

## Proposed Changes to Permit Conditions for Wood Product Manufacturers

### WE WANT THE WORKING LANDSCAPE TO BE SUCCESSFUL = REP. BONGARTZ

What prompted me to testify today was that Chair Sheldon mentioned wanting to hear from District Commissions. “Hear the reality of situation” I appreciate that you have been interested in hearing from us who are on the frontline so to speak. I also was prompted by watching you all attempt to parse out the proposed language regarding permit conditions on wood product manufacturers. I agree with Representative Bongartz view that consideration need be given to 3 parts, deliveries to, manufacturing, and deliveries going out.

### WHATEVER YOU DECIDE PLEASE BE CLEAR!!!! THE PROPOSED LANGUAGE BEFORE YOU IS ANYTHING BUT CLEAR.

Criterion 8 was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from his or her property will remain the same forever. Change must and will come, and criterion #8 will not be an impediment. Criterion #8 was intended to insure that as development does occur, reasonable consideration will be given to the visual impacts on neighboring landowners, the local community, and on the specific scenic resources of Vermont.

Re: Okemo Mountain Inc., #2W5051-8-EB, Findings of Fact, Conclusions of Law 1986

### LOCATION, LOCATION

1. Coltons is a case study in the historical complexity of permitting a wood products manufacturer. Since 1983 there have been issued at least 6 permits and 1 court imposed stipulated agreement. **With growth and success often comes an increase in NOISE.**
2. The Coltons are an excellent example of the Commission trying to balance an elephant on the head of a pin. The Commission has tried to balance the needs of a growing seasonal business into a full year business with the needs of neighbors for quiet enjoyment of their properties.
3. The proposed change in the law as passed by the Senate:
  - 2) *Permit conditions on a wood products manufacturer.*
    - (A) *A permit condition that sets hours of operation for a wood products manufacturer shall only be imposed to mitigate an impact under subdivision ((a)(1), (5), or (8) of this section.) Not necessary*
    - (B) *If an adverse impact under subdivision (a)(1), (5), or (8) of this section would result, a permit with conditions shall allow the manufacturer to operate while mitigating these impacts. A permit with conditions that mitigate these impacts shall allow for deliveries of wood products from forestry operations to the manufacturer outside permitted hours of operation, including nights, weekends, and holidays, for the number of days demonstrated by the manufacturer as necessary to enable business operations, not to exceed 90 days per year.*
  - (3) *Permit with conditions on the delivery of wood heat fuels. A permit with conditions issued to a wood products manufacturer that produces wood chips, pellets, cord wood,*

*or other fuel wood used for heat shall allow shipment of that fuel wood from the manufacturer to the end user outside permitted hours of operation, including nights, weekends, and holidays, from October 1 through April 30 of each year. Permits with conditions shall mitigate the undue adverse impacts while enabling the operations of the manufacturer.*

*4) Permit amendments. A wood products manufacturer holding a permit may request an amendment to existing permit conditions related to hours of operation and seasonal restrictions to be consistent with subdivisions (2) and (3) of this subsection. Requests for condition amendments under this subsection shall not be subject to Act 250 Rule 34(E).*

4. Last week I watched intently as you tried to wrap your heads around the proposed language cited above. I was having the same trouble understanding the language. I reached out to several District Coordinators and to several noted lawyers with an expertise in Act 250. One comment is that the language is circular, that is, circular reasoning. A Commission may impose a condition only when it finds the condition is necessary to mitigate the impact of a proposed action the applicant wants to take. But for the condition, the impact of the action taken by the applicant would result in an undue adverse impact and therefore not comply with the criteria and therefore not be permitted.
5. How do we apply the proposed restriction on permit conditions? A fire wood manufacturer wants to expand its seasonal hours of operation to full year. Do we automatically have to allow it under the first sentence in (2)(B)? What if the commission determines that the operation could operate full season without an undue adverse impact under regular 7-7 hours? However, they determine that the 90 day allowance for 24 hour delivery is too great an impact on the neighbors and therefore undue. Noise impact is cumulative. I believe this is what Representative Bongartz was thinking. It might be harder to permit changes or permit a new operation.
6. What if the Commission is not able to find a method to adequately mitigate the impact of the noise outside normal hours of operation?
7. I AGREE THAT IT IS UNCLEAR AS TO WHAT THE EXTENT OF THE LIMIT ON THE PERMIT CONDITION IS. IS IT TO ALLOW TRUCK DELIVERIES FOR 90 DAYS OR IS IT TO PERMIT MANUFACTURING 24 HOURS PER DAY AS WELL AS TRUCK DELIVERIES TO AND FROM
8. What happens to the history behind the development of these conditions upon which neighbors have relied? StoweClub analysis. **Tossing out the history**
9. Representative Morris had interesting thoughts about Criteria 10. If a town used clear, unambiguous, mandatory (shall, must) language in its Town Plan directing that for instance that the rural community “shall” remain quiet from twilight till dawn and that

traffic must be kept to a minimum during those hours, then perhaps this permit condition restriction might not conform with the town plan.

10. I heard you discussing municipal regulations, that there would be municipal review. Remember 45% of the towns don't have Zoning Bylaws. THERE IS NO MUNICIPAL REGULATION. In fact the Coltons reside in Pittsfield, a 1 acre town. Therefore, without Act 250, there would be no regulation.
11. The true intent of this restriction on permit conditions is to exempt wood product manufacturers from Act 250 for a period of 90 days when necessary to facilitate the economic welfare of the forest industry. Simply say it. "For 90 days despite any undue adverse impacts of the operation, a wood manufacturer may operate as they feel necessary to facilitate their and the loggers' operation." Don't put the Commission in the position of trying to mitigate an impact which might be undue.

**12. WHAT EVER YOU DECIDE PLEASE BE CLEAR!**

Thank you.

Tim Taylor

Chair District 3 Environmental Commission