

**House Committee on Environment and Energy**  
**S.100: Housing Bill**  
**Testimony of Ed Stanak**  
**April 25, 2023**

My name is Ed Stanak and I am a resident of Barre City. I was employed for 30 years as a district coordinator for the Act 250 program. I also served for 6 years as a member of the Barre City school board, one year as board chair, and for three terms as president of the Vermont State Employees Association. The testimony on S.100 that follows is based on those three perspectives.

There is no doubt that Vermonters are experiencing a severe housing crisis. It is likewise certain that this crisis has been growing for years. Solutions to this crisis require clarity regarding both its causes and the potential effectiveness of the proffered remedies contained in S.100.

**The Act 250 Permitting Process and Housing**

*Statistical Background*

Provisions in S.100 include further reductions in Act 250 jurisdiction over housing projects suggesting that the Act 250 process has been the cause of unreasonable delays and costs that have thwarted the construction of new housing. NRB statistics provided to this committee on April 21<sup>st</sup> refute those allegations. Over the last 5 year period, more than 3,000 housing units have been permitted by District Commissions and 89% of those projects were processed as “minor applications” with an average processing time of 73 days.

<https://legislature.vermont.gov/Documents/2024/WorkGroups/House%20Environment/Bills/S.100/Witness%20Testimony/S.100~Sabina%20Haskell~Act%20250%20Permitted%20Multi-family%20Housing%20Projects%20-%20Natural%20Resources%20Board~4-21-2023.pdf>

Legislators are often told that appeals of Act 250 decisions are causes of more delay and cost. But the data provided in the February 15, 2023 annual Act 250 report (See page 8) to the General Assembly show that over the last 5 years the average number of appeals per year was only 6- SIX- appeals for ALL categories of land uses out of the hundreds of applications processed each year.

[https://nrb.vermont.gov/sites/nrb/files/documents/Annual%20Report%202022\\_FINAL.pdf](https://nrb.vermont.gov/sites/nrb/files/documents/Annual%20Report%202022_FINAL.pdf)

Thus, it is reasonable to conclude that there is no demonstrable proof (as opposed to anecdotes and myths) that the Act 250 process is a measurable cause of the housing crisis.

Over time, Priority Housing Projects have been exempted from Act 250 reviews. NRB statistics also provided to this committee on April 21<sup>st</sup> indicate the significant number and locations of these housing projects that have been authorized over the last 5 years. However, it is unclear how many of these projects have actually proceeded to construction and if not, why not?

Closer review, for the example, of the Burlington housing projects permitted yet not built would be instructive.

<https://legislature.vermont.gov/Documents/2024/WorkGroups/House%20Environment/Bills/S.100/Witness%20Testimony/S.100~Sabina%20Haskell~Act%20250%20Exempt%20Priority%20Housing%20Projects%20-%20Natural%20Resources%20Board~4-21-2023.pdf>

So if objective data does not support a conclusion that the Act 250 process is a material detriment to the construction of new housing units, why would the legislature pursue deregulation as a means to address the housing crisis?

#### *Duplicative Regulatory Processes?*

There is a view that Act 250 is a duplicative permitting process and that towns with zoning and subdivision bylaws are adequately prepared to assess the impacts of proposed development. Some towns have strong bylaws and well trained DRB members – but they are a minority. Many DRBs have significant turnover in members, while others have members who see their role as fostering growth rather than properly applying the bylaws and some have members with unacknowledged conflicts of interest. This is not meant to be a broadside against “local control”, merely honest observations from many years of witnessing the administration of municipal bylaws in the 35 town region of Act 250 District #5. Although the legislature has mandated many studies over the decades about the administration of Act 250, there has never been a comprehensive “quality control” study of how the enabling provisions of 24 VSA Chapter 117 have been implemented by the towns. For the last 50 years, the complementary – not competing or duplicative - roles of municipal ZBA/DRBs and Act 250 District Commissions have served the public interest well. It has not been uncommon to have a DRB indicate that certain issues in complicated cases (eg floodplain, “brownfields”, wildlife habitats, aesthetics and even traffic) will not be pursued at the local level because “Act 250 will take care of that.”

#### **S.100 As Passed by Senate**

##### *Section 16*

This section would raise the Act 250 jurisdictional standard of 10 or more units within a 5 year time period and 5 mile radius to 25 units until July 1, 2026 for projects proposed within any of three statutorily “designated” areas. This provision originates from a fixation that reductions in land use regulation will somehow result in an increase in the construction of new housing despite the lack of any proof that existing regulation has been detrimental. The decades old “hand in glove” relationship between District Commissions and municipal reviews will further unravel with this reduction in jurisdiction with no corresponding benefit to the public interest. It is also unclear what the effects of this provision will be on existing projects permitted under Act 250 -and subject to ongoing mitigating permit conditions- that are located within any of the “designated” areas.

*Section 16a*

This section establishes a new Master Plan Permit process that a town may enter into before a District Commission. It is difficult to fathom why any town would want to pursue such a permit. Even worse, attempting to implement this section seems most likely to result in significant costs to the town and actualization of the “administrative nightmare” that the Vermont Supreme Court cautioned about in its In Re Agency of Administration master plan decision many years ago. This section will have no affirmative effect in addressing the housing crisis.

*Section 17*

This section would establish “enhanced village designations” within which the Act 250 jurisdictional standard would increase from 10 to 50 units. The “enhanced” designation would be met if three anemic requirements are met by the municipality. The potential combined and cumulative impacts from projects of such a size can be quite substantial as evidenced in findings and conclusions issued by District Commissions over the years. A blind eye would be cast upon such impacts under the bill in favor of accelerated development.

*Section 17c*

The NRB is directed in this section to expand the scope of its charge under Act 182 of 2022 to produce a report by December 31, 2023 on “necessary updates” to Act 250 by undertaking an evaluation of whether permanent changes to the Act 250 jurisdictional standards for housing projects will lead to housing affordability and what the effects of further deregulation would be on the “natural and community” resources currently protected under the Act 250 criteria. The NRB is incapable of producing a sufficient report because it lacks the expertise and experience to do so as discussed in more detail below in my testimony under sections 18 and 19 of the bill. As an aside, I have testified before this committee during the past two sessions about the need to retool Act 250 in order to address 21<sup>st</sup> century challenges and there is much wisdom in considering new “location based” jurisdictional provisions. A much better outcome would result from the establishment of a study commission composed of a broad base of informed “stakeholders” rather than reliance on the NRB to perform the study.

*Sections 18 and 19*

These sections establish a process that may be pursued by a town before the NRB for an “enhanced designation” for any “designated area”. Putting aside the strong probability that few, if any, towns will ever seek to make use of this convoluted process, the fact that the process would rely upon the NRB erodes the foundation upon which it is based.

I have testified before this committee over the last two legislative sessions about how the NRB is a failed administrative entity, flawed from its creation by the “permit reform” legislation of 2005. The NRB has never been involved in any factfinding proceedings; fact finding is as much an art as it involves certain skill sets. Few, if any, NRB members have had any actual experience on the District Commission level. Proactive rulemaking is an integral function of an

administrative body because rules ensure the orderly and efficient operation of a program. The NRB has not undertaken any rulemaking efforts since 2015, noting that many of the objectives of S.100 relative to expediting and prioritizing housing projects could and should be accomplished by an engaged NRB. The NRB does not engage in substantive work at its meetings. It would be most informative for this committee to conduct a review of NRB meeting minutes and one would see a board without a rudder over the last several years reduced to quarterly meetings of 10 or so minutes with little if any substance resulting. The NRB has never adopted any rules or policies that define its role as a party to each appeal of Act 250 decisions to the Environmental Court

The net outcome of the approach in S.100 to address housing by means of a reduced role for Act 250 in the review of housing projects will have no tangible effects in resolving the crisis. Deregulation will only result in the dismantling of a process that has worked well for many years.

### **The Lack of a Skilled Work Force**

During my tenure on the school board (1984-1990), the board was responsible for the administration of the regional vocational training facility (as it was known at that time). This was the era of the advent of “high tech” jobs. While the board recognized the need to thus revise curriculum, some of us asked about efforts to sustain ongoing programs for the training of future carpenters, electricians and plumbers. That was lost in the rush toward the “new economy”. Likewise, the then Department (now Agency) of Education provided no assurances of policies and programs to ensure an adequate work force of skilled workers going forward. And so now Vermont has an inadequate work force not only for the construction of new housing units, but for the renovation of an aged housing stock. Here is a glimpse at the lack of a work force:

<https://www.sevendaysvt.com/vermont/building-a-workforce-vermont-is-trying-to-bolster-the-ranks-of-skilled-workers-to-construct-housing-but-it-will-take-time/Content?oid=36682066>

Is it any wonder that available carpenters, electricians and plumbers are attracted to the construction of upscale homes in communities like Shelburne and Charlotte? I was visited by the president of the Laborers International Union of North America in 2001 when I was VSEA president. He was visiting all New England states in an effort to recruit future skilled workers for the construction trades because there was already a marked decrease at that time in young people entering the trades. This work force aspect of the housing crisis has long gone unrecognized and unaddressed by state policy and must be included in a comprehensive effort by the legislature to address the housing crisis. This related work force crisis will be exacerbated by the pressure that will result from the approaching wave of ARPA funded infrastructure construction projects.

### **The Siphoning Off of Long Term Residences**

The Airbnb phenomenon began in 2008 and has blanketed the nation resulting in the conversion of otherwise long term residences into use as short term rentals, a need previously met by the hotel and motel industry, small scale inns and beds and breakfast. Here in Vermont the number of short term rental units has risen from 6,624 units in 2017 to 9,757 units in 2022; that's a loss of over 3,000 units to Vermont's full time housing base. Approximately 2.5% of Vermont's total housing stock is now used as short term rentals. The Committee should pursue data and analysis about the impacts caused by this loss of thousands of otherwise available full time residences. The Committee should consider studies and reports from across the nation which have drilled down into the adverse effects of the Airbnb conversions as well as successful solutions being implemented by other states. The Committee should deliberate on legislation that would enable the regulation of, and constraints on, this diminishment of available housing stock and the undue effects on affordability. The common good and needs of existing Vermont residents for available and affordable housing argue strongly in favor of immediate legislative action to return these existing units to the housing pool for full time residents.

### **Exceptional Vacancy Rate of Vermont Housing Stock**

An analysis by the Pew Trust estimates a housing vacancy rate of 20 % (other estimates range as high as 28%) in Vermont – tied with Maine for the highest in the nation. A significant component of this vacancy rate is the number of seasonal homes in Vermont. There was a time (1950-1970s) in Vermont when there was a surplus of housing and that dovetailed with the fostering of the tourism industry through state policies. But circumstances have changed and will change even more with the effects of the climate crisis and the migration of climate refugees into the state. The Committee should consider revisions to these policies because the encouragement of second (and third) homes in the Green Mountains is no longer in the public interest. There are also vacant housing units throughout Barre City (which I observe daily in walks through the community) and other towns. The Committee should consider the reasons for these ongoing vacancies. The state has a range of options in its "toolbox" to ease these units back into the availability pool. The Committee should explore the range of "tools" available for action on behalf of the common good for full time Vermont residents.

### **Conclusions**

The housing crisis in Vermont has many causes and it has been unfolding for decades. Unfortunately there is no quick fix. But one thing is clear: reliance on accelerated deregulation and market forces will not solve the crisis. Further deregulation, through increased jurisdictional exemptions, will only weaken the effective Act 250 land use permitting process and lessen the important opportunity for legitimate public participation in District Commission proceedings. It's a bit of magical thinking to assume that reductions in regulatory reviews will somehow result in an increase in the construction of new housing. At the same time, the desperate need to reintegrate available housing units back into the "bank" of homes and apartments available for full time residents cries out for regulatory measures.

