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Senate Committee on Economic Development, Housing, and General Affairs
State House
Montpelier, Vermont

Subject: S.226, expanding access to safe and affordable housing, draft 3.1

Dear Committee:

I am a civil engineer with experience in permitting of projects and in performing environmental reviews; and evaluation and design of sewer systems. I am also certified as a Class I designer under the Wastewater and Potable Water Supply System rules.

My interest is to preserve and expand the ability of individuals to participate meaningfully in decisions that affect them and their surroundings. Act 250 is the only permitting process that I have seen or worked with that allows meaningful participation by individuals. So retaining jurisdiction under Act 250 is important to me.

Act 250 is not redundant. It covers the effects of a project broadly. The ANR permits are narrowly focused. They do not cover the entirety of the criteria that the district environmental commissions consider.

These comments point out troubling aspects of this bill and provide recommendations for amending them.

Act 250 does not delay projects

Recommendation: Do not exempt more projects from the jurisdiction of Act 250 Because Act 250 does not delay projects, there is no need to exempt more projects from Act 250. This recommendation means:

- not raising the caps on priority housing projects in Sec. 2d
- not expanding the exemption of priority housing projects in secs. 2e and 16b
- not expanding Act 250 exemptions for priority housing projects into neighborhood development areas

Permitting is an interrelated process. There are also municipal permits, ANR permits, and Fire Safety Division building permits. Permitting typically occurs in parallel. My research shows that removing Act 250 from the permitting process has a negligible effect on the time it takes for a project to receive all its permits.

The relevant factor is how long it takes between receipt of the last permit or other document needed by the district commission and the time that Act 250 issues its permit. The median time is 6 days.

The Natural Resources Board provided Senate Natural Resources and Energy a list of housing projects that had Act 250 permits issued 2017 through 2021. The list contains 55 projects for which Act 250 permits had been issued. Act 250 divides projects into three categories: those for which permits are issued as an administrative amendment (5); those which are issued without a hearing (41), and those which are issued after hearings (9).

The five administrative amendments were issued within 3 days of the receipt of a complete application. The median time was 1day.

There were 41 projects without hearings that received permits. I looked at the time between receipt of the last document and when the Act 250 permit was issued. The median time between a complete application and issuing the Act 250 permits was 60 days. I then looked at the 20 permits where the time between a complete application and the Act 250 permit exceeded the median. Projects where the decision is issued in less than the median time are unlikely to delay a project.

The Act 250 database has insufficient information to evaluate projects with hearings. The database lacks key documents needed for that evaluation. So I can make no informed comment on projects with hearings. Most of the projects (75%) were without hearings.

The median time between receipt of the last permit or document needed by the district commissions was six days for the projects without hearings. The maximum time was 34 days. Only six of the projects had a time more than 10 days. This shows that Act 250 does not delay housing projects.

The majority of last documents received in the cases studied were: ANR documents or permits.

stormwater permit	8
historic preservation letter	3
wastewater and potable water supply permit	3
water system construction permit	2
development review board	2

One time each for: wetlands permit; municipal comments; revised site plans; resolution of location of bus stop with VTrans; ANR comments, construction waste reduction plan, planting plan, and sign diagram. The total is more than 20 because multiple permits sometimes were received on the same day.

Removing Act 250 does not save time, in general. The median between the last needed permit and issuing the Act 250 permit of six days is too short to be considered a delay.

Projects have a schedule that is controlled by the permitting process in its entirety. Removing one permit from the process does not expedite a project.

Section 2a (neighborhood development areas)

Recommendation: Require all development in neighborhood development areas to have isolation zones completely on the property generating the wastewater.

On-site sewage treatment allows uncompensated encroachment on a neighbor's property.

The bill proposes to end the requirement that neighborhood development areas have municipal sewers or community or alternative wastewater systems. Additional development in these areas will typically require an on-site system: leach fields or mounds.

On-site wastewater treatment requires isolation zones in order to function properly and to protect public health. These isolation zones restrict what can be done inside them. Existing rules allow isolation zones to extend onto a neighbor's property and there is little the neighbor can do about it.

Development in neighborhood development areas likely will be on smaller lots with a higher chance of encroaching on a neighbor's property. This can cause problems for neighbors, when isolation zones extend into a neighbor's property.

The rules for Wastewater and Potable Water Supply Permits (WW permits) allow a permittee to encroach on a neighbor's property with no compensation to the neighbor. The only requirement is to send the neighbor a form that says, in effect: "The isolation zone for my on-site system will extend into your property. This notice gives you a chance to talk to me before the permit is issued. If I decide to make no changes, you cannot stop the WW permit." The notice indicates that the landowner can build in the isolation zone. The notice doesn't point out that the isolation zone inhibits other uses on the neighbor's property. If the neighbor builds a cellar in the isolation zone, there is a potential for leachate entering the cellar. The neighbor might not want to plant a vegetable garden or fruit trees in the isolation zone.

I am not asking in this bill that the entire system be changed. I am asking that you require that all isolation zones in neighborhood development areas be within the parcel generating the wastewater.

Sections 15 and 15a (permits for municipal wastewater connections)
Recommendation: Remove sections 15 and 15a from the bill. This means retaining Wastewater and Potable Water Supply permitting at the State for all projects involving connections to municipal water and sewer systems.

These two sections fail to meet the purpose of S.226. They neither increase the supply of affordable housing nor promote homeownership nor broaden housing opportunities.

I have commented in 2021 on these two sections. These comments present new information.

Following the end of the 2021 session, I looked into the effect of the wastewater and potable water supply permits (WW permits) on housing projects. A copy of the report on that study is on your internet site at January 5, 2022. The report shows that the Wastewater and Potable Water Supply permits are not a barrier for housing that connects to municipal water and sewer systems. Eliminating the WW permits in these cases will not decrease project times and will not make housing affordable.

Other benefits of retaining the WW permits for systems connecting to municipal water and wastewater systems.

The WW program provides a single repository for permits and the supporting documents.

The program provides uniform permitting. Uniformity was one of the reasons why the Wastewater and Potable Water Supply permits were transferred to the State. This uniformity will be lost if some municipalities choose registration and others do not. The proposed registration process has different requirements than does the WW permit program. For example, the WW permit program requires the permit to be filed in the land records. The proposed registration program only requires a certification of completion to be filed in the land records.

The proposed registration program means that records for some projects will be maintained by the State. Records for other projects will be maintained by the municipalities.

One of the projects had requested an incorrect allocation from the municipality. The municipality allocated the amount requested. The same incorrect flow was included in the application for the WW permit. The review by the regional engineer caught that error. In addition the State review found that the water service needed to be in a different location because it was proposed to be too close to the sewer service.

I am commenting on these sections to point out that they will not increase the supply of either housing in general or affordable housing in particular.

Sections 16 through 16d (Act 250 exemptions in high demand counties)
Recommendation: Remove these sections entirely. They will not increase the amount of housing being built.

The very concept of sections 16 through 16d seems flawed.
- There is no requirement that the rental housing will have rents that will lower the median gross rent.
- It is not clear that having more non-rental housing will lower rents. It seems the hope is that more non-rental housing will reduce the rents in the county. If the non-rental housing is too expensive to be bought by

the people who are renting now, then non-rental housing will not free up rentals and will not reduce rental costs.
- There is no evidence that exemptions from Act 250 have any effect on the amount of housing being built.

The median of the Act 250 fees for the projects discussed in the first section of this letter is about $600 per unit. Senate Natural Resources and Energy heard testimony today from Vermont Housing and Conservation Board and Vermont Housing Finance Agency. Affordable apartments are subsidized by $300,000 per unit. The Act 250 costs of $600 per unit are immaterial in making housing affordable.

Section 18 (Act 250 appeals)

Recommendation: Return appeals of Act 250 permits to the Natural Resources Board. Looking at your hearings and the documents on the committee's internet site, it is not clear that this section will resolve the issues. It is clear that this section will take money from the Natural Resources Board when the Natural Resources Board has no control over the actions of the Environmental Division. If you choose not to consider returning appeals to the Natural Resources Board, then remove § 6089(d).

It is curious that finding 5 in section 16 give no information on the average duration of zoning or subdivision appeals, or of ANR appeals. There is no provision to have municipalities refund fees if municipal appeals take too long. And none to have ANR refund fees. I am not suggesting an expansion to cover other permits. I am pointing out the unequal treatment of Act 250 on the one hand and on municipal and State permits on the other hand.

The bill proposes to make the Natural Resources Board financially liable for something over which it has no control: actions of the Environmental Division. If the Board is to be financially liable, then make the Board responsible for appeals. This will undo the damage of 2004 when appeals were transferred to the Environmental Court (as it was then called). If you are unwilling to give the responsibility to the Natural Resources Board, then remove section 6089(d).

An applicant can get a refund by delaying the court proceedings a few days.

As far as I can tell, your committee heard from neither ANR or the judiciary on this part of the proposal. I suggest it is important to understand why it takes so long to move an appeal through the court. Then perhaps you can craft a solution that will not have an undue adverse effect on the Natural Resources Board.

These comments apply to section 18. They do not apply to section 19. Because your findings omitted other permits, it is not possible to determine whether section 19 would be needed if appeals were retrned to the Natural Resources Board.

Conclusion

I hope that you find these recommendations worthwhile and that you will amend S.226 to implement them.

Thank you for taking the time to read this letter.

Sincerely,
Thomas Weiss, P. E.