

# Addison County Regional Planning Commission

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## FULL COMMISSION MEETING

Wednesday, February 12, 2003

The Addison County Regional Planning Commission Meeting was held on February 12, 2003 at Kirk Alumni Center at Middlebury College with Harvey Smith presiding.

### ROLL CALL

#### MUNICIPAL REPRESENTATIVES:

<b>Addison</b>	Alden Harwood	<b>Leicester</b>	<b>Ripton</b>	Jeremy Grip
<b>Bridport</b>	Andrew Manning Edward Payne	<b>Lincoln</b>	<b>Salisbury</b>	
<b>Bristol</b>	William Sayre	<b>Middlebury</b>	<b>Shoreham</b>	
<b>Cornwall</b>	William McQuillan	<b>Monkton</b>	<b>Starksboro</b>	
<b>Ferrisburgh</b>		<b>New Haven</b>	<b>Vergennes</b>	
<b>Goshen</b>		<b>Orwell</b>	<b>Waltham</b>	Thomas Yager
		<b>Panton</b>	<b>Weybridge</b>	
			<b>Whiting</b>	

#### CITIZEN INTEREST REPRESENTATIVES:

**AC Chamber of Commerce:**  
**AC Community Action Group:**  
**Otter Creek Audubon Society:** Judy Kowalczyk  
**AC Economic Development Corp:**

#### STAFF:

Adam Lougee  
 Kevin Behm  
 Brandy Saxton

Addison    Bridport    Bristol    Cornwall    Ferrisburgh    Goshen    Leicester  
 Lincoln    Middlebury    Monkton    New Haven    Orwell    Panton    Ripton  
 Salisbury    Shoreham    Starksboro    Vergennes    Waltham    Weybridge    Whiting



## PUBLIC PROGRAM

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The public program to discuss permit reform efforts underway in Vermont began at 7:45 p.m. The invited speakers were Elizabeth “Wibs” McLain, Secretary of the Vermont Agency of Natural Resources and Fred Dunnington, Middlebury Town Planner.

Secretary McLain began by introducing herself. She said she would talk about Governor Douglas’ permit reform proposal. She stated that there are a lot of proposals out there and it will be a long process. During the campaign, Douglas focused on three things: the myriad of appeals to different boards and courts; consolidating the appeal routes for state environmental permits to the Environmental Court; and addressing the need to ensure that those who appeal have an interest in the decision.

Secretary McLain then described the governor’s proposal. If all appeals of state environmental permits go to the Environmental Court, the judiciary believes that they would need one additional judge and seven additional personnel. Two judges would double the court time. New personnel are needed partly because the present Environmental Court is understaffed. The judges would rotate spending three years in Environmental Court and then they would rotate.

Like every other superior court, you would have to demonstrate that you have an interest that could be impaired by the project you are appealing. There is an existing court rule, VRCP Rule 24(a) that would be used. You have to demonstrate that you would be directly negatively impacted. You must meet the test and the court decides whether you have an interest.

In order to appeal, you would have to participate at the early stage, the district commission. This would get all of the information and concerns on the table early on in the process. Some really bad projects get approved in the end because they are so far along before there are objections. People cannot give up the project. There is an exception for unusual circumstances. One other change from the present system is that currently neighbors cannot appeal the Environment Court decision. Under this proposal, anyone could appeal to the Supreme Court. This has always been an anomaly for the Environmental Board.

The goals of the governor’s proposal were no negative environmental impact – process only on the table. He wanted more clarity, less redundancy and more consistency. Some business groups really like the idea that people have to have a direct interest in order to appeal, but do not like that neighbors can appeal to Supreme Court. Some environmentalists feel the opposite. The proposal does not turn the present system inside out or upside down. It is fair and consistent.

Another provision is to create an “on the record” review. Presently, appeals are de novo; everything that happened before is gone. Under the governor’s proposal, that will remain true unless someone asks for on the record review and the applicant agrees. There is currently an on the record demonstration project if all parties agree. The applicant must put his entire case on the record; the burden is heavy on the applicant. There have not been many uses of the demonstration because it is difficult to get everyone to agree at the district level.

Under the governor's proposal, all DEC permits will be appealed to the Environmental Court. There would be expanded public notice for some permits. The reason for adding process is to ensure that once a permit is granted it is not appealed, or if it is appealed and upheld the applicant does not have to open it all up again. DEC permits will not be reopened in the Act 250 process. In the past, DEC permits covered the Act 250 subcriteria one through four – the water, air and waste technical criteria. DEC permits do not match up to all the technical criteria. Under the proposal, the DEC permit will stand for what is covered. What is not covered is still in the purview of the district commission.

Also, the district commission can say no if there is duplicative testimony; there is control. The proposal eliminates the air and solid waste variance board and the waste facility panel. The water resources and environmental boards have functions other than appeals; all those functions will remain with the consolidated board. Those are the major provisions of the bill.

Fred Dunnington then discussed the proposed changes to Chapter 117. Fred stated that he has been involved in planning work for nearly 30 years and has been working in Middlebury for 21 years. Permit reform means different things to different people. Only recently have these ideas taken on label of permit reform.

Two years ago the legislature, in Act 62, established a summer study commission to see what could be done with local planning and zoning to improve provision of affordable housing. The group that was assembled was broad based: planners, attorneys, developers, Vermont League of Cities and Towns, regional planning commissions, and the Department of Housing and Community Affairs. They produced a report a year ago, which the legislature did not take it up. Among the recommendations of the study commission was to continue the efforts of the group and clean up Chapter 117.

The report that was produced, which is available from the RPC and online, provides the background. The group took the statute and tried to figure out how to make it more user friendly. Chapter 117 was reorganized in 1968 and since then virtually every year something has been cobbled onto it. There is information in different places. Review processes have different timelines.

The study commission set out to achieve organizational clarity, reflect current tools and practices, and recent court decisions. The court has taken narrow interpretations on issues such as pre-existing small lots and variances. As variances have been interpreted it makes it nearly impossible to grant a variance for example. The proposal includes a different type of waiver process that offers more flexibility.

The proposal preserves the basic structure – basic home rule for planning and zoning. Although, it is not really home rule; there are still certain things towns must do and some minimum standards. Otherwise towns are free to design regulations to meet their needs. There is a wide variation in the tools available and use of those tools around the state. It is a daunting thing – it is a big bill. However, it is enabling and it is up to the towns to adopt things.

The proposal minimizes state mandates and makes consistent the notice and appeals procedures. The affordable housing requirement was organized. It fine-tunes the limitations on zoning, such as regulating religious structures. There was also fine-tuning in tricky areas like things that are regulated by other processes. The study commission did not set out to do permit reform. The relationship between local

zoning and state process is in the news now. There are a number of permit reform bills, including H.179, which has 62 sponsors from both parties. There is good support in the House and it will work through the process.

Fred then discussed interested parties and appeals. Some of things the study commission came up with two years ago are similar to what Wibs talked about. Any person who comes to a public hearing can speak, the questions is who should be able to pursue it into the court system. The ten-people rule is one size fits all. The study commission recommended making it graduated, one percent of registered voters. The commission raised the idea of requiring participation at the local level. Another idea was better notice upfront by requiring a placard posted by the road. That lets people know that something is happening. Lots of things end up in Environmental Court or Act 250 – the more we can do locally enhances local control and help with issues bogging up the courts. Conservation commission cannot appeal – why do they have special status over other local groups?

The study commission dealt with equal treatment of housing. The attorney general has the right to bring an action against a community that has an egregious housing policy. Require that the effects of zoning be consistent with the town plan and better define consistent. Require provision for multi-family housing, redefine accessory apartment. This is a floor that allows some way to accommodate housing throughout the state.

Other issues include: keeping everything the same number of days, allowing more administrative decisions, adding undue adverse impact to better define the conditional use tool and prevent wide claims, conformance with the plan, consolidate development review language into one place, encourage combining zoning and subdivision into one document.

An important issue is variances. You have to prove necessity, which is very tough standard. The way that operated, it is easy for someone who wants to oppose it. It is too tough a standard. The proposal allows for another tool, waivers, which is something that Middlebury has done for several years. The standard is whether there is any adverse impact on neighbors. Do not torture the variance criteria, design something that fits a community's needs better.

There is a lot to it. How will this be worked in – over five years or be implemented right away? How will towns adapt to it? There are a lot of expectations for permit reform. People are clamoring for it and they are frustrated. It is difficult for volunteers on the board. Fred used the analogy of paints. Towns are like art students given a set of paints and told to make great art. No matter how good the tools, not everyone will make great art. It will take many years of education and training. People operate the system. That is where the RPCs and VLCT come in. It is not just a great set of paints.

Harvey then opened up the program for questions.

Wibs asked Fred about Number 17 on his handout. Additional types of zoning districts, what is New Town?

Fred said that they were new towns centers. Currently, Chapter 117 only lists agriculture and rural residential districts. There is no authorization for village residential. The Downtown and Village Centers Program is referenced now. Yeah new towns, why not?

Fred added very few things go through Act 250, but there is huge attention to it. Most things go through town zoning though.

Ed Payne said these look like sensible ways to go. What I am hoping for is in Act 250, the limitations of interested parties – I am curious about the viewshed concerns are going to be represented? We had the controversy on the wind generation in Middlebury. Anyone who could see the structure with binoculars had a concern. I sort of thought that in this initial presentation that perhaps some of that might be limited?

Wibs replied that someone would have to convince the judge that their concern satisfied Rule 24(a). The judges are very careful that that rule is tightly enforced.

Ed added we have a case where someone can see the open face of a gravel pit, but it is a mile away.

Wibs replied that the place to address that is locally.

Fred added that the Middlebury windmill was an interesting case study. What was at issue was Criteria 8, aesthetics. The windmill would ruin the view of the neighbors across the street. The Public Service Board struggled with this and decided that the applicant had no reason to put it right in the neighbor's view. The applicant then changed his plans and made the windmill subject to local zoning and moved it 75 feet to the right. The board went onto the neighbor's porch and could not see the mock-up. We took a picture and included that in the file.

Ed added, so when people were telling me you could see it from 125....

Fred replied you would drive into the river if you were really looking for this thing.

Ed continued, so those concerns would not be addressed?

Fred replied that Middlebury has same criteria as Act 250 on aesthetics. They care what things look like, but want a reasonable balance.

Ed continued I could see the concerns of the neighbor. One of things that was brought out was that it could be seen from 125, wouldn't that have been pertinent?

Wibs replied that it would be pertinent. She added that the board should also consider what else could be seen.

Judy Kowalczyk asked whether that neighbor would have the right to appeal?

Wibs replied that if you could see it, the judge would probably say you have an interest.

Judy then asked Wibs what are the problems slowing down permits?

Wibs replied the ability of parties not to participate at the original proceeding, but to get in on the appeal level. People who don't appeal permits in a timely manner but wait until the Act 250 process. Different aspects of same project can be appealed separately.

Bill McQuillan asked does Chapter 117 require towns to have zoning?

Fred answered no.

Bill asked if they decide to they have to step in this bear trap?

Fred said yes. You have to do things in a fair manner.

Bill asked if there was no zoning?

Fred said if there no zoning you don't have to comply.

Bill said that seems like a strong argument to not have zoning.

Fred said there are people who want to live where there is no development activity.

Bill Sayre said a couple years ago we had a presentation about proper interpretation of the town plan. He asked Wibs, why did you not include something to give more weight to local approval, to preclude the District Commission from reinterpreting town plan?

Wibs said there was not enough time to address everything. That is true; the District Commission often overturns a local decision.

Fred added that it is people who operate this system. In 21 years in Middlebury, no local decision has been reversed by Act 250 saying that we did not know what our town plan says. If your plan and zoning are dramatically different, these issues bubble up. The study commission recommended that bylaws must be in conformance with the plan in effect when the bylaws were adopted, not the current plan. There is not the inconsistency built in. At the end of the day if someone wants to raise an issue, not all towns are perfect and wrong decisions get made – checks and balances.

Wibs added, don't wait until Act 250.

Alden Harwood asked, do you see more appeals ore less? I don't think one more judge will solve the problem.

Wibs replied that there has been a lot of concern about the current Environmental Court. They considered creating a professional environmental board like the Public Service Board. The cost was high and the bureaucracy was greater. That still didn't address state and local appeals going to the same place. The bill

does have a lot of language about how to manage the Environmental Court. Wibs added that she thinks we will have fewer appeals and people will appeal in one place.

Fred added that there wouldn't be the duplications. The court system itself did its own internal evaluation and said it didn't have the resources it needed. There is not money enough in the budget. The inadequacies of the court system are well known.

Wibs added that not all the financial means of the board would be transferred to the court. The current judge never gets her decisions written. We added eight employees including two lawyers. That is up a net of three. We still have testimony to take on this. The initial cost is around \$200,000 and that is a lot for us when we have difficult budget constraints. This is important – we will find the money.

Fred concluded from the close of proceedings to the decisions being written is a long period of time. There needs to be more timely actions once the proceeding is closed.

Peg Elmer added that the new town center brings up Chapter 117 up-to-date with the Downtown Program. She added that there had been a lot of discussion about how to make Chapter 117 accessible for volunteers – the way it is written. Also, to allow for non-regulatory implementation tools.

Adam asked Fred to speak to Bullet 20 on his handout.

Fred talked about the distinction between urban and rural communities. This is really a situation where we discovered there are communities that keep stupid things in their zoning just because it is difficult to make the change. This change allows for an administrative update. The adoption process is so cumbersome for rural towns that it prevents ordinances from becoming more efficient.

Judy Kowalczyk asked what would happen to matters heard by the Air and Solid Waste Variance Board and the Waste Facility Panel?

Wibs replied that they would come to her and then be appealable to the Environmental Court.

Judy Kowalczyk asked Fred why conservation commissions were losing their party status?

Fred said that we were not aware that it has ever been used. Conservation commissions have primarily an educational function. Land trusts almost never get involved in local zoning. It messes up the relationship with local landowners. Conservation commissions should not be in an adversarial role. Individuals on the commission can participate.

The public program was adjourned at 9:00 p.m.

## BUSINESS MEETING

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The business meeting began at 9:10 p.m.

### **Approval of Full Commission Minutes: January 8, 2003**

Thea moved to approve the minutes from January 8, 2003 as written. Bill Sayre seconded the motion. Andrew commented that on the third page in the fifth full paragraph the reference to two-phase wires should be to three-phase wires. Harvey noted the change and asked for a vote on the minutes as amended. The motion passed unanimously.

### **Review of Executive Board Minutes: January 29, 2003**

There was no discussion.

### **Approval of Treasurer's Report**

Adam passed out an update. He noted that it was the beginning of the year and there was fair amount of money in the accounts with a good fund balance.

Ed moved to approve the treasurer's report. Bill Sayre seconded the motion. The motion passed unanimously.

## COMMITTEE REPORTS

Act 250: Fred said he had received an email from Adam on the Peet Airport application. He said he was not clear whether a hearing had been requested. He had heard nothing from any committee members.

Adam added that there was also an application for a commercial development in Bristol. He did not feel that there was any significant regional impact.

Local Government Committee: Thea stated that the committee would be going to Waltham for their plan review in March.

Natural Resources: Bill Sayre said that the committee had recently had a good meeting. They are working on watershed issues. Nell, the new watershed planner, is doing a good job reaching out to interest groups.

Ed added that Ethan Swift would be coming to the next meeting, so that the committee can ask questions and find out where they're coming from. Bill recommended that the Full Commission have a presentation on geomorphic assessments. Kevin added that he and Nell are gathering questions on the watershed process for Ethan, if anyone has questions. Adam noted that one of the committee members, David Shlansky, resigned from the committee. So, there is a spot if anyone is interested.

Transportation Advisory Committee: Tom stated that there had not been a transportation meeting.

Economic Development: Brandy said that Jim Peabody was going to be out of the area for the next month or so. February's Economic Committee meeting was cancelled. She was still gathering comments from committee members on the draft. At the March meeting, Jaime Stewart would be coming to the committee meeting to talk about the CEDS.

Utilities, Facilities and Services: Andrew reported that the committee was still working finalizing language for the Water, Wastewater and Solid Waste section. The committee would be meeting next Monday to discuss the VELCO resolution.

## **JOINT PARTNERS REPORT**

Adam had nothing to report.

## **MEMBER RECOGNITION**

Harvey noted that there was a new delegate from the Town of Addison at the meeting, Alden Harwood. He asked Alden to introduce himself.

Alden stated that he was a two-term selectboard member in Addison and before that he served as zoning administrator. He is a farmer in Addison. He said that no one from Addison had been attending for a few years. He added that he's the guy that took his sheep to town hall a few years ago to pay his taxes.

## **OLD BUSINESS**

Project Impact Update: Adam handed out an update on Project Impact. He stated that he was doing this because they are going to review the budget and the biggest change in the budget is in Project Impact. Most all the projects are moving along, but slower than expected.

The Ripton fire station is moving forward. They will have a bond vote in March. If that passes, our project will move forward quickly.

In Monkton, Project Impact is paying for equipment so there are no federal construction permit requirements. That project is moving forward now.

The downtown Bristol sprinkler project is on hold. The initial site did not work out. We don't have a site. No one has stepped forward and said they want to do this project. Harvey asked if the project doesn't go forward, could we reallocate the money. Adam said yes, as long as we do that before June and we'll have to move it to non-construction project.

Before we started the GIS culvert-sizing program, we found out that there are other tools to do that already. We are reallocating these monies. Harvey asked isn't that what Chris was doing? Adam answered that that was a different project, a culvert inventory. We have been using transportation money for that. It is Project Impact eligible and if some of the other projects don't go forward, we could fund some more inventories.

The Goshen road ditching project and the beaver deceiver in Starksboro will start construction this summer.

In New Haven, the project to armor and lower Halpin Road is a project that won't go forward. The AOT district transportation administrator didn't like it and the selectboard decided not to do it.

We have been unsuccessful in getting partners to take over maintenance of the rain gauges we want to install in the mountains for early warning of flood events.

We are paying for the communications equipment for the mobile command post. Adam stated that the idea behind this project is to take the mountains to Mohammed. A mobile communications structure would more efficient for the region. Harvey added that Bill Sayre has a vehicle that has most of that stuff in already. Adam said maybe we could get some tips from him on what works best.

The shoreline handbook project is moving forward. The planning practices project, we need to make time to do in-house. Most of the weather radios are installed.

The morphology study on the Middlebury River is in progress to identify areas of the river that are shifting and why. East Middlebury has been identified as a problem area. That project will be finished in the spring.

The disaster-proof home that Tom Vanacore is building will showcase new building techniques. We have received some computer simulation models of what the house will look like.

Adam closed by saying that for budget purposes what the commissioners need to know is that most projects are doing well, but some are taking longer.

Ed noted that they built the foundation for the demonstration home. Adam responded that what we paid Tom for was to make the blueprints public. We can post on the web and propagate these disaster proof houses. Harvey said so the so the project did not cover any construction costs. Adam said we put in \$20,000 mostly for computer equipment and the blueprints.

Adam added that because of the NEPA process we tried to not do construction projects. That allowed projects to go forward more quickly.

Charlie provided an update on Monkton's shelter. The contractors are putting on final touches and we are waiting for this money to come in.

## **NEW BUSINESS**

**Proposed 2003 Midyear Budget Adjustment:** Adam reviewed the proposed budget adjustment. He started with the revenue and asked everyone to look the fourth column over. That shows all the changes to the budget. He said that he would answer any questions.

Some of the changes include we are no longer paying for ACTR's telephone. The byways program incurred some expenses last fiscal year. That is pass-through money for consultants. In the commissioner's packet, there was a contract between ACRPC and Green Mountain National Forest to help them facilitate their planning process. Adam has proposed that Nell do that. The entire grant is \$10,000 and \$7,000 of that would be in this fiscal year, most going into salary.

The 604b pass through from EPA to ANR will be increasing by about \$4,000. We are finishing up FY00 and 01. That is a project that Kevin has been working on with Chris and Lewis Creek Association. We are finishing out last year's project.

For EMPG, we got \$14,000, which was \$4,000 less than anticipated. Project Impact, we have taken \$126,000 out and moved it to next year. That is the big change and what drives the changing numbers. We are not losing the money, but just shifting it to next year. There is also the stipend for being VAPDA chair. The changes are more cost shifting than a loss of money. Changes in the revenue are reflected in expenses.

Adam then turned to the expenses on page two. He noted that since he allocated a fair amount of administration for Project Impact and since that has moved into another year, he had to move things around to balance the budget for this year. We took out software and other things, like the scanner. There will be a salary increase due to GMNF project. The byways have a corresponding decrease in revenue.

Harvey then asked if anyone had any questions. There being none, he asked for a motion. Fred moved to approve the budget adjustment and Thea seconded. Harvey then suggested that Adam explain the GMNF contract before the vote on the budget.

**Proposed Contract with Green Mountain Nation Forest for Planning Support:** Adam stated that the Executive Board had recommended that the commission take on this project to help facilitate the GMNF planning process.

Fred asked does this tie our hands in commenting on their plan? Adam said no.

Ed asked is this something we are supposed to be voting on? Harvey said I think we will vote it in with the budget.

Fred amended his motion to approve the budget adjustment to include contract. Thea seconded and the motion passed unanimously.

Harvey asked if there was any other business?

Ed noted that the solid waste plan found that Bridport has not been following its dump closure procedures. The post-closure monitoring has not been done according to the book. Harvey said that that is a town issue.

Adam stated that he had copies of the bills discussed here tonight. Harvey said they would change.

### **ADJOURNMENT**

There being no further discussion, Bill McQuillan moved to adjourn. Steve seconded the motion. The motion passed unanimously. The meeting was adjourned at 9:50 p.m.

*Submitted by Brandy Saxton*