

Community versus development? Land use and development policy in Vermont as a tool toward community viability

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Abstract This paper examines Vermont's Land Use and Development Law (Act 250) as a means of promoting community development through public policy. Central to the law are mechanisms that invite citizen participation in the development and planning process. Accordingly, citizens can organize and undertake collective action against development projects that are understood as posing a threat to the ongoing life of the community. A case is explored in which citizens organized under the banner of Act 250 to prevent Wal-Mart from entering their community, in order to protect a vulnerable downtown area that had centred public and commercial life for generations.

Introduction

Communities in Vermont face a variety of pressures that threaten their viability. Alongside pressures common to communities across the globe, such as those resulting from heightened global economic competition, Vermont's towns and cities face a number of unique challenges. This paper explores the role public policy plays in meeting those challenges. In an effort to control burgeoning development and protect the state's natural resources, the Vermont legislature passed the Land Use and Development Law (Act 250) in 1970. Through its permit-granting process, this legislation forces development projects to be assessed in terms of their impact upon local communities. Act 250 has been credited for preserving the natural beauty and rural character of Vermont.

Central to the law are mechanisms that invite citizen involvement in the development and planning process. Accordingly, citizens can organize and undertake collective action against development projects that are understood as posing a threat to the ongoing life of the community. A case is explored in which citizens organized under the banner of Act 250 to prevent the entry of a large chain store into their community, in order to protect a vulnerable downtown area that had centred public and commercial life for generations.

Public policy as a tool toward community viability: Vermont's Act 250

Vermont is a small, mountainous state situated in northern New England. When the interstate highway system made Vermont more accessible to outsiders in the 1960s, the state began to experience heightened development pressures. An influx of second-home buyers exerted unprecedented stress on local services and the real estate market, the latter threatening Vermont's farms and open spaces in turn. The attendant gentrification and seasonal residency further exacerbated the challenges to Vermont's towns and cities. Uncontrolled growth, such as that experienced in the southern towns of Wilmington and Dover, was widely understood by Vermonters as a threat to the character and quality of life in Vermont communities, as well as a threat to the environment. In fact, the pressures for development in Vermont have been so great over the last several decades that, in the mid-1990s, the National Trust for Historic Preservation declared the state itself an endangered place.

The immediate catalyst for the public and political attention that led to Act 250's passage was ski area development. In 1968 it was reported that International Paper Company had designs to build a large development of vacation homes on a hilly 20,000 acres in Dover, Vermont (Bryan and McClaughry, 1989; Sanford and Stroud, 1997). Other such subdivisions in southern Vermont, poorly planned and ill suited for the terrain, had produced soil erosion and sewage problems (Sanford and Stroud, 1997; cf. Seidman, 1993). The over-sized nature of the International Paper development and the potential environmental fall-out of it enraged citizens (Brooks, 1997). As a result, in 1969, Governor Deane C. Davis requested that construction be delayed, and the Governor's Commission on Environmental Control chaired by State Representative Arthur Gibb was created. The Gibb Commission took the position that Vermont's natural resources were being harmed by large-scale development, and the fragile ecological balance of its environs was under duress. So persuaded was the legislature upon the Commission's report that no less than nine pieces of environmental protection legislation were adopted in under three weeks in the

spring of 1970, including the Land Use and Development Law (Act 250), which was signed on April 4 (Brooks, 1997).

For the most part, large commercial and residential projects must apply for Act 250 permits. For commercial applications, this means projects that intend to use ten or more acres of land. Residential developments that intend to construct ten or more housing units within a five-mile radius must also apply for a permit. The law stipulates several other specific types of development projects that require permits, such as construction above 2,500 feet; communication or broadcast structures measuring twenty or more feet; and, drilling for oil and gas wells. The construction of improvements related to farming, logging, or forestry is specifically exempted from the Act 250 permitting process (10 Vt. Stat. Ann. § 151-6001, 6001c).

The law encourages participatory democracy in a variety of ways. After applications are filed, public hearings are held for major projects, and may also be requested for those projects that the district commission has deemed minor. While the public is invited to attend the hearings, 'party status' is required to actively participate – that is, to provide evidence or argument in the proceedings (Argentine, 1998, p. 36; cf. 10 Vt. Stat. Ann. § 151-6085). Statutory parties by law include 'the applicant, the municipality and its planning commission, the regional planning commission, and affected state agencies' (VEB, 2000, p. 6). The district commission may also grant party status to citizens, citizens groups, or property owners likely to be affected by the project. Any statutory party may appeal a district commission's decision to the state Environmental Board. If dissatisfied with the Board's decision, statutory parties may further appeal to the Vermont Supreme Court (VEB, 2000).

Although developers often regard Vermont as resistant to sizeable development projects due to the permitting process, Act 250 itself is not meant to *limit* development. Rather, what Act 250 offers is the opportunity and means for communities and regions to control their own development, rather than merely be left to respond to corporate comings and goings. Whereas communities elsewhere have often granted tremendous concessions to large developers in order to woo them, Act 250 takes the unusual stance of constraining development projects to meet community and regional concerns. As former Governor Thomas P. Salmon (1973–1977) asserted, Vermont is determined to 'employ value-driven criteria as the basis for development decisions' (as quoted in VEB, 2000, p. 3). Development projects are thus scrutinized according to a set of predetermined criteria detailed in the law. The criteria are built upon values that are understood to be held collectively by citizens of Vermont: Namely, the value of the state's natural resources and the health of its environs, its scenic beauty, and its historic patterns of orderly and sustainable development (cf. VEB, 2000).

Developers intending to pursue sizeable projects in Vermont quickly learn that the easiest way to obtain a permit for a given project is simply to design the project from the outset to conform to the law's stated criteria (VEB, 2000). The '10 Criteria' that development projects must address are listed in Table 1. In brief, for each development project, applicants must assure district commissioners that a given project will not result in an undue strain on local resources or unduly burden local services. The criteria also specify that a developer must meet environmental concerns, consider aesthetic issues, and ensure that the development will not result in adverse effects due to growth related to it.

Over the three-and-a-half decades since its inception, the shape of Act 250 has remained, for the most part, intact – with the exception, that is, of the missing state land use plan (Brooks, 1997). The proposed land use plan provoked considerable debate and disagreement among Vermont citizens and legislators alike. Some regarded such a plan as the equivalent of 'state-administered zoning' (Sanford and Stroud, 1997, p. 242). Its omission from the law, however, is not insignificant. The law was intended to provide a structure for statewide planning for growth and development. Absent the land use plan, Henderson suggests, Act 250 is "half a law" – a regulatory scheme minus a forward-looking plan to guide it' (Henderson, 1993, p. 11). Without that guidance, Act 250 operates on a case-by-case, ad hoc basis (cf. Sanford and Stroud, 1997). This can result in inconsistencies in both environmental protection (cf. Sanford and Stroud, 2000) and orderly development.

Evaluating Act 250

Act 250 is not without its detractors – on both sides of the debate. While some decry Act 250, suggesting it promotes 'permit hell' (cf. Dwinell, 2001), is anti-growth (cf. Henrie, 1998), overly stringent (cf. Keese, 1995), and claims supporters that are obstructionists (cf. Marcel, 2001b), others criticize the law for not going far enough to control development. While the former argue that the stringency of the Act 250 process is damaging to Vermont's economy, a recent study concludes that relaxing environmental protections and regulations does not produce significant economic gains (Meyer, 1995). Moreover, despite accusations by developers and groups such as the Vermont Business Roundtable that the process is onerous and unfriendly to developers, most permit applications succeed. In 2002, 535 applications for permits were submitted to the nine district commissions – the same number as submitted in 2001. Of those 535 submitted in 2002, only 12 were denied, indicating an approval rate of 97.8%, a slight decrease from the 98% approval rate in 2001 (VEB, 2003).

Table 1. The '10 criteria' that development projects must address

Before granting a permit, the board or district commission shall find that the subdivision or development:

1. **Water and Air Pollution:** Will not result in undue air or water pollution.
Subcriteria:
 - 1(A) Headwaters
 - 1(B) Waste Disposal
 - 1(C) Water Conservation
 - 1(D) Floodways
 - 1(E) Streams
 - 1(F) Shorelines
 - 1(G) Wetlands
 2. **Water Supply:** Does have sufficient water available for the reasonably foreseeable needs of the subdivision or development.
 3. **Impact on Existing Water Supplies:** Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.
 4. **Soil Erosion:** Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water.
 5. **Traffic:** Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports, or airways, and any other means of transportation existing or proposed.
 6. **Educational Services:** Will not cause an unreasonable burden on the ability of a municipality to provide educational services.
 7. **Municipal or Government Services:** Will not place an unreasonable burden on the ability of the local governments to provide municipal or governmental services.
 8. **Scenic and Natural Beauty, Aesthetics, Natural Areas, Historic Sites:** Will not have undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas. *This criterion includes necessary wildlife habitat and endangered species under 8(A).*
 9. **Conformance with Capability and Development Plan:** *This criterion covers a range of issues that the district commission or board must consider vis-à-vis a proposed development. These varied issues are specified in the following subcriteria:*
 - 9(A) Impact of growth
 - 9(B) Primary agricultural soils
 - 9(C) Forests and secondary agricultural soils
 - 9(D) Earth resources
 - 9(E) Extraction of earth resources
 - 9(F) Energy conservation
 - 9(G) Private utility services
 - 9(H) Costs of scattered development
 - 9(J) Public utility services
 - 9(K) Development affecting public investments
 - 9(L) Rural growth areas
 10. **Local and Regional Plans:** Is in conformance with any duly adopted local or regional plan.
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Excepting italicized comments and bold headings, taken from 10 Vt. Stat. Ann. § 151-6086. Bold headings taken from 'The 10 Criteria: The Heart of Act 250' (in VEB, 2000, pp. 11–15).

Conversely, the latter contend that by limiting its focus to larger development projects – only 40% of development projects in Vermont come under the Act 250 review process [Vermont Natural Resources Council (VNRC),

January 2003] – smaller scale developments, which are also indicative of the sprawl the Act is meant to limit, thrive (Daniels and Lapping, 1984). Thus, Act 250 has been unable to restrain sprawl (Sanford and Stroud, 1997; VNRC, January 2003) or to slow the second-home real estate market (Daniels and Lapping, 1984). It has also been criticized as ill suited to protect historical sites (McCullough, 1986).

Many applaud the law, however, its limitations aside. Act 250 has been the focus of much attention and served as a paradigm for discussions of national land use planning (Brooks, 1997). The law has been credited with protecting Vermont's environment, preserving the beauty of its landscape, and preserving the character of its unique towns and villages (Defoe, 1992; cf. Sanford and Stroud, 2000; VEB, 2000). Act 250 has also been credited with other, less obvious, benefits such as reducing construction waste (Grodinsky, 2003). Its communitarian foundation has been hailed as key to renewing civil society and participatory democracy (Brooks, 1997). Moreover, despite the common assumption that environmental regulation hampers economic growth and development, Stephen Meyer of MIT's Project on Environmental Politics and Policy found that Act 250 has not harmed Vermont's economy in 'any identifiable way' (Meyer, 1993). In fact, Meyer concludes that the Act 250 process, by weeding out speculators and less sound development ventures, may have lessened the effects of the 1990–1991 economic downturn on Vermont's construction industry, as well as its real estate and banking industries (1993; cf. Feder, 1991). Accordingly, some argue that Act 250 is not only a positive environmental force for Vermont, but a 'positive economic force' as well (Defoe, 1992, title).

Vermont's economy and the Act 250 regulatory process are related in other ways as well. The scenic Vermont landscape undeniably serves the state's booming tourism industry. Furthermore, Vermont's environment is a useful marketing tool. Vermont-based businesses such as Ben & Jerry's Ice Cream and Green Mountain Coffee, to name only two, employ the uniqueness of Vermont – the presumption of its pristine environment and its scenic vistas unblemished by billboards and endless strip mall development – to sell their products (cf. Naylor, 1996). Some suggest a product with the 'made in Vermont' label may be worth as much as 10% more than the same product unable to claim Vermont as its place of origin (Greenberg, 2003).

The benefits of the law notwithstanding, certainly there are a variety of factors that might leave aspects of Act 250 in need of reconsideration and perhaps revision. Vermont's economy in the last three decades has shifted further from its historical base in agriculture and forestry to become more centred on service and tourism. Thus the imperative to protect the

'working' environment associated with those former livelihoods has changed (Brooks, 1997, Section II.2.21). The face of Vermont's population has also changed drastically. Vermont is more affluent and urban than it was several decades ago. Moreover, the cumulative effects of new waves of settlement since the 1950s have produced increasing tensions between newcomers – so-called 'flatlanders' – and long-time Vermonters (Bryan and McClaughry, 1989; *Vermont v. Wal-Mart*, 1995; Brooks, 1997; Bojhalian, 2003). The latter, many of whom made their livelihoods as farmers, loggers, and quarry workers, have benefited little from the changes under way in Vermont (Brooks, 1997). The struggle of Vermont's working poor alongside the affluent relocating to Vermont certainly adds to the tension (Roche, 1999). Clashes over Wal-Mart, as the following case study details, seem to play into this rift. It is assumed to be the newcomers who oppose Wal-Mart, eager to see Vermont's picturesque villages and landscapes preserved (Olinger, 1993; *Vermont v. Wal-Mart*, 1995). Whether or not newcomers to the state are the primary source of resistance is unclear. What is clear is that the pressure on the real estate market due partly to second-home purchases, in tandem with changes in Vermont's economy, are making it difficult for the working poor in the state to manage (cf. Roche, 1999). Certainly the concerns of Vermont's most needy citizens ought to be at the fore of any discussions regarding development in Vermont.

Community versus development? St. Albans against Wal-Mart

In 1990, Wal-Mart proposed building its first store in Vermont in the town of Williston. In nearby Burlington, the local paper decried the 'New Jerseyification' of Vermont (Kaufman, 1999). Others were quick to modify Robert Frost and note: 'Something there is that doesn't love a Wal-Mart' (cf. 'Shopping with the enemy,' 1995). Those remarks aside, citizen concerns about Wal-Mart's entry into their community are not unfounded. Some argue that communities have more to lose than to gain when Wal-Mart comes to town. One study, for example, suggests that money spent in locally owned businesses has a much more positive effect on the local economy – an effect four to five times greater – than that spent at a chain superstore (cited in Mander and Boston, 1996; cf. Shils, 1997). Indeed, there are numerous instances of citizens organizing to keep Wal-Mart out of their community in an effort to protect vulnerable downtown areas and local businesses, and to maintain a vibrant, locally oriented economy (cf. Griffith, 1994; Milne, 1994; cf. Norman, 1994; Reidy, 1994). The following case represents one such example.

St. Albans, Vermont, sits on the shores of Lake Champlain and is a short drive from the Canadian border. The population of St. Albans in 1992 was approximately 5,100, with 41,600 living in surrounding Franklin County.

The town is, in many ways, a typical small town in Vermont. While some housing developments have crept up around the outskirts of the town, the downtown area is quaint and appears bustling. Historically, the downtown area has centred community life – the town common is directly adjacent the main street shops. St. Albans is geographically compact, comprising just forty-four acres, and contains a variety of buildings with mixed commercial, residential, and industrial usages. It is a pedestrian-friendly town, and it is not uncommon for townspeople to live within walking distance of the downtown shops and offices. The historic district of St. Albans, on the National Register of Historic Places, has been the focus of millions of federal and state dollars for both preservation and revitalization (VEB, 1995).

In December 1993, District #6 Commission – the District Environmental Commission (DEC) representing Franklin and Grand Isle counties in the northwestern corner of the state – issued a permit for Wal-Mart to construct a 126,090 square foot retail facility in the Town of St. Albans (VEB, 1994). The facility was to be built just two miles north of the downtown area, off Vermont Route 7. While the facility was to be built in the Exit 20 area of Interstate 91 – an area that the town had slated for growth and development – the size of the store was incompatible with the existing stores in the immediate vicinity. The store and its surrounding parking lot and grounds were to take up forty-four acres, consuming a plot of land the size of the entire St. Albans downtown area (Muller and Humstone, 1994). The written statement of the Environmental Board notes that, while much of the existing retail space in the Exit 20 area would be considered ‘strip’ development, none of the other stores was contested (VEB, 1995).

Concerned about the ramifications of Wal-Mart’s entry into the local retail market – specifically the ramifications to the downtown area of St. Albans – a group of citizens, organized under the name of the Franklin–Grand Isle Citizens for Downtown Preservation (FGICDP), appealed the district commission’s decision to the Environmental Board. The Vermont Natural Resources Council (VNRC), Vermont’s leading environmental protection group, joined the citizens in their appeal. The two groups were granted party status in April of 1994 to pursue an appeal of the district commission’s decision on a variety of criteria. Hearings regarding the appeal were held in July of 1994, and the Environmental Board recessed to allow the parties – Wal-Mart, FGICDP, and VNRC – to provide further information regarding the anticipated impacts of the development (VEB, 1994).

Thomas Muller and Elizabeth Humstone of Humstone Associates – a Vermont-based independent research firm – were initially asked by the State of Vermont to prepare an analysis of the impact of the Wal-Mart store on area businesses. At the time, there was still no Wal-Mart store in

Vermont, and Vermont remained the only state in the United States where this was the case. Although the findings of Muller and Humstone presented to District #6 Commission suggested that retailers in Franklin County were indeed vulnerable and that the impacts were 'potentially severe' (Muller and Humstone, 1994, p. 1), the commission granted the permit. As part of their appeal to the Environmental Board, FGICDP and VNRC requested a more detailed analysis by Muller and Humstone. Their research concluded that Wal-Mart's entry into the local retail market would result in a net loss of 167 jobs by 2004 that would have negative repercussions for the regional economy, and induce tax-related losses for the municipality. The direct loss of jobs would likely generate indirect job losses as well. Muller and Humstone also argued that the secondary economic activity generated by Wal-Mart would likely be less than that generated by locally owned businesses. This is because Wal-Mart utilizes centralized purchasing, as well as centralized distribution and financial centres. Thus, Wal-Mart would not generate wholesale activity in the region or the state, nor would the megastore make use of local, regional, or state financial institutions. Thus, monies from profits and purchasing activities would leave the state and region. Locally owned businesses, conversely, are more likely to have the flexibility to invest locally and purchase products locally (Muller and Humstone, 1994).

In addition, the project – thought to be 'oversized' for St. Albans – would result in a displacement of 22.3 million in sales to existing stores in its first year (Muller and Humstone, 1994, p. 5). Muller and Humstone contended that the project would not only result in a dramatic shift in the 'locus of retail activity,' but this shift would have a severe effect upon the character and capacity of the community.

Due to lost sales and store vacancies, values of commercial buildings will decline which in turn will have an impact on local property tax bases. Employment reductions will cause payroll losses which will further lower potential tax revenues. . . Wal-Mart will cause a reduction in retail sales in the City of St. Albans which in turn will impact property values, employment, tax revenues, state aid to education revenues and public expenditures. (Muller and Humstone, 1994, p. 5)

In sum, Muller and Humstone concluded that the Wal-Mart store would result in an 'unreasonable fiscal burden on the City of St. Albans' (Muller and Humstone, 1994, p. 6).

The Environmental Board issued 'Findings of Fact, Conclusions of Law, and Order' in December 1994, reversing the District #6 Commission's decision to grant the permit. A final and slightly altered version of the Board's 'Findings' was issued in June of 1995 (VEB, 1995). The permit

was denied by the Environmental Board on the bases of Criteria 9(A) (impact of growth) and 9(H) (costs of scattered development), and 'negative conclusions' were reached regarding Criteria 6 (impact on educational services) and 7 (impact on local municipal services) (VEB, 1995).

As regards Criterion 9(A), the Board found that the overall public costs to the region as a result of the project would exceed the public benefits. For each dollar of public benefit, the Board contended, the development would cost the public 2.5 dollars. The public costs associated with the project were estimated to arise from two key sources: first, a net job loss in the region, which would, in turn, produce losses of property tax revenues; secondly, competition with downtown area stores would also trigger losses in public revenues. It was anticipated that the negative effects of competition with existing downtown stores would jeopardize the historic district of the town, and the public investment in its maintenance and revitalization as a consequence. Further, without estimates of the 'secondary growth' resulting from the project, the Board concluded that the public costs associated with such growth could not be determined. Wal-Mart was therefore obliged to provide sound estimates of such growth if it intended to pursue reconsideration of the application (VEB, 1995).

Under Criterion 9(H), costs of scattered development, the Board found that the project 'constitutes scattered development because it is not physically contiguous to the existing settlement of the downtown City of St. Albans' (VEB, 1995). Because of its conclusions regarding the public costs associated with Criteria 9(A) and 9(H), the Board further reached negative conclusions on the likely impact upon municipal schools and services.

In September 1995, following the Environmental Board's decision, Wal-Mart opened its first store in Vermont in the town of Bennington after battling for five years with citizens there. The store in Bennington was considered a compromise between opponents and Wal-Mart: At 50,000 square feet, the new store was half the size of the average Wal-Mart, and rather than constructing a large new facility on the outskirts of town, Wal-Mart situated the store in a former Woolworth's building in the downtown area (Larrabee, 1995). Wal-Mart also succeeded in obtaining a permit to build a store at Taft Corners in Williston, Vermont, despite the efforts of Williston Citizens for Responsible Growth who contested the permit.

Wal-Mart appealed the Environmental Board's decision regarding their intended store in St. Albans to the Vermont Supreme Court on a variety of grounds. Foremost was their argument that 'the impacts of market competition . . . are irrelevant to Act 250 review' (Vermont Supreme Court, 1997). The permit process, Wal-Mart argued, indicated a consideration only of increased public costs resulting from added services or facilities, and not

a consideration of retail market impact. The Supreme Court, however, upheld the Environmental Board's decision, affirming its conclusion under Criterion 9(A), impact of growth (Vermont Supreme Court, 1997). The Court's opinion states:

The Board's conclusion that the project's impact on market competition is a relevant factor under Criterion 9(A) finds support in the plain language of the statute, which requires the Board to consider the 'financial capacity' of the town and the region to accommodate growth. . . . Further, Criterion 9(A) requires consideration of the cost of 'education, highway access and maintenance, sewage disposal, water supply, police and fire services and other factors relating to the public health, safety and welfare.' A municipality's ability to pay for these services depends on its tax base, that is, the appraised value of property in the municipality's grand list. To the extent that a project's impact on existing retail stores negatively affects appraised property values, such impact is a factor that relates to the public health, safety, and welfare. (Vermont Supreme Court, 1997)

In sum, the Vermont Supreme Court affirmed the notion that competition that is harmful to local businesses such that the tax base is weakened as a result is a valid consideration under Act 250.

The conclusions of the Environmental Board and the Supreme Court represent recognition that development decisions have community-wide repercussions, and ought to be scrutinized accordingly. Further, they represent recognition that the needs and interests of the community should take precedence over those of developers. While some charge that the Court's decision is tantamount to economic protectionism (cf. Schneider, 1996), it seems more appropriate to understand it as pointing to the fundamentally social nature of economic exchange, and the inherent interdependence of public and private realms – despite the primarily private appropriation of surplus value (cf. Gunn and Gunn, 1991). Moreover, the Court's decision challenges a fundamental norm of zoning law – that is, that controlling competition is an inappropriate mandate of such laws (Dreisewerd, 1998). Hence, Dreisewerd argues that it offers 'hope to small communities across the country whose viability depends upon the economic strength of its small retailers' (1998, p. 343). The more typical 'Euclidian' zoning laws, however, do not allow for this type of community oversight (Dreisewerd, 1998). Communities wishing to define economic development according to the felt needs and interests of their citizens will thus require something more akin to Vermont's Act 250 in order to do so.

Conclusion: Vermont's Act 250 as paradigm?

Vermont's Act 250 offers a tremendous opportunity for citizens to participate in determining the course of development in their communities. In this regard, it offers a framework for the development and viability of communities in the larger, international context. Legislation at the regional or national level to promote development by inviting citizen participation could help to preserve or strengthen the political and economic autonomy of communities in countries around the globe. The need to protect such autonomy has never been more evident than it is currently, as capital is increasingly mobilized and labour markets are subsequently loosened. As one example, the world's largest company, Wal-Mart, now operates in nine countries, with Wal-Mart International its fastest growing division (Upbin, 2004). In April 2004, even Japan – with its historic reticence to large chain stores – opened its first covert Wal-Mart (the store's sign reads 'Seiyu') (Brooke, 2004). Arguably responsible for the rapid decline of American manufacturing and the low wages commanded by workers in the American retail sector – that is, the 'Wal-Mart phenomenon' (Bianco and Zellner, 2003), Wal-Mart could have a similar effect in manufacturing and retail labour markets in other countries. While public laws that invite citizen participation in development decisions may not be sufficient to combat such a force, certainly they are a way of giving a greater voice in development decisions to citizens at the grassroots. Moreover, such legal processes would be a useful structural corrective to the post-WWII decades of top-down and highly bureaucratic development decision-making. It must be noted, however, that laws akin to Act 250, which are utilized by citizen groups or public entities to restrict certain kinds of development, could find themselves under scrutiny from international trade dispute bodies. As aforementioned, such agreements are more concerned with preserving the interests of multinational and transnational corporations than they are with preserving local autonomy.

Furthermore, the wider application of Act 250 as a paradigmatic tool for community development and viability requires additional qualification. For starters, while Act 250 imposes a structure of public accountability and participatory democracy on matters of local economic development, it is not democratic enough. This is true for two reasons. First, Act 250 would benefit greatly from a more vigorously democratic structure at the community level, encouraging citizens to take on greater control and responsibility over the process of development in their communities. Without mechanisms to draw an ever-widening group of citizens into the dialogue regarding town planning and development, the Act 250 permitting process

could serve to divide Vermont communities further, exacerbating a perceived division between newcomers to the state and long-time Vermonters.

Act 250 would also benefit from a more democratic structure at the district and state level. The absence of electoral accountability in the composition of the district commissions and the Environmental Board has left the law vulnerable to administrative preference and prerogative. In late 2003, although the legislature was already in the process of considering broader changes to the permitting process, the Environmental Board proposed significant rule changes to a joint House–Senate committee (Mace, 2003). Despite opposition, the Legislative Committee on Administrative Rules approved the changes at the insistence of Governor James Douglas (VNRC, 2004a). In short, the changes were sought and achieved, effectively bypassing the legislature where a dialogue regarding reform was already in motion (cf. Allen, 2003; Mace, 2003). The changes disallow grants of party status to citizen and environmental groups that would have been granted such status previously under the law's provision for parties providing 'material assistance' (Mace, 2003). This rule change prevents such groups from appealing Act 250 permit decisions. In other words, under current rules the Franklin–Grand Isle County Citizens for Downtown Preservation and the Vermont Natural Resources Council might not be allowed to participate in the permit process to the same extent that they were in the mid-1990s, if the showdown with Wal-Mart in St. Albans were to play itself out in 2004 (cf. Jeff Green, District #6 Coordinator, personal communication, 28 January 2004).

Unfortunately, that is exactly what is likely to happen. Wal-Mart is planning a sprawling 150,000 square foot facility in St. Albans, on the very site where the original permit was denied (Thompson, 2004; VNRC, 2004b). In Bennington, where it was argued that the retail giant was amenable to compromise in an effort to meet citizens' concerns, Wal-Mart is planning a 170,000 square foot 'superstore' on the outskirts of town. The effects upon local grocery stores in Bennington could be severe (Crabtree, 2004). If plans go forward and permits for the two stores are approved, one would certainly have to question the effectiveness of Act 250 proceedings in shaping how communities develop. It could be that grants of party status hardly begin to level the playing field when the contest involves a behemoth-sized corporation with seemingly limitless will and resources. Citizens hardly have the time, organizational, or financial resources to carry on an extended battle with a corporation the size and scale of Wal-Mart. One critic charges that Act 250 favours 'whoever has the money and energy to last the longest' (Guma, 1997). In Williston, where Williston Citizens for Responsible Growth contested the grant of a permit to Wal-Mart and lost, Guma contends that the Act 250 process merely delayed

the inevitable. The Williston area now epitomizes sprawl. In the nearby downtown area of Burlington, residents complain about the lack of services, the empty storefronts, and the loss of the downtown area's only grocery store (Taylor, 1999).

Absent the opportunity to shape economic development according to the concerns and interests of citizens, communities are left subject to the adverse effects of global economic competition with few or no tools to challenge them. Despite its shortcomings, Act 250 is a useful model for public policy as a mechanism to further community viability by promoting community control over, and citizen participation in, community development. While imperfect – and perhaps insufficient – Act 250 grants citizens in Vermont communities an avenue to participate in shaping the development of their communities not open to citizens elsewhere. To the extent that citizens in Vermont do engage in the process, and actively seek to preserve the components of the law that invite citizen participation, the potential for the viability of Vermont's communities to benefit from this trend-setting law is undeniable.

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