

Draft Minutes Community Investment Package 12/16/2019

Dewey Conference Room, National Life Campus

Agency of Commerce & Community Development (12): Ted Brady, Josh Hanford, Chris Cochran, Jessica Vintinner, Jacob Hemmerick, Richard Amore, Gary Holloway, Caitlin Corkins, Faith Ingulsrud, Shaun Gilpin, John Kessler, and Jenni Lavoie.

Guests (31): Senator Michael Sirotkin, Chittenden County; Ludy Biddle, Neighborworks of Western Vermont; Nancy Lynch, Vermont Association of Realtors; Andrew Brewer, DRM; Philene Taormina, AARP; Karen Horn, VLCT; Austin Davis, Lake Champlain Chamber of Commerce; Natalie Silver, Necrason Group; Miranda Lescaze, Cathedral Square; Greg Boulbol, NRB; Evan Meenan, NRB; Maura Collins, VHFA; Catherine Dimitruk, NRPC; Sharon Murray, Front Porch Community Planning; Regina Mahony, CCRPC; Meagan Tuttle, City of Burlington; Kevin Geiger, TRORC; Alex Weinhausen, Town of Hinesburg/VPA; Andrew Winter, Twin Pines Housing; Sandra Levine, Conservation Law Foundation; Kate McCarthy, Vermont Natural Resources Council; Billy Coster, ANR; Jessie Baker, City of Winooski; Jen Hollar, VHCB; Kathy Beyer, Housing Vermont; Matt Chapman, ANR; Erhard Mahnke, Vermont Affordable Housing Coalition; David Snedeker, NVDA; Chris Snyder, Snyder Homes; Bryan Redmond, ANR; Charles Martin, Vermont Chamber of Commerce.

Via Phone (Listen-In Only) (3): Ellen Czajkowski, Office of Legislative Council; Ashlynn Doyon, Office of State Treasurer; Tyler Maas, Vermont State Housing Authority.

Welcome and Introductions

Josh Hanford (DHCD Commissioner) opened the meeting and participants introduced themselves.

Summary of Proposal and Related Initiatives

Chris Cochran (Community Planning +Revitalization Division Director) welcomed the group, mentioning the work that occurred over the summer to prepare this draft for discussion. He noted that the discussion will be documented and shared. The people joining by phone will be able to listen but will need to submit comments in writing. Due to limited time, he suggested discussion focus on key issues of the wastewater proposal, Act 250, and Chapter 117 changes.

Section-by-Section Bill Review

Referencing the DHCD Draft Housing Legislation document dated December 2019

ACT 250: JURISDICTION & EXEMPTIONS:

[Amends the Definition of Priority Housing Projects. Priority housing projects are certain mixed-income housing projects exempt from Act 250 review. The amendments remove state designated downtowns and neighborhood development areas (NDA) as eligible areas because the proposal exempts them from Act 250 jurisdiction in later provisions. Priority housing projects continue to apply within state designated village centers without neighborhood development areas, new town centers, and growth centers.]

[Development and Subdivision Exempted from Act 250 in Downtowns and Neighborhood Development Areas. In order to promote development in and around reinvestment-ready centers, this section exempts State designated downtowns and neighborhood development areas (which can overlay a designated village center) from Act 250 review. It creates a process and criteria to extinguish existing Act 250 permits within these areas upon issuance of a municipal land use permit. Since the existing Act 250 statute on 50% fee reductions for residential development within

neighborhood development areas and downtown findings (“6086b downtown off-ramp”) are made moot by the proposed jurisdictional exemption, the language is struck.]

Chris Cochran: This is a small part of a larger Act 250 package, but also included here as one of the housing proposals. Proposes to make development in designated Downtowns and Neighborhood Development Areas (NDAs) exempt from Act 250. Priority Housing Projects (PHPs) that now currently receive an exemption, would no longer exist in Downtowns and NDAs but would exist and be exempt in all other designated areas.

Erhard Mahnke: Concerned about the elimination of priority housing projects in downtowns and NDAs. A number of stakeholders feel strongly about this as well, since priority housing projects promote inclusivity. PHPs should be maintained as the way to an Act 250 exemption in any designated areas.

Kathy Beyer: Housing Vermont currently does not support this approach. Some private developers are able to meet the priority housing project definition, it’s not that restrictive since it’s targeted to 80% of median income. We want layers of affordability in our downtowns and NDAs.

Chris Cochran: Aware of this issue and plan to have a further conversation with a smaller group of stakeholders to find a solution and a way forward. Reviewed preliminary data and most who use the priority housing project benefit are affordable housing developers. There are a few instances where a private project was initiated that did create the affordability requirements, but it’s more of an exception and not the norm. Will bring the data to inform the follow-up conversation.

Kathy Beyer: All want to see more housing built, there’s a clear need for that, but PHPs work well now and give incentives to housing with public benefits.

Josh Hanford: We often hear from communities that are not seeing the market rate housing development they would like to see in their downtowns and a level playing field would be the best policy. There would still be other public incentives for affordable housing in these places. But this benefit is one of the few regulatory tools we can use to create a more level playing field for development in the designated areas. Eligible communities often have inclusionary zoning already. We should make sure we have affordable housing where it’s needed but not create more hurdles for communities that need all types of housing in a compact center.

Sandy Levine: We should move away from Act 250 exemptions and instead, make permitting for the kind of development we want to see, easier. For many communities without staff, Act 250 is the only review and gives place to address Act 250 values.

Jen Hollar: Supports the overall direction that creates the conditions for all housing in centers to be incentivized and to make the private market work to create housing at all income levels. But we need to make sure there are homes in all designated areas that are accessible at all income levels.

Karen Horn: Incentives are needed for all housing and the municipalities with designations have the capacity to adequately review development impacts.

Miranda Lescaze: Remove unit caps for PHP for the designations where they apply. The unit caps have been a barrier for some affordable projects.

Sharon Murray: Noted that the Act 250 exemption would eliminate regional review of development. RPCs and municipalities are statutory parties in Act 250 but not in municipal reviews.

Kathy Beyer: If the goal is to build more housing, take a new look at the basic Act 250 jurisdictional threshold for developing new units – it is out of balance with commercial jurisdiction that has a much higher bar. The number of units that trigger Act 250 should be increased, maybe based on the size of the town.

Kate McCarthy: Act 250 changes need to be considered in a larger context. VNRC does not support stand-alone, piecemeal Act 250 changes. Any exemptions, including those proposed, need to be part of a balanced package of Act 250 changes. Act 250 is not the main barrier to housing – others like construction costs, are significant.

Chris Cochran: The administration supports one comprehensive package of Act 250 changes. The sections addressing housing and development in designated areas are presented as part of the housing package to show how state and local regulations may be aligned to create the housing outcomes needed in walkable centers. They are included for discussion purposes only.

Austin Davis: Infill sites in designated areas are often brownfields that create a barrier as they often require a million dollars in environmental cleanup before construction even begin. We need to recognize the added costs of doing infill development.

Erhard Manke: Echo what others said. Where communities have inclusionary housing regulations private developers can partner with non-profits. Maintaining the PHP in all designation offers more opportunity to partner and leverage more moderate-income homes. Affordability levels for PHP are very modest, but still are helpful given how expensive most new market rate units are.

Regina Mahony: The straight exemption shifts benefits from the PHP to the designation so municipalities can make the case for the kind of housing they need. Local solutions for the kinds of benefits to provide could be based on a housing needs analysis.

Jessie Baker: With the way incentives work now, there isn't a level playing field and so projects that get built are subsidized or luxury. The double permitting (state and local) creates a hurdle for the missing middle homes. For municipalities with the planning and development review capacity, the full Act 250 exemption will allow more socioeconomically diverse neighborhoods.

Written Comments: See below for more comments on PHPs and Act 250 provisions from Miranda Lescaze, Evan Meenan, Kate McCarthy, Chip Sawyer, and Kathy Beyer

[Act 250 Permit Conditions Transfer to Municipal Permits. This section outlines what happens to landowners seeking to develop sites with existing Act 250 permits that are located within State designated downtowns or neighborhood development areas (NDA) exempted from Act 250 review. In such cases, the municipalities appropriate municipal panel would be tasked with holding a hearing and issuing findings that include the Act 250 permit conditions in the municipal land use permits unless the condition meets certain criteria, such as conditions related to: 1) the construction phase for something already constructed, 2) compliance with another state permit, 3) federal and state law no longer in effect, 4) a matter addressed by municipal bylaw, and 5) physical or use conditions no longer present. The municipality must send a copy of the permit to the Natural Resources Board and continue to record the municipal permit containing the Act 250 conditions in the land records.]

Alex Weinhagen: This would appear to be an applicant driven process and since the District Commission would still be involved in some types of permits, it would make sense for the local board to have a conversation with the district commission before making a decision. Municipal boards have nothing to do with the creation of those conditions and may not be equipped to understand which ones should be attached to a municipal permit, so some step through the district commission would make sense on the front end.

Jessie Baker: page 8/line 12, how does the state relinquish some control back to local jurisdiction? Some of what has been outlined here would require a change to local zoning, which we've seen as a strategic benefit in the past couple of years, specifically Winooski's form-based code. Communities that have professional planning and regulation, and infrastructure, those political processes should be respected as what works best for the local community and what's seen as part of its housing development. Winooski's whole downtown is Act 250. Allowing some local control to be trusted in Act 250 is helpful.

Catherine Dimitruk: Have three questions about the transfer of conditions to municipalities:

1. What if a municipality fails to take this action?
2. What if the developer fails to meet these conditions? Who holds the developer accountable?
3. Who decides if it's an issue addressed by the municipal regulations? Is there a test for that?

Chris Cochran: The intent of the section is to make clear what happens to existing Act 250 conditions.

Jessie Baker: This provision is difficult to follow. If the state is relinquishing control of the permit conditions to the town, it needs to trust that town knows what it wants to do with that designated area. For example, this section requires a DRB review process where it doesn't exist for the corresponding area in Winooski. So, this would add an extra review process where currently only administrative review is required.

Written Comments: See below for more comments on transferring 250 permit conditions from Catherine Dimitruk, Chip Sawyer and Evan Meenan.

[**Update Historic Character Commitment in Designated Downtowns.** This section would remove local Act 250 review of municipal impacts as one of four options for local commitment to historic downtown character, because it does not have a nexus with historic character outcomes. It would maintain three options for a municipality to demonstrate a commitment to protect and enhance the historic character of the State designated downtown development districts using: 1) design review, 2) adoption of an historic districts, or 3) other adequate regulatory tools.]

No Discussion

STATE & MUNICIPAL WATER/WASTEWATER CONNECTIONS

[**Exemption for Municipal System Water & Sewer Connections.** To reduce the cost and time to permit housing development within areas served by water and sewer infrastructure, this section proposes to exempt residential water and sewer connections from state permits unless the Secretary of the Agency of Natural Resources finds that the municipality does not meet certain criteria.]

Matt Chapman: Background for this proposal – when universal state jurisdiction over state water and wastewater permitting was established, partial delegation of permitting to municipalities was enabled. But there turned out to be a number of barriers and impediments to municipalities taking this step. So the goal now is to come up with a way for communities to meet minimum criteria to qualify for an exemption from state permitting for new housing units where there is public water and wastewater service. Municipalities need to apply and require state technical standards for connections.

Bryan Redmond: Municipalities must be willing and able to register with the state, issue approvals and show compliance with state standards. Municipalities need to own the infrastructure and only single sewer service connections can be approved for a change of use or a single connection.

Matt Chapman: It's an opt-in process but not like delegation. Municipality just needs to document and file compliance with the state to qualify.

Karen Horn: The wastewater treatment plant is the most valuable asset a municipality manages, so they are very careful about how they run the facilities.

Kathy Beyer: Currently you have to get a state permit for public water connection. Would you still need to if you have a single building and it's more than 300 feet?

Chris Snyder: Really appreciate that DEC is making this change. But extension of a line for a fire hydrant will trigger a water/wastewater permit so that is still a concern as those can result in the longest permit delays.

Bryan Redmond: Yes, the public water supply permit for 500' extensions, etc. can't be changed easily as it is in the Water Supply Rule. The issue is pressure for the distribution system. But we will look into what it would take to change the rule if the municipality has the capacity to review and monitor it.

Matt Chapman: We will issue a draft with proposed language this week.

Written Comments: See below for more comments on Water and Wastewater Permits from Kevin Geiger, Evan Meenan, Chip Sawyer, and Katie Stuart-Buckley.

PLANNING & DEVELOPMENT ACT

Jacob Hemmerick: These changes to Chapter 117 are a tool for addressing housing needs by increasing opportunities for homes in walkable places. There's been nationwide awareness of the role residential zoning has played in segregation and increasing inequality in our communities. In some places, there are good reasons to require more land for homes (working land protection and ecosystem services) but this is less true where there is public infrastructure, which drives up cost. We need to align land use policies for investment in development-ready neighborhoods. Households are shrinking and we need more units in walkable places to accommodate them. This proposal targets locations with public water and wastewater services and is aimed at small-scale, infill development that take place incrementally. Municipalities that are welcoming can grow the grand list, improve efficiencies, maintain population, and improve community vitality. We know it is a challenging proposal for stakeholders that don't feel the housing pinch, and we know how tough local conversations about zoning and housing can be, as well as technical and wonky. We welcome your ideas.

[**Homes Within Reach.** This section revises the enabling law for local land use regulations to establish new baselines for inclusive residential regulation and development that expands housing opportunities. The changes target areas served by development-enabling water and sewer infrastructure.]

[**Municipal Plan Water & Sewer Map & Statements.** This change to the requirements for municipal plans, adds additional detail to the existing requirement to include a map and statement of present and prospective water supply and sewage disposal to help owners, investors, and community leaders and policy makers determine existing and future municipal water and sewer. Although a map and statement of water and sewer is already a municipal plan requirement, the information produced does not consistently address best practices on the identification of facilities, lines and service areas needed to guide coordinated enterprise and land use policies, regulations, and administration consistent with the provisions proposed below. Although this level of detail in maps is not necessary to implement later provisions for this chapter, including this information in municipal plans can lead to a more consistent and predictable regulatory framework for funding and development partnership within investment-ready areas.]

[**Municipal Plan Housing Element.** This section expands the scope of the municipal plan's housing element and program to state that it should account for all fair housing provisions in the Chapter, not only the accessory dwelling units.]

Written Comments: See below for comments on the municipal plan housing element from Kevin Geiger.

[**Limitations on Exclusionary and Discriminatory Practices.** Chapter 117's required provisions and prohibited effects section helps set a level playing field and statewide baseline for the equal treatment of housing. Historically and nationwide, housing has been subject to exclusionary and discriminatory practices by municipalities and interested parties (also known as NIMBYs); this section aims to extend greater equity and equal opportunity for housing. The proposed changes in each section are detailed below.]

[**Clarifying Accessory Dwelling Unit Flexibility.** This provision aims to reduce a common point of confusion about the accessory dwelling (ADU) statute below, which many interpret -- and copy into

municipal bylaws -- as a ceiling rather than a regulatory floor that can be made less restrictive by (F)(i). This change helps make clear that ADUs may not be subject to any higher standard of review than a single-family dwelling unit would be subject to, by no longer limiting ADUs to be one-bedroom or 30% of the size of the primary residence; such restrictions are reported to unnecessarily limit the production of accessory dwelling units, such as a small house on a large lot that cannot build an adequately-sized and modest ADU, while a significantly larger home on the same lot could. The proposal retains the flexibility for a municipality to be less restrictive than the baseline established above, such as not requiring owner-occupancy. It also clarifies that municipalities may regulate overnight accommodation and lodging distinctly from residential dwellings intended for long-term occupancy according to local conditions and needs. The use of accessory dwelling units, or any dwelling unit, as a short-term rental may be regulated by the municipalities to reflect local conditions and needs.]

Sharon Murray: Accessory Dwelling Unit (ADU) provisions were controversial when Chapter 117 was last overhauled and has been one of the most permissive statutes on ADUs in the country. These proposed provisions go further to allow an ADU to be a duplex, or another detached equivalent sized units on any property. This basically eliminates the concept of an “accessory” unit. Most zoning regulations define it as subordinate to the primary dwelling.

Kate McCarthy: The “accessory” spirit of an ADU needs to be retained.

Sandy Levine: Because this provision applies town wide, it creates an incentive for rural development and takes away incentives for centers. Focus the new incentives on the centers where you want development.

Hemmerick. This proposal would not affect the enabled potential of unit density that is already allowed in rural areas but would allow greater dimensional flexibility.

Karen Horn: Sewage is still a limitation in rural areas that rely on onsite disposal.

Sandy Levine: You only need to remove a bedroom to gain capacity for an ADU so that’s not a limitation to ADU development in rural areas.

Catherine Dimitruk: In the last Chapter 117 update, we advocated for duplex as single family but that didn’t pass. We now know that ADUs don’t work to provide more housing. Most towns require 2 parking spaces for all units including ADUs. Septic will continue to be a limitation to rural ADU development. With shrinking household size and the need for a variety of housing types, we should be open to allowing two dwelling units anywhere there’s an existing home or one unit is allowed, if land can support it.

Sharon Murray: There are fire code issues with ADUs, and we should make sure this proposal doesn’t conflict. For example, separate entrance doors may be required for ADUs.

Meagan Tuttle: There’s no need to mention second entrances for ADUs. We should give municipalities maximum flexibility to craft regulations that work.

Jacob Hemmerick. The entrance language was added to clarify that an ADU can be attached or detached.

Alex Weinhagen: Subordination needs to be there for ADUs. Focus on duplexes where you really want to incentivize housing.

Josh Hanford: What’s wrong with having another home on a lot where there’s already infrastructure? Look at what we have in place for our existing centers and do some hard work to bring more people to share the facilities and improve affordability.

Alex Weinhagen: Allowing more ADUs won’t break character of Vermont but be careful about doubling density in rural places as it could be detrimental. We should be leveraging existing assets vs. allowing development everywhere.

Catherine Dimitruk: Rural parts of communities also have services like school busses and EMS and need to address forest fragmentation issues.

Alex Weinhausen: There are plenty of hill roads where services are limited, school busses don't go, and density should be limited.

Erhard Manke: The Affordable Housing Coalition supports these provisions for ADUs. The ADU changes were controversial 2004, especially in communities that are impacted by university housing so anticipate opposition.

Meagan Tuttle: Burlington is currently doing its own ADU reform to allow greater flexibility and duplexes are allowed in residential districts citywide. With these proposed state provisions, the city would need to reduce lot size for duplexes to make it the same as for a single-family dwelling.

Sharon Murray: There are landlord tenant laws that discourage people from renting units within their homes. There are concerns that it is hard to evict people. Landlord tenant laws may be a larger barrier to ADU's than zoning.

Meagan Tuttle: Removing ADU barriers may not help as local homeowners considering ADUs are discouraged by the cost of development and the fire code requirements. ADUs cost \$100,000+ so it's important to offer maximum permitting flexibility.

Written Comments: See below for more comments on ADU provisions from Catherine Dimitruk, Tyler Maas, Kate McCarthy, Chip Sawyer, and Kevin Geiger.

[**Development of Pre-Existing Small Lots Served by Water & Sewer.** This provision would no longer allow a municipality to prohibit development of a pre-existing small lot with a narrow width or depth in areas served by water and sewer. It continues to allow a municipality to prohibit the development of existing small lots outside of areas served by development-enabling infrastructure. This recognizes that a small lot with narrow width or depth is neither unusual, nor undevelopable for infill served by water and sewer. Many such lots and buildings exist in Vermont's centers and go underutilized.]

[**New Inclusionary Housing Development Provisions.** This adds a new section to the Chapter's required provisions and prohibited effects that allows a municipality to opt-out of the proceeding provisions because of capacity constraints. Overall, these additions intend to ease restrictions on small-scale and efficient patterns of residential development focused on areas planned for and capable of accommodating incremental housing development in character with Vermont's traditional settlement patterns. They aim to expand opportunities for smaller lots, duplexes, by-right reviews of multi-unit projects, and reduced parking. Municipalities would continue to be able to regulate form, bulk, design, and performance standards to guide character. The flood hazard and fluvial erosion area bylaws would still apply and take precedence. The overall goal of the combined provisions is to enable efficient, small scale, and incremental housing development consistent with statewide goals.]

[**Quarter-Acre Lots Served by Water.** Water & sewer infrastructure is one of the most influential development-enabling infrastructure investments that federal, state, and local funds support. This section aims to expand opportunities to subdivide quarter-acre lots in areas served by municipal water if the applicant can obtain a water/sewer permit for the resulting lot(s). Since land and infrastructure are a significant contributor to housing cost, reducing the amount of land required per conveyable lot (and linear feet of pipe per lot) is intended to increase potential land supply and lower potential costs per unit of housing in areas with substantial public investment in infrastructure.]

[**Eighth-Acre Lots Served by Water & Sewer.** Similar to the prior section, these amendments aim to expand opportunities to subdivide eighth-acre lots in areas served by municipal water and sewer if the applicant can obtain a water/sewer permit for the lot(s). Because land and infrastructure are a significant contributor to housing cost, reducing the amount of land required per conveyable lot (and linear feet of pipe per lot) is intended to increase the potential supply of buildable land and lower potential costs per housing unit in areas with substantial public investment in infrastructure. An eighth-acre pattern of development is frequently cited in transportation planning as the baseline at which public transit becomes feasible; in fact, many public amenities and services become more efficient and affordable when minimum lot sizes decrease.]

[**Duplexes Served by Water & Sewer.** This provision aims to expand opportunities to develop a duplex on lots served by municipal water and sewer to the same extent as a single-family dwelling. Unlike Vermont's accessory dwelling unit provisions, this would not require owner-occupancy. Duplexes in areas served by water and sewer are intended as a method to grow small-scale housing

opportunities in areas with substantial public investment in infrastructure. Reviews by DHCD indicate that most low-density residential districts in Vermont already include duplexes as an allowed use, but many add costly land area requirements.

Written Comments: See below for comments on Chapter 117 provisions for places with sewer and water from Catherine Dimitruk, Kevin Geiger, Kate McCarthy, Chip Sawyer, and Alex Weinhagen.

[As-of-Right Standards of Review for Small Multi-Family. Many small multi-unit dwelling projects (four units or less) are unnecessarily subjected to discretionary standards and conditional use review, making approval less predictable and increasing opportunities for permit appeals based on subjective criteria. This provision intends to reduce discretionary reviews and exclusionary appeals by stating that where such small-multi-unit uses are allowed, a small multi-unit must be a permitted (as-of-right) – not conditional use – and may not be subject to a character of the area review. It would not impact underlying districts or density the municipality has established for multi-unit dwelling uses.]

Sharon Murray: Don't use the term "as-of right" as some courts have started to interpret it as meaning an exemption. There are other ways to say that a use is allowed.

Written Comments: See below for more comments on "as-of-right" from Kevin Geiger,

[50% Reduction of Min. Parking Required for Spaces Leased Separately from Dwelling Units Located Near Transit. Parking spaces cost between \$5,000 and \$25,000 to construct, and require additional funds to maintain (e.g. plowing, paving, striping, treatment of stormwater, landscaping, and more.). This provision is intended to make housing within a half mile of transit more affordable by allowing a developer to propose un-bundling residential unit rent from parking space rent. Under this section, un-bundling would allow a 50% reduction in minimum required parking, reducing the cost to construct and operate a housing unit. In other words, one residential parking space would count as two spaces for regulatory purposes if the proposed parking will be separately leased and the project is near transit. Un-bundling the cost of parking is intended to reduce parking demand and the overall cost of housing. It allows residents who do not want or need a parking space to have the choice not to subsidize free parking for other residents that the market would not otherwise require. It would not affect zoning districts without minimum parking requirements.]

Jessie Baker: This aims to further the use of shared used parking, and that should be encouraged. Parking space leases can be an appropriate market to create. A caveat, municipally owned parking spaces that may be leased are taxable. Taxing municipally owned parking spaces isn't going to help affordability.

Austin Davis: I think it would be easier for more shared use of parking. Under recent federal legislation, parking lease for employees by employers is now a taxable benefit. So I think you'll see the market shift in that direction, where you want to see more than one income coming in from a parking space.

Jacob Hemmerick: This is intended to help make housing units more affordable by eliminating the need for expensive parking.

Austin Davis: Need more incentives to encourage use of parking to generate income.

Meagan Tuttle: This is one of the underlying costs of housing but the administration of this proposed approach to limiting parking is too hard. Don't make towns have to deal with the question of whether units are leased or not.

Austin Davis: Housing located along transit lines could be a good option for reduced parking requirements.

Catherine Dimitruk: Linking parking requirements to transit lines is a problem as the lines change all the time. It won't be clear how to deal with numeric guidelines for towns that have already reduced their parking requirements.

Karen Horn: Education and technical assistance could be very effective for addressing parking issues. Don't include this type of statutory requirement.

Written Comments: See below for more comments on parking provisions from Chip Sawyer,

[**Opt-Out Provisions for Substantial Municipal Constraints.** This provision would allow a municipality to opt-out of the Inclusive Development requirements for justifiable constraints (such as lack of water/sewer capacity for development) by filing a report to the Department of Housing and Community Development for public posting and comment. The Department would review and report on the filings to the General Assembly in 2023. Opt-out reports would have to be updated upon each plan or bylaw amendment authorized by Chapter 117 to account for any change in situation.]

[**Opt-In Incentives.** Municipalities that have opted-in or are working to overcome constraints that prevent opting-in, will receive priority funding for water & sewer infrastructure grants and programs, Municipal Planning Grants, the Community Development Program, and Downtown and Village Historic Tax Credits.]

Written Comments: See below for comments on opt-out provisions from Catherine Dimitruk, Kevin Geiger, Kate McCarthy, and Chip Sawyer

[**Municipal Pre-Emption of Covenants Preventing the Furtherance of Public Interest.** The final addition to Chapter 117 recognizes that inclusive bylaws furthering important public interests can be undermined via restrictive covenants, conditions, or restrictions put in place by owners' associations. This provision would allow a municipality to adopt bylaws that permit land development otherwise restricted by private covenants, conditions, or restrictions in conflict with the goals of the Planning Act and duly adopted municipal policies. For instance, this provision would enable a municipality to pre-empt and permit accessory dwelling units within a development where the homeowner's association disallows them. This proposal mirrors legislation for renewable energy and energy saving devices statewide, which is known on the 'clothesline bill' because it prevents homeowners associations from banning clotheslines. Unlike the provisions above, this does not set a common standard, but grants new powers to the municipality to address private restrictions that may limit housing or may also relate to other municipal interests. It is not intended to affect the enforceability of any restrictive easements, such as conservation easements.]

Jen Hollar: Clarify whether this will affect conservation easements? Consider the housing subsidy covenants.

Jacob Hemmerick: This allows municipalities to permit ADUs despite a covenant against ADUs. Similar to legislation on clotheslines, but instead of setting a statewide standard, would extent new power to municipalities to set limitations.

Erhard Manke: Addressing covenants in this way could have unintended consequences.

Catherine Dimitruk: Municipalities don't manage covenants and shouldn't start.

Written Comments: See below for more comments on restrictions on covenants from Catherine Dimitruk and Alex Weinhagen.

NEIGHBORHOOD DEVELOPMENT AREA DESIGNATION

[**When Neighborhood Development Areas & River Corridors Overlap.** This provision amends the requirements for approval of a Neighborhood Development Area to allow for the inclusion of flood hazard areas and river corridors if the local bylaws include flood ready provisions (current law bars these areas from designation). The Agency of Natural Resources would collaborate with the Department of Housing and Community Development to review local bylaws as part of Neighborhood Development Area application process. The goal of this review is to ensure that: 1) new infill occurs outside the floodway, 2) new development is elevated or floodproofed above the base flood elevation, 3) development will not exacerbate fluvial erosion hazards, and 4) development is reasonably safe from flooding. This also relates to a companion provision in the tax credit section below to support flood-safe development.]

Chris Cochran: This is a change to the existing NDA designation. NDA involves a bylaw review process and while there's interest in the designation, not many towns have qualified as their bylaws don't meet the standards for walkable housing development. We

are working on the ‘Zoning for Great Neighborhoods’ guidance with sample bylaws to help municipalities qualify for designation. Currently there is no benefit for redevelopment of existing homes. That’s why we propose tax credits for be expanded to commercial buildings in neighborhoods and include funding for flood resilience for at-risk properties. We also propose to allow safe infill areas to be included in an NDA, where currently river corridors must be completely excluded from the NDA. DEC is working on the analysis to identify areas within urbanized river corridors that can be safely redeveloped.

Kate McCarthy: VNRC is in favor of extending tax credit benefits to NDAs and continuing to exclude River Corridors from NDAs. Homes should be in the safest locations. If we are investing limited funds – we should not encourage redevelopment in vulnerable locations.

Karen Horn: Only 25% of towns that have chosen to adopt River Corridor regulations. The state needs to re-look at the River Corridor requirements to make them more manageable.

Chris Cochran: This language is only about including locations that are safe for development and this is not about allowing development in all of the river corridor

Faith Ingulsrud: NDA’s currently exclude river corridors, but those boundaries cut through properties, so when an area is designated, the boundary can bisect parcels. This makes Act 250 jurisdictional decisions confusing and difficult. For an NDA like Manchester’s, where the river corridor runs through the center, much of the land excluded from the NDA currently is used as parking with armored banks along the river. These areas could be redeveloped without increasing flood vulnerability, and the already developed land nearest the river could be reclaimed for greater flood resilience when development takes place.

Billy Coster: We can manage land mapped as river corridors in urban channelized areas and take pressure off of those areas by allowing for flooding in other places along the river. This allows us to be more flexible in how we address redevelopment along river corridors in already-developed areas.

Kathy Beyer: River Corridors aren’t currently excluded from designated Downtowns so don’t require the exclusion for NDAs. The exclusion is not applied levelly across designations.

Austin Davis: A TIF district can be used to build flood resistant infrastructure

Written Comments: See below for more comments on removing exclusion of river corridors from NDAs from Catherine Dimitruk, Kevin Geiger and Kate McCarthy.

[**Density Eligibility for NDA.** This provision aims to clarify the density eligibility for neighborhood development area designation to resolve existing ambiguity about the program’s baseline density. It also links the program’s density calculation to Chapter 117’s proposed approach for smaller lots. The change establishes a baseline for conventional subdivision of quarter-acre lots and maintains the net residential density and average existing density standards. The deletion of density determination is addressed in an earlier section that assigns this duty to the municipal administrative officer.]

No Discussion

DOWNTOWN VILLAGE CENTER TAX CREDITS

[**Tax Credits for Neighborhood Development Areas (NDA) and Flood Resilience.** This provision includes changes explained in the Act 250 section above. This section explains a new benefit for the NDA designation: eligibility for downtown and village center tax credits to rehabilitate income producing buildings within NDAs. Currently, tax credits may only benefit qualified buildings located within state designated downtowns and village centers.]

[Tax Credits for Flood Proofing. This provision amends the tax laws to enable the designation benefits detailed above (including tax credit eligibility for NDAs). The most significant change expands eligibility of the benefits to include flood mitigation work within flood hazard areas where the National Flood Insurance Program's (NFIP's) floodplain management regulations are enforced and the mandatory purchase of flood insurance applies (tax credits are not a cash or grant; they essentially redirect income taxes owed to help pay the construction bills; for example, if your tax bill is \$10,000, a \$4,000 credit will reduce your tax bill to \$6,000). Flood mitigation projects would have to: 1) meet any applicable local flood hazard bylaw, 2) be certified by qualified professionals, and 3) meet historic preservation requirements if listed or eligible for the State or National Register. This amendment aims to encourage more building owners to relocate basement-level utilities to upper floors and elevate structures above base flood elevation. The tax credits could cover 50% of the qualified flood mitigation expenditures up to \$75,000.]

Josh Hanford: Are there any issues with expanding tax credits to homes within the NDA? This would add more competition for an already oversubscribed program. So we will need support for entire package including the funding.

Alex Weinhagen: Support this but recognize it's a limited pie. Many villages don't qualify so there's an equity issue: the credits shouldn't just go to the big towns. Consider reserving a bit more for designated village centers.

Meagan Tuttle: Levels of funding need to increase for all programs including the Municipal Planning Grants when more and more towns are receiving designation and become eligible for benefits

Michael Sirotkin: Is administration support tied to tax credit funding? If not, are small increases of \$200,000/ year workable?

Josh Hanford: We hope funding will grow as the eligible projects increase.

Kathy Beyer: Test it out first – find out what kind of applicants want tax credits. Perhaps offer 75% of downtown credits to existing eligible project and open up the rest to the newly eligible in NDAs.

Chris Cochran: It takes time to obtain NDA designation and even after that homeowners may take some time to prepare their projects. We are strategizing approaches based on our experience with the current designations.

Josh Hanford: We need to see reinvestment in housing stock in downtown neighborhoods.

Written Comments: See below for more comments on expanded tax credits from Kate McCarthy and Chip Sawyer.

VERMONT HOUSING INCENTIVE PROGRAM

[Vermont Housing Incentive Program (VHIP). This subchapter creates a new grant to leverage two-18 to-one/private-to-public cash funding for small-scale housing providers to pay for necessary code 19 improvements (including weatherization) when applied to vacant and blighted property. Providers 20 could qualify for up to \$7,000 per unit, up to four units, and 50% of the units would have to be rented 21 to households earning no more than 80% of area median income. It is modeled after a successful 22 housing partnership in Bennington, VT.]

No Discussion

MISSING MIDDLE HOUSING DEVELOPER AND LANDLORD TRAINING

[Local training and assistance is needed to ensure small scale developers have the skills to 8 use VHIP funding and Downtown and Village Tax Credits to improve the quality of rental 9 housing in downtowns, villages, and neighborhoods. An appropriation is proposed to create 10 a manual on becoming a landlord and to leverage non-profit partner funding to provide 11 training and coaching to

individuals, civic groups, lenders, and elected officials on ways to collaborate to build a supportive ecosystem for small-scale real estate development projects in their communities.]

No Discussion

BETTER PLACES CROWD GRATING PROGRAM

[**Better Places Crowdgranting Platform.** This new section establishes a special fund and 'crowdgranting' framework to leverage funding partner contributions and coordinate investments in 'placemaking' projects that activate and revitalize public spaces in Vermont's designated downtowns, villages, new town centers, and neighborhood development areas. DHCD would administer the crowd granting platform to provide matching funds for municipal and non-profit projects in public spaces.]

Richard Amore: This placemaking initiative is intended to create the funding and partnerships to activate public spaces like the Bethel better block and the origins of Church Street Marketplace. The Collaborative funders are meeting on Thurs at 1 PM to discuss this further.

Chris Cochran: The crowdgranting approach has been an incredibly successful model in other states, and Vermont foundations are interested in helping. Funding for projects is 1/3 state, 1/3 philanthropic and 1/3 local fundraising.

Josh Hanford: These are small projects with big impact and will help with downtown investments where we need attractions, get people interested and engaged in the community. It's a really small investment in keeping things vibrant to attract economic development and build local leaders.

Nancy Lynch: The Vermont Association of Realtors supports this and wants to be involved in funding projects.

Written Comments: See below for more comments on Better Places from Kate McCarthy.

OPPORTUNITY ZONE RENEWAL INCENTIVE

[**Opportunity Zone Capital Gains Exemption.** This provision would add an income tax exemption for capital gains for residential property located within a low-income census tract designated as an opportunity zone, if the property is sold to an owner-occupant. This would extend to opportunity zones a similar exemption that is only available to designated centers under the land gains tax exemption.]

No Discussion

Next Steps, adjourn

Josh Hanford: Thanked all for attending.

Chris Cochran: Please send detailed comments by email by Wednesday and we will incorporate them into the meeting notes. Our goal is to send you the draft notes by Thursday or Friday this week.

Karen Horn: Circling back to the Zoning for Great Neighborhoods, how about letting the towns that change their zoning keep their local school?

Alex Weinhagen: Please change compliance with these measures to 2022 – municipalities don't move that fast.

Written Comments

12/18/19

Kathy Byer, Housing Vermont

So far, our comments on the proposed legislation would be to retain the concept of priority housing projects; we believe that it is important to ensure, into the future, that housing in our downtowns and NDA's includes a mixture of affordability levels. We don't believe that the PHP exemption is the reason developers aren't building new housing in many communities around the state; the reason new housing isn't being built is the cost of construction, which exceeds the market value of a new home in many regions of the state.

We agree that more housing is needed, and towards that end, we would support an increase in the jurisdictional threshold for Act 250 for housing, from 10 units to 20 units. This change could apply only to towns of a certain size (over 2,000 in population?) and would not include ski areas.

Small builders around the state are triggered by Act 250 when they build 9 units, and once they start on a 10th unit, their small residential development is pulled into Act 250.

12/20/19

Catherine Dimitruk, Northwest Regional Planning Commission

Section 4460 changes

I have concerns as stated in the meeting: what if a municipality fails to take action? What if a development is failing to meet its current conditions? Who decides whether the issue is 'addressed by municipal regs?' I support the suggestion made at the meeting that this process should be driven by the District Commission/Coordinate rather than the municipality. The District Commission should discharge the permit only after finding that the municipal decision will continue to enforce applicable conditions.

NDA

I share DHCD's interest in making this exemption available to all. I do, however have concerns about potentially perpetuating socio-economic segregation by providing a blanket exemption without any concern for affordability. I propose a few ideas for consideration. Currently, there is a cap for projects in the NDA; what if the cap is left in place for projects that are not of mixed income, but there is full exemption with no cap for projects of mixed income? If all projects are exempted from Act 250, could there be a corresponding benefit for local review for mixed income projects? Examples include: requirement to allow the minimum NDA density with no ability to appeal based on density, any PUD in an NDA must be a permitted use, etc.

ADU, Duplex and Multi-family

The language is confusing- i.e. what does 'no additional review' actually mean? I suggest all of these be revised and make them clearer and more consistent with the language in other required provisions of statute.

Opt Out

Municipalities, if opting out, should be required to demonstrate that these same limits and constraints apply to approving any new commercial development as well.

Covenants

This could be a powerful tool to enable more housing options in established subdivisions. The language should be revised to make it clearer. Municipalities are not required to enforce covenants as part of zoning unless they are part of conditions of approval, and it seems odd to then require a municipality to pass a bylaw to wade into this area. Would it be possible for statute to simply override covenants without requiring a bylaw to be passed by municipalities? Sometimes municipalities make covenants part of a condition of approval. How will this affect those decisions? Would municipalities need to re-open each application?

NDA Flood Hazard

'adequate by ANR' and 'otherwise reasonable protected' seem very vague and open for potential conflicts.

12/18/19

Kevin Geiger, Two Rivers-Ottawaquechee Regional Planning Commission

- Page 12, I support the idea of removing ANR permitting on public water and sewer hookups on existing systems in general, and also removing any ANR fees for such. This seems a task that municipalities are already doing, and so I don't see the advantages of duplication.
- Page 15, 4382(a). I see no need to keep the "may" in the first sentence. Let's return that to a "shall". In subsection (10). The "should" in the second sentence perhaps could be a "shall" as well. Also, many RPCs, us included, do not do a good job of identifying the housing need as called for in this section. This could be rectified as follows," 4348a(a)(9) of this title. Where such housing needs have not yet been identified by the regional planning commission in the regional plan, the regional planning commission shall supply this to the municipal planning commission during the development of the municipal plan."
- Page 17, The enabling of ADUs is very permissive now and allows towns the ability to loosen them up as much as they want, so long as it is still and ADU. I fear this provision goes beyond ADUs, and simply allows a second "complete unit" which could be as large of a house as desired. The argument that we should put more houses where they exist already assumes, they are not in dumb places, and many are. There is no need to wantonly double such density. I would suggest keeping the first language suggested as an addition in 4412(a)(1)E in the bill, but not keeping the strikeout changes to what is an ADU. I think the additions and strikeouts in F are fine. One quirk that could be addressed that is not is that right now the main building is the owner-occupied one, and the ADU is not. Technically, if someone were to make a nice accessible ADU and then move into it themselves and rent out the house that no longer fits them, that is not an ADU and likely an instant zoning violation. This might be fixed by amending E to read, "within or appurtenant to a ~~owner-occupied~~ single-family dwelling on an owner-occupied lot . . . "
- Page 20-21, (A) and (B), there are water systems that are not municipal systems, such as in Woodstock. Would those count under this provision?
- Page 21, last line. As others have said, delete any "as-of-right" language and just make these permitted uses. I am not sure that the language "of four or fewer" does not mean that a town can just do 3 or 2? If the intent is to allow MURs of four, then "up to four" may be better. Ask counsel.
- Page 23, it is not clear how a municipality opts out. I also think there should be some type of check on this. (2) could be clarified and tightened as follows," A municipality may ~~opt out~~ seek exception to the requirements of subsection (b) of this section, after an affirmative vote to do so by the legislative body, by complying with the following procedure. (A) The municipality must file a Substantial Municipal Constraint Report that the Secretary of the Agency of Commerce and Community Development finds, after a 60-day comment period, demonstrates the following:"
- Page 27, There are areas outside of FEMA-designated floodways that are still at risk of flooding now, and more so in the future. Some of these may be suitable for development if they are safe from lateral erosion and do not decrease flood storage or worsen flooding. To that end, I suggest amending the suggestion additional language in (5)(A) as follows, " . . . outside the FEMA-designated floodway, is elevated or floodproofed to at least two feet above base flood elevation, is not at risk from fluvial erosion given pre-existing channel protection measures in place, ~~or is otherwise reasonably safe from flooding,~~ does not result in net loss of flood storage, and will not exacerbate . . . "

12/17/19

Miranda Lescaze, Cathedral Square

Thank you for the opportunity to provide comment on the Department's proposed community investment package. We appreciate the Department's efforts to better address Vermont's housing shortage and to help revitalize communities. Cathedral Square (CSC) supports these efforts, with the

following comments:

- We are not in support of the proposed elimination of Priority Housing Projects in Designated Downtowns and Neighborhood Development Areas. Though we understand the Department's intent to incent all types of development in these planned growth areas through exempting them from Act 250 jurisdiction, the Priority Housing Project provision assures that such projects incorporate a small provision for inclusivity. Priority Housing Projects' inclusion of 20% of units for <80%AMI households is a modest threshold for residential developments. Though some municipalities have Inclusionary Zoning which would require incorporation of affordable housing in these areas, Inclusionary Zoning sometimes applies to only portions of downtowns or neighborhood districts, and some communities do not have Inclusionary Zoning at all. Thriving communities are mixed income communities. It is important that low- and moderate-income households are included in our planned growth areas.
- We recommend that the Department propose removal of the artificial caps on number of units for Proposed Housing Projects in those areas where Priority Housing Projects will remain. A number of factors including the high cost of land and high construction costs result in a minimum size for a development project to be financially viable. In addition to development cost feasibility, residential developments often need to be of a certain unit count to be operationally feasible. All sized communities, even communities of less than 3000 people, have a need affordable housing. We feel the current caps of 25, 50 or 75 units based on municipal population are an impediment to the advancement of well-planned, mixed income projects in these communities designated for growth.

12/16/19

Tyler Maas, Vermont State Housing Authority

Thank you for holding this meeting today, a lot of good ideas in the room.

In regards to ADUs, I am in support of the strikes and additions as drafted but would like to propose that (E)(i) line 13 on page 17 of 40 include septic systems so as not to give the wrong impression to folks not served by municipal sewer/water. Perhaps: 'The property has sufficient sewer or septic capacity' or 'The property has sufficient capacity to handle additional wastewater? There were a handful of non-sewer projects that I was a part of in the Brattleboro area.

12/20/19

Evan Meenan, Vermont Natural Resources Board

- Page 2, (line 15) - the phrase "or designated village center" should remain, but the phrase "that is also a designated neighborhood development area" should be deleted. This is to make sure that PHPs in village centers that aren't overlaid by a neighborhood development area still get special Act 250 treatment.
- Page 3, (line 7) - who is receiving notice? And how is that notice to be received?
- Page 3, (line 8) - In some situations, this may be different from lifting Act 250 jurisdiction over a parcel. for example if: (i) LUP 4C1234 is issued for a parcel; (ii) 4C1234-1 is issued for another project on the same parcel; and (iii) a 4460(f) permit is issued for that same project, then (iv) 4C1234-1 would be extinguished, but jurisdiction would still attach to the parcel by virtue of 4C1234.
- Page 8, (line 8) - might want to include any reporting requirements to the district commission. And instead of reporting to the commission, the permittee should report to the appropriate municipal panel.
- Page 8, (line 12) - This would mean that a municipality could impose conditions that are less restrictive than an Act 250 condition that folks litigated heavily for. Perhaps it could read

something like, "an issue that is address by municipal regulation. The panel may only remove a condition from a permit previously issued pursuant to 10 V.S.A. Ch. 151 pursuant to this subsection if it determines that the project will meet the municipal standards and if the panel imposes a condition that is at least as protective as the to-be-removed condition."

- Page 8, (line 19) - I think there is a numbering typo here.
- Page 9, (line 4) - there should be a requirement that NRB includes a final municipal decision in its database so there is a record of the change at NRB. this will also be helpful if the municipality ever loses its designation.
- Page 12, (line 20) - The NRB may have comments about this proposal if it going to include a new Act 250 exemption. At a minimum, the entire project that is going to connect to the water and sewer should not be exempt. Nor should this result in an exemption from the requirement that a developer demonstrate adequate water and sewer capacity. It would be very bad if a reduction in state regulation resulted in another incident like the PFOA issues in the southern part of the state.

12/19/19

Kate McCarthy, Vermont Natural Resources Board

Thank you for your work to put together a package to support more housing development in smart growth locations in Vermont – an effort we agree is key to Vermont’s economy, affordability, and environmental health. We believe that the package (referencing the draft titled “Draft_Language + Annotations –Community_Investment_Package_191210.pdf”) represents a useful mix of technical changes to planning statute, investment, and innovation, which together we hope will make housing development in our compact community centers more attainable.

As a follow up to the in-person meeting held December 16, 2019, we offer these comments to express our support for several specific elements of the package, but also to raise concerns about areas that we feel merit additional consideration and work.

Areas of concern

Exempting Downtowns and Neighborhood Development Areas from Act 250 review

Year after year, Act 250 has been subjected to incremental weakening through piecemeal exemptions like this one. We oppose this standalone exemption to Act 250; unfortunately, if this was included in a housing focused bill, VNRC would oppose the bill.

VNRC *does* support comprehensive Act 250 review that balances exemptions with greater protections in the outlying areas that are more sensitive to development. The work underway on Act 250 reform in the House Natural Resources Committee provides an opportunity for this balanced consideration, and we urge the Administration and lawmakers to consider this Downtown/Neighborhood Development Area exemption in the context of that discussion, not as a stand-alone Act 250 change.

Changes to how Accessory Dwelling Units are defined

We agree that accessory dwelling units (ADUs) add to the housing mix, help homeowners by providing an income stream, and are an important option for older Vermonters. While we support efforts to have more ADUs in our community, we oppose the proposed changes that eliminate the word “subordinate” and eliminate the limitation that ADUs be no larger than 30% of the primary residence. In effect, this allows two single family homes on a single lot. While we are not wedded to the 30% requirement, language should be retained to ensure that ADUs are subordinate in some way. This would ensure that the creation of ADUs remains consistent with the desired form in our compact centers and does not lead to the doubling of density in rural areas.

Allowing the inclusion of flood hazard and fluvial erosion areas within Neighborhood Development Areas

Neighborhood Development Areas (NDAs) provide an important way to encourage compact housing that supports our village and downtown economies while providing more housing choice. We want to ensure that housing receiving the benefits of this designation builds community resilience over the long-term. For that reason, we have serious concerns about removing the current language that disallows flood hazard and fluvial erosion areas from being included in NDAs. Even with the additional requirement that bylaws be reviewed to keep development out of the floodway, and that other development be floodproofed, we are concerned that this sends the wrong message about how our communities need to grow and change in an era of dramatically changing weather and climate events.

Maintaining accountability – opt-out provision for Substantial Municipal Constraints

We believe that municipalities who opt out of the Inclusive Development Requirements (the requirements to fully utilize water and sewer systems by allowing development at particular densities) must make a strong case for not participating in this measure. The process laid out in the proposed housing package appears designed to ensure adequate justification and accountability. We urge the Departments and Agencies involved to develop careful a definition of “Substantial Municipal Constraint” and to make sure that the internal resources are available to follow through so that this process is meaningful.

Areas of support

Promoting full utilization of sewer and water infrastructure

We applaud the Administration’s efforts to modernize Vermont’s zoning enabling statute so that we do not inadvertently discriminate against the range of housing types needed to help our communities thrive. Though we are still absorbing all of the details, in concept we support enabling legislation that requires lots served by water and sewer to be developed at minimum densities, as well as language limiting the application of conditional use to small-scale housing.

We note that today many communities achieve their form, design, and other objectives through conditional use review; without conditional use review as a tool, communities that do not currently address these objectives elsewhere will need to update their zoning to integrate these. To that end, we are pleased to see that there is priority technical assistance for communities working toward updating their regulations to comply with this section. We strongly support sufficient funding for this effort so that communities can comply successfully in a timely manner.

Downtown and Village Center Tax Credits

We have long supported the Downtown and Village Center Tax Credit as essential to maintaining and keeping buildings in our community centers in active use. We support the expansion of this program to Neighborhood Development Areas, and the inclusion of flood mitigation projects, under two conditions. One, flood mitigation projects should only be an eligible expense if Tax Credit funding receives and maintains a substantial increase. Second, consistent with our concerns above about allowing NDAs in flood hazard areas, we would not support using tax credits for flood mitigation for new construction in these areas if the NDA program were to change.

Better Places crowd-granting program

Since placemaking efforts improve the livability and appeal of our communities, make places more walkable and bikeable, support local businesses, and strengthen community identity, we strongly support this enabling legislation as a way to catalyze more of these projects.

We appreciate the Administration’s leadership on looking at a combination of land use planning, incentives, and new programs to support more smart growth housing development. We hope that our concerns can be addressed and look forward to continued conversation.

12/15/19

Chip Sawyer, City of St. Albans

For reference, the version of the proposals that I am using is the pdf file named *Draft Language + Annotations - Community_Investment_Package_191210*. I have some serious concerns about the

State preemptions of local planning/regulation that are included in the proposal, but I'll start with some other items first.

Act 250 exemption in 10 VSA Sec. 6081, on Page 2.

I have categorically supported the concept of partial or full exemptions from Act 250 for development in Downtowns and NDA's. These areas, especially downtowns, are well-suited to serve multiple forms of development and provide multiple supports to development review that can ensure compliance with State and local land use goals. I would just question whether this exemption could also be considered for designated Growth Centers, which are already supposed to serve more than half a community's development – a goal which would be well-served by removing the time and expenses associated with Act 250.

Transference of Act 250 permit conditions to municipal permits in 24 VSA Sec. 4460, on page 7.

This is an intriguing concept and one that I would like more time to consider. I realize it is probably a likely necessity of an Act 250 exemption.

Two initial questions:

1. Would an AMP be able to change permit conditions over time, as can be requested by applicants from time to time?
2. Would enforcement of Act 250 permit conditions be carried out as typical land use enforcement enabled in 24 VSA Chapter 117?

Exemption for Municipal Water and Sewer Connections proposed for 10 VSA Ch. 64.

I'm very interested in this concept but need more time to consider the details. I agree that there is potential for such a proposal to help address housing development issues in communities.

The proposed tax credits for NDAs and Flood Resilience, starting on page 29.

In general, I support any funding that could help to renovate and improve the existing housing stock in our City neighborhoods.

State Preemptions of Local Planning Processes

I have serious concerns about the new residential rules that are proposed by ACCD to be implemented across the board in my community without any regard for our local planning process. I recognize that bold action is needed to address the availability of housing in the State, and we in the City of St. Albans have been part of bold actions, such as our Congress & Main project which is part of a development partnership to bring 63 new affordable and market rate apartments to the downtown. Thus, our community is already responding to the issue with the most significant housing project ever in our community.

I was also looking forward to seeing the results of the Zoning for Great Neighborhoods Project, so that our City could consider the recommendations for implementation in our community after we were able to engage in a local planning process. I was dismayed to see many of the proposals included in the Draft Housing Legislation which seek to create change through State preemption of local planning, rather than partnership.

I realize that there may be areas of the Northeast US or even Chittenden County where the proposals to require allowance of 5,400 sq ft lots and allowing any single-family home to become a duplex might be seen as community-sensitive solutions to a housing shortage. But I cannot see how they are appropriate for the City of St. Albans, across the board, and I do not see that ACCD has put any effort into translating what these proposals may mean for the context of our community.

Please consider that the City of St. Albans has water and sewer service throughout, already allows single family homes on lots less than a ¼ acre, and we have no residential zone that prohibits duplexes. If further solutions are needed specifically in our community to address the State's shortage, we have not yet been given the time to address it through our local planning process. It is very possible that our City already has a functional *average* minimum lot size of 1/8 acre per unit when you consider residential districts and the denser mixed-used districts in our community. It is also possible that more could be done to match our land use regulations to existing land use densities or to allow increased residential densities when developers commit to rehabilitating the many historic homes that fill our neighborhoods. But these proposals are not giving us the chance to address these issues ourselves or to adjust changes to the many neighborhoods across our City. These proposals will also use up valuable administrative/planning resources as we are forced to pivot to a role of reacting to the ACCD's campaign rather than being able to focus on our local planning.

Professionally, I cannot support the proposals that I identify below as they currently written. Currently, I cannot recommend that our Planning Commission, City Council or legislators support them either. My Planning Commission and City Council have not seen these yet, but I do not predict that they will be viewed positively in the context of our community.

The Accessory Dwelling Unit “Flexibility” Proposal, starting on page 16.

I cannot support this proposed change as written in light of the fact that it would force my community to allow the conversion of any single-family home into a duplex without allowing us to hold any form of review. I cannot support a preemption that could have effects as far and wide as this across our City’s neighborhoods without holding any local planning process to support it. Furthermore, I would like to request that this proposal remove the term “accessory dwelling unit” from its terminology. It is currently misleading and should not be presented in a way that allows the reader to think that the proposal is only allowing an “accessory” apartment to be added to a single-family home. As written, this proposal would simply force my community to allow any single-family home to become a duplex.

Removal of ability to regulate small lots that are served by water/sewer, on page 18.

The development of a lot that is less than 1/8 acre in size or that is less than 40 feet wide is out of character with many of our community’s neighborhoods, which otherwise provide many different housing opportunities. This proposal would apply this rule across our entire community without any local planning to support it. Furthermore, I am worried that someone could read this proposal to prohibit any other development standards that could *effectively* prohibit development on a small lot, such as setbacks. I hope to see clarification on that point.

Requirement to allow residential lots as small at 5,400 sq ft. starting on page 20.

This proposal would be a substantial change to our community’s residential regulations. It would impose a reduction of size of minimum lot size for single family homes by as much as 43%. When combined with other proposals being made by ACCD, it would impose a reduction of minimum lot size for duplexes by as much as 55% without any local planning process to support it. Furthermore, I am worried that someone could read this proposal to prohibit any other development standards that could *effectively* prohibit development on a 5,400 sq ft lot, such as lot coverage. I hope to see clarification on that point.

The Proposed 50% reduction of parking requirement based on leases and transit stops, on page 22.

I understand the intent of this proposal, but I do not think the context for the idea’s success exists in my community. My concerns are thus:

1. This proposal goes too far in requiring our permitting office to oversee and regulate civil arrangements, such as leases. The requirement to monitor every instance when a tenant has changed at their apartment, get a copy of the new lease and verify that the lease SPECIFICALLY does not include a parking space would be burden that puts inordinate costs on administration and would likely require an additional fee structure.
2. What is the definition of “transit stop?” As a community that has a couple loose GMT routes that allow route diversions based on phone calls, nearly anywhere is a transit stop in our City. Not to mention the fact that the GMT routes change periodically. This could potentially put a property out of compliance with parking minimums if they are no longer within ½ mile of a stop.

The Opt-Out Provision, starting on page 23.

For what it’s worth, I don’t see our community gaining any peace of mind from having this provision as an option to get out from under a new set of State preemptions. This would require administrative/planning time that would be much better invested in local planning processes to devise community-context solutions to address State-identified needs. That is how I feel the ACCD-community partnership works best.

12/18/19

Katie Stuart-Buckley, M&S Development LLC

The language looks good. If we read it right, it allows muni’s to permit water/sewer municipal connections to their own systems without State approval. We like this! It takes the State out of it, as they are stretched thin. Downside is that each municipality may have a different process for review

and approval. This will present a learning curve for permitting consultants who will have to learn the process for each community they work in - not insurmountable. Pros greatly outweigh the con!

12/19/19

Alex Weinhalten, Town of Hinesburg and Vermont Planners Association

I'll do a more thorough review when it is introduced as a new bill or added to an existing bill. At the meeting, I gave some feedback on Act 250 permit condition transfer, accessory dwelling units, and extending the effective date. Here are a couple more preliminary comments:

- **Page 21 – Duplexes served by water & sewer** – I think the intent is good – i.e., require duplexes be a permitted use and treated with the same dimensional and density standards as a single-family dwelling. The proposed language is a bit opaque and could be improved to more clearly spell out the intent. Be sure to be clear whether it is simply dimensional standards that must be kept the same for duplexes, or if it is also density and lot size standards.
- **Page 25 – Municipal pre-emption of covenants** – The intent here is excellent! However, the proposed language is awkward. I recommend revising it to more clearly state that private covenants, conditions, and restrictions shall not restrict land uses and land development to a greater degree than is spelled out in municipal bylaws duly adopted pursuant to Chapter 117. This provision should also clarify that it retroactively applies to covenants, conditions, and restrictions already in place. As noted by others at the meeting, additional language is needed to carve out exceptions for conservation easements, affordable housing and resale restrictions, etc.