

**Montpelier Planning Commission**  
**Friday, December 10, 2004**  
**Memorial Room, City Hall**

*Subject to Review and Approval*

**Present:** David Borgendale, Chair; Ms. Grodinsky, Vice Chair; Anne Campbell, Curt McCormack (arrived 4:25), Marjorie Power (arrived 4:30)  
Staff: Valerie Capels, Planning & Community Development Director

**Call to Order**

The meeting was called to order by Mr. Borgendale at 4:00 p.m.

**Response to Recusal Request**

Mr. Borgendale said the Planning Commission must respond to the formal request that Commissioner Sedano be required to recuse from participation in the deliberations regarding the zoning proposal due to a conflict of interest. He felt there are two matters before the Planning Commission. One is the content of the zoning and the second is the zoning map. He believed those are two different matters because the zoning has general applicability throughout the city. He prepared two draft motions for the Planning Commission members to consider.

Ms. Campbell said that she would like to make a motion, but did not know if it would be the same as Mr. Borgendale's. Mr. Borgendale said that section 2c of the City's ethics policy specifies the language that must be addressed in response to a request for recusal.

Ms. Grodinsky moved the question, "Regarding the proposed amendment to the City of Montpelier zoning by laws, should Commissioner Richard Sedano recuse himself due to a conflict of interest or the appearance of a conflict of interest?" Ms. Power seconded the motion for discussion purposes. Mr. McCormack said he understood that Mr. Sedano did not wish to recuse himself. Mr. Borgendale agreed. Mr. McCormack said that he trusts Mr. Sedano's judgement on the matter. Ms. Campbell said that she feels very strongly that the zoning applies city wide. She said that, if Mr. Sedano has to recuse, all of the Commissioners would also need to do so. The Commission voted 5-0 to answer the question negatively.

Ms. Grodinsky moved the question, "Regarding the proposed amendment to the City of Montpelier zoning map regarding the Aja/Zorzi and portions of adjacent Union Institute property, should Commissioner Richard Sedano recuse himself due to a conflict of interest or the appearance of a conflict of interest?" Ms. Campbell seconded the motion. Mr. McCormack said he would vote no because Mr. Sedano did not wish to recuse and he trusted his judgement. Ms. Power said the house that she sold to Mr. Sedano has no view of the Sabin's Pasture property because of its location. The land rises and then drops off so that a bit of the Union Institute property can be seen, but all you can see of the Aja-Zorzi property are the tops of a few trees. Fred Connor said the property has a commanding view of the Union Institute property. Ms. Power said she would not call it a commanding view as all that can be seen is about 50' of the property. The part of the parcel proposed for T-4 zoning is right behind the house and would come right up to the back yard of the Sedano property.

Ms. Campbell said she was confused about the intent of the ethics policy. She asked Mr. Zorzi to describe the past action of the City Council regarding the Pioneer Street bridge property. Mr. Zorzi said he was on the City Council when the Pioneer Street bridge was under consideration. There were conversations with Mr. Stitzel regarding the ethics policy. Mr. Zorzi said he understood that the policy was extremely broad. It was strongly suggested that he recuse himself due to a family association even

though there was no financial interest and he did. He noted that the property in question comes up to the back of Mr. Sedano's property.

Ms. Grodinsky said she wanted to clarify that the motion considers asking Mr. Sedano to recuse on the consideration of where to draw the lines. Mr. Borgendale agreed saying that it only related to the zoning map. Ms. Campbell asked if the matter could be tabled. Mr. Borgendale said it could, but that he did not think that action would be wise.

A member of the public said that she was on the Zoning Board at a time that Eddie Walbridge, who worked for her, came before the Board. When she offered to recuse, the other Board members said many people in the city had similar associations. The issue is the public perception of fairness. If there is an appearance of an ethical problem, it should be addressed. Ms. Power noted that there is a difference between the quasi-judicial roles of some public bodies and the quasi-legislative role of the Planning Commission. Mr. Borgendale said he agreed that there is no legal requirement for recusal, but the question is whether the City ethics policy has set a higher standard.

Ms. Power said that, in her opinion, this is a marginal issue. She was concerned that if the Commission disqualifies Mr. Sedano, that action will tend to encourage people who disagree with a commissioner to raise conflict of interest filings. The fact is we all live in the city and have interests in various matters that are before public bodies. She would be prepared to accommodate those who have raised concerns except for the concern of the precedent that it might set. Mr. Borgendale said he felt the Commission could differentiate between Ms. Power's concern and the matter before the Commission. The ethics policy really addresses financial interests. Presumably, what happens on land adjacent to yours could affect the value of your land. Mr. McCormack said he agreed, but could see why there is fear that this will create the potential for issues in the future. He did not have any problem with Mr. Sedano deciding for himself and that he would extend faith in Mr. Sedano's ability to make the decision for himself.

Mr. Borgendale said one reason this question is so difficult is that, knowing Mr. Sedano personally, he has no question that Mr. Sedano would be fair and objective. However, he is concerned about the appearance of conflict. The public trust in the process is a significant matter. Chris Smart said that City Attorney Stitzel seemed to set the test as whether the party in question has a financial interest that is different from that of the public in general. Many houses and properties have views of Sabin's Pasture. Mayor Hooper said she has the highest regard for Mr. Sedano. The issue is the appearance and the public trust.

Ms. Campbell said she was not comfortable making a decision at this point. Mr. Borgendale said the decision must be made before the next meeting because the Commission needs to work on the matter and Mr. Sedano will be attending. Ms. Grodinsky asked what a delay would accomplish. Ms. Campbell said it would give time to think. She was being asked to make a decision regarding another Commissioner whose ethics she trusts based upon a public perception without knowing how much public sentiment there is on this issue.

Ms. Power made a motion to table the previous motion. Ms. Campbell seconded. The motion was rejected 3-2.

Mr. Borgendale called the vote on the original motion. There was one no vote, two yes votes and two abstentions. Mr. Borgendale said that the motion failed because there was no majority. Ms. Capels said

the motion may be reconsidered if requested by those in favor. She noted that any reconsideration must occur at the meeting immediately following the vote.

Dot Helling said she is very concerned about appearance and about the precedent related to the procedure. There is not disclosure on the record of the potential conflict. For that reason, she hoped the Commission would vote for recusal. Mr. Borgendale said the Commission did a disclosure on record, but it occurred on the same day the letter was received raising the conflict of interest issue.

### **Master Plan and Zoning Revision Tasks and Timetable**

Mr. Borgendale said there were three sub items: (1) the review of the legal opinions from Mr. Stitzel on December 6; (2) consideration of the Master Plan amendment to coincide with the zoning amendment; and (3) who would prepare the amendment and the timetable. Regarding the second, he wanted the Commission to make a formal decision on whether that was necessary. Ms. Power asked whether there was a timetable the Commission would have to meet if it chose to do that. Ms. Capels distributed a copy of the state statute dealing with adopting and amending the Master Plan. She said the public hearing process could coincide with the bylaw amendments.

Mr. Borgendale said he would, first like to decide whether the Planning Commission believes that the amendment is necessary. He did not see how the time table has anything to do with the question. Ms. Campbell said she thought there is sufficient language in the land use section of the Master Plan to match the Commission's intent. She has looked at the language that Chris Smart had e-mailed. Mr. Smart said he sent the suggestions to the Commission because he thought that it would be a useful addition. Mr. Stitzel had given the Commission some advice on the matter at the meeting. He thought his suggestions were consistent with Mr. Stitzel's advice.

Ms. Campbell made a motion that, based on Mr. Stitzel's advice we amend the Master Plan. Ms. Power seconded the motion. Mr. McCormack said he did not know if Mr. Stitzel understood what is going on with the proposal and the fact that the Commission is in the middle of the rewrite of the Master Plan. He was not comfortable with making small amendments to the present Master Plan for the sole purpose of accommodating the SmartCode which the Commission has not made final decisions on. Ms. Campbell said the Master Plan changes reflect changes that the Planning Commission has been considering for a long time. They are reasonable changes to move ahead with under any case. Ms. Grodinsky asked if the Commission has the option of moving forward with the zoning without moving forward on a Master Plan amendment. Mr. Borgendale said the first option he had described was to move ahead without changing the Master Plan. He noted that Mr. Stitzel advised that, if the Commission goes ahead with the zoning in that manner, the City could be subject to legal challenge. Mr. Borgendale said the second option was to do a Master Plan that has a land use plan that covered the entire city and then adopt the zoning. The third option was to take the existing Master Plan and tweak it to accommodate the zoning changes so there is not inconsistency. Mr. McCormack asked why the Commission cannot see if it can work out agreement on the code, then tweak the Master Plan, and go forward with them both at the same time. Ms. Power said that there are two reasons. First the legal advice suggested that we should adopt Master Plan amendments either before or in tandem with the zoning changes that we want to see made. The second is that the timetables for legal adoption of the two aspects are different since the Master Plan changes need longer lead time.

Ms. Capels asked to clarify the motion. She understood the motion to be to proceed with the Master Plan changes independent of the broader Master Plan changes. Mr. Borgendale said that was correct. Ms.

Power said the Commission might need to ask the attorney whether the Commission can also extend the time for the Master Plan revision as it adopts this amendment. Ms. Capels said that the Commission can amend the plan and reset the time for the general Master Plan revision. She believed that the amended plan would have to go again to the Regional Planning Commission for approval.

Mr. Connor said he heard the attorney say that the Commission has to withdraw the city wide text because there cannot be a whole new text that applies only to one area. Mr. Borgendale said that discussion was in relation to the zoning, but the current discussion related to the Master Plan. A member of the public asked why the Commission would do an amendment to the Master Plan rather than complete the work on the general Master Plan update. Ms. Campbell said that was because the Commission has the interim zoning to deal with. Mr. Smart said it was never the intention of the City Council that Sabin's Pasture zoning would wait for the general Master Plan changes. Mr. Stitzel told the Commission it is appropriate to do a Master Plan amendment if it is needed to address the zoning. It was anticipated the zoning would be done within six months.

Mr. Connor said he read the Council motion to set up the subcommittee. The motion said nothing about changing the zoning city wide. He said that type of action should occur through a Master Plan amendment rather than a decision of a subcommittee that did not follow the open public meeting requirements. The municipal plan should be first, then the bylaw should be written. The process would otherwise be backwards and that the zoning should not drive the Master Plan.

Mr. Borgendale said the motion on the table is to proceed with the Master Plan amendment. Mr. McCormack asked Ms. Campbell if she would consider a friendly amendment to say that the Master Plan would be amended concurrent with the zoning proposal. Mr. Borgendale said the motion only addresses the question of whether to proceed with the Master Plan amendment.

Ms. Power reviewed the timetable to notice a public hearing. Section 4335(e) says the draft and reports must be issued not less 30 days prior to the first public hearing. That would mean the Master Plan amendment would have to go out 15 days sooner than the zoning if the Commission wants to move with both aspects in tandem.

Mr. Smart said the Commission could issue a notice on the proposed plan amendments that he had suggested without being obligated to adopt the amendment.

Mr. Zorzi said Sabin's Pasture is 100 acres of 6,000 acres that are similarly zoned. The amended Chapter 117 requires that the Planning Commission create a rationale and apply it to all 6,000 acres. Another member of the public said that she would prefer to see the Planning Commission writing its own amendments. Mr. McCormack said he was not interested in debate about how the Planning Commission could move the City Council's proposal forward. The Planning Commission needs to look at it, discuss it, and make a determination on whether the Commission wants to move ahead with it.

Ms. Power volunteered to review the information, make amendments as appropriate, and bring it to the meeting on Monday, however, she won't be able to do the map revisions. Ms. Capels said that the GIS staff person who handles the City's mapping will not be in on Monday. Also, Figure 16 does not exist yet in a digital format. That work was going to be done as part of the overall Master Plan revision process. Mr. Borgendale noted that the text must reflect comprehensive community reasons for the amendment to

the Master Plan. Ms. Power said that she would give it a try. Mr. Borgendale said the matter will be on Monday's agenda.

Ms. Capels said the Planning Commission will also need to consider the report. Ms. Campbell said she would ask Ms. Capels to take a stab at that. Ms. Capels said she could not do that by Monday, particularly not knowing what Ms. Power had drafted. Mr. Borgendale read through the issues the report must address and noted that they must be addressed as to how the decisions related to this parcel will affect all similar parcels in the City. Ms. Power said that she would try to draft something for Monday.

### **Review of Draft Zoning Proposal**

Mr. Borgendale said the Commission had decided to add a footnote addressing the maximum building elevation in feet, but did not decide on the actual limit. He noted the Commission also wanted a provision stating that the back building and the out building would not exceed the height of the principal building as measured at the front of the principal building. The Commission also talked about the minimum height requirement, but did not reach any decisions on whether to have a minimum or not. Ms. Power suggested that there not be minimum height requirements in the T-4 zones. She thought there were enough design requirements to ensure that the house will look like traditional houses.

Mr. Borgendale referred Commissioners to the table he had prepared to try to apply densities to Sabin's Pasture for a point of comparison. The current zoning has a minimum lot size which can be converted to a number of lots per acre. He then looked at the maximum number of multiple units based on a minimum area per unit. That gives the number of units per acre. He only looked at the by-right densities, not the conditional densities. Mr. McCormack said the result would still be 12 units per acre for multifamily development. He did not know if the number of lots per acre was the same as the number of units per acre. Mr. Borgendale said you cannot subdivide at less than the minimum lot area.

Mr. Borgendale said he thought it would be helpful to have a comparison as the Commission discusses density. He noted the whole issue with TDRs is that the by-right densities cannot be set so high that no one has reason to use TDRs. Ms. Grodinsky said that, as a substitute for TDRs, a higher density could be allowed within a portion of a parcel. Mr. Borgendale said the question with that type of zoning is whether the Planning Commission and Council have the wisdom to know where to transfer from and to.

Ms. Capels said that in other municipalities that use TDRs, the program tends to be voluntary between properties. That means that the City must be prepared to have development occurring at the sending area's base density. Ms. Power said she did not think that TDRs will be that useful as a major planning tool. Mr. Borgendale said they are a way to encourage preservation while saving some of the development value of land. Ms. Power said TDRs would work if you do not really care where the development occurs. If the goal is to preserve specific places, the TDR tool is not as useful. Ms. Capels recommended that TDRs not be considered as a device for the Sabin's Pasture zoning at this time. The use of the PRD provisions with discrete criteria and overlays could accomplish the Planning Commission's goals.

Mr. McCormack asked Commissioners to recall that he asked Mr. Stitzel a question about taking a large parcel of land and zoning it for clustering. Mr. Stitzel advised that each land owner would have to have some residual value left with their land. Mr. McCormack asked what would happen in terms of the separate Zorzi property and Union Institute property under the subcommittee's proposal. Ms. Campbell said that she clearly heard Mr. Stitzel say that, if you left the landowner value, there was no taking.

Mr. Borgendale suggested the discussion continue at the next meeting.

**Adjournment**

Mr. McCormack made a motion that the meeting be adjourned. Ms. Power seconded the motion. The motion was approved unanimously and the meeting adjourned at 6:35 p.m.

Respectfully submitted,

Valerie Capels

*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.*

*Transcribed by Kathleen Swigon*