

## Rutland Herald & Times Argus Archives

### Act 250 permit needed? It depends

Author(s): Kate Thomas    Correspondent Date: August 5, 2012    Section: ENVIRONMENT

Act 250, Vermont's land use permitting law, is unique. It is a state law, but regional district commissions decide whether an application for a permit will be approved or denied. Vermont's district commissions approve most Act 250 permit applications. Last year, district commissions approved 327 of 330 applications, with three denials statewide. Once a district commission awards an Act 250 permit, that development must be built and operated in compliance with the permit conditions. The Natural Resources Board (NRB) is responsible for enforcing the permit conditions as well as the overall administration of Act 250.

How do you know whether you need an Act 250 permit in the first place?

The first question to ask is whether the project is a "development" or "subdivision." These categories are defined by statute. Generally, "subdivision" means land that is partitioned into 10 or more lots for resale. "Development" means construction of commercial or industrial improvements. In both definitions, the project is included if the owner is subdividing or developing on his or her land within a five-mile radius of any point on the involved land, and the land adds up to either one or 10 acres.

The next question is whether the land to be developed is in a "one-acre town" or a "10-acre town." In one-acre towns, if your project is going up on a tract or combined tracts of land that measure more than one acre, you will need an Act 250 permit. In 10-acre towns, Act 250 permits are needed only if the project is on a plot or combined tracts of land measuring more than 10 acres. To find out whether your town is a one- or 10-acre town, visit the Act 250 website or call your Act 250 district office.

If your lot is less than one or 10 acres, Act 250 will probably not apply to your development. However, there are exceptions. For example, if you own lots adjacent to the lot to be developed, and the total amount of acres under common ownership puts you over one or 10 acres (whichever would trigger jurisdiction in that town) then you need an Act 250 permit. It is the Act 250 district coordinator's job to answer any questions about jurisdiction for a particular project, so the best bet is to ask whether you need a permit.

This one- and 10-acre town distinction was set up by the Vermont Legislature in 1970. Towns with zoning and subdivision bylaws automatically become 10-acre towns. However, towns can remain a one-acre town if the town's legislative body (i.e. select board) passes an ordinance stating the town will remain a one-acre town. Roughly half of Vermont towns are one-acre towns and half are 10-acre towns. Statewide, fewer than five 10-acre towns have elected to maintain Act 250 jurisdiction at the one acre threshold.

In Rutland County (District 1), for example, Benson and Brandon have zoning and subdivision bylaws but have opted to remain one-acre towns. As a practical matter, this means if a person with

1.1 acres in Benson or Brandon must apply for permission to build using local process first. Once the town awards a permit, the person must apply for an Act 250 permit.

Bruce Brown was chair of the Brandon Planning Commission and a member of the Brandon Select Board when the town decided to keep itself under Act 250 jurisdiction for development of projects on one acre or more.

"We still wanted Act 250 involved because we thought it was good to have an independent review of bigger projects," Brown remembers. "When you're a small town with volunteers doing the permit review process, it's a lot of work. Volunteers don't have the time and expertise the state does."

This begs the question: Why would a town institute zoning ordinance and subdivision bylaws and keep Act 250? Brown says. "In our case we wanted the tax breaks and grant opportunities that come with having historic downtown designation."

An added benefit comes from having local control over small projects and issues Act 250 does not deal with. "Things like setbacks, Act 250 doesn't touch," Brown says. "Say your neighbor builds a garage on his half-acre lot, but he builds it right on your property line. A zoning ordinance would say there has to be a certain distance from the garage to the property line. We wanted control on things like that, but we wanted to let the state deal with more complex projects."

Tom Bartholomew, commissioner at the Rutland Regional Planning Commission, said the Town of Benson Select Board took the Benson Planning Commission's suggestion that Benson remain a one-acre town.

"For a small town, administrative capability is a real issue," Bartholomew says. "Benson has no town manager, no administrative assistant. We have no problem with having businesses reviewed by Act 250. It's more thorough and complete in some ways than what we could do on our own. We think (the state) may be a little more objective as a non-interested, non-biased party than the town development review board."

According to Bartholomew, the zoning and subdivision regulations Benson adopted were limited to begin with. "We have minimal regulations, but we knew we wanted some control over businesses," Bartholomew says. "So, Benson's zoning law says any business needs conditional use approval, and then if the business is going to be on more than one acre it will need Act 250 approval as well (because Benson is still a one-acre town)."

Once towns enact zoning and subdivision bylaws, they may retain Act 250 jurisdiction for projects on one acre or more. This provision makes Act 250 jurisdiction more complicated, but it gives local government greater flexibility to decide what the process for land development in their town will be.

Kate Thomas is a student at Vermont Law School and legal intern with the Natural Resources Board. She may be contacted at [Kate.Thomas@state.vt.us](mailto:Kate.Thomas@state.vt.us)  
[www.nrb.state.vt.us](http://www.nrb.state.vt.us); [http://www.nrb.state.vt.us/\[URL\]/\[URL\]](http://www.nrb.state.vt.us/[URL]/[URL])