

**CITY OF MONTPELIER
CAPITAL CITY OF VERMONT**

City Manager's Weekly Report – 07/14/2017

UPCOMING MEETINGS...

Monday, July 17	Development Review Board Meeting, 7:00 P.M. in the City Council Chambers
Monday, July 17	Design Review Committee Meeting, 5:30 P.M. in the City Council Chambers
Tuesday, July 18	Parks Commission Meeting, 7:00 P.M. in the Police Department Conference Room

FOR YOUR CALENDARS...

Monday, July 24	Planning Commission Meeting, 5:30 P.M. in the City Council Chambers
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ATTACHMENTS ...

 **Legal Opinion on Zoning**

CITY MANAGER'S REPORT...

One Taylor:

- ✓ **Mowatt** – They have all draft documents. Awaiting final approval.
- ✓ **Overall Project** – Continues to move forward. Housing partner is being finalized.

One Taylor Parking:

As you may know, the State discontinued their lease for parking at One Taylor. This is because we could not commit to it being available during the full legislative session since we expect to be in various stages of construction during that time. In the interim, the City has implemented a parking permit program for that lot. As with the state lease, all revenues from the permits will go into the One Taylor project account. Monthly permits are \$60.

Caledonia Spirits

Property closings are happening here in City Hall as I type this. Very exciting.

Bike Path

All easement documents have been signed. Final right of way package is being submitted to state for final approval to proceed.

Goals

You will have an updated set of goals in advance of next week's council meeting that establishes clearer timelines and more specific deliverables. Please send Sue Allen any suggested changes in advance of the June 26th meeting.

Master Plan & Zoning

We spoke with Attorney Rugh on Thursday and expect to have a written opinion by the middle of next week. We specifically covered the status/validity of the existing plan, the ability to readopt an expired plan, the legal requirements for completing re-adoption and options for the effective length of a readopted plan.

In addition, and in what will likely be a second opinion, we asked about timing requirements for zoning hearings and adoption, as well as what can and can't be completed during various stages of master plan work.

TIF

We are vetting a proposal for application preparation from the leading TIF consultant in Vermont. We expect to provide a full council briefing, with formal request to proceed, on the 26th. We plan to have Fred Kenney, Executive Director of the Vermont Economic Progress Council, and Stephanie Hainley of White & Burke Real Estate Investment Advisors attend the 26th meeting to discuss the TIF program.

Berlin Pond

We continue to await a response to our proposal from the State. As discussed, we will be filing comments on the boat launch application.

Organics to Energy Project

As briefly mentioned at our call-in meeting, we are considering a Project Development Agreement for an Organics to Energy (FOG) project at the Water Resource Recovery Facility. You will be receiving more information on this. A presentation will be made on the 26th.

Event expenses

The Council had asked about the cost of special events on the City budget. For the July 3rd Celebration, which was a wonderful success, but did require City services:

Police Department

This one special event required 14 police officers and 2 community service officers to work overtime.

Total cost: \$4,119.26

Public Works Department

This event required eight workers and equipment (trucks) to set up for the parade, including detour signs, work the parade route, and clean-up after the event.

Total cost: \$2,334.67

Fire & Emergency Services Department

This event required three firefighter/ EMTs working 7 hours of overtime.

Total overtime cost \$1,145.30. The cost to put up and remove the bunting will be roughly \$1,200.

Total direct costs about \$8,800. This does not include the time of salaried employees like the Police Chief, Fire Chief, Police Captain and others.

Parking/Transportation Alternatives

Reminder that a small working group has been formed. We will be convening a meeting. The hope is to have a recommendation for the full council for August 23 or September 13.

Econo Lodge

COPS has been notified that the City Council will hold a public hearing at the 26th meeting to act upon the inspection report on the Econo Lodge property on Northfield Street. Council members will receive information about the process prior to the meeting.

Collective Bargaining

Negotiations with the Police union continue. Next session is on the 21st.

Summer Schedule

Reminder that we will NOT have a meeting on August 9th. All other regular meetings will occur as scheduled.

The July 26th meeting is getting pretty full. We may have to meet a bit longer than usual

with the benefit of having a month before the next meeting.

Legal

Illuzzi vs City, et al: The Court has ruled on the outstanding motions. Trial has been rescheduled to take place September 21-22. The parties are directed to engage in mediation which must be currently scheduled for August 23rd. Represented by Constance Tyrone Pell, Esq.

WEEKLY REPORTS FROM DEPARTMENT HEADS ...

Public Works Department

Water & Sewer Division:

Harrison Ave project continues as the crews are now installing the new water main. Better progress is being made as the conflict with the adjacent sewer main is resolved at least for the time being as the pipe alignments are now diverging away from each other. Two Street Division employees have been reassigned to assist the effort and to allow water / sewer crew to continue meeting other on-going obligations.

Street Division:

- Work planned for the week of July 17th includes the following:
- Begin reconstruction of the Woodrow Avenue sidewalk (College St – Emmons St)
- Repair roadway near 90 – 92 River Street (US Rte 2) which was severely damaged as a result of a water main break last December.
- Drainage ditching on Hill Street & Cummings Street
- Wheel rut leveling (paving) on River Street (US Rte 2) between Pioneer St & the roundabout.

“Makeover Montpelier” Project (State & Main paving & sidewalk reconstruction):

- The work continues to be concentrated in the downtown area to and including Spring St and the roundabout to meet the deadline for the second interim completion date of August 4th.
- The sidewalk work remaining on State Street consists of three driveway ramps and several scattered smaller sections. At this time, the schedule indicates that all of the sidewalk work between Main Street & Elm Street may be completed by the end of next week.
- The section of State Street between Elm Street & Taylor Street should be completed by the following week (23rd – 29th) where the three driveway ramp replacements are located and where selected sections of walk need to be replaced on both sides of the street in the Capital Plaza and movie theater area.

- The week of July 16th – 22nd will also include continued work at the Spring & Main roundabout where sidewalk replacement including new crosswalk ramps and reconstruction of the splitter islands is planned.
- The tentative schedule for next week includes a continuation of sidewalk work on Main Street between Barre St & the Library with several areas including driveway ramps and selected large and small replacement sections located on both sides of the street.
- Noteworthy among these areas on Main Street is the full width sidewalk replacement in front of Cool Jewels to and including the North Branch parking lot driveway ramp, near Bagitos & Capital Copy, sections in front of City Hall & the Fire Station, and along the frontage of City Center with smaller sections scattered in between. This work will continue through to the end of the month.
- Paving of the remainder of Main Street from the railroad tracks to State Street and Spring Street including the roundabout will take place once all sidewalk and curb work is completed.
- Throughout the next couple of weeks, replacement of regulatory and lane assignment signs will also be occurring. Work will then shift to Elm Street beginning in the second week of August.
- Northfield Street Reconstruction:
- Good progress is now being made with two separate crews working simultaneously; one installing the new water main & the other working on the sewer main. The temporary water main is now fully operational and all services have been transferred throughout the work area which eliminates conflicts allowing uninterrupted service. One of the crews is also ripping out the old concrete road bed as they move up the hill. Traffic is being maintained through the work zone as possible.
- Special Note: the contractor has agreed not to work tomorrow (Saturday) to avoid any conflict with traffic related to the Do Good Festival. The street will be made passable for normal two-way traffic and pedestrian use.

Finance Department

Property tax bills for the 2017-2018 tax year are being mailed today July 14, 2017. The due date for the first installment is August 15, 2017. There has been a delay this year in finalizing data from the Vermont Department of Taxes for some residents that receive an income sensitized payment from the state. A new download of information with state payment amounts is supposed to be available at 5 p.m. today so staff will be working on Saturday to send out bills with the most current information available.

With the retirement of Fred Skeels on June 30, the city started using the Tech Group for computer and network management. We have been working with the Tech Group over the past several weeks to update our systems and complete a thorough network inventory including switches, routers, firewalls, etc. As a result of this effort, our actual number of “managed devices” is higher than anticipated. My original memo to city council indicated a

monthly cost of \$6,500 but the final contract pricing with all the necessary devices covered is now \$7,400. We are planning to move forward with the higher contracted price but will continue working with the Tech Group over the coming year to identify areas of cost savings as we encounter elements of our network that can be eliminated or streamlined but I wanted to bring this to your attention.

Senior Center

The Montpelier Senior Activity Center recently conducted an evaluation of its programs, and learned about the incredible impact that programs are having on older adults in Montpelier and central Vermont. Nearly one in four adults 50 or older in Montpelier participate in programs at the Center. Overall 98% of respondents gave their program a very good or excellent rating, and 97% gave their instructor a very good or excellent rating, including 90% who gave the top "excellent" rating. 98% say that our programs provide a good value. Most importantly, more than 80% of participants responded that they feel healthier as a result of their participation at the Center. Thank you to taxpayers from Montpelier and surrounding towns for supporting a community for healthy aging.

Some of the feedback we heard about classes and their impact includes:

- "I love hearing my fellow writers' work - it is a great way to get to know people and build community."
- "Course changed how I craft my writing, has given me more self-confidence. Being creative always makes me feel healthier."
- "Gaining flexibility and endurance while learning to breath properly while assuming poses. I always come away refreshed."
- "I have learned that I have Parkinson's, but Parkinson's does not have me! Being with Sara and the other Movers gives me a support group that I did not have previously. This class has made me feel healthier in body and mind...a definite plus!
- "I learned how to take better care of myself. It helps me to be active."

Parks Department

HOWL Family Arts Festival in Hubbard Park

In this first annual Hubbard Outdoor Wilderness Living Family Arts Festival (Friday, July 21-Sunday, July 23), the community is invited to camp out in the Hubbard Park! Live bands, a giant slip 'n slide, a kids' maker space, night hiking, evening bonfires, a kids' dance party and talent show and much more make this a memorable summer weekend. Learn more at www.facebook.com/montpelierparks. Price: \$3-20; family passes \$10-40; \$20 camping fee per night; \$15 parking in the park; free parking and shuttle at MHS. Tickets available in advance at Montpelier City Hall and Hunger Mountain Coop or at the event.

TOPICS FOR UPCOMING COUNCIL MEETINGS...


July 26
DPW fees 2nd reading and resolution
Master Plan/Zoning
TIF Summary
Police Department Security Briefing
Spring/Elm 4 Way Stop
Organics to Energy presentation
Econo Lodge hearing

August 9
NO MEETING

August 23
Parklet Ordinance - 1st Reading
Parking/Team Bridges
Dog Ordinance 1st Reading
Caledonia Spirits Tax Stabilization
Security Briefing

September 13

September 27



William J. Fraser
City Manager

David W. Rugh – drugh@firmspf.com - (802)660-2555

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

July 11, 2017

VIA ELECTRONIC MAIL

William J. Fraser, City Manager
City of Montpelier
39 Main Street
Montpelier, VT 05602-2950
wfraser@montpelier-vt.org

Re: *Zoning and Subdivision Regulation Amendments
and 2015 Master Plan Readoption*

Dear Bill:

You have requested our opinion regarding the validity of both the City of Montpelier's (the "City's") proposed zoning and subdivision regulation amendments (the "Zoning Amendments") and its 2015 Master Plan (the "Master Plan") in light of the arguments raised in two letters, both dated June 28, 2017, submitted to Mayor Hollar by Paul Gillies, Esq. and Marc Nemeth, Esq. on behalf of Mr. Alan Goldman. A portion of Attorney Gillies' letter contends that the City's Planning Commission failed to follow a substantive requirement pursuant to 24 V.S.A. § 4387(b) in its review of the Master Plan in 2015. Although the Master Plan is presumptively valid and can only be set aside by a court order, if a court were to find that the Planning Commission did not follow the requirements of § 4387(b), then the Master Plan would be invalid. The invalidity of the Master Plan would in turn render Zoning Amendments adopted thereunder void pursuant to 24 V.S.A. § 4387(c).

In 2015 the City readopted the Master Plan, which was based on the former, 2010 Master Plan. We understand and assume for the purposes of this opinion that in readopting the Master Plan, the Planning Commission only updated the date references in the prior 2010 Master Plan and did not review and update the information upon which the 2010 Master Plan was based. Before readopting a municipal plan, 24 V.S.A. § 4387(b) requires the Planning Commission to review and update the information on which the plan is based and to consider that information in evaluating the continuing applicability of the plan. If the Planning Commission neither reviewed, updated nor considered such information, then the readoption of the City's Master Plan in 2015 may be invalid.

William J. Fraser, City Manager

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We are of the opinion that the requirements of 24 V.S.A. § 4387(b) are substantive in nature, as opposed to procedural, and thus would not satisfy a number of exceptions in 24 V.S.A. Chapter 117 for the failure of municipalities to strictly follow procedural requirements in adopting plans and bylaws. For example, 24 V.S.A. § 4483(a) only requires “substantial compliance” with the procedural requirements in adopting, amending or readopting plans and bylaws and directs courts not to invalidate plans and bylaws due to a failure to adhere to the strict requirements of 24 V.S.A. Chapter 117 “concerning minor and nonessential particulars.” The Vermont Supreme Court has held that “Procedural defects are defects and irregularities in the mode of enactment of the ordinance that do not pertain to the nature of the ordinance itself.” *In re Paynter 2-Lot Subdivision*, 2010 VT 28, ¶ 7 (citation omitted). Procedural defects include infirmities such as failure to post notice of public hearings and defects in the written report prepared by the Planning Commission. *Id.* (citations omitted). A requirement that the Planning Commission review and update data upon which a plan is based during the readoption process is a substantive requirement pertaining to the contents of the plan itself, not akin to a defect in notice. Further, 24 V.S.A. § 4483(b) contains a statute of limitations that prohibits challenges to municipal plans adopted more than two years after the date of the challenge. But this statute of limitations only applies to challenges based on “purported procedural defects.” It does not apply to prevent challenges to municipal plans and bylaws based on substantive defects like the failure of the Planning Commission to follow the requirements of 24 V.S.A. § 4387(b).

Therefore, if a challenge to the 2015 Master Plan under § 4387(b) were successful, the Zoning Amendments adopted by City Council under the 2015 Master Plan would be invalid. Pursuant to 24 V.S.A. § 4387(c), upon the expiration of a plan, the City’s then-current zoning bylaws and capital budget and programs would remain in effect, but they could not be amended until the City Council approves a new City plan. In this instance, the previous, expired 2010 Master Plan would be viewed as the current plan for the City.

Mr. Goldman’s other arguments are unlikely to lead to invalidation of the Master Plan and Zoning Amendments. In his letter Attorney Gilles argues that the Master Plan lacks a future land use map, and apparently one such map, known as Figure 30, was omitted in readopting the Master Plan. 24 V.S.A. § 4382(a) requires municipal plans to include a map and a “statement of present and prospective land uses.” Even without Figure 30, which was apparently labeled a “Future Land Use” map, Figure 29 on page 119 of the 2015 Master Plan appears to act as its own “future land use map.” Figure 29 sets out areas of present and prospective land uses, including areas proposed for forests, recreation, agriculture, residential, commercial, industry, public and open space uses. *Id.* § 4382(a)(2)(A). The 2015 Master Plan also discusses present and prospective locations, amounts, intensity and character of such land uses and the timing and sequence of land development

William J. Fraser, City Manager

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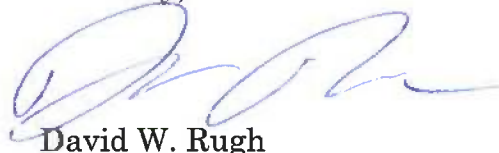
in relation to providing community facilities and services. *Id.* § 4382(a)(2)(B). Further, Master Plan Figure 29A identifies areas for designation under 24 V.S.A. Chapter 76A (designated downtowns and growth centers). *Id.* § 4382(a)(2)(C). Thus, it's unlikely that a court would invalidate the Master Plan solely due to the omission of Figure 30.

In Attorney Nemeth's letter, Mr. Goldman also contends that the Zoning Amendments' Natural Resource Inventory Map and some of the features and buffer zones identified thereon do not comply with the Master Plan. It is unlikely that any such noncompliance or inconsistency would invalidate the Zoning Amendments, however. Assuming the Master Plan is valid, the Zoning Amendments adopted thereunder must be "in conformance with the plan." 24 V.S.A. § 4401. That said, the Zoning Amendments may be inconsistent with the municipal plan in some respects since "total consistency" between a municipal plan and the zoning bylaws adopted thereunder "is not a legal requirement." *Smith v. Winhall Planning Comm'n*, 140 Vt. 178, 183 (1981). Although zoning bylaws must reflect the plan, they "need not be controlled by it," and only those plan provisions incorporated into zoning bylaws are legally enforceable. *Kalakowski v. John A. Russell Corp.*, 137 Vt. 219, 225-26 (1979). Thus, it's unlikely a court will invalidate the Zoning Amendments and the Natural Resource Inventory Map contained therein solely because they are not entirely consistent with the natural resource map in the Master Plan.

Lastly, the City Council still may proceed to hold one or more public hearings on the Zoning Amendments on July 12th and in the coming months even assuming *arguendo* that the Master Plan is invalid for failure of the Planning Commission to follow 24 V.S.A. § 4387(b). There's no requirement that the Council's public hearings on the Zoning Amendments wait until after a City plan is in place. Instead, once a new City plan has been adopted, the only requirement is that the Zoning Amendments be adopted within one year of the Planning Commission's final hearing on the Zoning Amendments. 24 V.S.A. § 4442(g). Thus, the Council has until April 10, 2018 to adopt the Zoning Amendments, assuming a new City plan already has been adopted.

Please let us know if you have further questions.

Sincerely,



David W. Rugh

DWR/gc