

Montpelier Planning Commission
August 23, 2010
City Council Chambers, City Hall

Subject to Review and Approval

Present: David Borgendale, Vice Chair; John Bloch, Tina Ruth, Bethany Pombar and Alan Goldman.
Staff: Gwen Hallsmith, Director, Planning and Community Development
Clancy DeSmet, Planning and Zoning Administrator

Call to Order:

The meeting was called to order by David Borgendale, Acting Chair, at 7:07 P.M.

Review and Approval of Minutes of July 12 and August 9, 2010:

John Bloch and Tina Ruth moved and seconded the approval of the July 12 and August 9 minutes. The Minutes of July 12 and August 9, 2010 were approved unanimously.

Flood Plain Zoning:

Ms. Hallsmith said the direction they decided on the last time was in this revision they wanted to bring the city up to the standard that we need to have in place in order to retain our flood insurance as soon as the new maps are adopted. Then, consider more stringent or expanded floodplain regulations as part of the overall zoning revisions. One of the questions the last time was what, if any, of the changes that are in front of them comprise that more expanded floodplain regulation, and what of the changes really only bring us up to the standard we need to be at to keep our flood insurance. Particularly, there was one provision in here where there is a provision that allows for 1 foot higher than the floodplain to be included. It was not on the checklist the state provided us, but in the ordinance changes that Miller Archer at the League of Cities and Towns had provided us.

Mr. Borgendale asked is that required or is that above the requirements?

Ms. Hallsmith said that is above the requirement which means that we might want to take it out of the revision or not.

Ms. Pombar said they were going to look at it to see how much more needed in to get us to the next level. We wanted to look for an eye towards what do we need to do to keep our insurance, and then what do we need to bump us up to the next level of savings?

Mr. Borgendale said his sense is that they are quite a ways from getting to the next level.

Mr. DeSmet said the green checklist is the one that Ned Swanberg went over by just looking at our current ordinance. The track changes ordinance you see before you was created by Millie Archer from the League. She had an eye towards getting us more credits. It's a little

stronger than what Ned did, but it isn't quite what Rebecca was talking about. Rebecca is finding out what we need to get a lot of points. She is working with an insurance organization to get more points by creating more of a hybrid ordinance than we see before us. If you read what Ned said about free board, on one if you just 2 feet they already subtract 1 foot. He doesn't see it as a problem to do the additional foot because in the downtown the historic structures are already exempt so you aren't going to be raising historic structures 1 or 2 feet.

Mr. Borgendale asked if they had talked to any architects or engineers that would know how much we would add to the cost of the building to do this.

Mr. DeSmet said he hasn't.

Mr. Borgendale said that is what the cost is.

Mr. Goldman said it isn't always cost. Sometimes it is site constraint or handicapped access.

Mr. Borgendale said this is also discussed on page 7-125 in Section 716(b) (1 & 2) which refers to both residential construction and nonresidential construction.

Ms. Pombar said in the letter from Ned it says something about residential construction not allowable to raise it up 2 feet.

Mr. DeSmet said it is in relationship to flood proofing. It says that flood proofing is not considered terribly reliable and is not allowed for residential structures. He can't give a permit to somebody that is in a residential structure on the first floor in a floodplain. It can be an office but it has to be flood proofed. If it is already there, then it is there. Say there is a 5-unit building on Elm Street and the person wants to convert the garage into an apartment. They probably couldn't do that unless they raised the apartment up above the base flood elevation. The free board is just a way to insure safety in an uncertain area. Most floods don't happen in the floodplain. You can have a 100-year flood event 6 times in 10 years. Free board is a way to mitigate the impervious surface and the rip rapping of the floodplain. It isn't going to save everything but it is another thing they can do with new construction to get a bigger discount. You guys are thinking about the discount across the board, but if we do free board 1 foot and 2 foot for the ordinance that is going to be an individual savings on the person's rating. When somebody builds the structure and raise it above, and since we have a higher standard than the minimum, they are getting a better rating individually.

Mr. Goldman asked what do we do when that raising really does inhibit ADA accessibility. Can we make an allowance for that? Can we give them a variance on the setbacks?

Mr. DeSmet said they could give a variance. The problem with giving a variance on a floodplain project means their insurance is going to be higher.

Ms. Ruth asked what proportion higher.

Mr. DeSmet said he isn't certain about the money but he knows that flood insurance is already extraordinarily expensive.

Ms. Ruth said she just received her bill for over \$900.

Ms. DeSmet said that is in addition to people having homeowner's insurance. It's not cheap.

Mr. Bloch said it only covers the first floor. It is very limited.

Mr. DeSmet said that is why they try to get people to build AC units and furnaces at least above to protect them.

Ms. Hallsmith said Ned's note says the second entry regarding 2 feet is in regards to flood proofing and not elevation of the lowest floor. Flood proofing is not considered terribly reliable and is not allowed for residential structures. Also, after construction in accord with the municipal permit the insurance for the flood proofed structure will be determined independently by the insurance agent. One foot of elevation is deducted before calculating the insurance rate. As such, a structure flood proofed to 2 feet above the base flood elevation will be rated as if it were one foot above. A structure flood proofed to the base flood elevation will be rated as one foot below. This potential problem can be avoided by through the bylaw.

Mr. DeSmet said there is an automatic subtraction of a foot before they calculate where you are with respect to the base flood elevation on the insurance side.

Ms. Ruth asked how do you do that in a bylaw?

Ms. Hallsmith said that is why they have proposed we add the foot because by adding the foot then when the insurance is calculated it is considered to be at the flood elevation.

Mr. Borgendale asked if that was a current underwriting practice or some regulation.

Ms. Hallsmith said it sounds like an underwriting practice but it is still important for people in terms of understanding what your flood insurance is.

Mr. Borgendale said those can change.

Ms. Hallsmith added that regulations can change, too. As long as the underwriting practice is that way they are suggesting that we try and make it so people here would have that.

Ms. Pombar said she doesn't understand how the two different flood insurances work together, the individual flood insurance that we can leverage credits and the other larger insurance where we can get extra points on a community wide basis. How do they interact?

Mr. DeSmet said they basically interact in the way that someone's individual insurance policy would be rated based on where you are in the floodplain. The community rating system is different in that it relates to how the city regulates the floodplain. It's not necessarily the same thing. If we clean out all of the storm drains, if we stop building in the floodplain, etc., get us more points on a community wide basis. At every 500 point increment you get a 5 percent discount overall on the insurance so that anyone in the city of Montpelier, regardless of whether they are in the floodplain, can get flood insurance. For example, when we had the flood events on Towne Hill and Prospect Street those people can get flood insurance. If your driveway washes out you might be able to make a claim and get your driveway fixed for a reasonable price. These regulations concern new construction so everything we are doing that is new has to be in compliance. It is alleviating grandfathered things. We allow them to continue unchanged indefinitely, but the moment you turn a restaurant into an office and the restaurant is no longer permitted there then it has to be something that is permissible. We are constantly seeking a point where all new development is in compliance rather than a static historic district that doesn't accommodate the natural environment. This is going to get somebody a better insurance rate if you are doing some development at your own house. The things that Rebecca spoke to are going to get the whole community a discount. Most of the people he has met at the trainings he has attended have a large staff and can do a lot of things that this city can't really do. They have professional engineers, professional floodplain managers, and that's all they do. They don't have the jack of all trades that most small Vermont towns have.

Mr. Borgendale said individuals buy insurance, but what they are talking about is setting regulations. The insurance rates that apply to the area, a concept called community rate, basically establishes where you start in terms of underwriting a particular insurance policy. They are still going to look at individual circumstances and vary the premium from that. What the Planning Commission is doing is by doing certain things we can get the better community ratings so when the individual goes to buy insurance the baseline the insurance company starts out is going to be lower than if we didn't do these things. They will still look at your individual circumstances so the price of the insurance is a function of the community rating system plus their evaluation for the particular circumstance of the individual.

Mr. DeSmet said there are only three towns in the state of Vermont that have a community rating system – Montpelier, Brattleboro and Bennington. Every other community that is in the floodplain has the minimum requirements for the National Flood Insurance Program and whether they do anything to further that he can't say. Montpelier is one of the

communities that decided collectively that we would do more than just the minimum. Right now our regulations are below the minimum. His interest for the present is to get Montpelier in compliance. His longer term goal would be to that next tier.

Mr. Goldman asked what if they brought this into compliance now and did the extra when they did all of the zoning revisions.

Mr. DeSmet said he hasn't heard back from Rebecca on whether the hybrid she is working on is even acceptable to the insurance people because they all have to review it. It's not every day that somebody is trying to be as innovative in the regulatory world as she is trying to do.

Ms. Ruth asked if he knew if Bennington and Brattleboro have gone to an advanced level.

Mr. DeSmet replied they are Class 9 just like Montpelier.

Ms. Pombar said the main goal today is just to get us into compliance?

Ms. Hallsmith replied yes. The one thing on the list that was above and beyond to get us into compliance was the 1 foot and 2 foot above.

Mr. DeSmet said there is a provision under 309 (h) (1) and he took issue with a little because he doesn't know if it is legal. That is on page 344. It says: "Where applications for development shall include a Vermont Agency of Natural Resource project review sheet for the proposal the project review sheet shall identify all state and federal agencies from which permit approval is required for the proposal and shall be filed as a required attachment to the municipal permit application. The identified permits or letters indicating that such permits are not required shall be submitted and attached to the permit before work can begin." He doesn't think that is legal. He doesn't think they can require a municipality to make sure somebody has state and federal permits.

Ms. Hallsmith said in this case they are putting language that would have the city require it. They aren't requiring it, but whether the city can require it is the question.

Mr. DeSmet said he looked up the code of federal regulations from which he cites says review proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law.

Mr. Borgendale said he doesn't understand why that wouldn't be legal for us to say in order for us to issue a permit you have to prove that you have obtained all of the other permits you need to have.

Ms. Hallsmith said they actually do a little of this now with the green sheet and they have copies of handouts that the state makes available that they go over with applicants with every permit application.

Mr. DeSmet said the checklist is mainly directed at the municipal regulations. He knows if they add a unit they need to have a waste water permit. If you are going to have a daycare there is a box showing you need a daycare permit from the state?

Ms. Hallsmith said they do a little of this, but to put it in the bylaws that the identified permits or letters indicating that such permits are not required shall be submitted to us and attached to the permit before the work can begin. That is too much.

Mr. DeSmet said they do receive copies of the waste water permits, but they don't always get them. It doesn't seem possible for them to track that and maintain copies of all permits required.

Ms. Hallsmith said if there are any baseline health and safety permits having to do with residential uses that make sense.

Ms. Ruth said ANR provides the project review sheet. Does that include the list of permits?

Mr. DeSmet said the Planning Office has a brochure that asks if they need a state permit.

Ms. Hallsmith said if the language is in the ordinance it will be in our authority. The authority is granted through the ordinance so if this language was to be inserted into our ordinance there would be absolute authority to do that. When the Agency of Natural Resources fills out a project review sheet for the applicant they look at all of the other permits they are required to apply for at that time. We can require the project review sheet and the letters indicating they are not required to be submitted as part of the zoning application. That is where they would have the leverage to do it because then that is before the clock starts ticking and it can be part of the application process. To stick it in between the date of application and the date of zoning permit issuance treads on thin ice and that is where they run into a contradictory regulatory scheme.

Mr. DeSmet said when they changed the regulations on septic systems in 2007 they were told they couldn't withhold a zoning permit if someone didn't have a septic permit yet from the state.

Ms. Hallsmith said most of what happens here happens before the application. She would suggest saying attached to the permit application. They would have to go to the state before making their application with the city.

Mr. DeSmet said the ordinance works the opposite way. We are supposed to get the application and send it to the state for 30 days when it is a floodplain development.

Ms. Hallsmith said this is for all development and not just floodplain development. That would give the floodplain managers the information they need to determine if water and waste water permits have been sought after.

Mr. Bloch asked what happens in the event the state doesn't respond within 30 days.

Ms. Hallsmith replied the clock doesn't start ticking until the information is submitted. We could get the project review sheet in as a required attachment to the municipal permit application because that just gives everybody an idea of what permits are required. It doesn't force you to apply for them prior to applying for the local permits.

Mr. Goldman said if it isn't statutorily enforceable it doesn't make a difference.

Mr. DeSmet said it seems complicated for the Planning Department to be an expert.

Ms. Hallsmith said getting the ANR project review sheet as part of the application, which means they have paid a visit and had ANR check their own sheet out, is not an onerous application requirement and would give the city and the state a better idea about what other permits are going to be required for the development to move forward. We are interested because the National Flood Insurance Program requires this of us.

Mr. Borgendale said it would seem that the expertise burden would have to keep on top of and identify which permits are on the list which ANR has offered to do here. We are alleviated of that responsibility which would probably be the most burdensome aspect of this. It doesn't seem that it would be terribly burdensome to have a checklist attached to the permit. He doesn't think we would be required to assess the validity of the specific permit.

Ms. Hallsmith said there will be a whole slew of projects that never require a project review sheet.

Mr. Borgendale said the language says the administrative officer shall have the following duties pertaining to floodplain permits, not all permits. It seems this only applies for construction within the floodplain. The section is called administration and enforcement and talks about the fact that these items apply specifically to floodplain permits and not all permits.

Ms. Hallsmith said to think about the development a couple of years ago. It seemed fairly innocuous and just a parking lot, but it was a parking lot that was going to fill a drainage that would have had to have floodplain staff review it to make sure there was adequate culverts and drainage. It was on the Barre-Montpelier Road.

Mr. DeSmet said the only thing in that permit was fill.

Ms. Hallsmith said it turned out to be a big issue for floodplain management because he had to have the state review the size of the culverts and other things to make sure it wasn't going to be a problem and the next flood event wouldn't just all that fill right into the river, which it could have done.

Mr. Borgendale said even a fence could alter water flow. This is about floodplain development.

Ms. Hallsmith said the requirement is about other permits besides floodplain permits. She doesn't see any problem with them getting a project review sheet in advance of their application being considered complete. As soon as they will be issuing a stop work order when they don't have their state permits, that is when they will get into trouble.

Mr. Borgendale said it seems like a friendly thing to do in the sense of telling people that these are all the permits you have to have.

Mr. DeSmet said he wants to be able to help people get other permits that aren't just our permits because there are a lot of permits.

Mr. Borgendale said his understanding is because they send them over to ANR is that in certain cases you may or may not be required to get a specific permit to do what it is you are going to do and ANR would need to know those specifics to make the judgment as to whether or not you needed that permit. What happens if they go ahead and do the project and the permit is not forthcoming?

Mr. DeSmet asked if he issues a violation.

Mr. Bloch asked if they do not respond within 30 days what is the default position.

Mr. DeSmet said there isn't any provision.

Ms. Hallsmith said if they say the project review sheet is required with the application she doesn't see any problem with it. It is just another thing they ask people to do prior to making the application. For one, it will make them aware of the fact that they need the permit so they aren't putting people in the position, which has happened here before, of starting construction in the dark about the state permits that are required and then getting potentially into a lot of trouble. She doesn't see it as that onerous. The project review sheet is like our planning check sheet. They are all related to whether the development can move forward.

Mr. Goldman said people approach Act 250 in different ways. Some people get their Act 250 permit first and some go second. He would hate to get the Act 250 permits before he came to the city.

Ms. Pombar said all they are saying are they have to identify the list of permits they are going to need before they put in a local application.

Mr. DeSmet asked if he was going to issue a notice of violation to somebody who doesn't get a Corps of Engineers permit. Can he do that?

Ms. Hallsmith replied no. It says we should try to assure that these necessary permits are obtained by making the project review sheet a required part of their application. We aren't making sure they get all of those permits necessarily. We are just asking for the information about those permits. The project review sheet is actually a form of review and puts them on notice and an official record in our files about what permits are necessary.

Mr. DeSmet asked how he is supposed to know if someone got a wetland permit or not.

Ms. Hallsmith said she isn't suggesting he can. She doesn't think anything is wrong with asking for the project review sheet to be part of the zoning application. That way we are putting them on notice that they do have these other permits that are required. Federal law doesn't always match what states do and don't do. In Massachusetts all state permits had timelines attached so it works the same there as it does here with zoning, that if you don't get your state permit by x date it is automatically granted. In Massachusetts this is not such an onerous requirement for the local administrator because there is a timeline attached to the state permits.

Mr. Bloch asked why they are bothering to change it.

Ms. Hallsmith said Ned has indicated that something more is needed for us to be in compliance with the National Flood Insurance Program.

Mr. Borgendale asked Clancy to read the specific language in the federal regulations.

Mr. DeSmet said in subsection 60.3 (2)(a)(2) it says: "Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Clean Water Act."

Mr. Borgendale said this is a regulation that imposes deep duties on the local zoning administrator. If the federal regulations say you have to do it then sitting around and arguing whether it is reasonable or not is fruitless. We have to do it.

Mr. DeSmet said Vermont is one of the only states that are in conflict with the federal law in this arena. Agricultural uses, if they are deemed as such, they are exempt from zoning. He is enabled by the State Legislature in Title 24 to do his job. If the state says that one part of the pie is within his arena and then exempt a portion of it, like agricultural uses, he can't really regulate agricultural uses. What the federal government is saying is that he has to. He brought that up when he was at FEMA. He isn't allowed to regulate farm structures in the floodplain. We are literally one of the only states that are in conflict with these federal rules.

Mr. Goldman said he is empowered by state statute not federal so the only thing he can do is what the state statute enables him to do.

Mr. DeSmet said there is a supremacy clause.

Ms. Hallsmith said she thinks it makes sense to ask Steve Stitzel about this in the intervening time. She also thinks it makes sense to do something to move us a little further down the pike without being unduly burdensome on Clancy.

Mr. Borgendale said he could change the language of the first sentence to match what the regulations say.

Ms. Ruth asked if there was any step after the city's permit is issued and they start.

Mr. Goldman said they would need a building permit and a certificate of occupancy.

Mr. Borgendale said Clancy should discuss this with legal counsel.

Ms. Hallsmith asked if there were any other areas of this they need to do to come into basic compliance.

Mr. Borgendale said it is a cost benefit issue for the individual developer, but if the underwriting practice is to deduct a foot then we need to have this as the minimum level of compliance.

Ms. Hallsmith said since the rest of this is just what brings us into compliance do you want to walk through every one or leave it as recommended and think about posting the public hearing. The next step from here is to post a public hearing.

Mr. Borgendale asked can they call for a public hearing before we get the language resolved on the item we just discussed.

Ms. Hallsmith said they could always change the language as part of the public hearing. We need a 30-day notice for a public hearing.

Mr. DeSmet said by that time he would have the answer so he would have proposed language. We should draft it consistent with the federal regulations.

Mr. Borgendale asked if there was a motion to approve the draft and to warn a public hearing on the draft.

Mr. Bloch moved with Mr. Goldman seconding.

Mr. Borgendale said they can go into a public hearing and say we have discussed it with legal counsel and this is how we should change it.

Ms. Hallsmith said they could look at a public hearing on October 25th. We need to give 30 days' notice. We need to have it done by the time the maps are published and they won't be done by October 25th.

The vote on the motion was unanimous.

Senior Center Update:

The only development she is aware of with the Senior Center is they are working on the VCDB grant this week which is highly contingent on getting the Master Plan adopted. There are a lot of things the Master Plan not being adopted can get in the way of, and that is one of them. If the seniors are interested in getting the grant to finish the center it would be good for the seniors to come to City Council on August 25th to support the Master Plan. If it has to go to other hearings and more revisions there will be a lot of projects that might be stalled in the city because the federal and state governments both require that the city has a current Master Plan for a lot of these applications.

DOT/HUD Grant:

She submitted a grant application today to the Department of Transportation and the Department of Housing and Urban Development to try and repair and improve the area around the Barre and Main Streets intersection. The project includes six project components extending the Capitol District Master Plan down Barre Street so we can try to determine how pedestrian, bike and transit would get down as far as the Senior Center because that is where the bike path and heads down Stone Cutters Way, to change the design of Barre Street so that bikes, pedestrians and transit are more easily accommodated. GMTA has been reluctant to serve the Senior Center because it is just too narrow and there is no place to have a bus pull over. They also want to do intersection improvements that include signalization and the possible acquisition and demolition of the dry cleaners that would allow for more improvements on the corner to control access and egress out of the intersection. Then, they want to do a site plan for the property across the street that is currently being impacted by the new reactivated railroad. Several buildings there have lost access to both parking and deliveries and their buildings. The city has lost access to the back parking lot. They are proposing to demolish the M&M Beverage and the building that houses the

Vermont Association for the Blind. They do have letters of support for this project from all of the building owners involved, including the dry cleaners. We'll pay them for their properties and build a nicer building for them. The other part of the project is putting a capstone building on the end of Main Street that would be able to house the uses that are relocated and some additional affordable housing on the top floors. Because we have a pedestrian and bicycle bridge proposed coming across the North Branch River that is paid for out of the Carr Lot project and another enhancements grant we have, but there is no place to land it. You can't land bikes and pedestrians on this side of the river safely. The corridor, if you are looking at where the bridge is proposed which is just north of the railroad bridge, goes right through the Association for the Blind and M&M Beverage.

Mr. Bloch asked what the site for a capstone building is.

Ms. Hallsmith said it is on the Frances property which is also known as the Tomasi Lot next to the Drawing Board which is now the Shaw's employees' parking lot. It is also access to the Association for the Blind building so the parking lot is already going to be disrupted.

Mr. Goldman asked if there was still something happening with Sabin's Pasture.

Ms. Hallsmith said this is what would be enabled by the development because one of the barriers to developing Sabin's Pasture into any type of housing was the traffic flow through the Barre and Main intersection. They have designed a round-a-bout for Routes 302 and 2. It has not yet received the support it needs.

Mr. Goldman said when you put in a project like Sabin's Pasture that necessitates improving the intersection Act 250 allows us to ask them to pay for it.

Ms. Hallsmith said it actually is in the master permit that they would have to upgrade that intersection. That was one of the purposes of applying for the master permit which was to get the number of units that could be accommodated in that development through that intersection and what intersection improvements would be needed with those number of units. There were a number of units proposed; there was a site plan developed with the units drawn on it. Whether that plan was feasible or not remains to be seen, and whether it would be affordable or not remains to be seen. They were getting at certain threshold requirements that would be mandated by the state.

Mr. Bloch said he was under the assumption that everything would go west on Barre Street rather than some of it going north and then through that other intersection that is controlled by a light on a hill. We need to be paying attention to that more accurately. If we are going to do anything about the number of units in this city and anything to mitigate the spiraling costs of the sewer and water which is predicated on more people flushing.

Ms. Hallsmith said that is why they are putting the grant application in which is to try and encourage housing along that street and to mitigate some of the existing problems with the intersection and the Senior Center with the additional housing.

Mr. Goldman said he is very concerned that we are setting the precedent where we are going to be building the changes you need to encourage a private lot to be developed without them paying for it. They should be mitigating the off site costs.

Ms. Hallsmith reminded them there is no development proposed.

Mr. Goldman asked why they are doing that then.

Mr. Borgendale said it is a problem even if they don't do the development. It has been a problem for years and years, and it is a bigger problem with the train coming through there. If the city did an improvement for other reasons that benefitted you, what would you say if we came after the fact and asked to be paid back?

Ms. Hallsmith said ultimately what they are trying to do is to enable the original Capitol District Master Plan Barre Street Extension Project which would give us the second route out of town across the North Branch River. Certainly, when they are doing the layout for this new project they will be doing it wide enough to accommodate that development even if they aren't able to build the road bridge across the North Branch right now. We will be building the pedestrian and bike bridge. This grant will give us study money so we will have the ability to get planners and engineers and architects.

Mr. Goldman said he would base it upon Act 250 as well. It is based upon intent. When a developer has intent he falls under the permits and regulations. We clearly have intent that someone wants to develop that site they should be asked to mitigate whatever impacts they are going to create. He doesn't think because it is federal dollars that it is not ours.

Mr. Bloch said he is suggesting they need to get serious about encouraging development in Sabin's Pasture because he doesn't know where they are going to put 300 more units of housing right away. If we get enough of these stakeholders paying property taxes a lot of these problems will resolve themselves.

Adjournment:

Upon motion by Mr. Bloch and Mr. Goldman the Planning Commission adjourned at 8:45 P.M.

Respectfully submitted,

Gwen Hallsmith, Director
Planning & Community Development

Transcribed by: Joan Clack