

THE ORIGINS OF ACT 250

A Talk With Former Governor Deane C. Davis



It would have been difficult to predict that Deane Davis would come to be viewed as Vermont's environmental governor. His career included positions as Washington County State's Attorney, Vermont Superior Judge, Counsel for National Life Insurance Company, and chair of the commission which called for an administrative overhaul of Vermont state government; but this resume does not hint at the ground-breaking environmental laws Davis would foster in his two terms as governor.

The Republican governor guided Vermont through the challenging, heady years between 1968-1972 — a time of booming development for Vermont, and the era that we now recognize as the dawning of the modern environmental movement. Act 250 (10 V.S.A. Chapter 151), Vermont's landmark land use law, and Act 252, (water law discussed on pp. 31-32 of this issue), are his legacy.

Born in 1900 in East Barre, Davis is a feisty and articulate eighty-nine years old this November. He was interviewed in his Montpelier home by writer Kimberly Hagen and V.E.R. Editor Susan Clark.

VNRC: Can you give us some of the background that led up to the creation of Act 250?

Davis: To begin with, when I first started running for governor, it was not one of my plans or goals because I was not fully aware of the extent of the problem. I think the real, actual physical evidence of the problem was then contained in Windham County, and spreading over a little into surrounding counties, like Bennington and Windsor. And it was almost entirely connected with ski development which was going along very rapidly at that time. While I was campaigning I got the chance to tour the areas.

I remember in the town of Dorset, for example, there was a proposed development where the developer had stuck up signs for each lot. Somebody — I don't know if this was a joke or not — had counted the number of signs up on this development and several other adjoining developments. And then they went to the Town Clerk's and checked all the applications that had been filed locally, and counted everything up. They figured that if all the lots set aside were indeed developed, there would be more

houses in Dorset than there were in Brattleboro.

That startled people a little bit, including myself. Later I toured a development where the buildings had been started, and they were located on hastily improvised roads which were very steep and had curves in them that were entirely unsuitable for school buses or any large vehicle of any kind. And one of the things you have to keep in mind is that often these second homes become first homes at some time in their history...

I noticed that not only would it be impossible for those roads to be developed, but among those houses that had been built, we found open sewers running into the ditches, which startled me. People were up in arms; even the real estate men who were engaged in the business of selling lots were deeply concerned.

There were some good organizations at that time, from different perspectives, that were organized for the very purpose of protecting various aspects of the environment of the state. But VNRC and Justin Brande [VNRC Executive Director at the time] were very active. He was pretty filled in with the information of what was going on in the state, and what was contemplated.

He was a wonderful person to deal with, very objective. Although a staunch environmentalist, he was, nevertheless, when he came to problems, open minded until all the evidence was in. Once that was done, he took his stand and that was it as far as he was concerned. And of course, all the others — Mr. Brett from over at Woodstock, and the lady from Fairlee, Lucy Bugbee, she used to come see me all the time.

So that's what got me started — to realize that the rights of the public had to be heard where major developments were to be.

VNRC: What was your first step?

Davis: I called a meeting of people I thought might be interested in both sides of the issue, there in the Statehouse. I made arrangements with Barry Commoner whose name was very prominent back in those days, to come and speak to the crowd. I think we sent out 600 invitations, and about 500 showed up. I never saw such a response!

In fact we had trouble getting them all in there.

“We found open sewers running into the ditches.... People were up in arms.”

“We knew we couldn’t put this thing across unless we... took the time to get a lot of people to participate, and that’s what we did.”

Commoner did an outstanding job of awakening those that weren’t awake already. After his speech, they decided to break up into smaller working committees, and spread out through the Statehouse, and they spent hours discussing certain phases of the problem.

Well, their conclusions all seemed to be the same thing — that something had to be done — but nobody was quite sure what was to be done or how. So they made one recommendation, and that was that the governor create a commission on the subject, to study it and hear from people more directly.

VNRC: That was the Gibb Commission?

Davis: Yes — I appointed Arthur Gibb chairman, and several others to be on it with him — and not all fighting environmentalists either. There were real estate people and businessmen.... By the time they got through, however, they were a pretty unanimous group.

I think the success in this exercise came about by reason that somehow God had his hand on our shoulder I guess, enough so that we knew we couldn’t put this thing across unless we did it right. Unless we took the time to get a lot of people to participate, and that’s what we did.

The report by the Commission is on file in the State Archives. They made two reports actually, after hearing from a large group of witnesses. The first one was what the development problems were, what had happened up to that point, and what was likely to happen. The second recommended, in general, a land-use management law at the state level.

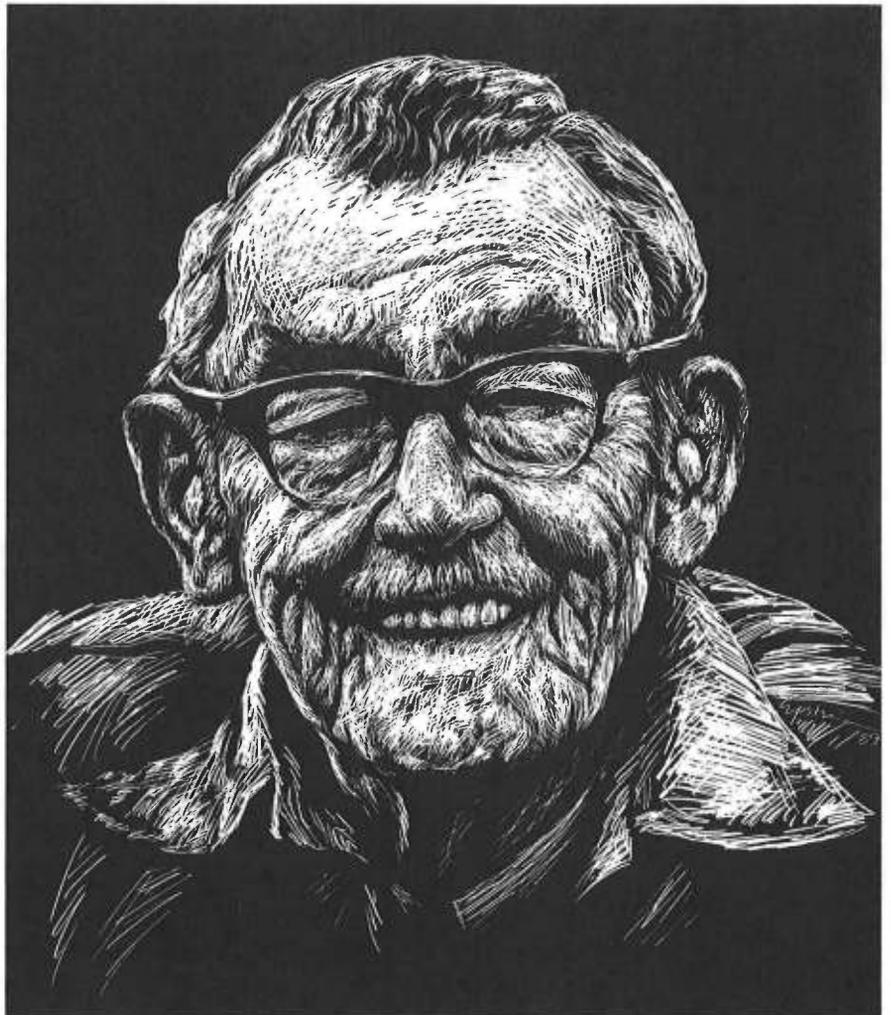
We then started an arrangement through the Planning Office and Walter Blucher from Arlington, who had been a professional planner but was now retired, and the Attorney General’s office. Jim

Jeffords, who was then the Attorney General, put a fellow by the name of Jon Hansen from Rutland, a member of his office, to oversee the legal draftsmanship as it had to continue under the guidance of the governor’s office.

VNRC: So that’s when the ideas were put into the form of legislation?

Davis: Yes. We worked on it in 1969 for the next legislative session. But we weren’t ready to meet the legislature with it after all. By the time the second part of the session met, in 1970, we were prepared with bullets.

And we had quite a fight. But we had the help of these many organizations, particularly yours. Yours had been the outstanding one really, all during that period of time. I think because of the integrity they had been able to create as a result of Justin Brande’s action. Now he was pretty nearly the whole office at the time as I remember. Of course now it’s much larger, but it was an institution even then in 1970



ED EPSTEIN

with a lot of credibility and they were extremely helpful in getting this work done.

VNRC: What were the concepts the bill designers were trying to get across?

Davis: First we decided that we had to have two things; we had to put immediately into effect a quasi-judicial organization to grant the permits. And then we had to establish an act of standards, which became the ten criteria in Act 250. And those were debated and debated for hours and days. We had to have an organization to grant these permits, and we had to require these permits as a way of getting the matter before and into the jurisdiction of these regional groups. We set up nine regional groups, actually little courts, to decide whether this permit should be granted or not. And if so, on what condition.

And this, in my humble opinion, has been the genius of Act 250. The fact that even though there have not been a large percentage of permits declined officially, an amazingly high percentage have been [improved] in the process. I think that's good because everyone learns more and more doing this process.

VNRC: How about the planning component?

Davis: It was on the advice of my friend Walter Blucher that we needed a state [land use] plan. And, well, you know the history of the state plan, that we didn't get it.

There were three things actually that were called for. First, that the governor should provide a temporary plan, [the Interim Capability Plan] and that was done. Second, the Legislature was to approve a Capability Plan, which was merely a factual plan — setting out what land was suitable or unsuitable for building, etc. And third, this plan was to be made legally enforceable — [a state land use plan].

We got two of them, but we didn't get the real one, that state land use plan. And this, I think, has somewhat contributed to the cost of operating Act 250, as they have had to resort to regulations by the State Board, some of them possibly questionable at times. And we don't have yet the uniformity that we would have liked to have seen, that would have resulted had we been successful in getting that plan.

As I look back I'm actually amazed at what we did get. Really this whole thing, Act 250, runs counter to Vermont's tradition with reference to the use of land. I mean, Vermonters feel land is sacred, and we don't want anybody messing around with our land, much less the government.

But now I do think the ethic of environmental control is pretty well established in Vermont. I know there [were attempts] in 1971-1972 while I was still in office, to scuttle the Act. Every one of

those failed. Watching that happen, and what has happened since then, I've made up my mind it would be pretty hard for anybody to scuttle Act 250 now.

The need, the desirability, in Vermont's case anyway ... to bring some kind of orderly approach to what's going to be done with Vermont's land, is pretty solid in the political end of it, and the social, philosophical field is pretty well established.

VNRC: How would things be different if the planning element had remained strong?

Davis: Let me give you an example. Much thought was being given back then to the question of altitudes, where fragile soil begins and ends. One has to look at Act 250 with Act 252 [Davis-initiated water protection law] in your left hand at the same time because the two go together so closely. I'm thinking for instance of the fight Governor Kunin had with Killington. I've a strong feeling if we'd had that plan in place, there would have been no fight.

One of the principles we adopted back then was that pristine waters were not going to be allowed to be touched with anything. In other words, we had our problems cleaning up the secondary waters and the tertiary waters, why let anybody do anything with our pristine waters which feed into them? We had a plan, and that [Killington] development at that altitude would have been an absolute no-no. And nobody would have gotten a lot of money invested.

You see the problems come up when somebody has already invested a lot of money, innocently or at least legally innocently, and *then* the issues are raised. With the plan in place, they would know beforehand what was considered proper or what wasn't.

That's just a recent example I give, but there are hundreds more with the same idea. I think that [the state-wide land use plan] would have brought more uniformity to the whole process and the state. I think Act 200 is an attempt to do what politically couldn't be done along the idea we had in the state plan. But after all, [Act 200] is only planning, and back then we were talking about standards and prohibitions that would be written into the law.

VNRC: What about the future of Act 250?

Davis: I think the idea is so ingrained now, the idea of the need for something to be done is almost religion in Vermont now. The next big test to come on Act 250 is if and when we have a major [economic] depression.

As for you, VNRC must continue its great work of educating and making people think about Act 250 and the need for it. [VNRC] was in on the genesis of it more than any other organization, so you have the background and history to carry on with this. ●

“We didn't get the ...state land use plan. And this, I think, has somewhat contributed to the cost of operating Act 250.”