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House Committee on Natural Resources, Fish, and Wildlife
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My Background:

- Act 250 District Coordinator for District 4 (Chittenden County), 1988 – 1997
- Chief Coordinator, Environmental Board/Natural Resources Board, 1997 – 2008
- Executive Director, Natural Resources Board, 2008 – 2016

The Road Rule

1. Part of the definition of “Development” in the Act 250 Rules (formerly Environmental Board Rules) at least since 1975.

2. Original language:

“The construction of improvements for a road or roads to provide access to or within a tract of land incidental to the sale or lease of land if the road is to provide access to more than 5 parcels or is more than 800 feet in length. For the purposes of determining the length of the road, the length of all other roads within the tract of land constructed within a continuous period of 2 years commencing after the effective date of this rule shall be included. (added, Revision 2, effective July 21, 1975)”

3. Road Rule was revised several times. The final version prior to its repeal was:

*“The construction of improvements for a road or roads, incidental to the sale or lease of land, to provide access to or within a tract of land of **more than one acre owned or controlled by a person. In municipalities with both permanent zoning and subdivision bylaws, this jurisdiction shall apply only if the tract or tracts of involved land is more than ten acres. For the purpose of determining jurisdiction, any parcel of land which will be provided access by the road is land involved in the construction of the road.** This jurisdiction shall not apply unless the road is to provide access to more than five parcels or is to be more than 800 feet in length. For the purpose of determining the length of a road, the length of all other roads within the tract of land constructed within any continuous period of **ten years** commencing after the effective date of this rule shall be included;”* (emphasis added)

4. Elements of the Road Rule:

- One acre/ten acre distinction, similar to other Act 250 jurisdictional triggers for “Development”; about half of Vermont towns are “one-acre towns”, half are “ten-acre towns”
- All land served by the road is subject to jurisdiction – not just the road itself
- Road must be greater than 800 feet in length OR serve more than 5 parcels

- 800 foot length is cumulative over 10 years
5. What did the Road Rule regulate?
 - 2-9 lot subdivisions served by a road
 - However, the Rule was part of the definition of “Development,” not “Subdivision”
 - Must be road construction to trigger the Road Rule
 6. Road Rule repealed effective July 1, 2001, pursuant to Act 40 of the 2001 Legislative Session.
 - Act 40 was a “permit reform” bill based on a Summer Study looking at ways to improve Act 250
 7. Act 40 added the following language to the definition of “Subdivision.”

“Subdivision” shall also mean a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into six or more lots, within a continuous period of five years, in a municipality which does not have duly adopted permanent zoning and subdivision bylaws.”

 - This section is still part of the definition of “Subdivision,” in addition to the 10-lot subdivision trigger for all towns
 - Addresses small subdivisions (6-9 lots) in “one-acre towns” that do not have both Zoning and Subdivision bylaws
 - Does not address smaller subdivisions (2-5 lots)
 8. Challenges of applying the Road Rule:
 - What is a road? Definition of “road”: a shared right-of way serving 2 or more lots (established by Declaratory Ruling)
 - How to measure the length of the road, e.g. when it ends in a cul-de-sac
 - Cumulative length provision required research and interpretation
 - Timing of road construction: roads/driveways constructed to serve single family lots or for non-subdivision purposes (e.g. logging) subsequently could be used to access subdivided lots in the future without “construction of improvements”
 - Applying Environmental Board and Supreme Court precedent
 9. Subdivisions were often designed to avoid the Road Rule, resulting in poor land use.
 - Subdivisions designed with long, sometimes side-by-side, driveways to avoid 800 foot road
 - 799 foot roads with long driveway extensions
 - Limiting number of lots served by a subdivision road resulted in more curb cuts on main roads
 - Goal was to avoid the Road Rule, not to achieve a well-planned subdivision