

Shaftsbury Planning Commission
February 23, 2021

The meeting came to order remotely via the Zoom platform at 6 p.m. Present were commissioners Chris Williams (chair), Mike Cichanowski, Martha Cornwell, Naomi Miller, and, a little later, Mike Foley. Also present were zoning administrator Shelly Stiles, and guests and workshop leaders Abby Chaloux, Jason Dolmetsch, and David Grayck, all of MSK Engineering.

Mr. Cichanowski moved to approve the February 9 minutes. Ms. Miller seconded the motion, which passed 4-0-0.

The team from MSK was invited to attend to help the PC understand how a small town planning commission can be as effective as possible in Act 250 matters – by first understanding the process.

Ms. Chaloux described what triggers Act 250 jurisdiction. Those actions are (from https://nrb.vermont.gov/sites/nrb/files/documents/Act%20250%20Jurisdiction%20Categories_0.pdf)

1. Construction of improvements for a commercial, industrial, or residential use above the elevation of 2,500 feet. (Mr. Grayck later clarified that this includes logging, and that the size of the improvement doesn't matter.)
2. The construction of improvements for any commercial or industrial purpose (including not-for-profit developments but excepting farming, logging, or forestry) on more than 10 acres of land; or on more than one acre of land if the municipality does not have both permanent zoning and subdivision bylaws.
3. The construction of 10 or more housing units, or the construction or maintenance of mobile homes or trailer parks with 10 or more units, within a radius of 5 miles. (In Designated Downtowns, Designated Growth Centers, Vermont Neighborhoods, and Neighborhood Development Areas the 10-unit threshold may be higher for some projects – see the District Coordinator for more information.)
4. Subdivision of land creating 10 or more lots of any size within a 5-mile radius or within the jurisdictional limits of a District Commission within a continuous period of 5 years.
5. Within a town that does not have both permanent zoning and subdivision regulations, subdivision of land creating 6 or more lots of any size within a continuous period of five years.
6. The construction of improvements for a governmental purpose if the project involves more than 10 acres or is part of a larger project that will involve more than 10 acres of land.
7. Any construction of improvements which will be a substantial change or addition to or expansion of a grandfathered (existing pre-1970) development of the type which would require a permit if built today.
8. The construction of a support structure which is primarily for communication or broadcast purposes and which extends 50 feet, or more, in height above ground level or 20 feet, or more, above the highest point of an attached existing structure.
9. The exploration for fissionable source materials beyond the reconnaissance phase or the extraction or processing of fissionable source material.
10. The drilling of an oil or gas well.
11. The sale, by public auction, of any interest in a tract or tracts of land, owned or controlled by a person, which have been partitioned or divided for the purpose of resale into five or more lots within a radius of five miles and within any period of ten years.
12. Any withdrawal of more than 340,000 gallons of groundwater per day from any well or spring on a single tract of land or at a place of business, independent of the acreage of the tract of land.

The team explained the Act 250 criteria. Later it was explained that, with subcriteria, there are a total of 26 criteria. They are (also from the Act 250 website):

- Criterion 1: Air and water pollution
 - 1(A): Headwaters
 - 1(B): Waste disposal
 - 1(C): Water conservation
 - 1(D): Floodways
 - 1(E): Streams
 - 1(F): Shorelines
 - 1(G): Wetlands
- Criterion 2: Water supply
- Criterion 3: Impact on water supply
- Criterion 4: Erosion and capacity of soil to hold water
- Criterion 5: Transportation
 - 5(A): Traffic
 - 5(B): Transportation
- Criterion 6: Educational services
- Criterion 7: Municipal services
- Criterion 8: Aesthetics, scenic and natural beauty
 - Historic sites
 - Historic sites - archeology
 - Rare and irreplaceable natural areas
 - 8(A): Necessary wildlife habitat
- Criterion 9
 - 9(A): Impact of growth
 - 9(B): Primary agricultural soils
 - 9(C): Productive forest soils
 - 9(D): Earth resources
 - 9(E): Extraction of earth resources
 - 9(F): Energy conservation
 - 9(G): Private utility services
 - 9(H): Costs of scattered development
 - 9(J): Public utility services
 - 9(K): Public investments
 - 9(L): Settlement patterns (*formerly "Rural growth areas"*)

- Criterion 10: Local and regional plans

The team explained party status, and noted that “by right” parties may address or appeal any Act 250 criteria. Those as of right parties are:

- Applicant
- Landowner (renters are not distinguished from landowners)
- Municipality
- Municipal and regional planning commission
- Solid waste management district
- Any state agency.

Others may participate as “friends of the District Commission” but these parties cannot appeal. Mr. Grayck clarified that any lesser party must prove to the Commission that it has a “particularized interest” – that “some kind of impact must leave the developer’s land and fall upon yours.”

The team led the group in a study of the Lake Paran Village project, which required an Act 250 permit. Two issues were especially salient; aesthetics (for the neighbors), and conformity with the town plan (for the commission).

Mr. Grayck let the group in exploring how the Commissions judge aesthetic impacts, via the Queechee test. Questions asked are how does it affect the character of the area?; what materials are to be used?; what is the historic pattern of land use?; and what is the proposed land use?. Answers to the questions will permit the district commission to decide if the project fits.

Further, though a project may have impacts, are they “undue” impacts? To answer that question, three others are considered: is the project shocking or offensive? Has the developer taken all reasonable mitigating measures to harmonize the project with its surroundings? Does the project violate a clear, written community standard, for example, a Town Plan that uses language such as “shall” and “is prohibited” rather than “should” or “are encouraged.”

Re the latter “clear and written,” Mr. Grayck pointed out that the Shaftsbury Town Plan and zoning bylaw were in conflict at the time the Shires application was filed. The District Commission found that the bylaw, which allowed multifamily housing (while the Plan discouraged it), was dispositive, and that the assumption is that the bylaw is consistent with the Plan (as it is the expression of the Plan). (However, the state Supreme Court has held that bylaw amendments need not be preceded by Plan revisions.) Mr. Grayck pointed out that the best way the planning commission can be effective is to be very clear whether the Town Plan is one that uses “encourage” and “should” standards or one that uses “shall” and “prohibited” kinds of standards. Mr. Dolmetsch later said “clean modern Town Plans produce better projects.”

Mr. Williams pointed out that after the Shires application was filed, the planning commission recommended that the Shires site be rezoned to Village Residential, and that multi-family housing be restricted to village districts. (The PC had earlier modified the cluster subdivision regulations.)

Mr. Dolmetsch suggested that, in writing bylaws and town plans as regards housing,, planning commissions should seek to maximize tax revenues and minimize inputs per square foot, all in the context of community standards. He noted that some towns promote dense housing by targeting, for example, old mill buildings for “adaptive historic re-use.”

Upon a question from Mr. Williams about the cost of Act 250 permits, Mr. Grayck suggested the question might be something like is their benefit to democracy greater than their cost to taxpayers.

Mr. Williams said he thought Act 250 conditions were poorly enforced. Mr. Dolmetsch said the State has two ways to enforce them: the Natural Resources Board has an enforcement division, and as ANR permits increasingly implement Act 250 requirements, fines make more sense. Mr. Dolmetsch said applicants should not take the possibility of enforcement action lightly.

Ms. Chaloux touched on the Act 250 administrative process. She said MSK works closely with the District 8 Commission coordinator at each step of the process. She said it has become a much longer process during the pandemic, It takes 4-6 months under the best of circumstances. She said District 8 is very busy.

In answer to a question from Mike Foley, Mr. Dolmetsch said some exemptions are allowed, as for example in some designated growth centers or downtowns.

Ms. Chaloux said they would be sending out follow up information and that she welcomed questions. Mr. Williams thanked the team for their very significant donation of time and expertise.

The meeting adjourned at 8:10 p.m.

Notes by ZA Stiles.