

MEMORANDUM

TO: Act 47 Commission
From: Natural Resources Board
Date: December 8, 2017

SUBJECT: Examples and statistics regarding competitors using Act 250 process for tactical appeals

The Commission has asked the executive branch for “Examples and statistics regarding competitors using Act 250 process for ‘tactical appeals’” unfortunately, the question is more nuanced, and the state entities do not have any statistics regarding appeals that have been brought for tactical or business competition purposes. In fact, we only know of a handful of anecdotes; none of which can be verified, where an appeal may have been brought for “business competition” or “tactical” purposes.

In order to participate in an Act 250 hearing at the District Commission level, an interested person/entity (other than the applicant and other “statutory parties”) must gain party status and participate in the hearing in order to maintain appeal rights to the Environmental Division. “[A]ny adjoining property owner or other person who has a particularized interest protected by this chapter that may be affected by an act or decision by a District Commission” shall be entitled to party status. 10 VSA §6085(c)(1)(e). In other words, an entity can gain party status in an Act 250 matter if the entity can prove that it has a “particularized interest” (not a mere general population interest) that may be affected by one of Act 250s 10 criteria.

Party status is granted unless proof shows that there was no reasonable possibility of a particular interest, covered by the criteria, that may be affected by the project. It is noteworthy that Act 250 party status “...contains the elements of standing articulated by the United States Supreme Court and adopted by Vermont...” *In re Bennington Wal-Mart Demolition/Construction Permit*, Docket No. 158-10-11 Vtec, Decision on Motion for Summary Judgment and Motion for Party Status, at 7, April 24, 2012 (J. Walsh). Ultimately, the test for party status in Act 250 matters is consistent with the test for standing to bring a law suit in both state and federal courts.

Finally, it may be worth reviewing the above concern in the context of the actual number of appeals from District Commissions (permits) per year:

Fiscal Year	Number of Permit applications ¹	Number of appeals to Environmental Division	Percent of District Commission decisions appealed
2012	525	9	1.714%
2013	506	15	2.964%

¹ Based on the date District Coordinator determined application to be complete

2014	468	12	2.564%
2015	452	13	2.876%
2016	458	6	1.310%
2017	529	13	2.457%