Senate Natural Resources and Energy Committee

H.687, S.308 and S.311: Amendments to Act 250

Testimony of Ed Stanak

April 16, 2024

I am a resident of Barre City and was employed as an Act 250 district coordinator for 32 years, administering the District 5 region comprised of 35 towns. The succinct comments that follow are based on an understanding that the Senate Natural Resources and Energy Committee is utilizing H.687 as a framework for the consideration of the possible integration of provisions of S.308 and S.311 into H.687.

Section 5 of S.311 – Amend 10 VSA 6086(d) and Make State Permits Conclusive Evidence

Similar efforts to amend 10 VSA 6086(d) have been made in several prior legislative sessions - and have been rejected by this committee - based upon significant data and case studies documenting that the "rebuttable presumption" process in place [Act 250 Rule 19]for more than 50 years is not abused and when used has resulted in significant benefit to the public interest. With all due respect, the record for S.311 as established by the other Senate committee is devoid of any factual basis to conclude that the current standard of "presumptive" proof for State permits should not continue. Over the course of my 32 year career, I was involved in only ten cases (out of literally hundreds of applications that were reviewed) where permits issued by the Department of Environmental Conservation were called into question under the Rule . Had time allowed I would have provided this committee with three case studies [Interstate Uniform Inc.(Town of Williamstown) , Trapp Family Inc (Towns of Stowe and Waterbury) and Moretown Landfill Inc (Town of Moretown)] establishing the substantial benefit to the public from the "rebuttals" in those cases.

The Vermont Supreme Court acknowledged and discussed in its In re Hawk Mountain Corp. decision [149 VT.179 (1988)] the oversight or supervisory role of Act 250 District Commissions relative to permitting by State agencies. The genesis for this role dates back to 1970 and coincides with the creation of the major State permitting agencies. Governor Dean Davis and the General Assembly were unequivocal in recognizing the need for a mechanism to safeguard against imprudent administration of permitting by State agencies and to also ensure a level playing field for public participation before a District Commission comprised of residents from that region.

Advocates for the S.311 section 5 provision claim that it is intended to end redundant reviews and unnecessary delays. There is no "redundant" review. Applicants merely file a copy of other State permits as proof under the Act 250 criteria. The Act 250 land use permit is then issued within a matter of a few days in 80% of all cases (ie "minor applications") There is ample statistical data gathered by the Natural Resources Board in support of this assertion.

If section 5 of S.311 is incorporated into H.687, this committee will be both affirming a change to state law unsupported by a sufficient evidentiary record and acting contrary to this same committee's votes in prior sessions, those votes having been based upon receipt of substantive evidence.

Section 27 of H.687 – "Tier 3" Jurisdictional Provision

This provision is anchored in the proposed 10 VSA 6001 (50) definition of "critical resource area" (See section 26 of H.687) and will be heavily reliant upon the use of mapping required elsewhere in the bill. Over the course of 30 years the Environmental Board emphasized that the orderly and efficient administration of Act 250 relied upon clear "bright line" jurisdictional provisions. The definition of "critical resource area" is vague and dim; the "can is kicked down the road" in the bill by depending upon an inexperienced board to promulgate clarifying rules. To my knowledge, no legislative committee has obtained any testimony from Act 250 front line staff on how the use of mapping will work-or not work- in the district offices as staff will attempt to implement the new provisions. Predictable outcomes will be immense frustration by members of the public and an increase in jurisdictional appeals. The "administrative nightmare" that the Vermont Supreme Court warned of in In Re Agency of Administration [141 Vt. 68 (1982)] will then finally be realized.

Section 19 of H.687 - "Forest Blocks" and "Fragmentation"

The proposed 10 VSA 6001 definitions of "Forest Blocks" and Fragmentation", along with the related amendments to criterion 8 are praiseworthy. However, the standards of the Act 250 review criteria only apply to proposed "developments" and "subdivisions" that come under jurisdiction. Given that at present something like less than 30% of all development and subdivision in Vermont undergo Act 250 reviews, the new language about forests will see very limited use. More to the point, in my experience as a district coordinator, the most deleterious effects on forest resources were not from "development" - they were from the "subdivision" of land. When it comes to land use,"fragmentation of resources" = "subdivision of lands". All three pending bills are inadequate in that they do not include an enhanced jurisdictional "trigger" for the subdivision of tracts of land in upland settings, where the remaining forest blocks -and other remaining finite natural resources- are located.

In closing, the provisions in H.687 creating the new Environmental Review Board are critically necessary and I fully support this component of H.687. Thank you for your consideration of this testimony.