MEMORANDUM

TO: Senate Natural Resources and Energy Committee
FROM: Ed Stanak
DATE: April 7, 2014
RE: H.823 Proposed Amendments to Act 250

This memorandum provides a summary of concerns with the provisions of section 3 of H.823 which would establish a new role for the Natural Resources Board (NRB) in the review of developments and subdivisions in "downtown development districts".

- The NRB has no experience in conducting administrative reviews. This is ironic in that , while the NRB oversees the nine district commissions, under the House bill the NRB and its staff would have to implement a new process for the review of applications .

-The new role for the NRB is contrary to the original framework of Act 250 which was to have regional district commissions conduct the reviews of development proposals rather than a centralized bureaucratic entity based in Montpelier . (For a more detailed discussion of this legislative underpinning of Act 250 practice see : "Managing Rural Growth" a 1983 publication by the Environmental Board during the administration of Governor Richard A. Snelling and "Toward Community Sustainability : Vermont's Act 250 : Volume I " by Richard O. Brooks et al (Serena Press 1996)]

- The district commissions and their staff have a wealth of familiarity with the municipalities within each district. This familiarity has ensured the efficient and effective processing of applications. In fact, the modified review under select Act 250 criteria, as proposed in the House bill, is similar to the "master plan" review already performed by the commissions under Act 250 Rule 21.

-The House bill diminishes the opportunity for "user friendly" and meaningful participation by the public as parties to the new NRB reviews. The bill sets up a process whereby the NRB is expected to process these applications – at least initially - without hearings. Efforts to administer these provisions at a distance from the location of the proposed projects and the involved public will prove awkward and inefficient. The emphasis of the House bill on "contested case" strictures under the Administrative Procedures Act will result in overly officious proceedings.

- The "written determinations" to be obtained from state agencies according to the House bill initiates an erosion of an essential oversight function of Act 250 with respect to other state permitting entities . This integral aspect of Act 250 has been affirmed by the Supreme Court in Hawk Mountain 149 Vt 179(1988)). While

this oversight role has rarely been exercised, in those instances when it has, the public interest has been well served.

-The Act 250 program is funded primarily by fees from applicants for land use permits as is set out in 10 VSA 6083a . The House bill is silent on application fees to cover the costs of the new NRB administrative process.

-The House bill is silent on effects on existing land use permits within the "downtown development districts ". Will permittees remain bound by those terms and conditions ? Will any parties to such existing permits be able to rely on mitigating measures perhaps attached to protect their "particularized interests" ?

In conclusion, the purpose of section 3 of the House bill seems to be an assurance that some level of scrutiny under Act 250 of developments and subdivisions in "downtown development districts" will go forward albeit in an expedited manner. The District Commissions are fully capable of conducting such reviews under a legislatively mandated modified use of Act 250 Rule 51 . The new administrative role for the NRB is unnecessary and may well prove problematic for applicants and prospective parties alike.