

II. THE SOLUTION

1. **Move land use siting to Act 250**, while leaving typical PUC issues such as rates, need, interconnection, etc. with the PSB. Act 250 has many benefits, in addition to being a good land use law, especially for solar siting. Act 250
 - a. is staffed by regional district coordinators trained to be responsive to all parties, a real person to answer questions
 - b. has regional offices accessible to the public, with parking
 - c. has a state level and regional structure that enables state level accountability while respecting the specific characteristics of each region, which are unique
 - d. has excellent public notice practices
 - e. is effective in identifying stakeholders and administering party status
 - f. has the ability to convene informal stakeholder meetings as allowed for in 10 VSA § 6085 (e) where parties can come together to develop solar the right way, rather than starting with a contested case
 - g. is possible for citizens to participate in without attorneys
 - h. has a document and database system that is easy to use and searchable and where all documents are available
 - i. has enforcement
 - j. acts as a clearinghouse for permits and it is a normal course of business to do so. One of the Act 174 Working Group members said that it would be a challenge to

have several different entities. But this is already happening with the PSB, where ANR brings in its permits and MOUs, DPS brings in its MOUs, other entities bring in their approvals such as the utilities, and also other parts of state government bring in theirs, such as Vermont Division of Historic Preservation. Soon the Agency of Agriculture will hopefully begin to participate. This is exactly what Act 250 is already designed to handle. And unlike the PSB, which is issuing CPGs with a lot of unresolved issues, leading to post-CPG compliance filings (that drive attorneys crazy from what they have told me), you do not get your permit from Act 250 until everything else is in order.

- k. has capacity. The PSB is doing too much work of the sort it was never designed to handle. The sheer volume of work being submitted to the PSB is unsustainable, and is not being done well. Based on the cases I am following there appears to be a backlog and the Board has a lot of trouble getting decisions out. I believe that the core work of a traditional Public Utilities Commission is suffering because of the distraction of the land use siting work. I also see this happening with the Department of Public Service, which is incapable of keeping up with the volume of applications being submitted and frequently seeks extensions of deadline, and on which they are supplying aesthetics and other expertise never envisioned or planned for when Section 248 was created.

What would moving land use siting to Act 250 do?

- Wetlands, floodways, soil erosion, stormwater permits, impacts to groundwater and surface water, air pollution would be reviewed under Criteria 1 through 4
- Would address traffic and delivery issues, which have been issues with Lowell Wind and Barton Solar with Criterion 5
- Provides the opportunity for discussion about impacts to the municipal grand list fire suppression issues which are addressed in Criterion 7
- The aesthetics analysis used in Criterion 8 would be applied correctly, including using zoning by-laws for the clear written community standard portion of the Quechee Analysis, and considering the interests of neighboring landowners as an “average person”. Mitigation in the form of adequate screening and setbacks from the travelled roadways would be addressed
- Would be more open to local discussions about the wildlife under Criterion 8(A) and likely result in better protections.
- Ag soil impacts would be considered under Criterion 9(B) and would require offsite mitigation
- Town plans would carry full weight under Criterion 10

The NRB’s two-pager that they hand out at hearings is here and details the criteria:

<http://www.nrb.state.vt.us/lup/publications/nrb1.pdf>

3. VCE's **proposal for regulatory reform** can go beyond the PSB process and the problems we see with it. We have listened over the years to the complaints from the business community regarding Act 250 and ANR, we have listened to ANR's complaints, and we are recommending an overhaul of the entire regulatory system to create a land use panel that hears all appeals of all land use permits, so there is one place where land use decisions are being made on a consistent basis. This proposal is based on our years of experience with Vermont's regulatory system. Our proposal is meant to be a starting place, not a fully baked plan, and could be taken a step at a time. [See *Exhibit 3*].

The first step, one that we believe will work and is realistic, is to create a place at the Act 250 District Commissions where people can sit down and talk utilizing a **community-based stakeholder process**. We are not talking about using the existing District Commission process as a starting place, because that is also a contested case. Instead, we suggest using District Coordinators as facilitators, so that when an application comes in, a meeting is called where all parties sit around the table and discuss the issues. If they choose to work together, the land use issues can be resolved. If they choose to fight, then move to the **contested case model with intervenor funding** provided to parties for lawyers and experts.

PROBLEMS WITH THE PSB PROCESS

RESOLUTION IN SUPPORT OF COMMUNITY INVOLVEMENT IN ENERGY SITING

Whereas

- The Vermont Public Service Board was created to address issues associated with centralized baseload power plants owned and operated by utilities
- The role of the PSB has changed as technologies, policies and markets are rapidly changing to decentralized power owned and operated by both utilities and merchant generators
- The PSB process is a legal process accessible only to attorneys or people who participate as *pro se* parties representing themselves in a courtroom situation with all the rules and legal requirements of an attorney
- There is no place in the PSB process for parties to sit down and talk
- The PSB process is litigated as a contested case, with lawyers and experts, pre-filed testimony, discovery, technical hearings with cross-examination, and briefs
- Participants in the PSB process must become experts on rules and the laws that govern the proceedings, in addition to the specific issues raised by the proposal
- Participants in the PSB process must spend money on printing and postage, even in enforcement cases where the participant is the complainant
- Costs to participate in some limited cases before the PSB have frequently run \$30,000 to \$50,000
- Costs to participate in larger cases before the PSB have frequently run \$200,000 to \$700,000
- In every instance where opposing parties have participated with lawyers and experts on renewable energy projects, they have come away saying “it is as though we weren’t even there.” This is true for towns as well as individuals.
- Very few attorneys are willing to take cases from people who want to participate in the PSB process
- Attorneys who will take the cases cost \$175 - \$250 an hour
- The cost of participation in the PSB process is out of range of Vermont’s citizens and towns
- Those who do participate in the PSB process cannot recommend to other people that they hire lawyers and experts because no results have been seen
- The PSB has denied only one solar project on the substantive criteria.
- The PSB has failed to respond in a meaningful way to noise complaints from wind projects for four years (Georgia Mountain, Lowell) and five years (Sheffield)
- The PSB is losing credibility with Vermonters who are witnessing what has happened in recent history
- There is no public process as part of the PSB. Site visits, public hearings and public comment are entirely for the benefit of the Board or Hearing Officer to understand the issues better from the local perspective; nothing said or written in public comment is considered as part of the record on which the decision is made

Resolved, that the Vermont Public Service Board’s functions should continue to be in the areas of typical utility regulation, while the land use siting portions of the Board’s current functions move to Act 250, utilizing the District Commission infrastructure and statutory provision Title 10, §6085(e) that grants the authority to “promote expeditious, informal, and nonadversarial resolution of issues, require the timely exchange of information concerning the application, and encourage participants to settle differences,” where developers, community members and town governments can work together to develop energy that respects Vermonters and protects the environment & the state’s natural beauty.

A NEW PROCESS FOR ENERGY SITING

VCE is proposing a new process for siting energy projects, one that encourages people to work together rather than fight. The current “contested case” has no place for cooperation and collaboration. VCE proposes to change that. There is no reason why community members, planners, town government, developers, utilities and regulators cannot work together to site the energy that Vermonters consistently say we want. Vermonters want to be a part of the process and we want to see clear benefits.

Plan A = Collaboration

Using the Act 250 infrastructure, stakeholders meet to discuss whether to work together or fight. If collaboration is chosen, the rules of stakeholder processes come into play, with joint fact finding and mutual gains negotiations.

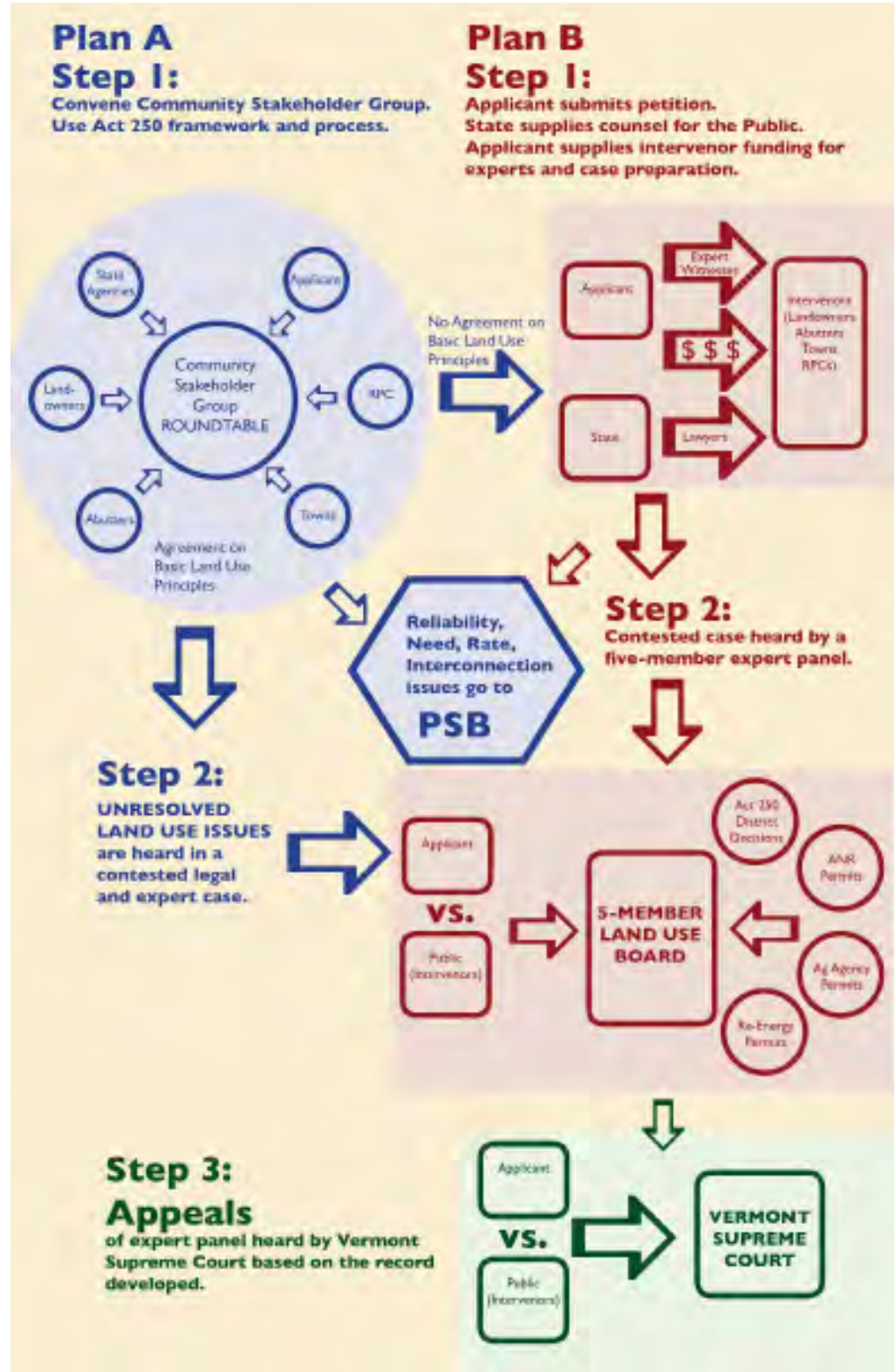
Plan B = Contested Case

If parties choose to fight, the state and applicants put up Intervenor Funding shared among parties for lawyers and experts.

A new 5 member land use panel is created and hears all contested cases including appeals of ANR, Agriculture, and Act 250 permits. In all cases, the state’s and applicant’s Intervenor Funding assures that the issues receive fair and full consideration.

This “carrot and stick” approach uses Intervenor Funding to encourage developers to come up with good proposals and collaborate on the local and regional level to assure good siting, community benefits, in compliance with the state’s goals.

The Public Service Board retains the duties of utility regulation including rates, interconnection, and need.



There is one de novo contested case, with one on-the-record appeal to the Vermont Supreme Court.