

ACT 250: An Overview of Act 250 for the Act 47 Commission

Vermont Natural Resources Board

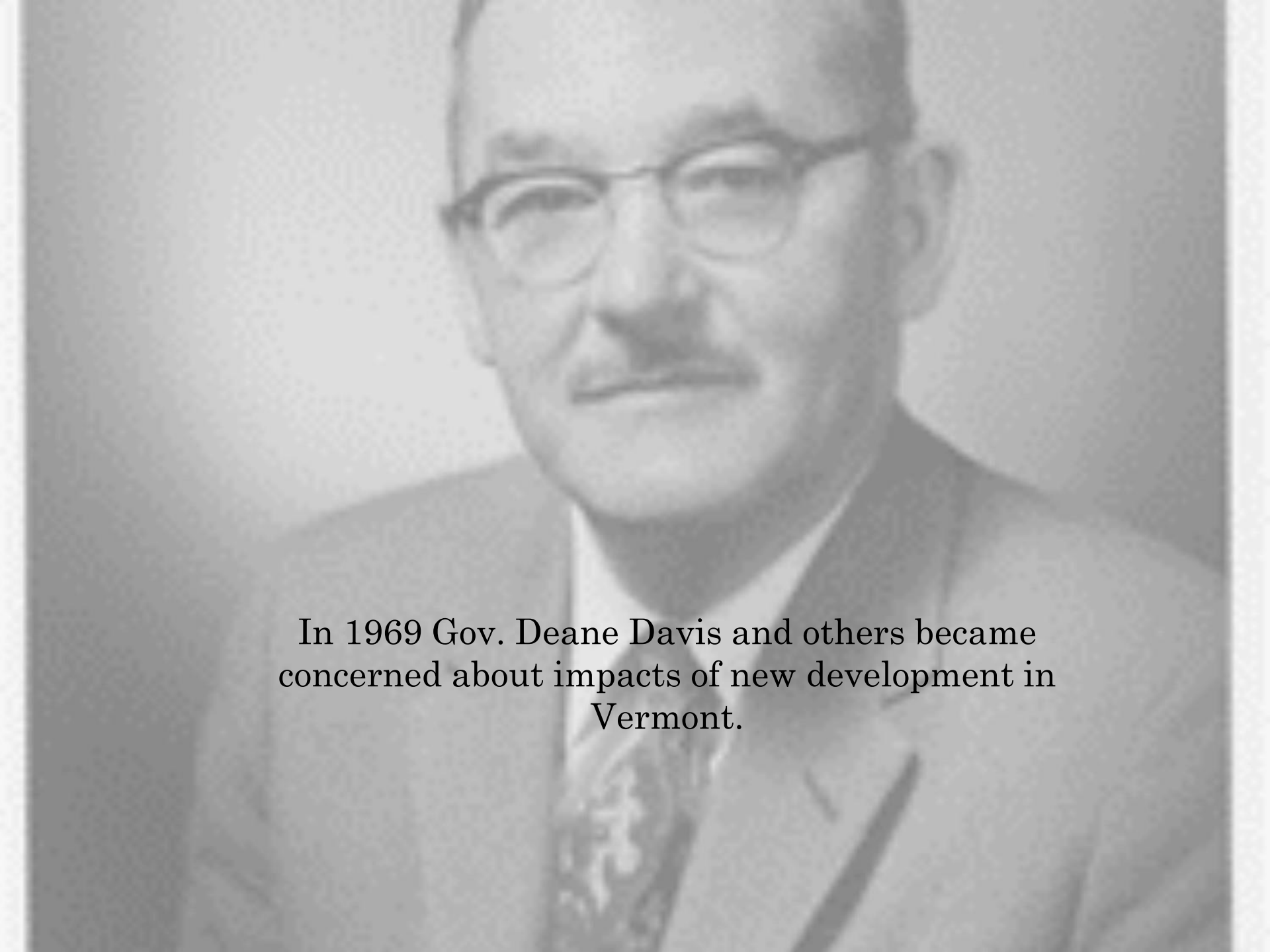
Diane B. Snelling, Chair

Gregory Boulbol, General Counsel

AGENDA

1. Brief Introductions
2. Act 250 – History and Purpose
3. Mechanics of the Natural Resources Board
4. Act 250 Jurisdiction and the Act 250 Application Review Process
5. Party Status
6. The Ten Criteria
7. Quasi Judicial Role/Ethics
8. Hearing Review Process
9. Questions? Answers??

BRIEF HISTORY OF ACT 250



In 1969 Gov. Deane Davis and others became concerned about impacts of new development in Vermont.



History of Act 250

After hearings by the Gibb Commission and statewide debate the Vermont legislature passed a law to regulate *certain kinds* of development at the state level, *in addition* to any existing local review.



January 19, 1970

The Honorable Deane C. Davis
Governor of Vermont
Montpelier, Vermont 05602

Dear Governor Davis:

In accordance with the provisions of Executive Order No. 7, creating the Governor's Commission on Environmental Control, I transmit herewith the commission report covering the period from June 24, 1969 through January 6, 1970.

This report includes our recommendations for legislation to be enacted during the coming session.

The commission has had fifteen meetings since its establishment, and numerous meetings for the committees to deal with specific subjects. It will continue meeting regularly during the winter.

I wish at this time to express my appreciation to Mr. Forrest E. Orr, Vice Chairman; the members of the commission; and the Advisory Committee for their dedicated efforts during this period. Many of the officers of State Government have also contributed to the work of the commission. Deputy Attorney General John Hansen has been invaluable in his assistance with legal matters.


A final report will be submitted at the conclusion of the commission's work.

Respectfully submitted,

The Legislature created the former Environmental Board to administer Act 250:

“...in order to protect and conserve the lands and the environment of the state and to insure that these lands and environment are devoted to uses which are not detrimental to the public welfare and interests.”

An Act to Create an Environmental Board and District Environmental Commissions, Pub.Act. No. 250, § 1, 1969, Vt.Laws (Adj.Sess.) 237 (eff. Apr. 4, 1970).



Vermont . . . has managed to keep intact more of the natural beauty and open space that people love about it. A lot of the credit for that goes to a . . . state land-use law, known as Act 250.

Under Act 250, nine regional commissions review any large-scale development falling within their jurisdictions. Before a development can proceed, it must win a permit from its regional commission. The commissions, supporters say, have done their best to balance economic growth with environmental and aesthetic sensitivity and planning practicality.

Jonathan Walters, *Land-use Laws Are A Battleground*, Chicago Tribune, Nov. 15, 1992.

Natural Resources Board

NRB Chair

NRB Members (4)

Alternate NRB Members (5)

Executive Director

General Counsel

Business Director

Staff Attorney

Enforcement
Officer

Administrative Staff (2)

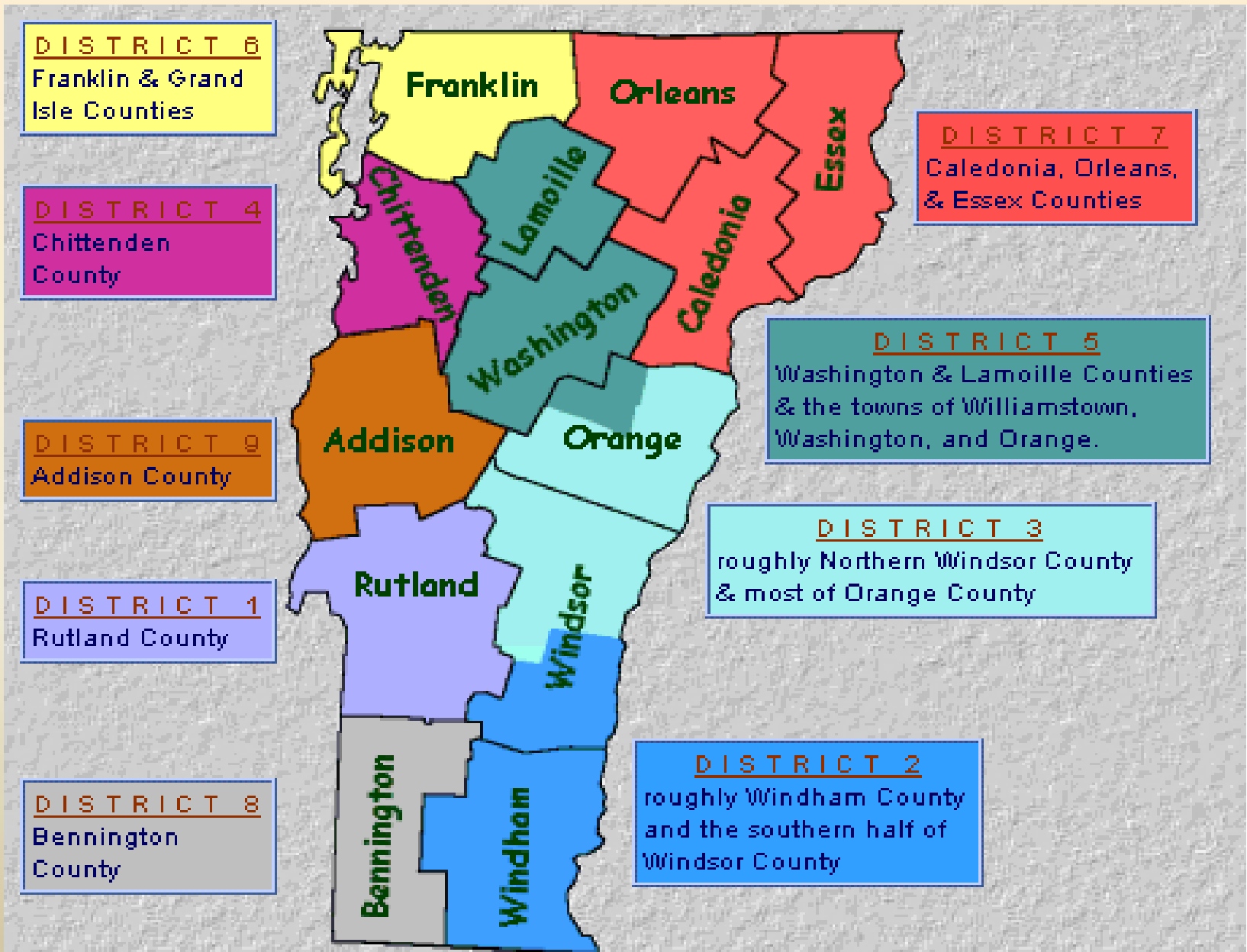
Five Regional Act 250 Offices

- 10 District Coordinators
- 6 Administrative Staff

Nine District Commissions

- Members appointed by Gov.
- Serve 2 – 4 years terms

9 Environmental Districts



ACT 250
JURISDICTION

Subdivisions of 10 lots or more, or 6 lots in towns without permanent zoning and subdivision regulations.


114.01 +/-

115.02 +/-

92.02 +/-

VERMONT ST

FIR ST



Commercial development on
>1 or >10 acre

Other Act 250 Jurisdictional Triggers

- State and municipal projects >10 acres disturbance
- Housing projects with 10 or more units (higher thresholds for Priority Housing Projects in designated centers)
- Communication towers >50 feet in height
- Commercial, residential, or industrial development above 2,500 feet
- Material change to an Act 250 permitted project
- Substantial changes to pre-existing (pre-1970) projects

ACT 250
EXEMPTIONS TO
JURISDICTION

Farming below 2,500 feet



Logging below 2,500 feet



Other Statutory Exemptions to Act 250 Jurisdiction

- Electric generation and transmission facilities regulated by PSB
- Agricultural fairs and horse shows; no buildings; open to public for < 61 days per year
- Small scale and on-farm composting
- And others

Exemptions by Rule

Act 250 Rule 2(C)(3) & related definitions:

➤ Home occupation – defined in Rule 2(C)(17)

Use, by a resident, of a minor portion of the residence + ancillary buildings, for occupation/business customary in residential areas that has no potential for significant impact

➤ *De minimis* - no potential for significant adverse impact

➤ Test wells, preparation & plans

Jurisdictional Opinions

(is there Act 250 Jurisdiction over a particular project?)

- Issued by District Coordinator (Letter form or Project Review Sheet)
- Reconsideration by Coordinator within 30 days
- Appeal to Environmental Division, Superior Court, within 30 days.

PARTY STATUS

10 VSA § 6085 and Act 250 Rule 14

PARTY STATUS ELEMENTS

1. ANY PERSON
2. PARTICULARIZED INTEREST
3. THAT MAY BE AFFECTED BY THE PROJECT (AN ACT OR DECISION OF THE DISTRICT COMMISSION)

ANY PERSON

- Individual
- Association
- Corporation
- Neighborhood association (whether or not incorporated)
- Partnership
- Non-profits with affected members

PARTICULARIZED INTEREST

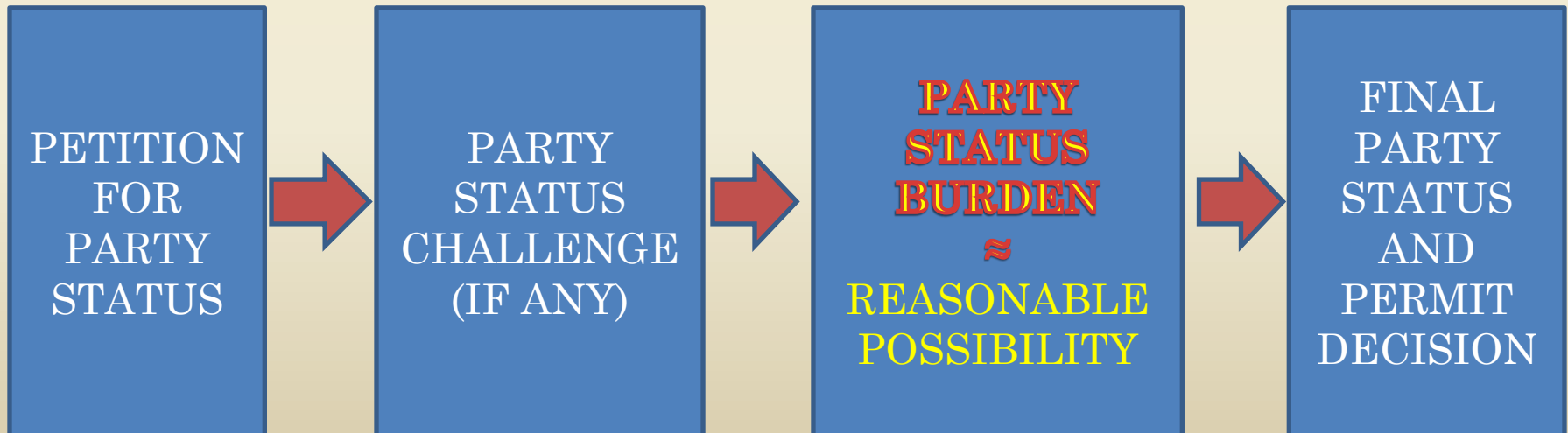
- Something particular to that person rather than the general public
 - The interest must be real – not speculative
 - Examples:
 - Can see it
 - Can hear it
 - Can smell it
 - Affects an activity:
 - I swim there and would like to continue swimming, but run off from the parking lot may affect my enjoyment this activity.
 - I enjoy the view when biking or driving, and the project may affect it.

AFFECTED BY THE PROJECT

- The person's concern or interest must be one that is protected by a criterion:
 - Aesthetics
 - Noise
 - Odors
 - Runoff/water pollution
 - Etc.
- Persons concerned about business competition or other issues beyond act 250 are not parties.

Burden for Showing Party Status

- **reasonable possibility** that a person's particularized interest **may** be affected
- allows one to present their concern under the criteria (merits).



Final Party Status

- Party status should be confirmed **unless** proof shows that there was **no** reasonable possibility of a particular interest being affected. For example, the proof on the merits shows that a party lives 100 miles away rather than the 100 yards stated in the party status petition.
- Lack of participation affects appeal rights — **not** party status

WHY?

➤ IT IS THE LAW

- Act 250 is based on citizen participation before a citizen board.
- Act 250's party status standard parallels federal standing law –In Re: Bennington Wal-Mart (4/24/12) footnote 5.

➤ PROPER PARTY STATUS


- Assures that commissions receive information
- Avoids delays, appeals, and remands.

THE ACT 250 CRITERIA



The 10 Criteria

1. Air and Water Pollution
2. Water Supply
3. Impact on Existing Water Supplies
4. Soil Erosion
5. Transportation Safety and Congestion
6. Impact on Schools
7. Impact on Municipal Services
8. Wildlife Habitat, Historic Sites, and Aesthetics
9. Impact of Growth
10. Conformance with Local and Regional Plans



10 V.S.A. § 6086(a)(1) – (10).

QUASI JUDICIAL ROLE/ETHICS

The Quasi-Judicial Role

- The District Commission is a quasi judicial body
- Commission sits as a mini -administrative court
- As an administrative tribunal, the Commission's sole focus is to render decisions on Act 250 applications
- As the judges hearing these applications commissioners must base their decision on the information submitted by the applicant.
- The ultimate decision on the application, including any conditions, must be supported by the information/evidence submitted by the applicant

The Quasi-Judicial Role

Due Process

- Protects the rights of all involved – applicants, opponents and other interested parties.
- Allows opportunity for a fair hearing, where the decision will be based on the record.
- Ensures that everyone has an opportunity to put in and respond to all the evidence.
- Fosters respect for the process.

THE ACT 250
PROCESS (AFTER
JURISDICTION)

Application Review Process

7 Days
Completeness Review
by District Coordinator



Application to Commission
for Major/Minor
Determination



Major

Board Rule 51: . . . “ if the district commission determines that there is demonstrable likelihood that the project will not present significant adverse impact under any of the 10 criteria . . .”



Minor

Application Process

Minor

Notice and Proposed Permit Mailed and Published
Within 10 days of filing of complete application

Comment Period for Hearing Request
7 - 20 days



**If No Hearing Request:
Commission Issues Decision after Last Permit or Other Evidence Received**

**If Hearing is Requested:
Application is Processed as **Major**; Hearing is Scheduled
Within 20 days of end of public comment period**

Application Review Process

Major

Notice Mailed and Published in Newspaper

Within 10 days of filing of complete application

Hearing or Prehearing; Site Visit

**Within 40 days of filing of complete application;
not less than 10 days from publication of notice**

Hearing Recess Order

Within 14 days of hearing

Last Recess Item Received by Commission

Deliberations and Issuance of Decision

Within 20 Days of receipt of last item, last permit or completion of deliberations

What happens at a hearing?

- Chair opens hearing, explains process
- Applicant presents overview
- District Commission accepts petitions for party status; makes preliminary determinations
- Applicant presents information under the 10 Criteria, including any expert witnesses (civil engineer, traffic expert, etc.)
- District Commission asks questions
- Parties have opportunity to ask questions (cross-examine)
- Parties have opportunity to present their own evidence, including expert witnesses
- After hearing, commission issues recess memo listing outstanding items
- Rule 19 Permits: Rebuttable presumptions



Citizen-Based Review Process



Decisions and Permits

- Decisions – applications are either approved, approved with conditions, or denied. Findings of Fact and Conclusions of Law are drafted and issued.
- Permits Granted and Conditions Attached – when permits are granted they are subject to a wide range of conditions – transportation, erosion control measures; energy efficiency; etc.
- Permits Denied – if a commission finds that the project will be detrimental to the public health, safety or general welfare it will be denied. Permits may not be denied under Criteria 5, 6 and 7 – but conditions can be applied under these criteria.
- Nature of Permits – LUPs run with the land; they are transferrable; project completion; expiration dates; non-use (abandonment).



Appeals

Appeals of a District Commission are heard by the Environmental Court; ultimately the Supreme Court.

- Findings, conclusions, conditions and Jurisdictional Opinions may lead to an appeal.
- Hearings on appeal are *de novo* – meaning they are heard “anew.” Facts must be re-established.
- Party must participate at District Commission level to appeal.

RESOURCES

- District Coordinator and Support Staff
- Natural Resources Board Administrative and Legal Staff ((802) 828-3309)
- Training Manual (Also on web site:
<http://nrb.vermont.gov/regulations/commission-manual>)
- Web site: www.nrb.Vermont.gov
 - Statute and Act 250 Rules (available on NRB website)
 - Environmental Board Decisions (available on NRB website)
 - District Commission Cases ([ANR Database](#))
 - E-Note Index (available on NRB website)

QUESTIONS??