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October 17, 2018

Commission on the Future of Act 250  
State House  
Montpelier, Vermont

Dear Commissioners:

The comments in this letter relate to the ability of individuals to participate in the Act 250 process. These comments are based on my experience in an Act 250 case around 2010. I was a consultant to two individuals in that case. When these comments request the commission to do something, the request is really to make that action a recommendation in the report.

I am a civil engineer with extensive experience in preparing environmental review documents for various kinds of permits. That experience goes back to the 1970's. I also have extensive experience in water resources.

### **Introduction**

I ask that the commission retain those components that make it possible for individuals to participate as a party. I ask that the commission also ease those components that make it difficult for individuals to participate in a meaningful way.

Positive points of Act 250 relating to participation by individuals

- Individuals may participate as parties by showing a particularized interest.
- District environmental commissions come to the project, not the other way around.
- Resources covered by permits issued by other agencies are open to review by Act 250.

Negative points of Act 250 relating to participation by individuals

- Individuals have little time to gather information, compared with the time that the applicant has had to prepare for hearings.
- The cost of active, effective participation is out of the reach of most individuals.
- Insufficient weight is given to permit conditions that result from participation by individuals.

### **Positive points of Act 250 relating to participation by individuals**

#### Individuals may participate as parties by showing a particularized interest.

Act 250 encourages participation by individuals in a way that other permits do not. Participation is encouraged by allowing individuals with a particularized interest to participate. Act 250 allows individuals to participate in the dialogue and the shaping of the permit's conditions, right from the beginning of the permit process. That is a major advantage of Act 250 over other permits. I ask that the commission retain, or even improve, the ability for individuals to participate in Act 250.

#### District environmental commissions come to the project, not the other way around.

Act 250 brings the hearings to the project's location, which is a benefit. In order to obtain party

status, an individual has to own property or live near the project. Bringing the hearings to the project's location means that an individual need not travel far for the hearings. I ask that the commission retain this feature of Act 250.

#### Resources covered by permits issued by other agencies are open to review by Act 250.

It is important that Act 250 retain the ability to review independently all criteria, even if there is another permit that involves resources covered by Act 250. Retaining this ability is important because other permits discourage active participation by, and interaction with, individuals. Individuals trying to affect other permits, get at most the chance to make comments at a public hearing or to send in written comments. Often for other permits, by the time a public hearing is held (or a comment period is established) the permit and its conditions are basically a "done deal", negotiated between the developer and the agency that issues the permit. The process for those other permits often leaves little room for the public to bring about changes without disrupting everything. Too often, changes in response to the public's input are deemed not worth the disruption; so the changes are not made. The very format of a public hearing is designed to limit the effectiveness of the public in shaping the conditions of a permit. The effectiveness of an individual is limited because a public hearing is really two sets of one-way communication. People at the front of the room talk to the people in the audience. People in the audience are then offered an opportunity to talk to the people in the front of the room. Please not that the phrase is "talk to", not "talk with". There is really no time at a public hearing to engage in dialogue ("talk with"). And a public hearing is also a one-time event, further limiting an individual's ability to shape the permit's conditions. The deficiencies of the process for other permits is why I ask that Act 250 retain the ability of an individual to effectively shape the conditions of a permit through being a party in Act 250. Act 250 also gives greater weight to the testimony of an individual who is a party than other permit processes give to an individual's testimony. I ask that Act 250 retain the independent review of resources that are covered by other permits.

#### **Negative points of Act 250 relating to participation by individuals**

##### Individuals have little time to gather information, compared with the time that the applicant has had to prepare for hearings.

The applicant in this case had taken several years to develop the proposed project. Then, when notice of the hearing was given, the individuals had, like, 10 days to decide to participate, to obtain and review the application documents, and to prepare for the hearings. That means that individuals who wish to obtain party status have little time to prepare for the first event (pre-hearing conference or hearing). In order to obtain party status, an individual needs to submit a petition to the district environmental commission no later than that first event. The current statute gives the district commission the option of whether to grant a petition from an individual later than that if certain conditions are met. I suggest that individuals be granted more time to submit petitions to become a party. This time could be increased either by a longer time between publishing of notices and the first event or by requiring (instead of the present optional allowing) that the district commission grant a petition from an individual that meets the conditions for a late petition, or both.

##### The cost of active, effective participation is out of the reach of most individuals.

The two parties for whom I consulted managed to get major changes to the project thanks to the support of a group of individuals. That support included legal and technical services from

multiple professionals, some of which (including mine) were provided at no cost to the parties. The value of those services was tens of thousands of dollars. Such an amount was unaffordable and unavailable to those two parties. They would not have gotten the changes to the project that the Act 250 criteria required, had they had to raise all the funds to pay for those services. It is important to reduce the cost barrier that hinders effective participation by individuals, although I am not sure how to do so.

Insufficient weight is given to permit conditions that result from participation by individuals.

An Act 250 permit might contain conditions that result from the successful participation of an individual. Those conditions are important to that individual. The individual has put a lot of resources into getting those conditions. The resources include time, money, building a group of supporters, and more. It is a great disappointment and frustration to an individual when those conditions are glossed over during implementation or enforcement of the permit. Such conditions are glossed over when the applicant and the permit administrators deem the condition to be minor in relation to the overall project and not worth the effort for compliance. Instead of being given weight according to the overall project, those conditions should be given weight based on the importance to the individual who put so much effort into getting those conditions into the permit. I ask that the commission place more weight during implementation and enforcement on conditions that might seem minor to the project, yet are of great importance to the individual.

**Summary**

These comments are limited to some aspects aiding or hindering participation by individuals in Act 250. I know that Act 250 needs to remain open and welcoming to individuals. I ask you to recommend in your report at least the following ways to make Act 250 more open and welcoming to individuals than it is now.

- retaining, or even improving, the ability of individuals to participate in Act 250
- keeping the hearings near the proposed project
- retaining the independent review of resources that are covered by other permits
- increasing the time allowed for an individual to submit a petition to become a party
- reducing the cost barrier to effective participation by individuals
- giving weight to permit conditions that were included because of an individual's participation, based on the importance to the individual.

Thank you for taking the time to read these comments. I ask that you include these suggestions as recommendations in your report. If you have any questions, please let me know.

Sincerely,

Thomas Weiss, P. E.