

Dear Ms. Pickens,

Please submit the following comment to the joint committee on Renewable Energy Siting for its public hearing this evening. Thank you.

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Vermont's scenic beauty has always been highly valued both by Vermonters and by visitors to our lovely state. In 1968 Vermont banned billboards to prevent the despoiling of Vermont's landscape. And when Act 250 was enacted a few years after that, it included Criterion 8, which prohibits commercial or industrial development that would create an "undue adverse impact" on the scenic or natural beauty, aesthetics, historic sites, or natural areas.

In order to develop an objective way of evaluating what is an "undue adverse" impact on aesthetics and scenic and natural beauty, in 1986, the Environmental Board convened a group of people with expertise on aesthetics. The result was the "Quechee Analysis." It has been used to evaluate aesthetic impacts in dozens of cases by the Environmental Board, Environmental Court, and the Public Service Board, and it has been consistently upheld by the Vermont Supreme Court.

The Quechee analysis has two steps. The first is to determine if a project will cause an adverse effect on aesthetics. That is based on whether the project will "fit" or be in harmony with the surroundings. If the impact is adverse, then the second step involves addressing three questions. The impact will be undue if any one of the questions is answered in the affirmative.

One of the questions is whether a project would offend the sensibilities of the average person. If it is so out of character with its surroundings or significantly diminishes the scenic qualities of the area so as to be shocking or offensive to the average person, the adverse impact is considered undue and a project is denied.

The Environmental Board explained the purpose of this provision: “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.”

When the review of telecommunications towers and large-scale solar and wind installations was transferred from Act 250 to the PSB, the law required the PSB to give due consideration to some of Act 250’s criteria, including Criterion 8 on aesthetics.

In the past, the PSB’s interpretation of the Quechee analysis was consistent with that of the Environmental Board in ensuring that development did not degrade Vermont’s scenic views, including those enjoyed by neighbors. For example, in a 2001 case, the PSB denied a wind tower, ruling that “because ... the Project will be in the direct view of the [neighbors] from their home and will significantly diminish their enjoyment of the scenic view from their home, ... the Project will be offensive and shocking to them and to the average person in a similar situation.” In denying the project, the PSB accurately applied the Quechee analysis as established in legal precedent. The decision was upheld in 2002 by the Vermont Supreme Court.

But the PSB no longer considers the interests of neighboring landowners. Every recent decision issued by the PSB on solar and wind projects has dismissed the interests of the neighbors, ruling that because they are most likely to be affected by the project, they cannot be considered the “average person.”

The PSB’s finding is especially nonsensical because in order to participate at all, neighbors must show that they have a particularized interest that is greater than the interests of the public at large. But then the PSB uses that particularized interest to ignore the neighbors entirely.

Thus in order to be able to participate in the proceeding, neighbors must prove that their interests (e.g. views) will be affected, but then because their views are affected, the PSB says that their interests (e.g. views) should not be taken into account. They base this absurd reasoning on their made-up notion that a person who is directly affected cannot be the “average person” that the Quechee analysis considers. But that is contrary to the years of precedent that included affected neighbors among the “average person.”

Although the PSB says that it applies the Quechee analysis, in fact the PSB is completely ignoring long-standing legal precedent on what the Quechee analysis means. The PSB is also contradicting the Environmental Board’s and its own precedent by ruling that municipal zoning ordinances do not constitute clear written community standards for purposes of the Quechee analysis.

In its zeal to approve every single telecommunications tower and renewable energy project in the state, the PSB is fabricating its own interpretations of the law regardless of the standards of the local community, and it is allowing the

scenic beauty of Vermont — that was so carefully protected over so many years — to become degraded.

It is time for the Legislature to take review of land use projects (i.e. wind, solar, and telecommunications towers) away from the Public Service Board and back into the hands of an administrative board with expertise in evaluating the substantial impacts of these projects on the Vermont landscape with proper respect for the importance of neighbor and community input.

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