

East Montpelier Planning Commission

Background & Position Paper with Recommendations Concerning Creation of Development Review Board for Land Use Reviews within the Town of East Montpelier

December 2, 2009

Facts & Background

The population within the Town of East Montpelier has steadily grown. US Census indicates the town population in 2000 was 2,578. Central Vermont Chamber of Commerce (2007) indicates the town's population is 2,701. It is likely that growth within East Montpelier will continue to occur at some rate that equals or exceeds the average for Washington County and Vermont as a whole. Managing that growth to achieve or to be consistent with town planning documents, goals and vision will present unique challenges and opportunities. Because of that current and anticipated growth and the number of land use and growth-related issues, the PC's work load is expected to remain considerable.

Over the last five years, land use permitting decisions done by the Planning Commission (PC) and the Zoning Board of Adjustment (ZBA) are trending upwards. The table below¹ shows the number of land use permit decisions for the last five years completed by the PC and ZBA and the total number of decisions overall (ie by the two boards and the Zoning Administrator).

Year	Land use permits issued by PC & ZBA	Overall land use permits
2008	29	114
2007	18	113
2006	26	126
2005	15	105
2004	17	102
ave/year	21	112

As part of its work in evaluating land development patterns, the PC also looked at overall permit statistics from four other towns (and estimated population)² that are similar and nearby to East Montpelier. The results of that examination are shown in the table below. Towns underlined have a DRB.

Towns	2008	2007	2006	2005	2004	ave/yr
<u>Calais</u> (1,538)	64	64	71	56	66	64
<u>Marshfield</u> (1,607)	27	47	56	62	60	50
<u>Moretown</u> (1,724)	49	56	100	76	87	74
Plainfield (1,349)	42	55	55	39	49	48

The East Montpelier PC consists of nine persons. Members of the PC are elected by town voters to serve a three year term. At town meeting each March, there are three PC seats up for election.

The PC meets regularly on the first and third Thursdays of each month. As most of the PC's meeting time over the last few years is devoted to permitting, there is very little time, if any, left for conducting town planning activities. As an example and in order to revise the town's land use regulations that became

¹ Figures taken and compiled from Town of East Montpelier annual reports.

² Permit figures from town reports or respective town ZA. Population figures (2007) from Central VT Chamber of Commerce.

adopted in January 2009, the PC regularly met on the second and fourth Thursdays for a period of three years.

The East Montpelier ZBA consists of nine persons. Members of the ZBA are appointed by the Selectboard to serve a three year term. Typically, appointments are done soon after each town meeting day.

The ZBA is scheduled to conduct its meetings on the first and third Tuesdays of each month. For the last several years, the ZBA typically is called to meet once every other month. It is common for the ZBA not to meet over the course of an entire summer.

Persons serving on the PC and ZBA do so by volunteering their time.

Discussing the notion of the Town of East Montpelier moving from its current Planning Commission / Zoning Board of Adjustment model (PC / ZBA) to the Planning Commission / Development Review Board model (PC / DRB) is not a new or recent consideration. Memos, meetings and other information from within the town municipal building or affected town boards regarding a DRB date back to 2003.

After applying for and receiving grant funds, the PC hosted a workshop on July 16, 2009 put on by the Vermont League of Cities and Towns (VLCT) entitled "*Is a Development Review Board Right for Your Town.*" Residents of town and members of the public were invited to the workshop along with members of the ZBA and Selectboard. Materials were provided at the workshop that described, among other things: the similarities and differences between the PC / ZBA and PC / DRB models; the benefits and drawbacks to a DRB; other Vermont towns having a DRB; and how to create a DRB. The boards met jointly as well as separately after the workshop to further discuss issues and aspects of a DRB.

Discussion & Rationale

From a land use permitting perspective, the work load between the PC and ZBA is out of balance. It is impractical and unsustainable for the PC to conduct meaningful planning for the town by meeting on the second and fourth Thursdays of the month. Planning done by the PC in a more systematic and deliberative manner should benefit the town and its taxpayers. Permitting done solely by a DRB should facilitate the permitting process which benefits applicants and reviewers.

To understand the purpose of creating a DRB, one must first have a clear understanding of the existing process for land development review and the roles and responsibilities of the boards and officials involved in the process. The three major functions are administrative, legislative and quasi-judicial.

Administrative duties and functions are executed by the Zoning Administrator (ZA). In East Montpelier, the ZA not only provides the face of the town's land use regulations but also holds much influence over the integrity of the review process. The ZA, accountable to the Selectboard while serving as staff to the PC and ZBA, coordinates a unified development review program. The ZA administers the bylaws literally and enforces the bylaws. See Table 1.1 in the town's land use and development regulations for a summary of ZA duties.

Legislative duties and functions regarding land use matters are executed by the Selectboard and PC. The Selectboard adopts the town plan and bylaws, makes infrastructure decisions based on the town plan, appoints and removes officers and plays an important role in the enforcement of the town's regulations. The PC provides leadership on planning matters by preparing and amending the town plan, bylaws and regulations to implement the plan and looking into a range of issues that can affect townspeople. The PC and Selectboard are statutory parties to any development within the town needing an Act 250 permit.

Quasi-judicial duties and functions are executed either by the PC and ZBA or by a DRB. The PC reviews site plans and subdivision applications. The ZBA hears appeals of ZA decisions and reviews conditional use applications and variance requests. The DRB, once created and following ZBA termination, is responsible for all these quasi-judicial duties.

A single board performing land use permitting decisions, in the form of a DRB, will minimize the potential for conflicting decisions between two boards performing land use decisions (ie PC and ZBA). A single permit issuing board will also simplify the review process for applicants.

The PC, freed up from permitting and focused exclusively on planning issues, will be able to better and more comprehensively address a number of planning issues (eg overhaul and develop town plan by 2013, propose revisions to land use regulations, water / sewer issues).

The PC (in consultation with the ZBA and Selectboard) has discussed and evaluated the benefits, drawbacks and unknowns that are associated with moving to a PC / DRB model. Amongst the three boards, there is recognition of the benefits and of the steps that could be taken to minimize the drawbacks. The unknowns are likely to work themselves through once any decision is made.

Within the context of a DRB, there was little support expressed for “On-the-record-reviews” and for the town to take on and be responsible for the review of three criteria associated with Act 250³. These aspects, which are optional elements of moving to a DRB, can be deferred for the future. “On-the-record-reviews” and Act 250 review would require the town to adopt and follow the Municipal Administrative Procedures Act or MAPA (24 VSA Chapter 36).

Action

It is the PC’s majority consensus recommendation that the town, through authorities given to the Selectboard by Vermont statute (24 VSA section 4460), move and adopt a PC / DRB model. The moment a DRB is created, the ZBA would cease to exist and the PC would no longer perform any quasi-judicial actions.

The PC recommends the town move to a PC / DRB model within the next several months. It seems advantageous for the Selectboard (and for the affected PC and ZBA) to make a public announcement regarding this matter, conduct a public meeting in a timely manner and, after considering public comment, to adopt a resolution making this change become effective. The PC encourages the Selectboard to complete these specific action steps before March 2010 town meeting day.

Land use regulations, ordinances and other bylaws that reference ZBA do not invalidate those regulations, ordinances or bylaws. The PC, associated with its work to revise or modify land use regulations, can change the regulations to reflect the creation of a DRB and the elimination of the ZBA.

The PC has provided a draft resolution that will codify and put into effect DRB adoption.

It is the PC’s opinion that most, if not all, ZBA members support the creation of a DRB.

As part of this paper, the PC has provided a series of action steps and rough timeline to achieve adoption of a PC / DRB model.

The PC recommends creating a DRB that consists of nine persons. DRB members are, by statute, to be appointed by the Selectboard. The PC recommends the Selectboard, first, solicit letters of interest from current ZBA members. The ZBA may not be a member of the DRB. The PC recommends that at least two members of the initially formed DRB originate from the PC. It is recognized that PC involvement on a DRB helps the PC to understand and write regulations that are clear. PC involvement on a DRB also helps to keep from doing its periodic regulation revisions in a vacuum.

³ Specifically, criterion 6 [educational services], criterion 7 [municipal services] and criterion 10 [town plan].

In order to minimize situations where conflict of interest may be an issue or to avoid DRB meeting cancellation due to lack of a quorum, the PC recommends the Selectboard establish that the remaining members of the PC who are not DRB members be appointed to serve as DRB alternates.

The PC recommends the PC and DRB meet at least once per year as a way to foster and maintain communication.

If adopting provisions of MAPA and performing “on-the-record-reviews” and/or Act 250 reviews are elements of a DRB the Selectboard wants to pursue, the PC recommends the Selectboard appoint a task force committee at some point in the future to examine those features and to prepare findings and recommendations.

Action steps / implementation plan with timeline for moving to DRB

- December 4, 2009 Selectboard receives PC position and recommendation paper on moving to a DRB.
- December 7 or 21, 2009 Selectboard discusses paper and endorses implementation plan.
- December 9 or 23, 2009 Selectboard contacts current ZBA members and solicits feedback from members concerning their individual interest and willingness to serve as appointed DRB member or as a DRB alternate. Selectboard contacts members of PC and solicits feedback from members concerning their interest in being appointed to DRB (member or alternate).
- Early January 2010 Selectboard holds public meeting to discuss DRB and take comment from interested townspeople.
- Late January 2010 Selectboard issues DRB resolution.
- March 8, 2010 Selectboard appoints DRB members and DRB alternates.
- March 16, 2010 Joint PC / DRB (members & alternates) and ZBA meeting – orientation & transition.
- April 6, 2010 First possible DRB meeting – organization, elect officers; ZBA eliminated.
- July 2010 Joint initial PC / DRB meeting to discuss issues.

**EAST MONTPELIER SELECTBOARD
RESOLUTION CREATING A DEVELOPMENT REVIEW BOARD**

WHEREAS, the Town of East Montpelier has enacted zoning bylaws and subdivision bylaws pursuant to the provisions of 24 V.S.A. Chapter 117; and

WHEREAS, the East Montpelier Selectboard has established a Planning Commission and a Zoning Board of Adjustment as authorized by provisions of 24 V.S.A. Chapter 117 to, among other responsibilities, assist in the administration of the above said bylaws; and

WHEREAS, the East Montpelier Selectboard is authorized to establish a Development Review Board to perform all development review functions under 24 V.S.A. Chapter 117 pursuant to Section 4461(a).

NOW, THEREFORE, IT IS HEREBY RESOLVED by this Board that it shall establish for the Town of East Montpelier, effective [**March 8, 2010**], a Development Review Board which shall consist of nine (9) members and shall have the authority to exercise all of the functions of the Zoning Board of Adjustment as set forth in 24 V.S.A. Chapter 117, and shall further exercise all development review functions performed by the Planning Commission pursuant to 24 V.S.A. Chapter 117.

BE IT FURTHER RESOLVED that members of the Development Review Board shall serve for terms of three (3) years, except that initial terms shall be as set forth below; and

BE IT FURTHER RESOLVED that nine individuals are appointed to the East Montpelier Development Review Board for the terms set forth herein:

<u>MEMBER</u>	<u>TERM</u>
1	3 years
2	3 years
3	3 years
4	2 years
5	2 years
6	2 years
7	1 year
8	1 year
9	1 year

and,

BE IT FURTHER RESOLVED that the Board has appointed seven alternate members of the Development Review Board from the Planning Commission whose terms will coincide with their elected terms; and,

BE IT FURTHER RESOLVED that all matters presently pending before the Zoning Board of Adjustment shall be completed by the Zoning Board of Adjustment, and, upon completion of all pending matters, the East Montpelier Zoning Board of Adjustment shall then cease to exist; and

BE IT FURTHER RESOLVED that all land use review matters presently pending before the Planning Commission shall be completed by the Planning Commission.

So dated at East Montpelier Municipal Building in East Montpelier, Vermont this [**day**] of [**January***], 2009.

East Montpelier Selectboard
[Signatures go here](#)

(*) signatures recommended AFTER conducting public meeting