



## NATURAL RESOURCES BOARD

10 Baldwin Street  
Montpelier, VT 05633-3201

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### **NATURAL RESOURCES BOARD MEETING** **TUESDAY, January 12, 2021** **11:00 am**

#### Board Members Present by Phone:

Diane B. Snelling, Chair; Brad Aldrich, Vice Chair; Steve Larrabee, Member & Don Turner, Member

#### Absent

Andrew Collier, Member

#### Staff Present by Microsoft Teams:

Kimberley Lashua, Business Director; Evan Meenan, Associate General Counsel; Aaron Brondyke, State Coordinator; Katie Emerson, Legal Technician; Katharine Servidio, Enforcement & Compliance Officer

#### **I. 11:01 a.m. Welcome and Introductions**

The Vermont Natural Resources Board convened at 11:01 a.m. via Microsoft Teams, Chair Diane B. Snelling presiding.

#### **II. 11:02 a.m. Opportunity for public to comment on agenda and non-agenda items.**

Chair Snelling offered the public the opportunity to comment on agenda and non-agenda items. There was no public present.

#### **III. 11:05 a.m. Review and action on Minutes of December 8, 2020**

A motion to approve the minutes of the Tuesday, December 8, 2020 meeting was made by Mr. Don Turner and seconded by Mr. Brad Aldrich and approved unanimously with one abstention (Mr. Steve Larrabee was not present at the specified meeting).

#### **IV. 11:10 a.m. NRB office and budget updates**

Ms. Kimberley Lashua, Business Director gave a budget update. The NRB has received updated Internal Service Funds numbers, these will be incorporated into the budget proposal. We are waiting for final budget targets (normally have by now). They will be issued this week and Ms. Lashua will send the Board a revised ups/ downs report.



Chair Snelling gave an update on the CRF funded scanning project. This was a limited scope project to digitize records and make them available to the public through our online database. The project is complete and overall, was a success. There were many challenges which allowed us to learn a lot about how we might tackle similar projects in the future. Chair Snelling acknowledged that we have many years of a great diversity of paper record types. This project came in under budget so we are returning the difference to the Legislature, who may be able to reallocate it. The Chair hopes to be able to give a more detailed overview at the next Board meeting in February, along with data from the Annual Report.

**V. 11:15 a.m. Performance Standards**

Mr. Aaron Brondyke, State Coordinator, presented on Performance Standards. Last year, the Board updated the NRB's internal Performance Standards from calendar days to business days to be consistent with Act 250 Rule 6. Through the development of the online database and application system, we have learned that the new system cannot count business days. We therefore must change back to calendar days. Calendar days can be a challenge, because state holidays frequently happen on a Friday or a Monday. An application that arrives on a Wednesday may only have four effective workdays for review. The commission or staff might not have enough time to review for completeness or to issue decisions. Therefore, we have added a couple of extra days to ensure folks have enough time to do their jobs.

7 business days → 10 calendar days (completeness)  
10 business days → 14 calendar days (minor decisions)

The reference to published notices in newspapers cannot be changed by the Board because that timeframe is included in statute.

Mr. Evan Meenan, Associate General Counsel, commented that several years ago, the Environmental Court switched to calendar days for all appeals and enforcement cases. Our attorneys would eventually like to make similar changes to our rules and statutes, so that when folks transition from the district commission system to the court system, there is consistency.

Mr. Brad Aldrich made motion to approve the amended Performance Standards. Mr. Don Turner seconded the motion, and it was approved unanimously.

**VI. 11:25am Discussion regarding Act 250 legislative initiatives**

Chair Snelling remarked that the Governor has indicated that he would like to see significant changes made to Act 250. ANR's Fish & Wildlife Department would like to

make changes regarding how they make Act 250 comments regarding wildlife and habitat. Last year, they talked about a bill-back provision as a way to recover staff costs from reviewing Act 250 permits. This year, they are talking about a separate permit.

Other legislative topics will likely be what has been discussed over the past two years, such as trails and downtown exemptions.

Mr. Meenan reviewed the process he uses to track legislation. Every Monday, he checks the Legislature website for:

1. New bills introduced, (if relevant are added to a bill tracking spreadsheet)
2. Hearings happening that week. Most hearings will occur remotely. If appropriate, the NRB can ask to testify.

Mr. Meenan can send the bill tracking spreadsheet to Board members upon request. Mr. Meenan attended the Senate Natural Resources Committee meeting before today's Board meeting. The Committee was brainstorming priorities for the upcoming session. Topics included: addressing climate change outside of Act 250, broadband technology, disposal of solid waste contaminated with hazardous substances, and plastic waste. Chair Snelling commented that there were some changes in the makeup of relevant Senate committees but that the chairs remain the same.

#### **VII. 11:30 am Legal & Enforcement Update**

Mr. Meenan gave updates on three legal matters: (1) the Killington Mountain House appeal, (2) the Costco gas pumps appeal, and (3) the Michael Lee enforcement case.

Killington Mountain House - the JO was appealed that found jurisdiction over a three-bedroom home that has been used as an Air BnB for up to 28 people. There is a coordinated municipal enforcement action. Some owners of the property are African American, and there are allegations that they are being treated poorly because of their race. These allegations are only in regard to the municipal enforcement action (not in the Act 250 appeal). There is also concern that Act 250 is taking jurisdiction over the sharing economy. That is not the NRB's desire. We have filed a resolution with the court that if the property is used as a 3-bedroom Air BnB, it would not need an Act 250 permit. But if they want to rent to 28 people, they would need an Act 250 permit as found in the JO. Chair Snelling commented that at this time, many people are looking for more regulations regarding on Air BnBs, as they compete with hotels.

Costco Gas Pump – competing gas station owners are challenging Costco's Act 250 permit. COVID is not letting up, and some of the witnesses would have to travel from out of state, so the scheduled trial will likely not be happening in February.

Michael Lee, New Haven Power Equipment – this is a case with multiple permit violations, municipal violations, and the respondent has been held in contempt of court multiple times. The Environmental Court has scheduled another contempt hearing in February. The NRB will need to present evidence and witnesses, and the court will likely be considering incarceration of Mr. Lee. We have been trying to avoid that result, but unfortunately, there has been no cooperation from the respondent.

**VIII. Other Business**

Mr. Steve Larrabee has heard feedback from a large builder in state, that energy efficiency rules passed last year are causing additional costs. The developer blamed Act 250. Chair Snelling and Mr. Meenan explained that the NRB has not imposed any additional energy efficiency requirements; however, the Department of Public Service recently updated its Residential and Commercial Building Energy Standards, which apply to all new development statewide. For residential projects, complying with the Department's Stretch Code leads to presumptive compliance under Act 250. But the residential Stretch Code is set by the Department of Public Service, not the NRB. The NRB used to have a Commercial Building Energy Standards Stretch Code, but last January, the Board voted to eliminate that Stretch Code, and not to require efficiency measures beyond the statewide base code. The recent base code changes could be causing additional expense for developers; but again, the base code is set by the Department of Public Service.

Chair Snelling reminded everyone that several service terms for commissioners and board members are expiring at the end of January. If you would like to be reappointed, it is important to communicate that interest to the Governor's Office.

**IX. 11:39 a.m. Adjourn**

At 11:39 a.m., Mr. Brad Aldrich made a motion to adjourn, seconded by Mr. Don Turner and unanimously approved by the Board.