**Testimony of Dean L. Pierce, AICP**
**(Developed for House Natural Resources and Energy Committee; April 7, 2015)**

Introduction

Good morning, Committee leaders and members; thank you for this opportunity to testify. My name is Dean Pierce. I live in Middlebury and have been a professional land use planner in Vermont since 1987.

1987… A year that might suggest I came of age as a planner when the Blue Ribbon Commission on Vermont's Future was performing its important work. And, that would be true.

For those of you who might not recall, the Blue Ribbon Commission sought ways for the state to manage growth and insure that Vermont's Values—embodied by its community life, agricultural heritage, environmental quality, and tradition of opportunity—were not sacrificed in the name of development "progress."

Much has changed in the many intervening years. And yet, in other ways, little has changed. Vermonters still care deeply about their communities, the environment, and the economy.

We worry less about acid rain and more about global warming. And when it comes to energy, we strive purposefully to reduce our dependence on burning of fossil fuels. As a father of two, I know that's a not just a good thing, it's a critical thing.

We have reason for hope: According to data provided by the Vermont Sustainable Jobs Fund, there are nearly 2,800 discrete solar installations with capacity to generate 64 megawatts of electricity scattered across the entire state.

The state's goal of increasing the availability of renewable energy and decreasing reliance on fossil fuels clearly is being realized.

However, we can't kid ourselves and think making progress toward this goal has been without social and other costs. Ironically, some of the costs stem from problems communities have been to attempting to address through zoning and in other ways since 1970s.

I'll cut to the chase: When it comes to the siting of renewable energy facilities--and by that I mean wind turbines and solar arrays regulated by the Public Service Board--the permitting system is overwhelmingly one-sided.

Municipalities have no jurisdiction of their own over such projects. And, as participants in the state supervised process, municipalities have an extremely difficult time getting the PSB's attention, let alone having any sort of impact.

Examples

I urge you to consider amending state law so that the process is more balanced. I offer three examples underpinning why I think so.

I

The first example concerns a net metered wind turbine with 14' rotors mounted on a 100 foot tower located approximately 350 feet from a downwind neighbor. In that case a local Planning Commission requested that the PSB conduct a site visit and convene a hearing.

The Town's position was that the application raised significant issues with respect to one or more of the substantive criteria applicable to net metering systems. The Town argued that a public hearing was necessary to determine whether the proposed wind turbine is entitled to receive a certificate of public good.

The Board granted a pre-hearing conference, at which the municipality reiterated its concerns. A hearing officer later issued an order granting the Planning Commission's request for a hearing. In time, however, the Town withdrew its request for a hearing. A CGP was issued to the applicant, and later amended.

This particular wind turbine turned out to be a prototype model that generated significant noise. As a result of noise, the Board opened an investigation. This investigation resulted in the petitioners replacing the rotor of the wind turbine. The order noted that although blade related noise persisted, rotor noise was reduced.

The tower was permitted to remain.

II

The second example concerns an installation of three pole-mounted “trackers” measuring approximately 22 feet by 16 feet. The trackers were proposed on a large rural residential property in a location out of the direct view of the property owner but in the foreground of a neighbor’s view of Camel’s Hump.

In that case the local Planning Commission visited the site and determined that a superior location—one that minimizes impacts on the viewshed of the area while having reasonable access to power lines—existed in the area immediately east of the applicant’s home. The Commission requested that the PSB conduct a site visit and convene a hearing.

A Hearing Officer appointed by the Board conducted a site visit and pre-hearing conference. Despite broad local concerns, the Board approved the project, determining that the Planning Commission and neighbors did not show that the project raises a significant issue with respect to the applicable criteria.

III

The third example concerns a proposal to erect a 150kW net metered photovoltaic installation in an area approximately one acre in size. The host Town moved to intervene and in requesting a technical hearing, a Town Selectboard argued that the area proposed for the project was highly visible, pastoral, and adjoined an historic barn. (Reminiscent of the second example, the Town also argued that the site was directly in line with views of Camel’s Hump.)

The Town argued at length that the project failed the Quechee test. As part of its argument, the Town noted that the project would be located within a long-mapped Significant Views area explicitly recognized in the Comprehensive Plan.

Somewhat remarkably, the PSB granted the Town’s request to intervene “on a permissive basis” because it had demonstrated “a substantial interest which may be affected by the outcome of the proceeding."

However, citing the Docket creating the net- metering program (which promotes private investment in renewable energy resources), the PSB denied the Town’s request for a hearing and granted approval.

In my first example, a municipality sought a public hearing owing to concerns about the impacts of a single wind turbine. Once installed, the turbine produced significant noise impacts, and the PSB investigated. Might not the system have worked more effectively if the Town's request for a technical hearing been granted automatically?

In my second example, a municipality sought a public hearing owing to concerns about the visual impacts three PV structures would have on a neighbor, when a suitable site might have existed elsewhere on the same lot. Is the system working when this happens—or when an applicant has no incentive to consider what a community considers meaningful impacts?

In my third example, a municipality sought a public hearing owing to concerns about the visual impacts of a project within a long mapped "significant view." The PSB ruled that the Town could be a party to the proceedings. However, the Board would not hold a hearing to consider the matter. Is the system working when the PSB order essentially asserts "Your argument isn't convincing; perhaps you'll have better luck before the Supreme Court?"

Changing for the Better

I believe rewriting statute to provide more municipal involvement in the renewable facility siting process would be good for the following reasons:

- It would help make the facility review process more effective (by identifying and illuminating potential problems).
- It has the potential to make the process more efficient (by reducing the chances the PSB will need to revisit its approvals).
- It would help avoid perverse outcomes such as the one that was created in my third example.
- Leveling the playing field and increasing participation in hearings should increase the chances that interests of the petitioner are balanced with the interest of the community.
- Addressing problems shortcomings in the law doesn't mean fewer projects will be built. But the projects that are built should be better projects.

To be even more specific about how existing law should be changed, I believe House bill 377 offers a good start. As recognized in that bill, municipalities should have the authority to

- request technical details regarding a community energy proposal;
- require the PSB to conduct a public hearing in their community-- whether or not such technical information is provided;
- appear and participate on any application seeking a certificate of public good; **and**
- must have substantial deference shown to any specific, mandatory provisions contained in their Comprehensive Plan.

This last point is in some ways the most challenging one to execute. The PSB has recently adopted what can be called the "significant and meaningful weight" standard, which unfortunately means little to anyone except perhaps the PSB and its attorneys.

H377 proposes that substantial deference mean as follows:

1) The relevant language of a duly adopted Comprehensive Plan is considered valid;

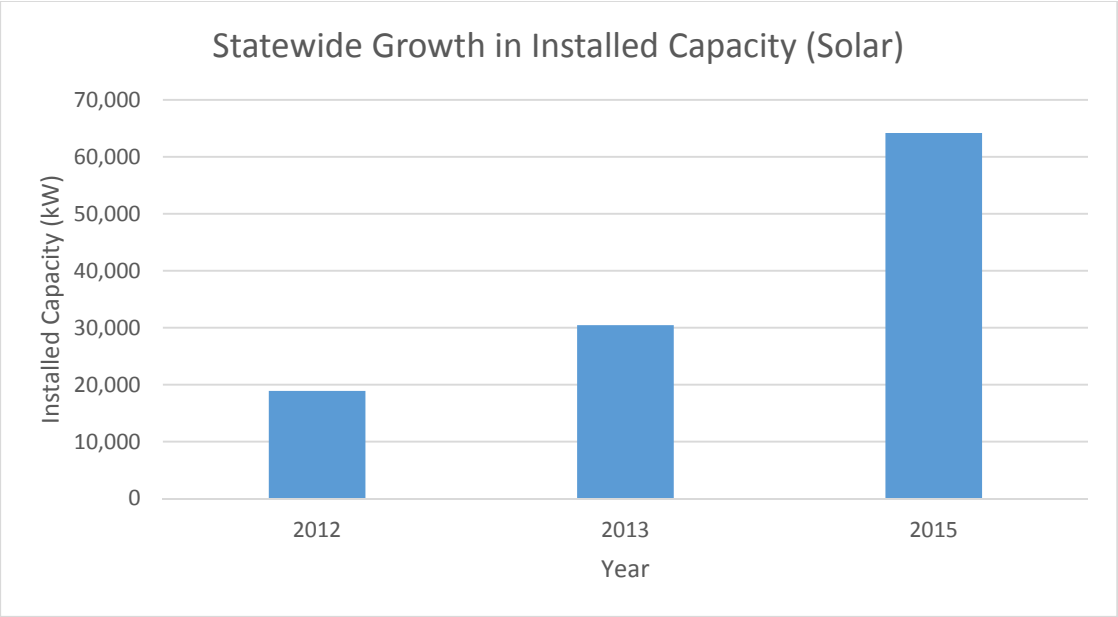
2) An applicant (or other party opposing the Plan) has the burden of proof to show Plan language isn't valid:

3) To be successful, the Challenging party must show that adhering to Comprehensive Plan would undermine the good of the state; and

4) Undermining the good of the state means the average Joe or Jane would say that the loss of good to the state is greater than (ie., is not offset by) the public good achieved by adhering to the Comprehensive Plan language.

Please take note: Modifying the Section 248 process as I have outlined would not mark the end of public policies promoting the development of renewable energy resources. However, it would adjust them and make clear the PSB that Vermont Values need not be sacrificed in the name of energy progress.

**That concludes my prepared remarks. Once again, thank you for this opportunity to address you.**




Source: Renewable Energy Atlas of Vermont; Vermont Sustainable Jobs Fund