

VCE Comments on Proposed Changes to Act 250 Process

House Natural Resources Fish & Wildlife Committee, Feb. 4, 2020

Dear Committee Members of House Natural Resources, Fish & Wildlife,

As your committee reviews proposals to eliminate District Commissions or turn District Commission proceedings into on-the-record, court-like proceedings, Vermonters for a Clean Environment offers our perspective on those ideas.

What is the Problem You are Trying to Solve?

The reason given by VNRC and the Scott Administration for eliminating District Commissions was “inconsistency of decision-making.” However, no evidence has been presented to support that theory.

The committee wisely decided to drop that idea, and has turned its focus to creating a much more formal process at the District Commissions, which would require hearings to be held “on-the-record”. Perhaps this is to address the complaint heard every time “permit reform” is taken up by the legislature: applicants have to put on two cases and opponents get “two bites at the apple.”

The evidence presented to the Commission on Act 250 does not support the theory that appeals are a problem. The Vermont Bar Association presented this review in 2018:

<https://legislature.vermont.gov/Documents/2018/WorkGroups/Act250/Commission%20Meeting%2011.15.17/W~Gerald%20Tarrant~Act%20250%20Appeals%20Summary~11-15-2017.pdf>

The evidence shows that most projects go through Act 250 as minors, and fewer than 10% of major cases are appealed.

The Problem with Act 250 is Limits on Citizen Participation

As VCE presented to the committee on Jan. 14, 2020, the problem we know exists with Act 250 is the increasing limits being placed on citizen participation, especially for major cases which begin as contested cases. Citizens can participate at District Commissions without lawyers and experts, and the informality of District Commission proceedings enables average Vermonters to speak and have their information considered as part of the decision-making. District Commission proceedings enable citizens to learn about big projects and their impacts, and provide valuable local information. District Commission proceedings often result in better designed projects and greater environmental protection.

VCE is recommending that Act 250 would benefit from the option of having a community stakeholder process for citizens to work with applicants to flesh out the issues prior to a contested case proceeding.

In support of the value of citizen participation, VNRC produced this document in 1999 https://vnrc.org/wp-content/uploads/2019/08/Act_250_Valuable_Citizen_Role.pdf. Still relevant today VCE is submitting it as a separate document with highlights to assist the committee in reviewing it for the information it conveys about the value of citizen participation in Act 250.

Turning District Commission proceedings into formal hearings similar to court proceedings would degrade the hallmark of Act 250 which is citizen participation, and would make those proceedings much more favorable to developers. Whether at an on-the-record hearing, at Environmental Court, at a new professional or citizen Board, or at the Public Utility Commission, legal processes require attorneys that cost a minimum of \$180 an hour and are out of reach for most Vermonters.

Please retain the District Commissions and the citizen friendly process. One change that would be beneficial and cost-effective for all parties is the option of a community stakeholder process where parties can work together rather than fight.

If the goal is to turn every process into a contested case requiring lawyers, then it is important to make citizen participation possible by enacting Intervenor Funding. If you invite lawyers to write this process, they will write a process that works for lawyers. Please keep in mind that it is Vermont citizens, not state agencies or developers' attorneys, who are the front lines of protecting Vermont's environment.

Annette Smith, Executive Director