

TESTIMONY BEFORE SENATE NATURAL RESOURCES COMMITTEE

THURSDAY, JANUARY 21, 2021

GOOD MORNING, I'M TIM TAYLOR. THANK YOU FOR THE OPPORTUNITY TO SPEAK WITH YOU ABOUT PROPOSED ESTABLISHMENT OF A NEW PROFESSIONAL NATURAL RESOURCES BOARD TO HEAR MAJOR ACT 250 CASES THEREBY USURPING THE POWERS THE LEGISLATURE VESTED IN THE 9 LOCAL DISTRICT ENVIRONMENTAL COMMISSIONS.

1. I AM A VEGETABLE FARMER IN POST MILLS, THETFORD FARMING SINCE 1980 ALONG WITH MY WIFE JANET.
2. WE FARM 56 ACRES, MIXED VEG., BERRIES, 18 GREENHOUSES, BEDDING PLANTS.
3. SINCE 2011 I HAVE BEEN THE CHAIR OF THE DISTRICT 3 ENVIRONMENTAL COMMISSION
4. DISTRICT COVERS NORTHERN WINDSOR COUNTY, MOST OF ORANGE, 1 TOWN, PITTSFIELD IN RUTLAND COUNTY, AND 2 TOWNS, HANCOCK AND GRANVILLE IN ADDISON COUNTY 15—TEN ACRE AND 15 ONE ACRE TOWNS. POPULATION FROM HARTFORD--10,000 TO GRANVILLE--298.
5. DURING THIS TIME, I HAVE CONDUCTED +/-70 HEARINGS INCLUDING GIFFORD ASSISTED LIVING, B&M REALTY (SCOTT MILNE), AND EXIT 4 (SAM SAMMIS)
6. I AM HERE FOR ONE PRINCIPAL REASON:

WHY? WHY SHOULD THE CITIZEN-BASED DISTRICT COMMISSIONS BE ESSENTIALLY REPLACED WITH A CENTRALIZED "PROFESSIONAL NATURAL RESOURCES BOARD" WHICH WILL HEAR ALL "MAJORS" WITH TITULAR PARTICIPATION OF A MINORITY OF LOCAL COMMISSIONERS?

7. IN ORDER TO ANSWER THIS QUESTION THE COMMITTEE SHOULD CONSIDER THE FOLLOWING QUESTIONS:
 - a. IS THIS PROPOSAL IN KEEPING WITH THE RECOMMENDATIONS OF THE ACT 250 COMMISSION WHICH SPENT OVER A YEAR REVIEWING THE LAW?
 - b. HAS THERE BEEN A HISTORY OF INCONSISTENT DECISION MAKING ON THE PART OF THE DISTRICT COMMISSIONS?
 - c. ARE ISSUES FACING THE DISTRICT COMMISSIONS SO "COMPLEX" THAT LAY CITIZENS WITH A LIFE FULL OF EXPERIENCES ARE NOT ABLE TO ADEQUATELY ADJUDICATE THEM?
 - d. IN A TIME OF FISCAL AUSTERITY, IS THIS HOW THE COMMITTEE WANTS TO SPEND THE TAXPAYERS DOLLARS?
 - e. DOES THE COMMITTEE WANT TO REDUCE DEANE DAVIS'S CORE PRINCIPLE THAT THE ACT 250 PROCESS BE DECENTRALIZED AND BE ACCESSIBLE TO VERMONTERS?

ACT 250 RECOMMENDATIONS

8. I HAVE REREAD THE COMMISSION REPORT. NO WHERE IN IT IS THERE ANY SUGGESTION THAT THE DISTRICT COMMISSIONS HAVE FAILED TO ADEQUETELY ADDRESS THE ACT 250 CRITERIA AND RENDER FAIR DECISIONS. THE DISTRICT COMMISSIONS ARE DESCRIBED IN THE NRB ANNUAL REPORT AS THE "HEART OF THE ACT 250 PROCESS". NO DOCTOR WOULD REMOVE A PATIENT'S HEART UNLESS IT WAS FAILING. WHERE IS THE EVIDENCE THAT THE DISTRICT COMMISSIONS ARE FAILING?
9. IN FACT THE COMMISSION STATES, "THE ABILITY OF THE DISTRICT COMMISSIONS TO QUESTION THESE (ANR PERMITS) SHOULD NOT BE REDUCED AT A TIME WHEN IT APPEARS IMPORTANT FOR THE DISTRICT COMMISSIONS TO MORE VIGOROUSLY EXERCISE THEIR SUPERVISORY AUTHORITY OVER THE WATER QUALITY IMPACTS OF PROJECTS WITHIN THEIR JURISDICTION".
10. THE COMMISSION FURTHER ADDS:

- In contrast to centralized agencies, the District Commissions are independent, regionally based citizen commissions more in touch with local conditions and circumstances.
- • The District Commissions make their decisions based on a comprehensive project review rather than a compartmentalized evaluation of a particular impact or activity such as a stormwater discharge.
- • They provide a clear avenue for citizens to participate in project review in a manner that provides a greater and more meaningful role than simply submitting or voicing concerns after an agency has decided to issue a draft permit based on back and forth between its staff and the applicant's experts.
- • They act as a safeguard against agency decisions in case they are flawed.

INCONSISTENT DECISION MAKING

11. DURING LAST YEARS HEARINGS THERE WAS LITTLE TO NO EVIDENCE CITED REGARDING DRAMATICALLY INCONSISTENT DECION MAKING ON THE PART OF THE DISTRICT COMMISSIONS. ACT 250 IS A VERY STABLE LAW. THERE ARE VERY FEW APPEALS OF DISTRICT DECISIONS.

I have attached the 2018 Natural Resources Board Annual Report for your perusal. On page 12 there is a graph that shows that in 2018 there were 404 Act 250 applications. 176 were handled as Administrative Amendments and went right out the door. 192 were deemed "minor" applications which means we issue a permit usually within 30 days of deeming the application complete, and unless an interested party requests a hearing, the permit issues.

What I would like you to understand is that only 36 applications out of 404 went to a public hearing. And of those 36, only 5 were appealed to the Environmental Court. Again, I ask what is the problem? The present system of citizen-based District Commissions appears to be working fine.

DECENTRALIZED ACCESS FOR VERMONTERS

12. When I conduct a hearing, I explain to the audience that that the legislature has created two types of parties. The first are statutory parties who have the absolute right to participate. They include all State Agencies, RPCs etc.. Then there is everyone else. We as Commissioners are just like the general public. We are citizens, appointed by the Governor and were we want to participate in a hearing, we would have to demonstrate as you do, that you have a “particularized interest” that is affected by the proposed application that is different than the general public. In other words, we are you, the general public and not state bureaucrats.
13. When I conduct a hearing, what I am most proud of is when an interested party I.e. a neighbor comes up to me after the hearing, shakes my hand, and says “I don’t think you probably agree with my position, but you listened to me and asked the applicant the questions I needed asked. Thanks.” The present system affords a process where neighbors listen to neighbors.
14. The proposed makeup of the Commission will intimidate many interested neighbors. Perhaps if the Commission was balanced 3-2 in favor of local, District Commissioners, neighbors would feel differently.

TOO COMPLEX FOR A CITIZEN BASED COMMISSION

15. Brian Shupe, the Executive Director of The Vermont Natural Resources Council stated last year during his testimony that all was well with Act 250 for 34 years until the Environmental Board was eliminated. Then chaos (my words) reigned down. The Commission Report recommends restoring the Environmental Board. That is a much simpler fix.
16. Also, he states, “At the same time, development projects and the associated environmental and community impacts have grown increasingly complex.” He is implying that we, lay commissioners are no longer capable to reach the correct decisions.
17. Let’s examine for a moment which criteria District Commissioners most wrestle with. Criterion 8 requires that before issuing a permit, the Commission must find the proposed project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare or irreplaceable natural areas. In approximately 70% of the hearings I have

chaired, this is the criteria most under contest. We must decide whether the project offends the sensibilities of the average person. Is the project offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area? We discuss noise and visual impacts. We mitigate these impacts with conditions such as hours of operation and sound barriers. Who better than lay citizen Commissioners to understand when a project offends the “sensibilities of the average person”. Who are we if not average persons?

FISCAL AUSTERITY

18. District Commissioners are presently paid \$50 per day for a major hearing. We are cheap! Remember in 2018 there were only 5 appeals to the Environmental Court. Why throw thousands of dollars at a problem that doesn't exist.

There are many changes to the law that deserve consideration, but this is not one of them.

THANK YOU ONCE AGAIN FOR THE OPPORTUNITY TO SPEAK WITH YOU.