

Memo to the Joint Committee on Labor and Housing, re LD 2003, by Edward Ashley, Yarmouth, Maine, as an individual resident of Yarmouth March 7, 2022

Good morning- I am a retiree resident of Yarmouth, an active volunteer in many areas of planning, and ordinance review and drafting, and have worked closely with our Director(s) of Planning and Development over many years on issues such as shoreland zoning, open space preservation, bicycle and pedestrian planning, Complete Streets Policy, the adoption of Character Based Development Code, Comprehensive Plan implementation and historic preservation, as well as engaging in on-going project application review and commentary. I am an advocate for affordable housing, with personal experience with the issue, but have come today to counsel against adoption of LD 2003 in its present form, as being too draconian and broad in some of its proposed measures, even counter-productive in some respects, and failing of its desired purpose.

Section 1 of the Bill would make it illegal for a municipality to “restrict” the construction or development of housing accommodations in any area based upon criteria that refer to (among three phrases) the “character of a location.” It defines this phrase as meaning “the unique characteristics of a municipality or specific area within a municipality”. This language paints with far too broad a brush. I am particularly concerned with its potential impact on historic preservation measures, because that is arguably precisely what they do, but not with any pernicious intent to block or limit affordable housing. As an example, the Yarmouth Zoning ordinance, Ch.701, Article IX, Historic Building Alterations and Demolitions, includes language (emphasis added).such as:

“The objectives of (the ordinance) ... give thoughtful analysis to an assessment of the significance of a Building, and the contribution it makes to the **character** of the Town and its immediate area, neighborhood and streetscape, ... and to guide alterations ...to ensure that **historic character defining features** are preserved and protected, and that any new work is compatible with them.” and “a Building ... worthy of preservation, due to any of a variety of relevant considerations, including, without limitation, architectural, cultural, historical, or archaeological significance, contribution to an overall setting or streetscape, or **otherwise of a character defining a particular area, neighborhood or streetscape**, such that preservation would be deemed **important to the maintenance of the character of such area, neighborhood or streetscape.**”

Another example is our recent adoption of Character-Based Development Code (CBDC, Yarmouth Ordinances Ch.703) applicable to certain designated development areas in Yarmouth. The introduction to the CBDC states in part (emphasis added) that it is:

“ a type of zoning code that is intended to facilitate the predictable contextually-based planning and development of walkable mixed-use human-scaled places of **character**....The vision generated during the (public planning sessions leading up to the adoption of the CBDC) is for the protection and enhancement of the **historic character** of the Village, improved connectivity to surrounding neighborhoods, improved safety and transportation options for cyclists, motorists and pedestrians, and restoration and repair of the streetscape, ...”.

Further, Chapter 703 provides for creation of certain **Character Districts**, which is the name used for CBDC zoning districts. CBDC is said to be less concerned with the uses permitted in a designated area than it is with the appearance of that area, i.e., its character.

As you can see, the word “character” is part of the vocabulary of preservation and planning, and not in any exclusionary sense. Please eliminate the word ‘character’ from this provision. I see no evidence that its inclusion will cure any known existing problems in Maine, and the Legislature should proceed in accordance with the maxim of “First, Do No Harm.

Section 5 of LD 2003 would prohibit municipal growth caps totally, opening all of our towns up to unrestricted growth. How can this be a good thing? There may come a time in the life of every community where a breathing spell may be in order. This proposal does nothing to ensure that future growth includes affordable housing. The existing legislation which it would replace provides a measure for limiting the reach of growth caps based upon ascertainable metrics, but excluding affordable housing from its limiting effects. It goes on to provide that a minimum percentage of total allowed permits be for affordable housing, **which Section 5 would delete!** If the Legislature sees a need for adjusting the percentages set forth in Title 30-A, MRSA Section 4360, that should be easy enough to do. But to do away with growth caps totally for all residential development seems reckless and potentially harmful to towns under stress of unexpected growth. I am also concerned that this provision may be used (or intended) to bar short term moratoria; I do not know the drafter's intent on that. It is just too much interference with local governance dealing with local conditions. It should be deleted from the Bill.

I object strongly to Section 12 of the Bill, designating a Housing Development Permit Review Board with the authority to review municipal housing development permit decisions. This is too much of an intrusion on home rule. Further, there is no statement of the rules, standards or mechanics of such a review. We are supposed to be a government of laws, not of men/women. Our Planning boards are charged with applying and enforcing the provisions of our ordinances, based upon findings of fact. If an applicant is aggrieved by a decision of the Planning Board, there is recourse, to a board of appeals and/or, ultimately, the Superior Court. I have not seen or heard any evidence that this system has failed us. The lack of direction to this board is distressing, and rather frightening, leaving us open to the interjection of ideological and subjective views which should have no place in the process of administering our ordinances. What will happen when administrations change, and new appointments are made? Would there be a sea change in the pronouncements of this Board? This is a bad idea and should be rejected.

I urge you to make these changes to the Bill in committee, or send it back for a rework. Thank you for your attention.

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