

Remarks to VT House Natural Resources Committee January 23, 2020

- Good morning, thank you for this opportunity to share some thoughts and ideas with you.
 - I'd like to take a few minutes to make some remarks and then I'd be glad to answer any questions.
 - Born & raised in Vermont here in Washington County, my family has lived here since the 1700s.
 - I have personally Lived & worked around the country & I returned to VT to make my career & raise a family
 - I Knew Deane Davis & have photo with him here in Statehouse shortly after A250 became law
 - I also Knew Jonathan Brownell & hunted & canoed with him in 69 & 70 and discussed & debated the details of the legislation being drafted
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 - I Have a Civil Engineering Degree
 - I worked here in VT doing Environmental Consulting for over 20 years
 - Including A250 for both Applicants & Parties
 - I was Appointed & reappointed by both Democratic & Republican Govs
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- And made Chair of D#5 by Jim Douglas
 - I served on the local district environmental commission for the first decade of this Century
 - Currently, I am Managing Director of Engineering for a company in the Energy Efficiency & Renewable Energy business = NO CURRENT BUSINESS OR POLITICAL STAKE & not Representing anybody here today except myself
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- Vt has Town meeting & VT has a citizen legislature; District Commissions are a Regional counterpart allowing Citizens of this Great State to participate and be heard & respected on issues related to development that directly affects them & their families and Community
 - As a member of Commission we routinely were thanked publicly by applicants, parties, municipal representatives & staff as well as interested citizens
 - We often heard praise for respect for everyone; keeping things moving, and getting lots of questions answered about the proposals pending before us.

- Deane Davis has been credited with saying something along the lines of “Let’s just not do anything stupid”
- I spoke recently with some developers that are well known both locally & statewide
- I’ve talked with current & former staff to the Commission & the NRB
- I also talked with Attorneys for environmental groups as well as those representing Applicants and/or Parties
- Not one wanted to be quoted with attribution - you need to know that = the current situation & process is either doing something or not doing something that has folks who know & can contribute unwilling to speak out. That’s an issue
- The proposals before you come largely from specific interests & are Not a complete & accurate representation of opinions of all the stakeholders directly involved: that’s a problem
- One developer said they turned to their partners & team & told them to finalize & submit complete applications on as many of their projects as possible so as to be grandfathered into the existing process before any of this takes place
- Jonathan Brownell never questioned the wisdom or need for regional citizen commissions supported by professional staff running a quasi judicial process
 - Instead, He became greatly concerned about the power of the State & the centralization of planning in Montpelier & specifically the taking of private property rights by consequence of a Statewide LUP
 - He said at one point that a crucial element was “The importance of building a structure that could not be manipulated by those who had specific, rather than community objectives”
- Deane Davis said the following: “In my humble opinion, the district commissions have been the genius of Act 250. The fact that even though there have not been a large percentage of permits declined, and amazingly high percentage of these have been improved in the process. I think that’s good because everyone learns more through this process.”
- That was my observation and experience on the D#5 too
- Projects got improved often at little or no cost and sometimes at a savings just through the facilitated process of discussion and exchange of information
- One attorney who works on both sides of the process for applicants as well as parties said
 - There are proposals here that will result in Litigation for years
 - Urged to keep it simple
 - Don’t make A250 part of some Great Experiment as a 50th Birthday present
- By some estimates only approximately 30% of ‘Development’ currently is subject to the Act 250 process
- Over 98% of the applications for an act 250 permit are approved.
- If you are concerned and interested in consistency and predictability, that is a fairly telling statistic! = 98%
- As an investor, if I was aware of an outcome that was assured 98% of the time, I would bet my money on that every time
- Act 250 was designed to achieve a balance between economic development and the legitimate interests of citizens, municipalities, and state agencies.

I have the following suggestions for you to consider:

- Do not cede authority carte Blanche for specific State Agency's projects
 - Do not abolish district commissions and centralize the functions in Montpelier and limit the local commission representative members ability to cast votes on matters that they are presumed to be incapable of understanding or deciding although that's what they've done for the last 50 years, particularly just for the sake of less than 2% of the applicants
 - By the way, over the years that statistic has remained remarkably consistent. With all of the changes and modifications to the process, that has remained the same.
 - Perhaps it's less of a reflection of the process and more about the proposals.
- Some of the proposals before you are worthy of consideration and measured inclusion as we modify our governance for this new decade, and this century.
- A wise person once said, fairly recently: "I have the philosophy of let's go slow to go fast,"
- Just because you've spent some time & got a lot of proposals before you doesn't mean necessarily it's time to go fast.
- With regard to consistency, one comment that I heard from developers was that there was more of a difference between individual projects in their experience than there was between the rulings of different district commissions across the state.
- However, if you wish To foster greater consistency between the different district commissions, please consider establishing a "members at large" for two positions on each commission. These two commission members, as well as the chair, would also be empaneled as the commissions for cases in adjacent districts. Hearing cases with members from different districts and deliberating with them will consequentially foster and enhance the cross pollination between districts.
- Consider requiring additional training for commission members when they join: I was never provided with any training. I think that the training session during the annual meetings is very helpful and I know that other commission members felt similarly, but it was always rushed because of timing and the opportunity for questions and debate was artificially limited. Consider requiring quarterly training sessions and mandating that commission members would have a minimum of one hours time in which to ask questions and hear answers. This would go along way towards fostering consistency as well.
- Also please consider requiring that a chair have served a minimum of two years on the commission before becoming Chair
- Further I would suggest that in order to be appointed one of the at-large members, that a commissioner must have participated in a minimum of three cases.
- The issue of De Novo proceedings has long been debated. I believe that the evidentiary record, and the findings and conclusions of law within the permit that is being appealed should at a minimum be required to be considered and adjudicated. I also understand and agree with the need to include a discovery process with interrogatories, depositions and document production as part of the appeal process. I have never thought that an appeal process should allow any party to present a substantially different case than had been heard in a lower jurisdiction., regardless of what body hears appeals.
- The development and publication of clear and enforceable standards under each criteria would be a hugely helpful step for all involved, and would support both consistency and predictability.

- Queen Elizabeth was recalling the 50th anniversary of another great achievement during her Christmas address just over a month ago when she said this about the Apollo 11 moon landing:

"... giant leaps often start with small steps,"

I urge the committee to proceed with small steps as you aim for great leaps in Act 250's 50th Birthday.