

## **Act 47 Commission on Act 250**

### **Testimony of Elizabeth Courtney**

**December 2017**

Thank you for the opportunity to share my perspective on Act 250 with you. I am outlining my experience with the Act and offering a humble opinion of what the 20<sup>th</sup> century vision for Act 250 was—vs its realities—and what questions the commission might ask in developing a vision for Act 250, fifty years out. I hope to be of some helpful service to this commission.

My name is Elizabeth Courtney. I am an environmental consultant, a licensed landscape architect and co-author of *Greening Vermont, The Search for a Sustainable State*. I have served at the pleasure of Governors Kunin, Snelling, Dean and Shumlin on various boards and councils of advisors over the years. I have represented a variety of municipalities and developers through the planning, design and permitting of their projects. In 1985 Governor Kunin appointed me to Act 250's quasi-judicial Environmental Board, where I served until 1994. The last four years on that board I was Governor Snelling's and then Governor Dean's appointee to the Chair. In 1994 I was awarded a Loeb Fellowship in Advanced Environmental Studies at Harvard University and from the Fall of 1994 to Spring 1995 I attended the Kennedy School of Government and the Graduate School of Design as a Loeb Fellow. In 1997, I was offered the position of Executive Director at the Vermont Natural Resources Council (VNRC) where I served until 2013. Since then, I have helped several non-profits fulfill their missions, I write a monthly column on the environment, reflecting on my 45 years of work to protect the beauty, durability and functionality of Vermont's environment.

My understanding of Act 250 is in no small way informed by the privilege of serving on the Environmental Board with Art Gibb. He helped me to see that there were three over-arching principles that the Gibb Commission sought to imbue in the State Land Use and Development Act of 1970:

### **The Three Overarching Principles of Act 250's Vision**

Act 250 should be Planning Based: In 1968 with the arrival of the interstate highway, Vermont was besieged by a wave of speculative mountain resort development in the southern part of the state. Governor Deane Davis called it "Rampant Growth". And as you know, Governor Davis appointed the Commission on Environmental Control, chaired by Art Gibb, which held hearings around the state. At one such hearing, Chairman Gibb met a Rutland County planner, Walter Blucher. And as it was told to me by Mr. Gibb, they had lunch at Gill's delicatessen on Strong's Avenue and Mr. Blucher impressed upon Chairman Gibb the importance of providing a comprehensive plan, identifying the areas best suited for resource protection and the appropriate locations for economic development. A Capability and Development Plan was to give citizens some certainty as to where development would be appropriate and where it was not. Without this plan, the Act would be fraught with ambiguities, costing all more time and resources.

Act 250 should be Comprehensive: In 1970, the criteria in Act 250 covered the spectrum of issues around the interface between the built and the natural environments and the relationship between ecological and economic interests. At that same delicatessen meeting, Gibb and Blucher fleshed out on a paper napkin, the 10 criteria that would become Act 250. At the time, these comprehensive criteria set the standard for the nation and put Vermont at the forefront of land use regulation, matched only by Oregon's Growth Boundary Legislation.

Act 250 should be Accessible: The process for Act 250 was envisioned by Governor Davis as a citizen oriented process that could be conducted on the "front porch of the General Store". The appeals process would be conducted in front of a citizen board, and participation in appeals were extended to 14b Parties or people who could simply identify an interest in the project's impact on any of the criteria.

## **The Blurring of the Vision**

### Loss of the Capability and Development Plan

- By 1984, with the legislative vote to remove the planning mandate from Act 250, the vision of a land use regulation based on the predictability of comprehensive planning was compromised. In addition to the lack of a plan there was also no mechanism to track or deal with cumulative impacts of the smaller non-Act 250 projects. Act 250 jurisdiction based upon the size of a proposed project, rather than land use impacts on resources left the natural resources vulnerable to incremental losses over time. The loss of the guiding land use plan left Act 250 rudderless and it became the whipping boy for many permitting problems—from local zoning to Agency of Natural Resources permits—that frequently had little to do with Act 250.
- By the early 1990s opposition to Act 250 had reached a new high. Contrary to studies from MIT and elsewhere, Act 250 was accused of being a deterrent to economic development and for retarding recovery from the 1987 recession. The MIT report compared New Hampshire's and Vermont's housing development over the boom time and into the recession. New Hampshire's foreclosure rate was significantly higher than Vermont's, demonstrating, essentially, that Act 250 review was beneficial to the Vermont economy. Failing to pass so-called permit reform legislation, a frustrated Republican majority in the Senate rejected three of the Governor's appointments to the Environmental Board. In February of 1994, two of my Environmental Board members, Nundy Bongartz and Terry Ehrich, and I were identified as "environmentalists" and denied reappointment to serve on the Environmental Board in a highly controversial Act 250 debate between then Governor Howard Dean and the Republican majority in the Senate. The Chair of the Senate Natural Resources Committee, Senator from Rutland, Tom Macaulay, was accused by many of "Environmental McCarthyism."

### Rise of Energy and Climate Awareness and Impacts of Unguided Growth

- By the mid 1990s technology and the legacy of a century of burning fossil fuels was changing our context, making Act 250 criteria no longer as comprehensive as they once were. Clean energy, energy conservation, climate change, transportation and smart growth were emerging issues that were inadequately addressed in the criteria.
- The troublesome criterion 9L was inadequate to stop the “Silent Sprawl” in the rural areas, vast improvements were made to it in 2014.

### Loss of the Citizen Board and Limiting Citizen Access

- The 2004 Douglas Administration changes to the Act 250 program were dramatic. Citizen access was severely limited by a requirement to demonstrate a “particularized interest” in a proposed project’s potential impacts.
- The quasi-judicial Environmental Board was dissolved and replaced with a Superior Court Judge. Act 250 is now no longer the quasi-judicial, citizen friendly process that had been the Deane Davis, Art Gibb vision.

### **A Vision for the Future**

Given today’s challenges and the opportunities we gain from our almost fifty years of experience, how can we strengthen the effectiveness and the efficiencies of Act 250?

Below are some questions the Commission might ask.

Plan Based: How can we give more certainty to the applicant in the permitting process while offering better protection for our natural resources?

- Explore ways to increase the incentives for development in Growth Center designated areas. For instance, allow municipalities to request Act 250 master plan review and approval from district commissions.
- Investigate giving Resource Protection Areas specific Act 250 jurisdiction for any size development.
- Consider jurisdiction triggered by location rather than by size of development.

Comprehensive Criteria: How can we improve the efficacy of the existing 10 criteria while addressing climate resilience and the drawdown of greenhouse gases?

- Water, waste water, soil erosion, traffic, cost to municipal services, aesthetics, historic preservation and wildlife, and the criteria of the 9s and 10s could all be modified to better address the collective impacts of energy use and climate change.
- Explore an energy conservation/carbon reduction criteria.

Citizen Access: How can we best return to the citizen access envisioned by the authors of Act 250, while recognizing the new demands of a climate altered world?

- Find a happy medium between the citizen based Environmental Board and the Court.
- Given the growth of distributed generation and its land use implications, consider a quasi-judicial, professional board, that could easily interface with the Public Service Board, when needed.

## **Two Closing Thoughts**

Sticks and Carrots: Regulation—the so-called stick—is a tried-and-true strategy that has been and continues to be an effective and necessary tool for guiding land use. But alone, it is simply not enough to combat the challenges of global climate change and the search for clean, efficient, reliable, sustainable energy sources. For these challenges, we need all the tools available. We will be coming up short against the abuses of a warming planet if we do not create sufficient economic and time sensitive incentives—the so-called carrots—to help us make land use decisions that are compatible with and healing for the ecosystems that sustain us. Our lawmakers can write legislation that regulates, and you can also write legislation that incentivizes the decisions and actions that will benefit the broadest majority of the people. It is my hope that this commission will consider the urgency of the need to address the consequences of climate change

in a comprehensive manner that, in addition to regulation, includes a package of incentives that would encourage the land use decisions that we want all our citizens to make.

Make No Little Plans: Since the early 1960s the over-arching planning goal for Vermont has been to follow a land use pattern of compact settlement surrounded by open countryside. It is a plan that the 19<sup>th</sup> century architect and planner, Daniel Burnham, would have called—along with Act 250—a Big Plan. In the 1960s this land use pattern was recognized as essential to meeting the state’s aesthetic, ecological and economic goals. Today, in addition to these worthy goals, the enduring, over-arching principle of compact settlement surrounded by an open countryside is essential in helping us provide for energy conservation, energy efficiency and the basic safety and well-being of all Vermonters. I ask you to please remember the need for us to use this land use pattern and to heed Mr. Burnham’s words as you go about your work to bring Act 250 into the 21<sup>st</sup> century:

*Make no little plans; they have no magic to stir men’s blood and probably themselves will not be realized. Make big plans; aim high in hope and work, remembering that a noble, logical diagram once recorded will never die, but long after we are gone be a living thing, asserting itself with ever-growing insistency. Remember that our sons and grandsons are going to do things that would stagger us. Let your watchword be order and your beacon beauty.*

Thank you for your service to Vermont and thank you for your time today.