

Testimony before the Senate Committee on Natural Resources and Energy. April 12, 2024
Herb Olson.

Good morning. Thank you for the opportunity to testify. My name is Herb Olson. I am a resident of Starksboro in Addison County. In prior lives I was an Assistant Attorney General for a number of state agencies, Legislative Counsel (the best job I ever had!), and General Counsel to health insurance regulators in Vermont and Rhode Island. Back in the day, I was on the Starksboro Planning Commission and helped to establish our first zoning bylaws.

My primary message to you is that Tier 3 Act 250 jurisdiction, as proposed in different ways in H.687 and S.311, will be devastating to the prospects for more affordable housing in my town. I suspect these provisions will also be devastating for affordable housing in countless other rural communities in Vermont.

My other key message is that the Tier 3 proposals as currently drafted are not necessary to protect Vermont's forest blocks and habitat corridors.

Let me explain why I have come to these conclusions:

- Starksboro is a small town of around 1,700 residents in the foothills of the Green Mountains, sitting beneath the western slopes of the Mt. Stark to Mt. Abraham range. We are a close knit community - most everyone volunteers for some public or community service - and we treasure the natural environment in which we live.
- Like so many other towns, and like the State of Vermont itself, we want to encourage more affordable housing. A growing, or at least not declining, population is critical to maintaining a vibrant, living community.
 - Affordable housing is also essential to attract families and children, and thereby maintain our town elementary school in the face of considerable pressure at the state and district levels to close it.
- Starksboro, because of its topographical and other natural features, does not have much land available for housing. Fertile soils that are valuable for agriculture predominate in the main valley along VT Rte. 116. Much of the town is forested with steep slopes. Other than our village centers along VT Rte. 116 and in Jerusalem, land along our class 3 town roads are the places where folks of modest economic means can purchase land at a relatively affordable price, and either contract for home building, or build the home themselves.
 - Starksboro's town plan and zoning bylaws reflect these circumstances. We use a variety of density tools to maximize the preservation of agricultural land. We have created strong protections for our forests by creating a very large forest conservation district where development cannot occur without a conditional use permit. We encourage housing in our village centers, and in narrow corridors along our Class 3 roads.
 - Here is our zoning map.
https://drive.google.com/file/d/1aAzpurf1K6-oC-zbiiFIZ-PxVO0_K9L/view?usp=s_haring

- We think we have struck a reasonable and effective balance between protecting the natural resources we love, and promoting affordable housing.
- Starksboro's situation is comparable to many towns in Vermont with similar demographic and ecological attributes. Many Vermonters live in these towns.
- H.687 and S.311 are different bills, with different policy emphases relating to affordable housing and natural resource protection. There are some common threads however:
 - Both pieces of legislation call for the creation of Tier 3 areas designed to protect and preserve the natural resources of our state, including forest blocks and habitat corridors.
 - The legislation directs that the boundary mapping of Tier 3 areas are approved by the Environmental Review Board after recommendations from Regional Planning Commissions (H.687, Sec. 40, 10 V.S.A. sections 4348a(a)(12)(J), see also Sec. 27(a)(3)); (S.311, Sec. 24, 10 V.S.A. subsection 6032(d)). Municipalities have a very limited role in the process.
 - Within Tier 3 boundaries, no development can occur, whether of a commercial, industrial, or residential nature, without an Act 250 permit. Even the construction of a single home would appear to require an Act 250 permit. (S.311: Sec. 23, 10 V.S.A. section 6001(3)(A)(vi); H.687: Sec. 20, 10 V.S.A. section 10 V.S.A. section 6086(a)(8)(C)).
 - The statutory standards for the creation of Tier 3 maps are narrowly tailored for the protection of ecologically important natural features. (S.311: Sec. 23, 10 V.S.A. section 6001(53) (H.687: Sec. 20, 10 V.S.A. section 6086(a)(8); see also Sec. 21(a)(3)(A)). Consideration of a community's legitimate interests in affordable housing is not identified as a factor in the creation of Tier 3 maps.
 - The Vermont Conservation Design established by the Agency of Natural Resources is intended to be the polestar for the Tier 3 mapping process. (H.687 Sec. 40, 10 V.S.A. section 4348a(a)(2)) (S.311: Sec. 24, 10 V.S.A. section 6032(d)(1); H.687: Sec. 40, 10 V.S.A. section 4348a(a)(2)). The Vermont Conservation Design is linked here https://drive.google.com/file/d/1_d3eP1tSxzXJX9VXafo6dMIZMhEsLGoJ/view?usp=sharing
 - Following up on the principles of the Vermont Conservation Design, the Department of Fish and Wildlife created a mapping data-set for each municipality in Vermont, in order to protect the important ecological interests identified in the Vermont Conservation Design. Here is a link to Biofinder4, the Department's mapping data-set. <https://anrmaps.vermont.gov/websites/BioFinder4/> Biofinder4 is a remarkable and useful planning tool. However, Biofinder4 is focused solely on the protection of natural resources. It was never intended to factor in the needs of municipalities for affordable housing.
 - Here is the Biofinder4 map for Starksboro. https://drive.google.com/file/d/1cLi8kFb9GIT2UVH_Nhrlan5Olr3FSugc/view?usp=sharing As you can see, most of Starksboro falls within "high priority" or "highest priority" areas for the protection of forest blocks. High and highest priority forest blocks seem to be destined for inclusion in Tier 3 for Act 250

purposes. The land area identified in Biofinder4 as available for housing in Starksboro is far less than the land area available for housing in Starksboro's plan and zoning bylaws.

There is a better way. We can develop standards and procedures designed to not only protect our natural resources, but to also encourage affordable housing. Please consider the following suggestions:

1. Keep municipal planning officials as the government entity responsible for protecting natural resources and promoting affordable housing. Starksboro offers clear evidence that this can be done.
2. If the Legislature believes more rigorous standards, or greater transparency and accountability, are needed to ensure that municipal officials strike the right balance between protecting natural resources and promoting affordable housing, I am quite confident in the Legislature's ability to do so.
3. Please consider mechanisms and programs to increase the capacity of small, rural towns to build the infrastructure needed to be eligible for Tier 1B consideration. Currently many small towns, with their limited tax base, cannot afford Tier 1B infrastructure, such as municipal water and sewage systems. Rural Vermont increasingly feels left behind by policymakers. Here is a wonderful opportunity to recognize and promote the contributions of rural Vermont for the benefit of all of Vermont.

Thanks very much for the opportunity to testify. I am more than happy to answer any questions.

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