



NATURAL RESOURCES BOARD

Dewey Building
National Life Drive
Montpelier, Vermont 05620-3201

NATURAL RESOURCES BOARD MEETING Tuesday, January 13, 2015 MINUTES

PRESENT

Ronald A. Shems, Esq., Chair
William Boyd Davies, Esq., Member
Martha (Marty) Illick, Member
Don Sargent, Member, (participated by telephone)
Gail Fallar, Alternate Member, (participated by telephone)

STAFF

Lou Borie, Executive Director
Melanie Kehne, General Counsel
Peter Gill, Associate General Counsel
Greg Boulbol, Associate General Counsel
Aaron Brondyke, Permit Compliance Officer
Kimberley Lashua, Administration Manager
Donna Seckington, Administrative Secretary
Lauren Gates, Legal Intern

ALSO ATTENDING

April Hensel, Coordinator, District 2 Commission
Clancy DeSmet, Coordinator, District 5 Commission
Warren Foster, Coordinator, District 8 Commission (participated by telephone)

The Vermont Natural Resources Board convened at approximately 10:37 a.m. on Tuesday, January 13, 2015 at the Dewey Building Conference Room, National Life Drive, Montpelier, Vermont; Chair Ron Shems presiding. Chair Shems welcomed everyone to the meeting and took a roll call of those attending.

1. Approval of Minutes

Bill Davies moved to approve the minutes of the December 16, 2014 meeting as printed with no correction. The motion was seconded by Marty Illick and approved by the Board by roll call vote:

Ronald A. Shems, Esq., Chair - Yes
Bill Davies, Esq., Member - Yes



Marty Illick, Member - Yes
Don Sargent, Member - Yes
Gail Fallar, Alternate member - Yes

2. Office and Budget Update

Lou Borie gave a brief budget update. All but one of the proposed fees are based on the consumer price index. The fee based on cost of construction would be raised by 24% or approximately 8% more than the construction price index. The fee increases would match increases in the NRB's fixed costs, largely costs of existing personnel and benefits. We had a conversation with the Administration to increase our fees as part of this year's Fee Bill.

Lou will testify Friday, January 16th in the House Appropriations Committee to update them on FY15 spending reductions that are part of the Budget Adjustment Act. The Natural Resources Board's spending reductions for this adjustment are just over \$12,000.

3. Update on Proposed Act 250 Rule Revisions

Melanie Kehne provided a brief overview. The Interagency Committee on Administrative Rules (ICAR) met and approved the prefiled rules with some corrections. Melanie informed ICAR of several possible changes to the rules, subject to Board decision today. The plan is to file the proposed rules with the Secretary of State's Office after making those corrections, and any other changes the Board makes today that were flagged for ICAR. Other than changes requested by ICAR, the rules cannot be changed from the prefiled version without notice to ICAR.

There will be three public hearing dates on the proposed Act 250 Rules. February 25, 2015, at 6:30 p.m., at four Vermont Interactive Technologies sites (Newport, Williston, Randolph Center, and Middlebury); March 10, 2015, at 9:30 a.m., at the Board's meeting in Montpelier; and a third date (evening hearing in Rutland), based on Board availability. After polling the Board Members, the third hearing was set for March 18, 2015, at the Rutland Free Library.

District staff provided oral and written comments on some of the proposed rules.

Next, the Board turned to several specific changes suggested by ICAR or flagged for ICAR during the ICAR hearing. The Board discussed and voted on them as set forth below:

Rule 2(C) – alphabetizing definitions. Melanie Kehne conveyed the district staff's concern that alphabetizing the definitions will make the rules more confusing and difficult to apply, since many of the rules have had the same numbers for years. Bill Davies made the motion to renumber the definitions as before (not alphabetized), and to



add an index before final adoption to make the definitions easier to find. The motion was seconded by Marty Illick and approved by the Board by roll call vote:

Ronald A. Shems, Esq., Chair - Yes
Bill Davies, Esq., Member - Yes
Marty Illick, Member - Yes
Don Sargent, Member - Yes
Gail Fallar, Alternate member - Yes

Rule 2(C)(26)(cognizable change). The Board heard from district staff, who asked that the Board delete the phrase, “made by a person, or person’s successor in interest” from Rule 2(C)(26). stating that it unnecessarily complicates the rule and that these situations involving adjacent parcels are rare. The references to “material change” and “substantial change” will remain in the “person” definition in case this issue does arise.

Bill Davies made a motion that the language be kept in Rule 2(C)(26) for further comment and consideration through the formal process. The motion failed for lack of a second.

Don Sargent made the motion to remove the phrase, “made by a person, or person’s successor in interest,” from Rule 2(C)(26)(cognizable change). The motion was seconded by Gail Fallar and approved by the Board by roll call vote.

Ronald A. Shems, Esq., Chair - Yes
Bill Davies, Esq., Member - No
Marty Illick, Member - Yes
Don Sargent, Member - Yes
Gail Fallar, Alternate member - Yes

Rules 2(C)(5)(involved land) and 2(C)(6)(material change).

The district staff raised concerns about these proposed rule changes. Staff are continuing to discuss these changes, their implications, and whether and how to revise the proposed rules to address various jurisdictional scenarios consistently statewide, while ensuring that the rules are also consistent with the law. Melanie Kehne’s recommendation is to leave the changes in the proposed rule and see what staff can work out to address the clarity and consistency issues.

Bill Davies made the motion to leave the language in the proposed rules defining involved land and material change . The motion was seconded by Marty Illick and approved by the Board by roll call vote.

Ronald A. Shems, Esq., Chair - Yes
Bill Davies, Esq., Member - Yes
Marty Illick, Member - Yes
Don Sargent, Member - Yes



Gail Fallar, Alternate member - Yes

Rule 10(E)(iv). Melanie reported that district coordinator Linda Matteson spotted an omission in this rule that should be corrected. The statute, section 6084(a), requires that a copy of the application be served upon the Agency of Natural Resources. This has not been in the rules for some time and should be added.

Bill Davies made the motion to correct this omission and add the Agency of Natural Resources to the Rule. The motion was seconded by Marty Illick and approved by the Board by roll call vote.

Ronald A. Shems, Esq., Chair - Yes

Bill Davies, Esq., Member - Yes

Marty Illick, Member - Yes

Don Sargent, Member - Yes

Gail Fallar, Alternate member - Yes

Rule 18(E)(recording of hearings). There are two changes recommended to this rule. The first is to Rule 18(E)(1), to add a statement that “Failure to record all or part of the hearing due to a technical issue shall not constitute a defect in that hearing.” Melanie said that this change would address the district coordinators’ concern that the rule changes regarding audiorecording might give rise to claims about hearing defects when there is a recording failure. That is not the intent of the rule.

The second change is to Rule 18(E)(2), to separate out the transcript copy requirements to a new, separate (3) because they apply to transcripts of Commission recordings as well as transcripts from privately arranged stenographic recordings.

Ron Shems suggested changing the proposal to read as follows: “Inadvertent failure to record all or part of the hearing ~~due to a technical issue~~ shall not constitute a defect in that hearing.”

Bill Davies made the motion to approve these two changes to Rule 18. The motion was seconded by Marty Illick and approved by the Board by roll call vote.

Ronald A. Shems, Esq., Chair - Yes

Bill Davies, Esq., Member - Yes

Marty Illick, Member - Yes

Don Sargent, Member - Yes

Gail Fallar, Alternate member - Yes

Rule 22(D)(3)(6086b application requirements). The Agency of Agriculture, Food and Markets is no longer using draft mitigation agreements, so this provision needs to be changed. The recommendation is to insert the following language as a placeholder while staff continue to discuss with AAFM: “A draft mitigation agreement or similar



document" from AAFM.

Ronald A. Shems made the motion to add "or similar document" to the rule. The motion was seconded by Bill Davies and approved by the Board by roll call vote.

Ronald A. Shems, Esq., Chair - Yes
Bill Davies, Esq., Member - Yes
Marty Illick, Member - Yes
Don Sargent, Member - Yes
Gail Fallar, Alternate member – Yes

Rule 34(E)(2)(formerly (3)) – Melanie reported that district coordinator Warren Foster spotted an erroneous reference to subsection (4), which would be deleted by the proposed rule. The rule should be corrected to refer to subsection (3).

Gail Fallar made the motion to make the Corrections to Rule 3(E)(2), to refer to subsection (3) not subsection (4). The motion was seconded by Bill Davies and approved by the Board by roll call vote.

Ronald A. Shems, Esq., Chair - Yes
Bill Davies, Esq., Member - Yes
Marty Illick, Member - Yes
Don Sargent, Member - Yes
Gail Fallar, Alternate member – Yes

4. Update on Possible Act 250 Technical Corrections Legislation

Melanie Kehne provided an overview of possible Act 250 technical corrections language. First, Criterion 9B must be updated with the new references in the mitigation statute, Section 6093. Criterion 9B still refers only to Growth Centers, but the mitigation statute was amended last year to apply to certain additional designated centers. This is the impetus for a technical corrections bill.

There are two other technical corrections in Title 24 that the Department of Housing and Community Development requested. One is the reference in Section 6081(o) and (p) to a repealed section of the definition of development, concerning housing jurisdiction thresholds. DHCD has asked whether the exemption from amendment jurisdiction for these housing and mixed use projects in designated Downtowns could be expanded to all Priority Housing Projects. Priority Housing Projects that meet the thresholds are currently exempt from Act 250, when there is no permit already on the tract of land. Priority Housing Projects include mixed income and mixed use housing projects meeting those thresholds, in New Town Centers, Vermont Neighborhoods and Neighborhood Development Areas, and Growth Centers, as well as in Downtowns, so this would expand the exemption. District coordinators expressed significant concern about this. They will look at projects in their districts to see what the impacts would be



of an expanded exemption.

Additionally, the bill could delete the outdated telecommunications map requirement in section 6030. Lou Borie reported that this hasn't been done in years, and that most telecommunications facilities are regulated by the Public Service Board, not Act 250.

The bill would also delete a requirement that applicants file four copies of the plan, to better facilitate electronic filing. Board rules allow electronic filing, and the requirement in the statute for multiple copies is no longer necessary. This is covered by the Act 250 Rules.

Sections 6090 and 6091 need updating. These statutes address permit abandonment, expiration, renewal, revocation, and construction completion deadlines. Staff are working on this, with the help of the Attorney General's Office.

5. Appeals, enforcement, litigation update

Melanie Kehne gave an update on the recent Dorr decision. The Vermont Supreme Court affirmed the Environmental Division decision that an Act 250 permit was required for a pit in Manchester. The decision will be posted on the Board's SharePoint site.

6. Discussion of Attorney – Client and Work Product memoranda (Executive Session)

Marty Illick made a motion to go into executive session in accordance with 1 V.S.A. Sec. 313 (a)(1) for discussion of privileged documents and civil actions by the State where premature public knowledge would clearly place the Board at a substantial disadvantage. Bill Davies seconded the motion, which was approved 5-0. The Board went into executive session at 11:57 am.

Ronald A. Shems, Esq., Chair - Yes
Bill Davies, Esq., Member - Yes
Marty Illick, Member - Yes
Don Sargent, Member - Yes
Gail Fallar, Alternate member – Yes

7. Action on Pending Appeals and Enforcement Matters

The Board came out of executive session at noon. The following actions were taken:

Bill Davies made the motion to participate in the *Manke – S.D. Ireland* appeal, Docket No. 168-12-14 Vtec. The motion was seconded by Marty Illick and approved by the Board by roll call vote.



Ronald A. Shems, Esq., Chair - Yes
Bill Davies, Esq., Member - Yes
Marty Illick, Member - Yes
Don Sargent, Member - Yes
Gail Fallar, Alternate member – Yes

8. Other Business – Scheduling

The Board scheduled its next meeting for February 10, 2015.

9. Adjournment

At approximately 12:04 p.m. Bill Davies moved to adjourn. Marty Illick seconded the motion, and it was approved by unanimous roll call vote:

Ronald A. Shems, Esq., Chair - Yes
Bill Davies, Esq., Member – Yes
Marty Illick, Member – Yes
Don Sargent, Member - Yes
Gail Fallar, Alternate Member - Yes

Respectfully submitted,

Ronald A. Shems, Esq., Chair

Approved by the Board at its _____ meeting.

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