

Montpelier Planning Commission
January 23, 2006
City Council Chambers, City Hall

Subject to Review and Approval

Present: Marjorie Power, Chair; Carolyn Grodinsky, Vice-Chair; David Borgendale; Anne Campbell; Craig Graham; Ken Jones; Richard Sedano
Staff: Valerie Capels, Planning & Community Development Director

Call to Order

The meeting was called to order by Ms. Power at approximately 7:00 p.m..

Minutes

Mr. Borgendale made a motion that the minutes of the January 3, 2006 Planning Commission meeting be approved as submitted. Mr. Sedano seconded the motion. The motion was approved by a vote of 6-0 with Ms. Grodinsky abstaining. Mr. Jones made a motion that the minutes of the January 9, 2006 meeting be approved as submitted. Mr. Borgendale seconded the motion. The motion was approved by a vote of 6-0 with Ms. Grodinsky abstaining.

Review of Agenda

Mr. Borgendale made a motion that the election of officers be postponed to the end of the meeting. Mr. Jones suggested that the motion be amended to postpone the item until the January 30 meeting. Mr. Borgendale agreed. Ms. Campbell seconded the amended motion. The motion was approved unanimously.

Public Hearing on Zoning and Subdivision Amendments

Ms. Power said that this was the first official public hearing on the zoning changes that the Planning Commission has proposed. There had been an informal meeting with the public in the preceding week. She noted that a complete copy of the amendments was posted on the City Web site. Ms. Capels added that a summary of the proposed changes was available on the table in the meeting room. She briefly noted some of the other changes and new provisions that would affect the city beyond the Aja/Zorzi property. Ms. Power said that people without Internet access who wanted the entire proposal could contact Ms. Capels for paper copies. Ms. Power pointed out that maps were posted at the back of the meeting room. She described the zoning proposal shown on the map of the Sabin's Pasture area. She said the Planning Commission would try to have any written comments posted on the Web site.

Mr. Jones provided an overview of the portion of the proposal related to the community resource overlay. He said his interest in the work began when the Stuart Chase development was proposed for Sabin's Pasture. People were interested in what would happen to the upper pasture and that there was a lot of dissatisfaction with the one acre zoning that the LDR zone would have permitted. The Planning Commission subsequently made changes to the Master Plan which added the idea that the upper pasture should be included in the conservation lands shown on the Future Land Use Map. Mr. Jones explained that the Planning Commission has tried to add some definition and goals for how those lands should be treated. There are three goals for the conservation lands: more housing for the city, something should be conserved (this does not mean that development should be excluded), and establishing procedures that will foster discussions and avoid contention when development is proposed. The community resource overlay concept was developed with these goals in mind. Mr. Jones said that the first

part of the community resource overlay process would be the completion of an inventory of community resources. The purpose of the inventory is to identify the resources on the property that can be conserved while allowing for development. He explained that the inventory will provide a more concrete list of the resources for an assessment of which resources can be conserved through the development process. The community resource overlay process is not structured to prevent any development of the upper pasture, but requires consideration of which resources can be conserved and those that would be lost. The Commission hopes this will create a more even-handed process. It may also help the projects through the Act 250 process. Mr. Jones said the Commission recognizes that some fine-tuning is needed and the Commission is interested to hear the public comments that would be provided that night.

Ms. Power said there would be a two minute time limit on commentators in order to ensure that there was time for all who wished to comment. She said there might be additional opportunity for follow up comment if time remained.

Paul Markowitz thanked the Planning Commission members for the time and energy that they had put into the work on this proposal. He looked on this as a revolutionary step forward in addressing how to incorporate other community interests into the process. He asked whether the document reflect the views of the diverse population that lives and works in Montpelier. He said that if those concerns had not been incorporated, he would urge the Commission to slow down and extend the process. He liked the community resource overlay concept. The interests of the landowners and community should be balanced. People should be given a chance to digest and understand the proposal and it should no be rushed through.

Tim Carver said that he agreed with the previous speaker. No one knows what the proposal actually would do. It is highly complex and would have enormous ramifications for the community. The flexibility that Mr. Jones had referred to would be limited because the proposal would be applied as a regulation. He objected to the fact that the limits on development would affect only those people who own undeveloped property. The Planning Commission should go back to the original zoning.

Alan Blakeman asked how the process would work for land that is partly in the community resource overlay. Ms. Power said that the development proposal would have to go through the process since it included land that is in the community resource overlay. Mr. Jones said that the review process could be simple if the development did not affect the part of the property that is in the community resource overlay.

Rich Hansen said that he was speaking on behalf of Union Institute and Vermont College. The institution has been interested to ensure that its 17 to 18 acres of land adjacent to Sabin's Pasture can be used for development as part of the institution's economic plan. The proposal appears to accommodate that interest, but he would seek assurance that the community resource overlay applies only to a small piece of Union Institute's property. Mr. Hansen suggested that be clarification of how the visual impact provisions impact property adjacent to the community resource overlay and how the regulations are applied when the community resource overlay does not follow property lines.

Jay Ancel said that he is an architect, Montpelier resident, and member of the Montpelier Downtown Community Association. The test for the zoning is whether the Montpelier that the

community loves could be built under these standards. The standards should be reconsidered if that was not the case. The proposal encourages open space, but then applies an additional setback to open space. The additional setback could actually work as a discouragement to providing for open space. Mr. Ancel encouraged the Commission to speak to the staff about addressing more provisions that might help to streamline the development review process. He suggested adding language about the types of development that is encouraged. The rules should allow the City to approach development proposals as positive partnerships. The rules regarding visual impacts should be addressed by criteria for quality neighborhoods and quality spaces instead of controls on where the development can be seen. The Commission should consider relaxing slope restrictions if it wants to encourage development.

Sandy England provided a statement that was read by Rachel Castle. Mr. England said the population of Montpelier has not changed since 1930. He was opposed to the overlay district that capriciously drew lines on his land in order to convert his property to public recreation land. This was confiscation without compensation and an encroachment on private land owners' rights. The proposal used the same flawed ideas as the previous SmartCode proposal. It is not fair to declare his private field as a natural resource and urged that the Commission withdraw the proposed community resource overlay district. He urged the Commission to balance community interests with the rights of landowners.

Lyman Castle said that he was concerned that his children's ability to build houses for themselves on the 110 acres of the family's land in Montpelier. The proposal would require a PUD application if two more houses were added to the property. That process would require that land be set aside for the city and that impact studies be completed at a cost of \$10,000 to \$50,000 per site. He was supportive of some of the ideas about conserving natural resources. He found the language related to community resources to be offensive. He found the language pertaining to trails and the potentially valuable recreation land for the city to be particularly offensive. He asked whether the proposal would supercede the Department of Agriculture rules on houses. Mr. Castle asked what formula would be used to determine whether there was a net protection of the land and who would make that determination. The goal of having development close to roads and infrastructure was in conflict with the goal of having the development be less visible from roads. He added that he would like to know how the liability issue would be addressed if public access to private land was allowed.

Rachel Castle said that she was also offended by the term community resource for private land. She pointed out the land designated as conservation land on the Future Land Use Map is not land that has been conserved, but is rather, a vision from the Master Plan. It is not appropriate to use that designation for zoning. Zoning should not be arbitrary. The proposal contains contradictory provisions and attempts to micro manage. All applicants are not developers. She added that land is an asset and if the development value of the land is removed, the asset has no value. The Land Trusts will not buy development rights if the zoning has already taken those rights away. The Planning Commission needs to use carrots for land owners, not sticks. The community resource overlay provisions will make housing cost-prohibitive.

Doug Zorzi said referred to the Sabin's Pasture portion of the zoning map. He said the railroad was abandoned in 1956. There have been two court cases regarding this issue and that, by showing the triangle on the map, the Planning Commission was not abiding by the court decisions. The map also shows the old alignment of Barre Street and should be updated to

show the new alignment. The 300' distance should be shown from the edge of the City right of way, not the edge of pavement. Mr. Zorzi said that DeWolfe Engineering did an analysis that was provided to the Planning Office, which shows what is feasible to be developed based on infrastructure. He said that, the development area should actually extend more than 500 feet from Barre Street instead of having the development area be limited to 300 feet from Barre Street. The development should also extend into the top 56 acres of the property. The community resource overlay will be subject to interpretation. He stated that the Director of Planning and Development has not responded to Rick DeWolfe's request for the type and quantity of development that would be allowed in the community resource overlay for Sabin's Pasture. He questioned how the DRB could address and respond to a development application if that information cannot be articulated. [Staff note: Mr. Zorzi was mistaken and no such request was ever received.]

Jack McCulloch said that his son, Adam, was out of state, but had sent written comments. Mr. McCulloch said that he is a Co-Chair of the Housing Task Force and would provide its comments. He said that the Housing Task Force strongly supported the portion of the amendment related to accessory apartments. He said that the Task Force was concerned that those provisions could be held up by the rest of the proposal. The proposal appears to cut the number of units permitted on Sabin's Pasture by half. The standards are so vague that a developer cannot look at a site and determine how many units could be built. The community resource overlay process is duplicative of the Act 250 process and the existing PUD process. He added that it seems to create multiple opportunities for people to try to prevent development. The community resource overlay process did not seem to add anything to current processes. It might give too much weight to soft factors like history and cultural significance. He noted that the community resource overlay would apply to more than 36% of the area of the city and questioned whether that was appropriate.

Carol Dorflein said that whatever tools the Planning Commission develops for the city have to be flexible to accommodate special circumstances like a landowner wishing to build a house for a family member. Her property was entirely in the community resource overlay and that was fine with her. She is a board member of Friends of Sabin's Pasture. The majority of voters have said that they wanted to protect the upper pasture with the goal of purchasing the area for a public park. The Housing Task Force and Friends of Sabin's Pasture subsequently agreed to support a viable park on the upper pasture with fair market compensation and viable development on the lower pasture. The agreement represents large constituencies. A significant part of public opinion supports the pasture above and dense development below. The community interest should be considered, not just the vocal minority. It is known that courts at all levels have consistently supported zoning that provides economic value for the property owner, but not windfall profits. The Planning Commission has done a good job of balancing values. The proposal provides for development on the lower pasture, but takes away the potential for a park on the upper pasture by allowing scattered development. She said that aspect of the proposal is thwarting the will of the voters.

Thia Artemis, a member of the Conservation Commission, said that there is never agreement over what natural resources should be conserved and where to place lines on a map. She said that GIS can be a tool to create accurate maps, but people will still argue over the placement of lines on a map. She would favor the purchase of the land as a park, but the future is unknown.

She suggested that, rather than adopting a paper map, the City use a GIS map that is constantly up-datable. That would allow each decision about a property to be based upon current data.

Robert White said that he was representing Union Institute. He had submitted written suggestions for zoning. There is a difference in dealing with a single issue and in dealing with citywide policy. He suggested that the proposal may have grown too large and worried that some of the connections may not be strong enough. Landscape preservation seemed to be a strong goal of the proposal. Other communities have accomplished that goal through compensation with transferrable development rights. The community resource overlay process does not include a clear basis for making a judgement after and assessment is done. Mr. White said that Union Institute agrees with the provision for high density housing. The connections between the policies and the creation of good neighborhoods need to be strengthened. He recommended using an alternate model based on the Vermont Neighborhoods Project developed by the Vermont Forum on Sprawl.

John Waldo, a member of the Friends of Sabin's Pasture board and resident, said that he personally wanted to encourage to Commission. He said that the Commission members had done a great job and needed to push ahead with the proposal.

Christine Zachai, a member of the Conservation Commission, said she agreed that the plan is not perfect, but she strongly supported the proposal. The community has been divided for years over whether the city can have conservation or development. The proposal is a first step in balancing those two goals. Growth is important, but must be done well and channeled into areas that are most appropriate for growth. The proposal does not prevent growth, but says that it should be balanced with protection of the quality of life in the city. The plan provides a vital balance for Montpelier. Work needs to be done on the clarity of the rules and on the community resource overlay map. She urged the Commission to move ahead with the adoption of the proposal and continue to work out the kinks.

David Keller said that he was a member of the DRB for two years. He saw that the code was difficult to enforce objectively. He was frustrated that the zoning did not enforce the goals of the Master Plan and that decisions always were made in favor of the developer because the code had no teeth. The Master Plan is the basis for zoning and he was glad that the Commission had developed a proposal that supported the Master Plan goals. He urged the Planning Commission to push ahead with the proposal and work on improvements in the future. The majority of voters wanted to preserve part of Sabin's Pasture. He added that the City needs to provide affordable housing, but he did not want to see every open space in the city filled with development.

Roy Schiff said he would like to see the upper pasture preserved as open space with compensation to the land owner. He said that, as a professional in the engineering field, he sees the regulations as supportive of developers' rights and the working landscape. He suggested refining the proposal based on some of the comments, but continuing to move ahead with it.

Ken Matzner, a member of the Conservation Commission, said that he wanted to provide some clarifications. He said that the cost of doing inventories had been exaggerated. The City has a \$15,000 grant to inventory the entire city. That meant that landowners could have the inventories of many of the items done at not cost if they allow the City to access the property to do the inventory this year. He wanted to clarify that all of the land in the community resource overlay

can be developed to the same number of units that would be allowed if there was no community resource overlay. Greater numbers of units could be developed if the development is located carefully. Some things can be better defined, but there is a balance between allowing flexibility and more clearly defining every provision. The proposal seemed to attempt to maintain that balance, but there may be room for improvement.

Michael Hoffman said he was interested to hear that the city's population has not changed since 1930. He said that is the definition of a sustainable community. Montpelier still has a viable downtown, a walkable city and attractive, viable neighborhoods. It is always easier in zoning to describe what it not wanted rather than what the community wants. The proposal needs to be clarified, but zoning codes are acts of continuous approximations and some adjustments can be made as the City moves forward. He urged that the Commission not allow the Sabin's Pasture piece to get lost in the overall zoning.

Tim Carver said that all government is based on the Constitution and the Bill of Rights. He said that consideration is missing from this process. That the question of property takings comes down to who benefits and who pays. It is not right that a few people should pay for the benefit of a large number of people. There are limits on what zoning can and should do.

Ms. Power said that the Planning Commission would welcome any specific suggestions on how to improve the clarity and precision of the proposal. She said that comments can continue to be e-mailed to the Commission. She closed the hearing.

Next Steps

Ms. Power said that the Commission members need to read and consider the submitted written materials. She thought it was a good idea to post all of the comments on the Web site. Ms. Capels said that the City's scanner could not easily convert the documents to electronic form. Ms. Power said that she would try to do so. Mr. Graham volunteered to transcribe Mr. Carver's hand-written comments.

Ms. Grodinsky suggested that the Commission use a term other than community resource overlay since that seemed to offend land owners. Mr. Sedano said that he did not want to lose the meaning of the term. Mr. Borgendale said that he did not want to spend a lot of time on the label since the objectors also have issues with the underlying concepts.

The Commission agreed to start the January 30 meeting at 6:00 p.m. Mr. Sedano said the commission should use that time to work through the comments on the proposal. Mr. Jones said he wanted to start where there is a clear understanding of the comments. Mr. Sedano said he thought that the Commission needed to come to agreement on what it wanted to change and not spend time on the language at that meeting. Ms. Power said that everyone should read all of the submitted comments and make up "to do" lists

Ms. Capels said that the joint meeting with the City Council has been scheduled for February 1, 2006. She said it would probably start at 7:30 p.m. There was discussion about how the meeting was intended to be structured or facilitated.

Adjournment

Mr. Borgendale made a motion to adjourn the meeting at 9:40 p.m. Mr. Sedano seconded the motion. The motion was approved unanimously.

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.