



Testimony of Vermont Chamber of Commerce

Criterion 9(L) of Act 250

Senate Committee on Economic Development, Housing and General Affairs

Michael Zahner, January 14, 2015

Introduction

The Vermont Chamber strongly supported major elements of H.823 last year including increased clarity for jurisdictional determinations under Act 250 for projects located in designated growth centers and downtowns, as well as a strong incentive package encouraging growth in these areas. These actions provided for more local control and a creative means by which development projects can earn Act 250 exemptions.

However, the Vermont Chamber expressed serious reservations regarding substantial changes to Act 250's Criterion 9(L) which includes a new definition for "strip development" which is sufficiently broad to include the configuration of some industrial and commercial parks, as well as formally adopted planning districts implemented by Vermont municipalities including but certainly not limited to the Towns of Montpelier and Middlebury. In my opinion, both Montpelier's and Middlebury's Industrial and Commercial Park Districts meet the broad definition of "strip development" and thus could be subject to Criterion 9(L) and risk potential denial.

There is a strong potential for certain industrial and commercial projects in formally adopted zoning districts to fail the Criterion 9(L) test and thus be denied under the new statutory language even though those projects fully comply with duly adopted local and regional plans, as well as Criterion 9(H), Costs of Scattered Development. This will lead to increased litigation (already underway), strained relationships between local and state officials and certainly a negative impact on local and regional economies.

I. Definition of Existing Settlement

Sec. 1. 10 V.S.A. § 6001 is amended to read:

§ 6001. DEFINITIONS

In this chapter:

* * *

(16) (A) "Existing settlement" means an area that constitutes one of the following:

(i) a designated center; or

(ii) an existing community center that is compact in form and size; that contains a mixture of uses that include a substantial residential component and that are within walking distance of each other; that has significantly higher densities than densities that occur outside the center; and

that is typically served by municipal infrastructure such as water, wastewater, sidewalks, paths, transit, parking areas, and public parks or greens.

(B) Strip development outside an area described in subdivision (A)(i) or (ii) of this subdivision (16) shall not constitute an existing settlement.

***Vermont Chamber Comment:** This new definition will be helpful under Criterion 9(H) -- Cost of Scattered Development: "The first step under this criterion is to determine whether the project tract is physically contiguous to an existing settlement. Existing settlement has been defined by case precedent as 'an extant community center similar to the traditional Vermont center in that it is compact in size and contains a mix of uses, including commercial and industrial uses, and, importantly, a significant residential component. It is a place in which people may live and work and in which the uses largely are within walking distance of each other. The term specifically excludes areas of commercial, highway-oriented uses commonly referred to as 'strip development.' Compatibility in terms of size and use is relevant to determining if an existing group of buildings constitutes an existing settlement in relation to a proposed project." (For more information see the decision in *Re: St. Albans Group and Wal-Mart Stores, Inc., Application #6F0471-EB, Findings Of Fact, Conclusions Of Law, And Order (Altered)*(Jun. 27, 1995)). If the project is contiguous to an existing settlement, this criterion 9(H) is satisfied. If the project is not contiguous to an existing settlement, then applicants need to demonstrate that **the additional tax revenues and other public benefits of the project outweigh the additional costs of providing municipal services to the project.**" Source: Guide to Applying For an Act 250 Land Use Permit (NRB)*

II. New Definition of Strip Development

(36) "Strip development" means linear commercial development along a public highway that includes three or more of the following characteristics: **broad road frontage, predominance of single-story buildings, limited reliance on shared highway access, lack of connection to any existing settlement except by highway, limited accessibility for pedestrians, and lack of coordination with surrounding land uses in terms of design, signs, lighting, and parking.** In determining whether a proposed development or subdivision constitutes strip development, the District Commission shall consider the topographic constraints in the area in which the development or subdivision is to be located.

***Vermont Chamber Comment:** This new definition of "strip development" will result in a very complicated analysis for the District Commissions leading to extensive litigation due to the implications under the new Criterion 9(L) - Settlement Patterns (below). Only three elements are required to meet the "strip development" definition which will capture some industrial and commercial parks as noted above and illustrated below.*

III. New Criterion 9(L) - Settlement Patterns

(9) Is in conformance with a duly adopted capability and development plan, and land use plan when adopted. However, the legislative findings of subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria in the consideration of applications by a district commission District Commission.

(L) Settlement patterns. To promote Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside, a permit will be granted for a development or subdivision

outside an existing settlement when it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision:

(i) will make efficient use of land, energy, roads, utilities, and other supporting infrastructure;
and

(ii)(I) will not contribute to a pattern of strip development along public highways; or

(II) if the development or subdivision will be confined to an area that already constitutes strip development, will incorporate infill as defined in 24 V.S.A. § 2791¹ and is designed to reasonably minimize the characteristics listed in the definition of strip development under subdivision 6001(36) of this title.

Vermont Chamber Comment: *It is not clear how a new or expanding automobile dealership, plumbing supply house, a Cabot cheese warehouse (Montpelier) or an expanding transfer station in a limited use industrial or general business district on a small lot would be able to "avoid or minimize the characteristics listed in the [new] definition of strip development." Under the new law, the applicant would be required to "avoid or minimize:" 1) broad road frontage, 2) predominance of single-story buildings, 3) limited reliance on shared highway access, 4) lack of connection to any existing settlement except by highway, 5) limited accessibility for pedestrians, and 6) lack of coordination with surrounding land uses in terms of design, signs, lighting, and parking, or risk denial even though the project is in strict conformance with duly adopted local and regional plans. None of these concepts are defined in law and it may be impossible for an individual applicant to achieve due to any number of variables beyond the applicant's control.*

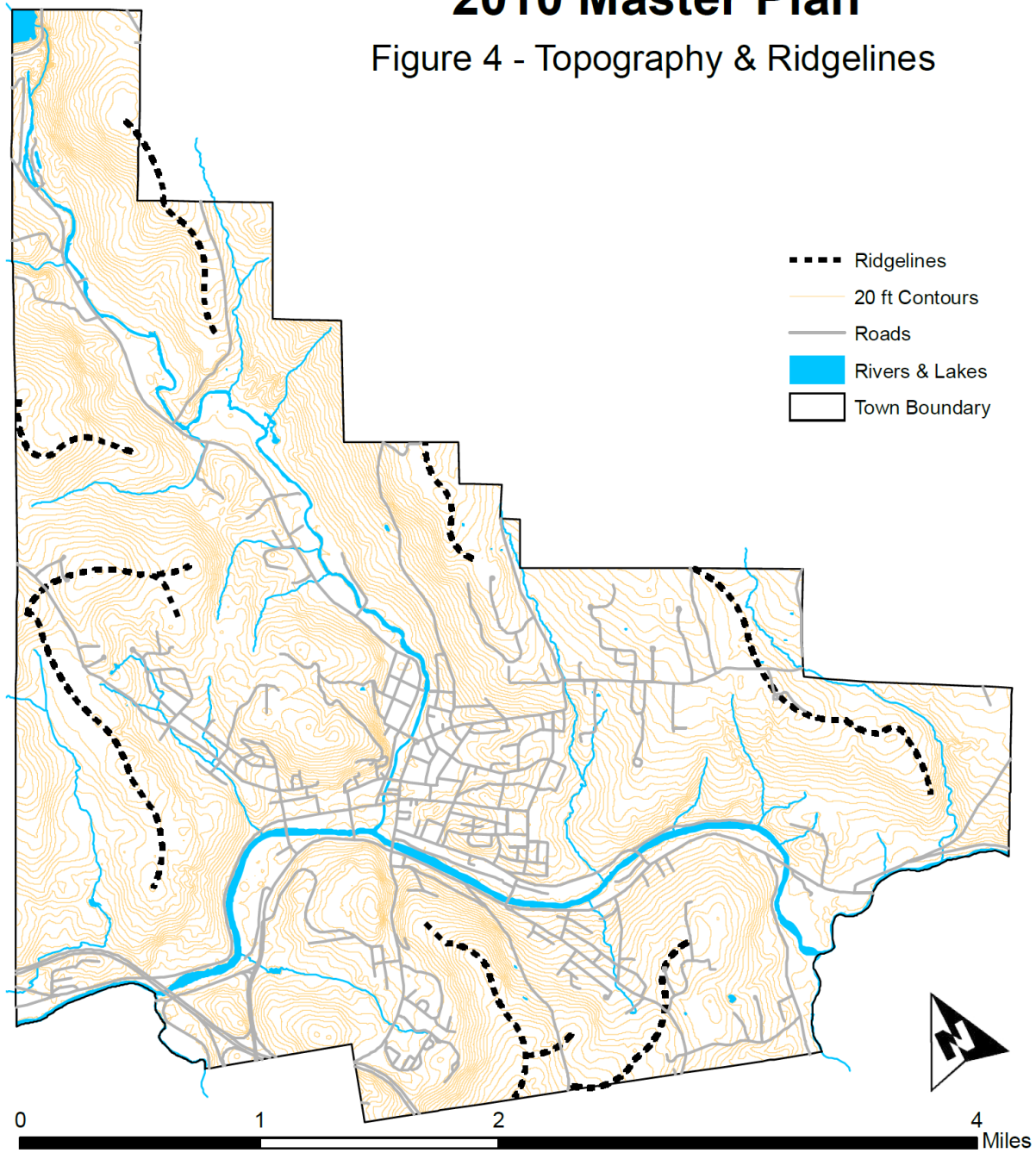
This will lead to increased litigation and delayed economic development for well designed projects that comply with duly adopted local and regional plans. See Montpelier and Middlebury examples below.

* * *

¹ 24 V.S.A. § 2791 (20) "Infill" means the use of **vacant land or property** within a built-up area for further construction or development.

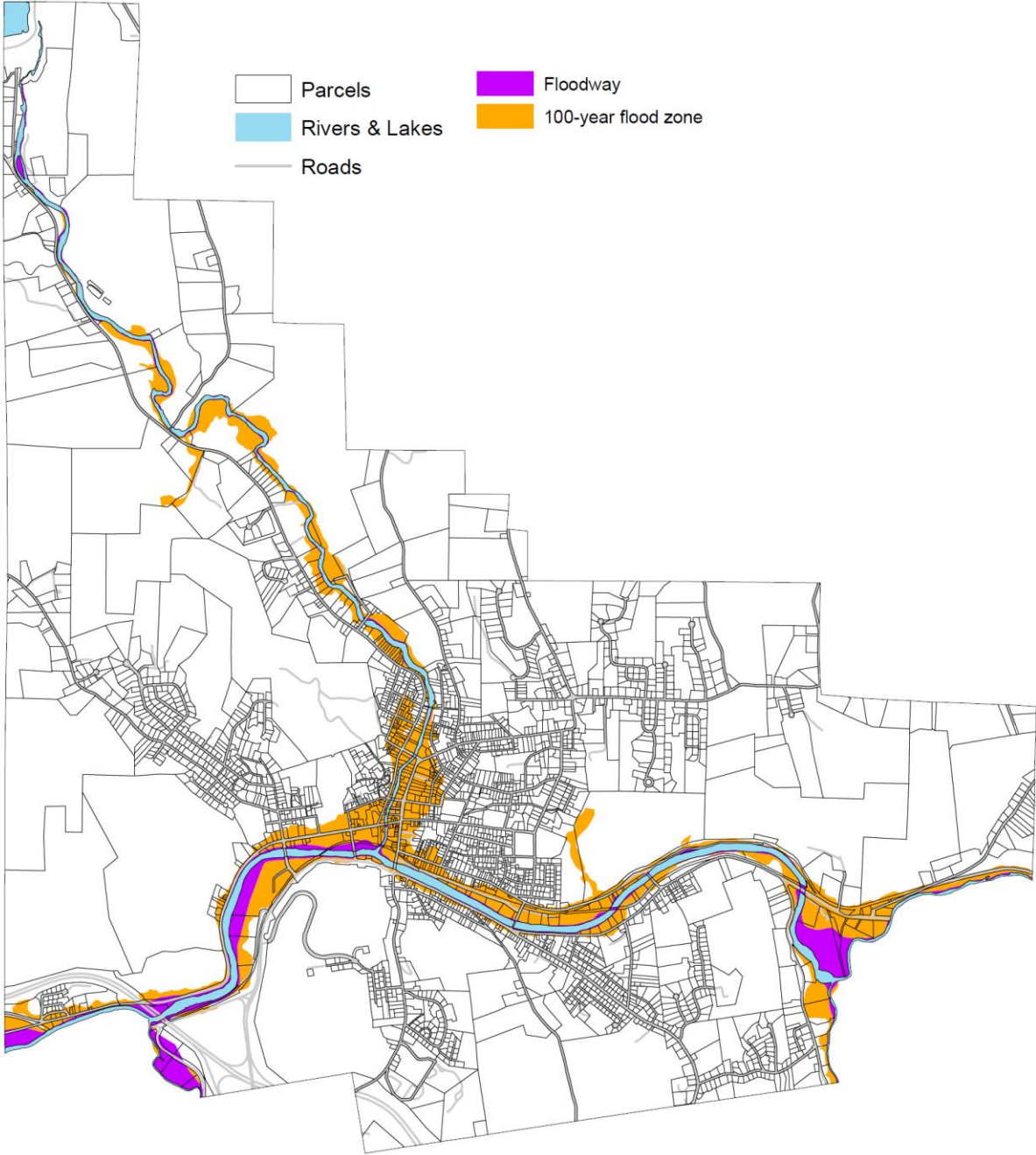
CITY OF MONTPELIER 2010 Master Plan

Figure 4 - Topography & Ridgelines



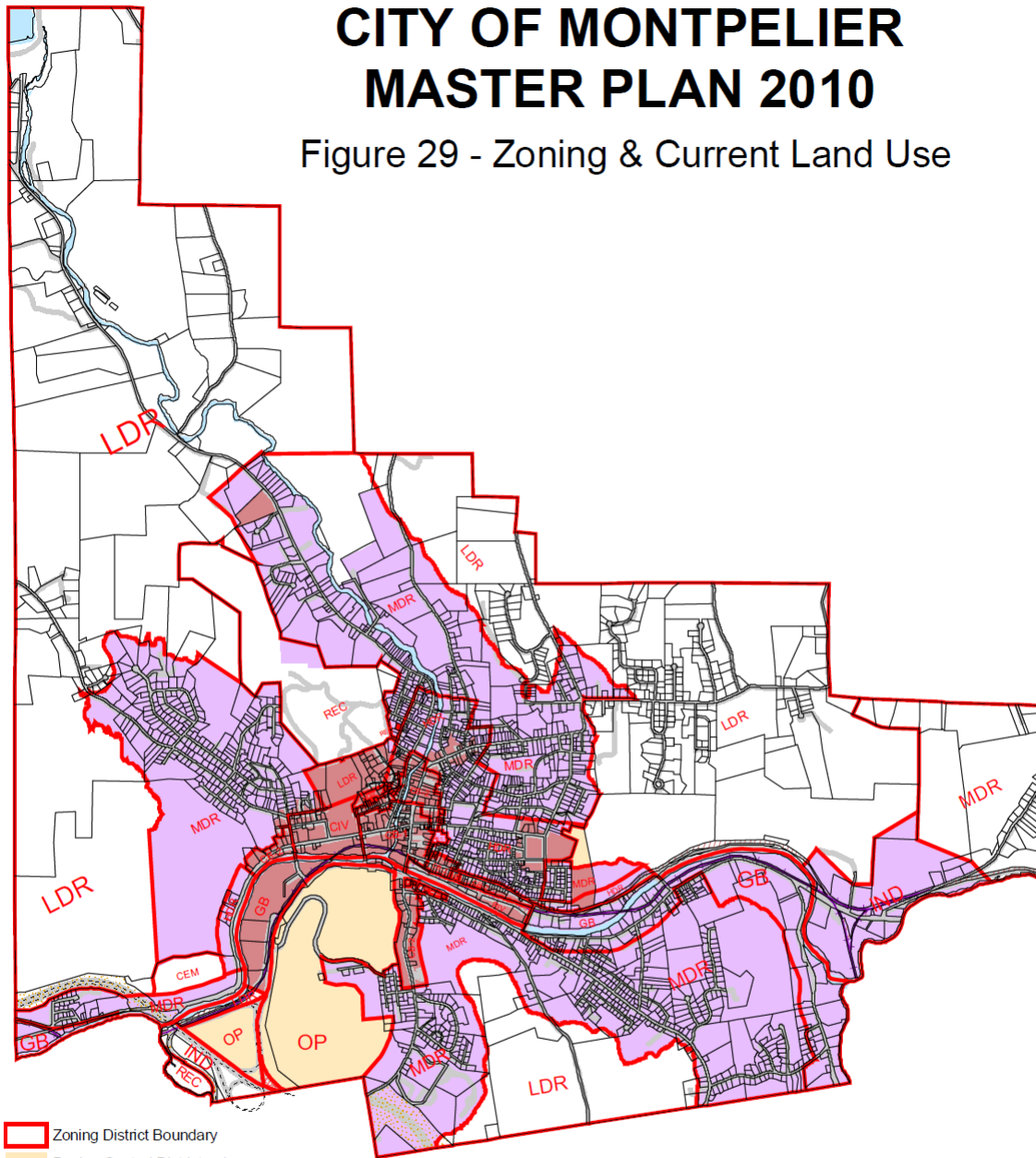
CITY OF MONTPELIER FLOOD ZONE AND FLOODWAY

UPDATED SEPTEMBER 4, 2012



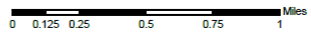
CITY OF MONTPELIER MASTER PLAN 2010

Figure 29 - Zoning & Current Land Use



- Zoning District Boundary
- Design Control District only
- DCD and Growth District
- Growth District only
- Parcel Boundary
- + railroad
- Railroad Right-of-Way
- State Road ROW
- I-89 Interchange
- Rivers-Lakes

	ADDITIONS	ADOPTION DATE	EFFECTIVE DATE
CB-I Central Business I			
CB-II Central Business II	Boundary Change (Greenwood Ter.)	6-14-1995	7-05-1995
	Boundary Change (Berlin and Northfield Sts.)	6-12-1996	7-03-1996
CIV Civic	Boundary Change (46 East State Street)	11-12-1997	12-03-1997
OP Office Park	Boundary Mapping Correction (Putnam St.)		2-10-1998
RIV Riverfront			
GB General Business	District Creation (Riverfront District)	1-10-2001	1-31-2001
IND Industrial	Interim Restricted Development District	8-06-2003	8-06-2003
LDR Low Density Residential	Boundary Change (GB to CBII & Design Control)	9-24-2003	10-15-2003
MDR Medium Density Residential			
HDR High Density Residential			
REC Recreation			
CEM Cemetery			

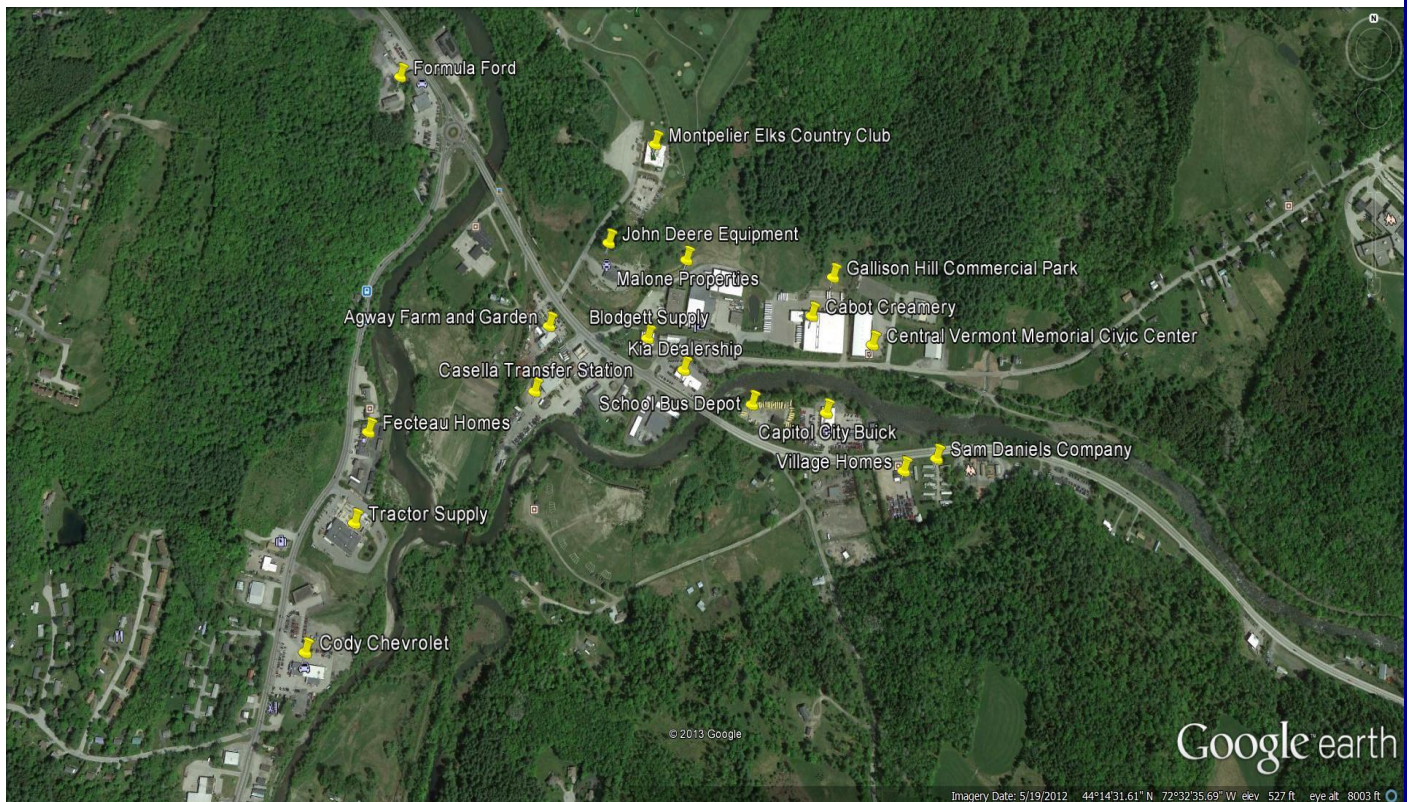


Prepared by:
City of Montpelier GIS
Dept. of Planning & Community Development
March 2010

THIS MAP IS FOR PLANNING PURPOSES ONLY.
IT IS NOT TO BE USED
FOR DESCRIPTION, CONVEYANCE, OR
DETERMINATION OF LEGAL TITLE,
OR AS A CONSTRUCTION DRAWING.

Montpelier Example: Cabot Creamery has large refrigerated warehouses in the Malone Commercial Park on a 94 acre tract of land along Gallison Hill Road in Montpelier's Industrial District. This agricultural related business with large volume tractor trailer truck traffic may need to expand its 50,000 sq. ft. warehouse in the future to augment its shipping capabilities to the East Coast. Gallison Hill Road meets the definition of "strip development" - "broad road frontage, predominance of single-story buildings, limited reliance on shared highway access." With the new Criterion 9(L) language in place, the Cabot expansion may be denied by the District Commission since it will "contribute to a pattern of strip development along a public highway" and by its very nature will not be able to "avoid or minimize:" 1) broad road frontage, 2) predominance of single-story buildings, 3) limited reliance on shared highway access, 4) lack of connection to any existing settlement except by highway, 5) limited accessibility for pedestrians, and 6) lack of coordination with surrounding land uses in terms of design, signs, lighting, and parking "

This denial will occur even though the project meets all environmental criteria including strict conformance with duly adopted local and regional plans. This scenario will likely be repeated throughout the industrial and general business districts of Montpelier, Middlebury and the rest of the state with obvious negative economic consequences and strained relationships between local and regional officials.



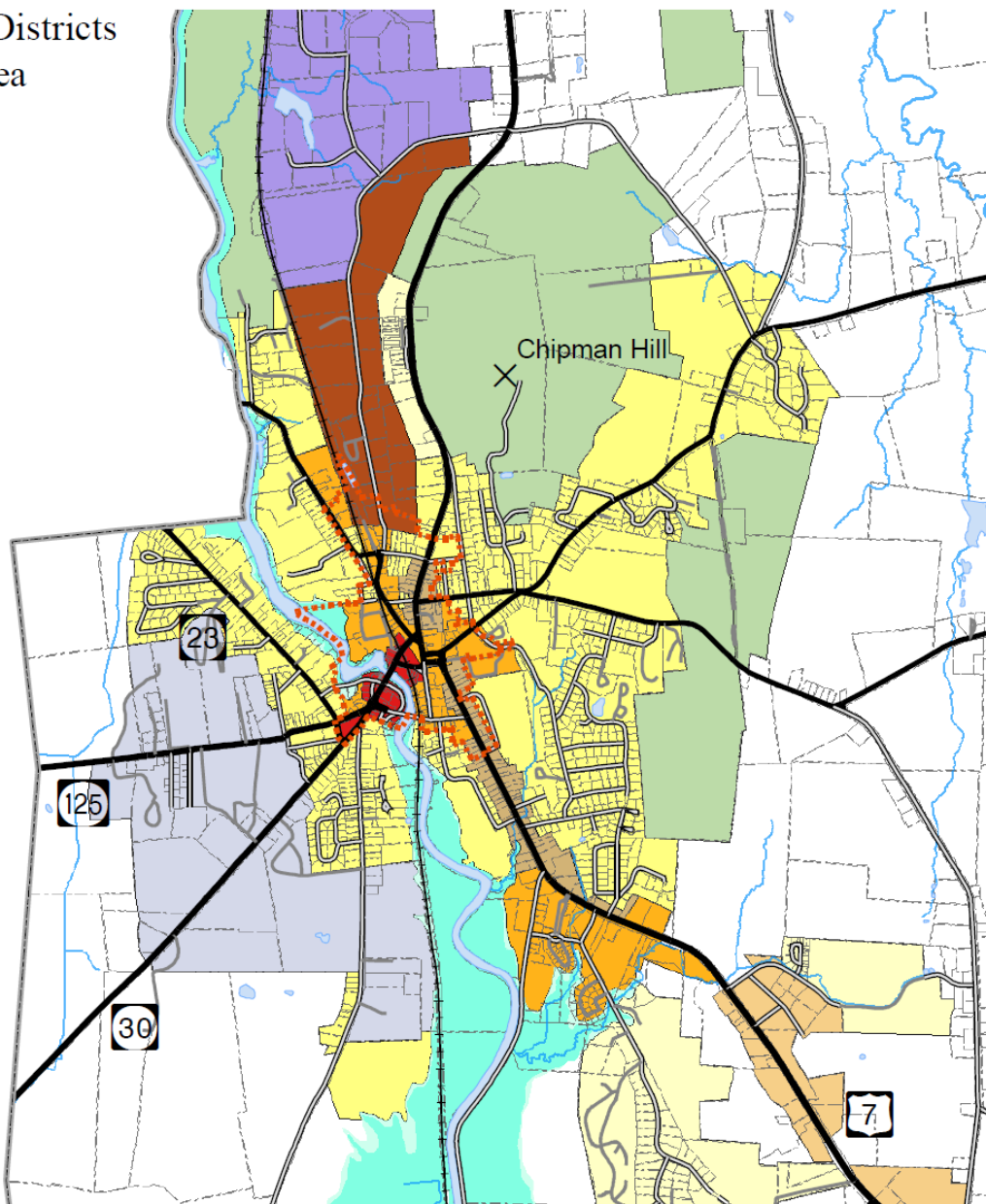
MONTPELIER ZONING DISTRICTS AND REGULATIONS - DISTRICT OBJECTIVES

GENERAL BUSINESS (GB): In recognition of the demand by the traveling public, the city provides for these activities in especially designated areas. They are designed for accommodating automotive activities, overnight accommodations and uses generally associated with the traveling public. (emphasis added)

INDUSTRIAL (IND): The Industrial District provides areas which encourage the location of industrial development and uses through the provision of transportation and other utility infrastructure, and appropriate buffering from residential and commercial uses.(emphasis added)

Middlebury's General Commercial District and Industrial District

Land Use Districts
Village Area



- | | | |
|----------------------------------|----------------------------------|----------------------------------|
| Downtown District | (CBD) Central Business District | (HDR) High Density Residential |
| (GC) General Commercial District | (VRC) Village Res/Com District | (PHD) Protected Highway District |
| (OFA) Office/Apartment District | (IND) Industrial District | (MDR) Medium Density Residential |
| (AIR) Airport District | (AR) Agricultural/Rural District | (FOR) Forest District |
| (INS) Institutional District | (FLD) Flood Hazard Area | |

Sources:

Land Use:
Planning Commission changes proposed
6/28/2012 and adopted by the Select Board
12/11/2012.

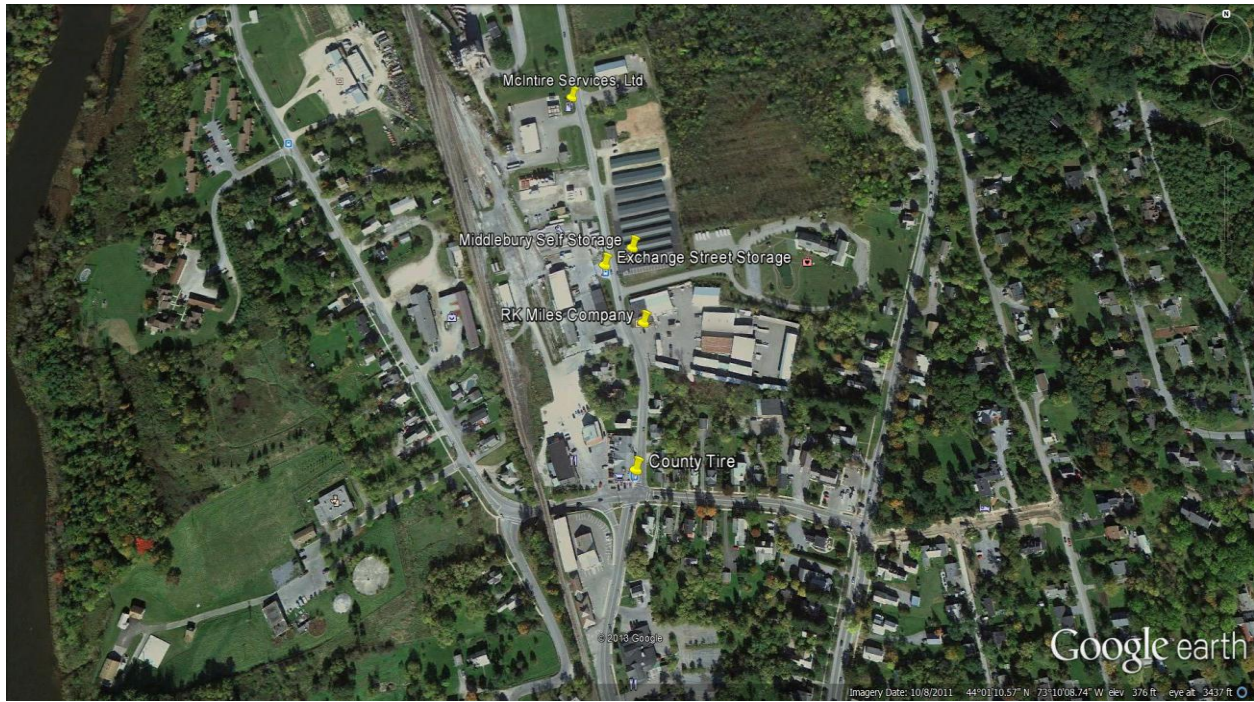
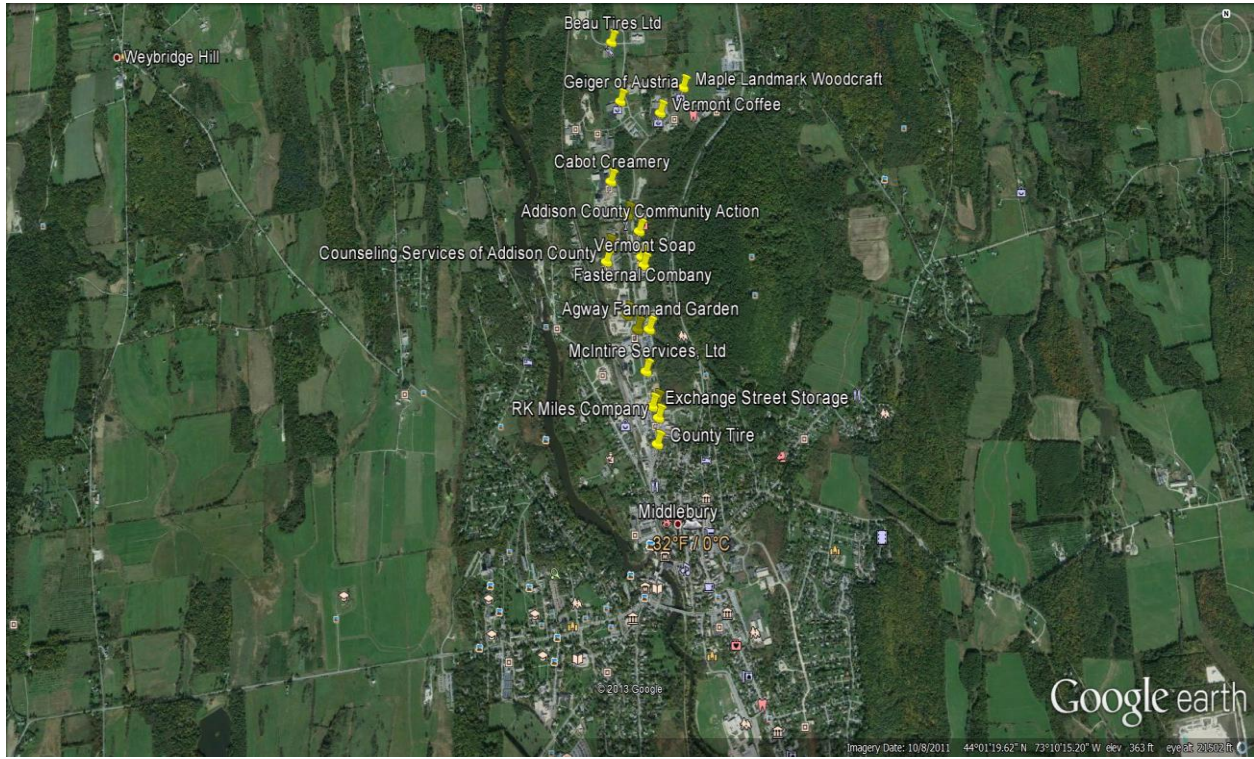
Parcel Boundaries: Digitized from tax maps
current as of April 1, 2011. Contact Town
Clerk for current information.

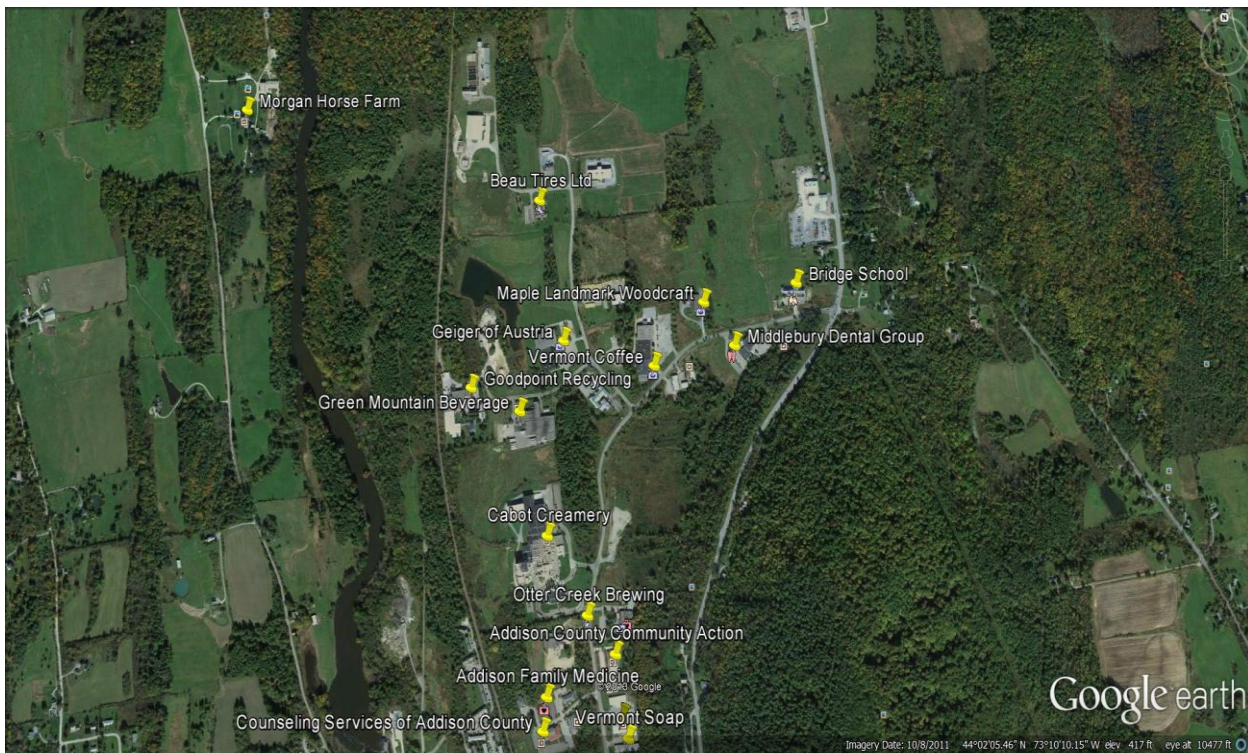
Flood Hazard District: Includes Floodway and Flood
Fringe from FEMA Flood Insurance Rate Map, 1985.
Advisory 500 yr flood area shown in lighter color.

Adopted as part of Town Plan, 2012



Addison County
REGIONAL PLANNING COMMISSION





GC - Middlebury General Commercial District: This District provides for general commercial or light industrial uses which are not possible or desirable in [other] districts due lack of space, the need for loading/unloading facilities or aesthetic concerns in those areas. These uses include equipment and vehicle sales and service, lumber or farm supply establishments, and machine shops. New residential development should not be permitted in the GC District. Where development in this district abuts residential areas, extensive landscaping and screening should be required.

IND - Industrial District: This District has been created to encourage the best and fullest use of the Town's prime industrial land for manufacturing jobs and other economic benefits for the community and surrounding area. The IND is designed to attract clean industry of a diverse nature for manufacturing with accessory warehousing and offices, research and other uses.

