

February 02, 2024

Testimony Regarding Be Home Bill's Proposed Appeals Process and Key Additional Concerns





Testimony of the Vermont League of Cities and Towns

Ted Brady, Executive Director

Senate Economic Development, Housing and General Affairs Committee

Regarding BE Home Bill

February 1, 2024

My name is Ted Brady, and I am the Executive Director of the Vermont League of Cities and Towns, which represents all 247 cities and towns in Vermont. Thank you for asking me in to about elements of the "BE Home Bill" that would effect municipalities. While I won't be discussing a majority of the bill today, please know that Vermont's municipalities support the larger, state regulatory-focused nature of many provisions of the bill. Addressing our state's housing shortage can not be rested on the shoulders of municipalities alone. It will take federal, state and local collaborative action to ensure Vermonters have access to safe and affordable housing.

I understand the committee was most interested in hearing VLCT's perspective on the provisions of the bill addressing changes to the appeals process. I also want to share some concerns about provisions in the bill that preempt local decision-making authority that may be well-meaning, but pose concerns for many municipalities.



First, regarding the appeals of housing developments, I'm concerned this bill makes significant changes to what local land use decisions are appealable, how they are appealed, who can appeal and to whom they appeal to without making comparable changes to the Act 250 appeals process. A quick reminder that many of the "poster children" in favor of making changes to our appeals systems were cases of municipalities bending over backwards to make housing happen. In Woodstock and in Putney, towns changed their town plans, worked with developers, and said yes to affordable housing. Municipal land use processes were not the problem in these instances – it was citizens exploiting the Act 250 appeals process and the municipal appeals process. That said, many of these changes would likely work to support land use decisions planning commissions make through democratic processes, and as such, VLCT supports many of these proposed changes and has concerns about others:

- Section 15 changing the threshold from any 10 people to 10 percent of a municipality would create an appropriate balance between individual rights and the common good. Allowing any 10 people to appeal a decision has effectively voided voter-supported land use decisions in the interest of a super minority.
- Section 15 eliminating the ability to appeal the development of up to 25 units of housing, residential and mixed-use development that doesn't require conditional use review, and residential and mixed-use development in designated centers raises concerns about allowing by right development at a significantly larger scale than currently exists. Many municipal land use decisions are based on existing infrastructure and efforts to balance the property rights of an individual with the greater good. Such buildings will have impacts on existing residents – think about 24 unit buildings next to small homes, the impacts on light, traffic, and infrastructure. VLCT also believes that such projects should be exempt from Act 250 permits (and associated appeals) in part because municipal zoning processes and permit processes exist,



ensuring a public process. Eliminating the municipal process may undermine the concept of exempting these locations from Act 250.

- Section 16 regarding appeals bonds interests VLCT. We hear from a few communities every year that the will of their voters are challenged by individual frivolous appellants. VLCT is unfamiliar with how appeals bonds work in practice, but believe the idea has merit.
- Section 17 sets a timeline on appropriate municipal panels conducting land use reviews that will have unintended consequences, likely resulting in more denials. Changing the requirement that these panels issue a decision 45 days after the close of a hearing to 60 days after the submission of an application fails to recognize how these hearings play out. First, it can take weeks to assemble and notice a public meeting to ensure a quorum in present, eating up a significant portion of the clock before the panel decides if it needs additional facts. Second, members of these panels often ask developers to amend applications in the developers' interest of getting to yes. This back and forth can take weeks, and requires again assembling and noticing another public meeting. Instead of working with developers, I think this provision is likely to result in panels denying applications instead of working with applicants.
- Sections 24 and 25 regarding changes to the appeals process at the Environmental Court may reduce frivolous appeals and resolve appeals more quickly, but I am not an Environmental Court expert, and do not feel comfortable providing any testimony on the practicalities of making these changes.

In addition to our concerns about the permit processes and the appeals processes, I wanted to flag a few other concerns in the bill that would impact municipalities:

- Section 18 would further restrict a municipalities ability to regulate parking. Act 47 last year addressed limiting municipalities' ability to set certain parking spot requirements for housing developments. Tandem parking works, sometimes. Smaller parking spots work, sometimes. Using excess parking in an adjacent lot



works, sometimes. Municipalities need the ability to decide when these situations are appropriate and when they are not.

- Section 20 that would “upzone” every municipality with water and sewer from the requirement of 5 units per acre to the equivalent of 25 units per acre. Only last year Act 47 preempted local land use decisions to require fifth of an acre zoning. It is an over-simplification to assume that it would be appropriate to build 5 units on each of those fifth of an acre lots now.
- Section 21 appears to allow any hotel and motel to be converted to a permanent housing unit. Specifically, turning a 50-unit hotel into a 50-unit housing complex has implications for a community. It may increase school enrollment. It may increase the need for transit services. It may increase water and sewer consumption. It may increase the need for recreational infrastructure (hotel guests don't need parks or coaches). Our communities have first-hand experience with the unintended consequences of changing the use of certain structures without careful planning. Our short-term rental issue here in Vermont has had wide ranging impacts on communities. I think hotel conversions would also have a large impact.

I appreciate the committee's efforts to address our state's housing shortage. Municipalities are a willing partner at the table to solve our housing crisis. As such, I hope any actions you take will be with us, not to us.

I'd happily take any questions.

Attachments

[Testimony to Senate Economic Development, Housing and General Affairs Cmte](#)
[2024-02-01](#)

