VNRC Vermont Natural Resources Council

COMMON SENSE SOLUTIONS
FOR A CHANGING VERMONT

H.823 – Incentives for Well-Planned Development
Summary of testimony from Kate McCarthy, April 4, 2014

VNRC supports H.823. In particular, the changes to Act 250's Criterion 9L will help reduce resource-intensive sprawl development by replacing 9L's current, meaningless "rural growth area" standard with one addressing "settlement patterns." This is good environmental legislation.

Overview

- VNRC was actively involved in the Act 59 process, participating in working groups on growth centers, natural resources, agricultural enterprises, and industrial parks.
- We've also been involved over the years in the development and improvement of the various designation programs – downtowns, village centers, growth centers, neighborhoods.
- We want to see these programs work more effectively to support our state land use goals. We think that H.823 presents a balanced incentives package to accomplish that.

Expedited permitting in Designated Downtowns and associated Neighborhood Development Areas

This will make downtown development easier, less expensive, and more predictable.

- Downtowns that have received state designation have certain characteristics: They tend to be already developed and impacted areas, with fewer natural resources. They tend to be small, narrowly defined land areas, with strong planning provisions in place.
- Still, some amount of review remains appropriate. This process allows review of impacts that Act 250 covers well, such as transportation and historic preservation. State agency review still occurs, but is more streamlined.
- Importantly, there is also a public process: the Jurisdictional Opinion (JO) is appealable. Regarding whether the JO issued by the District Commission or the Natural Resources Board, or for appeals to be on the record vs. de novo, we agree with the proposal to allow the District Commission and then de novo appeals. The important thing for us is that there is an appeal process available.
- ***VNRC is a long time supporter and proponent of Act 250.*** But given the characteristics of these areas, along with the proposed changes for managing development *outside* of them, this expedited Act 250 permit process is acceptable to us.

Proposed changes to Criterion 5 of Act 250: transportation

The proposed changes acknowledge the role that multimodal transportation has in our transportation system and ensure that projects are contributing to this overall network.

- The proposed change helps create a complete, connected network of transportation options.

9 Bailey Avenue • Montpelier, Vermont 05602
PHONE 802/223 2328 • FAX 802/223 0287 • WEB www.vnrc.org • EMAIL info@vnrc.org

- There has been some concern that this change could lead to overreach in permit conditions – where, for example, a developer needs to pay for a sidewalk offsite. In my opinion, this is not an issue: Conditions must be reasonably connected to the impacts of the project for the permit condition to be valid ("nexus and rough proportionality"), and Act 250 already limits permit conditions to the "allowable proper exercise of the police power" (10 V.S.A. §6086(c)).
- There was also concern that because the proposed language in 5(B) was close to the language contested in the Dolan v. City of Tigard case, lawmakers should be wary that such language might constitute a taking of property. However, I believe that any similarity of this language is irrelevant since conditions and requirements are now evaluated differently, and must meet the "rough proportionality" test established by the outcome of the Dolan case.

Proposed changes to Criterion 9L of Act 250: existing settlement

Currently, Act 250 does not have a way to deal with sprawl – poorly planned development that uses land inefficiently outside of compact centers. As a result, we're getting strip development that undermines our downtowns and villages centers – even as we invest in them. This proposed criterion change gives Act 250 the tools to ensure that we get better, less land consumptive development patterns outside of our existing centers.

- The proposed changes enable Act 250 to minimize sprawl outside of existing settlements, by including requirements that shape development outside of our existing, compact settlements.
- The changes promote "infill" development where strip development already exists, so that we are making it more functional, not abandoning it
- It *does not prevent* development outside of existing settlements; the bill says that if development is near an existing strip, it needs to be built in a way that minimizes the characteristics of strip development. Outside an existing settlement, development can happen if it meets the smart growth and other criteria.
- The bill is not about saying "no," it's about saying how things should be done.
- This provides MORE predictability, not less, while helping advance our smart growth goals.
- *Note:* The Committee heard testimony that this bill would preclude expansion of industrial parks because of the use of the word "commercial." My original testimony asserted that "commercial" would not include industrial parks. Since then, Aaron Adler clarified that in Act 250 "commercial" does include "industrial parks." *Despite this*, if an industrial park already constitutes strip development (and it may not), it is not unreasonable to ask expansion of these areas to contribute to the goal of minimizing further strip development – something that should be attainable given that many industrial parks already utilize a campus-like design.

Thank you for the opportunity to share these comments and please do not hesitate to contact me with further questions.

Kate McCarthy, AICP
Sustainable Communities Program Director, VNRC
(802) 223-2328, x. 114 / kmccarthy@vnrc.org

VNRC was founded in 1963 and is Vermont's oldest environmental organization. We work to protect, restore and promote Vermont's surface and ground waters, viable communities, forest and wildlife resources, working landscape, and energy independence.