

## RESPONSES TO QUESTIONS ASKED BY THE COMMITTEES

- **With regard to solar development and siting, how well is the current PSB approval process working in terms of achieving the state's energy goals?**

Vermont has no renewable energy goals in statute. Vermont has a Comprehensive Energy Plan that is not in statute that has a goal of 90% renewables by 2050. The current PSB process is not working to achieve the CEP's goals. The current PSB approval process is working very well in terms of achieving Massachusetts' and Connecticut's energy goals as required by their Renewable Portfolio Standards.

- **Does it provide adequate consideration of the planning goals and preferences of individuals, municipalities, and regions?**

No

- **How does it integrate the needs of the state as a whole with the needs of individual communities or regions?**

It does not integrate the needs of the state with the needs of communities or regions. It is imbalanced, with the needs of the state overwhelming the needs of individuals communities and regions.

- **How does it serve project developers?**

Very well. If a developer submits the application, the Public Service Board will approve it.

- **How could the process be improved?**

STOP. Pause all renewable energy development until a process is put in place that respects and protects our people and communities and is fair and balanced.

LOOK. Look at what is happening and take the time to evaluate what makes good siting practices and good public process.

LISTEN. Listen to the people who have experience with the process and with how sites are chosen.

## THE PSB AND ACT 250 – TWO DIFFERENT SETS OF STANDARDS FOR LAND USE

The PSB has no “front door.” There is nobody to talk to who can answer questions.

The PSB requires a written Motion to Intervene, along with a Notice of Appearance and Certificate of Service in order to participate.

The PSB requires regional and municipal planning commissions and select boards to file a Motion to Intervene, Notice of Appearance and Certificate of Service in order to participate.

The PSB has a website that posts only the petition filed by the applicant, but rarely posts filings by other parties.

The PSB has no enforcement capabilities.

The PSB gives due consideration to regional and municipal plans and gives no consideration to zoning by-laws.

The PSB has no statutory requirement to consider impacts to prime agricultural soils.

The PSB does not consider the interests of neighboring landowners in their evaluation of aesthetic impacts.

The PSB issues Certificates of Public Good that often contain conditions subsequent (i.e. conditions that have to be complied with after the CPG is issued).

The PSB process involves numerous rounds of discovery and prefiled testimony and is so legalistic that it is nearly impossible for the public to participate without an attorney.

The PSB can use a finding of “public good” to trump all other issues.

The PSB routinely accepts MOUs between ANR/DPS and developers which are negotiated behind closed doors and without public input.

The PSB decision-making process results in all parties other than the developer saying “it’s as though I wasn’t even there” when the CPGs are issued.

Act 250 has a district coordinator in each region who talks to the public and answers questions.

Act 250 enables citizens to come to a prehearing conference and seek party status by telling the district commission what their interests are.

Act 250 gives automatic party status to regional and municipal planning commissions and select boards.

Act 250 has a website with a database that posts all filings in a case.

Act 250 has a dedicated enforcement officer.

Act 250 must find compliance with regional and municipal plans and zoning by-laws before issuing a permit.

Act 250 has a requirement that impacts to prime agricultural soils must be mitigated by conserving prime agricultural soils elsewhere by a predetermined ratio.

Act 250 takes the interests of neighboring landowners into consideration when evaluating aesthetic impacts.

Act 250 must find compliance with all the 10 criteria BEFORE issuing a permit so that all evidence is filed and reviewed as part of the application.

Act 250 allows participation by members of the public, especially at the district commission, without legal counsel.

Act 250 does not have a “public good” standard that can override negative environmental impacts.

Act 250 does not use MOUs and requires compliance with existing regulations.

Act 250’s decision-making process sometimes gives the public the sense that they were listened to and changes were made to the project as a result of their input.

## **WIND**

Setbacks. The PSB has set what may be the worst standard in the country for setbacks from neighboring property lines. The national norm is 1.1x the total height (to the tip of the blade) except where ice throw is an issue, in which case it is 1.5x. For a 450 foot tall wind turbine, that would mean a setback of 675 feet to protect the neighboring property from the impacts of catastrophic failure such as collapse. The PSB has set a standard of less than 200 feet from the neighboring property line for all four approved wind projects. The result of the PSB's standard has, in two cases, led to the developer going to Superior Court for restraining orders to keep neighboring landowners off their own properties, taking those properties for blast safety zones, with no compensation (a violation of the Vermont Constitution).

Noise. The PSB has set a noise standard requested by developers which is at a level where harm is known to occur, despite testimony by two noise experts and a doctor in the Lowell wind case advising them that the standard they used for Sheffield and Georgia Mountain were too high. The PSB ignored that testimony and set the same standard, 45 dBA averaged over an hour, and 1/3 octave bands. Several people have sold at a loss or abandoned their homes because of health issues that developed around the Lowell wind project, and dozens of people are complaining about the noise.

A recent [study from Australia](#) confirms that dBA and 1/3 octave bands do not have any relevance in terms of what people are experiencing. However, there is growing agreement amongst credible acoustics experts that in order to protect public health and provide a healthy sleeping environment, 33 dBA as a maximum is an acceptable standard. Neighbors around all three big wind projects in Vermont continue to complain about noise and health effects. The PSB has failed to take any action despite formal complaints filed more than a year ago in one case and a finding of a violation that occurred two years ago in another case. Ongoing harm is occurring and the PSB has shown itself to be unable to address the complaints from the public.

Iberdrola is moving forward with Deerfield Wind in Searsburg/Readsboro and its Windham/Grafton project, and both projects put more Vermonters at risk for sleep deprivation, health symptoms, and loss of property values.

### Experience with Intervention before the PSB on Wind Cases

In each of the wind projects operating in Vermont that were approved by the PSB, citizens and towns attempted to participate.

1. The town of Sutton and the group Ridge Protectors participated and spent more than \$700,000 and when the CPG was issued, the PSB ignored all their input and the PSB's findings were entirely based on the applicant's submissions.
2. The towns of Albany and Craftsbury and the Lowell Mountains Group participated and spent nearly \$200,000 and when the CPG was issued, the PSB ignored all their input and the PSB's findings were entirely based on the applicant's submissions.

3. Neighbors of Georgia Mountain submitted extensive testimony on setbacks, including every ordinance in the country which showed that the vast majority had a setback of 1.1x the total height. The neighbors were also able to show that there were trails on the adjoining property that were frequently used for recreation. The developer needed a setback of 188 feet to make the project viable, and the PSB gave the developer what it needed to move forward.

When blasting became an issue for the Georgia Mountain Wind dairy farm neighbor, whose cows were pastured 200 feet from where blasting was taking place, the PSB took more than a month to respond to what was an urgent complaint.

## **SOLAR**

Municipal and Regional Plans. The PSB has not provided any guidance for towns or regions regarding specific language that would cause a project to be denied.

Setbacks. The PSB has not established any standard for setbacks from neighboring properties or roadways, except to approve what developers request.

Screening. The PSB has not required screening as a routine practice so some Vermont neighbors of solar projects look directly out onto a field of solar panels.



A Vermonters' view of the Barton Solar project from the front window

# Act 250's Criterion 8 Aesthetics Test

## QUECHEE ANALYSIS

- 1) **ADVERSE EFFECT.** Applicant admits the project “will likely result in an **adverse** impact on the aesthetics and scenic beauty of the area.”
  
- 2) **UNDUE ADVERSE EFFECT if any one of the following is yes:**
  - 1 Does the Project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?
  - 2 Does the Project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?

Criterion 8 was intended to ensure that as development occurs, **reasonable consideration will be given to the visual impacts on neighboring landowners**, the local community, and on the special scenic resources of Vermont.
  - 3 Has the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings?

<http://www.nrb.state.vt.us/lup/publications/manual/8aestheticsfinal.pdf>

# Act 250 Criterion 8 - AESTHETICS

## **In 1986, 1992, 2001, 2005 The Environmental Board found**

Criterion #8 was intended to ensure that as development does occur, **reasonable consideration will be given to the visual impacts on neighboring landowners**, the local community, and on the special scenic resources of Vermont. In this case we conclude that the project was designed with virtually no consideration for the visual impact on the neighbors. -- #2S0351-8-EB, 1986, #4C0841-EB, 1992, #4C1068-EB, 2001, #3W0839 -2-EB, 2005

## **In 2001, the PSB found**

because I find the Project **will be in the direct view of the Rimmoneaus from their home** and will significantly diminish their enjoyment of the scenic view from their home, I conclude that **the Project will be offensive and shocking to them and to the average person in a similar situation.**

-- *PSB In re Petition of Halnon*, Docket #NM-25, Order entered 3/15/2001, pp. 17-18

## **In 2002, the Vermont Supreme Court upheld the PSB's 2001 decision**

Based on this conclusion and the conclusion that the turbine **would offend the sensibilities of the average person faced with a situation similar to the Rimonneaus'**, the Board accepted the hearing officer's conclusion that the project failed the two-part Quechee test and would, therefore, have an undue adverse effect upon the aesthetic and scenic and natural beauty of the area. -- *In re Petition of Tom Halnon*, 174 Vt. 514, 811 A.2d 161 (Vt. 2002)

# How the PSB is Dismissing Neighbors 1

**PSB is ignoring its own and Environmental Board and Vermont Supreme Court precedent**

“As interested landowners, the [neighbors] are most likely to be impacted by aesthetic impacts of the Project, and therefore have an individualized perspective which is different from the viewpoint of the average person.”

-- *See e.g., Petition of Green Mountain Power corporation, Docket 5823, Order of 5/16/96, finding 128 at p 26.*

# How the PSB is Dismissing Neighbors 2

128. With adequate information about the benefits of sustainable wind-generated electrical energy over other energy alternatives, the average person should not find this proposed project shocking or offensive. **While some individuals who live close to the proposed project may find the proposed project offensive, they are not representative of the "average person" because of their personal interest in the area and their opposition to change.** These individuals generally do not oppose the concept of wind power, only the proposed location of this project. Many, most notably the Selectboards of the involved communities and representatives of the Appalachian Trail Conference and Green Mountain Club have not come forward in opposition to the proposed project. There is also evidence that the public as a whole is accepting of windpower installations given the positive value one associates with such developments. Finally, there has not been the substantial public outcry that has been evident regarding other sites or other projects. Boyle pf. at 5; GMP exh. TJB-1 at 17-18; Raphael pf. at 12-13.

*--Petition of Green Mountain Power corporation*

Docket 5823, Order of 5/16/96, finding 128 at p 26.