

Meeting Summary

Vermont Businesses for Social Responsibility
Lake Champlain Regional Chamber of Commerce
Greater Burlington Industrial Corporation

Environmental and Land Permitting in Vermont- Room for Improvement?

Thursday, July 23, 2009

9:00-11:00 AM

Fletcher Free Library

Welcome and introductory comments:

Will Patten-VBSR

Permitting will continue to be a huge part of the conversation about how to help business during this recession. The purpose of this meeting is to start that conversation. We also hope to breakdown the divide between the "tree hugger" environmentalists and the "money-grubbing" business people. This divide is an obstacle to creating economic vitality for all Vermonters.

Tom Torti- LCRCC

Success has been measured by what each side has stopped the other from accomplishing. We instead need to look for commonality. We want to begin a dialogue between folks who align with one of these affiliations and find where we have commonality on issues.

Business Survey Data

Dawn Francis- LCRCC/GBIC (See Handout Attached)

A summary of the results of recent member survey on permitting was presented.

Over 400 members were surveyed– and a majority of those responding say that permitting systems need work. However, they also indicated that in general, they were supportive of the standards and not looking to reduce them.

- State/environmental permitting - 75% say it's either broken or in need of major improvement. (42% say that it needs to be timelier).
- Municipal- 57% say that the systems are broken or in need of major improvement.
- Act 250 – 67% say the process is broken or in need of major improvement. 32% say it needs to be timelier.

S.99 was a bill intended to focus growth in designated areas and establish more stringent standards for development in rural areas.

| There was a split in opinion as to what people feel when it comes to this proposal.

Andrea Cohen- VBSR – (See Handout Attached)

- The purpose of this meeting and some other recent efforts is to focus on the users of the permitting systems and get feedback on what is/is not working.

- VBSR is not interested in “major reform” of our permitting regulations. We are very interested in improving its efficiency and have been soliciting feedback from our members.

- During town meeting week (2009) VBSR implemented a permit “quick poll” and is currently obtaining feedback via our annual policy survey of our 625 members.

- We have received some very interesting comments and survey results that make us think there are certainly opportunities and obligations to improve our permitting systems- for the benefit of our business and our environmental quality.

- One preliminary result from our current survey that really stood out and which we will use as a guidepost throughout our deliberation process- On a question asking about “the greatest contributor(s) to the success of your business in Vermont?” the highest ranked option, in the “major contributor” (5) category was Vermont “brand” and quality of life- at 49%. If we roll in those that ranked it “4”, then the response is 80%. 80% reported that the Vermont brand and quality of life is a top contributor to the success of their business- this is a strong message to us that we better not mess that up.

- Another question asked about the greatest obstacles to the success of your business--- 73.5% reported that environmental/land use permitting was either not an obstacle or only a minor obstacle. 13% reported environmental/land use permitting to be a major (or near major) obstacle.

- So why is VBSR here working on permit improvement? Well, for some types of businesses this is a HUGE issue....a very huge and expensive issue. For many businesses it poses some timing and cost issues. Every business and every job in Vermont matters—especially during these challenging economic times. If there are ways to improve the permitting systems to save time and money, to improve the system to eliminate unanticipated and antithetical outcomes, then we are all for it and want to be part of the solution.

Major conclusions about what needs fixing from the VBSR winter “quick poll”. (please refer to handout) :

- Act 250 is not “broken”. Less than 20% of respondents reported it was broken or in need of major improvement. 69% report it is working great or needs just minor improvement. The top identified

improvements focused on timeliness (65%) and redundancy with other permits (52%).

- The greatest potential for permit system improvement is in State Environmental permitting. 41% of respondents felt the State Environmental permit systems were "broken or in need of major improvement" and 44% of respondents said the system is working great or needs just minor improvement. Improvement is needed in timeliness (55%), reducing the redundancy between ANR permits and other permitting programs (55%), and clarifying permitting standards (48%).

- Note: municipal permitting fell somewhere in the middle—63% report that it is working well or needs only minor improvements, 32% report it is broken or in need of major improvement.

- Times are so tough if there's anything we can do to help businesses get through some unnecessary steps, that's what we're looking for. We should all be open to improvement.

Chris Snyder – The Snyder Companies (see handout)

- They have three neighborhoods under development now and some more coming down the road. In their business the recession started three years ago. During these tough times we have been working smarter and so should the permitting process.

- We need economic development in Vermont. We need housing at all price levels. Need to utilize growth center designation.

- We need to retain VT companies and allow them to grow and evolve. We can't have people leaving this state because they have better opportunities elsewhere.

- We need to encourage people visiting us here (visitors and 2nd home buyers) to spend money here.

- Why will we stay here if we can't see the potential for growth? It's a huge concern here for the long-term health of our businesses.

- We need to rein in the costs and infrastructure that are required for development.

- We all love VT and would love to stay here but the reality is that we can't rely on that. There are opportunities but we aren't doing enough.

Suggestions:

- Utilize growth center designations

- Have deadlines for permitting decisions— very clear and simple.

- We need to have skilled technicians reviewing technical data and allow dispositive permits based upon that technical knowledge.

- Act 250 fees – there is a proposal to raise fees to cover the same number of staff because there hasn't been any development. It is the wrong way to look at the problem—when business is slow I reduce my staff.

Jeff Nick – JL Davis Realty

- We are often known as the Walmart developer. We have done all the Starbucks, CCV, Church Street Marketplace, NECI, etc. Most developers in the state want to see VT preserved - they love raising their families here and love the land.
- There is too much redundancy at local and Act 250 level.
- No one thinks the development regulations are too strict even though they are in fact very rigorous (especially in Chittenden County). There is now much redundancy- things are now required both at the town and at Act 250. Also, there is a tremendous amount of uncertainty, which doesn't make sense if you have standards that are so rigorous. The standards need to be adjusted and reviewed.

Some examples:

- Simple subdivision in Shelburne – 10 lot project cost \$30K to do an archeological evaluation.
- Boulder Hill – 35 units. Site is 50% meadow/50% woods. Municipality wanted them to build in the meadow but Act 250 wanted them to build in the woods.
- One development had many conditions (color of building, landscaping, etc.), the one across the road was not asked to do these things. Standards are not consistently applied.
- Bad permitting systems and unnecessary delays slow spending and are bad for the economy.
- Clients often ask, Why isn't a Target store here? Why are rents so high? Locations aren't available- Not a lot of options and land is scarce.

Justin Dextrateur – Hartland Group.

- VT Law School recently did a survey- asking non-profits about permitting experience. 95% of projects took less than a year for Act 250 permitting compared to under 50% that took less than a year for local permits. Act 250 is better than other permitting programs in terms of cost and timeliness of permitting.
- The Study also found that active support of the community will hasten a project—but not always.
- We have a number of tools on the table (Planned Unit Development standards, Growth Centers or Vermont Neighborhood designations) but the VLS survey found that permitting through PUD/PRD correlated with much longer timeframe for permitting (60% taking between 7 months and 2 years, and 22% taking longer than 2 years) and greater risk of appeal (40%). The length of permitting and appeals often jeopardizes the affordability of the project. When permit costs explode, it has to come out of somewhere –either cut-backs on design or

additional public subsidy. In a senior housing project in South Burlington, there was a threat of appeal and the outcome was a paid settlement. Additional costs from lengthy appeals means we can't do other things like energy efficiency improvements.

- The permitting process for most projects is largely determined by who owns abutting property. An abutter with resources can delay and cause excessive costs (not for a community good but for personal gain).
- On the record review is worth exploring more.
- Prefer very detailed regulations over uncertainty
- Our smart growth vision is in place but not the implementation of that vision – additional resources for training local boards and technical assistance from RPCs would go a long way to help
- Uncertainty is the biggest evil and trying to harmonize the stated goals of a community with their implementing regulations is a key area for opportunity.

Geoff Hand – Shems Dunkiel Raubvogel

- Our firm represents people on both sides of the equation- the two magnetic poles in every one of these conversations- and both feel that the process is weighted to the other side. There is some middle ground that can be found.
- The system is not broken but there is some room for improvement. It's important to recognize that we are in a unique situation in this recession and we can't let that affect our long-term goals. Permitting is not the biggest obstacle to development now; it is access to capital. Public input in the development process is a right that is granted to Vermont citizens and we must respect and honor that right.
- The process can be lengthy and tedious but if you look at the 2008 data for Act 250, 480 permits were processed (both minor and major) and only 2 (or .5%) were denied. 20 were appealed. There be may be conditions you don't like but most likely you will get your permit.
- How do we improve the system? Start with the facts and what's really happening.
- We need to be cautious about setting firm deadlines (time-certain permitting). While people may work better on a deadline it can result in denials (because information is not complete), or bad decisions that get appealed.
- One way to reduce delays due to appeals is to reduce delays in environmental court because of a full docket. It might be helpful to add an environmental judge.
- Providing assistance to low-income appellants can make process go faster.

- Also, explore ways to reduce redundancy - local zoning and Act250- same case, same consultants, then to the Environmental Board. It ends up being like having the same trial three times.
- Currently great deference is given to state permits in Act 250 review.
- Might want to put in place system to skip right to E-court

Comments and Questions

- Time kills deals.
- North Ave. project costs and delays.
 - The cost of the process can take the project off the table entirely.
 - The project could have been built by now.
 - It's a difficult balance - people have their own interests in preserving their own property and it's hard to imagine taking that away.
 - There ought to be some additional limits to appeal rights. It was a project that clearly had all the standards set out.
 - A competitor can use the process to gain an advantage. We need to revise the systems to do away with abuse like that.
- How to ensure that growth center concepts get implemented.
 - The implementation of the legislation hasn't come to fruition.
 - We need to allow other municipalities to have access to this tool even if they don't have the means.
 - We need to build sewer and water capacity where we want growth to happen.
 - If we have a growth center then every project proposed in that area should be approved without having to go through the long tedious process.
 - We should limit appeals of permits issues for growth center projects.
 - It's an issue of implementation and small municipalities being able to take advantage of it.
 - Growth centers are definitely an area for opportunity. It's a great concept but it needs to be carefully managed.

Other Comments

- We can't measure when an application is never filed because system is viewed as too cumbersome. For example: A high tech company that reviewed permitting costs in both Vermont and New York decided to move to New York - and create 500 new jobs - because the process would take 3 times longer in Vermont.
- The system allows for extortion (mostly at local level, occasionally at Act 250). Onerous conditions are included and then the applicant needs to decide whether they should appeal their own permit!

- The cost of the process falls on all of us.
- Part of this issue has to do with the technical (and legal) expertise of the folks reviewing applications (especially at local level and lay boards). Should have training (required?) on what their role is, and what the limits are.
- Too much duplication. For example- if there is a site with wetlands there could be four levels of review for the same basic issue! It's a waste of funds that ultimately gets passed through, ultimately to all of us.
- About 20-25 years ago there was a major change in Chapter 117. In addition to five specific review criteria, new language added "...or any local regulation that may apply." It has made the process that much more complex and lengthy.
- Review should be limited to what is in zoning, not to what is in a town plan. Zoning is clear and enforceable.
- We should have one good thorough technical review and that should stand. Or towns should make it very clear in plan "no development here".

Recent case law has been clarifying how far a town can go and given more weight to zoning regulations over the town plan.

- Should allow for engineer self certification. It costs us all money to have additional review when a civil engineer has already stamped it with approval.
- We do not have a state land use plan and we do not have Act 250 review for smaller projects.
- There are a number of situations where the appeal process is the only way to obtain accountability. Therefore, rather than minimizing the appeal process, maybe it should be expanded.
- There needs to be a more efficient way to do accountability than through the appeal process. Need to deal with it through the certification process.
- The Environmental Court is less accessible. We should be giving people some access to legal counsel to help the process go smoother.
- Growth Centers – Act 200 – well thought out process. Dust it off, look at it again. It needs to be re-done again.
- So few of development permits are appealed yet it always is a major focus of our discussions. Recent decisions are making it harder to get party status. Think about other parts of the process rather than appeals.
- These laws apply to the whole state (beyond Chittenden County) where they don't have the sophistication to deal with these problems. There is a tough balance to be struck there. Don't forget to focus on the fact that so few permits have problems.

- Permit applications often take a long time because the applications are missing critical data.
- If something is missing from an application (or if it is a bad application) applicant needs to know asap so they can fix it. Can't wait 3 months to tell them something is missing.

List of Meeting Attendees

Geoff Hand	Shems Dunkiel
Josie Palmer Leavitt	O'Brien Brothers Agency
Justin Dextrateur	Hartland Group
Jeff Nick	J.L. Davis Realty
Michele Boomhaver	CCMPO
Chris Snyder	Snyder Homes
Roger Dickinson	Lamoureaux & Dickinson
Amanda Ibey	Home Builders & Remodelers Assoc.
Curt Carter	GBIC
Yves Bradley	Pomerleau R.E.
Brad Dousevicz	Dousevicz Inc.
Todd Bailey	Vermont League of Conservation Voters
Noelle Mackay	Smart Growth Vermont
Chris Killian	Conservation Law Foundation
Sen. Ginny Lyons	VT Senate
Sandra Levine	Conservation Law Foundation
Kristin Hines	Shems Dunkiel
Linda Sparks	Lang McLaughry Spera RE
Jon Groveman	VNRC
Brian Shupe	VNRC
Sen. Tim Ashe	VT Senate
Barbara Suprenott	ICV
Justin Johnson	VT DEC
Rep. Tony Klein	VT House
Rep. Tim Jerman	VT House
S McIntyre	VNRC
David G White	Whie & Burke Real Estate Investment Advisors
Brendan Cosgrove	VT ANR
Karen Horn	VLCT
Chad Farrell	Encore Redevelopment
Regina Mahony	Milton
Sen. Hinda Miller	VT Senate
Calen King	VBSR
Andrea Cohen	VBSR
Will Patten	VBSR
Dawn Francis	LCRCC/GBIC
Tom Torti	LCRCC.GBIC

