

1 H.144

2 Introduced by Representative Johnson of Canaan

3 Referred to Committee on

4 Date:

5 Subject: Land use; conservation and development; Act 250; on the record

6 Statement of purpose of bill as introduced: This bill proposes to provide for

7 “on-the-record appeals” from the district environmental commissions

8 (Act 250) to the Environmental Division of the Superior Court, at the

9 applicant’s request.

10 An act relating to on-the-record appeals from the district environmental
11 commissions

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 10 V.S.A. § 6085a is added to read:

14 § 6085a. RECORDED HEARINGS

15 (a) Once an application has been filed under section 6084 of this title but

16 before the district commission has convened a prehearing conference or a

17 hearing, an applicant may submit a demand for recorded hearings, in which

18 case any appeal under section 6089 of this title shall be a review of the record

19 of the proceeding before the district commission in accordance with

20 subdivision 8504(h)(3) of this title.

1 (b) Within 10 calendar days of receipt of both a complete application under
2 section 6084 of this title and a demand for recorded hearings under subsection
3 (a) of this section, the district commission shall provide notice of the demand
4 for recorded hearings in accordance with the procedures of subdivision
5 6084(b)(1) of this title. If the district commission provided notice of a hearing
6 prior to receiving a demand for recorded hearings, then the district commission
7 shall reschedule the hearing and provide new notice in accordance with the
8 procedures of subdivision 6084(b)(1) of this title.

9 (c) Each of the following shall apply to the review of an application for
10 which the applicant has demanded a recorded hearing:

11 (1) The district commission shall extend the hearing schedule or take
12 other appropriate action as necessary to provide a fair and reasonable
13 opportunity for parties to prepare, present, and respond to evidence without
14 creating undue delay in the review of the application.

15 (2) The district commission may require parties to submit prefiled
16 testimony and exhibits. If the district commission requires submission of
17 prefiled evidence, the applicant and any parties supporting the application shall
18 submit their prefiled direct evidence first, and then other parties shall be given
19 a reasonable opportunity to submit their prefiled direct evidence. The district
20 commission may then allow the submission or presentation of rebuttal

1 testimony and exhibits in the sequence and form that it reasonably determines
2 to be appropriate.

3 (3) Unless the parties agree otherwise, the district commission in a
4 prehearing order shall establish the type, sequence, and amount of discovery
5 available under Rules 26–37 of the Vermont Rules of Civil Procedure, limiting
6 the discovery permitted to that necessary for a full and fair determination of the
7 proceeding.

8 (d) During proceedings on an application for which the applicant has
9 demand recorded hearings, the district commission shall maintain the
10 flexibility regarding the introduction of evidence provided by 3 V.S.A. § 810
11 and the procedural flexibility and informality that has been characteristic of
12 district commission proceedings.

13 (e) On receipt of a request from the district commission for assistance with
14 regard to an application for which the applicant has demanded recorded
15 hearings, the Board shall provide assistance to the district commission as
16 necessary.

17 (f) At the expense of the applicant, the district commission shall record by
18 video any hearing on an application for which the applicant has demanded
19 recorded hearings. In the event that an appeal is taken from a district
20 commission act or decision on such an application, the district commission
21 shall provide the Environmental Division with the original recording of the

1 hearing and a copy of the complete written record and shall make and preserve
2 a copy of the original recording for the purpose of keeping a record.

3 (g) The Land Use Panel of the Board may adopt rules to implement this
4 section.

5 Sec. 2. 10 V.S.A. § 8504(h) is amended to read:

6 (h) De novo hearing. The ~~environmental division~~ Environmental Division,
7 applying the substantive standards that were applicable before the tribunal
8 appealed from, shall hold a de novo hearing on those issues which have been
9 appealed, except in the case of:

10 (1) a decision being appealed on the record pursuant to 24 V.S.A.
11 chapter 117;

12 (2) a decision of the ~~commissioner of forests, parks and recreation~~
13 Commissioner of Forests, Parks and Recreation under section 2625 of this title
14 being appealed on the record, in which case the ~~court~~ Division shall affirm the
15 decision, unless it finds that the ~~commissioner~~ Commissioner did not have
16 reasonable grounds on which to base the decision;

17 (3) an act or decision of a district commission on an application for
18 which the applicant has demanded recorded hearings under section 6085a of
19 this title, in which case the Division's review shall be on the record. Each of
20 the following shall apply to an appeal subject to this subdivision (3):

1 (A) The Division shall remand to the district commission if the
2 district commission improperly excluded evidence, did not provide adequate
3 notice or opportunity to be heard, or otherwise failed to comply with the
4 requirements of 3 V.S.A. chapter 25, pertaining to contested cases. The
5 Division need not remand for harmless error.

6 (B) Findings of fact shall not be set aside unless clearly erroneous.

7 Sec. 3. EFFECTIVE DATE

8 This act shall take effect on July 1, 2013.