

PLAN FOR THE FUTURE BUT ACT 250 IS BROKEN RIGHT NOW !!

Most Vermonters might agree that it is important to consider changes to Act 250 that will adequately address 21st century issues. But it is essential to recognize that Act 250 as presently administered fails to attain original legislative goals.

- Public participation is almost nonexistent. Approximately 90% of all applications are reviewed without public hearings. The majority of applications are being processed as “minors” without strict adherence to relevant statutory and rule provisions.
- Many Vermonters who request party status before a district commission find a process which has become “user unfriendly”. These parties come away feeling that they were not provided a fair hearing and that their concerns were not given proper weight or mitigation.
- Training of district commissions is without substance. The evaluation of applications requires experiential learning. Given the significant diminishment of commission hearings, commission members have lost the “institutional memory” that ensured quality reviews.
- Enforcement of Act 250 is uneven at best. Actions are brought disproportionately against small scale developers.
- The number of jurisdictional and district commission decisions that are appealed has dwindled since “permit reform” legislation of 2005. At the same time, the length of time to process appeals by the Environmental Court has increased substantially when compared with performance statistics for the former Environmental Board. The Court has transformed appeals into extremely expensive and hyper-legalistic proceedings.
- The Natural Resources Board has misused its power as a statutory party to all appeals of Act 250 decisions. Instead of playing an effective role by ensuring strict adherence to precedents, the NRB often casts aside jurisdictional determinations by staff and substantive decisions of the commissions and instead acts as a “fixer” for developers via “settlements”.
- Act 250 jurisdictional “triggers” have been eroded due to legislative amendments intended to encourage “smart growth” in the “right places”. There has been no assessment of whether these well-intentioned provisions have had the desired effects. The outcome has been a significant decrease in the volume of development and subdivisions now reviewed under Act 250.

These are only highlights – which can and should be verified via methodical case studies -of the incremental demise of Vermont’s land use control law that has taken place over the last two decades and which was once in the vanguard of efforts across the country to protect finite natural resources and yet ensure quality development and subdivision of land.

[Prepared by former Act 250 district coordinator Ed Stanak]