Dear Chair Sheldon,

I am following H.492 and would like to offer my perspective on a several items under consideration that mirror the Public Utility Commission process.

As background I am currently or recently assisting citizens in participation at the PUC in Bennington, Manchester, Granville, Chelsea, Worcester, Randolph and Norwich, and some other towns. To a person, they tell me that without my guidance explaining the process to them and focusing them on how to participate, they would have no idea what to do. It is unbelievable to me that I am the only person in this role providing towns and citizens with guidance so they can participate in the PUC process.

Act 250, when fully staffed, has a District Coordinator to serve in the role I am currently doing for PUC cases. However I am hearing that some of them are overwhelmed with work, take a long time to respond, some do not respond at all, whether to applicants or citizens. That points to the need to fully staff Act 250. It can work.

The following sections are similar to processes used at the PUC. I will offer my comments about the use of them by the Environmental Review Board.

Section 1. Hearing Officers. In past testimony, former Act 250 general counsel has pointed out the tremendous value of having a number of people hearing a case, as they can talk over issues with each other and that interaction is crucial to coming to good decisions. The single hearing officer is a rather sterile environment, and it actually adds a lot of time to the decision-making. After the evidentiary hearing is over, parties file Briefs, then Reply Briefs, then the hearing officer issues a Proposal for Decision. Parties then comment on the PfD, and can ask for oral argument before the full PUC and a site visit. After that happens, the full PUC issues a decision. The whole process is far lengthier than if a case was heard by the full PUC in the first instance.
Given that so few major cases are getting hearings, I would think you would want to see some legitimate justification for the use of hearing officers at the ERB. It is not beneficiary to the applicants or intervenors.

Section 5. Preapplication Process. Just yesterday I met with community members in an Advance Notice phase of a project. They had a lot of questions because there wasn't much information. I showed them the Advance Notice materials by another company filed in a similar type of development that had all the details that were lacking in their case. The applicant in their case did the minimum as required by the rules. The applicant in the other case provided information that is actually necessary to understand what is being proposed.
While I don't object to what is described in the bill, I will note that with the PUC's Advance Notice requirements, it is my observation that nobody has a clue what they are supposed to do during the AN phase. I explain to planning commissions, select boards and citizens that it is an opportunity to hold public hearings and take input from the public to provide to the applicant to improve their application, or withdraw it. These public input hearings rarely happen. Regional Planning Commissions have committees that review Act 250 and Section 248 applications. Usually the Advance Notice review is a quick overview with nothing resulting from them, except that the commissioners might remember the site when the Petition is filed and the full application comes to the committees.

In short, even though this process exists at the PUC, hardly anyone has a clue what they're supposed to do during the Advance Notice phase. And the materials submitted can vary widely in detail. Adding process is not necessarily citizen friendly because it is asking people to take precious time that most people simply do not have.

Section 6. Prehearing Discovery. At the PUC I have observed numerous instances of abuse of the discovery process when used on public participants who appear only as parties, or as lay or fact witnesses.
Discovery should be limited to expert witnesses only.

RPCs and Town Plans. I keep encountering a tremendous variation in guidance being provided by Regional Planning Commissions to municipalities. Just yesterday I learned that one RPC recommended removing language using the words "shall" or "must" as they finalized their plan, and told the municipal planning commission to use words like "recommend" and "encourage." Numerous Vermont Supreme Court decisions have made it clear that it is mandatory that for regulatory purposes, town plans must be specific and must contains the words "shall" and "must" in order to be regulatory. Towns are being encouraged to do Enhanced Energy Planning, yet the Department of Public Service requirements for certification do nothing to address the requirements of the PUC to make town plans useful for their regulatory review.
It is really shocking to me how much variation there is in the guidance coming from Regional Planning Commissions in assisting volunteer town planners in understanding what they need to put in their plans in order for them to be applicable to Act 250 and Section 248.

Gravel Pits and Quarries. In listening to the testimony you are taking, I will note that the issue of gravel pits and quarries needs to be addressed. Brian Shupe suggested that some issues benefit from their own program. New York State has a good program that regulates and enforces quarries, and shuts them down when they violate permits.
Something has to happen. And it has to happen now. The problems are ongoing, people's quality of life and actual risk to their lives is a problem that has grown.

Overall, **VCE supports H.492** and appreciates that it is evident that the committee has listened to the prior testimony from past years that has led up to this welcome restoration of an appeals board, with a process that addresses political interference. Thank you.

Annette Smith
Executive Director
Vermonters for a Clean Environment
789 Baker Brook Road
Danby, VT 05739
(802) 446-2094
www.vce.org