

**From:** Shems, Ron  
**Sent:** Friday, January 20, 2012 5:14 PM  
**To:** MacLean, Alex  
**CC:** Markowitz, Deb; Recchia, Chris; Mears, David  
**Subject:** permit process

Hi Alex,

I had a good meeting with David Deen, the upshot of which is that he is willing to amend his bill, H.513, to substitute the court for the proposed professional board. I believe that that gives us what we want. Three caveats:

1. David Deen's bottom line is the modified on-the-record standard in H.513 (that we discussed, was well researched by Aaron Adler, and is used in other states). I agree with that standard.
2. H.513 is not before David Deen's committee – it is before Tony Klein's. David was very clear that Tony will not take any action on it unless directly prompted to do so on a high political level. The prompt would not work from me, David Mears, Chris or Deb. He suggested that the Governor call him and Tony to his office "as he has done before."
3. Simply substituting the Court for the professional board in H.513 could please the Chamber and other constituencies (based on a very quick conversation I had with Dawn Francis), but leaves VNRC with little. David Deen suggested VNRC may want a magistrate or master that could:  
(a) work with parties in a less formal manner than a judge, (b) provide case-tailored ADR, and (c) otherwise facilitate parties. A far more critical issue will be assuring sufficient time for neighbors and other parties to prepare. An applicant often takes several months or longer to prepare an application while other potential parties have only 10 to 40 days notice (depending on the particular Act 250 proceeding; ANR notice is sometimes a draft permit which requires significant catch up for neighbors/other parties). De novo review is a backstop to this imbalance. In my brief chat with Dawn Francis, she recognizes that this will have to be addressed, but we did not discuss in more detail.

I recommend that we think this through carefully (item 3 in particular) and further engage VNRC before any prompting. We do not want to move this only to have it fail because we did not address citizen/neighbor concerns. To that end, David Mears and I met with Brian Shupe today and will try to set a small, informal brain-storming session with Gerry Tarrant (a VNRC Board member with great experience with the process), Pete Van Oot, Warren Coleman and Jim Dumont (they don't know this yet!) to see where room for compromise exists.

I called Ginny to set a time for her, David Mears and I to meet. However, Ginny wants to meet with us separately. I believe that David Mears is meeting with her on Wednesday. I am meeting with her over the noon hour on Thursday 1/26, but will likely be in her committee before then. Dawn Francis is lining up senators and also getting stakeholders to appear before Ginny's committee. Neither Dawn Francis nor David Deen know what bill Ginny may be working from or where her committee stands. That said, she is in Sen. N.R. for the time being.

Finally, I believe that some of the larger issues are being obscured by a superficial on-the-record v. de novo debate without any definition to either standard or the process leading up to it. We need to move the to the larger process that benefits neighbors and applicants (lawyers be damned!). For example, I represented Moretown in its opposition to the proposed 100B quarry; the time and expense of duplicating our effort before the Court was a disaster for the Town.

In short, there seems to be potential to move this.

I hope that all of you have a great weekend.

--Ron

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