

Areas for Act 250 Commission Focus – Ernie Pomerleau, Advisor

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Over the last 50 years, Act 250 has provided a great service to Vermont's residents and businesses. The Green Mountain State is known for its scenic vistas, quaint downtowns and villages, and Act 250 has played a pivotal role in protecting our state's assets. It has created a level playing field by holding out-of-state developers to the same standard that locally-based businesses adhere to; ensuring economic development in our state is done the Vermont way.

Since Act 250 was established, Vermont has seen changes to our economic, regulatory, and social landscape that could not have been foreseen 50 years ago;

- Vermonters now understand the need to build walkable, vibrant downtowns to help alleviate dependency on cars, and build resilient communities in our more developed areas, and to mitigate forest fragmentation in our more rural areas;
- New living arrangements, such as condominiums and co-housing, have become increasingly more prevalent in our developed areas;
- Planning and zoning at the local level has become more robust, allowing for more local, democratic control of a community's resources and vision for itself; and
- Multiple executive branch agencies have developed robust regulatory and permitting programs that were once only covered by Act 250. Today this dual jurisdiction creates a duplicative process that warrants streamlining.

The areas identified below have been the subject of significant discussion by stakeholders participating in the Commission's process and it appears there is widespread interest in moving forward with improvements in these areas. We look forward to working together to improve Act 250 for the next 50 years. With this in mind, the Commission should focus on the following four areas:

(1) Building Vibrant, Walkable, and Livable Downtowns - By exempting projects from Act 250 jurisdiction in state-designated centers we can allow for locally controlled development in areas where sufficient local planning, bylaws, and capacity exist to protect important natural resources. The Department of Housing and Community Development manages State Designation Programs and can provide the Commission with a starting point to identify locations where such exemptions would promote consistency of regulations and create opportunities for consolidated permitting in the future. We understand that this concept has broad general support from many participating in the Commission's process.

(2) Avoiding Duplicative Act 250 Criteria - Criteria that are also regulated by existing Agency of Natural Resource (ANR) or Department of Environmental Conservation (DEC) permits are duplicative. This provides the opportunity to modernize Act 250 by consolidating or eliminating these duplicative criteria while recognizing that there are other areas where Act 250 should turn its focus.

Furthermore, the new ENB2 online permitting system strengthens the ability of the public to participate in the ANR permitting process, thereby creating ANR permit decisions that should stand on their own and be the sole avenue for review and appeal rather than the Act

250 process. We understand that ANR will be proposing ideas consistent with this and we look forward to working with the Commission on this issue.

- (3) Respecting Local Control in the Appeals Process** – Require an appellant to have the burden of proving to the Superior Court’s Environmental Division that the Act 250 permit should not have been issued or should be modified. Currently, the applicant (or permittee) has the burden to demonstrate that the Act 250 permit already issued by the District Commission should also be issued by the Environmental Division. An appellant should not be able to take a passive role and cause the applicant undue delay simply by appealing a permit. Instead, they should be required to take an active role and demonstrate the merits of their appeal prior to requiring the applicant to invest substantial time and money to essentially go through the Act 250 process again on appeal.
- (4) Timeliness of Local and State Approvals Prior to Act 250 Application** - Obtaining all necessary approvals and permits in a timely manner to complete an Act 250 application is daunting. Creation of an agreed upon template and review period between applicants and town administrators would provide uniformity and save time. Assigning time limits to all state and local approvals and permits would increase certainty and uniformity across applicants. The added factor of a “deemed approved” decision if timeframes are not met would ensure predictability for Vermonters counting on projects for housing and economic development.