

**Testimony of Jon Groveman
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I. Introduction

The purpose of my testimony is to address why VNRC supports the proposed change to how major District Commission applications and appeals of Act 250 applications are processed.

To put my testimony in context, I would like to reiterate the experiences I have had in my career related to Act 250.

In the mid 1990s I was the Agency of Natural Resources (ANR) Land Use Attorney. In this role, for 5 years I represented ANR before every District Commission in the state.

In addition, I represented ANR in numerous appeals before the former Environmental Board. Accordingly, I saw first-hand how the Environmental Board appeals system worked, and how the former Environmental Board interacted with and guided the District Commissions.

In 2002 I was hired as Executive Director of the Water Resources Board (WRB), which at the time heard appeals of ANR permits. The Environmental Board shared offices with the WRB and was eliminated along with the Environmental Board in 2004. Accordingly, I participated in the transition from the Environmental Board to the Natural Resources Board (NRB) and Environmental Court.

While with VNRC, I represented VNRC and citizen groups before District Commissions and the Environmental Court in numerous cases

Finally, I served as the chair of the NRB during the Shumlin Administration. In this capacity, I was responsible for coordinating appointments to the District Commissions, training and providing support to the District Commissions and being the main client in appeals of District Commission decisions to the Environmental Court.

In my testimony I address the issues that VNRC believe exist with the current Act 250 system that involves the District Commissions, NRB and Environmental Court, why we believe the joint VNRC/Administration proposal (joint proposal) would address these issues and why the Committee should not abandon the joint proposal.

II. Overall Proposal

After last Legislative session, the Administration reached out to VNRC to see if there was common ground to move a series of improvements to Act 250 forward that the Governor would sign into law. As we began our talks with the Administration, we surprisingly saw a number of areas of common ground.

The joint proposal is comprehensive addressing the Act 250 process, criteria and jurisdiction. The package contains provisions that each party supports more than others. However, overall VNRC strongly believes that the proposal improves environmental protections under Act 250 and the Act 250 process and is the best opportunity in two decades to have improvements to signed into law.

III. The Current System is Not Working

There is common ground between supporters of the changes to the District Commission/NRB/Court system and those concerned about the proposed changes. That common ground is that the current system is not working.

Former and current District Commissioners and District Coordinators have all identified issues with training and providing information to District Commissioners, the lack of say that District Commissioners have when a decision is appealed, and the lack of guidance on interpreting Act 250 criteria that has been a problem since the Environmental Board was eliminated in 2004.

The point is if Act 250 is going to be improved and modernized, ignoring these problems and reverting to the status quo, or making slight adjustments around the edges will not set up Act 250 to be successful going forward – which was a key goal of the Commission on the Future of Act 250.

IV. Volunteer Commissions are Stressed

As NRB Chair, I witnessed first-hand the struggles that District Commission had with the complexity of applications and the difficulty in getting qualified people with the necessary time to invest in the Act 250 process to serve on a Commission.

We are currently asking District Commissioners, who are essentially volunteers, to review applications for the largest most complex development projects in Vermont. When Act 250 was enacted, applications were much simpler and smaller. After 50 years of decisions on the more than 30 criteria and sub-criteria, which address everything from technical environmental impacts, to economic and community impacts, traffic, energy, and land use planning issues, applications are voluminous, and typically involve multiple reports from consultants.

Hearings on major Act 250 applications usually involve attorneys arguing about evidence, procedure and the interpretation of criteria that Commissioners must resolve.

In my opinion, based on my experience with the Act 250 process, asking volunteer Commissioners to continue to do this work is not sustainable.

The joint proposal addresses these issues by funding three full time qualified professionals, who would be appointed through a process that involves the Legislature and Governor to join with two District Commissioners in making decisions on major applications. The hybrid Professional Board with District Commissioners would also have staff available – several attorneys and technical staff – to assist the Board in addressing the complex Act 250 applications that I have described.

This hybrid Board would be independent – more independent than the Environmental Board was (for example, the Environmental Board Chair could be removed at any time by the Governor for any reason – cause was not required for removal – under the joint proposal no Board member can be removed unless there is cause).

VNRC believes that having one hybrid, fair, comprehensive review of a major Act 250 application would create a better process than exists now and address the issue of asking volunteer Commissions to process Act 250 applications, and the other issues with the current system I will discuss.

V. The District Commission/Board/Court Process Does Not Work

We agree with the testimony you have heard that since the Environmental Board was eliminated in 2004 there is a lack of cohesiveness in how the Act 250 program functions. Prior to 2004, the Environmental Board administered Act 250 and heard Act 250 appeals. The Board had clear authority to dictate how Act 250 criteria should be interpreted through its decisions, and through its administrative function the Board was able to communicate with District Coordinators and Commissioners about Act 250 policy.

Since 2004, there has been a serious disconnect between the Commissions, the NRB and Court into terms of decision making that has resulted in conflicts between the three entities that has not served Act 250 well. Under the current system District Commissions function independently. They can take advice and receive support from the NRB, but that decision is up to the District Commission. The decision to do so varies from case to case and District to District.

Regardless, if a District Commission permit is appealed, the District Commission has no say in the appeal, is not represented in the appeal, and their decision can be disregarded in the appeal. The NRB is the legal party in the appeal and they have the sole authority to determine what position to take.

Moreover, no matter what position the NRB takes in appeal, it is up to the Court to render a decision on an appeal. The Court is not required to follow the NRB's

position, and can and at times does render a decision different from what the District Commission decided and what the NRB argued.

Accordingly, under the current system we have three separate entities with decision making power at three different levels of governance all with ability to make different interpretations of Act 250 criteria. This system creates confusion and uncertainty about Act 250 policy and fosters tension between the District Commission and NRB. The joint proposal would address this issue by creating one clear review of major Act 250 applications that involve regional Commissioners and professional Board members. The Board would set policy and legal disputes would be resolved by the Vermont Supreme Court.

VI. The Appeals System is Not Working

The Court appeals process has proven to be expensive and inefficient for citizens and applicants. We see the benefit in having one comprehensive and fair hearing before a Board made up of full-time members and regional commissioners from the area where a project is located (and the hearing will be held in the town where the project is proposed). VNRC has itself incurred significant costs before District Commissions and then even more costs before the Court to address the very same issues. We have seen citizen groups struggle with the same costs. Having on fair review with meaningful regional input would reduce these costs for all parties.

VII. Concerns Raised About the Commission/Board Change in Joint Proposal

I can say unequivocally that the District/Commission Board change in the joint proposal was one of the hardest parts of the agreement to include. However, in the end we think that having a strong independent Board with a combination of full-time members and regional members, and District Coordinators issuing minor permits and deciding whether a project is a "major" project will be a better process.

It was important to us that the proposal leaves the decision on minor applications in the regions with District Coordinators. 80% of Act 250 applications are minors, so most Act 250 issues will still be handled solely in the districts. **Accordingly, we don't agree that the joint proposal eliminates regional input into Act 250.**

In our view the key benefits of the proposal are that:

- * The Board is independent;**
- * There is a regional component to the review of Act 250 applications;**
- * The Board members are required to meet substantive qualifications;**
- * The Board is directed to help pro se participants through the process; and**
- * A pre-application scoping process is added to Act 250 that requires an applicant to notify stakeholders and consider their comments before an application can even be filed.**

We don't agree that the proposal is to create a PUC style Board that will not be citizen friendly. The PUC has jurisdiction over very technical engineering and electric grid system issues. It does not involve regional participation as the joint proposal does, and the joint proposal directs the Board to address the need to facilitate citizen participation.

VIII. Conclusion

Can more be done to ensure citizen participation and to ensure there is meaningful regional input into Board decisions as part of the joint proposal? Of course. However, I submit that the Administration would be open to addressing these important issues, that are also extremely important to VNRC.

Based on our experience in trying to improve Act 250 for decades, including adding criteria to address issues like forest blocks and habitat, improve how Act 250 addresses climate change, close gaps in Act 250 jurisdiction, and address the process issues I have discussed today, serious meaningful Act 250 reform must have bipartisan support. Without broad support these improvements will not become law and will not work.

This does not mean that everyone will support the joint proposal. We understand the concerns that have been raised. However, the Committee has heard mainly from critics of the proposal.

There are people in the environmental community, planning community, business community and legal community who support this proposal. I submit you should hear from them and hopefully you will see that there is support for the proposal across the spectrum that will address the range of Act 250 issues that require modernization.

To be clear, I am not saying that the Committee should take the proposal as is. But if you make improvements within the framework of the proposal the Committee can produce a product that has support across different sectors of Vermont, modernize and improve Act 250 and become law.

