P. O. Box 512
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June 11, 2020

Senate Committee on Natural Resources and Energy
in theory at the State House; in reality who knows
Montpelier (in theory) or who knows

Subject: Act 250 amendments in S.237 - Retaining jurisdiction in downtowns, neighborhoods, and villages

Dear Committee:

I am a civil engineer with many years experience in permitting of projects at the local, state, and federal levels. Part of my experience has also been in hydrology: flood studies, stream flow analysis, developing the early maps used for the flood insurance program in Vermont.

I ask that you not exempt downtown development districts, neighborhood development areas, or village centers from jurisdiction of act 250. Act 250 has an important role there. Requirements for municipal and other State reviews are inadequate compared to act 250.

Act 250 belongs in downtown development districts, neighborhood development areas, and village centers

Act 250 has a valuable role in shaping projects in downtown development districts, neighborhood development areas, and village centers. That is because act 250 is a comprehensive review. State permits focus on a specific issue and do not consider the effects of a project in their entirety. Municipal regulation does not need to consider any of the resources covered by act 250's criteria except flooding. Another advantage of act 250 is the way it invites citizens to become parties to an application. None of the other permits treats citizens with the same respect as does act 250. In my experience, municipal and State review and permitting are inadequate substitutes for act 250.

Act 250's small role in downtown development districts, neighborhood development areas, and village centers is still highly important. That is because act 250 applies to the larger projects (greater than 10 acres or more than 10 lots). It is these larger projects that are more likely to create adverse impacts. Because act 250's role is limited to larger projects and because act 250 has an important role to play, act 250 should remain in the downtown development districts, neighborhood development areas, and village centers.

Downtown development districts, neighborhood development areas, and village centers are defined in 24 VSA chapter 76A. The natural resources to be considered in these districts, centers, and areas by chapter 76 A are contained in the definitions of "smart growth principles", which includes "important natural resources" as one component. The resources to be considered under smart growth principles and important natural resources are fewer than the resources to be considered under the criteria of act 250.

Municipal regulation in downtown development districts and village centers is not required to be consistent with smart growth principles nor is it required to delineate or protect important natural resources.

Neighborhood development areas are intended to provide needed housing in areas immediately adjacent to downtown development districts, village centers, or new town centers, or within growth centers. Neighborhood growth areas are not intended to support other forms of development. In the designation of neighborhood development areas, municipalities need to balance smart growth principles with other considerations. They may include important natural resources. In the regulation of neighborhood development areas, municipalities are not required to consider either smart growth principles or important natural resources.

Act 250 does not hinder development in downtown development districts and neighborhood development areas.
My review of the act 250 database for projects that appeared on an agenda in 2019 turned up 219 projects. Two were located in a downtown development district. Both were in Winooski. One was a new 16-space parking lot. The other was a covered structure with retractable sides to expand the season of an existing outdoor dining area. Both permits were classified as minor, meaning no hearing was held. One permit was issued in 28 days; the other in 30.

A third project was partly in a downtown development district and partly in a neighborhood development area in Burlington. The project will merge 5 lots, demolish most structures, build a hotel, build senior housing, and build underground and surface parking. One hearing was held and a recess order was issued. The action then moved out of act 250 and to the City's development review board. Seven months after the recess order, the development review board issued its permit. Action then returned to act 250, which granted its permit 15 days later with no additional hearing. So act 250 did not delay or hinder this project. Most of the time between the act 250 application and permit was at the City's development review board with act 250 on hold.

If there are permit problems within downtown development districts or within neighborhood development areas, act 250 is not the cause. The Burlington project is an example: 71 days of action at act 250, waiting over seven months for a permit from the Development Review Board.

Municipal regulations do not require consideration of resources included in act 250 criteria
Municipal regulation is not a substitute for act 250 in the larger projects to which act 250 now applies.

Zoning requirements are contained in 24 VSA chapter 117, §§4410 through 4427. There is no requirement that zoning consider any of the act 250 criteria except flooding. And the requirement to consider flooding in zoning is minimal compared with act 250's criterion.

The only mention of smart growth principles and of important natural resources in the chapter is that they are goals, in the section on purposes and goals (§4302).

Zoning may touch on other resources included in the act 250 criteria. That permissiveness means that the amount of consideration of those resources will vary greatly from one municipality to another. Thus there will be large gaps between the consideration of those resources by the municipality as compared to the consideration given in the act 250 process.

Act 250 should remain in downtown development districts, neighborhood development areas, and village centers.

State permits are not the equivalent of act 250
Act 250 has intentionally and consistently been given authority over the same resources as covered by other state permits. This began in 1970 when act 250 was created. Act 252 of 1970 amended the requirement for a discharge permit. Act 282 of 1970 amended the requirement for a stream alteration permit. There were other resources covered by existing permit requirements that were put into the act 250 criteria in 1970. As permits were created for other resources, the resources were included in the act 250 criteria, in the same act *(e.g.*, wetlands). There are many more examples.

The review under act 250 is comprehensive and considers all effects simultaneously, in one process. State permits, however, focus narrowly on one specific aspect. And multiple State permits are required for one project. Act 250 can consider the overlap among resources and the overlap among effects. Other State permits cannot consider those overlaps. That actually means that act 250, with its one permit, is more efficient than the multitude of State permits required for a project.

The portion of the public that gains party status under act 250, is allowed to help shape a project to avoid adverse impacts. That is not possible with State permits. The most that the public can do with a State permit is to offer

comments late in the permit process. That is, after the details and conditions have already been settled by the State and the applicant. Neither the State nor the applicant need to amend the project to reduce adverse effects raised by the public.

State permits have large gaps in their consideration of the effects of a project. State permits do not cover the entirety of resources in the act 250 criteria. Some resources are not covered by other State permits and those permits leave gaps in coverage of resources.

For these reasons, State permits should not be considered to be an adequate substitute for an act 250 permit.

Conditions of act 250 permits need to be retained
S.237 proposes a mechanism for extinguishing act 250 permits and conditions under certain reasons. Those reasons are inadequate to protect the rights of non-applicant parties and of adjoining property owners.

One reasons for extinguishing is that the project is in compliance with another State permit that has independent jurisdiction. As I explained above, reliance on other State permits is inadequate. The framers and amenders of act 250 never considered other State permits to be a substitute for act 250.

Another reason is an issue that is addressed by municipal regulation and the project will meet the municipal standards This does not require that the municipal regulation require the same standard or the same level of protection as act 250. If the municipal regulation does cover the same issue, this allows the municipality to throw out all the conditions on that issue without imposing substitute conditions.

Conditions could be removed without any notice to the party that obtained those conditions. That is because the notice and hearing requirements of 4464(a)(1) and of 6048(b) do not require notice to all parties to the act 250 permit. A party that prevailed to have conditions included in an act 250 permit might not even know that a municipality had voided the very conditions that the party had achieved.

The exclusion of act 250 from village centers was not evaluated in committee.
The exclusion of act 250 from village centers was a floor amendment. The committee heard no testimony on the topic. The committee did discuss the amendment briefly without testimony (other than asking a few people in the room for clarification).

If you are considering excluding act 250 jurisdiction from village centers in your amendments, please receive sufficient testimony on the subject. Otherwise, please retain act 250 jurisdiction in village centers. As I have written above, there is no requirement in municipal permitting to consider in a village center any resources in the act 250 criteria.

Infill development in flood hazard areas and river corridors should not be allowed
As a hydrologist, I have learned that development in a flood prone area will increase damages and lead to increased water depths. Even if upstream actions reduce flood levels downstream, owners of existing buildings will experience little or no reduction in flooding if infill development is allowed. Infill development will tend to increase flood levels, offsetting the decreases achieved by the upstream actions. That means that owners of and occupants of existing buildings will not see the full flood-reduction benefits that could have been achieved.

Therefore, infill should be discouraged.

Conclusions

There is no benefit by removing act 250 jurisdiction from downtown development districts, neighborhood development areas, or village centers. And there is a detriment to removing that jurisdiction. Act 250 should retain that jurisdiction because of the following reasons.

- Few of act 250's projects occur in downtown development districts or in neighborhood development areas. So act 250 is not hindering projects in those districts and areas. Some projects there will benefit from act 250's comprehensive review, such as the Burlington project.
- Act 250's role in those few projects is important, because of the larger potential for adverse impact of these larger projects.
- Municipalities are not required to consider any of the resources in the act 250 criteria when regulating projects in downtown development districts, neighborhood development areas, or village centers.
- State permits are a poor substitute for an act 250 permit: narrow focus; ineffective public process; do not cover all resources.
- The exclusion of act 250 jurisdiction from village centers received no testimony in committee.
- Act 250 provides a comprehensive review of a project. Municipal permits, other state permits, and federal permits in their collective entirety do not provide that same comprehensive review of a project.
- Conditions of act 250 permits need to be retained.
- Infill within flood hazard areas and river corridors needs to be discouraged or prohibited.

Therefore, please retain act 250 jurisdiction by removing sections 5, 6, 7, and 8 from S.237. Also please retain references to Act 250 in sections 10 and 12.

Thank you for taking the time to read this testimony.

Sincerely,

Thomas Weiss, P. E.
resident of Montpelier