

**Montpelier Planning Commission**  
**May 10, 2004**  
**City Council Chambers, City Hall**

*Subject to Review and Approval*

**Present:** David Borgendale, Chair; Carolyn Grodinsky, Vice Chair; Bryan Mitofsky; Richard Sedano, Curt McCormack; Irene Facciolo  
Staff: Valerie Capels, Planning & Community Development Director

**Call to Order**

The meeting was called to order by Mr. Borgendale at 7:15 p.m..

**Approval of Minutes**

Mr. Mitofsky made a motion to approve the minutes of the minutes of the April 12, 2004 and April 26, 2006 minutes. Ms. Grodinsky seconded the motion. Mr. Borgendale noted that the zoning discussion on page 2 of the April 26 minutes reflects the Commission's understanding of the status of the Views and Vistas Report at that time. He now had more information to share with the Commission members to correct their understanding of the status. The motion to approve the minutes was approved 6-0.

**Review of the Agenda**

Mr. Borgendale said that the update from the Conservation Committee would have to be postponed because the members were unable to attend this meeting. Mr. Borgendale said that he would give the other Commissioners an update on his appearance before the City Council later in the meeting.

Mr. Mitofsky said that he would like to give the Commission an update on parking later in the agenda.

**General Appearances**

Carol Dorflein urged the Planning Commission to move ahead with its work on the Sabin's Pasture zoning.

**Conservation Commission/City Council Update**

Mr. Borgendale said that there are new co-chairs of the Conservation Committee and that the Conservation Committee has taken formal action on the Views and Vistas Report and that they have adopted it as a report of the Committee. He had hoped that Committee members would be available to present the report tonight, but that presentation would have to be moved to the next meeting. Mr. Mitofsky asked where the Committee stands on the natural resource inventory. Mr. Borgendale said that they haven't done anything on it.

Mr. Borgendale said that he had attended the City Council meeting and presented a timetable for the Master Plan update. There was considerable discussion of whether the timetable allowed the City Council enough time for its review of the Master Plan. Council members were concerned because they have no prior experience with a Master Plan review and do not have a feel for how much time will be required.

Mr. Borgendale introduced Geoff Beyer and asked him to discuss the relationship of the Conservation Committee with the Open Space Committee. Mr. Beyer said that the Open Space Committee was formed when an interest in developing a natural resource inventory was expressed at a meeting of the Conservation Committee and the Planning Commission. He and Kelly Lowry put some grant proposals together and the City was able to obtain \$22,000 in

grants. The Conservation Committee felt that it would be best is the Open Space Committee had broad representation because it was intended to stand alone as an advisory board. It was intended that the Open Space Committee's recommendations would be tools that other agencies could use as a guide or choose not to use at their discretion. The Open Space Committee was formed in 2001 or thereabouts. Mr. Borgendale asked whether the City Council had passed a resolution authorizing this Committee. Mr. Beyer said that it did not. Mr. Borgendale said that the Committee could be described as an ad hoc citizen's committee. Ms. Grodinsky said that interest in the group was revitalized as a result of the discussions about Sabin's Pasture.

Mr. Borgendale noted that the prior Master Plan stated that, as a first task, the Conservation Committee would develop an inventory of the key natural features in Montpelier and develop a plan for preserving these features. He is not sure whether the Open Space Committee is completing this task or working on something else. Mr. Beyer said that the natural resource inventory is definitely not completed. The work can be seen as a first phase, with only one third of the City's open space covered. Funding and landowner permission limited the work that could be done. Mr. Borgendale noted that the Planning Commission has authority under State law to enter properties to gather information for planning purposes.

Mr. Beyer said that the grant funds have been expended. About one fourth of the money was used on the Views and Vistas Report and more than half was used on the Natural Resource Inventory. Mr. Mitofsky asked about the likelihood of acquiring new grant money. Mr. Beyer said that there are skillful grant writers in the City. He added that community planning is an issue of interest to many funding groups. Mr. Beyer said that \$12,000 to \$14,000 would be adequate funding to complete the Natural Resource Inventory if there was a coherent understanding of those parcels for which permission had been granted to access the land. Mr. Borgendale said that the landowners will want a clear idea of the purpose of the survey. Mr. Beyer said that he believed that the purpose had been clearly described in the prior effort.

Ms. Grodinsky said that she understood that the ad hoc Open Space Committee was going to develop a checklist identifying the resources on each parcel in the city. Mr. Beyer responded that while only one third of the land was covered in the detailed, on-ground survey, the rest of the city was inventoried using maps, photographs and windshield survey. Mr. Borgendale asked whether there is a document containing that information. Mr. Beyer said that it is in the Natural Resource Inventory which is available. Mr. Borgendale said that the Planning Commission would like to have that information presented to it. Mr. Mitofsky said that he would rather have a presentation on the two thirds of the land that was not ground surveyed so as to avoid being unduly influenced by the one third that was surveyed. Ms. Grodinsky said that she thought the Commission should see all of the information. Mr. Beyer said that he would try to make the information available to the Commission, but noted that he was not speaking for the entire Committee.

Mr. Borgendale said that he would like to have the Open Space Committee and the Conservation Commission attend a Planning Commission meeting to discuss whether the Open Space Committee should be a subcommittee of either the Conservation Commission or the Planning Commission in order to give it more legal backing and accountability. Ms. Grodinsky agreed and said that she would write up a list of issues and questions to facilitate the discussions. Mr. Borgendale asked whether the Planning Commission had time on the next meeting agenda for this discussion. Ms. Capels said that the Transportation Survey is scheduled for that meeting. Mr. Borgendale invited Mr. Beyer to attend the next meeting.

### **Master Plan/Planning Budget Update**

Ms. Capels referred to the spread sheets of planning funds through FY06 that had been provided to the Commissioners. She said that there are enough funds available to complete the Transportation Plan and to fund upcoming planning activities after July.

Mr. Borgendale noted that there are \$47,000 in projected unspent funds, of which, \$23,000 are committed. Ms. Capels said that the figures run through June 2006. She said that the figures reflect the capital budget, two existing planning grants and one anticipated grant of \$15,000. The anticipated grant is included in the \$47,000. Mr. Mitofsky said that there is actually only \$9,000 in uncommitted funds if the anticipated grant (\$15,000) and the already committed funds (\$23,000) are excluded.

Ms. Capels said that the capital budget could be used for printing costs. Mr. Borgendale noted that the copies of the Plan will have to be printed in August 2004 and February 2005. Mr. Sedano said that Ms. Capels is also referring to the final printing which will occur in FY06. Mr. Mitofsky said that the \$8,000 for printing seems reasonable in comparison to the cost of printing the Annual Report. He said that the budget should add another \$8,000 for printing in FY05.

Mr. Borgendale said that it would be good if the drafts could be provided electronically, but that there is a need to budget for the printing of the drafts. Mr. Sedano said that the draft should be placed on CDs and the Commission should encourage interested parties to use them. Ms. Grodinsky said that the chapters should be posted on the web. Ms. Capels said that part of the printing budget could be used for the development of interactive Web pages. Mr. Borgendale suggested that this budget item be called "publishing and publicity" rather than printing. He asked the staff to develop a plan for the distribution of the Plan.

### **Zoning Subcommittee Update**

Ms. Facciolo provided a summary of the work of the Zoning Subcommittee. She described three topics—general objectives, current zoning deficiencies and the ways that the current Master Plan supports the objectives.

Ms. Facciolo described the general objectives:

- Zoning should reflect current conditions in the City. She said that the number of variances that are routinely approved should be a clue that the zoning doesn't reflect the built City. She said that the City could not be rebuilt based upon the current zoning.
- Zoning should allow for and encourage density
- Setbacks should be looked at in relation to the neighborhoods.
- More projects should qualify for administrative review.
- Smart codes should be used to encourage re-use of existing buildings.
- Use of one residential district rather than multiple districts.
- Use of Vermont Forum on Sprawl zoning ideas.

Ms. Facciolo discussed deficiencies in the current zoning. There are many examples of sections of the zoning ordinance that do not support zoning objectives.

Ms. Facciolo said that the existing Master Plan contains recommendations that support the objectives that she had previously described. Since the current Master Plan supports the objectives, there is no need to wait for a year and a half for a new Master Plan.

Mr. Borgendale said that it appears that not many applications qualify for administrative approval. Ms. Capels said that the ordinance spells out the criteria for approval by the Administrative Officer and there are not many applications that meet those criteria. There is another class of applications that can be approved by the Planning Director if they received site plan approval in the past. Mr. Borgendale asked whether there is an appeal process for those applications that meet the criteria. Ms. Capels said that the applications that qualify for review by the Administrative Officer have a 15-day appeal process. The appeal would be referred to the Development Review Board (DRB). She said that the ordinance is silent on the appeal process for those applications that qualify for approval by the Planning Director, but she would expect that, like appeals of the Administrative Officer's actions, an appeal of the Director's action would also be heard by the DRB. Mr. McCormack said that there are really two types of appeal—first, whether the application qualifies for administrative approval and second, the decision on the administrative review. He asked whether the ordinance needs to change in order to broaden the types of applications that undergo administrative approval. Ms. Capels said that the upcoming discussion on Chapter 117 is applicable to this question.

Mr. Borgendale said that there is a danger in viewing zoning as the only tool to implement smart growth planning because there are many other innovative techniques available. Mr. McCormack said that the subcommittee's effort was really to ensure that the ordinance does not oppose or prevent smart growth planning techniques.

### **Chapter 117 Overview**

Mr. Borgendale introduced David Grayck, Esq. who would provide an overview of the recently adopted changes to Chapter 117.

Mr. Grayck began by noting that there is a definition of "affordable housing" in Section 82 of the statute. He said that the Planning Commission should be using this definition in its documents.

Mr. Grayck said that the permit reform will consolidate all appeals into the Environmental Court. As the Planning Commission works on planning that will lead to ordinances, they should remember the role of municipal plans in Act 250. This is because criterion 10 of Act 250 requires that development comply with local and regional plans. Vague and ambiguous language in the Master Plan will not have regulatory applicability because the courts will find that the language is not specific enough. He said that words like "encourage", and "desirable" are ambiguous. A definition of the word "should" that has been added to Chapter 117 states that the word is not mandatory. On the other hand, the word "shall" is clear and mandatory.

Mr. Grayck highlighted the several sections of the statute. Sections 4402 and 4403 provide non-regulatory implementation tools. Six items are listed and each of these will help the Planning Commission move forward with smart growth. Mr. Grayck advised the Commission that Section 4410 says that bylaws must be consistent with the Master Plan to be applicable. He suggested that the bylaws could be ready to be adopted when the Master Plan is implemented. This will eliminate issues relating to a gap in the updating of zoning regulations.

Mr. Grayck said that Section 4412 states that one accessory apartment cannot be excluded by a bylaw provided that specific criteria are met. Ms. Capels noted that this provision is not effective until September 1, 2005.

Mr. Mitofsky said that the use of the term "relatively steep slope" in Section 4411(b)(3) is not very definite and could raise issues for Montpelier. Mr. Grayck said that the Planning

Commission could define the term in its bylaws if it desires more clarity. He explained that Section 4411 is the Commission's enabling authority and that the Section 4411(b)(3) is a list of situations for which non-uniform provisions may apply.

Mr. Grayck said that Section 4413, which is in the present law, describes what the Planning Commission cannot do. He said that Section 4414(1)(A) says that the municipalities may adopt a manual of design guidelines. The listed objectives in this section are really smart growth concepts. He described this as an opportunity for the Planning Commission to support towns and villages. Section 44.14 contains a reference to Act 250 criteria in the conditional use criteria. This allows the municipality to use the Act 250 criteria in its conditional use criteria. If the same criteria are in the local zoning and Act 250, an appeal of a decision under either rule is likely to be argued to be applicable to the other. Mr. Mitofsky asked whether the City could require that the Act 250 review be completed first. Mr. Grayck responded that the law does not authorize the municipalities to create such a requirement.

Mr. Grayck the referred to Section 4420 which he said contains a set of preconditions that must be met in order for a municipality to conduct the review of certain Act 250 criteria. He said that Section 4422 gives the Planning Commission a great deal of discretion in writing bylaws and moving to smart growth concepts. This section authorizes the use of phasing or limiting development to avoid or mitigate undue adverse impacts. Mr. Grayck said that section 4433 sets forth procedures for creating advisory committees. Ms. Capels noted that the section is not effective until September 1, 2011.

Ms. Facciolo said that the statute seems to set up a conflict between local boards and State jurisdictions. Mr. Grayck responded that there is not necessarily a conflict but that courts have said that the same set of facts cannot be adjudicated twice.

### **Other**

Mr. Mitofsky provided an update on the Parking Committee. He said that the sites for the replacement of the Carr lot parking have been narrowed to two choices – the Jacobs lot and the lot behind Christ Church. These alternatives will be presented at a public forum on May 27. He said that he is concerned about the lack of traffic impact modeling as these impacts continue to be minimized in the considerations. Ms. Capels said that there is no question that the traffic model will be used, but the question relates to who will run the model. She said that the forecasting part of the model is still being calibrated at this time. Mr. Mitofsky urged that the information be available for the May 27 meeting. Mr. Borgendale suggested using the model for the current conditions. Mr. Sedano said that, if the model is not accurate, it will create confusion. Mr. Mitofsky asked whether the choice of a parking structure should be delayed until the traffic model can be applied to the alternatives. Mr. Borgendale said that the traffic impacts must be considered as part of the choice. Ms. Capels said that the May 27 meeting is intended to make information available to the public, not to finalize plans. Mr. Mitofsky said that the Carr Lot Committee intends to choose a site at its meeting on June 2.

**Adjournment**

Mr. Sedano made a motion to adjourn the meeting, seconded by Mr. Mitofsky. The motion was approved unanimously and the meeting was adjourned at 9:50 p.m.

Respectfully submitted,

Valerie Capels

Transcribed by Kathleen Swigon

*These minutes are subject to approval by the Planning Commission. Changes, if any, will be recorded in the minutes of the meeting at which they were acted upon.*