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To: House Natural Resources, Fish and Wildlife Committee
From: Alex Weinhagen, VPA Legislative Liaison
Date: March 13, 2017
Re: Permit Reform Legislation – testimony for 3/14/17

Thank you for inviting testimony from the Vermont Planners Association on a collection of permit reform bills introduced in the House of Representatives this year. Unfortunately, I won't be able to attend the Committee's meeting on Tuesday afternoon (3/14). Please see below for VPA comments on several of the bills the Committee is discussing.

The Vermont Planners Association is a non-profit advocacy and educational organization of 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. More information is available on our website at www.vermontplanners.org. 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.

H.18 – Act 250 Release from Jurisdiction - Would allow land subject to an Act 250 permit to be released from said permit and Act 250 jurisdiction at the discretion of the District Commission, if the land use has changed and the land's present use would not be subject to Act 250 jurisdiction.

VPA supports the principles behind this bill but suggests that further vetting be undertaken to confirm that the numbers of properties affected are few, and that it is sufficiently narrowly crafted in order to avoid unintended consequences.

This appears to be a common sense bill that will provide relief from unnecessary permit review for what is undoubtedly a small number of properties that no longer need to be under Act 250 jurisdiction. It appears to address a specific circumstance, and appropriately leaves discretion on Act 250 permit release with the District Commission.

H.194 - Act 250 Priority Housing Projects Revision - Would amend Act 250 so as not to require review within certain community size and dwelling unit thresholds with respect to priority housing projects - i.e., mixed income housing or mixed use development in State designation areas (downtowns, village centers, growth centers, neighborhood development areas). Also would eliminate Act 250 review for permit amendments of priority housing projects that remain within the unit count thresholds, as long as such projects continue to comply with existing conditions of the original permit.

VPA supports this bill; however, we encourage further discussion about the removal of the requirement for affordable rental units in priority housing projects. This bill updates and slightly expands Act 250 exemptions for priority housing projects in State designation areas (downtowns, village centers, growth centers, neighborhood development areas) – particularly for larger communities with populations over 10,000. These designation areas represent Vermont’s smart growth centers, where we not only expect but encourage development including new housing. Vermont’s housing affordability issue is plain – i.e., demonstrated gap between wages and housing costs, smaller household sizes (more housing needed even without population increases), an aging demographic, and limited housing options priced for those entering the workforce. As such, it makes sense to streamline the permitting process for priority housing projects in areas already designated for smart growth. Proper planning and safeguards will still be in place for such projects – e.g., municipal development review, ANR permitting (water/wastewater, stormwater, etc.), VTrans or municipal access permitting, etc. Though VPA acknowledges that there are a variety of factors that affect the development of housing - materials costs and a short building season among them - we support this effort in order to reduce direct permitting costs, but more importantly reduce the time needed to bring these projects online to help address Vermont’s housing shortage.

H.209 - Chapter 117 Permit Reform - Would make several changes to municipal and Act 250 development review processes including introducing a time deadline to declare applications complete, requiring on-the-record "formal review" based on a request by an interested party, requiring decisions within a new time period, revises criterion 9L from Act 250, etc.

VPA feels this bill is extremely problematic. First of all, it would create inconsistencies in both municipal development review and Act 250 review with regard to process (standard review versus on-the-record or “formal review”). Requiring an on-the-record review (referred to as “formal review” in the bill) at the request of an interested party (applicant, neighbor, etc.) will create two review tracks in municipalities since most communities do not currently have on-the-record review. Aside from being difficult to administer (especially in small, rural municipalities without planning staff), this will create confusion that could lead to confusion on the part of all parties, including the review board, as well as delay in order to prepare for the meeting recordings described in the bill.

Secondly, this bill would create an untenable decision time frame for municipal review boards and Act 250 District Commissions by changing the current 45-day “decision clock” such that the clock would start from when the application was deemed complete rather than from the close of the public hearing. This simply will not work logistically, especially for municipalities with substantial development that must schedule application review 4-6 weeks out. More importantly, the change could have the effect of requiring review boards to issue a decision before all evidence has been submitted and before public testimony is complete. This flies in the face of community input (an important planning tenet), and could easily backfire for developers who need to make plan revisions to address compliance issues. In those cases, the development would likely have to be denied due to the compressed decision clock. The bill’s proposed formal review process will also create confusion by introducing an alternative 180-day decision clock that only some development applications would be held to. This alternative decision clock also suffers from the same problems noted above for the 45-day decision clock since it is tied to application submission rather than the close of the public hearing.

Third, this bill completely rewrites the Act 250 9L review criterion with regard to rural area development. This change in policy is completely premature given that a better protocol for 9L decisions was promulgated in just the last year or two. The criterion 9L protocol is working, and more experience with it is needed before criterion 9L is completely revised or scrapped. Scattershot changes to Act 250 review standards will likely make the process more confusing to all parties rather than more efficient or streamlined.

H.321 - Act 250 Jurisdiction - Simple but surprisingly hard to summarize, except to say it has to do with limiting the Act 250 trigger when a project on less than 10 acres in a municipality with zoning is related to a project (same applicant within five years) in a neighboring municipality without zoning. Municipalities with zoning have a 10-acre lot size Act 250 trigger for commercial/industrial development. Those without zoning have a 1-acre lot size trigger.

VPA has no position on this bill. At face value, this bill appears to be a reasonable clarification of the Act 250 trigger for a very specific situation; however, we are unclear on the potential ramifications. We recommend getting input from Act 250 staff on this bill.

H.362 - Act 250 Exemption for Utility Poles - Would exempt utility poles less than 50 feet tall that are installed within a road right of way from Act 250 review.

VPA urges caution on this bill. At first look, this appears to be a narrowly tailored, common-sense bill since Act 250 review for typical utility poles in a road right of way is unnecessary. However, we understand that traditional utility poles already are exempt from Act 250 and municipal level development review. We wonder if this bill is aimed at exempting some other type of infrastructure from Act 250 review. Some municipalities in Chittenden County have recently had inquiries and applications from a company called Mobilite to place telecommunication infrastructure in public road rights of way. Mobilite has claimed that it already has section 248a approval from the Public Service Board, even though it only has PSB approval to do business in Vermont, not for any particular infrastructure installation. There is concern that as new cellular technology is deployed (e.g., 5G networks), utility poles in road rights of way will be a place to install the necessary equipment. See the related FCC public notice on this topic - <https://www.fcc.gov/document/fcc-seeks-comment-mobilite-petition-small-cell-deployment>. VPA feels more research is needed before more review exemptions are enacted.

H.424 - Act 250 50th Anniversary Review Commission - Would create a commission to review Act 250 and suggest improvements.

VPA supports this bill, but suggests that some Act 250 practitioners be added as members of the commission. District Commission staff have a wealth of experience and perspective as the people doing the day-to-day administration and review. A comprehensive look at Act 250 (both successes and areas needing improvement) is likely to result in better reform legislation rather than the somewhat scattershot permit reform legislation introduced nearly every year.