Barriers to New Housing Committee Report
November 9, 2011

Council Members:	Angela M. Timpone (Chair) and Nancy Sherman
Housing Task Force Members:	Polly Nichol and Jack McCullough
Planning Commission Members:	Alan Goldman and John Bloch
Staff:	Ken Russell and Gwendolyn Hallsmith
Members of the Community:	Jennifer Hollar and Edmar Mendizabal
Vermont Law Students:	Nolan Riegler and Breana Behrens

The committee charge: *To identify barriers to new housing in the city; select a date to convene a "Housing Summit" to identify barriers; and develop options for what the city can do to foster new housing.*

Introduction

In June 2011, the Barriers to New Housing Committee was formed by the Montpelier City Council to investigate the barriers to new housing in Montpelier and identify ways the city can promote new housing growth. This report reflects the assumption that more housing and growth are ways to relieve financial pressure on city and tax payers. More housing and more residents will increase the city's grand list, spread the cost of services over more households, and utilize excess capacity in the schools and water system. On the other hand, some residents want the city to continue as it is with limited growth. The optimal or maximum size for the city was not discussed by this committee.

Housing and residents are the life blood of the city, now and in the future. We need to plan and provide for new residents as well as the changing needs of current residents. There are many views and opinions about Montpelier's needs for housing and why needed housing is not being built. This report is an effort to look at this problem and propose some constructive recommendations that will address the problems and conditions that impede the development of new housing in the city. In addition to discussions at our regular meetings, we conducted an informal telephone survey with fifteen local realtors, land owners, lending institution representatives, and developers. They gave valuable information in response to three questions that are the basis for this report. The questions are:

1. What are the barriers that discourage or block people from building or purchasing houses in Montpelier?
2. What are the factors that attract and retain home owners/residents?
3. What can the city do to encourage the building/development of more new homes and residences and bring new owners/residents to Montpelier?

The committee was assisted by Vermont Law School students, Breana Behrens and Nolan Riegler, from the Land Use Clinic. Both Breana and Nolan attended our meetings, researched policies and regulations that other municipalities use to increase housing development. Many of the recommendations in this report came from Breana and Nolan's research findings. A full report of their findings is in Appendix C: "Land Use Clinic – Vermont Law School: Options for Increasing Housing Development in Montpelier." Montpelier is well positioned to make a long term commitment to implement some of these recommendations. In some cases that may take some modest expenditure of funds, but we are fortunate to have the Planning Department, the Housing Trust Fund, and the Housing Task Force to help move the recommendations forward.

Barriers: Real and Perceived

What are the barriers that prevent new housing construction in Montpelier? This question was posed to local realtors, land owners, regulators (members of the Development Review Board), representatives of lending institutions, and developers. Survey responses, with comments from Planning Director, Gwen Hallsmith in parentheses are listed in Appendix A of this report. The Planning Director's responses are important because they provide current and correct information.

The survey responses show that many factors affect new housing; some can be addressed by the city through marketing, zoning and regulation. Our focus is on the areas where the city can take action to improve the environment for new housing.

Types of barriers identified

A. Economic conditions
B. The Montpelier market: Housing and land conditions and availability
C. Preferences and attitudes of potential buyers and current residents
D. Montpelier property taxes
E. Regulatory conditions; state and city
F. Financing: what's needed and what's available

Based on information from our surveys and the inventory of programs and procedures used in other municipalities, the committee makes the following recommendations for actions the city can pursue in order to promote the development of new housing and new residents.

Recommendations

Recommendations fall into three categories: marketing, developing new financial resources, and revisions to the regulatory environment.

Marketing

Montpelier has many assets, and survey respondents easily listed the factors that attract and retain homeowners and residents and make Montpelier a highly desirable place to live. There is, however, a lingering narrative that the city puts up unreasonable barriers to development. This makes it especially important to present clear and current information about processes, procedures and regulations that pertain to the development of new housing in the city.

- Montpelier promotion campaign – ***This is a great place to live and work!*** The city should develop a new marketing campaign that identifies the numerous assets that make the city a highly desirable place to live so that visitors and potential home buyers and residents know what the city offers. The group who answered our survey questions identified a set of factors that attract potential home buyers and retain current residents.

  Montpelier school system, city services (police and fire in particular), unique character, vibrant downtown with attractive stores, businesses, and restaurants; downtown events and farmer's market, friendly neighborhoods.

  (Action by Council, Manager, Planning Department, Montpelier Alive, Staff)

- Information for builders and developers will be featured on the city website, making the steps of permit processing and zoning regulations accessible and understandable, and sending the message that Montpelier welcomes new housing. By engaging in a compelling campaign of action and information, we can shift the narrative around housing development. We can present the regulatory framework in the light of the underlying values that shape this system, based on the understanding that there is a cost to living in a clean, safe, and peaceful city. **(Action by Council, Manager, Planning Department, Staff)**

- Housing Design Competition: This idea came from the research of the Vermont Law School students on programs used in comparable cities. The idea can be explored and modified so that it promotes new housing that meets the city's needs. The general concept is that the city would create a competition to encourage the design of housing that would meet the city's specific housing needs, including building and lot size, energy efficiency standards, and other desired outcomes. When winning designs are selected, the city could make them available to developers, with assurance that the plans were "permit ready" for a designated period of time. (See Appendix C: "Land Use Clinic – Vermont Law School: Options for Increasing Housing Development in Montpelier" Section 1. Permit Ready Competition) – **(Action by Council, Planning Department, Staff)**

Develop New Financial Resources

In an era of limited resources, it is challenging to find the financial means to implement desired policy outcomes. Necessity, however, can inspire some effective approaches, and our law student partners found some promising innovations implemented in other municipalities that may be useful in Montpelier as well.

- City sponsored periodic tax and financing seminars for lending institutions and potential business and home owners – **(Action by Planning Department, Staff)**

- Information about existing financial options: Distribute and share information with banks and realtors – **(Action by Planning Department, Staff)**
- Clarify incentives that offset sprinkler systems and other development expenses. **(Action by Council, Staff)**
- Housing Improvement District, *see Appendix C, Section 3, p. 18* -- **(Action by Council)**
- Publicize Accessory Apartment Incentives, *see Appendix A, p. 13* – **(Action by Council, Staff)**
- Expand Tax Stabilization to include in-fill housing, *see Appendix C, Section 6, Subsection ii* - **(Action by Council)**
- Adopt disincentives for vacant lots and underutilized buildings, *see Appendix C, Section 4* – **(Action by Council)**
- Create a program for individual development accounts for renters comparable to Montpelier Housing Trust Fund, *see Appendix A, p. 13, fourth paragraph from the bottom* -- **(Action by Council, Planning Department, Staff, Housing Task Force)**
- Explore opportunities to apply for Tax Incremental Financing (TIF), *see Appendix C, Section 3, Subsection f.* - **(Action by Council, Planning Department)**
- Develop a business/non-profit incubator program *see Appendix A, Section A, Economic Conditions, second paragraph* - **(Action by Council, Planning Department)**

Revisions to Regulatory Environment

A fair and comprehensive regulatory system will help the city and its citizens achieve desired policy ends by helping to shape development efforts in a way that helps the community achieve greater goods for all.

- Change setbacks for infill housing - **(Action by Council, Planning Department)**
- Explore adopting a Housing Preservation ordinance that would address the problem of losses in the housing stock due to demolition by neglect and conversion to office space. *see Appendix B, Jack McCullough's memorandum of 10/13/11, and Appendix C, Section 4, Subsection b.* - **(Action by Council, Manager, Planning Department, Housing Task Force)**
- Explore incentives for infill development (side yards, vacant lots, and etc.) *see, for example, Appendix C, Section 4, subsections c & d.* – **(Action by Council, Planning Department)**
- Educate members of regulatory bodies to properly play their adjudicatory roles. – **(Action by Council, Manager)**
- Streamline approval process
  - Increase the size of projects the City Zoning Administrator can approve (currently at 2, could go as high as 4) – **(Action by Council, Planning Department)**
  - Adopt a comprehensive approval process (one stop process) **– (Action by Council, Manager, Planning Department)**
  - Advocate for comprehensive permitting process at the legislature. **– (Mayor)**

Conclusion
The City Council, Planning Department, staff, Montpelier Alive!, and the Housing Task Force should work together over the next year to begin the implementation of these recommendations to insure growth of Montpelier's housing in the future.

Further Steps
The committee recommends additional research in these areas:

- Montpelier's impact fees compared to surrounding communities - **(Action by Staff, Planning Department)**
- Inventory of vacant spaces and underutilized buildings - **(Action by Staff)**
- What are the housing needs by demographics? – **(Action by Community Development staff person)**

The final product should be a development plan for new housing, a collaborative effort of the Planning Department and Housing Task Force.

Appendix A   Survey Findings

We conducted informal interviews, primarily by telephone, with local realtors, land owners, developers, representatives of lending institutions, and regulators. These individuals gave valuable information in response to three questions that provided useful information for this report. The questions asked and categories for the responses follow:

1. What are the barriers that discourage or block people from building or purchasing houses in Montpelier?

The responses fall into these categories:

A. Economic conditions
B. The Montpelier market: Housing, and conditions, and availability
C. Preferences and attitudes of potential buyers and current residents
D. Montpelier property taxes
E. Regulatory conditions; state and city
F. Financing: what's needed and what's available

2. What are the factors that attract and retain home owners/residents?
(See this section for the specific responses)

3. What can the city do to encourage the building/development of more new homes and residences and bring new owners/residents to Montpelier?
(See this section for the specific responses)

Parenthetical comments from Planning Director, Gwen Hallsmith, are important because they provide current and correct information.

Survey question 1. What are the barriers that discourage or block people from building or purchasing houses in Montpelier?

A. Economic Conditions

Response: No new jobs. No new companies hiring to fill new jobs (white or blue collar) in Montpelier. If there were a new employer in the city, new residents would want to live here.
(Planning Dept. comment: It's true that new employers coming to town might generate more demand for housing, but we have more jobs than people in Montpelier. It's hard for me to imagine that unemployment and lack of economic opportunities is the main barrier to new housing.)

Response: Need to offer incentives to businesses to locate in Montpelier
(Planning Dept. comment: I am not aware of businesses that have decided not to come here due to a lack of incentives. We need to keep the businesses we have, and grow them. The development of a business/non-profit incubator would be a good strategy for attracting and retaining businesses.)

Response: Economic development is needed in Montpelier; we need to create new jobs.
(Planning Dept. comment: New jobs are always good.)

Response: No demand for new housing in Montpelier because of the economic downturn. We are in a recession; Burlington is in slightly better economic situation.
(Planning Dept. comment: At our regular regional meeting of the Housing Partnership, the realtors report that housing has stabilized and that prices did not take a huge hit in Montpelier, unlike many other towns and cities.)

B. The Montpelier market: Housing, land conditions, and availability

Response: Physical barriers – topography of the land in Montpelier
(Planning Dept. comment: This tends to be true, although you can visit other places where steep hills and topography do not stop housing from being built. The combination of winter conditions combined with the topography is perhaps more of a barrier.)

Response: Low availability of housing at all price levels; many people are interested in houses in the middle price range.
(Planning Dept. comment: The inventory of housing that is available in Montpelier is always more limited than other towns, largely due to the demand for housing here. Right now there are 85 properties for sale, with prices ranging from $89,000 for a condo on Franklin Street, to $590,000 for a beautiful Victorian on Bailey.)

Response: Condition/quality of the stock of housing. Large proportion of single and multi-unit housing was modestly built, years ago. Quality of housing stock has withered and/or depreciated over time. Maintenance has been delayed.
(Planning Dept. comment: I don't think this is any more true of Montpelier than other places.)

Response: "The bloom is off the housing rose!" Perspective buyers are much more cautious. Much of the housing stock is older construction, buyers discover it is hard to plan for large, expensive items/improvements. Heating costs are as high as property taxes.
(Planning Dept. comment: Heating costs for large, older homes are high, as are property taxes.)

Response: Lack of lots in the city that are suitable for building houses
(Planning Dept. comment: This tends to be true. Right now there are five lots available, ranging from $49,000 to $87,500. These are all substantially more than the regional average for building lots, which tends to be in the $25,000 - $35,000 range.)

Response: Not a lot of land available for development.
(Planning Dept. comment: In addition to the five building lots, there are a few large sites, all which would cost over $1,000,000.)

Response: Not a lot of vacant land in Montpelier, therefore need to do cluster developments; use established streets, water and sewer; achieve high density; enable people to walk to services.
(Planning Dept. comment: True.)

Response: Need to accept that we live in a city; don't need big spaces; new homes will be smaller than older homes; household size is smaller, too.
(Planning Dept. comment: True.)

C. Preferences and attitudes of potential buyers and current residents

Response: Need homes for young, growing families; higher end homes as well as low income housing: 20% subsidized housing.
(Planning Dept. comment: True.)

Response: Need housing for older residents – new to Montpelier and residents wanting to downsize; retirement housing with 1st floor bedroom and bath (like Westview Meadows).
(Planning Dept. comment: True.)

Response: Build infill housing in the downtown for retirees, so their houses can be resold to families.
(Planning Dept. comment: True.)

Response: Potential buyers want to be rural, with open land and a view, but in the city with city services

Response: Litigation by adjoining property owners has become inevitable and it makes development of large projects time consuming and expensive.

Response: No one really wants growth or change; growth and new houses mean change

Response: There is talk about affordable housing, but "not next door to me."
(Planning Dept. comments: True. True. True. A significant barrier to new housing in Montpelier neighbors who fight to stop any change in their neighborhood.)

Response: Need for information and education around the value of diversity to assess how much the community is willing to support subsidized housing (moderate and below moderate cost).
(Planning Dept. comment: I actually don't think it has anything to do with affordable housing vs. market housing. I think its general aversion to change. I think Montpelier residents appreciate diversity and social equity.)

Response: Need to better inform the public about the value of having sprinkler systems in homes.
(Statistics show that lives and property are saved by sprinklers.)
(Planning Dept. comment: True.)

Response: Home buyers are not enthusiastic about living in a high density development or neighborhood
(Planning Dept. comment: True. Not why people move to Vermont. But as they get older, and we have an aging demographic, it gets more appealing.)

D. Property Taxes

Response: Property taxes are frequently identified as a barrier, in comparison with some surrounding small communities, although Montpelier's current property tax rate is lower than Barre City's rate. Property tax is a serious item that influences many home buyers. For example, estimated annual tax bills for a $250,000 house in Montpelier is $6,700. Tax on a similar house in East Montpelier is $4,000, and in Berlin $3,500.

(Planning Dept. comment: Our property taxes are high, but people still move to town because of the high quality schools.)

Response: People interested in buying in central Vermont don't even look in Montpelier because of the taxes.
(Planning Dept. comment: Not true – the reputation of Montpelier schools and the proximity to services still brings people into the city.)

Response: City tax issues are mitigated by Act 60 and income sensitivity provisions. These prebates reduce the education portion of the property tax, so a significant proportion of Montpelier residents do not pay the full amount of their property taxes.
(Planning Dept. comment: True.)

E.   Regulatory conditions: state and city

Response: Act 250 process is quite complicated.
(Planning Dept. comment: True. But the new Growth Center has raised the threshold for Act 250 projects to 50 units, so Act 250 doesn't need to be a barrier for smaller projects.)

Response: It is difficult and risky to build in Montpelier; easier to go outside the city where there is less regulation
(Planning Dept. comment: There is less regulation outside the city. But the lack of infrastructure elsewhere can make it difficult and risky there as well.)

Response: Montpelier's zoning regulations have more requirements than surrounding communities; many requirements have high costs (sprinkler systems); surrounding, smaller communities have simpler, looser zoning regulation or none. Example: To build a 6X8 deck on an existing home was long and complicated process. Getting a Zoning Permit was a straight forward, quick process at a reasonable cost ($25). Application process for getting a building permit was unnecessarily complicated and time consuming; 2 dozen conditions had to be met for the simple addition of a deck.
(Planning Dept. comment: Other communities do not require sprinkler systems. We do have more zoning requirements than other communities, although our zoning alone is not a substantial barrier. The way residents use the zoning to stop projects is much more serious.)

Response: Montpelier zoning limits are lower than Act 250 (10 acres or 5 lots). In Montpelier, if you are developing 1 – 2 units, Clancy can give you a permit if you meet the zoning regs. 4 or more units requires taking the plan to DRB for approval.
(Planning Dept. comment: I am not aware that this requirement has stopped any housing developments.)

Response: Regulation is important to protect the public (home owners and renters), but it adds layers of cost and expense that reduce the ability and interest of people to get into the housing market

Response: Building codes are strictly enforced by building inspectors, with no leeway or flexibility; no opportunity for personal choice or long term planning

Response: Building codes are expanding and covering more: fire codes, sprinklers, lead paint, ADA
(Planning Dept. comment: Other nearby communities have not adopted building codes. This can tend to make Montpelier more challenging and expensive by comparison**.)**

Response: In past Master Plans, many areas eliminated for development; resource overlays, protection of ridges, primary agricultural land, conservation areas. Nothing left to build on.
(Planning Dept. comment: Right now our current zoning does not prohibit development in these areas. We have incentives built in to encourage people to cluster development in areas that are not important natural resources, but this is not a barrier. Perhaps the perception that we regulate these areas is a barrier, but not the actual code.)

Response: Keep the Building Inspector consistent
(Planning Dept. comment: We get a lot of complaints about the building inspector. They tend to be from a few people who are serial code ignorers/violators, rather than the general public.)

E. Financing and credit: what's needed and what's available

Response: Barriers to entry into the real estate market include 30 year mortgages and current interest rates that are actually incentives for buying "more" house (compared to 30 years ago). Payments plus cost of needed repairs (delayed maintenance) for existing housing block entry into the market for new housing because of the high cost of being in the property.
(Planning Dept. comment: The message is not clear, but if people can buy "more house" because of low mortgage rates and long mortgage periods, they can also choose to buy "less house" with lower O&M costs.)

Response: It is true that a portion of the property tax is covered by the State, but a banker does not know how much when qualifying someone for a mortgage loan.
Planning Dept. comment: Bankers need better tax education. I believe it is possible to figure it out.)

Response: Cost of building a development is high: Upfront costs, such as site preparation ($40,000), street requirements (4"depth for paving), underground wiring, sprinkler systems ($10,000), add up quickly. Builders have to put up a significant amount of money without certainty that they will sell what is built. Developers may have to invest a million dollars at 7% interest. They cannot carry this amount of debt for a long period.
(Planning Dept. comment: True. This is why we've been exploring Tax Increment Financing, so that the city can help install the required roads and infrastructure for new development. This was how it was done in the past. Downtown Montpelier was not laid out by private developers.)

Response: It is not cost effective for developers to go through permitting. Montpelier has a reputation of not being developer-friendly. Montpelier is a tough spot in terms of creating more housing.
(Planning Dept. comment: Reputations die hard. I believe it was true that the city put up unnecessary barriers to development in the past, and our high standards for development now as compared to neighboring towns can be perceived as not being developer-friendly. Our standards are par for the course in most of the industrialized world, however.)

Response: Cost of building on current city street is lower than new development – road, water, sewer, are already in place.
(Planning Dept. comment: True.)

Response: First time homebuyers do not have the down payment now required. People do not have a lot of money (not just a Montpelier issue).
(Planning Dept. comment: Often true. The Central Vermont Community Land Trust currently has six units for sale in Montpelier that have subsidized down payment assistance attached. Some have been on the market for several months.)

Response: Credit is an issue. Low credit rating means higher interest rate and lower loan amount. If the credit score is below 660, potential home buyer needs 20% down payment and cannot qualify for private mortgage insurance. Rural Development and the VA are the only possibilities for 0% own. The Vt. Home Mortgage Guarantee Board is no longer available to assist with credit issues.
(Planning Dept. comment: True.)

Survey question 2. What are the factors that attract and retain home owners and residents?

Response: Montpelier school system, and the high school in particular
Response: Montpelier city services are excellent; police and fire departments in particular
Response: City is small scale, friendly, walkable; it is possible to live within 1 mile of down town
Response: Montpelier is a great place to raise kids
Response: Montpelier presents a "Norman Rockwell moment". Vibrancy of the downtown, including all the activities/events supported by Montpelier Alive that include flowers and music, plus attractive stores and businesses, variety of restaurants, and farmers' market
Response: Neighborhoods are small-scale and relatively private compared with Burlington's neighbor hoods that are more "suburbia" in character
Response: Montpelier is quite distinct from Burlington; Montpelier residents want more customized housing – not standardized large developments
Response: Being in walking distance to downtown, the farmer's market
Response: Great schools
(Planning Dept. comments for all of the above responses about factors that make Montpelier a desirable place to live: It's all true. People get what they pay for, even though taxes are high. Friendly, safe atmosphere of the city makes visitors want to move here.

Survey question 3. What can the city do to encourage the building/development of more new homes and residences and bring new owners/residents to Montpelier?

Response: Roll out PR campaign to get people to move to Montpelier – emphasize convenience to jobs, stores, services, quality of schools.
(Planning Dept. comment: Good idea, would cost money.)

Response: Plan and prepare for the next building cycle. Publicize CAN (Community Area Neighborhoods) that brings neighbors together and builds connections and conversations and shared interests and activities.
(Planning Dept. comment: We are planning Neighborhoods Day coming up on November 19th.)

Response: "Get real" about who we are and what works in Montpelier. Set a housing goal that is realistic. 60 is the largest number of houses ever built in a year. Success in this economy means thinking small, realistically. It is more realistic to target building/selling 24 new homes per year, and possibly some multi-units – 2 per month.
(Planning Dept. comment: We had 29 new units last year, with three lost, for a net of 26. It was an unremarkable year. I think more is possible, with the right market and incentives.)

Response: Build smaller, efficient, tight homes on attractive sites that are walkable to downtown. This is what many potential buyers are looking for. Older interested buyers are looking for 1 floor ranch or condos, like Westview Meadows but more affordable.
(Planning Dept. comment: Yes, although the condos have not fared as well as single family homes in the real estate downturn.)

Response: Bring new employers to the city; offer incentives
(Planning Dept. comment: In the Creative Economy/Internet age, we bring more employers to the city by building more housing. A lot of people are working out of their homes now.)

Response: Designate a growth center. Stand by it. Issue permits and let the building proceed.
(Planning Dept. comment: This has been accomplished.)

Response: When development is started, do not tax each plot. Charge the tax when the unit is built.
(Planning Dept. comment: That is the current practice.)

Response: City bond for roads or build the roads and then the city gets paid as lots are sold.
(Planning Dept. comment**:** This could be accomplished if the city is able to establish a Tax Increment Finance district, but the process is complex and costly.)

Response: Assist developers in getting permits. Give developers of large projects breaks i.e. density, infrastructure
(Planning Dept. comment: Our current zoning does this. We give people a lot of assistance.)

Response: City serve as a co-developer
(Planning Dept. comment: We did this with the Sabin's Pasture project and the Act 250 Master Permit.)

Response: Explore tax incremental financing as a way to promote housing development and relieve developers/builders of some of the upfront costs.
(Planning Dept. comment: The opportunity to explore Tax Incremental Financing is not available now.)

Response: Montpelier attracts residents who want high quality housing. Don't just build row housing.
(Planning Dept. comment: True.)

Response: Create more amenities for residents such as a downtown playground/park, access to the river. Why did the city not buy the salt shed and make that space a park for residents?
(Planning Dept. comment: We tried to build a park where the salt shed was. The bids came in too high and we couldn't find the additional $100,000 that was needed to do it. We have completed the Turntable Park right next door.)

Response: Advocate for the state to resurrect the Vt. Home Mortgage Board.
(Planning Dept. comment: This idea needs more explanation.)

Response: Inform the public that Council recently approved the use of Montpelier Housing Trust Fund dollars for accessory apartments. Promote and encourage more accessory apartments.
(Planning Dept. comment: We have been working to amend our Housing Trust Fund program to accommodate more accessory apartments.)

Response: Create Individual Development Accounts for Montpelier renters. City would match what renters save toward the purchase of a house in Montpelier, using Montpelier Housing Trust fund, provided it is funded adequately.
(Planning Dept. comment: An interesting idea that can be investigated.)

Response: Property tax breaks for new home owners in the city. Offer a reduction (x% for y years) on the municipal portion of the property tax for households with children that buy homes in Montpelier and send their children to Montpelier Public Schools. Advocate with Vt. Dept. of Taxes to make this happen.
(Planning Dept. comment: Interesting idea; it would increase home sales and possibly home construction but not create a corresponding increase in property tax revenues. Needs further investigation.)

Response: Make home improvement funds available without household income restrictions. Middle class families often have trouble affording big ticket items, such as a new roof.
(Planning Dept. comment: Good idea, would cost money.)

APPENDIX B

Memo:
Date: 10/13/2011
To: Barriers to New Housing Committee
From: Jack McCullough
RE: HOUSING PRESERVATION

While the emphasis of the committee's work has been housing creation, the committee believes it is important not to overlook the very real issue of housing preservation in Montpelier's housing market. In recent decades Montpelier has seen significant losses of housing stock due to demolition or conversion to office space. These losses have come at a time when the need for housing units has been growing, and have run counter to the city's policy to encourage residents and housing units. In addition, this change is particularly harmful to the community because most of these lost units have been located in the downtown core, which means that we have replaced housing units that encourage pedestrian traffic with office spaces heavily dependent on automobiles, consequently placing greater burdens on city streets forced to accommodate more vehicular traffic and parking.

The second force that has caused the loss of decent housing, particularly rental housing, has been neglect by property owners. Neglect by residential landlords has caused the loss of housing units that could provide needed housing to low- and moderate-income residents and contributes to blighted neighborhood conditions.

The Master Plan has already recognized the ability to address these drivers of housing loss by adopting ordinances requiring replacement of lost housing units, discouraging demolition by neglect, and encouraging rental housing maintenance.

The committee recommends that the City take action on the following items from the Master Plan:

6a Consider an apartment inspection, registration, and certificate of occupancy program.

6e Consider a housing replacement and demolition by neglect ordinance to address the loss of housing units to commercial conversion or demolition or neglect.

APPENDIX C

Land Use Clinic
Vermont Law School, 164 Chelsea Street, PO Box 96
South Royalton, VT 05068, (802) 831-1332 (phone)

MEMORANDUM

Date: October 18, 2011
To: Barriers Against Housing Committee, City of Montpelier
CC: Peg Elmer, LUC Associate Director
From: Breana Behrens, Land Use Clinician
Nolan Riegler, Land Use Clinician

Re: Options for Increasing Housing Development in Montpelier

This has been an exciting and interesting project to work on. Thank you for including us in exploring ways to increase development in the City of Montpelier. If there is any further research or way that we can be involved, please do not hesitate to contact us.

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1. **Permit Ready Competition**

a. Portland implemented the "Living Smart" competition in conjunction with an urban growth boundary and higher density zones to encourage infill development
   i. Portland design requirements: must be built on 25-foot wide lots, meet the needs of first-time homebuyers, provide design compatibility with a variety of neighborhoods, and respond to a range of market demands are all desired outcomes

b. Resulted in development incentives
   i. Developers purchase building permits and receive plan sets free of charge with the assurance that the plan will be approved (changes to the exterior are allowed, but will be subject to normal review criteria)
   ii. "Fast track program" where developers get approval within 10 working days
   iii. Applicants receive a 50% discount on Bureau of Development Services (BDS) charges related to plan reviews and inspections
   iv. Prices of houses ranged from $290,000 to $400,000 (the first one built was $319,000 and at the time the average home sales price was $320,000)

c. Resulted in two publications
   i. Portland Catalogue of House Designs for Narrow Lots (21 designs specifically suited to Portland's neighborhoods) http://www.portlandonline.com/bds/PDXCatalog_combined.pdf
   ii. Design Excellence Monograph (49 designs for narrow lot development in general) http://www.portlandonline.com/bds/Living_Smart_Design_Excellence_Monograph.pdf

d. Currently Suspended
   i. The City contracts allowing the BDS to use the Permit Ready Plans expired and could not be extended
      1. The pro of having permit designs expire is that it ensures the designs are current (for purposes of zoning and community need)
      2. The con is that the designs cannot be used after a certain time (regardless of their efficacy or community need). To reinstitute the designs the city would have to go through a whole new competition, which can be costly
   ii. From 2006-2011 **13** Permit Ready building permits were issued

e. University students at Middlebury and Norwich are designing and constructing solar panel houses for different national competitions
   i. The City may consider engaging with these programs for the competition
      1. Middlebury focuses on affordability
      2. Norwich is doing it through their architecture program

f. The City might also consider basing the competition on designs for cottage housing
   i. Cottage housing is ideal for young families, can create a sense of community and can be designed for the larger available lots
   ii. See Kirkland, WA's Cottage Housing Ordinance
      1. http://www.huduser.org/portal/casestudies_iss1_1.html

g. Legal Issues
   i. I do not see any legal issues with implementing a competition of this nature in Montpelier. So long as each development obtains the requisite permits, the development should be valid in the state of Vermont

        ii. The City should be cautious of whether certain designs or building on certain lots would require modifying the zoning regulations, require variances, or the like

   h. Resources
      i. Portland Living Smart website: http://www.portlandonline.com/bds/index.cfm?&a=271560&c=51302
      ii. HUD website: http://www.huduser.org/portal/casestudies_iss1_2.html

2. Linkage Ordinances

   a. Linkage ordinances allow municipalities to collect exactions, or linkage fees, from developers in return for permission to build new development
   b. The fees fund community development/redevelopment programs
      i. Such as programs that advocate or build affordable housing, programs that create employment opportunities, child care facilities, transit systems and the like
      ii. Municipalities can either require payment of a specific amount to fund the needed programs/facilities, or require the developer to actually construct the facilities or implementing the programs
         1. linkage payments are generally fixed payments that do not increase and are payable over a period of years
      iii. Similar to impact fees, but linkage fees are more problem mitigation/abatement than payment for infrastructure
      iv. Also known as “soft” or “social” impact fees
      v. Most often associated with office development
   c. Montpelier might consider imposing linkage fees on new development as a source of funding for downtown festivals, adaptive re-use programs, historic residences rehabilitation programs, enhancing child day care facilities, and other growth programs aimed at encouraging families to move into the City
   d. Legal Issues
      i. First, it must be determined that the City is authorized by statute to implement a linkage fee
      ii. Second, it must be determined that the linkage fee does not infringe on the constitutional rights of the developer
         1. Impact fees are authorized in Vermont under 24 VSA 131, however there is no direct statutory authority for linkage fees
         2. Linkage fees are not treated differently than impact fees at the national level. In Nollan v. California Coastal Commission, 483 US 825 (1987) the court held that any conditional development approval was valid so that so long as there is a nexus to a valid governmental purpose. Once it is determined that an essential nexus exists, then it must be determined that there is a reasonable relationship between the extent of the exactions and the impact of the proposed development. Dolan v. City of Tigard, 512 US 374 (1994)
            a. The reasonable relation test determines whether the development creates a need that it should be asked to address and whether the obligation imposed on the development is proportional to the need created

3. There is no case law suggesting linkage fees are unconstitutional in Vermont. Thus, it is likely that a linkage fee would be a valid exaction so long as it meets the constitutional requirements described in Nollan and Dolan
4. Other cities and states have been upholding linkage fees:
    a. Boston and San Francisco have both adopted linkage fees for commercial development to fund affordable housing
    b. New Jersey had recently upheld linkage fees on the ground that new development possesses and consumes raw land, the primary source for affordable housing
    c. Resource-based development exactions (that require protection of environmental resources as a condition of development) are also likely to withstand challenges in court
5. Finally, it is important to address whether the fee is a regulatory fee or a tax. The City may impose a regulatory fee under its police power, but it can impose a tax only under taxing authority specifically conferred by the state legislature
    a. An impact fee associated with a school is likely determined to be a tax, not a regulatory fee

e. Resources
    i. VT Statutes online: http://www.leg.state.vt.us/statutes/fullchapter.cfm?Title=24&Chapter=131
    ii. http://lawlibrary.unm.edu/nrj/43/3/07_nicholas_juergensmeyer_market.pdf
    iii. Sources of revenue—Government exactions—Impact and linkage fees: 15 McQuillin Mun. Corp. § 39:5 (3rd ed.)
    iv. National Agriculture Law Center website: http://www.nationalaglawcenter.org/assets/bibarticles/mudge_impact.pdf
    v. http://toolkit.valleyblueprint.org/sites/default/files/02_agricultural-mitigation_xxxx_xxxx_0.pdf

3. Housing Improvement Districts

a. A Housing Improvement District (HID) is premised on a Business Improvement District (BID). BIDs receive special services from the municipality in exchange for additional assessments
    i. Burlington's Church Street is an area where property owners get year-round maintenance, management of licenses/permits, as well as advertising and promotions in exchange for a fee
b. In theory, the creation of a HID would allow the City to collect fees from landowners in a residential area to pay for rehabilitation or adaptive reuse programs/projects, community events, street cleaning, pedestrian and streetscape enhancements, affordable housing, and community centers/playgrounds/gardens
    i. Funds might also go towards marketing the initiatives to encourage development and movement into the area
c. Formation
    i. A significant fraction of landowners that would be subject to the HID can begin the formation process by signing a petition
        1. The petition proposes the district's boundaries and outlines the basic aspects of its financial and service plan

2. While usually the private sector is the impetus for the creation of these districts, the City might propose the district itself
    a. If it does, the City must hold hearings and provide for public response, either through petition or veto power

ii. Once agreed upon, the City enacts a local law or ordinance establishing the HID
    1. The regulation should address the HID boundaries, functions, budget and financing formula
    2. HIDs can be operated by non-profit orgs or a quasi-governmental body

iii. Fees can be determined by square footage, frontage, place within the district, property tax etc.

d. Pros and Cons
    i. BIDs have been criticized as being a privatization of government funds, violating equal protection under the law, and requiring all property owners to pay the fee even if they oppose the BID
        1. Some properties may be exempt (such as government or non-profit properties)
    ii. BIDs are beneficial in that they eliminate the free rider problem and are thought as a self supporting district where BID fees go directly back to the landowners

e. Legal Issues
    i. Municipalities, in general, are permitted under 24 VSA 3253 to apportion a special assessment on properties to be benefited
    ii. Designation of downtown development districts under 24 VSA 2793 permits the City to impose a broad range of special assessment districts (including BIDs and HIDs) to raise funds for operating and capital expenses
    iii. BIDs do not violate equal protection under the law by providing a different voting scheme for members of the district

f. Alternative, TIFs
    i. TIF programs are permitted under 24 VSA 4403 and1892
        1. Vermont Act 183 and 24 VSA 2793 specifically promote creating TIFs in downtown districts
    ii. TIF programs allow local governments to finance redevelopment projects with the increased tax revenue generated by the redeveloped property
    iii. A HID could be implemented as a TIF district in the downtown
        1. The property taxes at the time the District is created are determined and then continue to go to the taxing entities at that rate
        2. At first the municipality incurs debt to spur real property development. Then, seventy-five percent of the incremental municipal and state property taxes that are generated are used to pay the infrastructure debt and twenty-five percent continues to go to the taxing entities (municipality and state). After the twenty-year property tax retention period, 100% of the property taxes generated go to the taxing entities.
        3. The District may only utilize municipal property tax revenues for programs
        4. If the municipality requires the utilization of incremental state education property tax revenues, further statutory requirements apply, including the requirement to apply to the Vermont Economic Progress Council to obtain approval of a TIF District Plan and a TIF District Financing Plan

5. Municipalities must closely follow the statutory rules and procedure for establishing a TIF District
    a. There must be no other available financing mechanisms and there must be a substantial need for this kind of redevelopment program

g. Resources
    i. TIF website: http://www.dhca.state.vt.us/TIF/tif%20homepage.htm
    ii. Bennet Heart et al., Conservation Law Found. & Vt. Forum on Sprawl, Community Rules: A New England Guide to Smart Growth Strategies 4-5, 51 (2002)
    iii. Downtown Designation website: http://www.smartgrowthvermont.org/toolbox/tools/downtowndesignation/
    iv. Briffault, Richard "A Government for Our Time? Business Improvement Districts and Urban Governance" 99 Colum. L. Rev. 365 (1999)

4. Penalties for Blighted and Dilapidated Properties

a. The City might consider imposing some sort of penalty for vacant or abandoned properties to encourage landowners with unused properties to rehabilitate or transfer the property for residential use
    i. Should be paired with a rehabilitation ordinance

b. Demolition by Neglect
    i. Under this theory the City would order any neglected structure to be demolished. The ordinance might be narrowed to target only structures in the downtown, in residential areas or on lots that might be used for residential use
    ii. Legal Issues
        1. Goal C(6) of the Montpelier Master Plan suggests implementing a housing replacement and demolition by neglect ordinance to address the loss of housing units to commercial conversion
            a. This goal does not seem to have been implemented in the Master Plan or Zoning and Subdivision Statutes for the City of Montpelier
        2. Under 20 VSA 2733 the fire commissioner may order a landowner to repair or rehabilitate a property. If it remains in a dangerous condition for more than a week after being notified the commissioner may order it to be demolished
        3. "Whenever a structure, by reason of age, neglect, want of repair, action of the elements, destruction, either partial or total by fire or other casualty or other cause, is so dilapidated, ruinous, decayed, filthy, unstable, or dangerous as to constitute a material menace or damage in any way to adjacent property, or to the public, and has so remained for a period of not less than one week, the commissioner may order such structure demolished and removed" Vt. Stat. Ann. tit. 20, § 2733 (b)
        4. The Montpelier City Charter Title XII Section 10, might also provide support
        5. The State may also seize unclaimed property under the Vermont Unclaimed Property Law (27 VSA 1241)
        6. Tearing down structures that pose a threat to the public safety is within the City's police power to preserve the public health, safety and welfare

                a. However, the statutes use extreme language, suggesting that for demolition to be ordered there must be a strong public need to abate a real danger to the public
                b. Such orders are vulnerable to taking claims when done without compensation
                c. In the case of neglect the City must provide the owner with notice, a hearing, and opportunity to correct
                d. The nuisance cannot be abated in any other way, demolition must be a last resort

c. Fines imposed on neglected or vacant properties
    i. The City may consider imposing a fine on any property that is not maintained or left vacant
        1. Could be done through code enforcement
        2. Fines could fund rehabilitation programs
    ii. Municipalities across the country have implemented ordinances imposing fines for neglected or vacant properties
        1. Chula Vista, CA: Residential Abandoned Properties Program
        2. Hartford, CT: Anti-Blight Initiatives
        3. New Haven, CT: Livable City Initiative
        4. Jacksonville, FL: Proactive Code Enforcement Initiative
        5. Bowling Green, KY: Property Donation, Maintenance, Rehabilitation Programs
        6. Westland, MI: High Grass Ordinance
        7. Albany, NY: Block-by-Block Initiative
        8. Germantown, TN: Neighborhood Preservation Program
        9. Bryan, TX: Bryan's Unified Infill Lot Development Initiative
            a. See the US Conference of Mayor's Best Practices for Vacant Properties publication: http://usmayors.org/bestpractices/vacantproperties08.pdf
    iii. SB 1137 in CA authorizes municipalities to impose a fine up to 1,000 per day (and may issue a citation or any violation) for failure to maintain a foreclosed property. These fines are then applied to local nuisance abatement programs
        1. May experience political back-lash from banks who will likely be responsible for the fines
    iv. Legal Issues
        1. The City must be authorized by State statute or the City Charter to enact an ordinance to fine neglected properties

d. Land Banks
    i. Some states have instituted legislation establishing land bank programs, where tax-delinquent properties are transferred to the State. The State can then transfer these properties to an established land bank (or other authority) that can rehabilitate the property and re-sell it
    ii. Michigan Land Bank Fast Track Authority (Foreclosure Law PA123) permits the State to transfer tax delinquent properties directly to the County Treasurer or the County, which can transfer land to designated land banks at their discretion. The law also allows profits from tax delinquent land sales to be directed to a Land Reutilization Fund to pay operating costs of managing land acquisition.
        1. The Land Banks work with a reutilization council to:
            a. Aide families in risk of losing homes to foreclosure

b. Demolish dilapidated structures
c. Rehabilitate lots assembled for city and non-profit development
d. Encourage new infill housing in particular

2. See specifically the Genesee County Land Bank and Neighborhood Stabilization Program; Dallas, TX Urban Land Bank Demonstration Program

iii. Legal Issues

1. Vermont has not established land bank legislation that authorizes counties or municipalities to transfer properties to the State for rehabilitation

e. Resources

i. Vermont Unclaimed Property Statute website: http://www.vermonttreasurer.gov/unclaimed-property/state-statues
ii. Michigan Land Bank Fast Track Authority website: http://www.michigan.gov/treasury/0,1607,7-121-34176---,00.html
iii. Genesee Land Bank website: http://thelandbank.org/default.asp
iv. Buildings that are menaces or public nuisances- removal or destruction McQuillin Mun. Corp. § 24:557 (3rd ed.)

5. Loans and Grants

a. Types of loans and grants

i. Rehabilitation and Improvement Loans

1. Emergency Improvement Loans – usually to low-income homeowners.
2. Rental Property Upgrades
3. Deferred Repayment – some loans are 0% interest, payment deferred until the homeowner sells the property.

ii. Renter's assistance – can take the form of either loans or grants.
iii. Homebuyer Assistance – typically take the form of loans; used to reduce the down payment or cover closing costs.

1. Range from $1000 to $10,000.
2. Cities may have multiple loans (Madison being a good example)
3. Low interest and flexible repayment plans are common, may include deferred repayment (Austin, TX)

iv. Pre-development loans – loans that cover the beginning stages of development for larger projects, including architectural and design costs, as well as impact studies.

b. Implementation Strategy

i. Housing trust fund – Montpelier's fund is currently used to provide loans to cover rehabilitation and updates, as well as some deferred repayment loans to first time homebuyers.
ii. Development revolving loan fund.

1. Municipally owned
2. Federally funded – distributed by a community land trust, Credit Union or development entity – in Vermont, the Central Vermont Community Land Trust is such an entity.
3. Private investor funded – Vermont Community Loan Fund
4. The largest markets have multiple funds within their trust or multiple trusts dedicated to certain types of loans and grants (for rental agreements; ownership funds, etc.)

iii. Pre-development loans are available from the Vermont Housing Finance Agency

c. Pros and Cons
    i. If Montpelier wants to expand the types of loans that it provides, it does need to generate revenue, which is difficult in a down economy.
    ii. Expanding the available options to potential homebuyers and providing rental assistance is an incentive to get a variety of potential residents to consider Montpelier.
    iii. An alternative might be to foster deeper partnerships with local loan institutions or any of the land trusts.
        1. May be able to convince them to expand some of their options, in exchange for the city doing some guaranteeing or investment.
        2. Many of the loan options mentioned above are already available through these entities, so it benefits the city to advertise these opportunities to local developers.
    iv. Deferred repayment plans (loans at zero percent interest that are paid in full when the property is sold) can be used to expand city-controlled properties and generate revenue.
        1. Can require that some additional percentage of the equity be paid in addition to the loan amount when the property is sold. In other words, no interest accrues while the property is owned by the original borrower, but the city is guaranteed some return on its investment.
        2. These loans may also contain a durational clause (10 years) to provide an alternative repayment option and prevent the city from being stuck should a homebuyer decide to live in that home for a long time.
        3. May also include a right of first refusal to the city to purchase the property at fair market value.
    6. TIF financing takes the form of a loan or a bond. Some municipalities have incorporated a pay-as-you go approach—a bond that places the risk on the developer, not the city— with well-financed developers. If the city chooses to create a TIF district, it may want to consider using different financing options for particular projects to better manage risk.

d. Legal issues
    i. None that I can foretell at this point, this mechanism falls within the city's powers, the primary hurdles here are fiscal, not legal.

e. Sources
- Vermont Community Loan Fund; http://www.investinvermont.org/housing-a-community-facilities
- City of Madison; http://www.cityofmadison.com/cdbg/home_assist_progs.htm; http://www.cityofmadison.com/planning/cedu/Documents/comparisonaddivshomebuy.pdf
- City of Eugene; http://www.eugene-or.gov/portal/server.pt?space=CommunityPage&control=SetCommunity&CommunityID=229&PageID=525;
- City of Austin/Austin Housing Finance Corporation; http://www.ci.austin.tx.us/ahfc/first_dpa.htm
- Central Vermont Community Land Trust; http://www.cvclt.org/services/
- Minnesota TIF Pay-as-You Go http://www.osa.state.mn.us/other/Statements/tif_pay-as-you-go_0904_statement.pdf

6. Development Tax Incentives

i) Types of Incentives

(a) Tax Free Zoning – Create Overlay Zones that eliminate all Property, Municipal, and most Income taxes

1. State Programs in Michigan, Pennsylvania, North Dakota
2. All differ in implementation and focus; Michigan and North Dakota's Renaissance Zoning laws apply to all development in certain areas, while Pennsylvania's focuses on business development.
3. Either designate certain areas, or implement a process by which a Municipality can designate small, contiguous areas as "Renaissance Zones."
4. They are limited in time; in MI each zone designation named in its Act expires after 15 years. The tax incentives are gradually drawn back during the final 3 years of the program.
5. In ND, there is a more fluid system, once a municipality submits its plan to the board of Commerce and is approved its designated zone has a 15 year window of application

    i. Incentives last for a 5 years, commencing when someone living in or already owning property in a zone, makes improvements to their properties or someone moves into a zone to reside or do business.

    ii. For example: I decide to rehab my property to build an accessory apartment in back during year 13 and my friend Mike moves in during year 14 of the zone designation period. Both of us are eligible for 5 years of tax reduction incentives, even though some of those years fall outside of the 15 year period.

    iii. The boundaries of the zone can be shifted during the 15 year window to exclude areas that have been sufficiently rehabilitated, and include others as long as the zone remains contiguous.

6. In both, there is an income limit to some of the incentives (like income tax), but there are no limits on others (development fees, municipal property tax.

(b) Real Estate Tax Abatement Programs – the City of Philadelphia allows 10 Year Tax Abatements for development that increases the value of property.

1. 100% of improvements to existing residential property with a Fair Market Value (FMV) under $193,125 and capped at an increase in the FMV of $48,100.
2. 100% of value added for improvements to new or existing commercial, industrial or other business property.
3. 100% of value added for newly constructed residential properties.

(c) Development Fee Relief – contained within many of these programs is a relief from development fees to further incentivize developers and property owners to make improvements.

ii) Implementation Strategy

(a) Tax Abatement is facially similar to the Tax Stabilization Contracts authorized to municipalities under 32 VSA §§ 4969 and 4985.

1. Sections allow TSCs for forest, farmland, industrial and commercial property. The city has entered into one with a business developer, so it's arguable that this could apply to residential developers as well.

(b) Tax Free Zoning requires state action to implement it. 32 VSA § 4601 requires taxes to be uniformly determined, and most tax structures are implemented by state statute. No state laws that I could find that would allow a municipality to relieve all taxes and fees.

1. There is some possible avenue to argue legislative intent, thus, precedent for creating these incentives: 24 VSA § 2785 provides cities with powers to effectuate "urban renewal projects" in a slum or 'blighted area."
2. Tax free zoning could be argued as a market, as opposed to government,-driven means to do the same thing.

(c) Supposing that the city does not want to ask the state to create new legislation, it does have the power to relieve development fees. It already waives the water connection charge for non-residential development if that waiver provides an incentive to new development.

iii) Pros and Cons

(a) Tax Free Zoning has been successful where it has been implemented
1. In Mandan, ND a Renaissance Zone has led to $8 Million in private investment commitments and the rehabilitation or redevelopment of 23 properties.
2. In Muskegon, MI, Renaissance Zoning has led a factory rehabilitation and conversion to a 127 unit apartment building, and a 200 unit mixed-use development closer to its downtown center.

(b) Tax free zoning requires state action to implement it. 32 V.S.A. § 3847 allows a 5 year tax exemption to neighborhood housing programs financed in whole or in part by a community land trust, however.

(c) Tax abatement and development fee reduction can be implemented in some form without a request to change the state laws.

iv) Legal Issues

(a) As far as I can tell, incentivizing individuals does not raise federal constitutional issues. Nor have tax incentives been litigated as a constitutional issue in Vermont.
1. The individual tax incentives are geared towards all people moving into a particular area.
2. Family focused incentives may want to preclude geographic distinctions
3. Families are not a "protected class," nor are "individuals who are not families," so the city should be able to show a rational basis for its decision.

(b) Incentivizing development is common, and less likely to carry a constitutional burden, generally.
1. All broad tax relief programs that I found were state-mandated and controlled, so the city would have to lobby the state to change its laws to provide complete tax relief

e. Sources

- http://ref.michigan.org/medc/services/sitedevelopment/renzone/businesstax/index.asp
- http://ref.michigan.org/medc/services/sitedevelopment/renzone/residentialtax/index.asp
- http://www.muskegon-mi.gov/services/business-services/renaissance-zone/
- http://www.communityservices.nd.gov/uploads%5Cresources%5C161%5Cnd-rz-guidelines-revised-6.27.11.pdf
- http://www.cityofmandan.com/index.asp?Type=B_BASIC&SEC={7777E54A-4CDB-4F82-80E9-EE5BCE584C36}
- http://www.leg.state.vt.us/statutes/sections.cfm?Title=32&Chapter=133
- http://www.philadelphiataxreform.org
- http://www.phila.gov/ohcd/taxabate.htm
- http://opa.phila.gov/opa.apps/OnlineApps/abatement_home.aspx
- http://www.montpelier-vt.org/upload/groups/206/files/3-III_WaterDepartment.pdf
- http://www.montpelier-vt.org/story/546/City-Provides-Tax-Incentive-For-New-Commercial-Building.html

- http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=32&Chapter=125&Section=03847

7. Quid Pro Quo Investment

i) I found little to go on based on my explanation, but I did read the Community Reinvestment Act and several parts of the Code of Federal Regulation that implement it.
   (a) My understanding of the law is that it incentivizes lenders who work within their community by a rating system. This rating has a direct impact on whether hat then determines whether the federal government approves certain profitable business ventures the lender may choose to undertake (i.e. mergers and large acquisitions).
   (b) The act suggests a multitude of different ways that banks can expand their options—including investment in a Community Development Corporation or a land trust—and they are encouraged to "be creative."
   (c) I found nothing regarding the scheme that I had explained: investment of municipal funds in exchange for some form of preferential treatment, via lower rates or more approvals.
   (d) I don't think that this would be disallowed by federal regulations, but the logistics of this plan may be tricky.

ii) I haven't found precedent for this arrangement, so it may take going to banks or credit unions in the area and asking if they are amenable to this situation.
   (a) It is difficult to anticipate whether or what lenders may require of the city, besides its investment. The city could be required to co-sign for loans, or to guarantee them in some way.
   (b) A benefit to approaching a community land trust, development corporation entity, or a credit union is that they have access to revolving loans created by the Community Reinvestment Act.

iii) At this point, I am uncomfortable making a recommendation either way. I do think the large number of non-profit development and loan making entities—like the Vermont Housing Finance Agency—are excellent resources, however. There is a history of partnership on specific projects with many local non-profits, so it may be useful for the city to form a close partnership with one or more of them as it determines how to fund housing development.

iv) Sources:
   - 12 U.S.C. §2901 *et. seq.*
   - 12 C.F.R. Part 25 *et. seq.*
   - 12 C.F.R. Part 203 *et. seq.*
   - 12 C.F.R. Part 228 *et. seq.*
   - 12 C.F.R. Part 345 *et. seq.*
   - 12 C.F.R. Part 563e *et. seq.*
   - The CVCLT website has been recently redesigned, but its former site had several projects located in Montpelier.
     http://www.cvclt.org/real-estate-development/current-projects/
     http://www.cvclt.org/real-estate-development/past-projects/
   - http://www.vhfa.org/about/overview/
   - http://www.investinvermont.org/housing-a-community-facilities

8. Inclusionary Zoning

i) Types of Inclusionary Zoning
   (a) Mandatory – all projects meeting certain size requirements must set aside a certain percentage of units as affordable housing.
   (b) Voluntary – while the city provides incentives to developers who do include affordable units in their developments, it does not mandate that they do so.

(c) Hybrid – development that mandates affordable units in projects, but can be flexibly implemented or offer developers a means to opt out.

ii) Implementation

(a) Definition of Affordable – defined based on the Adjusted Median Income of an Area.

1. Typically, an affordable unit is one in which a household of appropriate size making some percentage of the AMI for an area—usually 60-80%—pays no more than 30% of its income to live in that unit.
2. This 30% figure is inclusive of all of the costs to rent or own that unit (e.g. rent and utilities, or mortgage, utilities, and taxes).

(b) Circumstances that Trigger Inclusionary Requirements

1. Type of development – in Burlington, these requirements apply to nearly every type of residential development. Some laws apply only to new development.
2. Size of development – In some markets, cities have a size threshold that a development must meet in order to be required to set aside affordable units.
   i. In Burlington and San Francisco, the thresh-hold is lower (5 units or more).
   ii. In other markets, the thresh hold can be 100 units or more.
   iii. Size and Type may also work in concert with one another, so the thresh-hold might be higher for new development as for rehabilitated or converted development.
3. Incentive-based or permit based – these typically operate within hybrid systems, developers obtaining certain types of incentives form the city, or applying for certain permits or waivers from the city's Development Review body, are required or expected to set aside a certain percentage of affordable units.

iii) Unique Examples

(a) Chapel Hill, NC

1. The bylaw creates an expectation that developers seeking rezoning or special use permits will include 15% affordable housing in their developments.
2. During the predevelopment phase of each project city then has lot of flexibility to negotiate with each developer on a case by case basis.
3. It has resulted in the creation of 100 affordable units in 10 years all owned by land trusts to ensure affordability in perpetuity.
4. To build on this success, the city convened a task force to research expanding the program into a mandatory one.

(b) Chicago

1. A system based on quid pro quo principles, in which developers must include 20% affordable units in order to receive financial assistance from the city, including TIF funding.
2. It also requires affordable units in projects developed on land purchased city and projects that require rezoning or special use as in Chapel Hill.
3. Developers can pay $100,000 *per unit* to opt out of these requirements and build no affordable units.
4. The funds raised from these opt-out fees were then reinvested into the city's housing trust fund.
5. The original 2003 plan enabled city alderman to choose when they would enforce the inclusionary requirements.
   i. City Alderman are elected neighborhood officials who make many of the land use decisions for neighborhoods anyway.

            ii. The result of this was some alderman made inclusionary housing de-facto required, while others ignored it, concentrating affordable development in certain areas.
            iii. In 2007, the city updated its plan to roll back much of that power.
        6. During the housing boom, while the city lost out on affordable development to some extent, it significantly grew its trust fund.
            i. Based on development figures, the city could have had 7000 new affordable units if zones had been mandatory instead of the 4500 that were built
            ii. Housing Trust Fund grew by $20M over this time period.

iv) Pros, Cons and Montpelier-specific Considerations
    (a) As a market based mechanism, inclusionary zoning may not be useful in area that has shown little growth due to its own circumstances or an economic downturn
    (b) At the same time, it is useful for long-term planning if a city wants to insure equitable growth.
    (c) Special Considerations
        1. Montpelier is already fighting with the preconception that it is over-regulated and anti-growth.
            i. Should consider coupling a system like Chicago's with tax-free zoning or another development-friendly incentive.
            ii. These financial options would appear to make affordable housing de facto mandatory in lean times, and provide for a revenue stream during booms.
            iii. The effects of Chicago's alderman system in mind, Montpelier should be sure to implement inclusionary zoning equitably across the city.
            iv. Alternatively, Chapel Hill's approach, which at first mandated inclusionary development in very specific circumstances and now applies to all development, operated as a more gradual phasing-in of mandatory inclusionary zoning.
        2. The city's housing goals are not limited to expanding affordable housing.
            i. Consider expanding the definition of inclusionary to include starter homes for families.
            ii. It may also want to create inclusionary commercial zoning that would incentivize live-work developments.
        3. The city wants to encourage lots of different types of development.
            i. Consider keeping thresh-holds low, incorporating inclusionary requirements into many different forms of development.
            ii. Alternatively, it may be preferable to provide more flexibility to smaller developments as opposed to larger ones, since it is often smaller developments that can least afford to make concessions.
        4. Consider tools for maintaining the affordability of properties in perpetuity.
            i. Shared-equity ownership, or ownership by a land trust.
            ii. City-owned lean on the price differential between market-value and affordability value.
        5. Whatever the City chooses to do, I suggest that it be very carefully worded so that its implementation is inclusive of most types of development, predictable, and efficient.
            i. Consider following the lead in Burlington and partner with the CVCLT.
            ii.

v) Sources:
- http://www.housingpolicy.org/toolbox/strategy/policies/inclusionary_zoning.html?tierid=116
- http://townhall.townofchapelhill.org/agendas/2010/03/15/1a/1a-2-draft_inclusionary_zoning_ordinance-zoning
- http://www.ci.chapel-hill.nc.us/index.aspx?page=1298,
- http://www.ci.chapel-hill.nc.us/Modules/ShowDocument.aspx?documentid=6988
- http://www.cedoburlington.org/housing/inclusionary_zoning.htm, And the ordinance itself (the link on the page is currently dead).
- http://www.cityofchicago.org/content/dam/city/depts/dcd/general/housing/AROfactsebversion.pdf
- http://www.cityofchicago.org/city/en/depts/dcd/supp_info/chicago_communitylandtrust.html