

Peg Elmer Hough
Testimony on Act 250 bill (Draft 9.2), April 16, 2019

Planning overview:

Thank you for inviting me back, on “planning” questions this time. Again, thank you for the hard work you’re doing!!

I was here for Kate McCarthy’s testimony back in February. She provided a very helpful overview of how planning works in VT. As did Chris Cochran, and others. It sounds like it would be helpful to re-visit those, but you don’t have the time. I’ll just hit a few points.

Overview: The opportunity for this kind of comprehensive update and reform only comes around once every 15-20 years. It’s been 50 years for Act 250. We addressed the planning half of Chapter 117 in 1989, and the regulatory side about 15 years later. This is a major and much-needed opportunity to strengthen and bring all three parts together.

The plans provide what’s called the “rational nexus” – the rationale – for land use regulation. At the local level, if the rationale isn’t in the plan to back up what is put into the land use regulations, the regulation won’t hold up to court appeals. We lost the state plan part of Act 250 a long time ago. The state planning part of Act 200 also fell away. Even so, the new goals in Chapter 117, Section 4302, and incentives to gain an “approved” plan, have resulted in a huge leap forward in gaining stronger local and regional planning in Vermont.

What we’d hoped for in those planning revisions, was to create a planning structure resembling a T: decisions moving upward from the local level, and across state interests/agencies at the top. It’s important, in review of the language of this legislation, to avoid setting up processes that could be interpreted as top-down.

Capability and Dev Plan: Thank you for including this missing piece for Act 250. It’s the data and maps for the plan - the rationale – to inform and thus guide future planning (and regulatory) decisions, at all levels. AND for that plan to be built with input from all those levels and interests. Thank you so much for bringing it back to the forefront, as the planning foundation for Act 250 decisions. Its role will make it controversial. It needs not only local input, but to seek input and feedback from other state agencies. Given that, and to make that believable, those final draft maps need more than 1 public hearing! (Section 6030 (b)(2), p 26 of 9.2) The regional planning commissions can team up to offer at least 5 public hearings to provide for citizen input. And – it needs to be said, on every map and in every meeting – that they are only generalized maps for conditions that can shift...that field site visits will be critical in any regulatory reviews of development.

And Kate McCarthy offered this suggestion in her testimony that I want to repeat:
“**Suggested addition/change:** The part of Act 250 that describes the Capability and

Development plan is [Title 10,] Section 6042. Currently, it says that the Capability and Development plan's findings "may" accomplish the purposes of the state's planning goals – which are separate. We think you should change "may" to "shall" in the last line of 10 VSA §6042." I agree – if we are in fairness addressing consistency for planning at all three levels of government, including the state, and changing required consistency with the state's land use goals in Chapter 117, Section 4302 for local and regional plans from a "may" to a "shall"...then that sections describing the connection of the Capability and Development Plan in Title 10 should also change from a "may" to a "shall".

Critical Resource Areas: I am only representing myself here, and have raised this before to no avail, BUT I'm certain I am not alone in having this concern about the critical resources (e.g., river corridors, wetlands, steep slopes) being brought in as a new means for jurisdiction rather than mapped for consideration under the criteria. This legislation to update Act 250 is badly needed and long overdue, but that piece is worryingly going too far. Those critical resources need to be mapped and publicly available to guide land use planning and decisions at all three levels. The VERB will look at the maps and apply them in asking all the right questions about applications before them. That should be enough! We could lose this needed effort to update this law by taking jurisdiction over all the land that falls into those critical resource areas. Downtowns, again, are an example, with our major rivers flowing through them. Very little development in our Downtowns has to undergo Act 250 review now. Why then take jurisdiction back under this provision. By taking jurisdiction, those downtown developers will be required to go to the regional office and fill out and pay for an application. The argument that the Rivers Program has special leniency in downtowns, to preserve the historic settlements, will be little relief to them then. Those developers should only need to go directly to the wetlands or rivers state staff, which will also be triggered by the local regulatory process using those maps in the Capability and Development Plan, and applying them to the development proposals.

Make-up of the "State Board" (Downtown Board): There is much reliance being placed on this "State Board": the recipient of appeals to regional plan approvals and the review of enhanced designations being two major new roles. I served in the 'Smart Growth' seat for 8 years.

I hope, before this proposed legislation is finalized, that the make-up and purpose of this State Board will be revised to fit its new roles, as well as its old. We should be able to rely on a Chair who's a member of the Development Cabinet to represent coordinated state agency input, and reduce the number there who are on the Governor's payroll. Of the 13 members, 6 of them are state government leadership and staff. It's great that the Downtown Board has provided a platform for some much-needed state agency collaboration, but that should be happening in a forum set up for more than the Downtown focus. Several of its members have primarily an historic preservation focus. There's the Labor & Industry representative to help address barriers to rehabilitation of upper floors in downtown buildings. He and other members admitted being at a loss in reviewing the large and complex Growth Center applications. They're not going to be

geared to review enhanced designations. There also needs to be a “wall” between the VERB’s representative to the Downtown Board, and decision-making by the VERB on any appeals to that body of Downtown Board decisions, or review of regional plans.

Please get the Board down to a size which can really work together on tough decisions. If we don’t gain the Development Cabinet, possibly divide the Board into two subsets: one to review Downtown and Village Center applications, and one better equipped to review the larger land use questions inherent in New Town Centers, Growth Centers and Enhanced Designations.

Funding: We need to improve funding, if you want improved planning. The Municipal Planning Grants have been historically underfunded. Most towns don’t have planning staff, so this allows them to hire consultants or RPC staff to help. It’s essential, and it has been underfunded for years.

Thank you - for the opportunity to testify, and for all of your hard work on these details. It’s important and needed!