



To: Members of the House Natural Resources, Fish and Wildlife Committee
From: Karen Horn, Director, Public Policy and Advocacy, khorn@vlct.org www.vlct.org
Date: January 29, 2020
Re: Act 250 and Downtowns

Thank you for the opportunity to testify again on Act 250 issues. I testified on February 13, 2019 and sent the committee a letter on April 30 of last year as well.

We were somewhat surprised to see a draft bill developed by the Agency of Natural Resources and the Vermont Natural Resources Council – and not a lot of other interested parties who are key to the successful functioning of land use law in the state.

In many respects, the proposed amendments would further usurp local land use authority, turning the longstanding purpose of Act 200, that planning be undertaken at the most local level possible, on its head. The second goal established in statute is, “to encourage citizen participation at all levels of the planning process, and to assure that decisions shall be made at the most local level possible commensurate with their impact” (24 V.S.A. § 4302 (b)(2)). Municipalities are the traditional governmental entities to regulate land use. There must be deference given to municipal decisions, municipal effort in developing plans and bylaws and municipal expertise regarding their communities. This is accomplished within the extensive requirements of 24 V.S.A. Chapter 117, the municipal and regional planning statute. If the law incorporated the state capability and development plan, municipal and regional plans would necessarily be given secondary status, making it much harder to assure that a city or town’s vision for its future is realized.

We are concerned that towns would be required to increase their planning and mapping to include water supply and wastewater lines, facilities and service areas. This is a labor intensive and complex task as some water and wastewater lines are not known in town and are very old. In fact, some date from the Civil War.

As drafted, the Natural Resources Board would be comprised of five members, including two district commissioners. We urge you to consider including one municipal official with experience in land use law.

The draft would exempt designated downtowns and neighborhood areas from Act 250. We strongly support that provision. It would also significantly expand jurisdiction and potentially complicate development in many small towns and rural areas. These places, that define Vermont, struggle to remain viable in the face of declining and aging population, difficulty building housing for the “missing middle” (affordable to middle income families), and an uphill climb to incentivize right sized economic growth.



There are 23 designated downtowns and six neighborhood development areas in the state to which the exemption in the current draft would apply. (I am sending you the lists of all the designations to include with this testimony.) Act 250 law would apply to the rest of the state.

Having said that, at its January 16 meeting, the VLCT Board endorsed both the broad concept of a professional Natural Resources Board and a clear exemption from Act 250 for development in at least designated downtowns and neighborhood areas. We have a number of questions related to both initiatives.

Professional Act 250 Board

If enacted, a professional board must be user friendly, transparent, respectful of local government priorities; affordable for and responsive to municipalities and individual citizens; easy to navigate; and result in a shorter streamlined permitting process. If the model for a professional board is the Public Utility Commission, we caution you it has none of those attributes.

A professional board might cut down on time to obtain a permit, which is a goal of permit reform. A professional board might render more consistent decisions across the state. However, retaining district commissions would provide for consideration of regional differences across this economically and geographically diverse state.

If appeals from a professional Natural Resources Board go to the Supreme Court, what happens in the event a municipal permit for the same project is being appealed at the same time to the Environmental Court? Many appeals to the Environmental Court are sent to mediation. Would there be any opportunity to consolidate appeals between the Supreme and Environmental Courts? The potential for arriving at two vastly different decisions about a project is considerable if the appeal process for a municipal permit and an Act 250 permit are divorced from each other. The committee needs to consider how to align these processes at the appeal level.

Local zoning boards and development review boards have a legal obligation to issue permits within a certain amount of time. Would that requirement be imposed on a professional Natural Resources Board? If not, why not?

Exemption for Designated Areas.

We support language that would exempt designated downtowns and neighborhood areas from Act 250 and believe that should be a complete and clean exemption. Municipalities with such designations have gone through an exhaustive and expensive process to demonstrate their capacity to administer robust land use regulations and the components of the designation program. This is also true of growth centers, new town centers and to a lesser extent, designated village centers. Cities and towns that have been granted growth centers and new town centers have found that the benefits are insignificant.

Designated downtown areas in flood hazard areas or mapped river corridors must also be subject to local regulation only and not pulled into Act 250 because of that mapped attribute.



A significant limitation of the designation program is that regardless of the planning and design that town has undertaken to design multiple downtown or industrial/commercial areas, the Downtown Designation program allows a city or town to have only one. Act 250 would apply in all the remaining areas of town. For instance, in Burlington, less than 15 percent of the land is in a designated area. Yet the city might need to encourage housing in a much broader area.

Consideration needs to be given to how pre-existing Act 250 permit conditions are handled, particularly if they were established by the Environmental Court.

Pre-Hearing Process

We support the inclusion of a pre-hearing process at section 6084.

2000 Foot Road Rule

The 2000 foot road rule does not make sense as it is written. The 800 foot road rule was extinguished in large part because it led to the development of spaghetti lots (long narrow lots with driveways of just under 800 feet). As this provision is written, a clustered development on the edge of a forest block in a rural community would be pulled into Act 250. While we want to protect large parcels from fragmentation, there is a need to establish what resource protection is important and what size of contiguous area of forest is necessary to protect. Regulation of town forests needs to be under the purview of the town.

Specific Criteria

Acknowledging it is current law, we commented last year about the imprecise definition of connecting habitat, “land or water, or both that links patches of habitat...”. What is a patch of habitat? Who decides?

Climate adaptation requirements in the draft bill may be contrary to local bylaws and needs on small lots, particularly in urbanized areas with respect to orientation, site and landscape design. The bill should clarify that if a town has climate adaptation requirements or energy efficiency requirements in its bylaws or if the local form based code addresses efficiency in different ways, they will be given deference in the Act 250 process.

We oppose the proposal that unless a municipality responds to a request by the board within 90 days as to impacts, a development will be presumed to not have an unreasonable burden of educational services, municipal or governmental services. The default should be that if the town does not respond within that timeframe, the district commission or Natural Resources Board will consider the impact on those services. Today, which is far different from when Act 250 was written, the unreasonable burden on educational services is that there are not enough students and we continue to pay for infrastructure to support many more students. You might presume more students would presumably decrease the burden on educational services. We think the assessment around educational services may need to be changed completely.



Forest Based Enterprise

We have a number of concerns around the proposal for forest based enterprises, especially hours of operation and time of year (mud season).

Thank you for the opportunity to testify. As you have requested, we will revisit the question of a professional board versus a revised district commission and Natural Resources Board.

List of designated downtowns (23)

<https://accd.vermont.gov/sites/accdnew/files/documents/CD/CPR/List%20of%20Designated%20Downtowns.pdf>

List of Neighborhood Development Areas:

Burlington, Essex Jct., Manchester, S. Burlington, Westford, Winooski

List of New Town Centers:

Colchester, S. Burlington

List of designated Growth Centers:

Bennington, Colchester, Hartford, Montpelier, St. Albans City, Williston

List of Village Centers

<http://planningatlasdatabase.vermont.gov/Designation/Show-Designation-Table.aspx?>