Comments re Act 250 11.27.18 by Malcolm FitzPatrick [fit3Patrick@gmail.com]

http://digital.vpr.net/post/act-250-striking-right-balance-vermont-land-use-and-development

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Rep. Sheldon noted the heart of the problem with Act 250 when she stated that Act 250 is not a review of the economics of a development, but a review of the impact on natural resources caused a proposed project. But this is not the case. For example, the developer on the Act 250 Commission [A250C] said streamlining of the process should occur because many aspects required in Act 250 have already been reviewed by State agencies/ANR. It has to be recognized that the State is biased towards economic development, and this bias is inherent in their reviews, intentionally or not.

To illustrate this and other points, the proposed development of 170 Acres at Exit 4 in Randolph will be used as an example. The proposal was the construction of a large I-89 rest area which included a "sales" building for Vt products; a range of residential type units, industrial buildings, etc.; 100 A of the 170 A were prime farmland.

The developer openly stated that the development would not be done unless approval included the new Vt rest area and sales room, and a signed agreement that Governor Shumlin supported this effort. In short, it can be assumed that the ANR reviews had been done, for the development was backed by the governor, and access from/to I-89 was signed off by VTans.

It appeared obvious from the beginning of the hearings that the District Commissioner [DC] was in favor of the project – from where the Commissioners and proponents collectively sat, their conversations, their familiarity with each other – and the extended effort by the Commissioner to have a proposed Plan that could be approved. He openly suggested modifications that would allow approval – and the site plan "progressed" in 4 stages [over 4 hearings] from a detailed site plan to an amorphous outline of various uses on the 170 acres. It is doubtful the 4th proposed amorphous site plan would have been accepted for review under Act 250 if it had been submitted as the original plan.

Move-over, the DC promoted that Act 250 allowed the developer to pay to protect prime land in other parts of the state, thereby allowing development on the prime farmland at Exit 4. However, when it was pointed out that a significant reduction in farmland reduces the viability of agriculture infrastructure in the area, the DC stated that impact would be addressed under the Economy part of Act 250.

The DC properly would not allow discussion by the opponents of traffic problems, stormwater management, viewshed protection, etc. -- all parts of Act 250 review for protection of natural resources. However, allowing partial review, of just the Plan, ignores the fact that the Plan is the part of Act 250 that should collectively integrate all the parts of Act 250; it inherently assumes these other parts have been reviewed. The Plan is an integration of the other parts--should not allowed be subject to partial review.

In summary,

1/ a neutral District Commissioner and two other knowledgeable Commissioners are basic requirements to implementation of Act 250 review;

2/ the Commissioners should ask penetrating questions about impact on the values as stated in Act 250, and require supporting documentation which will become part of the findings;

3/ the use of limited review of parts of Act 250 should not include those parts which are interdependent, such as the Plan part.

4/ the technical aspects of the proposed project should be open to public review, including all interactions with agency reviews;

5/ there should be a depository [as in a local public library] of all documents for public review;

6/ public participation should not only be allowed but also encouraged;

7/ a mass mailing through US Postal Service should be used to inform all residents of the proposed project and location of the hearing[s];

8/ there should be limited [if any] effort to streamline the Act 250 process, especially if there is any real or apparent vested interest by review agencies;

9/ if this is to be a judicial process, the opponents should be provided legal and professional expertise;

10/ the standards commonly accepted to be the criteria of good development should be allow to be questioned, should there be sufficient evidence.*

*for example, it is known that there is a connection between surface and ground water; if the proposal potentially endangers surface or ground water, then groundwater should be protected as a critical resource.