



## Housing & Permit Reform Legislation Vermont Planners Association Recommendations

- **H.68 (as introduced) - House Environment & Energy testimony, April 12, 2023**
- **S.100 (as passed by the Senate)**

April 11, 2023

### Overview

The housing crisis is real and stems from a number of factors – e.g., a slowdown in residential construction after the 2008 economic collapse, lending restrictions enacted after the great recession, increased cost of building materials, supply chain shortages since the onset of the covid pandemic in 2020, a shortage of skilled labor, rising cost of land, inadequate State and Federal funding for infrastructure, antiquated municipal and State permitting, and unwieldy and slow appeals processes.

State and local government can and should take action in the areas over which we have control. VPA strongly supports modernizing municipal land use regulations, State permitting reform (e.g., wastewater, stormwater, building codes, Act 250), as well as changes to expedite development review appeals processes. Both H.68 and S.100 are well-intentioned; however, both lack substantive State permit reform elements. We recommend the revisions below to improve these bills, and to set the stage for even more impactful permit reform in the 2024 legislative session.

### General Comments

1. We support most sections of the bill. We hope our comments below will help refine and improve the bill, particularly the sections that deal with municipal zoning reform. We recommend language be added to the bill to convene a commission or stakeholder group (housing advocates, municipal planners, developers, regional planning commissions, etc.) to evaluate and provide additional recommendations for action in the 2024 legislative session. Legislative studies on Act 250 and state planning designation reforms due out this year will help inform this effort.
2. Similar stakeholder engagement efforts in other states helped yield results at the state and local level. Approaches like [New Hampshire's Housing Appeals Board](#), [Maine's study](#) of land use regulations and short-term rentals, and targeted "fair share" provisions in Massachusetts and Rhode Island should be considered.
3. To achieve the most impactful reforms of municipal land use regulation, we recommend including the municipal planning practitioners that work with zoning regulations and local-level development review every day. VPA would be very willing to participate through member outreach and designation of a representative to formally serve on a stakeholder group.

### Provisions to Rework

4. **Section 1 (both bills). Parking spaces per dwelling unit.** Right-sizing residential parking requirements to actual need makes sense, especially for one-bedroom units, multi-unit buildings, and senior housing. VPA agrees that excessive parking requirements in municipal zoning regulations can impact the viability of new housing projects, particularly in-fill and redevelopment. Context, housing type, and availability of transit are all important factors to consider. The bill should be revised to recognize these factors, so as not to constrain all municipalities to a 1 or 1.5-space per dwelling unit formula for every housing project.

- a. Even in some of Vermont’s urban centers, dwelling units with two or more bedrooms are very likely to need parking for more than one vehicle. VPA agrees that there should be less parking in growth areas than is required today to make more efficient use of limited space and reduce the cost of development. Unfortunately, transit options, on-street, and off-site parking are currently limited in Vermont villages and downtowns, and certainly in rural areas not served by transit. VPA recommends further discussion, and possibly reducing parking requirements for specific types of development in areas served by adequate public transit.
  - b. Furthermore, VPA recommends adding language to clarify that municipalities can require parking maximums as well as minimums – this is currently practiced but has been challenged based on stricter interpretations of current statute.
5. **Section 2 (portions; both bills). Residential density, building height, and density bonuses.** VPA has long advocated for higher density development in areas planned for infrastructure-supported growth. However, these pre-emptions of municipal land use regulations could be problematic and may result in unintended consequences for some communities. They should be discussed and refined by a stakeholder group for consideration in the 2024 session, perhaps working towards a statewide plan for housing growth that complements, rather than overrides, existing regional and municipal land use planning. Some of the issues include:
- a. Smart growth areas are not always synonymous with municipal water and sewer service areas. A one-size fits all approach for all areas served by municipal water and sewer doesn’t recognize the complexity, history, and planning of these service areas. Particularly problematic are legacy service areas that are adjacent but outside areas planned for growth. See attached map of the Town of Hinesburg water and sewer service area.  
  
Other problems with using service areas as surrogate for smart growth include: shoreline areas where water/sewer service exists to address water quality issues; legacy service areas that are adjacent but outside areas planned for growth; service areas that were expanded outside of growth areas to address public health issues (mobile home parks, PFAS contamination, etc.); and floodplains, and river corridor, and other unbuildable areas within a service area. S.100 includes a list of excluded areas to address these examples; however, it still doesn’t address legacy service areas outside of areas planned for growth.
  - b. Not all municipal water and wastewater systems have large amounts of uncommitted reserve capacity. Some communities with limited capacity have adopted local land use policies to direct this limited capacity toward redevelopment of their village and downtown cores, including housing that meets the needs of low- and moderate-income Vermonters.
  - c. Some municipal systems are subject to Act250 permit conditions that have required adoption of land use regulations and/or limit connections in order to limit sprawl. It is unclear whether the State preemption will also overturn these Act250 permit conditions. Unless clearly defined in Statute, it is possible that this will introduce litigation and unpredictability that could discourage housing investment in these communities.
  - d. Meaningful tools are also needed to address defined housing production targets in affluent exurban communities that exercise exclusionary policies simply by avoiding investment in municipal water and sewer infrastructure. This could include a combination of incentives for communities that make progress on meeting more clearly defined housing goals, as well as consequences for those that do nothing or actively avoid it, as anticipated in existing statutes.
  - e. While VPA strongly supports measures that increase affordable housing and mixed-use development, the proposed height waivers for such development likely will not work as intended. The limits to building heights in rural areas are also pragmatic – namely, the

community's ability to provide adequate water service and fire protection to taller buildings. Until these underlying issues are resolved, removing height restrictions in zoning will simply stall such projects in the permitting process. Density "bonuses" can also be addressed in other ways (reduced lot sizes and setbacks, increased lot coverage, etc.)

### **Provisions to Strengthen**

- 6. Section 4 (both bills) – Duplex definition.** We agree that that two-unit dwellings should be treated like single-unit dwellings in terms of density, minimum lot size, and other dimensional standards. However, we recommend eliminating the term duplex and "family" dwelling throughout 24 V.S.A. Chapter 117 to help provide consistency, clarity, and to avoid outdated references. We recommend using the terms single-unit dwelling, two-unit dwelling, multi-unit dwelling, and accessory dwelling unit.

We recommend starting with the language in S.100, as it was revised and simplified to make sure that accessory dwelling units are not enabled for each unit within a duplex building. H.68 proposes to treat each unit in a two-unit dwelling as a single-unit dwelling. The proposed duplex definition would be different depending on whether it was served by municipal sewer and water. Apparently, the purpose of this change is to allow each unit of a duplex to be able to add an accessory dwelling unit (ADU). As outlined in existing statute, ADUs are appropriately allowed on properties with a single-unit dwelling, and typically include requirements for owner occupancy and size limitations. Instead of expanding ADUs to properties with two-unit dwellings, we should be simplifying zoning regulations and addressing structural barriers found in State technical permitting that make infill projects difficult – e.g., wastewater rules, stormwater rules, fire safety codes, etc.

- 7. Section 5 (both bills) – Bylaw reporting.** Currently there is no review process to ensure that municipal bylaws are not exclusionary prior to adoption – only allowance for after-the-fact enforcement through 24 V.S.A. § 4453. Consider empowering or requiring Regional Planning Commission review of proposed municipal bylaws for conformance with fair housing practices as they currently do for municipal comprehensive plans (as required to receive the benefits of municipal "confirmation"). We recommend starting with the language in S.100, as it was revised to ensure that municipalities report on bylaw changes to the Department of Housing and Community Development (DHCD), but that DHCD ensures the regulations are properly stored and uploaded to any statewide zoning database.
- 8. Sections 6 & 7 (H.68) - Administrative subdivision revision.** We recommend starting with the language in S.100 (sections 7 & 8), as it was revised to simplify the administrative review options. Those revisions fully addressed the following concerns we raised during the review in the Senate. Revise to eliminate the undefined terms of minor and major subdivision. Simply authorize municipalities to allow the Administrative Officer to approve subdivisions involving three or fewer lots, as well as revisions to subdivisions previously approved by an Appropriate Municipal Panel that don't involve the creation of new lots, in accordance with the administrative review provisions found under 24 V.S.A. § 4464(c) (Administrative Review).
- 9. Section 8 (H.68) & Section 9 (S.100) – Appeals.** Revise/expand to include designated village centers, and to include any other approval that addresses character of the area (e.g., subdivision, site plan, etc.).
- 10. Section 10 (H.68) & Section 13 (S.100) – Energy codes.** Revise to clarify that RBES/CBES or stretch code is the standard, but that municipal energy codes that address aspects not covered by

RBES/CBES or stretch code are allowed – e.g., prohibition on use of fossil fuel, orientation/design for solar gain, etc.

11. **Section 15 (H.68) – Duplicative State water/wastewater permitting.** This is an excellent and long overdue reform of State permitting. There is no reason to require State water/wastewater permits and fees for projects that will be served by municipal water and wastewater systems. This provision was stripped from S.100. We recommend it be included in whatever housing bill moves forward in the House.
12. **S.100, Section 11 & 12 – Housing needs and estimates.** Section 11 & 12 of S.100 are positive additions to what H.68 contemplated, and should be moved forward. Section 11 would require regional plans to include more specific housing needs assessments, and provide housing targets or ranges by municipality. Section 12 would require municipal plans to include public and private actions to address these needs, as well as specific steps to address the need for low to moderate income housing.

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*VPA is a non-profit advocacy and educational organization of over 150 planners and related professionals. We are dedicated to the advancement of community planning in Vermont at the local, regional, and state levels, to foster vibrant communities and a healthy environment.*

*Our membership is diverse, including municipal planners, regional planning commission staff, private planning consultants, state planning professionals, etc. We also work to coordinate VPA's advocacy and education with other groups involved in planning policy such as VAPDA (VT Association of Planning & Development Agencies), VLCT, and the Agency of Commerce and Community Development.*



A section of the  
**Northern New England Chapter  
American Planning Association**  
[nne.planning.org/sections/vermont](http://nne.planning.org/sections/vermont)

Alex Weinhagen  
April 12, 2023 Testimony  
H.68 & S.100

Town of Hinesburg  
Service Area Example

**Legend**

- Service Area
- Existing Village Core
- Village Growth Area
- Town Water Line
- Parcel Boundary
- Lake/Pond
- River/Stream

**Appendix D - Water & Wastewater  
Service Area Map**

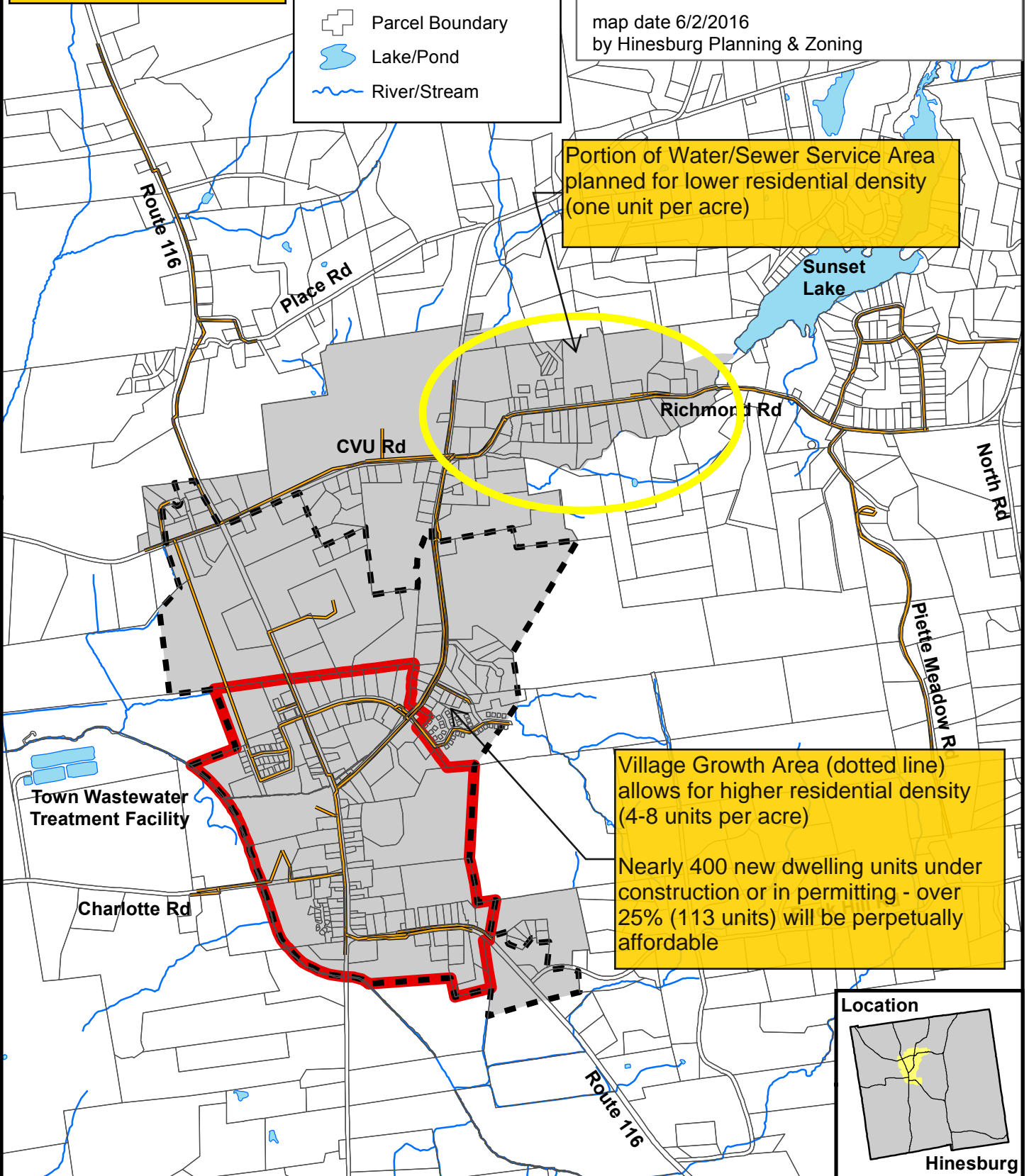


1 inch = 1,750 feet  
(at 8.5"x11" map size)

0 1,250 2,500 Feet

map date 6/2/2016  
by Hinesburg Planning & Zoning

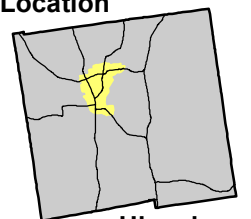
Portion of Water/Sewer Service Area  
planned for lower residential density  
(one unit per acre)



Village Growth Area (dotted line)  
allows for higher residential density  
(4-8 units per acre)

Nearly 400 new dwelling units under  
construction or in permitting - over  
25% (113 units) will be perpetually  
affordable

**Location**



Hinesburg