

Testimony of Annette Smith
Permit Reform -- Citizen's perspective
House Natural Resources Committee -- March 19, 2003

- ❖ Want the process to be fair and effective in enforcing the law
- ❖ Focus on citizens, understand there are other points of view. Small businesses and citizens share common problems such as lack of resources.
- ❖ Listened to 15 to 20 cases from Vermont citizens who have been involved in the process, asked for problems, solutions, suggestions and comments on proposals:
 1. Local zoning at the root of the problem in many cases. Permits issued that violate by-laws. No will to enforce violations and no resources for enforcement.
 2. District commissions work best with no lawyers. Attitude that citizens are "obstructionists" or "interferers" must be changed. Commissions in a hurry to issue permits, violate due process and rarely deny permits for issues such as water and air pollution or traffic safety.
 3. Adopt standards, procedures, training for local officials and district commissions.
 4. Bring ANR permits and expertise into Act 250 public process. No dispositive permits!
 5. Applicants minimize impacts, fail to give complete details which must be wrung out of them by citizens through zoning and/or Act 250 process
 6. Citizens oppose professional board and environmental court, want to see better appointment process for citizens boards
 7. Experts -- Applicants can pay anybody to say anything. Citizens lack resources for experts. Allow for intervenor funding in large cases. Problem of dueling experts.
 8. Public Advocate with staff of experts. Handbook for citizens. State level review of large projects prior to involving citizens on the local level. Enforce the laws.
 9. In all cases, if citizens were not looking out for the environment in their neighborhoods, nobody was. Establish citizen suit enforcement of state environmental permits.
 10. Make DEC do its job, make sure DEC has adequate resources, make DEC accountable.
- ❖ Many of the current problems are the result of the politicization of the entire process by the previous administration. The former Chair of the Environmental Board was one of the worst things to have happened to Act 250. It is unfortunate that we are considering extreme solutions when a good Chair and board with excellent counsel could be effective in carrying out their duties.
- ❖ In recent years, citizens have been clobbered by Environmental Board decisions. Only place citizens got a fair hearing was Environmental Court. That is not sufficient reason to move to Environmental Court.
- ❖ Unintended consequence? -- Nagging feeling that move to consolidated appeals before Environmental Court judges will result in MORE appeals. Professional or smaller full-time Citizen Environmental Board could result in better decisions that might not be appealed so readily. Too much focus on appeals. Rearranging the deck chairs on the Titanic.

Environmental Board and/or Office of Public Advocate could be place for review of large-scale projects where developers improve their projects to meet criteria or get the **RED** or **GREEN** light.

- ❖ Bring accountability to DEC: Handle all permits on a first-in, first-out basis to minimize political pressure. Add language that grants legislative committees subpoena power and requires all testimony under oath where perjury would be handled in the same manner as it would be in a court of law, as is done in Congress. Enables testimony by state employees the committee choses, not who the administration choses. The bill should have language that disallows quashing and requires those testifying to be paid.
- ❖ Very concerned about changes to standing law that may limit party status. Suggest:
 - adjoining property owners automatically, without requiring paperwork of showing direct effect
 - any person who can show an effect under the Act 250 criteria should be a party by right
 - any group which can show it has members affected, as opposed to current permissive status
- ❖ Background: WRB case -- explain story -- never before has a state board attempted to set corporation law policy. Rule 24 -- requires direct injury. Remove reference to Rule 24, write definition of "interest" and "person aggrieved".

"Interest" means any person or property interest or any public or organizational interest of local, regional, or statewide scope directly related to the criteria of the act which may be affected by the outcome of an Act 250 proceeding."

- ❖ Changes to who can appeal -- Section 8504(v)(1)(b) adds the requirement that the person must have to have "participated" in District Commission proceedings and retained party status. Define "participation". Let's look at how this would work in a specific case.
- ❖ Extremely difficult for citizens to engage in the process -- expensive and time-consuming. Case study today intended to illustrate just how difficult it is, especially when citizens are outgunned in the face of aggressive lawyers hired by corporations, and how despite three separate reviews, the primary issue is not being addressed.
- ❖ Paperwork reduction. Create encrypted web site for parties, allow for digital filings and sharing of files between ANR, Zoning and Act 250.

- ✓ 12/18/02. End of 10 hour day-time hearing on 32-acre waste pile application:
District One Commission Chair: *"Thank you everyone for bearing with us so we can give a decision as quickly as we can."*

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