

To: House Committee on Natural Resources, Fish and Wildlife

From: Jon Groveman

Re: H.492

Date: February 16, 2022

Below is the suggested language that I referenced in my testimony today:

#### Discovery

(6) Prehearing discovery.

(A) A party may ~~use~~ obtain discovery of expert witnesses who may provide

testimony relevant to the appeal. ~~Use of an e-Expert witness testimony shall be in accordance with follow the~~ Vermont Rules of Evidence. ~~702.~~ The use of discovery for experts shall comply with the requirements in the Vermont Rules of Civil Procedure 26–37.

(B) **Interrogatories served on non expert witnesses** shall be limited to discovery of the identity of witnesses and a summary of each witness's testimony. Interrogatories served on expert witnesses shall be in accordance with the Vermont Rules of Civil Procedure

(C) Parties may submit requests to produce and requests to enter upon land pursuant to the Vermont Rule of Civil Procedure 34.

(D) Parties may not take depositions of witnesses, except by order of the Board for cause shown.

(E) **The Board may require a party to supplement, as necessary, any prehearing testimony that is provided.**

#### JO Appeals

**My second area of concern relates to the language regarding the appeal of JO's on page 22 of the bill. I understand the intent of the language is to capture the fact that sometimes all parties are not notified that a JO has been requested and issued, and those parties should not be limited in their ability to appeal by time – must appeal within 30 days of the issuance of the JO – in the person did not know the JO was every issued.**

**Rather than using the language in the bill on page 22, which I believe is confusing, I recommend using the existing language in law on JO appeals to the E-Court. All that needs to be changed is the appeal goes to the Board and not the courts.**

The language is mostly from 10 VSA § 8504 (e) and should replace the language on page 22, lines 3 to line 4 of page 23.

Act 250 jurisdictional determinations by a district coordinator.

(a) A person who seeks review of a jurisdictional determination issued by a district coordinator may bring an appeal to the Board of issues addressed in the determination.

(1) The appellant shall provide notice of the filing of an appeal to each person entitled to notice under subdivisions 6085(c)(1)(A) through (D) of this title, to each person on an approved subdivision 6085(c)(1)(E) list.

(2) Failure to appeal within the time required under subsection (a) of this section shall render the decision of the district coordinator under subsection 6007(c) of this title the final determination regarding jurisdiction under chapter 151 of this title unless the underlying jurisdictional opinion was not properly served on persons listed in subdivisions 6085(c)(1)(A) through (D) of this title and on persons on a subdivision 6085(c)(1)(E) list approved under subsection 6007(c) of this title.