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Toward a better Act 250

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By Rep. Linda Joy Sullivan

Last year the Legislature created an Act 250 Commission to study possible improvements to Vermont's principal land use law. I have written several times about Act 250, a law which has been on the books since the 1970s. No matter how well-intended, many believe that Act 250 operates to discourage new investments that would contribute to Vermont's collective prosperity, increase economic opportunities for individual Vermonters, and expand our industrial tax base by spurring positive growth. Many have complained of the law's lack of predictable application and of the very long and often uncertain delays that can be occasioned by a competitor or even by an isolated neighbor deciding that a project is simply not to its liking. While we often hear that the vast majority of Act 250 permits are granted, we don't much hear about are the projects that are never started or the permit applications that are abandoned in mid-stream. I hear about them.

Still, I'm not in the least bit hostile to the policy underpinnings of Act 250. We must protect our landscapes, our water, our air, and we should help our local communities protect themselves against errant and ill-considered projects thrown up in the search for short-term profits. The increased opportunity for citizen engagement at the local level is to be encouraged.

I was initially pleased to see the Commission begin its work in search of necessary reforms. Since the law's passage, Act 250 reforms have come only once every 15-20 years and we were long overdue to take a fresh look at the bill. Soon, however, many feared -- largely from the composition of the hand-selected membership of the Commission and its Advisory Committees -- that the Commission was likely to be less reform-oriented and more inclined to impose additional criteria that would have to be met before the issuance of a permit.

When the Commission did its roadshows last year those fears seemed confirmed: the events were expressly structured so as not to allow for an opportunity for the sort of free-wheeling discussion and debate that best informs legislators. The organizers of these gatherings actually told participants that they did not want to focus on anyone's individual bad experiences under the law. Instead, they used a "card game" run by facilitators largely inexperienced in Act 250 to solicit members of small "break out groups" to respond to a series of often leading questions seemingly phrased to elicit the answers desired by the Commission. There was no open dialogue or debate. The Commission came to town and left with the scribbled notes of these untrained facilitators.

The Commission issued its findings several weeks ago. Again, not to the surprise of many the report paints an exceedingly rosy picture about the strength of Vermont's economy that is, in my opinion, untethered to reality. I read that employment was way up in Vermont, that Vermont incomes were skyrocketing, that land development has far exceeded population growth. That, of course, is a dramatically different picture than the rating agencies painted about the State when they downgraded Vermont's investment rating last year. Then the report proposed legislation — dr req 19-0040, an 82-page House bill — that would among other things impose even more hurdles that would have to be met to get an Act 250 permit and that would create yet another level of administrative review and limit access to the State's Environmental Court.

The Commission proposed to place the principal appeals process in the hands of a newly created board of non-elected officials -- Montpelier-based policymakers neither accountable to voters nor to local communities affected by proposed projects. Instead, the Commission proposed to revert back to an appellate review system that was essentially jettisoned by the Legislature almost 20 years ago and to allow the courts to intervene only at the Vermont Supreme Court level.

In addition, the Commission proposed the imposition of new standards that would have to be met relating to climate change. I'm all for attacking the causes of climate change. But we know the science around the causes and effects of climate change is still developing. The bill proposed by the Commission adds criteria that, frankly, I think will take years for people, scientists and experts to sort out - adding yet another level of uncertainty to businesses looking to make an investment in our State.

I have this week introduced a House Bill. My legislation proposes, on the one hand, to actually enhance the important role of our local Act 250 District authorities, while permitting on the other expanded access to the courts by persons believing the law to have been applied incorrectly. We have excellent judges and hard-working local Act 250 bodies. We need to let them do their jobs and respect their work; most importantly we need to provide better, quicker and more predictable access to the courts. Some appeals - those that do not involve the application of technical environmental standards - could under my bill be initiated in our Superior Courts. And, in the interest of providing more efficient and timely reviews, my bill, would eliminate time-consuming "de novo" reviews: no more having to put on two trials, one before an administrative body and then another one starting from scratch before the courts. There are other proposals being advanced by those of my colleagues who believe, as I do, that the Legislature's Act 250 Commission has missed an opportunity to reform the law by preserving its essential features while permitting more efficient processes and clearer standards. We owe it to the State always to make sure that our laws are applied timely, predictably and consistently. In the Act 250 context we can do that largely by placing a greater degree of trust and responsibility in our local Act 250 authorities and the very fine court system we are blessed to have. These measures will all be considered by the House Fish and Wildlife Committee. Let's insist on a fulsome dialogue and debate about what works well - and poorly - about this Vermont signature legislation.

Rep. Linda Joy Sullivan serves Bennington-Rutland in the Vermont House of Representatives.

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