

September 8, 2020

House General, Housing, and Military Affairs Committee
Honorable Tom Stevens, Chair



RE: Comments on S.237 from Town of Essex & Village of Essex Junction Planning & Public Works Staff

Dear Representative Stevens and Committee,

We wish to provide you our municipal perspectives on this bill. The goal of increasing housing availability and affordability in areas planned for growth aligns with our communities' priorities, and the version passed by the Senate which shows improvement over prior versions. However, a statewide one-size-fits-all approach to housing production will undermine our communities' long-standing efforts at smart, responsible housing growth.

Essex staff support the following parts of S.237

- The premise that significantly more housing is needed in smart growth areas
- Better coordinated planning and mapping of water and wastewater service areas and infrastructure (which reflects our community's current practice and goals)
- Changes to permitting duplexes and ADUs (current zoning treats duplexes as the bill proposes; we are working on making ADUs more flexible)
- Re-evaluation of character of the area review for 3- and 4-unit dwellings, but not removal of conditional use review authority
- Incentives and funding to support municipalities that are making zoning upgrades

Essex staff concerns about S.237 include the following

- The practical limitations to how much new and affordable housing smaller lot requirements would induce
- Technical complications created in our existing regulations by the lot size mandates
- Undermining decades of positive planning by communities with defined sewer service areas

Limitations to how much new and affordable housing smaller lot requirements would induce

- Essex has no real sense that the ability to build more densely on existing, developed lots will result in more units built, limited by owners' financial resources or willingness to redevelop unless they are already selling a property.
- Due to practical design considerations in existing neighborhoods, the inclusive development provisions could result more in redevelopments involving 2-4 unit dwellings on existing lots, rather than subdivision of new single-family lots. A different way to achieve both would be to require minimum densities, rather than minimum lot sizes, since ultimately, market forces determine how developers choose to build.
- The new lot size mandates make sense in the few undeveloped areas in Essex and may tip the scales to make a project financially feasible where it wasn't before¹. However, new housing construction generally is not affordable unless subsidized, since developers and lenders expect a market-rate return on their investment.

¹ A useful tool for exploring the feasibility of housing projects is the Grounded Solutions Network's [Inclusionary Housing Calculator](#)

Technical complications created in our existing regulations by the lot size mandates

- Lot size is not the only parameter by which zoning regulates housing density, and the bill's mandates have a domino effect on frontage, setback, coverage, and streetscape requirements.
- Prior to publication of the Zoning for Great Neighborhoods guide, we were already reviewing similar provisions, starting with our Town Center revitalization project. The planning effort for this has taken over 3 years, prior to undertaking amendments to zoning. S.237 will have an adverse impact on our process and outcomes.
- Until a thorough review and update of our bylaws takes place, the conflict between the bill's new provisions and local bylaws will lead to appeals or other administrative / legal complexities, further delaying housing construction and increasing its cost.

Undermining decades of positive planning by communities with defined sewer service areas

- Essex carefully allocated its finite sewer capacity to a limited geographic area based on existing and future land use, including both residential and commercial/industrial areas. Even so, we lack the total capacity to serve all areas within the sewer core without expensive upgrades, which would be borne by current and future ratepayers and would add to the ongoing cost of housing.
- Our policies would have to be totally redone under this bill, with the likelihood that growth will occur in a way that exacerbates existing suburban sprawl, rather than supporting the compact centers that are currently planned. The mandates take away capacity from industrial or commercial districts in favor of residential areas.
- This could reduce the potential for future job and wage growth, which goes hand in hand with affordable (including workforce) housing. Achieving a balance between housing and job creation is a local and regional planning issue. The Building Homes Together partnership between CCRPC and local non-profits serves as a model for how to create housing in a way that best fits with local and regional planning.
- Municipalities should not have to opt out of incomplete state-level planning, or scramble to cover its shortcomings. This is a long-standing pattern with legislation like Act 250, Act 174 (Enhanced Energy Planning), Act 48 (Rental Housing & Health Code Enforcement), etc.

Additional concerns

- The Substantial Municipal Constraints Reporting process should specifically include stormwater management as a municipal service, given the state's emphasis on cleaning up our waterways. Other public services (emergency response, transportation, health, libraries and recreation, etc.) may be burdened by these regulatory changes, but it is unclear if or how those would be considered in the constraints reporting process.
- Also, the proposed change to §4412(a)(1)(E)(i) of the bill (which requires sufficient wastewater capacity for ADUs) neglects the parallel need for sufficient water capacity.

Conclusions

The bill proposes some useful approaches to zoning reform that might encourage housing production, which might lead to increased affordability. However, it should not present a blanket policy with the potential to undermine local efforts, nor should it be used to hold towns hostage for technical and financial assistance. Instead, the state should consider municipalities a partner in this effort, investing in and strengthening the planning and financial capacity needed to help us meet our housing and affordability needs in a strategic manner.