House Natural Resources, Fish and Wildlife Committee
Act 250 Legislation
H. 18, 194, 209, 321, 424

March 14, 2017

Thank you for the opportunity to testify on the Act 250 bills in your committee.

History vis-a-vis Municipal Planning.

Act 250 and municipal zoning are inextricably linked. Act 250 jurisdiction is initially dependent upon whether a town has zoning and subdivision bylaws in place. That is, in a town without both zoning and subdivision, Act 250 has jurisdiction over any project involving an acre or more unless it is a municipal or state project. In a town with both zoning and subdivision, Act 250 has jurisdiction over construction of improvements on a tract or tracts of land involving more than ten acres of land within a radius of five miles of any point of involved land for commercial or industrial purposes in a town that has adopted both zoning and subdivision bylaws. A town with both zoning and subdivision bylaws may opt to also have Act 250 jurisdiction apply on developments of more than one acre. I do not know of any towns that have taken that option.

Housing projects of more than ten units on a tract of land within a five-mile radius of any involved land in a five-year period are subject to jurisdiction except that priority projects are permitted to build more units based on the population of the host municipality.

A number of hard fought exemptions from Act 250 or restrictions on its jurisdiction, also apply to specific land uses and in specific areas such as designated downtowns. The ten criteria at 10 VSA section 6086 include consideration of the potential burden on transportation, educational services or municipal or governmental services, as well as conformance to the duly adopted municipal or regional plan, initially as determined by the municipality.

Amendments to the act have been made throughout its history, largely on a piecemeal basis and only occasionally with an eye to the overall evolution of planning at the local level.

VLCT Municipal Policy.
One of the significant problems with Act 250 is that its jurisdiction is frequently redundant with local jurisdiction and a developer must secure both an Act 250 and municipal zoning permit. VLCT's 2017 Municipal Policy, adopted by the membership in October 2016, states:

4.02 ACT 250 AND STATE PERMITS
Policy.
VLCT supports:

1 *further consolidating, coordinating, and expediting all required state permit processes for all projects;*
2. *delegating responsibility for Act 250 to municipalities demonstrating the professional capacity and willingness to assume responsibility for administration;*
3. *defining "local impact" and "regional impact" for development projects in Act 250 and comprehensively evaluating Act 250 jurisdiction over projects with local and regional impacts, including recommendations for jurisdictional thresholds and levels of review commensurate with the potential impact of a project;*
4. *eliminating Act 250 review of projects with local impact in municipalities that have in place duly adopted municipal plans approved by the regional commission and zoning and subdivision regulations, if the local legislative body votes to eliminate such review, once recommendations are in place; and*
5. *assigning to district commissions review of projects with regional impact expected to affect regional interests.*

VLCT opposes revisiting permitting decisions in a second forum such as Act 250 if a local or state permit decision has been made subsequent to appropriate hearing and review. Regional plans should be considered in concert with municipal plans and may not be used to trump duly adopted municipal plans.

Act 250 Bills in House Natural Resources, Fish and Wildlife.

H. 18. We believe that it would be very helpful to establish a process whereby jurisdiction over a project may be dropped if the land use has changed from that which originally required a permit, the use of the land would not otherwise require a permit and the host municipality has in place zoning and subdivision bylaws. In fact, it damages Act 250 to hang on to jurisdiction just for the sake of hanging on. We support H. 18.

H. 194. Finding adequate housing that fits people's incomes in much of Vermont is a significant problem, compounded by some of the restrictions imposed by Act 250 permit limitations. Lack of housing seriously constrains businesses ability to grow or increases commutes significantly.

The proposal is to allow state designated communities with populations greater than 10,000 to determine the appropriate number of housing units – those listed by the agency are Burlington, Essex, S. Burlington, Colchester, Rutland, Bennington and Brattleboro. Looking at population statistics, Hartford should be included in that number. If you included municipalities of more than 9000 population, you would include Milton, Barre and Springfield. (www.virtualvermont.com/towns/rankpopulation.html) Both Milton and Barre have Tax increment financing (TIF) districts Springfield is seeking one. All of the

above mentioned municipalities have robust planning and zoning departments and are working hard to improve their downtowns. Those municipal permit requirements will remain in place. We believe that those municipalities have the professional capacity to address housing development proposals at the local level.

As written, a development that lost the priority housing designation, would thereafter be subject to Act 250, a risk that some developers may not be willing to take. We would suggest that the exemption be extended to municipalities of more than 9000 population and that once the exemption is in place, it not be rescinded at a later date.

H. 209 would amend that section of the municipal planning statutes that provides for municipalities to elect to make determinations for Act 250 permits regarding burden on educational, municipal or governmental services and conformance to the town plan. Section 1 of H. 209 would add scenic and natural areas, and aesthetics to that list. Municipalities with adopted municipal plans and zoning and subdivision in place already address those issues as part of their local review of permit applications. We agree that it would be appropriate to add the new sub (4) to section 24 V.S.A. §4420 (c).

Section 2 of H. 209 would amend the statute providing authority for appropriate municipal panels (zoning board or development review board) to review project applications. Title 24 section 4464 establishes clear processes for warning and hearing applications. Upon an appropriate municipal panel adjourning its hearing, a decision must be issued within 45 days. If no decision is forthcoming, the permit is deemed approved on the 46th day. This condition does not exist with respect to state Act 250 or environmental permits. A municipal panel may recess a hearing pending submission of additional information. Because some projects are quite complicated, it sometimes takes time for all the information to be submitted to the appropriate municipal panel and all interested parties. We do not believe there needs to be any amendment in this section.

Subsection (e) on page 9 would require that a municipality conduct a hearing pursuant to the Municipal Administrative Procedures Act (MAPA) upon request of an interested person or applicant. Not a lot of towns have adopted the MAPA. It requires hearings to be recorded; testimony to be made under oath or affirmation; rules of evidence as applied in civil cases in superior courts to be followed; prohibits ex parte communication; final decisions to be in writing and state findings of fact and conclusions of law based exclusively on the record in the contested case; and making transcripts of proceedings available upon request. Implementing that system is expensive and requires staff.

Please recall that members of an appropriate municipal panel are volunteers, few of whom have extensive legal training and that the funding to support appropriate municipal panels is scant. According to the Agency of Commerce and Community Development, Brandon, Brattleboro, Castleton, Chester, Huntington, Ludlow, Montgomery, Poultney, Randolph, Rutland, Springfield and Windsor have adopted MAPA.

We oppose requiring MAPA to be followed at the request of an applicant or interested party.

Section 5 of H. 209 would redefine what is a "lot" for purposes of Act 250. It may be helpful to encourage the exercise of discretion in this situation. However we cannot anticipate all the factors that would be considered in rendering a decision about what is a "lot".

We testified in the Senate Economic Development, Housing and General Affairs Committee that it would be helpful to retain the definition of "existing settlement". It took some struggle to arrive at that definition. We support establishing the definition and use of "rural growth area", which may well be outside a designated area but that does not necessarily obviate the advantage of having a definition for "existing settlement". (Section 9 of H. 209)

We suggest that the sections on housing should be evaluated in conjunction with S. 100. We do not understand why a subdivision of land for purposes of building housing based on need would be different than subdivision for any other residential development. Both types of development require review of where roads are located and environmental permits are required.

We have supported proposals to make state agency permits rebuttable presumptions and believe that is in the law today. (Section 9 of H. 209) Likewise we have supported proposals to provide for engineering certifications of work accomplished. Providing a certification of scenic or natural beauty or aesthetics may be more problematic.

Section 14 provides for a consolidated permit process at the Agency of Natural Resources, another proposal that we have supported for some time.

H. 321 would remove Act 250 jurisdiction from a project if the reason for jurisdiction is that the project is partially in a town without zoning and subdivision. The question is whether the town in question has any land use regulation at all. There are several that do not. If there is no zoning or subdivision regulation in place, it would seem that Act 250 jurisdiction should apply.

H. 424 would establish a commission of twelve members to evaluate Act 250. Six members would be legislative and none would represent local government. We suggest that four members should be legislative, and two should represent local governments, one from a ten acre town and one from a one acre town. We cannot support a commission without local representation.

Thank you for the opportunity to testify.

Karen Horn, Director
Public Policy & Advocacy