

## House Energy & Environment Committee - Testimony Outline

Introduction: For the record, Renée Carpenter, East Montpelier:

– First, as a Successful Party with Act 250 (from about 2006-2010), I need to highlight that Act 250 creates a democratic process through which large scale development is reviewed. This is generally omitted from the public mediated narrative, as are “particularized interests” that are *required* for individuals and organizations to participate in the process. We hear a lot of *rhetoric* that I want to identify and de-bunk, starting with the facts that: *No other permitting process duplicates the democratic, quasi judicial process of Act 250*; Act 250 applies only to larger development projects, rarely adds significant cost per unit or time to the overall permitting process; upwards of 96% of Act 250 applications are permitted; appeals data and other information has been misrepresented (and is difficult to find); the current administration has been undermining Act 250 from within, and generates much of the rhetoric that misleads the public.

– I’ve been a Witness and Engaged Citizen since the *Commission on the Future of Act 250: Following Legislative Process* and offering testimony, including for the NRB Draft report in mid-December-2023—I’ll get back to this. *I am NOT a lobbyist*. There’s no financial gain expected from my testimony—no remuneration or rewards. My only goal is to reveal the necessary facts to protect our ecosystems in the face of extreme weather events and excessive development, and to highlight that the democratic processes of Act 250 and local (municipal) zoning are what—along with Town Meeting—make Vermont unique in having a strong participatory democracy, which requires public engagement. *Over-riding either of these two, distinctly different forms of civic engagement and democratic process, or mistaking that one can compensate for the other, or anything else, is a failure in critical thinking about the richness and foundation of Vermont’s effectiveness as a participatory democracy.*

– In addition to my direct experience with Act 250, I’ve been a listerv for the Town of East Montpelier and, separately, worked with their Planning Commissions on at least one major re-write of their Town Plan; I was Zoning Administrator for the Town of Calais, and represented Calais at the central Vermont Regional Planning Commission (CVRPC) during that time.

– My lifelong background is in organic agriculture, bio-regional systems, community development, residential carpentry & painting, non-profit administration, professional writing/editing, and 25 years as an educational professional—pre-K to post-12—implementing philosophy attributed to John Dewey, a Vermonter who wrote the seminal tome, Democracy and Education. I am uniquely qualified as a witness for your committee.

– Beginning in 2000, I entered the academic field of Communications and Analysis of News, often identified as “Critical Media Literacy,” which includes context, rhetoric, and investigating omissions (among other considerations). Understanding the conventions of journalism, and the construction of narratives through “public relations” communications and political strategies creates a valuable lens of Critical Media analyses through which I frame my testimony.

First, we need to acknowledge that Vermont has an *affordability crisis and a climate crisis: We must address both*. In addition, I would venture to say that Vermont also has a pending crisis of democracy and ethics: While we think of Act 250 as a Land Use law, it is also and importantly a quasi-judicial democratic process that empowers individuals and organizations with *documented* “particularized interest,” and municipalities, *to influence* the permitting of large-scale local projects.

*No other permitting process replicates these functions of Act 250.* To undermine the functional processes of Act 250 and/or local zoning regulations, is to undermine democracy.

Reflections on the *Commission on the Future of Act 250*: I was grateful to see Representative Amy Sheldon quoted in a recent article that her committee has been taking testimony on Act 250 for eight years. (I could cite some of my own testimony: Make the process more accessible; raise the level of funding for District Commissioners; increase training for, and/ or communication among new Commissioners ...)

Sometime during the 2019-2020 legislative session, testimony given to the Senate Committee on Commerce and Community Development outlined Phil Scott's long history with Act 250: How his understanding of the process was distorted by his failure to follow through on his small business application. Recent testimony to this committee by Thomas Weiss (Feb. 9) reflected on one of his earlier changes to the law as a relatively new Senator. We've also heard from Mr. Weiss an analysis of the NRB's failure to meet the legislative charge of 2023 to investigate data to support the current ("Modernization" process. ([https://nrb.vermont.gov/sites/nrb/files/documents/NRB%20Necessary%20Updates%20to%20Act%20250\\_Public%20Comments%20and%20Feedback\\_Dec2023.pdf](https://nrb.vermont.gov/sites/nrb/files/documents/NRB%20Necessary%20Updates%20to%20Act%20250_Public%20Comments%20and%20Feedback_Dec2023.pdf) - beginning on page 18) I also gave verbal testimony at that hearing because I was so alarmed at the ongoing political assault on this highly effective land use law, and the flawed process being passed off as a "consensus compromise."

In recent time, and unreported by Vermont media, the Scott Administration has been eroding the effectiveness of the NRB & District Commissions by making appointments that have been political in nature. Some of these details have been offered to legislative committees very specifically in the past few years: The current Chair of the NRB was appointed by the governor—not as a highly qualified administrator or an expert on natural resources management or ecosystem services: Her background is in communications. Members of the environmental community who have sat in on public meetings of the NRB have reported on their inaction, their lack of engagement, week after week. Every time the NRB Report is identified as such—especially by the chairwoman of the NRB—and as "a consensus report," I cringe. *In reality*, as testimony offered at the December public hearing describes in detail, that report FAILED in five of the seven data sets requested by the legislature to better inform your current process. Instead, that oft-cited report reflects the current administration's goal to exempt Act 250 and municipal zoning for more concentrated, and less regulated, development.

The chair of the NRB, and all commissioners of state agencies, work for the governor; they reflect the current administration's goals. That's their job. With our tax dollars, they come before your committee; and—with communications professional's support—they come before the public via mass media to accentuate the rhetoric which supports the governor's goals and positions. (Sometimes he does it himself, in press conferences, and more recently on social media.) Your job is to ferret out the facts upon which to base honest legislative proposals that will actually function effectively to protect Vermont's natural resources and ecological systems.

Facts vs. Rhetoric: About Vermont's mainstream narrative, what is and is not true—i.e. *documented* to be false, offered in testimony to the Vermont Legislature over these years: In fact, Act 250 adds *NO* significant cost—time & money—for most projects; Act 250 permits are *NOT* redundant; there are *very few* appeals for many hundreds of permits granted; Most Act 250 permits are minor, move swiftly, and about 98% are approved; exempting development from Act 250 will *NOT* solve Vermont's AFFORDABLE housing crisis; and one large, well-funded organization willing to compromise ecological protections in one area for what they want to protect in another is a *political maneuver* which has not gained consensus from the rest of the environmental community, *who tend to be excluded*. And while I agree with the need for more protections of wildlife corridors, sensitive ecosystems, and forest blocks, I do not agree that *compromising away*

water quality, zoning, and Act 250 in other areas is acceptable. To me, it feels like political bullying: I won't give you what you want unless I get what I want for my developer friends. Bottom line for me is to maximize protection of ALL sensitive natural resources and *resolve housing issues by going to the actual roots of the problem.*

About Housing: While much is true about the limited and inflated housing market, the increase of homelessness, and lack of *affordable* housing units, *the underlying causes*, which were exacerbated during the pandemic, have its roots in our skewed economic system that (among other impacts) allow corporate investment LLCs and other absent property owners to buy up Vermont properties. We seem to understand about the impacts of short-term rentals on more limited vacancy rates: A brief pre-pandemic report identified that the number of short-term rentals in Vermont was then "roughly equal" to the number of housing units needed to address the immediate shortfall statewide. And there are many other factors—from landlord-tenant relations, to wages not keeping up with the inflated market, and to the underlying *facts* of housing design, bedrock, and Vermont's soils that are not conducive to percolation for water-based waste disposal systems. (Many municipal water & waste water systems are problematic.)

Leaders in the affordable & transitional housing coalitions have told us that repealing or minimizing regulations will have little or no effect on affordable housing; that repealing regulations are *not "at the top of their list," and are NOT a significant barrier* to solving the problems of assuring affordable housing for all Vermonters.

#### A Crisis of Democracy:

- Act 250's democratic process is not replicated by any other permitting process; the ten criteria should be enhanced to accommodate factors of extreme weather.
- VT's Planning and Zoning process engages public participation to decide what they want in their own towns. Act 250 empowers people and municipalities to have a say in their own communities. These local governance processes compliment each other, and sometimes interact.
- VT Media offer a limited perspective with lots of rhetoric and many omissions in the current narrative: The Administration has deployed its staff to recite its desired outcomes with specific and limited rhetoric, which is then reported as presented across our mediated information system.

We have a single dominant public broadcast entity that shares its reporter with the largest digital media conglomerate in the state. Digital commenting has been shut down and officially-vetted LTEs and Commentary are more limited than ever. This consolidation and management of messaging, coupled with the political power plays by the administration, is antithetical to an unbiased "Fourth Estate" necessary to inform the (actual) public—Vermont citizenry—of the intricacies of complex public policy and the decision-making process.

#### De-Constructing some Rhetoric; including some omissions:

1- Exempting Act 250 in designated areas will NOT accelerate SAFE housing development and will EXACERBATE some problems which already occur:

- municipalities do not have the capacity to address any more than what they already do—municipal permitting & Act 250 compliment each other with different roles in the analysis
- storm water/wastewater systems have been failing in many places. The current language of the bill is insufficient to assure capacity. The ANR permitting system is slow and flawed; there is insufficient follow-up and enforcement of permits they have already issued.

- 2- For 2023's communication cycle, two well-funded VT groups & a VHFA staffer OVER-estimated VT's recent population growth, over-estimated projected TRENDS & the projected need for additional housing. YES, we need more housing; AND it is most important that we have accurate, fact-based, and honest information about the real causes, trends, and problems, in order to reach effective and viable solutions.
- 3- Recent reports from non-political housing organizations do NOT identify "regulation repeal" as an immediate step towards resolving the problems of affordable housing.
- 4- National trends of global investment buyouts of residential housing and conversion of long-term rental housing into short-term housing are the two largest factors that have driven up costs of housing (AND related taxes) and fewer vacancies, *including here in Vermont*. Recent Model Legislation (by ALEC- American Legislative Exchange Council) to repeal zoning laws—state by state, and nationwide—has surfaced after towns in MA identified that similar initiatives in their communities were being met with citizen outrage. Vermont is being subjected to strategies of "Crisis Capitalism" as defined by Naomi Klein (among others) in her book [The Shock Doctrine](#).
- 5- Larger residential contracting firms with Vermont values in mind have reported in previous years' testimony that Act 250 is a part of their development design process and, as such, does not add significant cost or impediment. Exemption of Act 250 is the (required & stated) compromise for a governor who has been dismantling Act 250 from within for his entire political career.
- 6- Communications strategies to frame a false narrative: Most articles or interviews begin with some focus on the "Consensus NRB Report" of the summer committee—their huge effort, how reflective it was of all stakeholders, that it came from the NRB, that it actually assessed the problems, and then defined real solutions: This is not true, as previously discussed (with linked reference).
- 7- Vermont's clear lack of affordable housing—the "Housing Crisis"—is taking place in every state across the nation. Clearly, Act 250 is NOT the problem and so exempting Act 250 will not solve the problem and will create other, more serious problems.
- 8- Vermont's ecosystems are the front line of protection against adverse repercussions of extreme weather, of which we've seen an accelerating number. (One 200-year-old property in my neighborhood has flooded three times since July.) Disregarding comprehensive ecological assessments—the larger the project, the more important these become—flies in the face of reason. Go back to *all* of the testimony offered since the start of "The Commission on the Future of Act 250": To "Reform" or "Modernize" Act 250 means *to strengthen* (not to weaken or exempt from) assessments regarding how a proposed new development will impact ecological systems *and capacity* as well as community needs, infrastructure, and functions.
- 9- Since the 70s—at least—environmentalists have been discussing limits to growth (Meadows, Fuller). Vermont actually has *capacity limits* to natural resources, population growth, maintaining healthy ecosystems. Clean water, clean air, agricultural soils, attention to and steps towards food security and regenerative agriculture; enhanced mutual aid and intact democratic processes which have, until recently, supported Vermont's unique culture that enhance our quality of life: These are ALL essential features of the kind of resilience we witnessed during the pandemic years. This has clearly been omitted from publicly mediated discussion.

As this committee makes final decisions on H. 687 before crossover, which will be a first step towards modifying Act 250 as it has been presented through at least nine different (remaining)

bills from the beginning of this 2024 legislative session. I hope your committee will play a pivotal role in bringing together all *acceptable* proposed changes to Act 250 under a single piece of legislation that:

1- Re-institutes the original language for the purpose of Act 250

2- Replaces the Natural Resources Board with a new Environmental Review Board whose primary—but not only—responsibility will be to administer the overall Act 250 program and to hear appeals of District Commission decisions. The appointment of this board must be *de-politicized* from the current scheme, and be comprised of non-partisan, experienced professionals with depth in the skills necessary to evaluate the ecological complexity and administrative legal processes of the Act 250 program.

3- Appointments of District Commissioners must also be *depoliticized*. Going back to original testimonies' recommendations: more funding for training, communication across districts, and engagement of parties will improve and enhance the effectiveness of permitting under Act 250 (please over-ride incorrect rhetoric: Act 250 permits are well documented to have been issued within reasonable timeframes). An investigation into *other permitting processes* might be advised to better understand hold-ups and inefficiencies; overall auditing of state programs can offer valuable insights, towards modifications and efficiencies.

4- I appreciate this committee's focus on enhanced protections for sensitive resource areas (testimony of E.Thompson and other ecologists) and Forest Blocks (VNRC), and request that you make revisions, in the forest block section: The change to "undue adverse effect" was negated by leaving "avoid, minimize, mitigate" in the criterion and by re-combining habitat connector with forest blocks. Undue adverse effect on a habitat connector cannot be mitigated. Once the connector is gone, the salamanders (as a single example) have lost their ability to move from summer habitat to breeding grounds. Delete "mitigation" for habitat connectors. You've heard testimony from multiple experts who explained why, including migratory resilience of species for adaptation. I could tell you my own stories, if I had the time.

5- Eliminate Act 250 exemptions in downtown & village areas. Act 250 does NOT impede development for projects that use due diligence in their design/development process. I see no language in this (or related Act 250) bill(s) that make *assurances* that water & wastewater systems are *fully functional*, or even current with their permits. You've heard/ seen testimony and other data *that assures us that the opposite is too often true*. In addition, Act 250 and municipal zoning are separate and distinct democratic processes, each of which must be upheld.

In other words, uphold Act 250 jurisdiction in downtown & village areas with, at minimum, current jurisdictional triggers. The quasi-judicial processes of Act 250 are far more than a checklist of planning elements. And I find it unbelievable that a committee with a mission to protect natural resources would allow exemptions for up to 50 units of housing, especially in smaller towns, whether or not they have some infrastructure or basic planning, zoning and subdivision regulations: Municipalities do not have the capacity to replicate what well trained, non-political District Commissions can implement under de-politicized Act 250 authority. These exemptions reflect statutory over-reach, legislation by rhetoric, and unwise yielding to financial and political interests.

6- 1500 foot elevation jurisdictional trigger: There's been a lot of testimony—this year and in previous years—that this is *essential* to protecting Vermont's watersheds, wildlife corridors, and sensitive headwater ecosystems. In recent years, it has become obvious that to prevent flooding downstream we must address development design features at these elevations to minimize impacts below.

7- Considering "the Road Rule" for Tiers 2 & 3, there should be no exclusions for state or municipal roads. Wildlife corridors, erosion, and other significant features require thoughtful consideration in the design process regardless of the developer. (My Act 250 experience with VTrans clearly informs me of the need for Act 250 oversight—a story, perhaps Chair Sheldon remembers from my earlier testimony.)

8- I do not support the release of land (exemptions) in tiers 1-A & 1-B: I find these provisions to be unwieldy and more of a reflection of certain political will than wise considerations. I've been unable to fully follow some detail, but it has come to my attention that in a Tier 1A area, Act 250 conditions could be removed under a zoning permit on the property, and previously hard-earned conditions could be eliminated without notifying original parties.

9- "Critical resource" is now limited to river corridors, headwaters streams, and habitat connectors of Statewide significance. That will exclude many habitat connectors: those for frogs or salamanders moving the few hundred yards from their summer and wintering habitat to their breeding grounds. Individually those connectors might not be of Statewide importance. Collectively they definitely are of Statewide importance. Change this to habitat connectors of significance to the animal populations whose existence depends on the connector.

10- Finally, it has come to my attention that the NRB is suggesting one part of the bill be immediate and the other part(s) be delayed. This is highly problematic and compromises the potential effectiveness of Act 250 overall and its mission-defined intent to protect Vermont's precious natural resources.

H. 687 is an exceedingly large bill with many complications that sometimes seem more intent on political compromises, often based on innuendo and rhetoric rather than facts.

Perhaps a fair strategy is to simplify the bill: Create the new Environmental Review Board and depoliticize the appointments of board members and district commissioners. Follow the lead of ecologists' testimony to maximize protections of sensitive natural resources. Avoid the temptation to complicate the Act 250 jurisdictions and review processes: Every change must be on the same timeline. Base every change to Act 250 on facts, not rhetoric or political maneuverings.

#### In Summary:

- There is a lot of rhetoric and misinformation surrounding Act 250. I have countered that with facts, media analysis, and explanations.

- Act 250 is not a barrier to housing. If Act 250 is removed from the Tier 1 areas, then those areas will suffer from *the lack of sufficient evaluation* of Act 250's criteria that cover the climate crisis in a comprehensive manner. Act 250 has an important role within the Tier 1 areas. The Tier 1 areas are all about more housing with little consideration given to the effects of that housing on the environment and how the climate will affect the Tier 1 areas.

- These suggestions to alter or implement H.687 will support the need to address extreme weather and related environmental consideration necessary for adaptation and resilience, while at the same time assure the safety of housing and the individuals who will live there in the Tier 1 areas and those who live downstream. Thank you for hearing and considering my testimony.