Thomas Weiss
P. O. Box 512
Montpelier, Vermont 05601
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Senate Committee on Economic Development, Housing and General Affairs
State House
Montpelier, Vermont

Subject: H.479, housing

Dear Committee:

Thank you for this opportunity to testify on this bill. I am a civil engineer whose experience includes reading, understanding and applying rules, regulations, statutes. I also have experience with permitting. I apply that experience to this testimony.

These comments and recommendations are limited to sections 8 through 11, the four sections on appeals. These sections are not in your bill S.127, housing and housing development. They should be taken out of H.497 and kept out of S.127.

Secs. 8 and 9 relate to the chapter on environmental appeals in title 10.

These two sections relate to "appeals arising under 24 V.S.A. chapter 117", which is municipal and regional planning and development. Secs. 8 and 9 add unnecessary complexity to an already complex subject.

Unwarranted use of the term "person aggrieved" in appeals from the planning and development chapter.

Sec. 8 (10 V.S.A § 8502(7)) proposes to expand the definition of a "person aggrieved" to include one who alleges an injury caused by municipal zoning boards and planning commissions. Chapter 117 uses "aggrieve" only twice, both times in relation to enhanced energy plans. The first use authorizes regional planning commissions to appeal to the Land Use Review Board acts or decisions of the Commissioner of Public Service in relation to enhanced energy planning (24 V.S.A. § 4352 (f)) The second use (of "aggrieve") is no longer in effect, applying to a municipality's appeal that had to be made before July 1, 2018. Thus adding sec. 8 has no benefit because "person aggrieved" is not a term used in chapter 117.

The first part of Sec. 9 (10 V.S.A. §8504(b)(1)) proposes to add "aggrieved persons" to those who may appeal acts and decisions relating to municipal and regional planning and development to the Environmental Division. The term "aggrieved person" is not used in chapter 117, as pointed out above, so allowing appeals by an "aggrieved person" is a meaningless concept when applied to chapter 117. Amending § 8504 (b)(1) has no benefit.

Recommendation: Delete section 8 and the first part of section 9 from H.479 and keep them out of any compromise bill.

Unwarranted conversion of court review to consistency of an application from consistency of the project

The second part of Sec. 9 (10 V.S.A. §8504(h)) proposes to require the Environmental Division to determine whether applications for a permit are consistent with the bylaws. Often permits are approved with conditions. The conditions were required to make the project consistent with the requirements of the bylaws or land use regulations. The conditions remove the project's inconsistencies.

The court will not review, under this proposal, whether the project is consistent or not. The court will determine whether the application is consistent or not. That is a big difference. It is not clear what makes an application

consistent or not. The court should continue to be determining whether the permit and project are consistent with the bylaws. When the review in the appeal is about the permit and project, there is no need for § 8540 (h).

Recommendation: Delete the second part of section 9 from H.479 and keep it out of any compromise bill.

Meaningless intrusion into the court's scheduling

The third part of Sec. 9 (10 V.S.A. §8504(k)(5)) proposes to confirm the Environmental Division's present full control over the timing of cases involving housing. The proposed amendment confirms that authority by making the exception "for cases the court considers of greater importance"

Recommendation: Delete the third part of section 9 from H.479 and keep it out of any compromise bill.

Unwarranted reduction of ability to hold planning commissions and zoning boards accountable

Section 10 proposes to remove two classes of interested persons from those able to make appeals, by amending 24 V.S.A. § 4465, appeals of decisions of the administrative officer. Section 4465 presently defines five classes of interested persons. These proposed changes will affect all of chapter 117, municipal and regional planning and development and all of Title 24 itself.

Chapter 117 uses "interested person" in six locations. The first location is § 4304 in subchapter 1, relating to the planning and land use manual prepared by the Commissioner of Housing and Community Development. This use probably should not be covered by the definition of "interested person" in § 4465.

Section 4461 (subchapter 10, appropriate municipal panels) allows potential interested persons to make their cases before the appropriate municipal panel that they are interested persons. It is then up to the panel to determine whether the persons have met the criteria of being interested persons. If the persons do not demonstrate to the panel that they have met the criteria for becoming interested persons, then they are not interested persons under subchapter 11 (appeals).

Sections 4470; 4471; and 4472 (subchapter 11, appeals) all include conditions for appeals to the Environmental Division by interested persons. These appeals are available only to those who have demonstrated at the municipal level that they are interested persons.

Sec. 10 24 V.S.A. § 4465 (b)(3) proposes to remove persons owning or occupying property in the immediate neighborhood of the property in question from the definition of "interested person" A potential interested person in this class must demonstrate that there will be a physical or environmental impact on the person's interest under the criteria reviewed and that the decision will not be in accord with the policies, purpose, or terms of the plan or bylaw. Those are high bars. A person should be allowed the chance to make the case before the municipal panel. If a person can show these effects, then the person should be allowed to appeal to the court.

Sec. 10 (24 V.S.A. § 4465 (b)(4)) proposes to remove the ability of any 20 voters. residents, or property owners from holding the appropriate municipal panel accountable. This definition goes back to the creation of chapter 91 in 1968 and maybe before. The sections of chapter 91 were later transferred intact to chapter 117. The key word in the definition is "relief". Relief is not defined in Chapter 117. "Relief" is used in chapter 117 only in subchapter 11: in sections 4466 and 4469. In § 4469, "relief" is used in the context of allowing variances as a form of relief from the requirements of the bylaws. My Webster's Ninth New Collegiate Dictionary confirms that meaning of "relief". The two relevant definitions are "a removal or lightening of something oppressive, painful, or distressing"; and "release from a post or from the performance of a duty". This class (4) is intended to allow appeals by a small group of concerned individuals when the development review board has allowed a

permit that does not require the project to comply with the zoning bylaw; or when the planning commission has created a bylaw that does not comply with the town plan.

The ability to have public input on the development and enactment of bylaws has been curtailed over the last few years: reducing public hearings; reducing the ability of the voters to approve or deny bylaws. Thus it is important to retain the ability of voters and residents to appeal the bylaws and plans.

Recommendations:
- Amend § 4465(b) to limit the definition of "interested person" to subchapters 10 (appropriate municipal panels) and 11 (appeals), after confirming that the term is not used elsewhere. I suggest the following amendment.
  "(b) As used in subchapters 10 and 11 of this chapter, an "interested person" means any one of the following:"
- Delete the remainder of section 10 from H.479 and keep the remainder out of any compromise bill.

Unwarranted prevention of public hearings on all future bylaw amendments

Sec. 11 24 V.S.A. § 4441 (i) proposes to allow a municipality to make all future zoning bylaw amendments without holding hearings.

The existing requirements for bylaws allow a municipality flexibility in how it implements specific, statutory requirements. Flexibility includes changing zoning district boundaries, for example, to implement the requirement in more or in less of the municipality. Thus, a hearing is essential in order for the municipality to receive comment on the scope of the implementation.

Currently, many provisions in zoning are optional. Bylaws "may" (not "shall") incorporate certain elements. If statute is amended to require inclusion of an element, this proposal will prohibit public hearings on how that provision will be incorporated into the bylaw. When chapter 117 is amended to allow other optional features, those options will have requirements. If a municipality chooses to add an option to the bylaws, then the amended bylaw will need to meet the requirements associated with the option. Again, there will be no requirement to hold a public hearing.

Recommendation: Remove section 11 from H.479 and keep it out of any compromise bill.

I have two more comments.
- Anything you can do in a housing bill to support or increase the rate of weatherizing and installing insulation in housing will have far-reaching, positive effects. The last year-and-a-half, I spent much time as an active participant in the Public Utilities Commission's proceedings on the Clean Heat Standard. The most effective way to reduce greenhouse gas emissions and energy bills is to reduce thermal loads. This means the first step is to weatherize and insulate. Conversions to heat pumps and substituting fuels are way down the list of actions to reduce heating bills.
- Leave the land bank report in H.479. The concept of a land bank is intriguing and warrants this report.

I ask that you find that these recommendations have merit and that you include them in H.479 or whatever housing bill results this session.

Sincerely,
Thomas Weiss