

Senate Natural Resources and Energy Committee

Consideration of Executive Order No. 02-21

Reorganization of the Natural Resources Board

Testimony of Ed Stanak

January 29, 2021

I am a resident of Barre City and was employed for 32 years as an Act 250 district coordinator. While the majority of my service as a public employee was as staff to the District 5 Environmental Commission, I had no role in the processing of application 6L0076-3.

Vermonters believe that governors and legislators make decisions after careful consideration of facts obtained from studies, reports and input from lobbyists and Vermonters. Many decisions also rely upon the personal experiences of the governors and legislators. Ideally, a mix of objective facts and personal experiences will result in sound decisions. But what is the effect on public policy when the decision maker's perspective on a personal experience is based upon a mistaken understanding of what actually took place?

An example of such an unfortunate outcome can be found in Governor Phil Scott's personal experience with the Act 250 process almost 40 years ago and how that experience tainted his positions as a state senator. It now drives his effort as governor to change the Act 250 permit process under the authority of an Executive Order.

After graduating UVM in 1980, Scott decided to open a motorcycle sales and repair shop in Morrisville. He teamed up with the H.A. Manosh Corporation that offered to rent him space in a new building - construction on which had commenced prior to obtaining necessary state permits. Scott claims that unreasonable delays in obtaining an Act 250 permit subsequently forced him to abandon his business proposal and he has been hell-bent on "reforming" Act 250 ever since.

According to public records, Scott and Manosh filed the required application for an Act 250 permit on May 17, 1983. The District 5 Environmental Commission then processed application 6L0076-3 as a "minor application" on May 25, 1983. The Commission circulated a draft permit and a notice indicating that any comments or requests for a hearing had to be made by no later than June 9, 1983. As was (and still is) standard procedure under applicable statutory provisions and Act 250 rules, the draft permit included a condition (condition # 4) that would incorporate the terms of a related Agency of Environmental Conservation (AEC – now the ANR) permit, when issued, approving the water supply and sewage disposal systems for the project. The procedure required that the District Commission await the AEC permit as adequate proof under

the criteria of Act 250 that the project would not cause water pollution and would have an appropriate water supply.

The file for application 6L0076-3 shows that no one requested a hearing by the June 9th deadline. The only comments were filed by the AEC land use administrator reminding the applicants that they needed to obtain the AEC permit as well as a permit for electrical wiring from the Department of Labor and Industry.

Thus, **Phil Scott's experience with the Act 250 process was completed within 23 days** – from the date of filing the application to the end of the comment period stated in the notice.

So what happened next? The District Commission awaited receipt of the AEC permit. The application for that permit was filed on May 11, 1983 and the AEC engineer sent a review letter to the co-applicants on May 23rd requesting additional details. Co-applicant Scott provided final submittals to AEC on October 21, 1983. The AEC permit was then issued on October 27, 1983. Under Act 250 rules, the applicants had the responsibility of providing the Commission with a copy of the AEC permit. (This was during the era prior to email and the electronic transmission of documents between state agencies.) The 6L0076-3 file reveals that the co-applicants never provided the Commission with a copy of the AEC permit.

Application 6L0076-3 remained pending in the District Commission office until August 20, 1987 when staff issued a memorandum noting the lack of progress on the pending application. The public file for application 6L0076-3 does not include any evidence of inquiries or any other submittals by either co-applicant Scott or Manosh after the filing of the application on May 17, 1983. The Commission considered application 6L0076-3 withdrawn as of September 7, 1987 due to inaction by the applicants to complete the record.

Scott took a job with the Manosh Corporation when the effort to open the motorcycle shop was not completed and then became a principal with DuBois Construction Inc. in Middlesex. But Scott's experience with the Act 250 process had a profound effect on the young businessman who was quoted in a February 27, 2017 Burlington Free Press article as saying "It definitely changed my life." Scott first ran for the state senate in 2000 and his Act 250 tale of woe was an essential part of his stump speech and continued to shape his political career during campaigns for lieutenant governor and governor.

I contacted the Governor directly twice about the contradictions between the content of his "stump speech" and the 6L0076-3 file. The first time was during fall of 2014 following a forum for lieutenant governor candidates and we exchanged voice mails. The second contact was through written communications in May 2018 and at that time he wrote back: "If it (sic) indeed the application failed because of delays and the inability of the lead applicant to complete the application process, I believe this suggests we need to determine if the system we have in place is sufficient."

So what is the take-away from this glimpse into the development of the Governor's attitude toward Act 250? The misplaced bitterness of a young businessman became a pillar upon which a political career has been built and continues to this day. Scott now attempts to drastically alter the administration of Act 250 by means of an Executive Order without any evidence of the "problems" the EO purports to solve. *

I have voted for Phil Scott. I applaud his leadership in guiding us through the Covid pandemic. But when it comes to a clear and objective understanding of the Act 250 process his policies are inherently flawed. The Governor's policies do nothing to ensure that Act 250 will be strengthened in order to adequately address foreseeable 21st century growth pressures on our dwindling finite natural resources.

At least one house of the General Assembly needs to pass a resolution, pursuant to the duly enacted provisions of 3 VSA 2002(b), and disapprove the Governor's Executive Order that would destroy the time tested decentralized and publicly accessible decision making process of the Act 250 district commissions.

*Legislative records indicate that Governor Scott may be responsible for some of the alleged Act 250 problems he now proposes to solve. Paragraphs 6 and 7 on page 1 of the EO refer to the very significant "permit reform" amendment of Act 250 in 2004 that replaced the Environmental Board with the Natural Resources Board. Then Senator Scott, a member of the SNRE committee, was the sponsor of S.72 in 2003 which set this change in motion. Senator Scott also served on the eventual conference committee for related House bill H.175 which became Act 115 of 2004 – the law the Governor now blames for less than consistent applications of policy and law in the Act 250 program.