Vermont Environmental Report

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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 services, 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 Commisions 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