

COMMENTS ON THE ROLE OF DISTRICT COMMISSIONERS IN
THE HYBRID BOARD DRAFT BILL DATED 2.11.2020

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As you know, I have testified multiple times regarding the proposed appeal process and the substantive changes in the Act 250 criteria.

I understand that the Committee is moving in the direction of substituting a new professional Board along with 2 commissioners from the applicable district to hear “major” applications. Appeals of Board decisions would go directly to the Supreme Court. I stand by my prior testimony that the professional Board process will be more expensive, less efficient and will hinder public participation.

However, in the event the Committee continues to move in the direction of a new professional Board, I want to point out a major issue that I believe the Committee should address—the role of the District Commissioners.

While I applaud the Committee for keeping a role for local District Commissioners, I fear that as drafted such role will be very limited.

The issue is that the Board is authorized to appoint hearings officers to initially hear appeals. Given the number of “major” projects throughout the entire state, it is likely that most initial hearings will be held by the hearing officers and not the Board with the District Commissioners. Therefore, it will be the hearing officer who holds the hearing, listens to the witnesses, takes the evidence and then issues findings of fact and a decision.

The hearing officer’s proposed findings of fact and decision are then to be reviewed by the Board including the local District Commissioners. However, by the time the local District Commissioners are involved in the process, all of the facts have been determined by the hearing officer and it will be too late for a District Commissioner to solicit testimony or evidence about issues which they might have raised based on their local knowledge and experience. Therefore, the role of District Commissioners will be limited to reviewing the recommendations of the hearing officers. I am not sure how many volunteers there will be to become District Commissioners if this is their sole role.

There is a simple solution. The legislation should provide that all hearings which are not held by the full Board be held by a three-member Commission which includes a hearing officer appointed by the Board and two local District Commissioners. The initial proposed findings of fact and proposed decision would have to be approved by a majority of the three members. Then the Board, including the two local District Commissioners, would review and approval the initial decision.

This approach would continue to provide local District Commissioner real, substantive input into any major applications and not relegate them to just reviewing the proposed findings and permit submitted by a hearing officer. This will help ensure that there is still local input in the Act 250 process.

I would be glad to testify again at the Committee’s convenience regarding this or any other aspect of this important legislation.