



NATURAL RESOURCES BOARD

Dewey Building
National Life Drive
Montpelier, VT 05620-3201

NATURAL RESOURCES BOARD MEETING TUESDAY, MARCH 8, 2016

PRESENT

Jon Groveman, Esq., Chair
Dominic Cloud, Member
William Boyd Davies, Esq., Member
Martha (Marty) Illick, Member

ABSENT

Don Sargent, Member

STAFF

Greg Boulbol, General Counsel
Lou Borie, Executive Director
Aaron Brondyke, Enforcement Officer
Peter Gill, Associate General Counsel
Kimberley Lashua, Administration Manager
Alexandra Pastor, Program Technician

ALSO PRESENT

Clancy DeSmet, District 5 Environmental Coordinator
Jennifer Mojo, Regulatory Policy Analyst, ANR's Secretary's Office

Public Meeting

The Vermont Natural Resources Board convened at 9:10 am at the Dewey Building Conference Room R206, National Life Drive, Montpelier, Vermont, Chair Jon Groveman presiding.

1. Approval of the Minutes

A motion to approve the minutes of the February 9, 2016 meeting as distributed was made by Bill Davies. Said motion was seconded by Marty Illick, and unanimously approved by the Board.

2. Office and Budget Updates

Farewell: Jon Groveman bid the Board farewell, expressing his appreciation for the valuable contributions and important work the Board, Staff, and Commissioners do.



Thursday March 10 will be his last day in the office, starting his new position with the Vermont Natural Resources Council in the very near future. Questions were asked about succession. Jon stated that the Chair position is appointed by the governor. Jon has provided several names to the Governor's Office for consideration. A replacement Chair has not yet been appointed, however, Jon has indicated that Lou may step in as Interim Chair. Secondly, Bill Davies, who has served as Interim Chair in the past, could carry on the role of Interim Chair until the new Chair is appointed if Lou were unable to do so.

Staff: Lou Borie updated the Board on staffing. The Montpelier legal technician position has been filled. We welcome Jessie Davignon to the Montpelier office. Her first day will be Monday, March 21, 2016. For the Springfield hybrid position, we have received over 20 applications. Interviews are scheduled for Thursday, March 17, 2016. Once the Springfield position is filled, we will be fully staffed.

Budget: Lou gave the Board an update on the budget. We are currently providing testimony to the Senate Appropriations Committee, however, the majority of the budgetary work was done during the House Appropriations Committee budget meeting, which went well. Jon Groveman added that the Legislature asked us how the budget cuts will affect us. Jon responded that this is a question that can only be answered in the year to come, after we have had time to assess the success of the Springfield hybrid position, the result of combining two positions because one was lost to budget cuts from the retirement attrition initiative.

Performance-Based Measures: The Agency of Administration has asked the NRB to provide performance-based reporting in the form of an RBA (results-based accountability) report. Currently, we provide the Legislature with an annual report that documents statistical information specific to Act 250 applications received in our district offices (e.g., number of applications, time to process, year-over-year data, etc.). We have been providing this annual report for a number of years. Although our annual report does provide considerable statistical data, it does not capture the level of benefit the public enjoys from the services that the NRB and its district offices provide. RBA reporting will help us to tell the full story of the value of our work. We have reached out to the Agency of Administration to provide us with training in either group or one-on-one sessions.

Appointments/Reappointments: Several appointments are about to expire: one Board member and several commissioners. We have contacted the Governor's Office for guidance, as they have generally taken the lead in past years on appointing officers, however to date we have not received direction. One appointment that is of particular concern is a District 2 commissioner who has opted not to be reappointed, creating a vacancy that will need to be filled.

Legislative Update: The Governor indicated that, in general, his office is not taking on any Act 250 initiatives. Summaries of the different initiatives that currently involve Act 250 to some degree are below.

Senate Bill S.230 (An act relating to improving the siting of energy projects) proposes to make such siting subject to Act 250. At present we do not have the staff nor the commissioners to oversee the Act 250 aspects of this bill, therefore it is unlikely this bill will make much progress in its current form, especially given it does not have the support of the Governor's Office. This bill requires twice the staff and commissioners to carry out what would be the doubling of our current work load for Act 250.

House Bill H.702 (An act relating to a workforce housing demonstration project). The NRB is currently working with the House Committee on General, Housing and Military Affairs to avert the creation of an Act 250 exemption order as a result of this bill. The Committee has also taken testimony from ACCD (Agency of Commerce and Community Development). Critics have concerns about Act 250 applicability up to 2 miles outside of designated centers.

Senate Bill S.123 (An act relating to standardized procedures for permits and approvals issued by the Department of Environmental Conservation) was just introduced. It includes a repeal of the NRB's review of JOs.

3. Discussion of Litigation and Attorney – Client and Work Product Memoranda (Executive Session)

Bill Davies made a motion to go into executive session in accordance with 1 V.S.A. Section 313(a)(1) and (6) to discuss attorney-client privileged documents and civil actions by the State where premature public knowledge would clearly place the Board at a substantial disadvantage. Marty Illick seconded the motion and it was unanimously approved by the Board.

4. Action on Pending Appeals

The Board came out of executive session at 9:50 am. No actions were taken by the Board.

5. 9L Guidance Approval

Bill Davies made a motion to accept the 9L Guidance document in the present format with an edit from John Adams (Planning Coordinator for the Department of Housing and Community Development, ACCD), who drafted this document, to define what "79%" refers to (i.e., "79% of what?") on page 6, first paragraph under the section entitled "Looking at the elements together," in the second-to-last line.



Marty Illick seconded the motion, requesting an amendment to the motion to add language to and/or amend existing language in the 9L Guidance document on page 1, the first full paragraph under the section entitled "Guidance Overview," three lines from the bottom, in the sentence that begins, "In the interim..." so that the text speaks to striving for consistency, e.g., something to the effect of:

In the interim, this guidance is intended to provide technical assistance to District Commissions, lend consistency to the Act 250 application review process, and ... [*remainder of the original sentence*].

The motion, as amended, was unanimously approved by the Board.

In a separate motion, Bill Davies requested addition of the following language to the 9L Guidance document:

This procedure supersedes the procedure adopted on October 14, 2014 and will go into effect on March 15, 2016 at 12:01 AM.

The motion was seconded by Marty Illick and it was unanimously approved by the Board.

Jon Groveman mentioned that during the public comment period for the 9L Guidance two comments were received: a formal comment by letter from James P.W. Goss, Esq. of Kenlan, Schwiebert, Facey, & Goss, PC; and an informal comment via e-mail from TRORC (Two Rivers Ottauquechee Regional Commission). The comment from Mr. Goss expressed concerns about the inclusiveness of the process. The Board noted that the 9L Guidance was mandated by the 2015-2016 Legislature, is intended to provide consistency in Act 250 application procedures across all District Commissions, and is intended to assist District Commissioners in situations where projects applying for Act 250 permits are considerably more complex than typical. 9L decisions continue to ultimately reside with the District Commissions. The Board noted that the outreach process was well-publicized. Amendments and revisions as noted earlier in the present minutes address the concerns brought to light by Mr. Goss. The comment from TRORC was in support of acceptance of the 9L Guidance as presented.

Jon Groveman indicated that the NRB will provide the Guidance to Senator Mullen of Rutland (who introduced the 9L Guidance request), the legislative committees of jurisdiction, stakeholders, and those who commented on the Guidance.

The next step in the 9L Guidance process is training, which will be initiated by NRB with assistance from ACCD.

At approximately 11:20 am, Bill Davies made a motion to adjourn. Marty Illick seconded the motion and it was unanimously approved by the Board.

Respectfully submitted,


Diane E Shelling, Chair

Approved by the Board at its April 12, 2016 meeting.

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