

Marc -

Since I am unable to attend the Committee's meeting today I thought I would share some thoughts about "on the record" by sending the communication below which I had conveyed to the Committee chair on January 28th. Although it was written with the current appellate process in mind (i.e. to the Environmental Division of the Superior Court) it would also work with a VERB.

Please share this email with the Committee and add to the Committee's record.

Thank you

Ed Stanak

I have a recommendation for a hybrid "on the record" proposal which would accomplish the goals of speeding process and reducing costs for appeals while keeping the current appeals structure in place . But I cannot put it into a detailed form this evening.

In a nutshell:

- The Supreme Court has been making consistent rulings in Act 250 appeals **from the Environmental Court** to the Supreme Court that the Supreme Court will extend **deference** to the decisions of the lower court with regard to findings of fact.
- **The same principle of deference could and should be extended to the evidentiary value of District Commission decisions on appeal to the Environmental Court .**
- The **"record" on appeal** for the District Commission proceeding **would consist of the Commission's written decision and the exhibits** it relied upon.
- The Environmental Court would be required to review the Commission decision .
- The applicants and others appealing the decision could then raise specific objections under the rules of evidence to specific exhibits admitted by the Commission and/or aspects of the Commission decision. **Based on those rulings, the record could then be revised with new or revised submittals and testimony .**
- The applicant and parties would also **be allowed to submit supplemental evidence but it could not be redundant.** Likewise a substantive redesign of the project would not be allowed unless all parties stipulated.

That is it in a nutshell. Like I said, it needs to be properly drafted and presented. It seems to me the only thing missing from the typical understanding of "on the record" appeals would be the transcript of actual proceeding below. But absent some significant due process claim to be

brought before the House Committee for consideration , it would appear the legislature could dispense with the transcript because the "record" as would be defined by the legislature - consisting of the Commission decision and the Commission exhibits.