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Senate Committee on Natural Resources and Energy
State House
Montpelier, Vermont

Subject: H.479, housing.

Dear Committee:

I am a civil engineer whose experience includes understanding and applying rules, regulations, statutes. I have experience with zoning and I participate in Montpelier's mostly annual updates of its zoning bylaws.

H.479's proposal to eliminate public hearings for bylaw amendments

*I*H.479 contains a provision that will allow a planning commission to waive a public hearing on amendments to bylaws. This provision is in section 17 as recommended by Senate Economic Development, Housing and General Affairs.

Sec. 17 is a "notwithstanding" provision that supersedes all other laws. "Notwithstanding" provisions can have serious, unintended, adverse consequences. Thus the use of "notwithstanding" provisions should be strictly limited. Its use in section 17 is unjustified. Sec. 17 reads:

> Sec. 17. 24 V.S.A. § 4441 is amended to read:
> § 4441. PREPARATION OF BYLAWS AND REGULATORY TOOLS; AMENDMENT OR REPEAL
> * * *
> (i) Notwithstanding this section and any other law to the contrary, for bylaw amendments that are required to comply with amendments to this chapter, no hearings are required to be held on the bylaw amendments.

Distinction between pre-emptive and non-pre-emptive statutory amendments

Last week you heard from Samantha Sheehan, Vermont League of Cities and Towns, about section 17. (It was then section 18.) She supported the option of not requiring public hearings for zoning pre-emptions.

Section 17 is overly broad. It would apply to all required changes, whether they are pre-emptive or not. Nowhere does sec. 17 limit the "notwithstanding" part to pre-emptive changes.

Pre-emptive statutory amendments to chapter 117 are those that specify the details of the required provisions of bylaws. Pre-emptive changes automatically supersede municipal bylaws, even if the municipality does not amend the bylaws. I learned that years ago when I was on Montpelier's zoning board of adjustment. I acknowledge that changing the bylaws to incorporate the pre-emptive changes makes the bylaws clearer for the public.

Here are some examples of pre-emptive statutory amendments from sec. 52 of Act 181 (2024).
- Requiring that "In any district that allows year-round residential development, duplexes shall be an allowed use with dimensional standards that are not more restrictive than is required for a single-unit dwelling, including no additional land or lot area than would be required for a single-unit dwelling."
- Requiring that "In any district that is served by municipal sewer and water infrastructure that allows residential development, multiunit dwellings with four or fewer units shall be a permitted use on the same size lot as single-

unit dwelling, unless that district specifically requires multiunit structures to have more than four dwelling units."

Non-pre-emptive statutory amendments to chapter 117 are those that require changes to the bylaws and that leave the details to the municipality.. It is inappropriate for a planning commission to waive hearings on non-pre-emptive changes. The public should have the right to be heard at hearings in order to provide input on how non-pre-emptive changes are regulated in the bylaws.

Here are some examples of non-pre-emptive statutory amendments. The planning commission should not have the authority proposed by section 17 to waive public hearings in these examples.
- Hotels and motels converted to permanently affordable housing developments were added to the uses that may be regulated only in limited fashion. (Act 181, Sec. 53). The bylaws may regulate some aspects. Those aspects applicable to existing buildings being converted include: traffic, noise, lighting, landscaping, and screening requirements.
- Requiring that "In any area served by municipal sewer and water infrastructure that allows residential development, bylaws shall establish lot and building dimensional standards that allow five or more dwelling units per acre for each allowed residential use, and density standards for multiunit dwellings shall not be more restrictive than those required for single-family dwellings." (Act 47 (2023), sec. 2) The bylaws are required to establish dimensional standards while the specifics of the dimensional standards are left to the municipality.
- Changing a bylaw option to a bylaw requirement. A hypothetical example would be requiring bylaws to regulate uses within a river corridor. Current statute makes regulating uses within a river corridor optional (§4441(a)(5)). It is possible, because of the severe floods over the last 15 years, there might be an amendment requiring bylaws to regulate uses within a river corridor. Public input is necessary in order to develop a bylaw amendment to regulate the types of uses and conditions for use within a river corridor.

Proposed alternative to section 17

Sec. 17 is ostensibly about public hearings for pre-emptive bylaw amendments. The "notwithstanding" language is overly broad and can lead to unintended consequences. A clearer, more precise version would amend 24 V.S.A. § 4441(d) and § 4442 (a) along the lines of:

> §4441 (d) Public hearings
> (1) The planning commission shall hold at least one public hearing within the municipality after public notice on any proposed bylaw, amendment, or repeal, except that
> (2) a public hearing is optional when implementing only a pre-emptive statutory amendment made after _____. Public notice shall be provided whether a public hearing is held or not. [The blank would contain the effective date of the act that results from H.479].
> (3) A pre-emptive statutory amendment is one that changes a bylaw in a specific manner with no flexibility allowed by the municipality.
>
> §4442 (a) [NOTE: A similar revision would allow the legislative body the option of waiving a public hearing on a bylaw amendment in response to a pre-emptive statutory amendment.]

Of course, you could just eliminate section 17. A public hearing would allow the public to propose additional changes to the bylaws. The additional changes might change the boundaries of zoning districts in which the pre-emptive changes are required.

Sincerely,
Thomas Weiss