

VPA Position Statement on H.863 as passed House 3/18/08

The Vermont Planners Association (VPA) strongly supports legislation that will generate affordable housing, particularly at this time of worsening economic conditions. To this end, VPA believes that the single most important component for the Legislature this year must be full funding for VHCB.

As part of measures that will directly or indirectly produce more affordable housing, VPA also supports balanced measures to avoid creation of sprawl. The Act 250 changes proposed reflect current practice, or what should be current practice relative to rural development, sprawl and strip development - - the revisions to criterion 9(L) are supported. Although on principle VPA does not favor exemptions from the review process for any class of development, we do not object to the new Act 250 exemptions for affordable housing as contained in H.863.

1. Support of DHCA and Downtown Program is Essential

VPA is very concerned that positions in the DHCA planning staff are unfilled and could remain unfilled - - The support for community and downtown planning is at roughly half of the staff FTE level that existed just a few months ago. Adequate staffing is very important to sustaining the Downtown Program as well as Vermont's nascent Growth Centers program.

There are at least nine communities actively working on Growth Center Designation applications, with at least three to four of these expected to be submitted this spring or summer, requiring much coordination by DHCA staff to shepherd them through the approval process. In addition there are about a half dozen towns seriously considering applying, with others interested in growth center planning, even if they are not interested in designation. All of these towns are asking for technical assistance from DHCA staff.

If H.863 is passed, with no funds to fill a full-time staff position in the DHCA Planning Division, the community planning program in the Division will be forced to terminate their land use planning activities (such as their current work on wastewater alternatives for villages), in order to maintain administration of the Municipal Planning Grants (MPG's), the Municipal Education/Board Training Grants (MEG's) and the Growth Center and New Neighborhood Programs. A huge loss will be no staff to maintain and coordinate the Land Use Education & Training Collaborative. This Collaborative took years to build up, both the working framework and citizen reliance on it, and it needs a coordinator that is invested but not conflicted with being a potential contractor for creating the materials. DHCA has been perfect for this role. There's a lot more that is lost by lack of participation by ACCD in other state agencies' planning: transportation, hazard mitigation, natural resources, initiating efforts on wastewater treatment, housing etc. Without planning staff there will be a loss in support for planners throughout the state, such as provision of workshops, directories, and communications. And there are other DHCA obligations such as the updated Chap 117 reprints and the Planning Manual, which won't happen.

VPA is recommending a funding level of \$100,000 to cover a full-time DHCA planning position and related support of these activities and for administration of the Growth Centers Program, not to mention a New Neighborhoods program. VPA believes that a necessary part of H.863 is an appropriation: "in the amount of \$100,000 to fill a position in the Community Revitalization and Planning Division of the Department of Housing & Community Affairs to staff the Growth Center and New Neighborhoods Program and to support the work of the Vermont Land Use Education & Training Collaborative."

2. Designation Application Process Must be Simplified

In Sec. 2 of the bill, Section 2793d (a): “A municipal decision to apply for designation shall be developed according to the procedures established in sections 4441 and 4442 of this title, with regard to the development by the planning commission of a proposed bylaw, and its adoption or rejection by the municipal legislative body.” This is the process for enacting a regulatory zoning ordinance, which is an unnecessarily complex process for a designation application. The decision to apply ought to be approved by a simple resolution signed by the Planning Commission and Select Board. We also believe that the process for a municipality to apply for Growth Center designation should be made consistent and likewise simplified. [This now reads, in 24VSA section 2793c (c) ...*Any decision to apply for growth center designation shall be made by vote of the municipal legislative body, subject to the process established under sections 1972 and 1973 of this title.*]

3. Eliminate Court Appeals of the VT Downtown Board.

The bill is proposing to make the new neighborhood designations appealable to the Vermont Environmental Court, by ANY individual neighbor or group of 10 or more citizens, duplicating the appeal rights that exist for these “interested persons” under Chapter 117 for local zoning approval of the very same development site. Perversely, H.863 reduces appeal opportunities in other aspects for Act 250 review, yet adds this appeal opportunity back.

The “State Board” (expanded Downtown Board) that approves designations of Downtowns, Villages, Growth Centers and New Town Centers under 24 VSA Chapter 76A operates like a grant-awarding board and has a track record of rigorous evaluation of designation applications that has thus far been achieved by 23 downtowns and 78 villages in Vermont. Thus far, in over 165 designations or renewal actions by the Board, only one has been the subject of an attempted appeal by VNRC in Williston, out of disagreement with the Downtown Board’s action for enlarging a local designation application boundary. H. 863 [Sec. 2 (a) (2)] specifically allows the Board to reduce locally-nominated boundaries and it expressly prohibits the Board from enlarging a boundary first proposed by the town. As if this were not discouraging enough for municipalities, adding the opportunity for court appeal will be cumbersome, costly and unnecessary for the designation process. It negates the encouragement intended, and needed, to get communities to plan for and establish designations that will become an incentive for needed housing development. The added procedures, such as more formal filings and legal costs,. would be a further drain on the limited resources of the DHCA, and would harm the Downtown Program, not to mention the added caseload burden on the VT Environmental Court.

Thus, the Vermont Planners Association is urging that Sections 10 through 14 of H.863 be eliminated.

4. The urban homesteading program idea deserves consideration.

Unfortunately this idea never was included in any draft of the bill as it evolved. It merits serious consideration. (See attachment – pp.4-5)

The VPA supports creative opportunities and financial incentives for renovation of underutilized upper floors of downtown and village buildings to establish residential units. The tax incentives proposed are well worth the potential benefits of creation of downtown living units and supporting the economic viability of downtown buildings.

5. Incentives for Growth Center and Neighborhood Designation Need Enhancement.

The bill should first make it much more encouraging for communities to do Growth Center planning and second, provide substantial incentives for Neighborhood designation. The incentives needed are to relieve both artificial physical limitations and to make real the financial incentives.

Some planners have expressed concerns that boundary standards are too restrictive and will not yield meaningful numbers of affordable and mixed housing units in Vermont communities. Finding developable housing sites without the removal of historic buildings that surround the cores of our towns and villages is difficult. Other planners fear that relaxing the contiguity requirement for Vermont Neighborhoods will act as a back door to the benefits of growth centers and remove the incentive for real growth center planning. A legislative solution should produce an outcome that actually results in the development of affordable housing while stopping short of rendering the growth centers program meaningless and opening the door to sprawl.

The financial incentives for growth centers are illusory, especially until TIF opportunities or enabling of greater local option tax revenues to host communities are provided by legislative action. Planning grant funds for this very purpose, first established in Act 200 with the property transfer tax and to be dedicated to the Municipal and Regional Planning Fund under 24VSA 4406 have been siphoned off over many years and planning support is at a low and inadequate level. The VPA realizes that these are tough budget times, but our source of funding for growth center and neighborhood designation planning needs restoration or replenishment.

To fail to fund planning support and to fail to enable local options for raising funds for housing and downtown improvements simply starves these objectives.

Proposed to be appended to H. 863:

Sec. ____ 24 V.S.A. CHAPTER 76C IS ADDED TO READ:

CHAPTER 76C URBAN HOMESTEAD PROGRAM

§ 406. PURPOSE AND CREATION OF THE URBAN HOMESTEAD PROGRAM

The Urban Homestead Program is created to provide a market for the creation and sale of unfinished, owner-occupied residential condominiums located on underutilized upper floors of mixed- use buildings, mill structures, vacant schools, and other like-structures by providing incentives to the end user in the form of a tax rebate. Building owners will benefit from selling the unfinished condominium units to the market this bill creates and will be responsible for providing the common systems and for the legal creation of the condominium units. A market of prospective purchasers will be created by the benefits provided by the Urban Homestead Program. Purchasers of the unfinished condominium units have the flexibility to finish and customize the interior of each unit to meet their lifestyle and work environment needs and will be exempt from the property transfer tax and receive a tax rebate equal to 24 times the amount of the exempted property transfer tax on the sale of the unit or \$10,000, whichever is less.

Participation in the Urban Homestead Program compliments the tax credit incentives provided by the Vermont Downtown Development Program but is not part of, nor subject to the limits of, that program. Participation in the Urban Homestead Program does not preclude participation in any other program administered by the Vermont downtown development board (“state board”) created by 24 V.S.A. § 2792.

The Urban Homestead Program is created and shall be administered by the Agency of Commerce and Community Development.

§407 Definitions

(a) “Qualified unit” means an unfinished, owner-occupied residential condominium located on the underutilized upper floors of a mixed-use building or in an underutilized mill, vacant school, and other underutilized structure that is located in a designated downtown or village center, as defined in 24 V.S.A. § 2791.

(b) “Qualified sale” means the sale of a qualified unit.

(c) “Underutilized” means a building or portion thereof permitted for purposes other than residential use prior to application for a reallocation under this section such that a change of use permit is required; or a building or portion thereof permitted for residential use but unoccupied for a period of not less than five years prior to application for reallocation under this section.

§408 Reallocation

Beginning in fiscal year 2009, the state board, established under 24 V.S.A. § 2792, may certify buildings in which qualified units are located for reallocation of the property transfer tax to the purchasers of qualified units. The amount of the reallocation is twenty four (24) times the exempted transfer tax which would have been levied on the sale of the unit or \$10,000, whichever is less, so that the total cost of the program shall not exceed \$280,000 in any fiscal year.

§409 Application Process

(a) The owner of a building in which qualified units are located shall submit to the state board an application for reallocation of the transfer tax to be generated by the sale of qualified units. The application shall include an estimate of the sale price for each unit; evidence of ownership of the building in which the qualified units are located; and certification that the building complies with all applicable permits and regulations.

(b) The state board shall review the application. If the application meets the requirements of this section and the requested reallocation does not exceed the unencumbered statutory limit set by this section, the state board shall approve the application and issue a reallocation certificate.

(c) Purchasers of a qualified unit shall claim their rebate by filing a copy of the reallocation certificate, together with proof of the actual sale price of the qualified unit and a declaration of homestead to the commissioner of taxes. At the time of purchase, a copy of the certificate shall be presented to claim exemption from the transfer tax.

§410. Recapture

If within three years after the date the state board has approved the property transfer tax reallocation to the applicant no claim has been filed with the commissioner of taxes, the property transfer tax allocation may be rescinded.