

SUBMISSION ON S.100 (3/13/23):  
CHANGES TO ACT 250 AND LOCAL ZONING WILL NOT SOLVE VERMONT'S HOUSING  
PROBLEMS

*This submission is by Aaron Adler of Brookfield, a retired lawyer who was counsel to the Vermont legislature from 2008 to 2018, focusing on natural resources and energy. I was previously Deputy General Counsel to the Agency of Natural Resources, Special Counsel to the Department of Public Service, counsel to the Act 250 program, and Chair of the Brookfield Planning Commission.*

I urge the Senate Committee on Natural Resources and Energy to recommend striking all parts of S.100 relating to Act 250 and local zoning, including Secs. 1-21 and 43.

These proposals on Vermont land use regulation and housing advance a "Field of Dreams" policy: "Permit it and they will build." Proponents erroneously claim that Act 250 and local zoning are barriers that cause Vermont's shortage of affordable housing and if we lift those barriers we will get more housing that average people can buy or rent.

But the cause is the underlying economics, not so-called regulatory barriers, and subjecting fewer projects to land use laws is unlikely to increase affordable housing. If any new housing does result, it will be market-priced rural sprawl.

You may remember the movie "Field of Dreams," in which a farmer hears a voice say, "If you build it, he will come." The farmer plows under part of his crop to build a baseball diamond. Magically, dead players appear to use the diamond and crowds come to watch.

Magic works in the movies but not in reality. Removing a dam increases flow because a river is there. No river of affordable housing waits to spring forth if we open the alleged regulatory dam.

Instead, market economics are driving housing prices beyond the reach of many Vermonters.

Demand for housing in Vermont has surged due to the pandemic, migration from outside the state, and a greater ability to work remotely, as reported recently by [VTDigger](#).

The increased housing demand coincides with [inflation that is outpacing wage gains](#). Nationally, the average cost for materials to build a single-family home rose 42% from 2018 to 2021, per the [National Association of Realtors](#).

This environment pushed Vermont's median price for a new home to over [half a million dollars in 2022](#). A builder who can command that kind of price for a new home will not lower it simply because the builder does not have to get a permit, especially when the builder's costs have climbed. The builder will charge what the market will bear.

Meanwhile, the state has seen an increase in the fragmentation of large parcels into smaller lots used primarily for rural housing. [One report](#) found that over a 12-year period ending in 2016, more than 12 thousand acres per year changed from forest or farm to residential development scattered over Vermont.

Regulation cannot be too big a barrier to new dwellings when it is allowing so much residential development.

These trends indicate that if reduced regulation leads to more housing, it will be expensive rural sprawl that fragments our forests and farmland, and therefore undermines wildlife habitat and the land use patterns that make Vermont a place to cherish.

Proponents nonetheless cite a handful of housing projects that underwent litigation and appeal, but anecdotal evidence is no substitute for system-wide data. Most projects that need Act 250 permits, housing or otherwise, are approved and not appealed.

Some may argue that housing costs have risen in Vermont as we have implemented Act 250 and local zoning, but that is a correlation only. It does not prove causation.

To the contrary, the legislature has amended Act 250 and local zoning statutes many times to promote affordable housing and the amendments did not prevent or remedy the state's affordable housing problem. They included multiple reductions in Act 250 regulation over housing projects in many areas of the state.

Doing the same thing again and expecting a different result is not a recipe for success. We should look to other tools to address the problem, such as increasing funds for existing housing programs, creating new housing authorities, tax credits to builders of lower priced homes, and financing low interest loans to home buyers.

The legislature should not pursue the proposed changes to Act 250 and local zoning, which are unlikely to promote affordable housing and may lead to high-priced residential sprawl that harms our environment and sense of place.