

VT Planners Association, notes from testimony by Peg Elmer Hough on February 2, 2022

We do not have a solid position to deliver on H.492. Our legislative committee had 17 members participating in an active discussion on Monday, but the Executive Committee, yesterday, was divided on wanting more time to discuss, and those ready were further divided equally pro and con on the question of replacing consolidated appeals before the Env Court with the ERB. Our membership is a diverse x-section of professionals deeply involved in how land use decisions proceed in VT. I can offer you the reasoning from those who are “pro” and those who are “con”.

Pros -- From those that agree that shifting Act 250 appeals to a professional Environmental Review Board with adequate staffing is a good idea:

1. Having Act 250 appeals heard by professional board, rather than a single judge, is more accessible and flexible, providing for a more deliberative process, and informed findings and decisions, as was originally intended under Act 250.
2. Decisions from that Board can better establish binding interpretations and tests under the Act 250 criteria (like the Quechee decision/test). This will help provide needed precedent and consistency in District Commission reviews and decisions.
3. The structure is also set up so the ERB decisions are less likely to undermine the work of the District Commissions
4. The professional board, as described in this legislation, could improve consistency in training, interpretation, and implementation of rules across the various districts
5. Such a process is more similar to what many VPA municipal planner members are accustomed to, with appeals of zoning permits. The first level of appeal goes to a Board (e.g., DRB) that is steeped in the regulations, and has an inclusive public process to hear the appeal.
6. And overall, the opinion that the quality of the former Environmental Board decisions, in handling the District Commission appeals de novo, were enhanced by the deliberation of balanced set of Board members. The current, litigious, appeals process has proven to be expensive and time consuming for all parties.

Cons -- A preference to hold on to the current Environmental Court appeal system to maintain the ability to have consolidated appeals for any given project because:

1. The municipal zoning permits and Act 250 permits for the same project are consolidated and can be heard at the same time in the Environmental Court.
2. Appeals of administrative decisions affecting property rights should be decided by the judiciary with a neutral decision-maker who follows clear procedural rules and knows how to interpret the law.

With that said, legislators have received testimony that consolidation has often significantly delayed or extended the judicial review process and associated costs, and can still require separate judicial findings and outcomes due to the different statutes, rules, and bylaws applicable to Act 250, local, and state agency permits that a particular project will be subject to.

VPA has already been on record with our position that the current Act 250 appeals process is not working well. And that the existing consolidated appeals process, as was intended in the 2004 changes, has had plenty of time to prove its value and has not achieved the intended benefits.

We are unanimous that:

- broader reform of the law is still needed, such as H.926 in the last biennium sought to address, and
- most importantly, we recommend expanding the reporting requirement in Section 16 of this bill. There is an opportunity, not to be missed, in Section 16, to add Section 12 from the 2020 House-passed H. 926: VERMONT REGIONAL AND MUNICIPAL PLANNING REVIEW, to address the Capability & Development Plan and Downtown Board decisions. **Act 250 exists outside the policy frameworks of state, regional and local planning processes, including the CAP.** At the very least, having the reporting requirement in this legislation address that gap – the why and how VT should get that plan back in place – would be big step forward.

I was able to provide you with VPA's position paper on the Capability & Development Plan, which was adopted 2 weeks ago.

A side note: is there an error in line 4 of p. 15. Shouldn't the first "Board" be "Commission"?

Thank you!