

Public Participation in Act 250 Proceedings

Lou Borie, Executive Director, Natural Resources Board

A. Public Participation is One of the Founding Principles of Act 250

- a. Decisions are made by lay District Commissioners
- b. The review process is transparent and the public (including public entities) has ready access

B. Interpreting “Public” Broadly – includes state agencies and other public entities

C. Broad Notice Provisions – Precursor to Public Participation

- a. Notice of Application Filing
 - i. Applicant files application with Act 250 District Office and sends Notice of Application Filing directly to landowner, town (selectboard), town planning commission, regional planning commission, Agency of Natural Resources
 - ii. Town posts notice of application filing in town clerk’s office
 - iii. Starting 10/3 application process will be paperless
- b. Notice of Commencement of Application Review by District Commission
 - i. After application has been deemed administratively and technically complete
 - ii. Direct notice from Act 250 District Office to:
 - 1. Statutorily required entities: town (selectboard), town planning commission, regional planning commission, affected state agencies (ANR, AAFM, ACCD, VTrans, DPS) – by email
 - 2. Other interested entities who have requested to be on standard certificate of service: Natural Resource Conservation Service, Green Mountain Power, Vermont Gas Systems, Efficiency Vermont, Champlain Water District -- by email
 - 3. Adjoining Property Owners (list provided by applicant): Receive notice by US Mail
 - iii. Notice is also published in a local newspaper

D. Participation During Application Review Process

- a. Major Applications (hearing scheduled) – 20% of applications
 - i. At the beginning of the public hearing, any statutory parties in attendance (towns, RPC, state agencies, etc.) identify themselves and their interest(s) under the 10 criteria; these parties may participate by right under any of the 10 criteria

- ii. Any other interested persons (includes adjoining property owners, other persons, organizations and other entities) may also seek party status if they can demonstrate:
 - 1. a “particularized interest” under one or more of the Act 250 criteria that
 - 2. may be affected by the project (“an act or decision of the Commission”).
- iii. Statute requires an oral or written party status “petition” which includes a statement of the petitioner’s interests under the criteria and how the project will affect those interests, the reasons why the petitioner should be admitted as a party, the location of the petitioner’s property; most of the time this “petition” is presented orally at the hearing and the District Commission assists the petitioner in identifying his or her interests
- iv. Qualifying for Party Status is a Low Bar
 - 1. The purpose is to determine whether a person has a sufficient stake in the matter to allow the person to present evidence on a criterion.
 - 2. The District Commission wants to make the most informed decision about a project, including how the project may others
- v. Participants may also seek “Friend of the Commission” status
- vi. Two-Step Process
 - 1. Preliminary determination at the beginning of the hearing
 - 2. Final determination at the close of the hearing and stated in the Commission’s decision
- vii. Party Status Decisions may be appealed (to Superior Court and Supreme Court)
- b. Minor Applications – 80% of applications
 - i. Notice and proposed permit are distributed with 20-day comment period and opportunity to request a hearing
 - ii. Any hearing request must include a written petition for party status which states the petitioner’s interest(s) under the 10 criteria and how those interests may be affected – same standard as requesting party status at a hearing
- c. District Commission reviews party status requests received by the end of the comment period and determines whether to hold a hearing; again, the bar is low
- d. If a hearing is held it is not limited to the issues raised by any petitioner

E. Appeal Rights

- a. Decisions of the District Commission on an application may not be appealed unless there was a hearing (scheduled initially or subsequent to a request after Minor notice) – except appeals of party status