Housing & Act 250 Bill Recommendations – S.237
Vermont Planners Association

Testimony to the Senate Committee on Natural Resources and Energy
Alex Weinhagen, VPA Legislative Liaison, 6/11/2020
Based on:

- *S.237, Draft 9.1, 3/11/2020*
- *H.926, as passed by the House*
- *S.165, as introduced*

Background

Thank you for inviting testimony from the Vermont Planners Association (VPA) regarding S.237 - the housing and Act 250 reform bill. VPA is a non-profit advocacy and educational organization of over 150 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. We are a section of the Northern New England Chapter of the American Planning Association. More information is available on online at https://nne.planning.org/sections/vermont. 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.

VPA has been very involved in the Act 250 reform effort. We served as an advisor to the Act 250 Commission, organized a well-attended Act 250 reform conference at VT Law School in May 2018, provided a comprehensive set of reform recommendations to the Act 250 Commission in November 2018, and provided testimony on multiple occasions to the House Natural Resources, Fish and Wildlife Committee during the 2019 session and the 2020 session.

Key Messages

- We strongly support the housing objectives of S.237.
- We support the vast majority of the bill's provisions with the exception of Section 2, and offer the eleven specific revisions below to help improve what we feel is worthwhile legislation.
- We agree that some provisions from H.926 should be added to S.237 to ensure a balanced approach to this first step of Act 250 reform. However, we hope the Committee and the Legislature recognize that S.237 is not a comprehensive Act 250 reform package. We trust that a more comprehensive package will be reintroduced in the 2021 session to help deliver the reform that Vermont needs, and that all of us have been working on for so long – e.g., Act 250 Commission, VPA members, House Natural Resources, Fish and Wildlife Committee, and countless others who participated and provided feedback and testimony over the last few years.

Recommendations

Section 2 (Title 24, §4412) – Land Use Mandates

1. Strike all of Section 2 except for the revisions to the Accessory Dwelling Unit provisions (pages 3-4).

2. Add a provision to Section 17 directing the Department of Housing and Community Development (DHCD) to do outreach to municipalities on the Zoning for Great Neighborhoods guide, collect

feedback, and provide recommendations for any potential further legislative changes to the General Assembly by January 15, 2021 or 2022.

Vermont's housing crisis is not uniform across all communities. Overall, this section prescribes a sweeping set of local land use planning requirements – e.g., small lot development, minimum lot sizes, regulation of multi-family dwellings (e.g., 3-plex, 4-plex), parking requirements. We support the ADU changes, and while there may be some value in some of the other proposed land use requirements applying statewide, these one-size-fits-these mandates should be more carefully vetted with communities across the state before being adopted. Some solutions will be necessary and effective to implement uniformly across the state, while other solutions need to be tailored by local and regional planners, and implemented at the community-level. There should be an opportunity to vet these policies by building upon DHCD's current work on the Zoning for Great Neighborhoods program - https://accd.vermont.gov/content/zoning-for-great-neighborhoods.

Again, while some strategies could be appropriate with more careful consideration, others, while well-intentioned, could easily backfire. Many of these provisions include requirements for areas served by municipal water and/or sewer systems, which is not always a proxy for where particular land uses and densities are most appropriate in each community. For example, the Town of Stowe has a relatively long and linear sewer service area that consists of 6,400 acres in 13 different zoning districts, when only some may be zoned for the type of dense, mixed use infill these provisions seek to encourage.

At the top of page 3, the bill adds language to an existing section on allowances for multiunit or multifamily dwellings. The proposed language says, "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…" Many communities allow for 3-plex and 4-plex multifamily dwellings via conditional use review in their most rural zoning districts. Conditional use enables a close review of measurable development impacts and appropriate mitigations. Rather than having the effect of making it easier to create more multifamily dwellings in areas where they're contemplated, this provision could have the unintended consequence of encouraging concerned communities to simply restrict 3- and 4-unit housing types to very limited areas.

Similarly, the "Inclusive Development" provisions on pages 5-6 focus on minimum lot size as the metric when creating new lots. Allowing smaller lots is not the silver bullet to create more housing supply. Development density allowances are a much more direct measure of new housing opportunity, and in some communities are disconnected from lot size requirements. These density allowances are fine-tuned in local land use regulations based on multiple factors beyond simply water and sewer service.

Section 4 – Report on Municipal Constraints

3. Strike all of Section 4. This section is not necessary if the bulk of Section 2 is eliminated, including the "inclusive development" and municipal opt out provisions.

Section 8 (Title 24 §4460) – Act 250 Condition Removal/Transfer

4. Strike and replace Section 8 with revised language.

5. Modify Title 10, Section 6090 to keep Act 250 District Commissions and District Coordinators responsible for the elimination/retention and enforcement of existing Act 250 permit conditions in newly exempt designation areas.

It is important to have a process to get rid of existing Act 250 permit conditions in designated centers exempt from Act 250 review. However, the bill proposes a rather convoluted mechanism to accomplish this, which requires appropriate municipal panels (AMP) to be involved. This needs substantial rework for a whole host of logistical reasons. The language assumes that an AMP will be involved in municipal permit review, providing notice to parties, and issuing specific findings on Act 250 conditions to be retained. This process simply won't work in municipalities where a good deal of permitting is handled administratively without AMP review. More importantly, an AMP should not be charged with retaining Act 250 permit conditions that it had no role in imposing, based on criteria that are not contained in the municipality's land use regulations. Conditions not supported by the municipality's land use regulations could pose a legal challenge for enforcement, and could easily be eliminated in the future upon request.

The cleanest way to address this is to simply extinguish pre-existing Act 250 permit conditions in newly exempt designation areas. However, if some conditions need to be preserved, this decision should be made by the entity that imposed the conditions in the first place – i.e., Act 250 District Commissions. There was an Act 250 process that created the conditions, so it seems reasonable that there can be an Act 250 process that determines which conditions need to be retained. We recommend that such legacy Act 250 conditions continue to be administered and enforced via the Act 250 program with clear references and rationale linked to the legacy Act 250 permit. However, if some sort of hand off to municipalities is deemed necessary, it should happen with municipal consultation (perhaps through a municipal application referral and notification process and/or a joint meeting of the District Commission and the AMP) and with clear guidance from an Act 250 District Coordinator or District Commission on what conditions need to be retained and why.

Section 10 (Title 24, §2793) – Downtown Designation Area Affordable Housing Provisions

6. Revise subsection 5 (page 17) as noted below provide flexibility in how communities promote affordable housing.

   (5) Implemented meaningful measures to promote the availability of affordable housing opportunities in the municipality, including but not limited to the following:
   - (A) Municipal housing needs assessment that addresses affordable housing.
   - (B) Partnerships with non-profit housing providers to provide more affordable housing.
   - (C) Residential density bonuses or other incentives for projects that include affordable housing.
   - (D) Reductions in fees (e.g., zoning, impact, water/wastewater, etc.) for affordable housing.
   - (E) Inclusionary zoning as provided in subdivision 4414(7) of this title.
   - (F) A restricted housing trust fund with designated revenue streams.
   - (G) A housing commission as provided in section 4433 of this title.

We support requiring that municipalities demonstrate they are working to provide affordable housing. However, the draft bill language is far too prescriptive by only citing four ways to accomplish this. The four measures cited are not the only, nor the best ways for municipalities to further the creation of affordable housing. The suggested revision language requires that meaningful measures be implemented, and provides a better, non-exhaustive list of ways to demonstrate this.

Section 12 (Title 24, §2793) – Neighborhood Development Designation Area Affordable Housing Provisions

7. Revise subsection 13 (page 25) to provide flexibility in how communities promote affordable housing. Use same revision language noted above for Downtown Designation Areas.

H.926 (Title 10) – Forest Block Definition and Act 250 Criteria

8. Revise the Forest Block definition (page 10) to focus on core/interior forest areas or larger, more intact forest blocks.

Throughout our work and comments on the Act 250 reform effort, we have strongly advocated for the creation and vetting of resource maps that are a reliable basis to trigger Act 250 jurisdiction, and to help with consistency of review and to ensure the goals of Act 250 are realized.

We support adding new language from H.926 that ensures Act 250 review considers impacts on forest blocks, connecting habitat, and rare and irreplaceable natural areas (page 34). With that said, the forest block definition in H.926 (page 10) is too broad. As written, it would include any amount of forest, no matter how small. We believe the intent of adding forest blocks to Act 250 criteria 8 is to avoid/minimize the fragmentation of significant forested areas. Act 250 review need not get bogged down with the preservation of small, disparate patches of forest.

The forest block definition in S.165 (draft as introduced) appears to address this weakness, as it focuses on interior forest blocks rather than all forested areas. The language in S.165 also envisions that forest blocks would be mapped, and that this dataset would be updated based on science-based criteria with some measure of public input. S.165 references: page 2 (definition), page 11 (resource mapping).

H.926 – Exemptions for Designated Centers

9. Expand the designated center Act 250 exemption in S.237 to include village centers with enhanced designation as proposed in H.926 (pages 19-21, 48).

H.926 provides for Act 250 exemptions in village centers with an enhanced designation. Providing exemptions for Act 250 review in designated downtowns and neighborhood development areas, as well as in village centers with enhanced designation is a step in the right direction. It encourages development in areas that are planned for it, and focuses Act 250 review in more sensitive areas. Providing the exemption to enhanced village center designation areas ensures that Act 250 reform is balanced in both large and small Vermont communities. Furthermore, village center designation areas are extremely constrained, and focused on the commercial core of a communities. As such, providing the Act 250 exemption here will be targeted and should not pose concerns about potential impacts to the larger landscape.

Eventually, we'd like to see a larger conversation about how all existing settlement areas are treated (e.g., jurisdictional triggers), particularly in rural Vermont where there are no designation options beyond the highly constrained village center area. We acknowledge that this is a conversation for the future, and that providing Act 250 exemptions in designation areas is an appropriate first step.

H.926 – Non-jurisdictional Release

10. Allow for Act 250 permits to be extinguished for uses that no longer exist as proposed in H.926 (pages 42-44).

H.926 contains an excellent and clearly overdue provision that allows Act 250 permits to be extinguished for uses that no longer exist. Currently, properties with an Act 250 permit are subject to Act 250 review forever – even if the use originally permitted no longer exists, and the new use proposed would not be subject to Act 250 jurisdiction. It makes perfect sense to have a process by which the Act 250 District

Commission can consider and approve a request to extinguish Act 250 permits for uses that no longer exist. This is a no-brainer, and is crafted nicely in H.926. It should be added to S.237.

H.926 - Road Rule for Jurisdiction

11. We don't support the new jurisdictional trigger tied to road and driveway length (H.926, pages 5-6) – i.e., projects creating more than 2,000 feet of new road and driveway.

Forest and habitat fragmentation do need to be addressed at the Act 250 jurisdictional level, but the road rule is an overly blunt method. It would be more logical to apply such a rule to development in large, intact forest areas rather than everywhere. It will result unnecessary Act 250 review for small projects that have little to impact on forest or habitat. Resource mapping is a critical first step. We recommend holding off on this jurisdictional change until the necessary resource maps are created and vetted. Existing resource mapping provides an excellent place to start, such that refinement and vetting could be accomplished relatively quickly if ANR receives direction, resources, and guidance on a vetting process that includes the regional planning commissions.