



**Senate Finance Committee
Public Service Board Section 248 Permit Process
Thursday, March 17, 2016**

Thank you for the opportunity to testify on S. 230.

According to the Comprehensive Energy Plan, we have 4,996 solar sites generating 94,860 kw of electricity. We have 13 wind turbines over 100 kw in Vermont and several more large turbines planned. The Governor expects solar installations will double in 2016. To date three projects of 150 kw or more have been rejected. Decisions about where to place those facilities are today driven by the choices of private renewable energy developers, many of whom have neither connection to Vermont nor familiarity with the state's planning tradition of compact settlement surrounded by rural countryside.

It is in this environment that the Senate Natural Resources Committee undertook its efforts to comprehensively address planning for the Section 248 electrical facility siting process.

On January 20, local officials testified to the House and Senate Natural Resources Committees on the issue of siting renewable energy facilities and what changes should be made in the law to assure that municipalities are restored a significant voice in the Public Service Board siting process. I list those local officials to give an understanding of the statewide nature of the current frustration with the PSB process. Their testimony as well as that of Cindy Hill, attorney for the Town of New Haven, is posted on the Senate Natural Resources Committee website.

Jared Cadwell, President VLCT and Fayston Selectboard
Russell Hodgkins, Town Administrator, Westminster
Stephen Marx, Strafford Selectboard
Larry Labor, Morgan Selectboard
Brian Fecher, Irasburg Selectboard
Joel Clark, Swanton Selectboard
Mary Boyer, Windham Selectboard
Chris Violette, Barre Town Zoning Administrator and Fire Chief
Joel Cope, Brighton, Town Administrator
Jamieson Heins, Shelburne Planning Commission
Don Chioffi, Rutland Town Selectboard
Brian Fecher, Irasburg Selectboard Chair

Municipal Plans

“24 V.S.A. Chapter 117 § 4302 Purpose, goals

(a) General purposes.

It is the intent and purpose of this chapter to ***encourage*** the appropriate development of all lands in this State by the action of its constituent municipalities and regions, with the ***aid and assistance of the State***, in a manner which will promote the public health, safety against fire, floods, explosions, and other dangers; to promote prosperity, comfort, access to adequate light and air, convenience efficiency, economy and general welfare; to enable the mitigation of the burden of property taxes on agricultural, forest, forest, and other open lands; to encourage appropriate architectural design; to encourage the development of renewable resources; to protect residential, agricultural, and other areas from undue concentrations of population and overcrowding of land and buildings, from traffic congestion, from inadequate parking and the invasion of through traffic, and from the loss of peace, quiet, and privacy; to facilitate the growth of villages, towns, and cities and of their communities and neighborhoods so as to create an optimum environment, with good civic design; to encourage development of a rich cultural environment and to foster the arts; and to provide means and methods for the municipalities and regions of this State to plan for the prevention, minimization, and future elimination of such land development problems as may presently exist or which may be foreseen and to implement those plans when and where appropriate. In implementing any regulatory power under this chapter, municipalities shall take care to protect the constitutional right of the people to acquire, possess, and protect property.

The same section of statute establishes eighteen (soon to be twenty) goals. In 2013 economic growth in designated growth centers was added as was avoiding development in identified flood hazard, fluvial erosion and river corridor protection areas. In 2014, public investments, including construction or expansion of infrastructure, and development in accordance with smart growth principles were added. In 2015 maintaining and improving Vermont’s water quality according to the policies and actions developed in the basin plans was added. This year, the legislature is well on its way to adding managing forestlands to maintain and improve forest blocks and habitat connectors; and to encourage efficient use of energy and development of renewable energy resources consistent with Vermont’s greenhouse gas reduction goals, 25 by 25 goal for renewable energy, building efficiency goals, state energy policy and specific recommendations in the state plan pertaining to the efficient use of energy and siting and development of renewable energy resources, and distributed renewable generation and energy transformation categories of resources to meet the requirements of the Renewable Energy Standard.

At the same time, as the attached summary shows, funding for municipal planning grants has been flat since at least 2010. As the tables show, the demand for planning grants far exceeds the money that has been available. Funding to regional planning has increased and regional commissions charge for the planning services they provide to municipalities.

Now, S. 230, without any discussion that I recall in committee, would establish that municipal plans “shall” be consistent with all the planning goals. Suddenly, volunteer planning

commissions in every size municipality are mandated and no longer encouraged, to write and adopt plans that are consistent with the goals. There has been no evaluation of whether goals remain appropriate or timely, whether they fit in every municipality, or what kind of time and money it takes to develop a plan that would meet every goal. There would be no flexibility to determine which of those goals fit with the character of the municipality. If your plan was not consistent with all the goals, it would not be approved by the regional commission, would have no standing in Act 250, would be ineligible for municipal planning grants and lower on priority lists for other state grant or loan programs.

*We urge you to restore the language that says “a plan for a municipality **may** be consistent with the goals established in section 4302...” (Sec. 8, p. 10)*

A municipal plan must contain all the twelve elements established in section 24 V.S.A. § 4382. Each of those elements is important in its own right and each was added to statute because someone determined that a concerted effort at the municipal and regional level was required to address the future disposition of those elements. Pursuant to S. 230 the energy plan would need to include a comprehensive analysis of energy resources, needs, scarcities, costs, and problems within the municipality across all energy sectors, including electric, thermal and transportation; ... a statement of policy on conservation and efficient use of energy, siting of distributed and utility-scale renewable energy resources, and a statement of policy on and identification of potential areas for development and siting those resources or particular categories or sizes of those resources. (Sec. 8, pp 12 -13)

Please remember that planning commissions are volunteer boards of dedicated people who are not necessarily experts in electrical and utility minutia, but who are expert in the vision and character of their communities for whom they develop and implement plans.

State and Regional Plan Guidance, Recommendations, Standards

The State Energy Plan would need to include guidance that contained specific recommendations on the conservation and efficient use of electric energy and development and siting of renewable electric generation; and a list of standards for determining whether municipal and regional plans should receive a certificate of energy compliance from the department. (Sec. 9, page 15) All that work is to be completed by October 1, 2016.

The Department of Public Service would certify that a regional plan conformed to the state energy plan and the regional commission would certify that a municipal plan conformed with both the regional and state energy plan. Only then would the PSB be required to give “substantial deference” to the land use conservation measures and policies in the duly adopted regional and municipal plans. Substantial deference would be defined to mean that a land conservation measure or specific policy shall be applied in accordance with its terms unless there is a clear and convincing demonstration that other factors affecting the general good of the state outweigh the application of the measure or policy.

The new Planning Manual issued by the Agency of commerce and Community Development in January, urges municipalities to develop succinct, readable plans that reflect a community vision. http://accd.vermont.gov/strong_communities/opportunities/planning/manual

“While a municipal plan must address all 12 required elements, the planning commission may decide how it will address each element” (Module 1, p. 20)

We are concerned that unless a municipal plan essentially mimicked the State Energy Plan and regional plan, it would not receive a certification or substantial deference. And if the municipal plan is no more than a copy of the regional and State Energy Plan, there is essentially no need for it. We believe that the State Energy Plan should express policy – much as it does now – and the regional plan should provide a general assessment of the status of renewable energy facilities in the region, the goals for renewable energy projects and land use generally, and general areas that are reasonable for renewable energy facilities because of proximity to transmission lines or like infrastructure, but that the municipal plan is the level at which policies and siting attributes are established within the context of the complete municipal plan.

Preferred Sites, Parties, CPG Conditions

We believe the language regarding preferred sites will be helpful. (Sec. 13, p.23)

We support the language that provides for the Agency of Agriculture, Food and Markets, municipalities within 500 feet of a project, and regional commissions to be parties by right before the PSB. (Sec. 18, p. 39)

We support the language establishing requirements for mitigation, documentation and maintenance of vegetation to screen facilities (Sec. 22, p. 42)

Municipal Land Records

We endorse the recommendation from Attorney Cindy Hill, made to the Senate Natural Resources Committee, that, “CPGs should be registered in the land records, with proof of filing placed in the PSB record. CPGs should have expiration dates; the PSB should have a tickler system that notifies the CPG holder at least one year prior to expiration so that either the CPG renewal is sought or decommissioning processes are begun. CPG transfers should also be filed in the land records. Applicants for CPGs should be required to demonstrate legal control over a defined area of land to which the CPG will apply. That site plan should be filed in the land records, with proof of recording submitted to the PSB.”

We are happy to work with the committee on S. 230. Thank you for the opportunity to testify.

*Karen Horn, Director
Public Policy & Advocacy*