VERMONT
LAND USE REVIEW BOARD
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**From:** Stephen Whitaker
**To:** Act250 - Board
**Subject:** Written Comments Following the Board"s September 8, 2026 Meeting — Docket RPC03-0001
**Date:** Wednesday, September 9, 2026 12:08:06 PM

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**MEMORANDUM FOR THE RECORD**

**Written Comments Following the Board's September 8, 2026 Meeting — Docket RPC03-0001**

**To:** Chair Janet Hurley and Members of the Vermont Land Use Review Board

**From:** Stephen Whitaker, Montpelier, Vermont

**Date:** September 9, 2026

**Re:** Consolidated written submission of oral comments given at the Board's September 8, 2026 meeting

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At the close of yesterday's meeting I undertook to submit in writing the comments I gave orally on the record. This memorandum does that. It consolidates three matters raised on the agenda as prepared, plus one additional matter raised extemporaneously during the Board's community engagement discussion that was never reduced to a prepared text. Quotations from the Board's own statements are taken from a machine-generated transcript, have not been verified against an official recording, and are attributed to role rather than to named individuals; I will correct any error promptly on notice.

### 1. Scope of the Board's § 4348(h)(4) Determination (Public Comment, ~1:03 p.m.)

Once a regional plan is adopted, my own objection under § 4348(i) narrows by statute to the § 4348a elements. That limitation runs to my objection specifically; it does not narrow the Board's own compliance determination under § 4348(h)(4), which independently reaches § 4302 and the purposes stated in § 4347. Participation, disclosure, and methodology questions are exactly that kind of concern — not § 4348a elements, but squarely within what the Board's own determination has to resolve.

I am asking what mechanism, if any, exists for a member of the public to direct

comment specifically at the Board's own § 4348(h)(4) determination, separate from filing a § 4348(i) objection. I also asked that the Board confirm when my September 3 and September 4, 2026 letters — requesting agenda placement on the Board's Application Guidelines — will be taken up, since neither appeared on yesterday's agenda.

The Chair responded, in substance, that the written record I have been building is being treated as live input to the Board's own review: “you have been providing comment... you are registering some of these questions and challenges to us, and we are considering them... as part of this preapplication.” I take that as a Board-level acknowledgment that this record feeds the § 4348(h)(4) determination regardless of its procedural label, and I am relying on that acknowledgment going forward.

**2. Planned Growth Area Data Deficiency and the Underlying Methodology Problem (Public Comment, ~1:34 p.m.)**

On the Central Vermont Regional Plan draft pre-application response, I raised that approximately 2,000 acres of proposed Planned Growth Area carry no supporting data on walkability, complete-streets compatibility, or water/sewer capacity — attributes the Agency of Transportation's own comments identify as missing from the bike-path mapping. The Board's map viewer for the region does not resolve this: it displays a water/sewer layer dated 2008, which shows no service to Country Club Road, yet the area is nonetheless treated as appearing to meet the applicable criteria. I asked how the Board or CVRPC can state that these parcels appear to meet the statutory criteria when the data that would establish that has not been produced or attached at the parcel level.

The Board's response was sympathetic but non-committal — acknowledging the input as “real world” and appreciated, while declining to reopen the draft, and the Board then voted 3–0 (Chair Hurley abstaining) to approve only the redline edits discussed that day. I understand that vote as the Board's comment to CVRPC, not CVRPC's own adoption, and I do not read it as resolving the underlying data question.

That data gap is not merely a documentation shortfall; it is a methodology problem the Board is positioned to correct. The VAPDA Statewide Future Land Use Methodology was developed “in consultation with” the Board under § 4348a(e) — consultation, not adoption. Where the methodology and the statute diverge, the statute controls, and reconciling that divergence is the Board's obligation under § 4348(h)(4), not VAPDA's. One concrete divergence: the

methodology states that capacity of sewer and water systems “need not be considered” in verifying whether an area is served by public infrastructure. Section 4348a(a)(12)(B)(ii) contains no such qualification — it asks only whether an area “is served by” that infrastructure, present tense, with no capacity carve-out and no planned-infrastructure allowance of the kind the Legislature wrote into criterion (vii) for transportation.

Separately, § 4348(d)(1) requires three conjunctive items from an applicant RPC: the plan itself, a report documenting conformance with the § 4302 goals and § 4348a elements, and a description of Regional Future Land Use Map changes. Section 1.106(A) of the Board's own Application Guidelines treats a checklist as sufficient to satisfy all three. That checklist is the same document I have been asking CVRPC to produce since my earliest comments in this docket — parcel-level documentation a member of the public could use to verify whether a specific parcel meets the § 4348a(a)(12)(B) criteria. CVRPC has not produced it. Under the statute, that should be a live deficiency; under § 1.106(A), it is defined out of existence before the Board ever reaches it.

I am asking the Board to confirm, as a general matter, that where its own Application Guidelines or a third-party methodology diverge from the statute's plain text, the statute controls — and, specifically, to require the parcel-level data supporting the roughly 2,000 acres of proposed Planned Growth Area referenced above before treating those parcels as satisfying § 4348a(a)(12)(B).

**3. Sequencing Between This Docket and the Board's Community Engagement Plan (Public Comment, ~1:50–1:57 p.m.)**

The Board's own Community Engagement Plan, required as a covered agency under 3 V.S.A. § 6004(c), is not due until July 1, 2027. CVRPC's regional plan, by contrast, is expected to be approved under the Board's own December 31, 2026 deadline. I do not raise that as a criticism of the Legislature's schedule. I raise it because of what it means in sequence: the Board will finish deciding whether CVRPC's participation record was adequate a full six months before the Board has worked out, for itself, what an adequate participation record looks like.

Under § 4348(m), once the Board approves that plan, it is not merely narrowed on appeal — it is not appealable at all. The irony has two layers: my own ability to raise these concerns closes entirely at approval, while the Board's own standard for judging exactly this kind of concern remains months from being written. Whatever record I build closes for good at CVRPC's approval; the Board's own yardstick for that record does not yet exist.

I have a documented record directly relevant to that future plan: a CVRPC meeting that closed before my public comment was heard, and an eight-month Code of Conduct process substantially organized around silencing participation rather than expanding it. The Board's own Core Principles guidance, discussed at yesterday's meeting, instructs agencies at Principle 8 to consult exactly this kind of prior history of engagement before finalizing a plan, and at Principle 6 to prioritize the voices most affected by participation barriers.

My request is that this record, including yesterday's testimony, be formally incorporated as input to the Board's own Community Engagement Plan now — not filed away for a 2027 process that will only begin after the one case I actually have standing to raise is already closed and unappealable. The Chair's response did not commit either way, characterizing the Board's posture as “flying the plane we're building” and pointing to existing guidance documents. I renew the request here in writing.

**4. Additional Matter Raised Extemporaneously: Act 174 Precedent, Municipal-Plan Credibility, and the Tier 1A Shot Clock (Public Comment, ~2:35–2:37 p.m.)**

This matter was not reduced to a prepared text and is being submitted in writing for the first time here. Following Ms. Annette Smith's testimony on access-to-justice problems in PUC/Act 250 practice, I asked the Board to take note of Act 174 of 2016, by which the Legislature created a working group to review and improve citizen participation in what was then Public Service Board proceedings. I have primary-source video of that working group's meetings and am preparing transcripts of them, which I can make available to the Board as a legislative precedent potentially relevant to strengthening its own public-participation framework.

The substantive point is one of institutional credibility. Regional plan approval is built on each Regional Planning Commission's prior approval of municipal plans, but the Board does not itself examine whether those municipal plans deserve approval. For the Board's determination to be credible, it cannot be perceived as either omniscient or arbitrary — and there is no appeal from it. If a municipal plan fails to meet statutory requirements and the Board nonetheless approves the regional plan built on it, that creates a due process and credibility problem in its own right. That problem compounds where a regional plan approval includes Planned Growth Area designations that open a Tier 1A application under 10 V.S.A. § 6034's 45-day clock: once a parcel that should never have qualified for Planned Growth Area status obtains Tier 1A status, traffic review and regional-

impact review fall away entirely. Granting that status to an unqualified parcel, on an accelerated clock, would be devastating to the credibility of the whole process.

I also want to correct the framing of my own Vermont Supreme Court appeal, 26-AP-064, which is scheduled for oral argument next week. The issue is not the Legislature's repeal of 24 V.S.A. § 4476 this past session; that repeal does not reach my case, which was filed before it and is protected by the statute's savings clause. The issue is narrower and older: § 4476 provides a right to formal review of a regional planning commission's decision approving a municipal plan, before a regional review panel appointed by the Council of Regional Commissions. The Legislature repealed the Council of Regional Commissions section more than a decade ago, apparently without anyone noticing that doing so eliminated the only body authorized to appoint that panel. So when I filed my appeal, § 4476's right of appeal was still on the books, but the mechanism to exercise it had been defunct for over ten years. The question before the Court is whether that right of appeal survives the loss of its appointing body. I did not preserve the related constitutional question at the lower court — whether an affected party has a right to challenge a regional plan's designation of their land adversely to their interest, once that designation, approved by the Land Use Review Board, becomes unappealable — so I raised it in my brief only as an invitation for the Court to exercise its supervisory discretion and consider directing the Legislature to restore a right of appeal for affected parties.

**Requested Actions**

1. Confirm the mechanism, if any, by which written comment may be directed specifically at the Board's own § 4348(h)(4) compliance determination, separate from a § 4348(i) objection, and confirm that my September 3 and September 4, 2026 letters will be taken up at the earliest practicable meeting.

2. Require CVRPC to produce, or itself produce, parcel-level documentation supporting the water/wastewater, walkability, and complete-streets criteria for the approximately 2,000 acres of proposed Planned Growth Area referenced in Part 2, before treating those parcels as satisfying § 4348a(a)(12)(B).

3.

Confirm whether § 1.106(A) of the Board's Application Guidelines is intended to satisfy all three conjunctive elements of § 4348(d)(1), and if so, on what basis, given VAPDA's express disclaimer that sewer and water capacity “need not be considered.”

4. Formally incorporate this record, including my September 8, 2026 testimony, as input to the Board's pending Community Engagement Plan rather than deferring it to the 2027 process.

5. Take notice of the Act 174 (2016) Public Service Board Citizen Participation Working Group as a legislative precedent potentially relevant to the Board's own public-participation framework, and of the pending oral argument in 26-AP-064 as bearing on the appealability of Board determinations built on unvetted municipal plan approvals.

Respectfully submitted,

Stephen Whitaker

Montpelier, Vermont