

Meeting Notes for Planner/Municipal Focus Group, Sept. 28, 2023: NRB Necessary Changes to Act 250

ATTENDANCE: C. Baker, A. Weinhagen, L. Krohn, M. Tuttle, T. Kennedy, P. Gregory, T. Brady, S. Murray, Kartez and Daniels facilitators.

JURISDICTION:

The NRB Steering Committee should consider making Tier 2A part of Tier 1. Based upon our last meeting, I didn't think our intent was to limit Tier 1 to only the 23 towns with downtowns. There was discussion about being as inclusive as possible statewide. Concern was expressed about the Tier 2A concept—the Neighborhood Development Areas (NDAs) are too tightly drawn, can be basis for adjacent residential areas. Village Center designation currently is also too commercial-oriented.

The discussion of Tier 2B had contending views—why worry about sprawl in a defined village or hamlet? Changing to new lots/units approach would be ripe for gaming. Seems anti-rural-village to change trigger from 6/10 lots to 3 or 4 lots don't want to discourage infill development. Some sentiment that Tier 2B may be partly right, but if Tier 2C has a greater (stricter) trigger, then Tier 2B should have the original Act 250 provisions. Some sentiment that 10-5-5 rule has not discouraged sprawl, but has discouraged development where desirable. Idea to lose the 5 mile radius and 5 years part?—Why not a 9-lot development year-after-year if in the right place(s)? Hamlets should be put into Tier 2C.

General view that someone needs to map these places. But the preference on Tier 2C and Tier 3 is not to choose resource areas as triggers but use dedicated state permit processes, such as wetlands for core forest, wildlife resources not tied to Act 250.

Discussion of growth of building on steep slopes in southern Vermont but no effective regulation—if a landowner can get a stormwater permit, the landowner can build a house. Headwaters provision in Act 250 does not address this, but maybe could be beefed up? Getting washouts and landslides increasingly.

There is a general sentiment that NRB study needs to push for better use/access to maps and their improvement. Use existing DEC/ANR maps as basis instead of a long process to create new maps—use existing data subject to a review process of some kind—easy process, “living map” process. “We rely on DEC maps now to begin conversations.”

A suggestion was made to provide a summary of the three studies of Act 250—the NRB study, VAPDA study, and the Downtowns study. The idea is to show areas of concurrence among the three studies for recommended changes to Act 250.

GOVERNANCE:

FEES: Sentiment that if Act 250 protects the state environment, then all taxpayers should support the effort. Fees are a big issue in Burlington—caps on fees important. Some sentiment that if exemptions take effect, especially in the 23 larger places (or more), then workload and need for fee revenue should decrease.

Environmental Court: Many concerns voiced around the E-court: “flawed,” takes too long, court gives precedence to pro se appellants w/ no lawyer, bending procedure/timelines for them such as postponing status conferences when they don't show up. Get different opinions from different judges, E-Court seems overwhelmed with backlog; Concurrent municipal and Act 250 appeals still an issue, was

supposed to be fixed in 2002-3 reforms but hasn't been. E-Board was more deliberative, one judge doesn't have all the expertise needed. Appeals are a symptom of the problem—not about compliance with policy but access to opposition to actions. On the record review would train board or body over time. COUNTERVAILING VIEW from others:—rolling back the E-Court reform hasn't been effectively argued.

General need perceived for integrating separate permit processes and reforming the delay in appeals. Can we reduce duplication in the process?