

Notes for November 15, 2017 Testimony before the Act 47 (2017) Commission on Act 250

1. Introduction. I am Tom Little. I am Chair of the District # 4 Environmental Commission (Chittenden County) and have been privileged to be the Chair since February 2003, the year after I retired from the Vermont House of Representatives following 11 years of service there. I am an attorney, currently General Counsel at Vermont Student Assistance Corporation (VSAC). In my prior private practice, I advised clients on, among other things, real estate law and development, including Act 250 and local zoning permit applications starting back in the early 1980's. On an historical note, I have clear memories of the summer and fall of 1969 activities of the Gibb Commission and then the 1970 session of the General Assembly, where my father, then a member of the House, participated in the debate on Act 250 and voted for it. Also, one of our District # 4 Alternates, Jim McNamara, served as one of the first District # 4 Commissioners in the early 1970's, was reappointed in 2001, and this April turned 90. District 4 is blessed to have over 50 years of Act 250 experience.

And those 50 + years involve a great deal of Act 250 activity, as District # 4 is generally a busy Act 250 hub. I am certain that the NRB has or can give you the statistics on the number and type of applications, the fee revenue, the time it takes to process the applications, the number of hearings we hold and other pertinent metrics. We have been especially busy the last six months; I think I have chaired seven hearings since July 1. I have chaired hearings in every town in Chittenden County except Huntington – and there, I got really close, as a site visit for a Richmond application was within eyeshot of the Huntington line.

I reached out to the District Commission Chairs from other parts of the state, and heard back from the Chairs of District 1 (Rutland), District 3 (northern Windsor County and most of Orange County), 5 (Washington and Lamoille Counties and three towns in Orange County), and District 9 (Addison County). While my testimony is from me alone, I believe that my colleague Chairs would find it representative of the views from all Districts.

2. The Value of the District Commission Model. I want to emphasize, with passion, my view that a vital part of Act 250's success, value and perhaps genius has been the role and work of the District Commissions. I don't believe the law would have passed if it required Act 250 hearings to be conducted by state employees operating out of Waterbury or some other central location. Governor Davis certainly realized this as did the Gibb Commission. It is sometimes easy to forget how big a step Act 250 took. Notwithstanding the alarm of many and perhaps most Vermonters with the water pollution horror stories coming out of Windham County in the late 1960's (and Windham County deserves great credit for leading the way on this issue), giving even residents of nearby towns the authority to make decisions affecting property and development in a different town was a huge step. Thus, the Commission model was instrumental in enacting the law.

Not only did the Commission model help get the law passed, but this model has been part of the law's success since passage. Regionally based Commissioners, with local knowledge and experience, using a quasi-judicial but not overly formal process, are a good fit for where the statutory-regulatory "rubber" meets the road of specific projects and development applications. And – let me stress this – where a Commission does a good job of sifting through the evidence,

asking good questions of applicants, judging the credibility of testimony, explaining the law and the hearing process to anxious, concerned neighbors – in short creating an open, accessible and fair process that is not too formal or legalistic – applicants, neighbors and opponents usually come away with the sense that the law is a good law because it is administered fairly.

A final thought here. The work of the District Commissions is not only of value in its working context but is also the embodiment of the 1970 legislative vision, i.e., the process by which the citizens of Vermont can participate in application proceedings and have an impact on the development of their part of the state

So, this is a plug for retaining the Commission model – if that wasn't clear!

3. On The Record District Commission Hearings. The District Commissions are skeptical of the ability of citizen boards and commissions to create robust or even adequate records for on the record review. In fact, the Town of Castleton was so spooked by its first (and last) effort to do so that it quickly voted to return to de novo review. Shelburne is considering the same thing. This View of on-the-record was the clear, albeit informal consensus of all of the Chairs during 2012-2014 discussions of on the record proposals.

In my 14 + years on the District 4 Commission, we have had three or four applications that resembled fully lawyered-up, on the record proceedings. In all of these, we were fortunate to have at least two lawyers on the Commission (and in one case, all three). These were challenging for us, time-consuming (four days of hearings in two of them), with objections and evidentiary issues to rule on, and the need to admonish the parties' lawyers to stay on point (well, I have to admit that part was not so bad).

4. Where Should Appeals Go? And yet the District Commissions are mindful that some believe that Environmental Court resource issues – and the fact that court permit proceedings are fully lawyered up and inherently lengthier – has slowed appeals when compared to the prior appeal pathway through the Natural Resources Board. Further, we need to remember that the Environmental Court entertains appeals from a host of other forums besides Act 250.

Perhaps what is needed is a serious look at returning to NRB appeals as the norm, with perhaps some provision for the parties to agree to opt into the court. It would be a service to Act 250 if the Commission could ascertain whether appeals, generally (i.e., not the occasional outliers) take more time now than they did at the NRB.

5. We are “Environmental” Commissions and not “Economic” Commissions; that tension, of course, is inherent in the application of the statute. But the Commissions regularly remind ourselves of that distinction, and we feel that our work yields evidence of the economic benefits resulting from our environmentally based decisions and how they make Vermont a special place to live, work and own a business. Another way of saying this is that our landscape,

6. Thank you for this opportunity. I am following the Commission's work closely, and will continue to solicit the input of other District Commission Chairs and their members as the Commission moves forward and provide observations, experience and recommendations.

7. I would be pleased to answer questions, now or at a later time convenient to the Commission.

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