

April 28, 2021

Testimony to the House Committee on Natural Resources, Fish and Wildlife and H120

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I thank you Madame Chair, for the opportunity to discuss your Act 250 Bill, H 120, in particular, the sections on the Board and its Commissions.

I'll offer my short take on the Environmental Board right off the bat. With all due respect, and having worked with and on the Environmental Board over the past 45 years I think that it is time for us to return the planning function to the Act 250 process and return the Act to its original place, if not on—at least close to—the “front porch of the general store”, as Governor Deane Davis, Art Gibb and others envisioned in 1970. We have learned the hard way that the courthouse is no place for reaching agreement, no place for citizens to participate and no place for thoughtful, nuanced decisions that might bring to light a better understanding of the criteria of Act 250.

As for the District Commissions, please leave them as they are, with one exception, let the District Coordinators be part of a scoping service to applicants and parties. They are the core of the remaining good parts of Act 250. As non-deciders in the process, the Coordinators and/or the General Council to the Board can help the Commission avoid ex parte communication while resolving conflicts and moving projects along.

In 1994 Governor Howard Dean reappointed me to my third term as Chair of the Environmental Board, along with two of my nine Citizen Board Members, Nundy Bongartz and Terry Ehrich. But, the three of us were accused of “environmentalism”, and lost reappointment, in a pitched partisan battle lasting for months . When Terry was asked if he was then or ever had been an environmentalist, he answered, sure I am, aren't we all? Don't we all want a safe, healthy place to live?

I frequently think of Terry's answer these days because we are now just beginning to wake up to what it might mean to have, not just NO safe, healthy place to live, but actually NO PLACE to live, as the effects of climate change make life impossible in many regions of the country and around the world.

1994 was a low point for Act 250, and it makes me very sad to see that it has managed even to go down from there. To some extent the 1990's partisan divide was driven by a lagging economy. The fact was that in other parts of the country, fortunes were being lost due to speculative development failures. But in Vermont, the speculation was not a driving issue because Act 250's stringent criteria review protected against that.

How did Act 250 get so polarized? Let's look at its original intent. Act 250 was famously founded on a three pronged proposition: It was based upon a State-wide Plan, with Comprehensive Criteria and Citizen Access to the process.

But, almost immediately after Governor Davis signed it into law, the State-wide Planning leg of this three legged stool was yanked out, its opponents calling the Capability and Development Plan,

state-wide zoning. Ironically, the development community shot itself in the foot by supporting it: the lack of the planning component proved to be a problem for Act 250 applicants in particular, because it left them in the sorry position of not knowing whether their project would likely get a permit, until they were well into the process, having spent too much time and too many resources on a doomed project

The Act was seriously wounded without the planning piece and by 2003, the development community was determined to make the Act more “efficient”, by taking appeals to court. The “Citizen Access” leg was weakened when Governor Jim Douglas and the Legislature gave the appeals of District Commissions decisions to an Environmental judge. The Environmental Court requires a very particular expertise, making the appeals process expensive and in most cases, beyond the reach of citizens. The up or down, pass/fail, guilty or innocent decisions turned out to be hollow shells compared to the thoughtful, informative Environmental Board decisions.

The Act 250 we know today is a weakened version of what it was in the beginning, with a reputation for being slow, unpredictable and hard to navigate. Act 250 is now so polarized and controversial, it is hard to imagine how it might be able to play a role in mitigating or helping us to adapt to our biggest land use challenge, climate change. No longer is the problem the “rampant growth” of the 1970’s. Our challenge is not a Business As Usual scenario .

Today the threat is the violent weather patterns, fires and floods of climate change. Today we must focus on science, mitigating actions and adaptation protocols to save our towns and countryside from destruction. Everyone needs to participate. We need all hands on deck, pulling in the same direction. We cannot afford to be fighting each other, we need to be working together to secure our future.

We need Act 250 to play a pivotal role. We need to put version of Humpty-Dumpty together again and empower Act 250 to bring a new level of resilience to Vermont and to Vermonters
Don’t let H 120 keep Act 250 a slave of the past. Give Act 250 a new life, to help us gain the resilience to adapt to the climate changes as rapidly as possible.

We might ask how we could use Act 250 to bring parties together instead of driving them apart?
We might explore the scoping process to bring parties together in common cause to help Vermont to become more resilient. We might ask how could Act 250 play a role in the Global Warming Solutions Act? Or, what role can Act 250 play in a Green New Deal?

This committee has admirably begun to offer new criteria to abate climate change. But the job isn’t done. Affordable housing, renewable energy, agriculture, community building, stormwater management, growth rates and more, await your focus.

The Act 250 framework is there to use, the weaknesses have been identified. Now we need to put a broken Act 250 back together again, re-tool this valuable resource called Act 250 and empower it to address a challenging future.

Think big, think bold. Give Act 250 a MISSION to focus and sharpen the new green deal and work to make it successful. Give Act 250 the AUTHORITY to ensure the Climate Council objectives are met. Give Act 250 the additional RESOURCES to bring people together to find solutions.

We can build a better Vermont, with a better Act 250. And we must build a better Vermont, because, after all, we all want a SAFE AND HEALTHY PLACE TO LIVE.

Thank you for your time and your good work and for the good work you will do in the future.