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July 25, 2014

Susan Hudson, Clerk  
Public Service Board  
112 State Street, Drawer 20  
Montpelier, VT 05620-2701

Re: Order Revision Pursuant to Act 199 (S. 220)

Dear Ms. Hudson:

We are writing in response to your memorandum of July 10 requesting comments and recommendations on the definition of “good cause” and “substantial deference” as directed in Section 28 of Act 199.

We note that the legislation also requires the Public Service Board (PSB) to hold a workshop, although there was no mention of one in the July 10 memorandum to municipalities. Does the Public Service Board intend to hold a workshop?

Act 199, Sec. 28. Public Service Board; Order Revision states,

The Public Service Board (the Board) shall define the terms “good cause” and “substantial deference” for the purpose of 30 V.S.A. § 248a(c)(2) in accordance with the following process:

(1) Within 30 days of the effective date of this section, the Board shall provide direct notice to each municipal legislative body and planning commission, the Vermont League of Cities and Towns, the Department of Public Service, and such other persons as the Board considers appropriate, that it will be amending its procedures order issued under 30 V.S.A. § 248a(1) to include definitions of these terms. The notice shall provide an opportunity for submission of comments and recommendations and include the date and time of the workshop to be held.

(2) Within 60 days of giving notice under subdivision (1) of this section, the Board shall amend its procedures order to include definitions of these terms.

Current statute at Section 248a (c) (2) reads:

*Sponsor of:*

- VLCT Health Trust, Inc.
- VLCT Municipal Assistance Center
- VLCT Property and Casualty Intermunicipal Fund, Inc.
- VLCT Unemployment Insurance Trust, Inc.

“Unless there is *good cause* to find otherwise, *substantial deference* has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively. Nothing in this section or other provision of

law shall prevent a municipal body from basing its recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located.” [Emphasis added.]

The requirement to define these terms is long overdue. Our understanding is that since jurisdiction was moved to the PSB, 100 percent of applications for telecommunications facilities have been approved. Yet more than a few of them have been opposed by municipalities. We believe that telecommunications service can be provided in a way that both meets Vermonters need for coverage and municipal needs to protect the land use values identified in their municipal plans and community standards.

The Vermont League of Cities and Towns recommends that the Board define the terms in question as follows:

“Good cause” means that evidence clearly shows that the plans and other written community standards of a municipality (i.) have not been duly adopted; (ii.) have not been substantially followed by the municipality in forming its recommendation(s); or (iii.) based on those community standards, the community has not identified a viable alternative means of substantially achieving the goals of 30 V.S.A. § 202c.

“Substantial deference” means the conservation measures and standards contained within the municipal comprehensive plan and recommendations of the municipal legislative body and municipal planning commission shall be applied unless there is a clear and convincing demonstration that the conservation measures, standards and recommendations are contrary to law and that factors affecting the public good of the State of Vermont significantly outweigh application of the municipal legislative body or planning commission recommendations, standards, or land conservation measures.

Although it is not directed by Act 199, we also believe the PSB would be well advised to revisit its definition of “limited size and scope,” which is currently 140 feet for a new facility and 200 feet for an improved or updated project. We do not believe that a reasonable person in a typical Vermont community would think that 140-200 feet in the air is “limited size and scope.”

Thank you for your consideration of these comments. I look forward to hearing from you.

Sincerely,



Karen Horn

Director

Public Policy and Advocacy