

Testimony on Wireless Communications Facilities (H. 693)

Dean Pierce, AICP

Prepared for delivery to
House Commerce and Economic Development Committee
April 10, 2014

Chairman Botzow and Member of the House Commerce and Economic Development Committee:

I join you today to express objection to efforts to remove the sunset provision from Section 248a of Title 30.

As noted by my professional colleagues in the Vermont Planners Association, such a change would be an unnecessary pre-emption of municipal authority to regulate telecommunications facilities *as provided for –and limited by– the Federal Telecommunications Act of 1996*.

From the late 1990s to the late 2000s Vermont municipalities had clear authority to regulate telecommunications facilities under locally adopted zoning bylaws or ordinances. Municipalities were joined on the regulatory field by the Public Service Board in 2007.

PSB jurisdiction was initially scheduled to expire in 2010. But, statute was amended in 2009 to allow for expedited PSB review—and the preemption of local review—in the name of facilitating statewide deployment of what no one disputes is an important technology.

I believe that as legislators you must now ask yourself certain questions:

- If Vermont has effectively achieved basic, statewide broad coverage (which the Vermont Telecommunications Authority has indicated) does justification for continued preemption of local review still exist?
- And, if you believe justification for the promotion of telecommunication technology still exists, do you believe municipalities should continue to be relegated to an essentially meaningless role in the PSB process?

My last question could seem rather pointed, so please allow me to explain.

In my experience current law suggests that municipalities can have a meaningful voice in the telecommunications review process carried out by the PSB. However, I believe as do others that the appearance is far removed from the reality.

To the extent communities do have any voice at all, they are little bit like the lone cow bell player in a 200 person marching band. There's not much they can do to get anyone on the reviewing stand's attention if everyone else is playing.

Once again as my professional colleagues in the Vermont Planners Association have noted:

- **Vermont is the only state that completely preempts municipal jurisdiction over telecommunications facilities as otherwise protected under federal law.**
- **At the state level this preemption has always intended to be temporary.**
- **There is no longer any policy basis for permanently preempting local regulation of facilities that have a demonstrated impact on neighborhoods, public facilities and key natural, historic and scenic and resources that are important to the community.**

Should you feel that some form of preemption should continue *but you want to do something to address municipal concerns*, **please do not satisfy yourselves with "process changes" that will have no impact on what already happens under existing law and rule.**

I would ask that you carefully consider changes such as those that are being drafted for Rep Lenes.

In my view, at a minimum, in any future law

- **Municipalities must have the ability to insist that an evidentiary hearing before the Board be held when an application has been filed.**
- **The law must explicitly require the Board to consider the merits of comments and recommendations received from municipalities, and**
- **The law must require the Board to address each municipal recommendation in the Board's final CPG decision.**

In closing I would like to say that Shelburne, the Town where I serve as Planner, has never denied a telecommunications application. I cannot accept it would be an obstacle to progress--as some might claim it to be. It and other municipalities should once again have a meaningful role in the review process.

Thank you for your time and attention.