

Testimony before Senate Economic Development, Housing & General Affairs

January 30, 2024

Elizabeth Bridgewater

Executive Director

Windham & Windsor Housing Trust

Thank you for inviting me to share my thoughts on H719 and specifically about the proposed creation of an Appeals Bond. I applaud you and your colleagues' efforts to explore every avenue for addressing the Vermont housing crisis because if we are going to truly tackle this challenge, we cannot take our foot off the gas and we need a multi-pronged approach. Breaking down the development process into its component parts and looking for ways to speed up each process is a smart approach. It helps answer the question about why building new housing takes so long, but also generates ideas on how to get it done faster. There are some really good ideas in this bill that will help speed up the permitting process and deter costly and lengthy permit appeals.

Unfortunately, I have recent experience with this because a project in Putney that we are co-developing with Evernorth is in its third appeal and the project has been delayed for over two years. If some of the provisions in this bill were in place over two years ago, these 25 homes would have been built by now and the new residents would have already moved in. Instead, during these two years, the price tag went up over a million dollars due to construction cost increases and we spent tens of thousands on legal fees.

In contrast, for the first appeal, the sole appellant spent all of \$250 which was the price of the filing fee. The appellant didn't hire an attorney and representing themselves, presented a case comprised of about 70 questions, the vast majority having nothing at all to do with actual zoning requirements. But there we were, in an appeal process and required to respond anyway.

When I think about the menu of strategies to speed up the permitting process and deter frivolous appeals, I think we need to choose the best strategy that balances the critical need for new housing, citizen participation in the public process and due process inherent in our legal system. And I was happy to see that H719 contains some strategies that do this quite well.

The story of the Putney Project is an excellent way to illustrate this because the parcel of land on which these 25 new homes will be built has been the subject of a variety of public processes that all concluded in some way or another that this was a good location for development. Around 2005 with a grant from the Windham Regional Commission, the Putney Planning Commission hired a consultant to host a series of meetings that looked at different zoning districts and their capacity. This parcel was identified as a good location for housing and renderings of possible designs were presented. In addition, numerous Putney town plans, which include a public process, have called this parcel out as an ideal location for housing. This parcel is also located in a Neighborhood Development Area, a state-wide designation created to help streamline development in areas adjacent to village centers and that contain municipal infrastructure like water and sewer. Obtaining an NDA designation has a public process with multiple opportunities for citizen participation before being recommended for approval. Finally, the application to acquire a zoning permit had a public process, during which we outlined how our project plans adhered to the zoning regulations and answered questions both from the development review board and the public.

So collectively, this parcel of land and eventually, this specific project has been the focus of numerous public processes that all built upon one another and that all pointed to this being an excellent location for new housing. And why is that? Because it's right in Putney Village, a lovely walkable town with lots of amenities. It's in a neighborhood that has existing housing, both multi-family rentals and single-family homes. It is also served by water and sewer. The Putney Food Coop sits adjacent to the parcel. A community garden occupies part of the parcel and we developed a plan that preserved this community resource. There is ample space for parking and exit 4 on Rt91 is a one-minute drive, making it easy to commute for work or other needs. This is an ideal 'smart growth' location that builds out areas with existing housing and commercial development patterns while preserving outlying forests and farms.

So why should one person have the right to circumvent the will of the majority of citizens and those who participated in the public process over a 20-year period, a process that consistently validated this location for new housing? My answer is that they shouldn't, especially when we're in a serious crisis that impacts every Vermonter, but most especially those with the most modest incomes and those with no home at all.

H719 contemplates this in the municipal zoning section where it exempts projects with certain characteristics from the appeal process entirely. These characteristics include the project size (up to 25 homes), the project location (in a designated center in a zoning district that allows residential development) and a project that does not require conditional review. If this section had been law 2 years ago, 25 households would be enjoying their new Putney homes right now.

This section also includes the appeals bond which requires an aggrieved person to post a bond which, if the appeal fails, would cover reasonable costs directly incurred by the developer as a result of the appeal and if the appeal was found to be frivolous, additional funds to cover injury. When I first read this, I was very intrigued because our project costs had sky rocked during the delay. Though it sounded like a good deterrent for frivolous appeals and a way to recoup costs if the appellant decided to move forward anyway, it does raise the question, does this exclude participation by people who do not hold wealth? Here's where the exception for the 'indigent' comes in, meaning those with no money still had the right to appeal without the bond requirement. While this reads as a strategy to ensure inclusivity; that it's not just the wealthy who have a voice, on a practical level, it effectively puts a damper on the whole strategy.

Let's go back to Putney as a way to explain this. In the first appeal, the appellant, a person of modest means, did not hire an attorney. They simply paid the filing fee of \$250 and proceeded to submit an appeal that contained very few questions related to Putney's zoning requirements, delaying the project a full 12 months while costs were rising. But in the second appeal to the supreme court, they presumably found a benefactor because at this point, they had an attorney to represent them. No new appellants were added to the case and yet they were able to fund the next step. I can't imagine that this kind of work around wouldn't come into play with the indigent exemption provision included in H719. And on a

practical level, if a person is indigent and therefore exempt from the bond requirement, how is it that the developer would be compensated from someone with no financial resources? The bill doesn't contemplate this, but the very existence of this exception, I suspect, demonstrates the real struggle to balance equity in the public process with the desire to find ways to speed up the process.

Massachusetts has an Appeal Bond created specifically for affordable housing. I called a former colleague to hear his insights because his project in Truro was the first project in the state to trigger the bond. He indicated that the requirement for the appeal bond did what it was intended to do and that he was delighted with the result. A group of appellants appealed his project and the judge reviewed the initial filing, determined that it was frivolous and required a bond of \$25,000. Although the group could have spread the cost amongst all of them, they instead chose to withdraw their appeal and negotiated a settlement which did not impact the project significantly. However, the process still took a year to resolve so it didn't do anything to speed up the process significantly.

Our experience in Putney and the insights shared by my colleague lead me to wonder if the creation of an Appeals Bond as it is written, is indeed an effective way to speed up the process.

I really like the provision outlined earlier that recognizes the characteristics of certain projects in certain locations as being "appeal proof" given the crisis we are facing. I wish the unit cap under this provision was higher given the need and rising costs. A 25-unit project has a very high total cost per unit so I suggest that doubling this number would bring the cost per unit down and create more housing into our communities.

In addition, I like the provisions found later on in the bill that direct the Environmental Court to issue decisions within 5 months of a case being filed. Coupled with a 30-day limit on filing an appeal, cases that are appealable could be resolved in 6 months. I have some concern about how this will impact the environmental court's current case load. New Hampshire has addressed this by creating a Housing Appeals Review Board that exclusively hears housing appeal cases. This seems like a smart targeted approach that truly puts to the focus on getting these cases resolved as quickly as possible and from what I'm hearing, it's working as intended.

In summary, I want to thank you again for taking the time for a deeper dive into ways to get new housing built faster. Creating a provision to protect certain projects from appeals altogether, especially those in locations that have gone through a variety of public processes, coupled with a speedier process for projects that are subject to appeal are two very strong strategies that I support. I'm more ambivalent on the creation of the appeals bond as I'm not clear that, as it's written, will have the intended impact.

Finally, I'd like to make one more related point. While I am delighted that regulatory reform is a strong focus of this legislation session, without funding for new housing, the effort will be watered down. We can create a great new efficient process, but if you don't have funding for more housing, you still get less housing built. Housing Development is inherently risky and it takes years to go from an initial concept to project completion. Developers need to have faith that while we are spending pre-development capital there will be state and federal funds available when it comes time to apply. There was a lot of available capital during the COVID years and now that these are sunseting, we need to continue this commitment with additional state funding. This bill did not address this in a significant way, but I know there will be another opportunity with the bill being drafted in the senate. I haven't seen a copy of it, but I hope that it provides additional one-time funding for VHCB because regulatory reform can't fix this problem alone.

Thank you.