

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 House Bill No. 823 entitled “An act relating to encouraging growth in
4 designated centers and protecting natural resources” respectfully reports that it
5 has considered the same and recommends that the Senate propose to the House
6 to amend the bill as follows:

7 First: In Sec. 1, 10 V.S.A. § 6001 (definitions), in subdivision (16)(A)
8 (existing settlement), in subdivision (ii), after “an existing”, by striking out
9 **“community”**.

10 Second: In Sec. 1, 10 V.S.A. § 6001 (definitions), by striking out
11 subdivision (36) in its entirety and inserting in lieu thereof a new subdivision
12 (36) to read:

13 (36) “Strip development” means linear commercial development along a
14 public highway that includes three or more of the following characteristics:
15 broad road frontage, predominance of single-story buildings, limited reliance
16 on shared highway access, lack of connection to any existing settlement **or**
17 **surrounding land uses** except by highway, **and** limited accessibility for
18 pedestrians, ~~and lack of coordination with surrounding land uses in terms~~
19 ~~of design, signs, lighting, and parking.~~ In determining whether a proposed
20 development or subdivision constitutes strip development, the District

1 Commission shall consider the topographic constraints in the area in which the
2 development or subdivision is to be located.

3 Third: By striking out Sec. 2 in its entirety and inserting in lieu thereof a
4 new Sec. 2 to read:

5 Sec. 2. 10 V.S.A. § 6086 is amended to read:

6 § 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

7 (a) Before granting a permit, the ~~district commission~~ District Commission
8 shall find that the subdivision or development:

9 * * *

10 (5)(A) Will not cause unreasonable congestion or unsafe conditions with
11 respect to use of the highways, waterways, railways, airports and airways, and
12 other means of transportation existing or proposed.

13 (B) ~~As appropriate, will~~ Will incorporate transportation demand
14 management strategies and provide safe access and connections to adjacent
15 lands and facilities and to existing and planned pedestrian, bicycle, and transit
16 networks and services, unless the District Commission affirmatively finds
17 that such a strategy, access, or connection does not constitute a measure
18 that a reasonable person would take given the type, scale, and
19 transportation impacts of the proposed development or subdivision. This
20 subdivision (B) shall not require an applicant to construct an
21 improvement on a tract that the applicant does not own or control.

1 ~~**However, the District Commission may require an applicant to contribute**~~
2 ~~**to the cost of constructing such an improvement.**~~

3 * * *

4 (9) Is in conformance with a duly adopted capability and development
5 plan, and land use plan when adopted. However, the legislative findings of
6 subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria
7 in the consideration of applications by a ~~district commission~~ District
8 Commission.

9 * * *

10 (L) ~~Rural growth areas. A permit will be granted for the~~
11 ~~development or subdivision of rural growth areas when it is demonstrated by~~
12 ~~the applicant that in addition to all other applicable criteria provision will be~~
13 ~~made in accordance with subdivisions (9)(A) “impact of growth,” (G) “private~~
14 ~~utility service,” (H) “costs of scattered development” and (J) “public utility~~
15 ~~services” of subsection (a) of this section for reasonable population densities,~~
16 ~~reasonable rates of growth, and the use of cluster planning and new community~~
17 ~~planning designed to economize on the cost of roads, utilities and land usage.~~
18 Settlement patterns. To promote Vermont’s historic settlement pattern of
19 compact village and urban centers separated by rural countryside, a permit will
20 be granted for a development or subdivision outside an existing settlement

1 when it is demonstrated by the applicant that in addition to all other applicable
2 criteria, the development or subdivision:

3 (i) will make efficient use of land, energy, roads, utilities, and
4 other supporting infrastructure;

5 (ii) is designed in a manner consistent with the planning goals set
6 forth in 24 V.S.A. § 4302(c)(1); and

7 (iii) will conform to the land use element, map, and resource
8 protection policies included in the municipal and regional plans applicable
9 to the proposed location of the development or subdivision;

10 (iv)(I) will not establish, extend, or contribute to a pattern of strip
11 development along public highways; or

12 (v)(II) if the development or subdivision will be located in an area
13 that already constitutes strip development, will incorporate infill as defined in
14 24 V.S.A. § 2791 and is designed to avoid or reasonably minimize the
15 characteristics listed in the definition of strip development under
16 subdivision 6001(36) of this title; and

17 (vi) if the development or subdivision will be adjacent to an
18 area that already constitutes strip development, is designed to avoid or
19 minimize the characteristics listed in the definition of strip development
20 under subdivision 6001(36) of this title.

21 * * *

1 Fourth: By striking out Secs. 3, 4, and 5 in their entirety and inserting in
2 lieu thereof new Secs. 3, 4, and 5 to read:

3 Sec. 3. 10 V.S.A. § 6086b is added to read:

4 § 6086b. DOWNTOWN DEVELOPMENT; FINDINGS

5 Notwithstanding any provision of this chapter to the contrary, each of the
6 following shall apply to a development or subdivision that is completely within
7 a downtown development district designated under 24 V.S.A. chapter 76A and
8 for which a permit or permit amendment would otherwise be required under
9 this chapter:

10 (1) In lieu of obtaining a permit or permit amendment, a person may
11 request findings and conclusions from the **Board District Commission**, which
12 shall approve the request if it finds that the development or subdivision will
13 meet subdivisions 6086(a)(1) (air and water pollution), (2) (sufficient water
14 available), (3) (burden on existing water supply), (4) (soil erosion),
15 (5) (traffic), (8) (**aesthetics**, historic sites **and**, rare and irreplaceable natural
16 areas **only**), (8)(A) (endangered species; necessary wildlife habitat),
17 (9)(B) (primary agricultural soils), (9)(C) (productive forest soils),
18 (9)(F) (energy conservation), and (9)(K) (public facilities, services, and lands)
19 of this title.

1 (2) The request shall be complete as to the criteria listed in
2 subdivision (1) of this subsection and need not address other criteria of
3 subsection (a) of this section.

4 (A) The requestor shall file the request in accordance with the
5 requirements of subsection 6084(a) of this title, ~~except that the filing shall be~~
6 ~~with the Board,~~ and the requestor shall provide a copy of the request to each
7 agency and department listed in subdivision (3) of this section.

8 (B) Within five days of the request's filing, the ~~Chair of the Board~~
9 ~~District Coordinator~~ shall determine whether the request is complete. Within
10 five days of the date the ~~Chair of the Board District Coordinator~~ determines
11 the request to be complete, the ~~Board District Commission~~ shall provide
12 notice of the complete request to each person required to receive a copy of the
13 filing under subdivision (2)(A) of this section and to each adjoining property
14 owner and shall post the notice and a copy of the request on ~~its~~ the Board's
15 web page. The computation of time under this subdivision (2)(B) shall exclude
16 Saturdays, Sundays, and State legal holidays.

17 (3) Within 30 days of receiving notice of a complete request:

18 (A) The State Historic Preservation Officer or designee shall submit a
19 written ~~determination~~ **recommendation** on whether the improvements will
20 have an undue adverse effect on any historic site.

1 (B) The Commissioner of Public Service or designee shall submit a
2 written **determination recommendation** on whether the improvements will
3 meet or exceed the applicable energy conservation and building energy
4 standards under subdivision 6086(a)(9)(F) of this title.

5 (C) The Secretary of Transportation or designee shall submit a
6 written **determination recommendation** on whether the improvements will
7 have a significant impact on any highway, transportation facility, or other land
8 or structure under the Secretary’s jurisdiction.

9 (D) The Commissioner of Buildings and General Services or
10 designee shall submit a written **determination recommendation** on whether
11 the improvements will have a significant impact on any adjacent land or
12 facilities under the Commissioner’s jurisdiction.

13 (E) The Secretary of Natural Resources or designee shall submit a
14 written **determination recommendation** on whether the improvements will
15 have a significant impact on any land or facilities under its jurisdiction or on
16 any important natural resources, other than primary agricultural soils. In this
17 subdivision (E), “important natural resources” shall have the same meaning as
18 under 24 V.S.A. § 2791.

19 (F) The Secretary of Agriculture, Food and Markets or designee shall
20 submit a written **determination recommendation** on whether the
21 improvements will reduce or convert primary agricultural soils and on whether

1 there will be appropriate mitigation for any reduction in or conversion of those
2 soils.

3 (4) Any person may submit written comments or ask for a hearing
4 within 30 days of the date on which the **Board District Commission** issues
5 notice of a complete request. If the person asks for a hearing, the person shall
6 include a petition for party status in the submission. The petition for party
7 status shall meet the requirements of subdivision 6085(c)(2) of this title;
8 **except that it shall be filed with the Board.**

9 (5) The **Board District Commission** shall not hold a hearing on the
10 request unless it determines that there is a substantial issue under one or more
11 applicable criteria that requires a hearing. The **Board District Commission**
12 shall hold any hearing within 20 days of the end of the comment period
13 specified in subdivisions (3) and (4) of this section.

14 ~~(A) The Board shall conduct the hearing as a contested case~~
15 ~~under the Vermont Administrative Procedure Act.~~

16 ~~(B) Subdivisions 6085(c)(1)–(5) of this title shall govern~~
17 ~~participation in a hearing under this section.~~

18 (6) The **Board District Commission** shall issue a decision within 60
19 days of issuing notice of a complete request under this section or, if it holds a
20 hearing, within 15 days of adjourning the hearing. The **Board District**
21 **Commission** shall send a copy of the decision to ~~the District Commission in~~

1 ~~whose district the development or subdivision is located~~, each State agency
2 listed in subdivision (3) of this section, to the municipality, to the municipal
3 and regional planning commissions for the municipality, and to each person
4 that submitted a comment, requested a hearing, or participated in the hearing, if
5 any. The decision may include conditions that meet the standards of
6 subsection 6086(c) of this title.

7 (7) The requestor may waive the time periods required under
8 subdivisions (3), (4), and (6) of this section as to one or more agencies,
9 departments, the **Board District Commission, the District Coordinator, or**
10 other persons. Such a waiver shall extend the applicable and subsequent time
11 periods by the amount of time waived. In the absence of a waiver under this
12 subdivision, the failure of a State agency to file a written determination or a
13 person to submit a comment or ask for a hearing within the time periods
14 specified in subdivisions (3) and (4) of this section shall not delay the **Board's**
15 **District Commission's** issuance of a decision on a complete request.

16 ~~(8) The record of a proceeding under this section shall consist of the~~
17 ~~request, each written determination issued under subdivision (3) of this~~
18 ~~section, each comment and request for hearing submitted under~~
19 ~~subdivision (4) of this section, each document submitted for introduction~~
20 ~~into evidence at the hearing, an audio or audiovisual recording of the~~
21 ~~hearing, and the decision of the Board.~~

1 Sec. 4. 10 V.S.A. § 6081(v) is added to read:

2 (v) A permit or permit amendment shall not be required for a development
3 or subdivision in a designated downtown development district for which the
4 **Board District Commission** has issued positive findings and conclusions
5 under section 6086b of this title on all the criteria listed in that section. A
6 person shall obtain new or amended findings and conclusions from the **Board**
7 **District Commission** under section 6086b of this title prior to commencement
8 of a material change, as defined in the rules of the Board, to a development or
9 subdivision for which the **Board District Commission** has issued such
10 findings and conclusions. A person may seek a jurisdictional opinion under
11 section 6007 of this title concerning whether such a change is a material
12 change.

13 Sec. 5. [Deleted.]

14 Fifth: *PLACEHOLDER FOR RECONCILING SEC. 6, RE PRIMARY*
15 *AGRICULTURAL SOILS MITIGATION, WITH H.448 AMENDMENTS*
16 *ON SAME STATUTE (10 V.S.A. § 6093)*

17 Sixth: By striking out Secs. 7 and 8 in their entirety and inserting in lieu
18 thereof new Secs. 7 and 8 to read:

1 Sec. 7. 10 V.S.A. § 8003 is amended to read:

2 § 8003. APPLICABILITY

3 (a) The Secretary may take action under this chapter to enforce the
4 following statutes and rules, permits, assurances, or orders implementing the
5 following statutes, and the Board may take such action with respect to
6 subdivision (10) of this subsection:

7 * * *

8 (10) 10 V.S.A. chapter 151, relating to land use, and including findings
9 and conclusions issued ~~by the Board~~ under section 6086b of this title;

10 * * *

11 * * * Nonappeal, Recommendation to District Commission * * *

12 Sec. 8. 10 V.S.A. § 8504 is amended to read:

13 § 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

14 (a) Act 250 and agency appeals. Within 30 days of the date of the act or
15 decision, any person aggrieved by an act or decision of the Secretary, the
16 Natural Resources Board, or a district commission under the provisions of law
17 listed in section 8503 of this title, or any party by right, may appeal to the
18 Environmental Division, except for an act or decision of the Secretary under
19 subdivision 6086b(3)(E) of this title or governed by section 8506 of this title.

20 * * *

1 Seventh: In Sec. 13 (wastewater rules; amendment), after “the Agency of
2 Natural Resources shall amend its” by inserting the word **application** prior to
3 “form”.

4

5

6

7 (Committee vote: _____)

8

9

Senator _____

10

FOR THE COMMITTEE