



Lamoille County Planning Commission

PO Box 1637

52 Portland Street, Second Floor

Morrisville, Vermont 05661

www.lcpcvt.org

(802) 888-4548 • e-mail: lcpc@lcpcvt.org • fax: (802) 888-6938

Members of the Legislature:

Thank you for this opportunity to comment on S.237. The Lamoille County Planning Commission shares the goal of expanding housing opportunities for Vermonters. In fact, the Lamoille County Regional Plan specifically identifies “*Increasing the county wide supply of workforce housing*” as one of the highest land use and economic development priorities for the region.

LCPC has worked proactively with member municipalities to update their local bylaws to enable diverse housing types throughout the Region. Unlike many other rural regions of Vermont, Lamoille County’s population continues to grow as Lamoille County municipalities have provided critically needed workforce housing for the Greater Burlington Area and communities along the I89 corridor. This growth however, has not been without its challenges, as housing pressures from other Regions have increased housing costs for existing residents, while also placing new demands on municipal infrastructure and services.

While S.237 takes an important step of recognizing housing as a statewide problem that needs a statewide solution, it is also important to recognize that rural communities facing housing pressures must retain the ability to use local land use tools to manage growth in a way that is consistent with infrastructure limitations and natural resource constraints. Beyond the proposed flood mitigation tax credit discussed below, we are deeply concerned that the new mandates and preemptions proposed in S.237 need more time and consideration before they are adopted into law.

We ask that you pause on adopting new mandates in this session, and instead direct the Agency of Commerce and Community Development to work with Regional Planning Commissions, municipalities, housing groups, and other relevant stakeholders to develop recommendations to enhance the availability of affordable housing for consideration in a future Legislative session not clouded by the challenges of the COVID-19 epidemic. However, if the Legislature decides to proceed with the proposed mandates in this session, we ask that you consider and address the concerns outlined below.

Tax Credit for Qualified Flood Mitigation Projects.

The provision of S.237 that enables a new tax credit for “Qualified Flood Mitigation Projects” in Designated Village Centers, Downtowns, and Neighborhood Development Areas addresses a major housing related challenge faced by Lamoille County communities. The existing Village Center and Downtown tax credit program has proven extremely successful at leveraging resources from other sources, and this new tax credit will be a welcome addition to the tools available to our communities. As a result of our region’s topography of narrow river valleys bounded by steep mountain sides, many of Lamoille County’s traditional Village and Downtown settlements are vulnerable to flooding. In some communities, such as Johnson Village, nearly 2/3rds of existing

income producing properties are located within the 100-year floodplain or river corridor. This new tax credit will provide a tool to protect historic buildings and residents of existing settlements from flooding.

This is a critically needed resource, as resources for elevation and flood proofing available through FEMA are structured for coastal environments and have proven difficult for rural communities and property owners to access and manage. This new tax credit will be especially potent if enacted in conjunction with the proposed provisions in H.926 related to Neighborhood Development Area and flood hazards. This language is extremely important for Villages that are largely located in the floodplain as it will allow residential neighborhoods surrounding the Designated Village Center to access the benefits of Neighborhood Development Area Designation, including the new flood mitigation tax credit. This represents an important new tool for revitalizing areas such as the Railroad Street Neighborhood of Johnson Village while also protecting them against future flooding.

Natural Resource Constraints

Lamoille County's topography also presents challenges to other provisions of S.237. For example, as currently structured the "inclusive development" provisions of Section 2 would mandate significant increases in density along the shoreline of Lake Elmore due to the presence of municipal water. Similarly, high density development would be mandated in undeveloped greenfields between the Village of Hyde Park and a cluster of former agricultural processing industries supported by the Village water system. Due to the presence of both prime agricultural soils and wetlands, these greenfields could not be developed at the densities mandated in S.237 without adverse impacts on natural resources.

While S.237 allows communities to seek relief from the mandates of S.237 by filing a "Substantial Municipal Constraints Report," ***as currently drafted, protection of natural resources is not a valid rationale for filing a Substantial Municipal Constraints Report.*** In addition, communities who file a Substantial Municipal Constraints Report are placed at a competitive disadvantage for numerous State funding programs. Penalizing communities for protecting natural resources identified in the local and regional plans is counter to Vermont's long standing planning goals and undermines three decades of public policy that view housing and conservation as dual goals rather than competing virtues.

Competitive Disadvantage of Rural Communities

In a related concern, the presence of water/sewer infrastructure does not necessarily imply the ability to serve significant new amounts of development. Many rural water and wastewater systems have limited capacity and/or other deficiencies that present significant constraints to new housing. Rural communities already face major barriers when attempting to access resources for infrastructure upgrades, as most existing funding streams are based upon service for existing users and/or service area extensions and do not provide competitive consideration for infrastructure upgrades intended to provide capacity for new development within existing service areas.

As currently structured, S.237 would create yet another barrier by penalizing communities that are unable to meet the proposed mandates due to infrastructure limitations -- the very actions needed to overcome these limitations. Sanctions that deprive rural communities of the resources they need to support low and moderate income housing are ultimately counterproductive to the underlying policy goal of expanding housing opportunities.

Attached are detailed suggestions regarding proposed changes in the legislative language. Thank you for your time and consideration,

Sincerely,

R.Tasha Wallis
Executive Director



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(1) Except in a municipality that has reported substantial municipal constraints in accordance with subdivision (b)(2) of this section and notwithstanding any existing bylaw other than flood hazard and fluvial erosion area bylaws adopted pursuant to section 4424 of this title, and/or natural resource constraints identified in a duly adopted and regionally approved local plan or regional plan the following land development provisions shall apply in every municipality...

(2) A municipality may opt out of the requirements of subdivision (1) of this subsection by filing a Substantial Municipal Constraints Report with the Department of Housing and Community Development.

- (A) The Substantial Municipal Constraint Report shall demonstrate that:
- (i) the municipality's bylaws comply with all of the requirements of subsection (a) of this section; and
 - (ii) the municipality has documented substantial municipal constraints on its municipal water, municipal sewer, or other services, and/or natural resource constraints identified a duly adopted and regionally approved local plan or regional plan that prevent the adoption of bylaws that conform to the requirements of subdivision (1) of this subsection (b).

(3) Incentives and funding.

(B) The following State funding programs shall prioritize funding in municipalities that have updated their bylaws to comply with this subsection, or are actively pursuing actions that will bring their bylaws into compliance with this section or are pursuing/implementing projects intended to address infrastructure limitations identified in the Municipal Constraints Report. No State funding prioritization developed in accordance with this section shall have the effect of penalizing municipalities for constraints based on protection of natural resources identified in a duly adopted and regionally approved local plan or regional plan.

- (i) State funding for Municipal Water and Sewer Systems;
- (ii) Municipal Planning Grants under section 4306 of this title;
- (iii) Vermont Community Development Program under 10 V.S.A. chapter 29, subchapter 1; and
- (iv) Neighborhood Development Area Historic Tax Credits under 32 V.S.A. § 5930cc.

Conditional Use Review for Multi-Family Dwellings

As currently structured, S.237 requires any district that allows multi-family dwellings to treat a three unit and a four unit multi-family dwelling as a permitted use and does not allow communities to require conditional use review of such dwellings. However, S.237 does allow municipalities to prohibit three and four unit dwellings from most zoning districts. Disallowing conditional use review while allowing outright prohibition is counterproductive to the stated goal of housing affordability.

Within Lamoille County, many communities, including Hyde Park, Wolcott, and Elmore, allow multi-family dwellings within rural districts, subject to conditional use review. There are legitimate, non-exclusionary rationales for requiring conditional use review of multifamily dwellings, especially in rural districts that may encompass diverse settings, road conditions, and topography, and thus require consideration of issues such as vehicle access, fire protection, and other municipal services. These are the very issues that conditional use is intended to address. Even the “character of the neighborhood” criteria is not in-and-of itself exclusionary. For example, the Town of Elmore allows multi-family dwellings at densities in its Village District that exceed the mandates laid out in S.23, and it utilizes conditional use review to ensure basic compatibility with the Village setting and energy efficient design through clearly defined, predictable standards.

All of these techniques will become illegal under S.237 as currently drafted. Communities, however, will be within their legal rights to greatly reduce the area in which multi-family dwellings are allowed. While LCPC will advise against this approach, *statute should not deprive communities of tools needed to accommodate diverse housing options in diverse locations*

LCPC recognizes that conditional use review has been abused as an exclusionary tool in other areas, primarily by finding that a multi-family dwelling is inconsistent with the “character of the neighborhood” due to a greater number of units than surrounding development. The Lamoille County Regional Plan specifically identifies this as an inappropriate use of conditional use review, stating “*An increase in the total number of dwelling units and/or housing density in comparison to neighboring properties shall not in and of itself be considered detrimental to the character of the neighborhood.*” Similar language is found in the local plans of many Lamoille County municipalities.

Rather than eliminating conditional use as a tool available to municipalities, we suggest similar language be added to the conditional use enabling statute found in 24 VSA § 4414 (3) as an alternative to the proposed ban on conditional use review in 24 VSA § 4412(1)(D):

24 VSA § 4412(1)(D)

Bylaws shall designate appropriate districts and reasonable regulations for multiunit or multifamily dwellings. No bylaw shall have the effect of excluding these multiunit or multifamily dwellings from the municipality. ~~Within any regulatory district that allows multiunit residential dwellings, no bylaw shall have the effect of prohibiting multiunit residential dwellings of four or fewer units as an allowed, permitted use, or of conditioning approval based on the character of the area~~

§ 4414 (3) -- Conditional uses.

(A) *In any district, certain uses may be allowed only by approval of the appropriate municipal panel, if general and specific standards to which each allowed use must conform are prescribed in the appropriate bylaws and if the appropriate municipal panel, under the procedures in subchapter 10 of this chapter, determines that the proposed use will conform to those standards. These general standards shall require that the proposed conditional use shall not result in an undue adverse effect on any of the following:*

(ii) The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located and specifically stated policies and standards of the municipal plan. A project consisting of the housing types identified in 4412(a) may not be denied solely due to the absence of existing housing of similar densities or types in the surrounding neighborhood, nor may conditions be imposed solely to reduce the number of units in a multiunit residential dwellings that meet other dimensional and design standards contained within the bylaws.

Note that this approach is in practice more permissive of multi-family housing than the current language of S.237, as it protects all multi-family dwellings from exclusionary conditions, while enabling communities to retain legitimate conditional use review of multi-family dwellings in rural districts.

State Designation Programs

Any housing project must not only comply with local bylaws, but also with a myriad of State level regulations, notably Act250 that also imposes costs and barriers to housing. Vermont's various "designations" are the primary tool for providing relief from these regulations and associated costs in targeted areas of the State. While not specifically included in S.237, the companion bill H.926 provides an expanded Act250 exemption for Designated Downtowns and Neighborhood Development Areas. ***Rural communities in Lamoille County currently face several significant barriers to accessing these designations.***

As noted above, many of Lamoille County's traditional Villages and Downtowns are vulnerable to flood hazards. While it is necessary to provide these communities with tools to protect existing neighborhoods from flooding, such as the proposed Flood Mitigation Tax Credit, these may not be appropriate locations to locate significant amounts of new housing. For example the Town of Cambridge contains two Villages -- Jeffersonville and Cambridge -- both of which face significant flood hazards. The Cambridge Town and Village Municipal Plan has identified a safer area for future development that is free of other natural resource constraints.

The "New Town Center" is the existing designation program designed for new development areas not directly adjacent to an existing Village or Downtown. However, under current Stature, New Town Centers may only be established in communities that lack an existing Village or Downtown. Enabling New Town Centers in communities with existing Villages and Downtowns that are significantly constrained by floodplains and other natural resources would provide a tool to enable

these communities to create new housing in appropriate, planned locations without jeopardizing important natural resources or public safety.

The Neighborhood Development Area Designation is the existing program designed to encourage new housing in neighborhoods adjacent to existing Villages and Downtowns. Unfortunately, rural communities also face barriers accessing this program. In fact the Lamoille County Regional Plan specifically *“Encourages minor revisions to Vermont Neighborhood Development Area (NDA) program rules to make the designation more effective in rural areas.”* The Lamoille County Regional Plan further states,

“State policy makers must recognize that the dense, multi block pattern seen in regions with gentler topography may not be achievable in much of Lamoille County. Even so, there are some steps municipalities can take to implement “smart growth principles” even in rural settings with multiple limitations, including . . . Using alternatives to minimum lot size to regulate the intensity of development, such as lot coverage and floor to area ratio . . . allowing multiple principal uses per lot to replicate the traditional “running ell” and “carriage house” development pattern found in many villages.”

Unfortunately, under the proposed S.237 lot size mandates, communities that utilize density rather than lot size due to legitimate topographical constraints will be penalized, regardless of the number of housing units enabled under the local bylaws and are also currently unable to access the Neighborhood Development Area Designations. We understand that to date, the Legislature has chosen to focus on “lot size” rather than density based on the understanding that lot size is “simpler to administer.” Depending on the structure of the local bylaws, this “simple to administer” understanding may not be the case. Creating a new lot, regardless of local bylaws, requires expensive survey and recording costs. On the other hand, a local bylaw may enable density through simple administrative review – as is the case in some communities as rural as Wolcott and Hyde Park.

The Revisions noted above can be accomplished through the following revisions to existing enabling statute:

24 V.S.A. § 2793b -- Designation of New Town Center Development Districts

(a) A municipality, by its legislative body, may apply to the State Board for designation of an area within that municipality as a new town center development district, provided no traditional downtown or new town center already exists in that municipality, unless flood hazard, river corridor area, and/or other natural resources identified in a duly adopted and regionally approved local plan or regional plan significantly constrain opportunities for development in or immediately adjacent to that traditional downtown.

(b) Within 45 days of receipt of a completed application, the State Board shall designate a new town center development district if the State Board finds, with respect to that district, the municipality has:

B) Regulations enabling high densities that are greater than those allowed in any other part of the municipality or, if the New Town Center is located in a community with a traditional downtown constrained by flood hazard, river corridor area, and/or other natural resources identified in a duly adopted and regionally approved local plan or regional plan, densities of at least four residential units per acre.

24 V.S.A. § 2793 -- Neighborhood Development Area Application Process

(7) The municipal bylaws allow minimum net residential densities within the neighborhood development area greater than or equal to four ~~single-family detached~~ dwelling units per acre, exclusive of accessory dwelling units but inclusive of density bonuses and/or other incentives provided for by statute, or no fewer than the average existing density of the surrounding neighborhood, whichever is greater. The methodology for calculating density shall be established in the guidelines developed by the Department pursuant to subsection 2792(d) of this title.

(8) Local bylaws, regulations, and policies applicable to the neighborhood development area substantially conform with neighborhood design guidelines developed by the Department pursuant to section 2792 of this title. These policies shall:

(A) ensure that all investments contribute to a built environment that enhances the existing neighborhood character and supports pedestrian use;

(B) ensure sufficient residential density and building heights;

(C) minimize the required ~~lot sizes~~, setbacks, and parking and street widths; and

(D) require conformance with "complete streets" principles as described under 19 V.S.A. § 309d, street and pedestrian connectivity, and street trees.

In order to address the concerns expressed above, we suggest the following revisions to the language of S.237 as currently proposed:

S.237 Section 2 -- (b) Inclusive Development:

(1) *Except in a municipality that has reported substantial municipal constraints in accordance with subdivision (b)(2) of this section and notwithstanding any existing bylaw other than flood hazard and fluvial erosion area bylaws adopted pursuant to section 4424 of this title, and/or natural resource constraints identified in a duly adopted and regionally approved local plan or regional plan the following land development provisions shall apply in every municipality...*

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(A) *The Substantial Municipal Constraint Report shall demonstrate that:*

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(ii) the municipality has documented substantial municipal constraints on its municipal water, municipal sewer, or other services, and/or natural resource constraints identified a duly adopted and regionally approved local plan or regional plan that prevent the adoption of bylaws that conform to the requirements of subdivision (1) of this subsection (b).

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