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The Natural Resources Board is proposing further changes to the Act 250 Rules (“the Rules”). The Rules were last amended effective October 1, 2013. The proposed changes can be viewed at the following address: <http://www.nrb.state.vt.us/rulemaking/act250/act25020152.htm>

Only one of the proposed changes appears controversial. Proposed Rule 21(A)(3) allows a District Environmental Commission to require a master plan application if:

1. The proposed development or subdivision involves multiple phases; or
2. The master plan process would avoid or limit piecemeal review of development or subdivision planned for the reasonably foreseeable future.

Under current law, an applicant is allowed to determine the best way through the permit process. If, for reasons of cost or time, a developer/applicant wants to propose only a single phase of what may be a larger project, he can do so and need only obtain an Act 250 permit for that phase. If asked, the developer must tell permitting authorities the current status and content of future plans, however there is no requirement to prepare a final master site plan if the developer is not ready to do so. The proposed change would allow District Environmental Commissions to require applicants to prepare and submit master plans for phased developments regardless of the desires of the developer.

The proposed change should be opposed because it complicates the process, makes permitting more expensive and fundamentally interferes with a developer’s business judgment. Long term planning involving the development of a master plan is often a wise decision for a developer of a large project. For example, a developer may want to have a general idea of the total number of residences a project may eventually contain so that the water and sewer pipes that are initially installed are sized appropriately. However, for a number of reasons setting such plans in stone through the master plan approval process is unwise. Time and circumstances can change the optimal design and size of future phases thus rendering the initial planning investment for naught. A developer’s decision not to prepare a master plan thus should be respected as a reflection of his business judgment, the current and future market and his current and future resources. The permitting process exists to protect the environment not to second guess a developer’s business decision.

The proposed rule changes will be reviewed at a public hearing at Vermont Interactive TV sites on February 25, 2015 at 6:30 p.m. in Middlebury, Newport, Randolph Center and Williston, and another public hearing in Montpelier on March 10, 2015 at 9:30 a.m. An evening hearing in Rutland is also being set up for late February/early March, date to be determined. The comment period ends March 31, 2015.