



NATURAL RESOURCES BOARD

Dewey Building

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My name is Ron Shems. I am Chair of the Natural Resources Board. We administer Act 250.

Thank you for allowing me to comment on the draft enterprise zone provision. I will focus on subsection (b)(4) that releases industrial parks with valid Act 250 permits from compliance with Act 250.

1. Act 250 adds value to industrial parks. Industrial parks typically have master-plan or “umbrella” permits that guide the big picture, and allow subsequent development of particular lots in the park to obtain permits more quickly. These amendments – so-called “minors” issued without a hearing – are typically issued in 30 days. Knowing that most of the permitting issues are already sorted out and that permitting will be prompt adds value to a lot in an industrial park.
2. Even more important, an Act 250 permit provides certainty on these issues. Act 250 permits run with the land. Finality in permitting is something that people count on and plan investments on, whether that investment is a home, small business, office, or industry in an industrial park. Certainty adds value. Removing that certainty would have unintended consequences.
3. Act 250 addresses state and regional issues that the municipal process does not address. Industrial parks are often located outside of a downtown or village center and on a state highway. Act 250 addresses impacts on the state highway system, any impacts on adjacent towns, and any regional impact issues. State agencies participate in the Act 250 process, providing guidance on natural resource and transportation issues. Regional Planning Commissions can also participate when regional issues are at stake. Municipal permitting either cannot address these state or regional issues, or do not address these issues as well as Act 250 does.
4. Senator Mullin asked me about the Howe Center in Rutland. The 1994 Act 250 proceeding was contested by residents of Porter Place, a largely residential street that would experience significant increases in commercial traffic. The issue was ultimately resolved in favor of the Howe Center. That proceeding took a little more than 3 months. Robert Bloomer chaired the District Commission at that time. Several permit amendments have been issued since then, and the last application was processed in 1999. There are currently no pre-application discussions. In short, we do not see a problem here.



5. At Senator Baruth's suggestion, I also spoke with Milton Town Manager Brian Palaia. He told me that Milton is not experiencing any specific problem with Act 250. Rather, he said the issue is whether the Town of Milton should handle permitting within the Town.

6. I am not aware of situations where Act 250 is impeding use of an industrial park. I polled my staff this week and the uniform response I received was that most permits sail through as "minors" – permits issued without hearing usually within 30 days.

7. Act 250 already does provide an incentive for industrial parks. Generally, applicants have to mitigate any loss of primary agricultural soils at a ratio of 2:1- 3:1, and in most cases, the mitigation has to preserve soils on the project site. Industrial parks are allowed to pay a mitigation fee to preserve off-site soils at a 1:1 ratio.

8. I have serious concerns with subsection (b)(4) of the draft for other reasons. It is unclear how it will work. This lack of clarity can lead to unnecessary litigation. I fear that lawyers may be sorting through it for a long while before any benefit is derived.

a. There is no workable definition of industrial park. Many so-called "industrial parks" are mixed use. They have office and retail uses, as well as industrial, and some industrial parks are, in fact, primarily office and retail. We do not want to create situations where these uses conflict with one another, or with neighbors to the park.

b. It is not clear whether existing permits would remain in effect and only prospective activities exempted from Act 250, or whether industrial parks would be fully exempted from any compliance at all.

c. Either way, there would be considerable confusion and uncertainty. Could existing permit conditions be enforced if a subsequent, exempted activity violates a permit condition? What happens to permit holders who made their investment knowing that they have certain traffic allocations or other rights established by the permit? Would existing lot owners in a park remain subject to Act 250, while new neighbors would not be? The problems would be innumerable.

d. In short, careful study is needed before creating a hole in a long-standing regulatory structure that people rely on.

9. Finally, I have concerns that this proposal runs contrary to, and indeed may undermine the efforts of the Department of Community Housing Development under the Act 59 process. That process has carefully studied the balance between state, regional and local control and should be given heed.

Thank you. I am available to answer any questions.

