

To House Committee on Natural Resources, Fish & Wildlife  
Re: Act 250 Reform  
From Katherine R. Hall, Chittenden Town  
January 21, 2020

In the summer of 2018, I attended two workshops organized by the Commission on Act 250. For people with no experience of 250, those were educational. For those who have been involved with Act 250, whether we consider our involvement good or bad, the lack of opportunity to share our assessment of how 250 is doing was frustrating. So I will share my assessment here.

Vermont's Act 250 is an extremely valuable program. Its criteria are eloquent and protect our central concerns as a state. I have found those engaged in executing the law highly competent. The staff in the Rutland office are dedicated and capable. The three commissioners who served our area (when I attended a hearing in 2015) were impressive --thorough, discerning, and determined to look at all sides of the issues. When I filed a formal complaint, the state enforcement officer responded promptly and looked into the matter thoroughly. Nonetheless, the admirable mission of Act 250 is doomed if it does not provide power to agencies to enforce decisions. It is doomed if professionals working in the program are not protected from powerful pressure from politicians and businesses.

These flaws in our current system will cause the mission of Act 250 to fail:

- There is no "Chinese wall" between those who communicate with, or are lobbied by, permit applicants and their lobbyists, on the one hand, and the ultimate decisionmakers who appoint, supervise and direct the District Coordinators who issue Jurisdictional Opinions and who act as staff for the District Commissions and often write their rulings for them. For many years, Act 250 had, by regulation, that Chinese wall, so we know it is feasible -- but the regulation was repealed by the NRB.
- Preferential treatment abounds in major cases. Disgruntled developers communicate with the Governor, with county senators, and at times with members of the NRB, and then get their way. Because there no longer is any "Chinese wall."
- Settlements are negotiated in private, which is not surprising or a problem by itself, but there is no public input in the process. In the case I was involved in, as described in detail below, a privately negotiated settlement acknowledged important violations of Act 250. A small fine was imposed but the developer was allowed to continue violating Act 250 before it obtained the missing permits. The settlement was submitted to the Superior Court for approval, I tried to intervene to object to continuing violation of the law. The developer's lawyer complained that they had negotiated the settlement in good faith with the State, including direct participation by the Governor, and it would be unfair to let a citizen intervene and upset the privately negotiated apple cart. The judge agreed with the developer. He then approved the settlement without addressing our concerns.

- Pitifully small levied penalties send the wrong message to offenders. Other businesses operating similarly must be delighted to see meagre repercussions for bad behavior!
- Firm penalties can discourage illegal operations and growth in lieu of the unaffordable expense of having officers inspecting and overseeing the behavior of businesses all over Vermont. Failure to punish those overstepping their permits only reinforces illegal activity.

Act 250 must be strengthened for the future. That is my position; for details underlying my position, read on.

In the summer of 2015, Mountain Top Inn in Chittenden initiated an Act 250 application for a plan to build an Annex that would double the size of the resort. Neighbors of the Inn were distressed by the possibility of such an expansion for many reasons.

- The Inn had grown extensively in the previous 5 years: construction of a wedding barn, reconstruction of an event pavilion, dozens of previously private homes being contracted for the Inn's use, use of two large vacation homes as wedding venues, etc.
- Mountain Top Road is a twisty, dead end road, partially surrounded by national forest and overlooking a beautiful reservoir that was already seeing overuse and abuse. The levels of traffic and noise, the usurping of our formerly quiet country road by trucks and speeding out-of-state guests and employee cars, and the continuing threat of overused septic systems were already eroding local support for the Inn's business as a whole.
- Mountain Top Inn constructed a housing development that showed, in my view, total disregard for the permit they had acquired from Act 250.

As I mentioned above, the last project that the Inn had undertaken what appeared to me to be violations of the Act 250 permit. In August, 2015, I filed a formal complaint, pointing out that the Trail Side Cottages in no way conformed to the designs that had been approved, and that, with only half of the structures built, the septic and storm water runoff systems were already inadequate. Water and septic systems of residents downhill from this development were/are threatened by the overbuilding of the development and overuse of those houses. My report triggered an investigation that discovered dozens of major violations all over the resort's campus.

After months and months of expensive legal reparté, three years later, all of their previous violations were lumped into a settlement handled by the Attorney General's office, which was scheduled to be signed in Rutland Superior Court in August, 2018. Over the years I checked in with the AG in charge of the case; I was told that such negotiations are confidential, and I could not be informed of their progress. When the terms of the settlement were revealed, the pitifully inadequate repercussions for all the offenses to which Mountain Top Inn confessed were ludicrous, and my I objected. We asked to be allowed to submit objections. The Rutland judge said we could have no voice.

While we neighbors who had initiated the investigation were shut out of the process, Mountain Top Inn, perceiving this whole investigation as just maneuverings to slow down their expansion, did all they could to circumvent the

250 process. The owners proceeded to lobby with the Vermont Department of Tourism and Marketing, invited all the Rutland County Republican Senators and our town's House Rep to dinner at the Inn where they spelled out their complaints with the neighbors, with me specifically, and with Act 250. Most shocking, (as their own lawyer said in court) they got Governor Scott, an outspoken critic of 250, involved in crafting the settlement on their case. The entire system was bent to serve them, and completely betrayed the local people whose homes and neighborhood are now in jeopardy.

Most detrimental to the future of Act 250, the AG's office was instructed by the now complicit Act 250 Board to go easy on the penalties for the myriad violations by the Inn over the past 5+ years. They suffered a mere slap on the wrist. While the statute allows for substantial financial penalties, the Inn was barely docked. The building project that defied their 250 application was not curbed in any way.

Usually a settlement includes an "assurance of discontinuance." In our case, there was none other than an agreement to do what all responsible developers do anyway – hire a consultant to advise them about compliance: nothing spelled out how the Inn should operate in the future to avoid continuing to violate the law and potentially damaging the environment and the private homes around them. The Trailside Cottages, which prompted the entire investigation, originally proposed construction of nine houses accommodating four people each,  $9 \times 4 = 36$ . A community septic system was built for that level of occupancy. The 4 homes (not yet 9) that have been completed already are advertised to accommodate approximately 36 people. (This is according to their web site before they edited it). The settlement does not curtail the completion of other homes on that septic system, so the Inn theoretically could construct more homes connected to that already maxed out septic system.

The settlement contained no repercussions for the following violations of the Inn's permits:

- expansion of the Inn's parking lot, an unauthorized project the Inn admitted to
- the rope tow and the night lighting
- the use of the marquee events tent
- the kitchen addition to the wedding barn, which was not part of the approved design, and which contributes to the Inn exceeding its wastewater permits
- the unauthorized spa and salon

Adding to these failures is the lack of enforcement of proper operations of the Inn. There is no way for the NRB to oversee the operations of permit-holders such as the Inn in the long run. The system largely depends on permittees to be honest, and on neighbors who have the ability and motivation to investigate and to report violations. **Substantial** fines when violations are detected therefore are a necessity, in order to deter repeat offenses and to set an example for others. I have seen leniency, negotiated at the highest level of Vermont government instead, which only encourages this behavior.

The sense of entitlement continues. In the latest document filed by the Inn to renew an indirect discharge permit, MTI checked NO when asked if they have been out of compliance any time in the past 5 years. Their abuse continues.

*Compliance Review: If this application is for a permit renewal, have you, the applicant, complied with all the permit conditions for the previous 5-year period, including performing all the necessary repair and maintenance items? Yes \_\_\_ No \_\_\_ If no, document on a separate attachment which permit conditions have not been complied with and why.*

Act 250 is the best defense we have of our State, but it needs strengthening.

Thank you for your attention to my concerns.

Sincerely yours,

Katherine R. Hall  
182 Mountain Top Road  
Chittenden, VT 05737  
[Krhall297@aol.com](mailto:Krhall297@aol.com)