



# a comparison of land use legislation in western north carolina and vermont

**Benjamin Orsbon**, who concentrated in regional development at UNC, received his Master of Regional Planning in May.

by **Benjamin Orsbon**

Recreational development caught Western North Carolina and Vermont unprepared to guide and manage growth. When shoddy construction and land speculation began to create environmental and social problems, the local citizenry became alarmed. These two relatively isolated areas had never experienced such an influx of outsiders; yet, both hoped new construction would revive their sleeping economies.

Citizens of Western North Carolina and Vermont have existed outside the economic mainstream. Partially because of this fact, both underdeveloped areas still contain valuable scenic resources demanded by affluent outsiders, and they remain dependent on the recreation-hungry urban areas for much of the capital investment in their rural economies.

It can even be argued that the main cause of their underdevelopment is this dependency relationship; much of the productive capital or economic surplus generated by the outside investment in the two areas is drained off by the controlling investors and reinvested elsewhere in more attractive ventures.<sup>1</sup> As a consolation to real development, the localities protract the positive benefits of an increased tax base, short-term construction employment, and low-wage service jobs such as ski lift operators; however, recreation development generates additional costs that must be borne by the local regions.<sup>2</sup> Because of their subservient relationship, Vermont and Western North Carolina are caught in a vicious cycle. Both regions are underdeveloped because they are dependent and dependent because they are underdeveloped. The recent downturn in the economy and the subsequent financial crisis of the recreation industry in North Carolina's mountains illustrates the dependence of the recreation industry on outside investment.<sup>3</sup>

The existence of this dependency relationship has severe policy implications because "as mountain land acquires more and more value for the larger population, local natives are being called upon to be caretakers for the greater public good while their life style is destroyed."<sup>4</sup>

Recreation development in Vermont and Western North Carolina was induced by several different factors. In Vermont, second home development can be attributed primarily to increased demand for skiing and other recreation-related activities in cities such as Boston and New York City, which had easy access to the area due to their proximity and the newly-constructed Interstate highway system.<sup>5</sup>

The rapid development of North Carolina's mountains was generated by factors somewhat different from those mentioned above. The initial impetus for development in Western North Carolina resulted from increasing demand for rural and scenic recreation in reaction to growth in the Piedmont, Florida, and even Northern urban centers. Recreation development was further stimulated by the availability of cheap land that could be aggregated in huge tracts in areas that previously had not needed land use regulations to guide or inhibit growth.

The outcome of this unexpected growth is intuitively obvious. Second home construction in Vermont and in North Carolina's mountains occurred almost exclusively in scenic rural regions where land use planning was virtually nonexistent. As a result, many construction practices degraded the environment and strained the existing life styles and social patterns.

In Vermont, the major environmental threat appeared in the form of deteriorating water resources resulting from the lack of even the most rudimentary site planning. "Developers jammed as many houses as possible onto shallow soil covering impermeable bedrock. They did this without building central sewage systems, depending instead on much cheaper septic tanks for each unit."<sup>6</sup> Consequently, the soil quickly became saturated and caused the seepage of filth into nearby streams.

North Carolina's mountains had a slightly different problem which resulted from different scales of development. Most of the large developments were well planned environmentally because of the huge long-term investment tied up in the area. However, the smaller developments that clustered around the larger ones usually generated two sorts of environmental problems.

One resulted from the fact that people who were not in the land development operation on a large financial scale did not have the capability to hire consultants and generally put together the know-how necessary to design a first class project. Many of the poor land use practices were results of ignorance rather than attempts to cut expenses.<sup>7</sup> (Emphasis added)

An example of this environmental ignorance is provided from a study by David Godschalk. "At one mountain development, salt was being heavily used to free roads of ice and snow. By asking about the possible salt pollution of small streams and lakes, it was discovered that this developer had no idea that salt could even become a pollutant."<sup>8</sup>

The other problem of small scale developments was the way in which they were overwhelmed by gradualism. Most roads leading to major land developments were slowly lined with small projects in a form of strip development. There were rarely any land use controls in effect and once started, strip development quickly became an established pattern.<sup>9</sup>

Even though some recreation development resulted in environmental destruction, developers in both North Carolina and Vermont have stressed environmental preservation and an opportunity to "get away from it all" in their advertising campaigns. Below is an example from a promotional brochure.

You'll be amazed when you see Whittingham Farms for yourself with its lovely common greenery offering complete off-road privacy and rusticity to each homesite. The community parks, beaches, recreational areas, and covered bridges are all designed for the epitome in private use and landscape protection.<sup>10</sup>

Often these brochures are true, but sometimes they contain empty words to trap unlucky buyers.

Environmental problems were only part of the negative effects produced by second home and recreation development. Harmful social and economic

## the rise of the recreation industry

### environmental and social effects of rural encroachment



impacts were generated as well because recreation development often trapped the local landowners in a vicious cycle.

In Vermont, skiers, vacationers, and hunters decided to buy second homes which attracted developers who snapped up the land. Naturally, land prices and property taxes soared. They went so high some residents could no longer afford to work their farms thus forcing them to sell because of the artificial acceleration of land values and subsequent increases in their property tax obligations. The influx of people increased road maintenance, garbage disposal, schools, and police and fire protection so taxes were raised again and more landowners were forced to sell, causing the cycle to repeat itself.<sup>11</sup> (Emphasis added)

The native highlanders of North Carolina also experienced a similar problem. Most mountain landowners valued their land between \$300 and \$500 per acre if the property had easy highway access and if it was flat enough for some type of farming. Otherwise, it was worth only about \$100 per acre if it was not too rocky to grow timber. When developers offered from \$1000 to \$2000 for this land, many older mountaineers sold out since the young had left for the bigger cities to find employment. And because land prices became so inflated, younger people could no longer afford to stay if they wanted to.<sup>12</sup> It can be inferred that rising land prices may not have forced the mountain owners to sell their land as was the case in Vermont, but it certainly did not encourage local owners to keep their property. In at least one case, property taxes were proven to be a burden. "A gentlemen near Boone faced an annual property tax bill of \$8,000 for 200 acres he owned near the rapidly commercialized area."<sup>13</sup> With more and more services being demanded from the county governments, tax supervisors in the two mountain counties most affected by recreation development, Avery and Watauga, predicted that farmers and local landowners will face even higher taxes after the next revaluation.

To add to the distastefulness of the "building boom", local landowners had to watch the developers make huge profits off the land acquired from the local mountain people. Lot prices soared in large developments such as Beech Mountain and Connetsee Falls. To illustrate, the size of the lots at Beech Mountain averaged two-thirds of an acre, with lot prices usually ranging from \$10,000 to \$20,000, with some as high as \$40,000. At Connetsee Falls, one-third of an acre sold for about \$7,900, and half of an acre cost up to \$15,500. Obviously, these land prices precluded anyone but the middle- and upper-income groups from purchasing a second home, and with most of the land supply of Western North Carolina tied up in national forests and parks, much of the privately-owned land quickly fell into the hands of outside speculators and second home owners. As a result, the ruggedly beautiful land that the natives once held for quasi-public benefit, since everyone could enjoy its beauty, has been gobbled up by outsiders for private use.

## the need for regulation

Much of the harm from recreation development has already occurred in the most beautiful and accessible regions; it is too late to effectively regulate development in these areas. But in other areas of Vermont and Western North Carolina, the beauty of the mountains could be insured by prohibiting overcrowding, environmental degradation, and the destruction of the scenic values that initially attracted development. With development increasing over the last few years at a rate of around one-hundred and fifty percent in some mountain counties, North Carolina does not have long to wait before it will be in the same predicament as Vermont, where second home development increased the number of the housing units in the state by one-third.<sup>14</sup>

As a result of all this development, Vermont's citizenry perceived a crisis which caused them to pass their statewide land use planning measure, Act 250. However, the North Carolina Legislature is still apprehensive, even though many of North Carolina's citizens and some conscientious developers are expressing anxiety over uncontrolled development. Local governments have not attempted to regulate developers since they fear such action might cause developers to relocate, resulting in the loss of short-term construction employment and the more long-lived but low salary service jobs. Some type of disincentive might be appropriate for the peaceful communities that wish to



preserve their rural lifestyle. Still, if local governments desire the small benefits that recreation development brings, the fear of relocation can be subdued by establishing homogeneous development standards throughout the mountain region. There would then be no incentive for the developer to relocate because restrictions would be universal. North Carolina could capitalize on this opportunity if the Legislature takes the initiative by passing the Mountain Area Management Act (MAMA).

As it is written, MAMA and Vermont's Act 50 both use the police power to regulate land use and share the common goal of regulating second home and recreational development in environmentally sensitive areas although Vermont chose to regulate development on a statewide basis, while MAMA takes a critical area approach. Similarities between the two bills are described below.

**a comparison of the two acts**

<b>Act 250</b>	<b>MAMA</b>
<b>Bodies Created by the Two Acts</b>	

A nine-member Environmental Board is appointed by the Governor for four years, with a chairman appointed for two years. The Board formulates policies and reviews decisions of lower permit-letting bodies.

Eight district commissions are created, each composed of three members appointed by the Governor for two years. No expertise is required of the commissioners, who carry out the day-to-day responsibilities of holding hearings and issuing development permits.

The Mountain Resources Commission is a fifteen-member body which prepares state guidelines, objectives, policies, and standards for land use plans and critical environmental areas in the region. The Governor appoints twelve of the Commission members from a slate of nominees from the mountain region. The Governor has the sole discretion to choose three Commission members, two of which can reside outside the mountain region. All members except three must have experience in specific environmental and land related fields.

The local governing body, either city or county, files a letter of intent to become a permit-letting agency with the Department of Natural and Economic Resources (DNER). If the local government does not sponsor a permit agency, DNER becomes the permit agency in the area.

**Permit Systems**

Development permits must be filed by businesses, individuals, associations, or state and municipal government agencies. Permits must be filed for commercial or industrial construction on land owned or controlled by a common entity exceeding ten acres (one acre where a town has no zoning or land use controls), housing projects not including subdivisions of ten or more units within a radius of five miles, developments by municipal and state agencies of ten or more acres, or any development above 2,500 feet. Exemptions are allowed for farming, logging below 2,500 feet, for forestry purposes below 2,500 feet, electric power or transmission facilities, and any development under way at the time of the Act's passage.

Every person, before undertaking any development in any area of environmental concern, must obtain a permit. Exemptions are specified for road maintenance, railways, utilities, use of land for agricultural purposes, emergency maintenance or repairs, construction of any accessory building, and completion of any development which was issued a valid permit prior to the passage of the bill, or any development initiated prior to ratification of the Act. Minor development permits are introduced at the city or county level except where the local government did not develop an approved implementation and enforcement program. In that case, the Secretary of DNER is responsible. Major development permits which are introduced to the Mountain Resources Commission are defined as any development which requires permission, licensing, approval, certification, or authorization from

any one of several State boards or which occupies a land or water area in excess in 20 acres; or which contemplates drilling for or excavating natural resources on land or under water or which occupies on a single parcel, a structure or structures in excess of 60,000 square feet. A minor development is any development other than a major development.

#### Appeals of Permit Decisions

An appeal of a district commission's ruling goes to the Environmental Board, which reviews the case in a quasi-judicial fashion excluding all parties except the directly aggrieved. The decision can ultimately be appealed to the Supreme Court of Vermont.

Minor development permit decisions can be appealed to the Mountain Resources Commission by any person directly affected. Major development applications are initially introduced to the Mountain Resources Commission. Any person directly affected by the Commission's decisions can bring final appeal to the Superior Court of the county in which the land is located.

#### Plans Required to Guide Development

Three plans are authorized by Act 250: an interim, a capability and development, and a land use plan. The State Planning Office drafts all three plans.

Land use plans can be developed by the counties and cities, but if they choose not to, the Mountain Resources Commission has the option of preparing the plan. Both the county and the Commission can delegate some or all of its planning responsibilities to the lead regional organization for the region which contains the county.

#### effectiveness of the two bills

"The Vermont Environmental Control Act was never intended to be a comprehensive tool to control all land use problems, only large and small scale developments in unzoned communities."<sup>15</sup> The Act has been successful in this respect by protecting the natural environment from the hazards of development that have come to the attention of the Board.<sup>16</sup> The bill's effectiveness can be attributed to the capability and development plan, the efficiency of the district commissions, the stimulation of local zoning, and the strong commitment of Vermont's citizens to land use planning.

The capability and development plan was designated to coordinate economic development, promote the general welfare of the inhabitants, and reduce the waste of resources which resulted from either excessive congestion or scattering.<sup>17</sup> The plan has had its intended effect on investment and development by influencing location decisions before they were crystallized—indicating where development should occur before an applicant was over-committed on a high risk proposal.

By far the strongest positive factor in controlling development has been the district commissions. Some state officials feared that the district commissions' decisions would reflect their own prejudice or the popularity of the project. Now most officials agree that district commissions have expressed a high degree of technical competence. Facts show that the commissions are less permissive in their permit enforcement than the Environmental Board, which has been accused of underenforcement.

To counteract the Board's underenforcement, an effort has been made to place more restrictions on development and diffuse enforcement responsibility through the implicit stimulation of local zoning and subdivision regulations. The Act encourages local zoning in three ways:

1. The law must be applied to developments of over ten acres in zoned towns and over one acre in unzoned communities.
2. Town plans have the force of law because a district commission

may not issue a permit unless the project complies with local plans;  
and

3. Local officials are made parties to state permit proceedings.

Another important reason that Vermont's Act 250 is a success is citizen involvement. Vermont's citizens have always had a close association with their relatively rural mountainous state once secluded from the "hustle and bustle" of growth. The flood of recreation-seeking outsiders strengthened the cohesiveness of the citizens, creating even more unity in Vermont's fight to control development.

Vermont has always had active citizen involvement, attributable to its Puritan heritage and the small villages that facilitate open discussion and debate in the traditional town meetings. This activism was exploited by wise government officials through the use of public hearings, opinion polls, and grants to finance citizen involvement. Due to the efforts of a statewide environmental group funded by the Ford Foundation, Vermont's citizens were involved in all stages of the drafting and passage of Act 250.

It is difficult to speculate how effectively the Mountain Area Management Act would function in North Carolina. From the previous comparisons of administrative bodies and permit procedures, it is obvious that the institutions are analogous enough to give North Carolina's Act a sturdy framework. All that is needed is a strong commitment by the members of the Mountain Resources Commission, county planning boards, and enforcement agencies to ensure a strong land use guidance mechanism.

Yet very few of the local mountain people in North Carolina are organized and actively involved in the passage of the Mountain Area Management Act. The few public hearings that led to the introduction of the bill in 1974 were meetings of elites. The list of occupations of the individuals attending the hearings sounded like a "Who's Who in the Local Community", with lawyers, real estate men, doctors, and bankers comprising the largest percentage of attendants. Consequently, there was not a true representation of the entire populace—in stark contrast to Vermont.

The lack of local participation along with the desire to limit the appointment power of North Carolina's first Republican Governor in recent years could have led to the amendments that now require more local involvement. Another reason for the incorporation of more local controls could be the growing sectionalism in North Carolina. Increasing industrialization and urbanization in the Piedmont has increased its affluence to the point that some citizens are now mobile enough to use the poorer rural areas at both ends of the State to recreate and escape the problems of urbanism. To assure a place to escape, they want an environmentally-pleasing region; thus, they push for land use controls. Local governments in Western North Carolina are rightly apprehensive of such a gesture that is merely a veiled request to save the mountains because of their recreational and scenic value.<sup>18</sup>

Deceit in the request to preserve the mountains is illustrated by the fact that only the North Carolina coastal and mountain regions have been encouraged to accept region-wide land use legislation. An observer only needs to ride from Charlotte to Durham on I-85 to see that the Piedmont needs land use planning more than the mountain region.

As a result, strong local control of the Mountain Resources Commission, the main policy-making body that formulates the guidelines for land use planning in the region, should make the bill extremely attractive to local governments. The Commission, comprised mainly of local appointees, could guide economic development to areas that would not disrupt the lifestyle and culture of the region.

Vermont had no need for a regionally-oriented system because of the homogeneity of the state and the external origin of their development. In contrast, Western North Carolina is faced with development originating both inside and outside the State, and in both cases, local and outside interests often conflict. No matter what the source, recreation development has proved to be little if any benefit to the local economy. Consequently, recreation



conclusions

development should be regulated along with other types of construction to assure an adequate respect for nature and the desires of the local community.

#### Footnotes

<sup>1</sup>Theotonio Dos Santos, "The Structure of Dependence", **The Political Economy of Development and Underdevelopment**, ed. Charles K. Wilber (New York: 1973), pp. 109-117.

<sup>2</sup>Robert A. Nathan Associates and Resource Planning Associates, **Recreation as an Industry**, Appalachian Research Report #2, (Washington: 1966).

<sup>3</sup>W.H. Scarborough, "Gloom Thick in Resorts", **Winston-Salem Journal**, (September 22, 1974), p. D2.

<sup>4</sup>Joy Lamm, "So you Want a Land Use Bill?", **Southern Exposure**, (Fall, 1974), pp. 53-62.

<sup>5</sup>Fred Bosselman and David Callies, **The Quiet Revolution in Land Use Control**, (Washington: 1971), p. 54.

<sup>6</sup>"The Land, Cry, Vermont", **Time**, (September 26, 1969), p. 50.

<sup>7</sup>David R. Godschalk, **New Communities and Large Scale Development**, Department of Administration, (1972), pp. 77-78.

<sup>8</sup>**Ibid.**

<sup>9</sup>**Ibid.**

<sup>10</sup>**Time**, (September 26, 1969), p. 50.

<sup>11</sup>**Ibid.**

<sup>12</sup>Bill Lee, "Florida Boom—In Our Mountains", **Greensboro Daily News**, (November 13, 1972.)

<sup>13</sup>James Branscome and Peggy Matthews, "Selling the Mountains", **Southern Exposure**, (Fall, 1974), pp. 122-129.

<sup>14</sup>Francis H. Parker, **Land Policy Alternatives for North Carolina**, Dept. of Administration, (1972), p. 23.

<sup>15</sup>Elizabeth Haskell and Victoria Price, **State Environmental Management: Case Studies of Nine States**, (New York: 1973), pp. 175-177.

<sup>16</sup>**Ibid.**, p. 175.

<sup>17</sup>Arthur Ristau, "Land Use Management: The Vermont Experience", **National Civic Review**, (November, 1972), pp. 554-558.

<sup>18</sup>Joy Lamm, p. 62.