

The Valuable Role Of Citizens In Act 250

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Acknowledgements

This report was written for Vermont Natural Resources Council (VNRC) by Georgie Vining in February 1994 and edited and updated by Mateo Kehler in July 1999. VNRC is a non-profit environmental organization founded in 1963 to promote the wise use of Vermont's natural resources. VNRC does research, legislative lobbying, advocacy, and education on issues including land use, forestry, agriculture, water, energy, wastes, and growth management.

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INTRODUCTION

Act 250, the primary law regulating land-use and development in Vermont, has played a central role during the past two decades in protecting the state's environment, beauty and character. The Act 250 process provides a forum for neighbors, municipalities and other organizations to voice their concerns regarding projects that may affect them. However, in recent years it is asserted more and more often by Act 250 opponents, that the direct involvement of citizens is a major cause of procedural delays and excessive financial costs for applicants. Recent and upcoming legislative and administrative efforts focus on limiting the rights and involvement of citizens.

The principal purpose of this paper is to lay out five of the most frequently voiced criticisms of citizen involvement, and then counter them with factual information and arguments which will demonstrate the value of direct citizen involvement in the Act 250 review process. In addition to the main body of this report, we have included four appendices. The first appendix consists of several case studies that illustrate the vital role citizens have played in specific Act 250 cases. The second is a brief overview of the current system of public involvement in Act 250. The third is a summary of Act 250 permitted party appeals and the fourth appendix is a statistical portrait of Act 250 created from Environmental Board Appeal Statistics.

EXECUTIVE SUMMARY

1) Criticism: "Direct citizen participation is unwarranted, since there are elected and appointed officials involved in the process who are ultimately accountable to the public...."

ANSWER: Direct citizen participation is a valid exercise of both individual liberty and democracy, and is an essential cornerstone of the Act 250 review process.

- Direct citizen involvement allows individual citizens, organizations, and communities to defend their interests from the potential impacts of developments, as opposed to elected or appointed governmental officials making those decisions for them.
- Direct citizen involvement allows overlooked facts and other information to be provided to the decision-makers on the District Commissions, Environmental Board, and State courts.
- Direct citizen involvement provides a forum in which alternative values and frames of reference regarding the interpretation of "undue impact" and the protection of our resources can be voiced, perspectives which developer-applicants and appointed decision-makers may not share.

2) Criticism: "The Act 250 process involves too many citizens and organizations with no legitimate interests affected by the projects under review"

ANSWER: Act 250 involves groups and individuals who have clearly demonstrated that they may be negatively affected by a development, as well as those, who can aid the decision-makers by providing evidence.

- The legislature, the courts, and the public have all consistently agreed that a broad range of citizens - from individuals and community groups, to environmental organizations and neighboring towns -- have a right to participate in determining the use of our natural resources, the fate of our environment, and whether or not a project's impacts are acceptable.
- Act 250's critics have never produced any credible evidence -only value-laden anecdotes - to show that citizens tend to abuse the process.
- The primary criterion for evaluating Act 250 must always be how well decisions are made regarding the use of our State's resources. Citizens often fill the role of defending the values that Act 250 was enacted to protect. Since there is no evidence that the system's inclusiveness severely impacts the process, the broad involvement of citizens fully meets this primary test.

3) Criticism: "Citizens tend to make emotional, 'frivolous' arguments against projects in Act 250 cases...."

ANSWER: The record clearly shows that citizens tend to make factually-based, criterion-specific relevant arguments in Act 250 cases that are critical to addressing projects' impacts.

- No credible evidence has ever been offered demonstrating that citizens' testimony tends not to be specific, relevant, and factually-based.
- Vermont's rules regarding the admission of evidence in Act 250 cases already clearly require that "irrelevant, immaterial, or unduly repetitious evidence be excluded."

4) Criticism: "Most citizens involved in Act 250 review are 'no growth' advocates, strategically using the process to stall or block projects...."

ANSWER: Citizens involved in Act 250 want an economy with appropriately scaled and located commercial, residential, and industrial development that respects and maintains the viability of existing communities - not growth for growth's sake.

- Most projects falling under Act 250's jurisdiction, particularly those designated as "minor," are not opposed by any citizens.
- The rate of appeals of Act 250 District Commission decisions by parties other than the applicant, municipalities or the state is only 2%.
- Approximately 97% of all applications receive Act 250 permits. Clearly, the rate of opposition and appeals would be substantially higher if most citizen opposition was based on a desire to halt all growth.
- It is wrong to confuse the drive to halt or modify flawed individual projects with a desire to halt all development in the state.

5) Criticism: "Citizen involvement and opposition have tangled up the Act 250 process to such an extent that an applicant can almost never get a permit in a timely fashion."

ANSWER: Any delay that may exist in Act 250 decisions is attributable to a host of different factors; furthermore, any "delay" resulting from citizens raising critical issues should be considered a positive feature of the process.

- Act 250's "slow" reputation is inaccurate, as a full-time staff of only about 36 people statewide issues the majority of permit decisions (about 58%) in 60 days or less, and issues over 70% within 90 days.
- The majority of Act 250 applications are unopposed, suggesting that public participation cannot be primarily responsible for system-wide delays.

- Studies have identified the primary reasons for delay in sampled cases as incomplete applications, and the need for permits from state agencies. Other factors influencing review time include the number and experience of staff, the application workload, and the complexity and quantity of materials to review.
- Any delay resulting from the raising, examining, and consequent addressing of environmental and community impacts is a positive feature of the Act 250 process. Thorough evaluation by the District Commissions and Board usually leads to permits that better protect the resource and communities Act 250 is designed to protect.

CITIZEN INVOLVEMENT: ADDRESSING THE CRITICISMS

The negative comments heard today in Vermont regarding various aspects of citizen involvement in the Act 250 process are usually, a combination of supposedly factually-based criticisms and philosophical or ideological objections to how the system has been designed and operates. The following is an attempt to clarify and address both of these elements in a relatively concise manner. It should be noted that most of the arguments are interdependent, and that points made about one issue are often relevant to the discussion of another.

1)Criticism: "Direct citizen participation is unwarranted, since there are elected and appointed officials involved in the process who are ultimately accountable to the public."

ANSWER: Direct citizen participation is a valid exercise of both individual liberty and democracy. Citizen participation is an essential cornerstone of the Act 250 review process that offers a forum in which concerns may be voiced without the influence of politics.

Over the past 20 years, citizen participation has become an accepted part of the management and allocation of natural resources at all levels throughout the country. The general trend is towards increasing citizen involvement. However, there are some who fundamentally object to public involvement as an essential aspect of Vermont's system of decision-making and land-use regulation. Their objections are often based on strongly held ideological or philosophical beliefs about economic development and property rights. They

apparently view citizens as the hostile opposition, rather than Vermonters such as themselves who may have important interests at stake. Instead of addressing the issues that citizens raise, some Act 250 critics wish to deal with controversies by simply eliminating their opposition.

For both adjoining and nearby landowners, citizen participation is a means by which property owners can protect their property from devaluation. Act 250 incorporates a recognition of the right of such property owners to avoid a nearby project's undue negative impact on their property. As opposed to governmental officials making decisions for these landowners, the Act 250 process provides a forum for people to make their own decisions regarding their own economic interests. Act 250 also recognizes there are other non-economic interests of importance to citizens of Vermont.

In accordance with Vermont's heritage of grass-roots democracy, Act 250 provides a system by which individuals and organizations can exercise their liberty and directly defend their interests. There is no reason to believe that elected and appointed officials can act as effective substitutes. The presence and work of officials in Act 250 cases is critical, yet individuals often have interests that differ from government officials. In addition, the behavior of officials regarding a specific development project makes them "accountable to the public" in only the most diffuse way. Citizens and citizen's groups are at least as qualified as public servants are in the search for truth.

In addition to those defending their interests, citizens also aid the decision-making process by providing critical information. Such information can range from overlooked physical observations to the product of considerable technical expertise. The reality is that the bulk of data provided in Act 250 cases as well as the interpretation of that data, is from the applicant. It is clear that this package of information is not always "complete" and it is reasonable to assume that the applicant's presentation of information is biased in favor of the developer-

it would be bad business if it were not. Along similar lines, the technical expertise of the state agencies involved in reviewing certain aspects of a proposed project is not necessarily comprehensive or infallible. The integrity and effectiveness of the decision making process is based on fleshing out the evidence as completely as possible. The involvement of interested and potentially affected citizens who are outside of, and uninfluenced by, the political arena serves this cause well.

* * *

2)Criticism: "The Act 250 process involves too many citizens and organizations with no legitimate interests affected by the projects under review."

ANSWER: Act 250 sometimes involves groups and individuals who have clearly demonstrated that they may be negatively affected by a development, as well as those who can aid the decision-makers by providing evidence.

The Act 250 process incorporates the recognition that projects can have a variety of adverse impacts on people. Streams, groundwater systems, and the air can carry a development's pollution to an extent that ignores property lines. The demands and burdens placed on community services by a development also clearly have impacts on many others. Citizens who use and share public resources may have a strong interest in the fate of those resources regardless of their geographical location or economic interests. There is no "correct" definition of whose interests are legitimate and whose are not. As a political value judgment, however, the legislature, the courts, and the public have consistently expressed their conviction that a broad range of citizens --including landowners, community groups, environmental organizations, and neighboring towns -- have a right to participate in determining the use of our state's resources and deciding whether or not a project's impacts are acceptable.

Act 250 also recognizes that involving organizations and individuals with specialized information and expertise aids decision-makers in reaching conclusions. It must always be remembered that the primary criterion for evaluating Act 250 is how well decisions are made regarding the use of our state's resources. District commissions already have a broad discretion to deny citizens party status based upon such reasons as duplication of testimony, even if the denied citizens can show that they may either be affected or be of material assistance. The Act 250 process must continue to be inclusive, as opposed to exclusive, in order to reach the most well-informed and balanced outcomes.

No Act 250 critic has ever produced credible evidence that citizens tend to abuse the process. Some recent legislative campaigns to "reform" Act 250 have focused on constricting appeal rights and applying sanctions for so-called frivolous appeals, but these campaigns have given no evidence that appeals are a systemic problem. In fact, only 2% of Act 250 decisions are appealed by parties other than the applicant, municipality or the State.¹ Furthermore, the total percentage of cases appealed dropped to 4.2% in 1998 and was as low as 2.0% in 1997.² One can easily argue that citizens' appeal rights are too limited today. Nearby property owners and other citizens who have already established that a proposed project significantly affects their interests do not currently have the right to appeal cases beyond the Environmental Board to the Supreme Court. The "evidence" used to support the claim of inappropriate citizen involvement is anecdotal at best. Even assuming such "horror stories" can stand up to close scrutiny, these examples can always be met with alternative anecdotes and cases in which citizens, regardless of their ownership of adjoining property or direct economic interests, have provided critical information and defended community and environmental interests.

¹ See March 1993 memorandum entitled "Environmental Board Appeal Statistics" from Michael Zahner, Director of Administration for the Environmental Board to Senator Dick McCormack, and July 1999 VNRC research.

² See Environmental Board Statistics: "Act 250 History of Permit Application Activity", 1985-1998.

3)Criticism: "Citizens tend to make emotional, "frivolous" arguments against projects in Act 250 cases."

ANSWER: The record clearly shows that citizens tend to make factually-based, criterion-specific, relevant arguments in Act 250 cases that are helpful to the District Commissions and the Environmental Board in addressing project impacts.

Vermont's Administrative Procedure Act, which governs how the District Commissions and Environmental Board make decisions on evidence, already requires that "irrelevant, immaterial or unduly repetitious evidence be excluded."³

Disagreements inevitably occur over what sorts of evidence should be considered relevant and admissible. In general the Administrative Procedures Act encourages the admission of testimony in the interest of gathering as much information as possible on which to base decisions.⁴ Along similar lines, a less-publicized complaint is of applicants providing too little information. Regardless of the extent of either of these concerns, the solutions do not lie in restricting or eliminating certain classes of citizens or applicants. The solutions lie in finding innovative ways to ensure that testimony and arguments are prepared, focused, and relevant, and that applications are fully prepared and completed.

There is no evidence that citizens' testimony tends to be anything but factually-based. Compilations of Act 250 case histories show citizens' raising a host of concerns - from traffic congestion and pedestrian safety, to neighborhood aesthetic issues, to impacts on affordable housing and educational

³ V.S.A. Section 810(1).

⁴ See Cindy Corlett Argentine. 1998. Vermont Act 250 Handbook: A Guide to State and Regional Land Use Regulation Putney Press: Brattleboro, VT. p.43-44.

services, to air and water pollution - which are then addressed in the conditional permits granted.⁵ In fact, complaints by Act 250 opponents along these lines refer to citizens' assessments of risk and tolerable impacts that are simply different - but no less legitimate - than those of applicants and developers. One could suggest that it is opponents of the law who rely on emotional rather than factual arguments loudly expressing their differences of opinion and repeating unfounded and misleading statements about Vermont's system of land-use review.

* * *

4)Criticism: "Most citizens involved in Act 250 review are "no growth" advocates strategically using the process to stall or block projects."

ANSWER: Citizens involved in Act 250 want an economy with appropriately scaled and located commercial, residential, and industrial development that respects and maintains the viability of existing communities - not growth for growth's sake.

The assertion that most citizen opposition is based on a desire to halt all growth simply does not coincide with the facts. In 1998, District Commissions designated approximately 80% of Act 250 cases as "minor", which means there is no automatic public hearing.⁶ However, a project placed within the administrative category of "minor" does not necessarily mean that the "minor" project is small or inconsequential. "Minor" projects have included large-scale uses in approved industrial parks, the replacement of a wastewater treatment plant in East Haven, construction of a 94,009 square foot elementary school in

⁵ See Environmental Board's Municipal Project Study dated April 7, 1992 (see also the case summaries in this report's appendix).

⁶ See February 15, 1999 memorandum entitled "Environmental Board Annual Report," from Michael Zahner, Executive Director of the Environmental Board to Governor Howard Dean.

Lyndon, and the reconstruction of close to a mile of roadway in Colchester and many other such projects.⁷ In such cases, the public is given notice that a permit will be issued unless someone requests a hearing. If it were true that citizen intervenors are generally opposed to any kind of growth, it would follow that citizens would at least frequently request public hearings in an attempt to fight all projects, whether deemed "major" or "minor." It is rare for hearings to be requested for "minor" applications and the vast majority of projects falling under Act 250's jurisdiction go unopposed.

The facts about the appeals process clearly refute the contention that citizens are strategically manipulating the Act 250 process to generally stall, block, or halt growth. If this were the case, one would expect a large percentage of cases to be appealed. In reality, only a handful of cases are appealed. Analysis conducted by the Vermont Environmental Board indicates only 3.1% (42) of the 1356 applications received during FY 1997 and 1998 were appealed at all.⁸ Only 25 cases (less than 2% of all applications) were appealed by adjoining landowners and permitted parties during these two years.

In July 1999, the Vermont Natural Resources Council conducted further analysis of appeals by permitted parties. Using the records kept by the Environmental Board, VNRC found that between July 30, 1990 and July 24, 1998, there were 211 appeals filed, not including interlocutory appeals, declaratory rulings and party status denials. Of that total 83, or 39%, were filed by applicants themselves; 65, or 30.8% were filed by adjoining landowners; and 20, or 9.5%, were filed by permitted parties alone. Only three were filed by

⁷ See February 3, 1993 memorandum entitled "Act 250 Statistics - Municipal Projects," from Michael Zahner, Director of Administration for the Environmental Board, to Senator Tom Macauley, Chair, and Members of the Senate Natural Resources Committee.

⁸ See Environmental Board Statistics: "Act 250 History of Permit Application Activity", 1985-1998.

statewide conservation groups: one by The Conservation Law Foundation; one by VNRC filing alone; and one by several groups, including VNRC, filing jointly.⁹

Clearly, if individual citizens and local and statewide groups were committed to blocking all growth the appeal rate would be considerably higher. Some citizens involved in Act 250 cases may have come to the conclusion that Vermont, and the world outside our borders, has exceeded its carrying capacity and that we must rein in those who believe in a state of endless and limitless growth. But to characterize the majority of citizen opposition along these lines is misleading. Those making this charge are attempting to downplay and dismiss the real concerns raised about specific projects that have the potential to negatively affect Vermont's environment and character.

Citizen intervenors may be interested in halting a project or mitigating its impacts, depending on the specific case. It should be remembered that some individual projects simply do not deserve to be permitted, due to their poor planning and potentially substantial negative impacts. Citizen opposition to such projects reflects the operation of Act 250 at its best. In fact, the mere existence of Act 250 and a forum for citizen opposition helps to promote high quality development. Case-by-case opposition, however, is very different from a generalized opposition to all growth and development in Vermont. Most Vermont citizens and most conservationists believe that a strong state economy is based on a healthy environment. Citizens who involve themselves in Act 250 are interested in a sustainable economy based on Vermont's unique environment, one that involves appropriately scaled and located commercial, residential and industrial growth and maintains the viability of our communities- not growth for growth's sake.

⁹ Act 250 Permitted Party 14(B) Appeals: July 30, 1990 – July 24, 1998, prepared by VNRC July, 1999 (see appendix IV). VNRC filed an appeal in the Killington Master Plan case May 20, 1999.

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5)Criticism: "Citizen Involvement and opposition has tangled up the Act 250 process to such extent that an applicant can almost never get a permit in a timely fashion."

ANSWER: Any delay that may exist in Act 250 decisions is attributable to a host of different factors; furthermore, any "delay" resulting from citizens raising critical issues should be considered a positive feature of the process.

Act 250's general reputation for being slow regardless of whether citizen opposition is the cause - is not accurate. With a full-time staff of only 36 people statewide, 58% of 1997's permit decisions were issued in 60 days or less, 70% were issued within 90 days, and 77% within 120 days. In addition, processing times appear to be improving since the late 1980s.¹⁰

Furthermore, the timeliness of a project's review depends on a large number of factors. Most Act 250 applications are completely unopposed by citizens. Other influences on review time include the number and experience of program staff; the permit application workload; the complexity and quantity of material to review; the application's completeness; the need for permits to be issued from the Agency of Natural Resources and Department of Health prior to an Act 250 decision; and the timeliness of applicants' response to providing additional information after the hearing. An illustration of these multiple factors can be found in the Environmental Board's study of all municipal projects falling under Act 250's jurisdiction processed between January 1, 1990 and September 30, 1991. The Board's examination of 59 cases suggested that a substantial portion of any delay in the Act 250 process was attributable to waiting for State

¹⁰ See September 16, 1998 Environmental Board Report entitled: "Total Days to Process Applications Report."

agencies to issue technical permits.¹¹ In addition, an Environmental Board study in November of 1989, which focused on a sample of 44 1987-1988 cases, calculated that 82% delayed either primarily or in part because of a lack of information or application revision.¹²

Act 250's critics imply that a major cause of delay is appeals of district commission decisions. However, as described above, few cases are ever appealed by non-applicants. The number of appeals that do occur - usually in regard to extraordinary cases - has little bearing on the time taken to review the bulk of Act 250 permit applications.

The fact that a specific case may take longer due to the involvement of citizens can not be automatically considered negative. Citizens provide valuable assistance to District Commissions by raising issues of a project's airborne and waterborne pollution, impacts on pedestrian safety, neighborhood aesthetic issues, affordable housing and educational services, etc. Any "delay" resulting from the raising, examining and consequent addressing of these issues is actually a necessary and positive feature of the process. Such complaints attempt to dismiss the essential contributions citizens make to the management of Vermont's growth and development. Those who make these complaints appear willing to accept the issuance of a permit based on incomplete information. For some critics, protecting Vermont's natural resources and communities through a comprehensive review process is secondary to their interest in getting a permit.

¹¹ See April 7, 1992 memorandum entitled "Municipal Projects Subject to the Jurisdiction of Act 250," from Michael Zahner, Director of Administration for the Environmental Board, to Karen Horn, Director of Legislative and Membership Services of the Vermont League of Cities and Towns.

¹² Reported in Vermont's Office of Policy Research and Coordination's December, 1990 report entitled "Status of Permit Processing in Vermont," George Hamilton and Ken Jones.

APPENDIX I: CASE SUMMARIES

The following 13 brief case summaries provide some examples of Act 250 cases in which citizens have clearly provided critical information and raised crucial issues that otherwise might not have been addressed. The cases cited are not meant to be comprehensive, typical or representative of all Act 250 cases. For instance, a large proportion of the cases are permit denials, whereas approximately 96%-98% of all Act 250 applications are approved.¹³ The following summaries are examples of projects with potentially large adverse impacts and the critical role citizens played in addressing them.

Case Name: Stratton Corporation – Sunbowl

Permit Application #: 2W0911

Admitted Parties: Conservation Society of Southern Vermont; Stratton Area Citizens Committee; Vermont Natural Resources Council and several adjoining landowners.

Brief Case Description: Applicant proposed a 498-unit second home development, with an 18-hole golf course, swim/tennis club, additional parking and an expanded sewage disposal system. A major portion of the project would have been located in the pristine Class A Kidder Brook watershed. Citizen parties demonstrated that storm water runoff from buildings, parking areas, as well as pesticides and fertilizers from the golf course would have an adverse impact on Kidder Brook. Based on Citizen testimony, the District Commission issued a permit for 58 second homes and 5 holes of golf, all outside the Class A watershed. There were no appeals brought in the case.

¹³ Environmental Board Report entitled, "Act 250 History of Permit Application Activity," 1985-1998.

Case Name: Killington Ltd.

Permit Application #: 1R0584-EB-1

Admitted Parties: Town of Shrewsbury, Shrewsbury Planning Commission, Shrewsbury Land Trust/Friends of Parker Gore and Vermont Natural Resources Council.

Brief Case Description: Based on information provided by citizen groups, the Environmental Board denied a permit for construction of a pond to expand the applicant's snowmaking operations. The proposed construction would have imperiled habitat necessary for the survival of a population of black bears. The Vermont Supreme Court upheld the Boards decision.

Case Name: Berlin Associates Ltd.

Permit Application #: 5W0584-9-EB

Admitted Parties: Citizens for Vital Communities, Central Vermont Medical Staff and EMS #6.

Brief Case Description: In an appeal, citizens argued that the traffic generated by the applicants grocery store would create unreasonable congestion and unsafe conditions at the Central Vermont Hospital's emergency entrance across the street, as well as at nearby intersections. The Environmental Board eventually granted a permit based upon a revised plan, which was altered to address the issues citizens raised regarding safe roads and the threat to the public's investment in the hospital and highways.

Case Name: C&S Grocers

Permit Application #: 2W0434-8-EB

Admitted Parties: Windham Citizens for Responsible Growth, Dummerston Planning Commission.

Brief Case Description: Citizens raised traffic safety, congestion, air quality and health concerns in regard to the construction of a 200,000 square

foot warehouse on Putney road in Brattleboro. The warehouse was projected to generate up to 600 additional and nearly 800 passenger car trips each day. A conditional permit was granted which included some limitations on the volume and time of truck movements.

Case Name: Finard-Zamias Associates

Permit Application #: 1R0661-EB

Admitted Parties: Citizens for Responsible Growth; Vermont Natural Resources Council.

Brief Case Description: Citizen groups opposed development of a shopping center on a 92 acre parcel in Rutland Town with respects to fiscal impacts, air pollution, soil erosion, and conformance to wetland rules amongst other issues. The Environmental Board issued a permit with conditions that included a required inventory of two wetland species, maintenance of at least 2 acres of wetland as habitat and the off-site re-seeding and preservation of species if re-seeding of the designated land proved ineffective after five years.

Case Name: Sherman Hollow Inc.

Permit Application #: 2C0422-5R-1-EB

Admitted Parties: Group of affected individuals and adjoining landowners.

Brief Case Description: The applicant proposed construction of a 10 hole golf course and lighting of existing ski trails as part of a resort. Citizens opposed the project based on most of the Act 250 criteria including water pollution and waste disposal. The Environmental Board upheld the District Commissions permit denial based on the likelihood that pesticides from the golf course would contaminate the groundwater.

Case Name: University of Vermont

Permit Application #: 4C0895-EB

Admitted Parties: Citizens for Responsible Planning.

Brief Case Description: The applicants proposed construction of a student apartment complex, including 81 units in 11 buildings, parking lots, municipal water and sewer services and two storm water management ponds. On appeal, the citizen group proved that the wastewater treatment plant did not have the capacity to handle the development's impact during heavy storms. The Environmental Board issued a permit with mitigating conditions regarding sewage disposal, noise, traffic congestion and safety.

Case Name: Waterbury Shopping Village

Permit Application #: 5W1068-EB

Admitted Parties: Waterbury Citizens for Responsible Growth

Brief Case Description: Applicant proposed construction of a shopping complex off route 100 in Waterbury. The Environmental Board denied the permit based on its non-conformance with the regional plan and visual impact on Route 100. The Board also stated that had a permit been issued, it would have been conditioned to address other issues raised by the citizens group, including traffic safety, congestion, water pollution and burden on local governments.

Case Name: Okemo Mountain Inc.

Permit Application #: 2S0351-8-EB

Admitted Parties: Three adjoining landowners

Brief Case Description: Based on issues of traffic safety, burdens on water supply and aesthetic concerns, citizens appealed a permit for a 7 lot subdivision and construction of seven homes, 1200 feet of road and a ski bridge.

The Environmental Board denied the permit, concluding that the projects tree removal, bridge and ramps would unduly impact the scenic and natural beauty of the area. The Board also stated that had a permit been issued, it would have been conditioned to address other issues raised by citizens.

Case Name: Town of Stowe

Permit Application #:100035-9

Admitted Parties: Regional Impact Pure Water Protective League (RIPPLE)

Brief Case Description: In this case a citizen's group demonstrated that a sewer expansion project proposed by the town of Stowe would have adverse impacts on the West Branch of the Little River. RIPPLE showed that such a project would encourage scattered development leading to increased non-point source pollution and the degradation of the Little River. The citizen's group also demonstrated that the planned project did not comply with the town and regional plans and that its direct and indirect costs outweighed the public benefits. The Environmental Board denied the permit on these and other criteria.

Case Name: Nile and Julie Dupstadt & John and Deborah Alden

Permit Application #: 4C1013-EB

Admitted Parties: Friends of Muddy Brook Basin

Brief Case Description: In this case the applicants proposed the subdivision of 61 acres and the construction of 55 single family dwellings. The citizen's group filed an appeal with the Environmental Board believing that such a development would have unfavorable impacts on the natural condition of the Muddy Brook and its tributaries. The Board denied the permit on the grounds that the development did not comply with the local plan, impacted primary agricultural soils and for aesthetic reasons.

Case Name: The Stratton Corporation

Application #: 2W0519-9R3-EB

Admitted Parties: Stratton Area Citizens Committee

Brief Case Description: In this case citizens were instrumental in exposing inconsistencies in compliance with permit specifications. The applicant clearly represented that no in-stream work would be needed in the construction of a bridge across the North Branch of Ball Mountain Brook. Ball Mountain Brook is a permanent stream and a headwaters area that supports fish life, including brook trout, and thus qualifies as necessary wildlife habitat. On site examination by ANR Fisheries Biologist and Water Quality Engineers revealed extensive damage to 75 feet of stream bed caused by the use of heavy equipment in the stream. The erection of concrete piers in the high and low flow channels of the stream bed caused permanent damage, to the degree that the stream would no longer flow in it's low flow channel. The impacts of this development on fish and wildlife due to erosion were unclear. The citizen's group pressed for the removal of the bridge and complete environmental remediation. The Environmental Board ruled the Stratton Corporation must reconstruct a portion of the tributary of the North Branch Brook and implement a revegetation and stabilization plan for the affected area.

Case Name: H.A. Manosh Inc.

Permit Application #: 5L1290-EB

Admitted Parties: The Alliance

Brief Case Description: In this case a number of local citizens and adjoining landowners organized to oppose the erection of a telecommunications tower. The Environmental Board heard testimony and revoked the permit because of the "submission, with gross negligence, of innacurate, erroneous and materially incomplete information concerning the location of the Project". The Board further ruled that because of these violations of Environmental Board provisions, First Petitioners were denied their right to

protect their interests through participation in the Act 250 application proceeding. The permit was also violated by the construction of an unauthorized building at the site.

APPENDIX II:

Current Structure of Public Participation in Act 250

Public Notice and Hearings

Citizens participating in the Act 250 process may include adjoining landowners and other affected community members. They also may include ad hoc groups, organized to address a specific project or certain projects in their town, and they may be standing organizations.

Several different steps are legally required to inform the public of specific projects and the manner in which citizens may become involved.¹⁴ On or before the date of filing an application, Act 250 applicants must send a notice and a copy of their application to the municipality in which the project is sighted, as well as to the municipal and regional planning commissions, and the State. A recent change to the law requires the applicant to send notice to adjoining property owners. In addition, applicants are responsible for posting notice in the town clerk's office. The District Commission is then responsible for publishing a notice in a local newspaper, as well as sending copies to the municipality, municipal and Regional Planning Commissions, the Environmental Board, and other persons at its discretion.

Public hearings are one of the most important forums for citizen involvement in the Act 250 review process. Hearings are held primarily for those projects that district commissions designate as "major." Approximately 80% of all applications are categorized as "minor," with no public hearing required (although one is occasionally granted based on the petition of a citizen with a legitimate interest at stake.)¹⁵ When hearings are held, their dates and

¹⁴ See 10 V.S.A. §6083.

¹⁵ See Environmental Board report entitled, "Act 250 History of Permit Application Activity," 1985-1998.

times must be published in a local newspaper at least 10 days in advance, and the first day of hearings must be held within 40 days of the application's submission.

Anyone may attend an Act 250 hearing. However, if a citizen is to actively participate in terms of providing evidence, questioning witnesses, making arguments, and bringing an appeal, one must be designated a formal "party" by the District Commission. If denied party status, citizens can appeal that decision to the Environmental Board. As briefly discussed in the following section, there are several legal categories of party status which have been defined by statute and the Environmental Board's rules. These categories act as parameters which define the possibility and extent to which citizens can become involved in various cases.

Party Status

Statutory parties¹⁶ are those people and organizations automatically granted full party status in a case. Statutory parties may address all (or none) of the Act 250 criteria. The applicants - the projects' developers -- always have full party status. Other statutory parties include the municipality in which the project is located, as well as the Municipal and Regional Planning Commissions, and affected State agencies.

Adjoining landowners¹⁷ whose property abuts the site of the proposed project, may request party status from the district commission in order to address certain specific effects that the project could have on their land. The District Commission determines party status during the first hearing of a case or a pre-hearing conference (although in a few cases late requests have been granted). The limited party status that

¹⁶ Environmental Board Rule 14(A)(1)(2).

¹⁷ Environmental Board Rule 14(A)(3).

is granted to adjoining landowners allows them to address only those specific Act 250 criteria that they have demonstrated to be applicable to their property. Landowners who cannot persuade the District Commission of a direct impact on their property can join other members of the public in applying for intervenor status.

Intervenors¹⁸ are any other members of the public who wish to become directly involved in the review of a case. Individuals and groups may petition a District Commission to be granted party status on the basis that certain specific interests of theirs will be adversely affected by the proposed project. In addition, party status may be granted if the person or group can assist the District Commission with their knowledge or experience. Party status is reviewed and preliminary determinations are made at the first hearing or pre-hearing conference. Final party status determinations are made prior to a final decision on the application.

¹⁸ Environmental Board Rule 14(B)(1)(4).

APPENDIX III

ACT 250 PERMITTED PARTIES 14(B) APPEALS

JULY 30,1990 – JULY 28,1998

Act 250 14(B) Appeals
July 30, 1990 – July 24, 1998

Case Name and Case Number	Date of Appeal	Appellant	Status of Appellant	Decision
S. Burlington Realty 4C0154-6-EB	7/30/90	Meadowbrook Condo Association	interests affected and materially assisting	Dismissed
Wake Robin 4C0814-EB	8/17/90	Murdoch/other neighbors	interests affected and materially assisting	Permit
Waterbury Shopping Village 5W1068-EB	11/2/90	Waterbury Citizens for Responsible Growth	not specified -assume materially assisting	Denied
Windsor Prison 900011-1-EB	4/3/91	Windsor Citizens for Responsible Growth	not specified -assume materially assisting	Dismissed
Okemo 2S0351-7A-EB	8/20/91	Mt. Holly Citizens for Responsible Growth	materially assisting	Permit
Killington/Pico 1R0704-EB	8/26/91	ATC (lead), GMC, Sierra, VNRC, Audobon, others	interests affected and materially assisting	Dismissed
Taft Corners Assoc. 4C0696-11-EB	12/13/91	Williston Citizens for Responsible Growth	materially assisting	Remand
Shelburne Partnership 4C0815-EB	2/14/92	David Miskell Town of Charlotte	materially assisting	Remand
UVM Agricultural College 4C0895-EB	2/20/92	Citizens for Responsible Planning Burlington Country Club	materially assisting and interests affected adjoiner withdrew	Permit
Robert and Barbara Barlow 8B0473-EB	5/14/92	Nancy Lubeck	materially assisting	Dismissed
L&S Associates 2W0434-8-EB	8/14/92	Dummerston Planning Commission	materially assisting	Permit
Stokes Communications Corp 3R0703-EB	9/22/92	Pierre LaFrance Langlais and others	materially assisting/ interests affected	Denied
Mt. Mansfield Co. 5L1125-4-EB	12/11/92	Joy Fagan	interests affected and materially assisting	Permit
AOT 6L0091	8/19/93	Village Business Community	interests affected and materially assisting	Withdrawn
St. Albans Group/Walmart 6F0471-EB	1/20/94	Vermont Natural Resources Council Franklin County Citizens	materially assisting interests affected and materially assisting	Denied

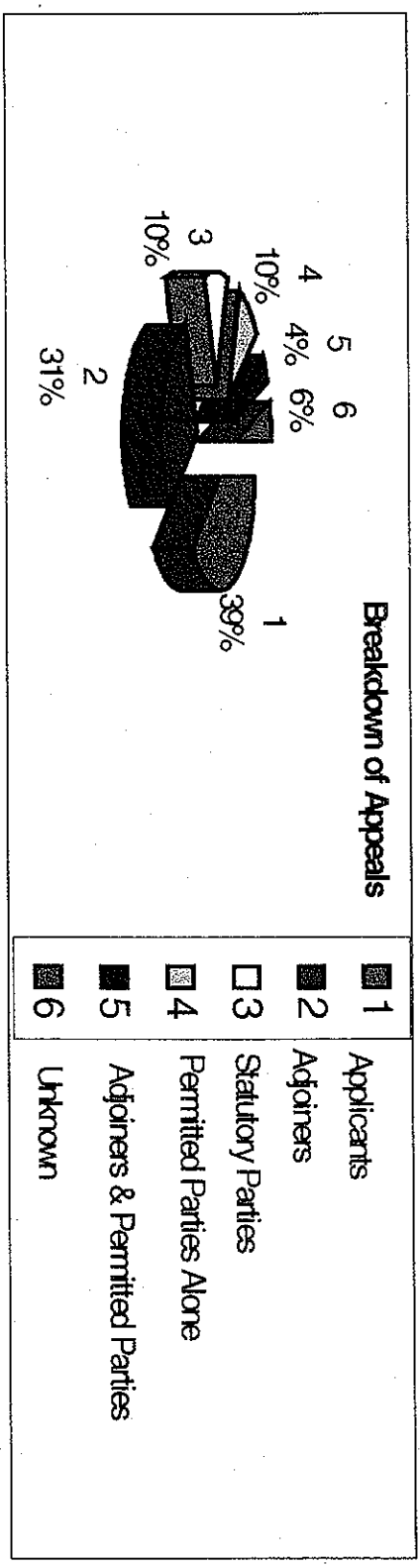
Act 250 14(B) Appeals
 July 30, 1990 – July 24, 1998

Case Name & Number	Date of Appeal	Appellant	Status of Appellant	Decision
Talon Hill 9A0192-2-EB	7/21/94	Miner/others	adjoiners / interests affected	Permit
Dept. State Buildings and VTC 3R0581-4-EB	10/11/94	Farrow / other neighbors of Langevin House	adjoiners / interests affected	Permit
Pico Peak Ski Resort 1R0265-12-EB	10/11/94	Conservation Law Foundation	materially assisting	Permit
Manchester Commons 8B0500-EB	3/27/95	Ferdinand Bongartz Nancy Sparkman	James and materially assisting	Denied
Gary Savoie d/b/a W/PL and Eleanor Bemis 2W0091-EB	4/5/95	Windmill Hill Pinnacle Sarah Ann Martin	Brelsfords, adjoiners / interests affected	Denied
Ronald Carpenter 8B0124-6-EB	5/10/95	Dorset Citizens for Responsible Growth	materially assisting	Permit
Town of Stowe 100035-9-EB	7/17/97	Regional Impact Pure Water Protective League (RIPPLE)	materially assisting	Denied
Stratton Corporation 2W0519-9R3-EB	9/23/97	Stratton Area Citizens Committee	Materially assisting	Denied
Rinaldo and Ann Vasquez, c/o George and Alice Araskiewicz 600016, 600016-1, 600016-2	11/7/97	Lawrence White	adjoiner/ materially assisting/ interests affected	Revoked
Killington Ltd., Farm and Wilderness Foundation and VT Dept of Forests, Parks and Rec. 1R0813-5-EB	12/24/97	Nicolas Lenge	assume materially assisting	Permit
HA Manosh Inc., 5L1290-EB	6/11/98	The Alliance	adjoiners / interests affected / materially assisting	Revoked

Act 250 14(B) Appeals
July 30, 1990 – July 24, 1998

Case Name and Number	Date of Appeal	Appellant	Status of Appellant	Decision
Hector LeClair d/b/a Forestdale Heights 4C0329-17-EB	7/6/98	Gavin Wright and Timothy Green	adjoiners / materially assisting	Denied
Nile and Judy Dupstadt and John and Deborah Alden 4C1013	7/24/98	Friends of Muddy Brook Basin	materially assisting/ interests affected	Denied
OMYYA Inc. And Foster Brothers Farms 9AO1O7-2-EB	10/6/98	Michael and Melanie Shane, Norman and Ginette Milot, Louis and Sarah Pattis	materially assisting/ interests affected	Permit

Act 250 Appeals July 30, 1990 – July 24, 1998



Breakdown of appeals 211 total*

Applicants	83
Adjoiners	65
Statutory Parties	22
Permitted Parties Alone	20
Adjoiners and Permitted Parties	9
Unknown	12
Total	211

* Party Status appeals, Interlocutory appeals and declaratory rulings were not counted.

100%
Prepared by VNRC 7/99

Source: Vermont
Environmental
Board

APPENDIX IV:

ENVIRONMENTAL BOARD ANNUAL REPORT
FEBRUARY 1999

VERMONT ENVIRONMENTAL BOARD

DATE: February 15, 1999

TO: Governor Howard Dean, MD
Kathy Hoyt, Secretary, Agency of Administration

FROM: Marcy Harding, Chair
Michael Zahner, Executive Director

RE: Environmental Board Annual Report

The following report has been prepared based upon a statistical analysis of Board and District Commission activity during 1998 pursuant to the reporting requirements in 10 V.S.A., Section 6083(d). Where appropriate, a historical perspective has been provided to complement the current information. Fiscal year information has been tabulated for the revenue and statistical analysis.

1) Number of Act 250 Applications and Dollar Volume

In FY 1998, the number of Act 250 permit applications increased nearly 5% from the previous year to 676. As previously reported, the FY 1997 the dollar volume, based on estimated construction cost, was a record \$807,344,473 and represented a 120% increase from FY 1996. This increase was due to a number of factors including the Husky Corporation, large retail development in Chittenden County and substantial long range investment by the ski industry. In FY 1998, the dollar volume was only \$268,780,883 but increased to \$555,200,530 in CY 1998. It remains to be seen how long this economic expansion will continue. The variation between fiscal and calendar years 1998 is due to the timing of large applications such as the Killington Master Plan which was received in the second half of calendar year 1998. It is interesting to note that the 676 permit applications involved 71,538 acres of land, as well as, the creation of 249 single family lots, 311 dwelling units and 1,200,700 square feet of commercial space. There were only 4 denials at the commission level, a rate of less than 1 per cent of all Act 250 applications received.

2) Permit Application Fees

Permit application fees comprise approximately 50% of the Environmental Board's annual budget. Corresponding to the dramatic increase in the dollar volume of permit applications over the past two or three years, fee revenues have also increased since fees are directly related to the cost of estimated construction activity. During the recession years of the early 1990's, the Board had incurred a cumulative budget deficit of \$458,251 going into FY 1997. The Board received \$1,459,293 in permit application fees in FY 1997. This figure not only met our target figure of \$866,792, it entirely

erased the accumulated budget deficit in one year and left the Board with an unexpected surplus of \$253,232. The special fund target figure for FY 1998 was \$891,001 which was also exceeded. In FY 1998, the Board received a total of \$1,065,382 in permit application fees, thereby increasing the surplus to \$579,253. This surplus will be carried forward to offset future lean years in accordance with legislative intent.

3) Environmental Board Appeals

Reflecting increased permit activity in the Environmental Districts, the number of active Board cases doubled in CY 1997 consisting of 30 appeals, 14 requests for jurisdictional declaratory rulings and 2 petitions for permit revocation. In CY 1998, the Board received a total of 21 appeals, 24 requests for jurisdictional opinions, and 3 petitions for revocation. The Board issued 50 decisions in 1998, 44 of which became final. Of the 44 cases that were finalized in 1998, 43% of the appeals were processed within 6 months and 77% were processed within 9 months. This is still being accomplished while allocating the efforts of one/half attorney to Act 250 permit enforcement and one/half attorney to work directly with the district environmental commissions and coordinators providing much needed legal advice. We believe that providing timely legal advice at the district level may actually serve to reduce the number of appeals that we might otherwise expect.

4) District Commission Performance

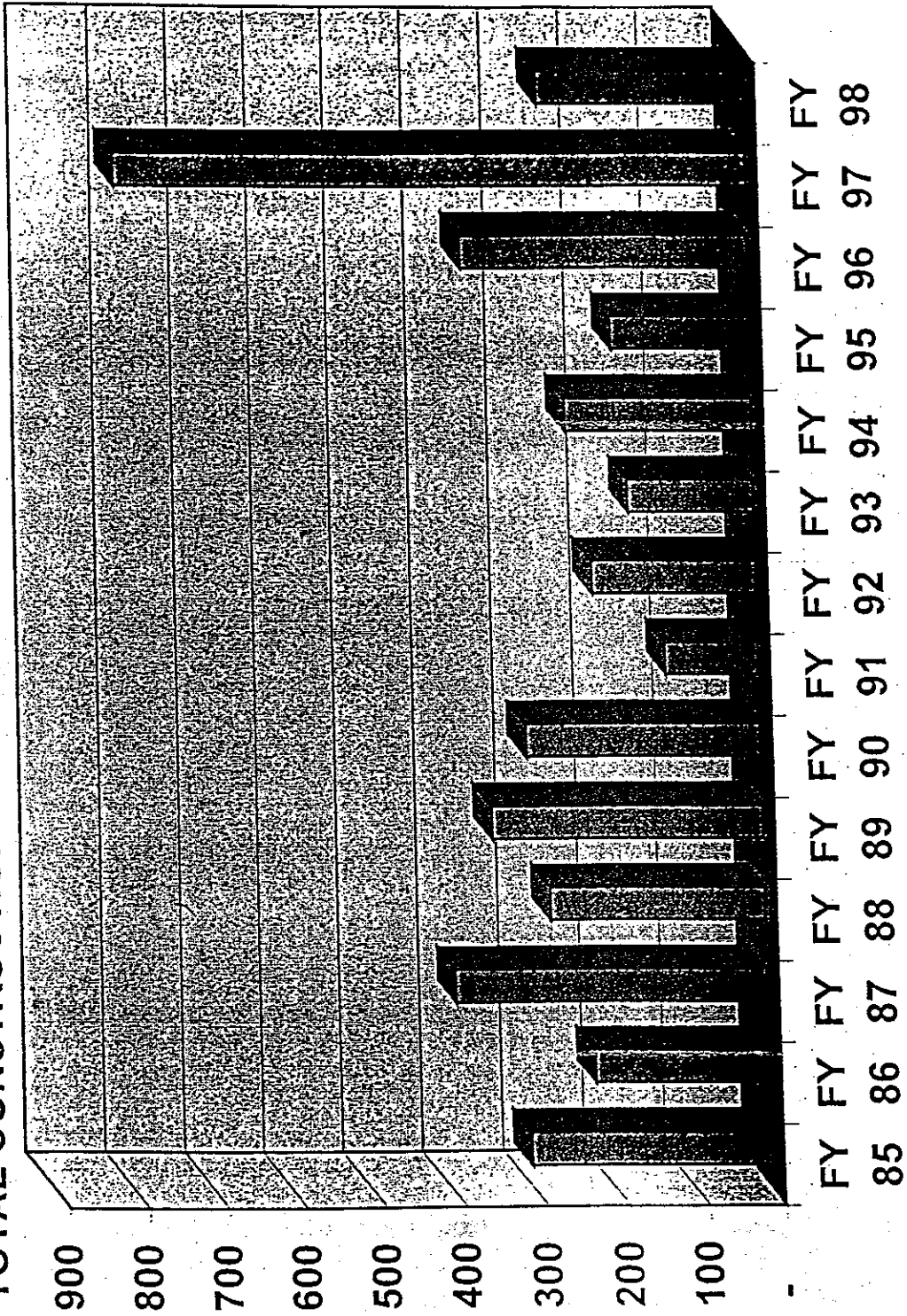
Current information indicates that 80% of all Act 250 applications are being processed as "minors". The average "in-house" permit processing time at the commission level for all permit applications is 44.4 days. Our past data indicates that close to 82% of all permit decisions are processed within 120 days. The Act 250 and Board appeal tracking systems have been completely revamped through the services of an outside consultant which will help to provide even more detailed statistical analysis in the future. The Administration has proposed that two Environmental Board temporary positions be converted to permanent classified status in FY 2000. These positions would be entirely funded with revenues from the Board's special fund. Since they are conversions of existing positions, the additional expense will not be significant.

In summary, the Board and the district environmental commissions are meeting or in some cases exceeding the performance standards that have been established for the processing of permit applications and appeals. The Board has continued to pursue improvements in the permit process particularly in the areas of a reorganized management scheme, annotating all Board decisions and providing improved direct legal assistance to the district commissions as noted above.

If you need any additional information, we would be glad to provide further clarification.

cc: David Rocchio, Deputy Counsel
Kevin O'Connell, Budget Analyst

TOTAL CONSTRUCTION COST OF ACT 250 APPLICATIONS



FY data in millions of dollars