise is that it not leaves the door open in the way that the Master Plan had a certain design for the river front which has become a very slippery slope and looks nothing

like the Master Plan intentioned it would look like. She can easily see that happening here if some lines aren't drawn in the sand around that.

Ms. Cooper asked if they received the impression in their conversations with the representatives from the Regional Planning Commission that they were really stuck on this language.

Mr. Borgendale said he does know that the language is a result of a specific motion made within the committee. He has only spoken with one of the committee members.

Ms. Cooper said she would personally trust his ability to mediate the situation and find out if they are willing to take the language out all together after having heard their feelings about it.

Ms. Hallsmith said they will be presenting at the hearing on Thursday.

Mr. Czarnezki asked if the Trust for Public Land was engaged in any other permitting processes that relate to Sabin's Pasture.

Ms. Cooper replied no.

Mr. Borgendale said he has served on the Regional Planning Commission for less than a year, but it struck him they may have a governance problem as well because it seems with a major Act 250 application having the RPC take a position like this really should be a board issue and not a subcommittee issue, which he intends to raise. As long as he has served on the RPC they have not had any position on Act 250 in front of them.

Ms. Hallsmith said they shouldn't forget the governance issue that goes with not having them really representing one person/one vote. The towns are not weighted voted based on population on the Regional Planning Commission.

Mr. Borgendale said he leaves with instructions to handle this using his best judgment taking comments from the Planning Commission members.

Mr. Czarnezki said he would be happy to look at the language and highlight the language. He wanted to put it on the record that while he is a law professor and has been taking a crash course in Act 250 since he got to Vermont he isn't licensed to practice in the state of Vermont and can't give legal advice to the Commission.

Multi-Modal Transit Center:

Ms. Hallsmith reported she has been trying to get this on the City Council agenda. Now they are looking at holding a workshop on it on May 13th so there won't be any further progress on that for another month.

Ms. Campbell said she saw a headline about the bus stop leaving.

Ms. Hallsmith replied that is the Greyhound trailer. The man, who was running the Greyhound services out of the trailer gave up, found another job and closed shop. The Greyhound service will still be coming to Montpelier. Rhapsody will be selling tickets and they are looking for a place for the bus to pull over somewhere near Rhapsody so they can continue service in the city. That has nothing to do with the multi-modal transit center. Suzanne Hechmer and she have been doing their best to keep Greyhound here and finding a place for them to sell tickets. It's a win/win for the business owner because there is some revenue for them from the commissions.

Mr. Borgendale said at one point it was Vermont Transit.

Ms. Hallsmith said Vermont Transit was owned by Greyhound, and Greyhound was owned by somebody else. All of that was bought by a British company called First Group, so all of those bus lines now are run out of England. They do have offices in Texas. To say they are out of touch with the New England service area is an understatement. With the transfer there were all kinds of crazy mistakes made. Clancy was on one of the buses coming back from White River Junction and he had to tell the driver how to get into Montpelier. Another woman

heading into Canada testified before the City Council that the bus had pulled into a construction zone and was running illegally down through a construction zone that had been cordoned off and the driver pulled through the border and did something wrong there and had to turn around and go back, and then she needed directions into Montreal to get where the bus station was. They arrived two hours late. There aren't good reports of the transition.

Mr. Borgendale said at one point it seems to him somebody talked to the Planning Commission and said the service might be terminated by Greyhound.

Ms. Hallsmith said largely because of the fact the city is building a multi-modal center they are very interested in continuing service to Montpelier.

Mr. Borgendale said he only remembers it because he has a replica of a Vermont bus from the meeting sitting on his desk that was handed out as a memento of an extinct species.

Ms. Hallsmith said they are awaiting direction from the leadership on what to do with the transit center.

District Energy Plant:

Since the last Planning Commission meeting the city received a grant from the Clean Energy Development Fund for \$75,000 to continue work on the district energy plant. The city also voted to change the language on the original bond vote from 2003 to allow us to use those funds for siting, engineering, and permitting the plant, so now they have about \$325,000 to do that with. The Requests for Proposals were due last Wednesday. There are about five proposals. There is a committee that has volunteered to review the proposals.

There are some proposals from big companies that are willing to build it for us and other proposals that want to have more of a sharing partnership around building and distribution.

enVision Montpelier Process:

enVision Montpelier continues to chug along. There are committee meetings this month. There is an Economics and Livelihood meeting on April 21st. The other committees have been meeting. Since Jason Czarnezki is new we might want to take a peek at the existing committee assignments. Matthew is covering Natural Environment.

Next month the first week of May is another big stakeholder meeting on recreation and cultural activities in town. There is a lot of talk about developing some sort of regional recreational center and regional senior center so those representatives will be present. That is the only meeting in May because there are no committee meetings in May. That is scheduled for May 5th.

Montpelier CAN:

Regarding the Montpelier Capillary Neighborhoods initiative they met with the Governance Committee this month to talk about the possibilities for giving the neighborhoods more of a voice in city government through some mechanism, so those conversations are ongoing. The North Street Neighborhood had invited City Council and the City Manager to attend one of their recent potlucks where that was discussed as well.

Turntable Park:

They are in the process of completing the budget to submit to the state to finalize the funding for the brownfields cleanup. The Pyralisk Park, as you know, did not get built and the property is being sold to a private developer who does not need the money that we have in the brownfields budget to do his side of the brownfields cleanup.

Ms. Campbell asked if we knew what his plan was for the property.

Ms. Hallsmith said they have not received a final plan yet. He has been talking about producing a space for industrial and commercial development that matches most of the footprint of the existing salt shed.

Mr. Goldberg inquired if that was Connor's group.

Ms. Hallsmith replied yes.

Mr. Goldberg asked if it was consistent with the original plan for that district.

Ms. Campbell said industrial and commercial is not the original plan, and far from it.

Ms. Hallsmith said the plan he has submitted to the Planning Office on a very tentative basis did not go into any detail about the facility's use except to list all of the allowed uses in the district without any specificity. They told him he needed to come back with a more detailed plan and submit it to Design Review and the Development Review Board so they could consider it.

Mr. Czarnezki inquired what the district was.

Ms. Hallsmith said it is the Riverfront District which does have special zoning. He has received a permit from the Planning Office to tear down the red part of the structure because under the Pyralisk Park plan the whole building was going to be demolished. He wanted to move forward with tearing down the little red wooden part. Since the whole building already had a demolition permit they said fine. Once he came back and submitted a plan for what looked like a partial tear down of the other part, they told him that if any of the building was to remain he needed to do a site plan amendment with the DRC and the DRB and have clear uses delineated. He is still working on closing on the property, which she imagines will happen later this month or early May.

Ms. Hallsmith said because he doesn't need the money for the brownfields cleanup they are asking the state to dedicate the rest of the money that would have been used to clean up the Pyralisk side of the brownfields to allow the city to complete the park construction that would bring it in compliance with its current permits. When they applied the remainder to the park construction budget, which is a complicated budget that includes brownfields money, transportation grant for \$75,000, and \$33,000 from the state tax reimbursement they get from the construction of 575 Stone Cutters Way building and matching funds from the city and parks fund, then we are only \$11,000 short. That includes developing some sort of overlook of the river and the perennial plants to be put in. They are pretty confident with some naming rights and donations they could close that gap and the park would be built as designed.

Of course, it does rely on the state agreeing to give us the remainder of the money, and that is unclear. It's about \$75,000, which isn't a lot in the whole scheme of things, but it does make a big difference in terms of whether we can bring the park up to standards we had imagined.

enVision Montpelier Committee Assignments:

Ms. Hallsmith asked if the members were happy with their committee assignments. To review how this works for Jason's benefit is that each Planning Commissioner, except for the Chair, has a committee assignment. The Planning Commissioner is Co-Chair of each enVision committee with someone who is elected from the committee. In the case of the Natural Environment Committee the Co-Chair is Chris Hammer, who is the Chair of the Conservation Commission. You work with your Co-Chair to set the agenda for the meetings and run the meetings. Having two people responsible makes it a little easier than just one. Typically, the Planning Commissioners are expected to attend the committee meetings and stay up to date on what is going on. Jesse Moorman serves on Infrastructure. Anne Campbell is on the Governance Committee. David Borgendale is on Economics. Alan Goldman also serves on Infrastructure. Claire serves on the Social Systems Committee. The Natural Environment Committee is open so Jason Czarnezki could serve on that committee.

Mazer Grants:

There is another Steering Committee meeting coming up on April 27th to discuss the Mazer grants.

Regional Planning Commission:

The Regional Planning Commission representative is a yearly appointment made by the City Council. David has expressed an interest in continuing. As of last year the Planning Commission did play a role in asking that the regional Planning Commission representative be part of the Planning Commission and voted to recommend somebody to the City Council.

Mr. Goldberg moved that they ask David Borgendale to continue serving as Montpelier's representative on the Regional Planning Commission. Ms. Campbell seconded the motion.

Mr. Borgendale said he did say he wanted to be reappointed. One of the reasons is that he has become aware that it takes awhile to get up to speed. He is currently a nominee for the Executive Committee for the coming year which would be very helpful knowing what is going on. It was unanimously approved that David Borgendale serve as the representative to the Regional Planning Commission. David Borgendale abstained from voting.

Other Business:

Ms. Hallsmith said she is going on vacation from April 24th to May 12th or 13th. That raises questions about Planning Commission meetings. She can ask Clancy DeSmet to attend. It means she will miss at least two of their regularly scheduled meetings on May 11th and April 27th. The fourth Monday in May is Memorial Day.

Ms. Campbell said it was her understanding when they set up the enVision Montpelier process and urged all of the Commissioners to be present for the committee meetings it was with the understanding that we would waive one meeting a month, so it makes sense to waive April 27th.

Ms. Hallsmith said the next real push will be to get the Master Plan written, and that will start up in earnest once the committee meetings have ended. June is the last set of committee meetings. Then, the Planning Commission will take all of their recommendations and start drafting the new Master Plan.

Mr. Borgendale said his recommendation as far as May 11th is concerned is that they leave it to the Chair to decide whether or not there is enough business to call a meeting. Chair Karen Vogan said Clancy could let her know if something comes up the Planning Commission needs to address.

Ms. Hallsmith said they did get the Growth Center application into the state several weeks ago, and they have 30 days to determine if it is complete. Once it is complete, a whole bunch of copies have to be made for them and then they have 90 days to consider it and have a meeting with the city.

Chair Karen Vogan said the consensus seems to be to leave May 11th open for a potential meeting should there be something that comes up the Planning Commission needs to address. Otherwise, there will not be a meeting. We are cancelling the April 27th and May 25th meetings.

Adjournment:

Upon motion by David Borgendale and Anne Campbell the Planning Commission adjourned.

Respectfully submitted,

Gwen Hallsmith, Director
Planning and Community Development