

**Testimony to the Senate Natural Resources & Energy Committee
Re: Definition of “Served by Municipal Water and Sewer Infrastructure” in S.328.**

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**Chip Sawyer
Director of Planning & Development, City of St. Albans
Vice President, Vermont Planners Association**

One of Act 47’s (2023) responses to the housing crisis was to create a definition in 24 V.S.A. § 4303 of an “an area served by municipal sewer and water infrastructure” in order to implement the expectation that areas that have received the public investment associated with water and sewer infrastructure should be subject to the residential density allowances of “quadplex by right,” at least five dwelling units per acre, parking space provisions, and other things. This was a fundamental and transformational change to local zoning.

Act 47 never actually mapped where these areas “served by municipal sewer and water infrastructure” are. It has been left up to local interpretation, for instance of what “where residential connections and expansions are available” means.

My understanding, which is shared by other members of the Vermont Planners Association, is that the proposed amendment in S.328 to add a definitional distance standard to the definition of “an area served by municipal sewer and water infrastructure” was a response to one or two recent incidents where a municipality initially did not agree with other parties over where the density allowances of Act 47 should apply or whether connections to water and sewer should be granted. However, it is also our understanding that each of these situations could still benefit from further pursuit of mutual agreement between the municipality and the property owners or developers.

As I discuss this issue with other members of the VT Planners Association, I’m increasingly met with the reaction that the proposed 2,000 foot or ¼ mile distances that have been contemplated in S.328 could have intended consequences and add more negative outcomes to the current understanding that that areas that have received the public investment associated with water and sewer infrastructure should be subject to the residential density allowances of Act 47.

Two of the concerns are:

- An increased reliance on the “an area served by municipal sewer and water infrastructure” definition to implement statewide zoning preemption will further conflate local land use regulation with the mechanisms of water and sewer allocation and the establishment of service areas. These two municipal functions are carried out with separate sets of considerations and concerns, and more time should be invested in understanding their interplay and providing clarification for how the establishment of water/sewer service areas will affect zoning preemptions under this new regime.
- The Act 47 version of the “an area served by municipal sewer and water infrastructure” allows a municipality to interpret its own solution for applying the residential allowances

of Act 47 to where it intends to provide water and sewer. The distance-based definition proposed in S.328 will further complicate the establishment of service areas with perceived zoning obligations. Furthermore, it can be interpreted that the expansion of a service area in one municipality could affect the application of Act 47 allowances in the zoning in a neighboring municipality.

My recommendation at this time is to ride the momentum of the transformational changes that Act 47 implemented in local zoning and allow the positive benefits of the residential allowances to continue to play out as municipalities interpret their understanding of “an area served by municipal sewer and water infrastructure” in the best ways possible in their given context.

Thank you.