


PARTY STATUS AND “DUE CONSIDERATION” IN SECTION 248 APPLICATIONS

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45 Days on the inside track

- ▶ “Plans for the construction of such a facility must be given by the Petitioner to the municipal and regional planning commissions no less than 45 days prior to the application for a certificate of public good...” 30 V.S.A. 248(f)
- ▶ ACT (It will go fast)
- ▶ Establish a chain of command
- ▶ Gather information
 - Seek community input ideas
 - Hold an informational hearing
- ▶ Work informally
- ▶ Organize


Waiver of 45 days

- ▶ Use your Judgment the 45 days is valuable to your community (Chances are the applicant has taken a long time to prepare)
 - ▶ If you agree to waive, get a vote of the selectboard, preferably informed by the Planning Commission after it has been on the agenda of a warned hearing
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Pre-filing comments

- ▶ “Such Commissions (municipal or regional) shall make recommendations, if any, to the PSB and Petitioner at least 7 days prior to the application...” 30 V.S.A. 248(f)
 - ▶ Use the Comments to:
 - Summarize your activities during the 45 days
 - State your conclusions, requests, intent to participate as a party and the criteria under which you will participate.
 - Signal the Public Service Board
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PRE-HEARING CONFERENCE

- ▶ PARTICIPATE EVEN IF YOU ARE NOT SURE YOU WILL BE A PARTY
 - ▶ SETS THE ENTIRE AGENDA
 - ▶ BRING YOUR SCHEDULE
 - ▶ Work the room/ask questions
 - ▶ Deadlines come fast
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Party Status

- ▶ You will receive a copy of the application and information 45 days prior to the application
30 V.S.A. 248(a)(4)(C) and 248(f)
 - ▶ PSB must give due consideration to your Plan
30 V.S.A. 248(b)(1)
 - ▶ However, YOU MUST STILL FILE TO INTERVENE IF YOU WANT PARTY STATUS
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Party Status (continued)

- ▶ Big decision – Go/No go
 - ▶ What is the impact on/benefit to your community?
 - ▶ Who cares?
 - ▶ What is the Commitment?
 - Time
 - \$\$\$
 - Formal Schedule (PSB and applicant drive)
- 


Party Status (Continued)

What benefits do I get by participating?

Control

Responsible government

Shared resources/costs

- ▶ What Choice Do I have?
 - Do nothing
 - Interested Party, Monitor and write letters
 - Use Public Service Department/ANR other party
 - Use the Region
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Party Status (Continued)

- ▶ OK, We're In! Now what?
- ▶ Establish Control structure (Selectboard)
- ▶ Dedicate Funding (Selectboard)
- ▶ Hire a lawyer?
- ▶ Work collaboratively (Regionally)
- ▶ Use volunteer committees to do leg work
- ▶ Find experts, locally?



Intervention!

- ▶ How?
- ▶ What Criteria?



Criteria 248 (b)(1) Orderly Development and Due Consideration

- ▶ Before the PSB issues a Certificate of Public Good...it shall find...an in-state facility will not unduly interfere with the orderly development of the region with due consideration...to:
 - Municipal legislative bodies,
 - municipal planning commissions
 - regional planning commissions
 - land conservation measures



Criteria 248 (b)(1) Orderly Development and Due Consideration

- ▶ Will not unduly interfere with the orderly development of the region
 - Plans should help define orderly development of the region/municipality
 - Make sure to look at land conservation patterns
 - What constitutes “undue interference”?



Criteria 248 (b)(1) Orderly Development and Due Consideration

- ▶ with due consideration...to local and regional government
 - What constitutes “Due Consideration”?



Criteria 248 (b)(1) Orderly Development and Due Consideration

- ▶ Compare to Act 250 Criteria 10
 - Certificate of Public Good: Before the PSB issues a Certificate of Public Good...it shall find...an in-state facility will not unduly interfere with the orderly development of the region with due consideration...to...
 - Act 250: Before granting a permit the District Commission shall find the development: Criteria 10: Is in conformance with any duly adopted local or regional plan...
- ▶ Substantial deference?



Other Criteria

- ▶ 248(b)(2) Need
- ▶ 248(b)(3) System reliability
- ▶ 248(b)(4) Economic Benefit
- ▶ Hard to win, costly
 - Must be specific
 - will need experts



Other Criteria 248(b)(5)

- ▶ Contains nearly all of the criteria of Act 250, criteria 1–8 and 9(K)
 - Does not include:
 - 9A Impact of Growth, 9B Prime Ag soils, 9C Forest soils
 - 9D Earth Resources, 9E Extraction of Earth Resources
 - 9F Energy Conservation, 9G Private Utility Services
 - 9H Cost of Scattered Development, 9J Public Utilities
 - 9L Rural growth areas,
 - Criteria 10



Other Criteria 248(b)(5)

- ▶ Aesthetics (Quechee test)
 - Same test, but influenced by Certificate of Public Good
 - Must think long term 60 years
 - Cost matters (CPG influence)
 - Be creative



Conclusion

- ▶ Get a chain of Command
- ▶ Get ahead of the Process
- ▶ Find allies/resources
- ▶ Think creatively (around, under, over)
- ▶ Get help when you need it
- ▶ Questions?

