



Proposed Act 250 Rule 21 (Clean Copy)

Michael Zahner, Vermont Chamber of Commerce Comments Proposed Revisions to the Clean Copy (03 31 15) - in red, bold and underlined

Rule 21. Master Plan and Partial Review

Purpose. This rule creates greater efficiency in the application review process, avoids unnecessary and unreasonable costs, and provides guidance and greater predictability to the applicant and all parties by providing for master plan decisions. Master plan decisions include partial findings of fact and conclusions of law for a phased development or subdivision and may also include a permit for the initial construction phase.

The comprehensive planning and specificity on which a master plan decision is based allows for greater certainty and expeditious processing of permit amendments for subsequent phases, with as many criteria as practicable having already been addressed by the master plan decision.

Master plan decisions expedite permitting of subsequent phases by addressing some criteria for the fully developed project. For example, a master plan decision for an industrial park could address the park's general impacts and these impacts would already be addressed for a manufacturer subsequently seeking to develop a lot in the park, thus saving time and money.

Additionally, partial review can continue independently of master plan review to determine whether a project complies with one or more Act 250 criteria. This allows cost-effective preliminary review that may determine whether a project is feasible in a particular location.

Master Plans

(A) Applicability and effect.

(1) An applicant may seek review of a phased development or lot-by-lot build-out of a subdivision as a master plan decision.

(2) Master plan applications shall be reviewed as a request for partial review under subdivision II of this rule.

- 1) (3) The District Commission may require a master plan application **in limited circumstances pursuant to Rule 20(A), if:**¹

¹ *VCC Comment: As the Board recognizes, the Vermont Supreme Court has ruled consistently that the District Commissions have limited authority to require the preparation of a "master plan" in*

(a) the proposed development or subdivision involves multiple phases; or

(b) the master plan process would avoid or limit piecemeal review of development or subdivision planned for the reasonably foreseeable future.

(4) Vesting.

(a) Master plan findings and conclusions may be sought on any issue under the criterion or criteria for which there is sufficient, reliable information to base findings and conclusions.

(b) Master plan findings and conclusions shall be binding upon all parties pursuant to subdivision II (E) of this rule.

(c) Master plan findings of fact and conclusions may be issued for a period of time that allows for reasonable investment certainty for a reasonable planning period for which potential impacts under a criterion can be ascertained. The District Commission shall consider the following factors in determining the period of time for which findings and conclusions shall be valid:

i. the quality and sufficiency of information provided to the Commission under each criterion for which the applicant has requested findings and conclusions; and

ii. the nature and context of the project.

(d) Prior to expiration a master plan decision may be renewed and conditions updated, as appropriate. The District Commission may require information on which a master plan decision is based to be updated prior to granting any extension or renewal.

(B) Applications.

An applicant seeking a master plan decision shall, in addition to filing an application in accordance with all other applicable requirements, detail, to the extent known with reasonable certainty, all project phases for which the applicant is seeking a master plan decision, the fully completed project, and the project timeline, and the criteria under which the applicant seeks review.

accordance with the following decisions: In re Agency of Administration, 141 Vt. 158 (1981) and In re Vermont Gas Systems, Inc., 150 Vt. 34 (1988), both of which held that Act 250 jurisdiction does not formally attach until detailed plans indicate that “construction is about to commence.”

With respect to master planning, the restriction on Act 250 jurisdiction also needs to be balanced with NRB Rule 20(A):

(A) Supplementary information. The district commission may require any applicant to submit relevant supplementary data for use in resolving issues raised in a proceeding, and in determining whether or not to issue a permit. When necessary to an adequate evaluation of an application under the criteria set forth in 10 V.S.A. § 6086(a)(1) through (a)(10), the district commission may require supplementary data concerning the current or projected use of property owned by the applicant or others adjoining the project site.

Subsequent phases or the development of individual lots of a subdivision may be approved as amendments. The amendment process shall be conducted in conformance with the terms of Rule 34, all statutory requirements, and the following:

(1) The District Commission may require persons other than the applicant to be co-applicants in pursuant to Board Rule 10; and

(2) Amendments of master plan decisions shall detail the effect on all overall limits or any impact budget set by the master plan decision.

(C) Master plan decisions.

(1) Development or subdivision associated with any aspect of a master plan project shall not commence until a permit specifically authorizing the development or subdivision has issued.

(2) The District Commission may issue a master plan decision with partial findings of fact and conclusions addressing one or more criteria for subsequent phases of a project. Master plan decisions shall, to the greatest extent possible:

i. establish an impact budget addressing overall limits for the full project build-out (including but not limited to wastewater, water supply, vehicle trips, etc.) based upon findings of fact under the relevant criteria;

ii. establish a procedure for evaluating subsequent phases of the project against the impact budget;

iii. provide guidance to the applicant and identify information that may be required by the District Commission to issue affirmative findings and conclusions for subsequent phases.

II. Partial Review

(A) To avoid unnecessary or unreasonable costs, an applicant, upon notice and approval of a District Commission, may offer evidence in support of or have the project reviewed with respect to any **appropriate** issue under the criteria or sub-criteria.² of the Act in any sequence approved by the District Commission. However, the District Commission shall not permit such procedure if it works a substantial hardship or inequity upon other parties to the proceedings, will unduly delay final action on the application, or make comprehensive review of an application under applicable criteria impractical or unduly difficult. An applicant seeking to use this procedure shall notify the District Commission and all parties entitled to receive notice, of his or her petition and the sequence and timing under which he or she intends to

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*VCC Comment: Recommend "appropriate" for consistency with subdivision II.(B) below and current NRB Rule 21(A): To avoid unnecessary or unreasonable costs, an applicant, upon notice and approval of a district commission, may offer evidence in support of or have the project reviewed with respect to **any appropriate issue** under the criteria or sub-criteria of the Act in any sequence approved by the district commission..*

offer evidence or submit the project for review with respect to any issue under specified criteria or sub-criteria.

(B) A District Commission, on its own motion, may consider whether to review any appropriate issue under the criteria or sub-criteria before proceeding to the review of appropriate issues under the remaining criteria.

(C) In any proceeding under sections (A) or (B) of this rule, the District Commission, shall, within 20 days of the completion of deliberations, either issue its findings of fact, conclusions of law, and decision, or proceed to a consideration of appropriate issues under the remaining criteria. The decision to issue a decision or proceed to the remaining criteria shall be in the sole discretion of the District Commission. If the District Commission first issues a partial decision under this rule, the decision must state which findings of fact support conclusions of law under the applicable criteria, and which findings of fact are preliminary and do not support a conclusion of law.

(D) If the District Commission decides to issue a partial, the District Commission shall make findings of fact and conclusions of law including any conditions or terms to be imposed by the District Commission. If the District Commission is unable to make such findings of fact supporting a conclusion of law by reasons of inadequate evidence or information, it shall inform the applicant and all parties. Such findings of fact, conclusions of law and any conditions or limitations shall remain in effect, pending issuance or denial of a permit under the Act, for a reasonable and proper term as determined by the District Commission. Such findings of fact and conclusions of law may be subject to timely application for extension pursuant to Rule 35.

(E) The findings of fact and conclusions of law made under the terms of this rule shall be binding upon all parties during the period specified by the District Commission, unless it is shown that misrepresentation fraud or a material change has occurred.

(F) A permit authorizing development or subdivision **in any pertinent phase** shall not be granted under this rule until the applicant has fully complied with all criteria and positive findings of fact and conclusions of law **for that phase** have been made by the District Commission as required by the Act.

(G) These procedures are intended to minimize costs and inconvenience to applicants and shall be applied liberally by the District Commission for that purpose consistent with the right of other parties and the requirements of law and any pertinent regulations.

