Chip Sawyer Testimony Notes on *BE Home Bill* draft
For Senate Committee on Economic Development, Housing and General Affairs

February 8, 2024
Chip Sawyer, Director of Planning & Development, City of St. Albans
Revised text is highlighted.

Thank you to Senator Ram Hinsdale and members of the committee for the opportunity to provide testimony. This document contains my comments on the draft of the BE Home Bill, specifically in reference to Draft 7.2 - 02/07/2024.

Notable Recent Legislative Accomplishments concerning local regulation of residential development:

2020: Act 179 (S.237) in general…

- Provided some clarity to allowances for Accessory Dwelling Units.
- Ensured that any development of up to four dwelling units cannot be denied based solely on "Character of the Area."
- Broadened the range of existing nonconforming lots that can still be developed in water/sewer areas under the "existing small lot" rule.

2023: HOME Act (S.100) effects on St. Albans…

- Affected our ENTIRE community with the triggers based on water/sewer service area.
- Lowered our multifamily parking space requirement by **40%** or more.
- **Doubled** the allowed number of dwelling units per property in our largest residential zoning district (just over half of the City).
- **Quadrupled** the number of dwelling units that that can be permitted by right in our residential districts (versus having to go through conditional use review).
- Created a 40% density bonus for affordable housing projects. **No such bonus existed before in the City.**
- Has had little effect in the center of the City, where there are no density maximums or parking requirements, and where development benefits downtown revitalization and the tax increment financing district.

After the HOME Act, our community got to work to bring our local zoning into compliance with the new State housing statutes. We are also planning on looking at neighborhoods of the community where housing densities could be increased higher than the new "floors" set in the HOME Act. These efforts came to a halt when we found out that there were new bills picking up steam in Montpelier with yet another collection of local zoning mandates and rule changes.

The BE Home Bill begins to address many solutions with Act 250 that are long overdue for development in the areas where our State should be encouraging housing and growth. I would like to reference Alex Weinhagen's testimony of Feb. 6 to echo the positives that he highlights with the bill.

Suggestions and Requests:

Overall: I would request that the Legislature refrain from any further changes to State statutes governing local land use regulation this session. The HOME Act preempted some **fundamental** aspects in of local zoning and short-circuited many of the ways in which rules interact. It should be seen as a powerful step forward in solving Vermont's housing crisis, but communities need time to adjust to the new allowances and density floors, bring our zoning into compliance, and continue to pursue our own community-based solutions for addressing housing and modernizing our rules.

Sec. 9 (prime ag. soils): Please remove prime agricultural soil mitigation requirements from ALL development in designated areas, not solely for alternative or community wastewater systems. This broadened exemption would recognize that designated areas are where Vermont should be developing, not conserving soils that will never be farmed to a substantial degree and are likely degraded by historic urban uses, regardless.

Sec. 12 (appeals): The 10% rule is excessive and likely creates an impossible scenario. Suggested language: Any 10 persons or a number of persons equal to a minimum of 1 percent of the most recent U.S. Census Bureau decennial population total for the municipality, whichever is greater,… For instance, that would require more than sixty-eight people to join an appeal in our City, which is already twice the number of signatures you need to run for local office in our community. Even then, a 1% requirement may still be seen as impossible in larger communities.

Also, in Sec. 12, Please address some ambiguity in the language concerning the reasons one can't appeal a project in new item (d). The issue is that I think you could also read this proposed language to say that one can't appeal a DENIAL of any one of these project types, which would seem to run counter to the goals of the bill.

Sec. 14 (tandem parking): Allowing developers to create tandem parking for everyday use will create a false sense of true parking capacity, because they either will not be fully utilized or they will create conflicts between tenants. Tandem parking is a good urban solution for vehicles that are not accessed on a daily basis. If this language must remain, then I would suggest: Tandem parking of two spaces shall be allowed to count toward the residential parking space requirements for a single dwelling unit, and a municipality is allowed to require that tandem spaces are not shared between different dwelling units.

Sec. 14 (parking space size): Echoing the comments of Juli Beth Hinds and Alex Weinhagen submitted on Feb. 6, and likely many others, the proposed parking space standard of 8x16 ft. is too small. There are also concerns that this language removes the ability of a municipality to require additional spaces for ADA accessibility. If this bill must include a parking space size "floor," than I would suggest: For the purpose of residential parking, a municipality shall define a standard parking space as not larger than nine feet by 18 feet, however a municipality may allow a portion of parking spaces to be smaller for compact cars or similar use. Furthermore, a

municipality may be allowed to require a larger space wherever ADA-compliant spaces are required.

It has also been suggested to me that this bill could request a study into other State rules, such as stormwater treatment, that exacerbate the cost of building parking lots and creating adequate parking supply.

Sec. 19 (duplexes permitted by right): I request that Conditional Use Review still be allowed for duplexes that are built to the same requirements as single-family homes. I know that many see Conditional Use Review as a specter for denying applications, but quite the opposite is true in my community: it is used as a method to ensure that development will be successful within any given neighborhood. Conditional Use Review already can't use "Character of the Area" as a reason to deny an application, and it is the one of the best ways for the applicant and DRB to have a conversation about concerns and solutions concerning traffic, facilities, services, multimodal connectivity and other aspects of development.

Sec. 19 (multiunit dwelling density): Whether it is concerning unit density, lot size or both, the proposed language effectively turns the HOME Act's new five units per acre requirement into a **twenty** units per acre requirement. This change is excessive with its complete disregard for neighborhood context, traffic capacity and municipal services. And it could do harm to any existing local density bonuses that may exist in communities in order to incentivize affordable housing, open space preservation, multimodal connectivity, universal design and accessibility, or other beneficial policies. I urgently request that the HOME Act's 5 units per acre rule is allowed to continue to act as the State's transformational new **floor** for housing density, with municipalities encouraged and incentivized to maintain and grow the number of areas of their communities that allow higher densities in various different ways.

If the committee truly wishes to pursue a track where 3- or 4-unit structures are allowed at a density higher than five units per acre, then I would suggest the following language: In any district that is served by municipal sewer and water infrastructure that allows residential development, multiunit dwellings with four or fewer units shall be permitted on lots that are at least 1/3 of an acre in size with an allowed density of at least twelve units per acre, unless that district specifically requires multiunit structures to have more than four dwelling units. I believe that allowing 12 units per acre is a good compromise between five and twenty, but I certainly prefer to stick with the five currently in the HOME Act.

Also, please keep in mind that every use that is permitted-by-right or required to be allowed wherever a single-family dwelling is allowed, can be construed to make that use eligible for development under the small lot rule at 24 V.S.A. § 4412 (2). These are lots that are otherwise too small for regular development, and it would be wise to limit this allowance to the smallest degrees of use. I would request that uses that are more intensive than a single-family home or duplex NOT be eligible for the "existing small lot rule."

Sec. 20 (limitations on municipal bylaws): Please remove the proposed language for 24 V.S.A. § 4413 (a)(1)(A). This section of statute should continue to read "(A) State- or community-

owned and -operated institutions or facilities." For further context, please see the comments of Juli Beth Hinds and Alex Weinhagen concerning "protected class use."

Appropriate Municipal Panel Process Deadlines: It is good that the previously-proposed 60-day deadline was removed for a DRB or other appropriate municipal panel to do their work. If this issue comes up again, please keep these factors in mind:

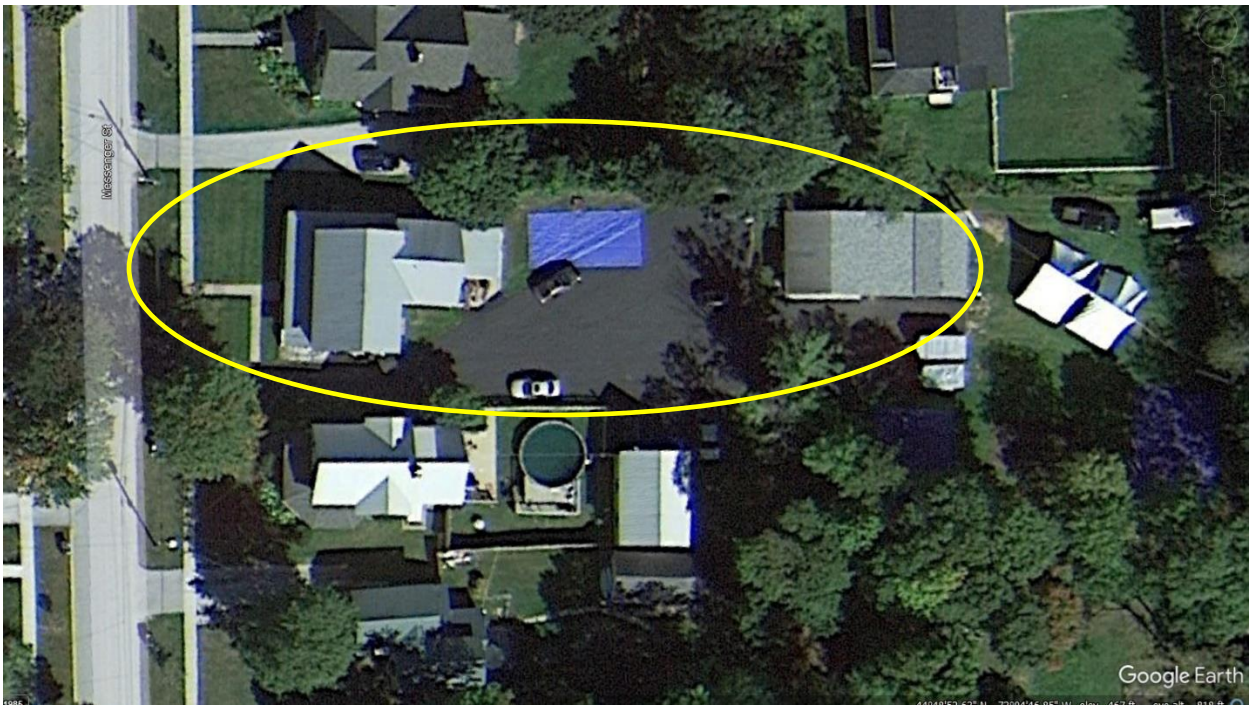
- A complete application for an appropriate municipal plan requires a published warning at least 15 days before the hearing. This is subject to the publishing schedules of newspapers of record, which are not daily in every county.
- During a hearing, there are many reasons why it may be beneficial or even critical for the success of a project to be able to recess for some time to gain more information to show compliance with zoning. Many times, it is the **applicant** requesting the recess, not the board.
- Many of these volunteer boards have a monthly or bi-monthly schedule in order to ensure a quorum at each meeting.
- The case-law surrounding "deemed approval" is that the application must still go before the Environmental Division before it is truly considered approved. Therefore, any arbitrary process deadlines that consequently increase the number of deemed approved cases will only result in further delays and court cases.

In the following pages, I have attached pictures of a few fourplexes in our City, as requested. I look forward to the discussion.

Thank you.


Congress St
Google Earth
44°48'48.85" N 73°04'42.67" W elev 484 ft eye alt 810 ft


62 Congress St
Exit Street View
© 2024 Google
Google Earth
Imagery Date: 10/2022 44°48'48.89" N 73°04'42.84" W elev 484 ft eye alt 492 ft


Messenger St
Google Earth


© 2024 Google
Google Earth
44°48'52.81" N 73°04'48.28" W elev 467 ft eye alt 466 ft

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