



Office of Mayor Miro Weinberger

MEMORANDUM

To: House Committee of Energy and Environment
CC: Honorable Chair, Representative Amy Sheldon
From: Mayor Miro Weinberger
Date: April 21, 2023
Re: Amendment to S.100 to create municipal delegation and reinstate 25/5/5

The need for new housing is very great throughout the state.

Last summer, our rental vacancy rate ranked 49th in the country at 2.4%, we had the second-highest homelessness rate in the country, and the median home price has jumped to \$310,000 in 2022, up more than 35% since 2019. In Burlington, the lack of housing is the most serious social challenge we face – last summer we had approximately 70 people sleeping outside unsheltered in Burlington every night. In Chittenden County, the vacancy rate has hit a 20-year low of 0.4% and *more than half* of all renters pay more than one-third of their income on housing.

There is broad consensus that these pressures are being caused by a lack of housing supply. VHFA estimates we need 40,000 more homes just to meet current demand. Burlington has long believed that both state and local land use laws are a major factor in constraining our housing supply, and during my 11 years as Mayor we have advanced major reforms of our code, with three more ambitious reviews underway for 2023.

One of those, called the “Neighborhood Code” is similar to S.100 in that it seeks to relegalize smaller scale housing that local codes in 1970s- 1990s prohibited, including duplexes, triplexes, ADUs, and backyard cottages. I appreciate and support the local zoning changes required in the current bill, however, if this bill passes as drafted today it will do very little to create new housing opportunity in Burlington and other areas growth centers where we all want and need more housing to be built. **There is currently a deep contradiction in S.100 that will prevent builders, homeowners, and municipalities from realizing the creation of new homes envisioned in this ambitious bill.**

The purpose of this testimony is to advocate for the creation of a system for “municipal delegation” of Act 250 review in order to eliminate the existing and burdensome duplicative permit review process, and to share objections to the 10/5/5 rule that the I

perceive as in conflict with the requirement for municipalities to upzone to 5 units per acre.

Duplicative Permit Review is the Single Greatest Barrier to the Creation of New Housing in Vermont

In Vermont, we have a unique and problematic practice of requiring many critical development projects to go through both a comprehensive local zoning review and a redundant, costly and time-consuming state Act 250 review.

The 2019 VT Commission on Act 250 Report references an earlier DHCD report that concluded projects exempt from Act 250 review via the priority housing project provisions “supported the development of 586 housing units, saved an average of \$50,000 in permit fees per project, and reduced permit timelines an estimated average of seven months.” The study does not even account for the greatest cost of this redundancy, which is the *hundreds-of-thousands of dollars* in professional expenses to employ engineers, designers, and legal support to defend these permits at the state level. For small and mid-size builders, especially those considering in-fill, neighborhood scale projects like those conceived of in S.100, this added up-front expense and extended project time are make-or-break.

What’s worse – is that this duplicative review discourages development within the State’s growth centers where robust local zoning exists, working against our climate and conservation goals.

The commission report goes on to cite data about Act250’s inability to curb residential growth outside of designated areas, it “suggests that Vermont is not meeting its settlement pattern goals, with the majority of development occurring outside existing centers and with the loss of significant percentages of woodland and farmland in recent years.”

A System for Municipal Delegation of Act 250 will Eliminate Duplicative Review, Create New Housing in the Growth Centers Where We Most Want and Need Development

Duplicative review could be eliminated by “municipal delegation”, which would not change Act 250 criteria in any way – but would simply create a dramatically more efficient system for implementing it in municipalities that have robust zoning and substantial regulatory capacity. There is already municipal delegation in other state laws, such as for lakeshore protection standards and stormwater regulations. There is also precedent within Act 250 itself — for years, there has been an exemption for a narrowly defined group of projects within state-designated areas.

Within S.100 as it was passed by the Senate, there is a process which attempts to alleviate duplicative review in growth centers by creating a new process called “enhanced designation”, however there are two serious issues with this proposal. The first, is that according to VLCT only .3% of all land area in the state would ultimately be eligible for

enhanced designation, in Burlington it would be 14%. Second, the process would create a burdensome and likely years long process whereby the NRB has to first write model bylaws then to be adopted by the municipality.

Alternatively, a municipal delegation system as described in the technical memo by city planners from Burlington, South Burlington, and Winooski provided to you places the burden on the municipality to prove to the NRB that its local regulations are functionally equivalent to existing Act 250 criteria.

In Burlington, we believe that 90-95% of Act 250 criteria are met through existing codes and ordinances, and in the technical memo the planners say that in those three communities “Zoning Administrative Officers are unaware of a situation in the past 5 to 10 years in which a development that was approved at the local level was subsequently denied by Act 250, or for which Act 250 conditions resulted in the need for substantial modifications to the local permit.”

Restoring S.100’s Original Trigger from 10 to 25 as Drafted Will Enable the Most Significant Elements of the Bill

Perversely, and likely unintentionally, leaving the 10- unit cap intact will directly undermine the actual impact of the many local zoning changes S.100 requires.

The most impactful element of S.100 currently is that it will compel municipalities with water and sewer to upzone their residential density to at least five units/acre and allow structures as large as a fourplex to be an allowable use in these areas. For example, a municipality that currently allows only one unit per acre would have to allow 20 units on a four-acre lot under the bill. However, even when a municipality goes through the hard and likely controversial work of updating its zoning to make this mandated revision, if S.100 keeps the State trigger of Act 250 in place, a property owner who owned one of these four-acre sites would be likely only to build only nine homes in order to avoid the very costly and onerous Act 250 process. In sum, the current legislation forces municipalities to take dramatic action to remove local housing barriers while doing very little to address any of the many State housing barriers.

For over a year Burlington has been developing a Neighborhood Code that would seek to create substantial new housing opportunities in every neighborhood by legalizing duplexes, triplexes, and other neighborhood scale developments citywide (<https://www.burlingtonvt.gov/CityPlanning/NeighborhoodCode>).

However, if S.100 keeps the Act 250 trigger at 10 units instead of 25, property owners attempting to create new homes under the Neighborhood Code will face act 250 barriers in many situations. The rendering below shows one example of this from Burlington’s New North End where the Neighborhood Code we are drafting would allow property owners to build six new small homes where our current zoning only allows one.



If S.100's Act 250 trigger remains at 10, a property owner with two of these 1-acre parcels in the City (outside of the 14% of land that is in designated areas) will only be able to do one of these much-needed cottage developments before triggering the major costs and time burdens of Act 250. A single local developer could only build one cottage court, 3 triplexes, or 4 duplexes in Burlington before, very likely, being forced well out of City limits by the Act 250 process. This directly undermines not only the aspirations of S.100 to realize neighborhood scale developments in growth centers, but also our common and important goals to advance sustainable and climate friendly growth, improve equity and affordability in home ownership, and to conserve wild and working lands.

Summary

We are in an acute housing supply crisis that has made hundreds of our constituents homeless, and put severe financial strain on thousands. We are facing an emergency that requires swift, urgent action and I urge you to consider these thoughtful, discrete changes to the legislation before you that will not change Act 250 in any substantial way – but will have an immediate and significant impact on our ability to deliver new homes to Vermonters who need them.