



H.702

Written Testimony

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Representative Helen Head, Chair, and Members of the House Committee on General, Housing and Military Affairs

Thank you for the opportunity to testify on H.702 on behalf of the Vermont Chamber of Commerce ("VCC").

We wholeheartedly appreciate any legislative effort to increase the amount of Vermont's housing stock both for "affordable housing" and for housing that is considered "affordable" for those who work in the State meeting certain economic thresholds. As documented by the Vermont Futures Project supported by the VCC, there is a strong need for both types of housing.

In support of that premise we have the following comments and recommendations:

- 1) The VCC does not believe there is value in sponsoring another "pilot project" in order to ascertain whether it makes sense to support workforce housing in designated centers nor is there a need to expand "neighborhood development areas" as contemplated in the bill. Since there are very limited financial incentives available for "work force housing," H.702 appropriately focuses on providing regulatory relief which can have very strong financial consequences for housing projects.¹
- 2) Any effort to increase Vermont's housing stock should focus on locations where substantial local, regional and state planning efforts and infrastructure development have been concentrated; i.e., existing centers formally designated by the Vermont Downtown Board. Not addressed in the bill are measures that would simplify the requirements for formal designation and thus allow more Vermont communities to take full advantage of the various programs.
- 3) The bill can be greatly simplified by concentrating the proposed new Act 250 exemptions for "work force housing" within the existing framework of designated centers as opposed to layering yet another program on top of this existing framework.
- 4) Borrowing from H.234, all appeals of publicly funded permanently affordable housing projects in Act 250 should be subject to an "appeal-on-the-record" to the Environmental Court which will save a great deal of time and money associated with a conventional "de novo" review where all evidence needs to be introduced anew as if there had been no lower proceeding. The Committee may wish to consider extending this measure to all housing projects in Act 250 proceedings which

¹ The supply of housing in Vermont is uniquely constrained in comparison to other states. The vacancy rate among owner homes was 1.6% in 2008 — fourth lowest in the country. Although the vacancy rate among Vermont's rental homes was the lowest in the country in 2008, it has increased recently according to quarterly data for 2009. **High development costs and regulatory constraints are commonly considered contributors to the slow rate of home building in Vermont..... VHFA analysis of U.S. Census Bureau housing unit estimates and building permit estimates. July 2009. (emphasis added)**

are determined to meet Vermont's projected housing needs as described in Vermont's 2015 Housing Needs Assessment, presented to the Committee on January 22, 2015.

<http://accd.vermont.gov/sites/accd/files/Documents/strongcommunities/housing/Vermont%20Housing%20Needs%20Assessment%2014-363%20%28Final%202.25.15%29.pdf>

Based on the above comments, we recommend the following statutory changes to H.702 in support of the creation of more affordable housing for all Vermonters in locations that have already been formally designated by the Vermont Downtown Board.

§ 6001. Definitions

In this chapter:

(28) "Mixed use" means construction of both mixed income housing and construction of space for any combination of retail, office, services, artisan, and recreational and community facilities, provided at least 40 percent of the gross floor area of the buildings involved is mixed income housing **or workforce housing**. "Mixed use" does not include industrial use.

(35) "Priority housing project" means a discrete project located on a single tract or multiple contiguous tracts of land that consists exclusively of:

(A) Mixed income housing, **workforce housing** or mixed use, or any combination thereof, and is located entirely within a designated downtown development district, designated new town center, designated growth center, or designated village center that is also a designated neighborhood development area under 24 V.S.A. chapter 76A; or

(B) Mixed income housing **or workforce housing** and is located entirely within a designated Vermont neighborhood or designated neighborhood development area under 24 V.S.A. chapter 76A.

(38) "Workforce housing" means a discrete housing project located on a single tract or multiple contiguous tracts of land that consists exclusively of owner-occupied housing or rental housing, or both, that meets each of the following:

(1) The project includes 12 or more independent dwelling units, which may be detached or connected.

(2) At least 25 percent of the units will be owned by or rented to occupants whose gross annual household income does not exceed 100 percent of the county median income, or 100 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes, insurance, and condominium association fees, is not more than 30 percent of the gross annual household income.

(3) At least 50 percent of the remaining units will be owned by or rented to occupants whose gross annual household income does not exceed 150 percent of the county median income, or 150 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes,

insurance, and condominium association fees, is not more than 30 percent of the gross annual household income.

(4) The project will be located in a neighborhood development area designated under 24 V.S.A. § 2793e.

(5) The project will have a minimum residential density greater than or equal to four single-family detached dwelling units per acre, exclusive of accessory dwelling units as defined in 24 V.S.A. § 4303, or no fewer than the average existing density of the surrounding neighborhood, whichever is greater.

10 V.S.A. § 6083 is amended to read:

§ 6083. APPLICATIONS

* * *

(e)(1) The District Commissions shall give priority to:

(A) municipal projects that have been a municipal project mandated by the State through a permit, enforcement order, court order, enforcement settlement agreement, statute, rule, or policy;

(B) a project that is publicly funded permanent affordable housing.

(2) In this subsection, “priority” shall mean that the application for a project moves ahead of all other pending applications with respect to scheduling conferences and hearings and issuing decisions.

(3) If a priority conflict arises among projects described in subdivisions 12 (1)(A) and (B) of this subsection, the District Commission shall assign priority to those projects in chronological order based on the date it received a complete application.

10 V.S.A. § 6085 is amended to read:

§ 6085. HEARINGS; PARTY STATUS

* * *

(f) A hearing shall not be closed until a Commission provides an opportunity to all parties to respond to the last permit or evidence submitted. Once a hearing has been closed, a Commission shall conclude deliberations as soon as is reasonably practicable. A decision of a Commission shall be issued within 20 days of the completion of deliberations.

(g) Notwithstanding any contrary authority provided by subsection (f) of this section, a Commission shall issue its decision on a project that is publicly funded permanent affordable housing within 120 days of the date a complete application is filed. An applicant may agree to extend this 120-day period. This subsection shall not apply to a Commission’s review of an application under section 6085a of this title.

10 V.S.A. § 6085a is added to read:

**§ 6085a. PUBLICLY FUNDED PERMANENT AFFORDABLE HOUSING PROJECTS;
RECORDED HEARINGS**

(a) An applicant for a project that is publicly funded affordable housing may submit a demand for recorded hearings. The applicant shall submit this demand at the time of application under section 6084 of this title. If the applicant submits such a demand, any appeal under section 6089 of this title shall be a review of the record of the proceeding before the District Commission in accordance with subdivision 8504(h)(3) of this title.

(b) Within 10 calendar days of receipt of both a complete application under section 6084 of this title and a timely demand for recorded hearings under subsection (a) of this section, the District Commission shall provide notice of the demand for recorded hearings in accordance with the procedures of subdivision 6084(b)(1) of this title.

(c) Each of the following shall apply to the review of an application under this section:

(1) The District Commission shall extend the hearing schedule or take other appropriate action as necessary to provide a fair and reasonable opportunity for parties to prepare, present, and respond to evidence without creating undue delay in the review of the application.

(2) The District Commission may require parties to submit prefiled testimony and exhibits. If the District Commission requires submission of prefiled evidence, the applicant and any parties supporting the application shall submit their prefiled direct evidence first, and then other parties shall be given a reasonable opportunity to submit their prefiled direct evidence. The District Commission may then allow the submission or presentation of rebuttal testimony and exhibits in the sequence and form that it determines to be appropriate.

(3) Unless the parties agree otherwise, the District Commission in a prehearing order shall establish the type, sequence, and amount of discovery available under Rules 26–37 of the Vermont Rules of Civil Procedure, limiting the discovery permitted to that necessary for a full and fair determination of the proceeding.

(d) On receipt of a request from the District Commission for assistance 1 with regard to an application heard under this section, the Board shall provide 2 assistance to the District Commission as necessary.

(e) At the expense of the applicant, the District Commission shall record by video any hearing on an application for which the applicant has demanded recorded hearings. In the event that appeal is taken from a District Commission act or decision on such an application, the District Commission shall provide the Environmental Division with the original recording of the hearing and a copy of the complete written record and shall make and preserve a copy of the original recording for its own records.

10 V.S.A. § 8504 is amended to read:

**§ 8504. PUBLICLY FUNDED PERMANENT AFFORDABLE HOUSING PROJECTS;
APPEALS TO THE ENVIRONMENTAL DIVISION**

* * *

(h) De novo hearing. The Environmental Division, applying the substantive standards that were applicable before the tribunal appealed from, shall hold a de novo hearing on those issues which have been appealed, except in the case of:

(1) A decision being appealed on the record pursuant to 24 V.S.A. 18 chapter 117;

(2) A decision of the Commissioner of Forests, Parks and Recreation under section 2625 of this title being appealed on the record, in which case the Court shall affirm the decision, unless it finds that the Commissioner did not have reasonable grounds on which to base the decision.

(3) An act or decision of a District Commission on an application for a publicly funded permanent affordable housing project heard under section 6085a of this title, in which case the Division's review shall be on the record. Each of the following shall apply to an appeal subject to this subdivision:

(A) The Division shall remand to the District Commission if the District Commission improperly excluded evidence, did not provide adequate notice or opportunity to be heard, or otherwise failed to comply with the requirements of 3 V.S.A. chapter 25 pertaining to contested cases. The Division need not remand for harmless error.

(B) The Division shall not set aside findings of fact unless clearly erroneous.

Thank you again for the opportunity to comment on this bill. If you would like further assistance or testimony, please let us know.