

Vermont Environmental Report

PUBLISHED MONTHLY BY THE VERMONT NATURAL RESOURCES COUNCIL, A NON-PROFIT CITIZENS' CONSERVATION ORGANIZATION, SUPPORTED BY MEMBERSHIP DUES AND CONTRIBUTIONS. VNRC, 26 STATE STREET, MONTPELIER, VERMONT, 05602. (802) 223-2328. CHAIRMAN: DAVID R. MARVIN; EXECUTIVE DIRECTOR: SEWARD WEBER; EDITOR: NAT FROTHINGHAM.

ACT 250:

A Law That Is Only Partly Effective

Schuyler Jackson and William Bartlett, two men who have had wide experience in the administration of Act 250, are raising serious questions about the overall effectiveness and currency of the State's fundamental land use and development law.

Until March 25th of this year, Schuyler Jackson was Chairman of the State Environmental Board. William Bartlett is the Environmental Coordinator for District Commissions 5 and 6, with offices in the former State Hospital at Waterbury.

As a preamble to the discussion with Jackson and Bartlett, the VER is providing below in 10-point type a general summary of the basic provisions of Act 250.

General Summary

(A) ACT 250 IMPLEMENTATION PROCESS

For many Vermonters, Act 250 is a bewildering array of definitions, provisions, conditions and criteria. This confusion is understandable. A printed copy of the Act runs to thirty pages of closely-packed type and legal jargon.

Part of the difficulty of understanding Act 250 springs from its implementation. It was meant to be implemented in four successive stages. Only three of these stages have, in fact, been implemented. First to be enacted in 1970 were the basic regulatory provisions of the law. Then came the adoption of a so-called "Interim Land Capability & Development Plan" in 1972. The purpose of this Plan was to describe the present use of land in Vermont and to "define in broad categories the capability of (that) land for development...based on ecological considerations." The third stage was the passage of a "Capability & Development Plan" which took effect on

July 1, 1973. This "Capability & Development Plan" was a statement of principles that were to be used in guiding the Vermont State Planning Office in developing the fourth, final, and ultimate stage in the implementation process, a State Land Use Plan. This Land Use Plan provoked a bitter controversy, and though it was modified and presented to several sessions of the General Assembly, it was never passed. The other features of the law are still intact.

(B) DISTRICT ENVIRONMENTAL COMMISSIONS

Perhaps the most striking innovation of Act 250 was the creation of an environmental review process that involves a three-member, citizen panel that for all intents and purposes is a "citizens' court." This citizens' court is known as a "District Environmental Commission." There are nine Districts and nine Environmental Commissions throughout the State. These Commissions are the 'workhorse' element of the State's environmental review. They are empowered to accept applications

ACT 250- Summary...

for development, hear evidence, compel the attendance of witnesses, and hand down decisions either to approve, deny, or to set conditions on development.

(C) STATE ENVIRONMENTAL BOARD

The next step in the Act 250 review process is a body known as the "State Environmental Board." This Board has nine members appointed by the Governor, including a full-time Chairman and staff. The State Environmental Board hears cases on appeal from the District Commissions and issues occasional administrative guidelines.

(D) "DEVELOPMENT" SUBJECT TO REVIEW

A "development" is variously defined under the Act. In municipalities that have instituted zoning and subdivision bylaws a "development" means the "construction or improvement...on more than 10 acres of land for commercial or industrial purposes." But where there is **NO** zoning, the regulations are much more stringent. In such instances, a development is defined as the "construction or improvement for commercial or industrial purposes on more than **ONE** acre of land." The list goes on. Broadly speaking, all proposals for development above the elevation of 2500 feet are subject to Act 250 review. Almost all logging, forestry and farming activities, on the other hand, are exempt. A developer may construct as many as nine housing units without an Act 250 hearing, but as soon as he starts to construct a tenth unit, he must submit his plans to the review of a District Environmental Commission.

(E) ACT 250 CONDITIONS AND CRITERIA

In judging the merits of an application for development that comes before them, the nine District Environmental Commissions and the State Environmental Board are obliged to follow certain carefully-noted conditions and criteria. The District Commissions must ask these kinds of questions of any proposed development. "Will the development result in undue water or air pollution?" "Is there sufficient water available to meet the needs of the development?" "Are the principles of water conservation and energy conservation incorporated into the plan or design?" "Will the development cause unreasonable soil erosion?" *(These kinds of questions must be answered by the applicant to the satisfaction of the Commission.)* There are other kinds of questions such as the impact of the proposed development on schools, government ser-

vices, roads, waterways, airports and the like, and the possible adverse effects of the development on the "scenic or natural beauty of the area." *(These kinds of questions must be proved against the applicant by any party opposing the proposal.)*

THE DISCUSSION:

(1) THE ACT 250 REVIEW PROCESS IS FAILING

Schuyler Jackson and William Bartlett are asking penetrating questions of the Act 250 environmental review process. To be sure, the District Environmental Commissions, the key review bodies under the Act, are working, are asking **some** of the pertinent questions. The trouble is that they are only **partly** effective.

They are effective in looking at the "housekeeping" details of individual applications for development permits. As Jackson says, "Act 250 is capable of coping with 'quality' issues of development." Such quality issues are, for example, landscaping, lighting, sewage disposal, and soil erosion, confined to a specific site. But where the Commissions are falling down is in their failure to address a whole new generation of concerns that have come to the fore in recent years, and this failure is compromising the State's ability to plan intelligently for its future.

(2) THE TIMES HAVE CHANGED

Neither Jackson nor Bartlett are saying that Act 250 ought to be scrapped. They **ARE** saying that Act 250 has failed to move with the times. Says Jackson candidly, "Outside of finetuning the administrative process we have not moved forward." And, he adds ruefully, "We are no better equipped to deal with the larger issues today than we were in 1970."

Jackson describes what has happened. In the first instance, he asserts, "Development has come out of the hills." He means that if you looked at a contour map in 1970 you would see that the major developments were taking place between 1500 and 2000 feet. These were second-home and ski area developments. The plain fact, according to Jackson, is that it is too expensive today to build up in the hills. A second

Discussion...

change is in the tax laws for second homes. The tax write-offs are gone, and it is simply no longer cheap to own a free-standing second home. A third change is a change in recreational taste. People want more flexibility. They don't want to sink \$60,000 into a second-home. They prefer a condominium instead. They want to be near a sauna, a golf course, a grocery store, with somebody to clean up and watch the place when they are gone. A fourth change is the decline in land speculation. Jackson observes, "Land is now in a retail phase in Vermont." The cheap land is gone; taxes are higher." And he concludes, "You are seeing more primary as opposed to recreational development in the State." What Jackson means specifically is that we are seeing more growth in such areas as permanent homes, manufacturing, shopping centers and low-income housing.

Presiding like an eminence over all these changes is the understanding today that we are entering an age of scarcity, an age of thrift. This, more than anything else, contributes to the frustration that William Bartlett expresses when he asks, "Where are we going? Who is in charge? Who is responsible for raising the critical land use questions with the District Commissions?"

(3) WE ARE NOT RAISING THE ESSENTIAL QUESTIONS

Bartlett discusses an issue such as energy conservation. What, he asks, does energy conservation mean within the context of the Act 250 review process? Does it just concern building insulation? Or does it extend to the use of private automobiles? "There is not any standard policy," says Bartlett, "on what energy conservation is."

Or take the question of solid waste disposal. Should a District Commission grant a development permit to a fast food chain that will be disposing of tons and tons of throwaway materials? Is that kind of development acceptable under the Act 250 criteria?

Or water conservation, another issue. The Act 250 process asks about water supplies and sew-

age systems. But again, insists Bartlett, "We do not deal with the fundamental issues. We are not asking whether the eight gallons we are dumping into the ground (with each flush of a toilet) is a good thing." As Bartlett describes it, "The language of the Act is 'great', but what is happening is not too great." The problem with the language is that it is "good planning language" but "terrible regulatory language. It is too ethereal." What, after all, **does** it mean on pages 24 and 25 of the Act where it says, "A permit will be granted when it has been demonstrated by the applicant that...the planning and design of the subdivision...reflects the principles of energy conservation and incorporates the best available technology for efficient use or recovery of energy."

Jackson has experienced similar frustrations with the Act. He says, "The structure we have created is unable to focus on critical issues." Energy conservation. "What about equity?" he asks. It is obviously unfair to require one standard of energy conservation in Brattleboro and another standard in St. Johnsbury. Or incremental development. "When and where should the State draw the line on piecemeal development?" Or capital expenditures on roads and schools and sewage treatment facilities. Or the balance of development between one region of the State and another. These are all vitally important questions, and they are questions that are currently not being raised effectively, according to Jackson, before the District Environmental Commissions.

Neither Jackson nor Bartlett is blaming the District Commissions. The Commissioners are citizen volunteers sitting on a quasi-judicial panel. The Environmental Coordinators who assist the Commissions are too busy to help. Bartlett explains that the Coordinators are responsible for running regional offices for the Agency of Environmental Conservation. "We are wiped out with paper work. We cannot keep up with it," reports Bartlett. The paper work he refers to is the task of processing, changing, and filing applications both before and after Act 250 hearings.

continued...

Discussion...

The question is still there. "Look at the criteria (of the Act)," says Jackson demanding. "Who has affirmative, continuing responsibility for those criteria? If they fail to do a competent job, will they be brought to task? Are they accountable?"

(4) FUTURE PROBLEMS: "PYRAMID MALL"

Both Jackson and Bartlett look with apprehension at a proposal like "Pyramid Mall" in Williston. While this project has not yet come under Act 250 review, the very scope of it raises insistently the kinds of issues that Act 250 ought to be addressing, -- but isn't.

The Pyramid Mall would be a \$16 million regional shopping center on 70 acres of land, at the intersection of Interstate 89 and Routes 2 A and 2. It would have store space of some 580,000 square feet and one million square feet of black-top that would accomodate 2,600 cars.

The problem in Williston has occurred again and again all across the State, according to Jackson. "What if the issue was the disappearance of prime agricultural land?" asks Jackson. "Who would be charged with the responsibility of advocating this point of view?" And is there a definition of what "agricultural land" is, and a policy to go with it?

At the moment the proposal for a Pyramid Mall in Williston is before a local planning commission with a group of citizens and a lawyer working *pro bono* (without pay). They are raising some of the questions. Says Jackson about the situation in Williston, "There is something intrinsically unrealistic about a group of private citizens raising issues in Williston. They have been raising highway issues before a (local) commission that has no authority to raise highway issues." What Jackson sees in the Pyramid Mall proposal is a development that raises unavoidable "inter-community impacts." That situation is familiar in Vermont. A development

goes in. The tax revenues accrue to one town. But the consequences of development are felt in an entire region. The question here once again is whether or not the State will choose to get involved, whether it will raise the fundamental issues, and whether it will have formulated a consistent policy.

Responding to the Pyramid Mall proposal, Bartlett said, "It is absurd,--how little time we spend on major developments. It is pitiful. It is way out of balance." Bartlett is tired of District Environmental hearings where no one is an advocate for the Act 250 criteria; where none of the State agencies feel obliged to testify; where one department of an agency is fighting to build more sewage treatment plants and "tie in" more development, and another part of the same agency is opposing further sewer line construction. "They would rather do things in a back room on their own," Bartlett concludes. At the end of two hours of conversation, Bartlett summed up the whole situation by agreeing that "Yes, Act 250, overall, is in disarray."

(5) WHAT CAN BE DONE?

Defining the problems with Act 250 is one thing; indicating solutions is another. One thing that Schuyler Jackson was specifically *not* calling for was a State Land Use Plan. "It would not have worked," said Jackson about a Land Use Plan. "It would have been a damned nightmare." He went on. "You have to abandon the terminology of a 'Land Use Plan'. First, it's dead. Second, it's a misnomer. We are talking about processes. We are dealing with something that is complex. You need a process that is capable of responding to what is a State interest at any time." Jackson's more immediate suggestion is that it is "the right time to reconstitute a special committee or study group to re-evaluate where we stand in using our land resources and developing recommendations for change."

William Bartlett would endorse that proposal. He wants a sweeping review of the Act. "I think it is a question of organization," he said. But he

Discussion...

would go further than Act 250. He would look at all the regulations that affect the use of the land, health regulations, mobile home regulations, everything. "Perhaps," he says, musing, "we ought to come up with a combined environment-

al law." And he would do one more thing. He would ask an environmental organization like VNRC to bring together an informed group of citizens, a network of people, who would attend District Commission hearings, and raise some of the fundamental questions that are presently being overlooked.

EDITOR'S NOTE: Correction -- DICKEY-LINCOLN

In the March issue of the VER on page 2 in an article on the Dickey-Lincoln hydroelectric project, the Vermont Environmental Report made the following misleading assertion:

"Bill Riviere, a columnist for the **Boston Sunday Globe**, has estimated that the worth of the wood alone on the affected land, harvested on a sustained yield basis, would amount to \$36 million per year."

The VER made this misleading statement, drawing its facts from Mr. Riviere's column in the **Boston Sunday Globe**, dated February 13, 1977. Mr. Riviere stated:

"Some 91,000 acres will be flooded. One acre grows about two cords of wood annually. Fed into the mills, a cord is worth \$200 to the Maine economy. Multiply 91,000 acres by two cords at \$200 each and you get \$36 million."

Since the publication of the March VER, the Council has received several calls and letters that are helpful in clarifying this matter. We are printing two letters from Mr. A. Bradford Wyman, a Forester with the Brown Company, in Berlin, New Hampshire. Mr. Wyman registered a strong objection to the \$36 million dollar figure in his first letter. The VER corresponded with Mr. Wyman and received a second letter which is helpful in estimating the worth of the forest resource on the land that would be flooded by the Dickey-Lincoln project. We also received a helpful letter from Mr. Benjamin F. Hoffman, a Vermont forester.

As this publication went to press, we received an answer to a letter that we addressed to Mr. Riviere himself. Mr. Riviere was generous in saying,

"Regarding the Dickey-Lincoln **Globe** piece, you did not misinterpret my comments. Yours was a fair, and accurate appraisal of my statement."

Mr. Riviere goes on to say in his letter that a reputable conservationist claimed a value of up to "\$40 million each year to the state's economy" for the renewable timber resource.

After reviewing all of the correspondence on this matter we believe it would have been **much clearer** if we had indicated that we were referring to an estimate that included "value-added" multiplier effects. We are also convinced that the \$36 million estimate overstates the realistic value of the forest resource on the affected land. We are grateful for these letters that indicate a concern for accuracy and that underscore a needed passion for truth.

To the Editor:

I imagine (and certainly hope) that you will receive vast numbers of letters drawing your attention to a rather serious problem with your report in issue No. 61 on Dickey-Lincoln.

On page 2 you attribute a rather outlandish statement to Mr. Bill Riviere, i.e., that the annual value lost in wood alone, on a sustained yield basis, due to the 88,000 acre flood, would amount to \$36,000,000! This is an annual yield of over \$400/acre/year!

If Mr. Riviere did not write that, I call it ironic justice that a newspaper writer should be misquoted. If he did, then his credibility is seriously lacking. In any case the V.E.R.'s credibility has suffered, be it through carelessness or sensationalism. Regardless of which side of the issue you take, this sort of reporting does not serve society well. Please try to be more careful!

Sincerely,

A. Bradford Wyman, Forester
Brown Company
Berlin, New Hampshire

LETTERS...

To the Editor:

Thank you for your speedy response to my critical letter of March 30. I quite agree with you that Mr. Riviere's remarks were not as clear as they might have been.

Please allow me to comment anew in light of the additional information provided in your letter.

Basic to Mr. Riviere's contention is the assumption that "one acre grows about two cords of wood annually." Most foresters would likely concede that with highly intensive management (and correspondingly increased expenditures) those acres have a **potential** for such a yield. In all likelihood, however, the actual yield under current management is not greater than one-half a cord annually. Certainly, I would not propose to deny a value exists in that potential, but Mr. Riviere did not **say** potential.

Basic to **your** commentary, was the statement that the annual value "in wood alone" was \$36 million. There was certainly room for confusion, but Mr. Riviere did not really say that. The value of that one-half cord of wood, without value added, i.e., on the stump, is probably about \$4.00. The U.S. Forest Service normally employs a multiplier of about 27 in figuring the added value of a unit of wood once it has passed through the conversion process. Thus, Mr. Riviere's estimate of \$200 per cord is defensible if presented as including the value added. At the risk of confusing the issue, the cord of wood delivered to the mill (what the mill will pay) is likely to be in the neighborhood of \$50.

In summary, I do not think it unreasonable to state that the value "in wood alone" on a sustained annual yield is $\$4 \times 88M = \$350,000$ (plus or minus) and that that wood represents an annual contribution, in wood and added value, of $\$108 \times 88M = \9.5 million (plus or minus). This is still not an inconsiderable sum and in promoting a cause is substantially more

valuable than \$36 million which is vulnerable to attack by your opposition.

Sincerely, A. Bradford Wyman, Forester

Benjamin Hoffman:

To the Editor:

Thanks for your March 29 letter concerning my call to (Executive Director) Seward Weber about the March VER article on Dickey-Lincoln.

VER quotes Bill Riviere's claim (**Boston Sunday Globe**) that 91,000 acres to be flooded by Dickey-Lincoln are producing 2 cords/acre per year and contributing \$36,000,000 annually to Maine's economy. Based on statistics from **The Forest Resources of Maine**, the 1972 U.S.D.A. Forest Service Resource Bulletin NE-26, by Roland H. Ferguson and Neal P. Kingsley, Mr. Riviere's figures are misleading.

Net annual growth in Aroostook County, Maine, averages 39.8 cubic feet/acre or roughly one-half cord (using 80 cubic feet of solid wood per cord). Assuming that the Dickey-Lincoln area contains the most productive land in Aroostook County and is well-stocked and well-managed, possibly it produces one cord per acre per year. Only exceptional land, under the best management, would produce two cords/acre/year.

Current pulpwood stumpage in this area averages \$8.75/cord, thus the value of one cord produced on one acre in one year would be \$8.75. Assuming that wood harvested in Aroostook County Produces the same "value added" as the average for Maine, about \$15.30 per \$1.00 of stumpage, each acre would contribute \$133.88 to Maine's economy annually. Thus, 91,000 acres would contribute \$12,182,625 annually, not \$36,000,000. Since most of the wood harvested in Western Aroostook County is cut by French-Canadian residents of Quebec, and a portion of this wood is shipped into Quebec for processing, the value added is probably much less.

As a forester, and conservationist, I sympathize

LETTERS...

with Mr. Riviere's cause, but his exaggeration of values lessens his credibility and VER's unqualified use of these figures is misleading.

Sincerely, Benjamin F. Hoffman, RFD 1,
Northfield, Vermont, 05663

John E. Lawe:

To the Editor:

I am writing to comment on the Editorial by Dr. Carl Reidel in the January, 1977 VER.

I found the article excellent, stimulating and provocative, but unsatisfactory because:

- a. It did not suggest how we could assist in achieving the changes suggested by Dr. Reidel.
- b. The fragmentation of woodlands with more small acre owners is almost certain to continue and spread and no solution to managing these small parcels was offered.

Would woodlot-user cooperatives be the answer? Are you approaching this question?

Last year (VNRC) held a number of woodland management meetings. Do you plan more for this year and will any be held in the Windsor/Orange area?

Best wishes, John E. Lawe
Norwich, Vermont 05055

Responses:

Dr. Carl Reidel responded to Mr. Lawe's letter as follows:

No single solution is possible; we must move ahead on several fronts. Greatly expanded assistance to landowners is essential: Cooperative Extension programs providing workshops and on-the-ground

demonstration; expanded County forester staffs to prepare management plans; an aggressive development program to establish new, diversified primary and secondary wood industries. Fragmentation can be slowed with property tax reform like that proposed by the Fair Tax and Equal Education Coalition. Cooperatives -- both for management and marketing -- could be vital to overcoming the problems of small ownerships. All this will take state leadership and realistic state funding.

Darby Bradley of VNRC has responded to Mr. Lawe's question about VNRC-sponsored Forest Management Workshops for the summer of 1977:

The VNRC is presently exploring the possibility of co-sponsoring several "Forest Management Workshops" throughout Vermont this coming summer in cooperation with the Green Mountain Chapter of the Society of American Foresters. No dates or places for these workshops have yet been identified. If plans for such workshops materialize, there will be information supplied to VNRC members in the pages of the **Vermont Environmental Report**.

ANNOUNCEMENTS

LAKE CHAMPLAIN STUDY ANNOUNCED

The New England River Basins Commission has just announced plans for a far-reaching study of the critical issues and problems that affect Lake Champlain. Cheryl King of the study team is preparing an informational flyer on the "Lake Champlain Basin Study." To obtain this flyer and further information write: Cheryl King, Lake Champlain Basin Study, 177 Battery Street, Burlington, Vermont, 05401.

VER CLASSIFIED ADS SUSPENDED

The "Resources Section" of classified ads that was to be carried on this page has been suspended temporarily because of a notice handed down by the Postmaster in Montpelier. The Council is seeking a definitive ruling on the question of whether or not it is permissible for the VER to run paid ads without jeopardizing its non-profit mailing rates.

PUBLICATIONS and VNRC NEWS...

THESE PUBLICATIONS AVAILABLE:

The following publications may be of interest to VNRC members and others:

1977 ENVIRONMENTAL QUALITY INDEX, a publication with the National Wildlife Federation. This **Index** "tracks" the state of the environment nationally. It uses these measures: air, water, minerals, timber, soil and living space. For a copy of the **Index**, write to the VNRC, 26 State Street, Montpelier -- Vermont. Please enclose a (13 cent) stamped, self-addressed envelope (business size, number 10 envelope.)

RURAL ENVIRONMENTAL PLANNING, by Professor Frederick O. Sargent, the "culmination of a ten-year planning research program at the University of Vermont (which describes an innovative and functional concept for planning and protection of the total rural environment." Write to Professor Frederick O. Sargent, Department of Agricultural and Resource Economics, 178 Prospect Street, Burlington, Vermont, 05401. Sargent's book is 199 pages long.

CASE STUDIES IN LAND CONSERVATION published

by the New England Natural Resources Center of Boston, Massachusetts. There are five case studies in the series which examine "actual land conservation problems" and the legal and financial remedies that were developed in each instance to take effective action. To obtain single copies and a complete list of case studies available write: VNRC, 26 State Street, Montpelier, Vermont, 05602. Case studies are on sale for \$1.00 each, which includes postage and handling.

VERMONT ETV TO INTERVIEW ROBERT KLEIN

Vermont Educational Television (ETV) has set Thursday evening, May 12th, at 7:30 p.m. as the **tentative date and time** for an interview with VNRC's Robert Klein and the showing of portions of his slide-tape presentation, entitled, **Natural Areas: Saving a Precious Resource.**

VNRC members are invited to attend the Thursday, May 12th, meeting of the VNRC Board of Directors. It will be held at Victoria's Restaurant, in Randolph and will start at 1:00 p.m.

Margaret Lucenti of Barre has announced a public meeting to be held on the steps of the State House in Montpelier on Saturday, April 30th, at 2:00 p.m. The purpose of the public meeting is to call attention to the issue of nuclear power and the proposed construction of a nuclear power plant at Seabrook, New Hampshire. The meeting will have the theme of "A Festival for Life."

VNRC

Non-Profit Org.
U.S. Postage
PAID
Montpelier, VT.
Permit No. 285

THIS ISSUE • APRIL • 1977 • No. 62

Contents:

- VER Publishes Summary of Act 250
- Bartlett and Jackson Discuss Act 250
- Letters Question Estimate of Forest Resource in Dickey-Lincoln Article

ADDRESS CORRECTION REQUESTED

VERMONT NATURAL RESOURCES COUNCIL, 26 STATE STREET, MONTPELIER, VERMONT