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Subject: [External] H.926/Road Rule Provision/Title Certification

[External]

Dear Members of the Senate Finance Committee,

I notice that Mr. Weiss has submitted comments, which are posted on the committee's webpage, concerning the proposal I presented to the committee on behalf of our client Connecticut Attorneys Title Insurance Corp. (CATIC) on August 26; namely, that ANR be directed to amend its application process for Waste Water and Water Supply permits so that applicants for those permits be required to state, in their application, the length of any new road associated with a project requiring a WW/WS permit, and that the ensuing WW/WS permit recite the length of any such road, as provided by the applicant.

Mr. Weiss states that the proposal is flawed for two reasons.

First, Mr. Weiss asserts that our proposal provides no mechanism to hold an WW/WS permit applicant accountable if a road turns out to have a length different than what was stated in the application.

At the outset it should be noted that when one applies for a WW/WS permit one must submit an application signed by the landowner. Environmental Protection Rules section 1-305(a)3).

However, beyond that it is always the case that there is a potential that a project, as built, differs from the information that was provided with an application for any permit required for the project. For instance, Act 250 permits routinely recite the final engineering drawings that were reviewed by a District Environmental Commission and a condition is routinely imposed in Act 250 permits that the project be built in accordance with

those drawings. There is no follow up mechanism that ensures that the project was in fact built in accordance with the drawings other than the fact that a permittee who deviates from the approved drawings is at risk of being subjected to an enforcement action.

Moreover, when an attorney issues a title opinion he or she is always basing their opinion on instruments, such as a WW/WS permit, that are on file in the relevant land records. The possibility that the land records do not reflect what is actually “on the ground” at the subject property always exists. As a result, title opinions always contain a disclaimer that they do not reflect anything that would require a physical inspection of the subject property. However, under Supreme Court case law an attorney must opine, based on his or her examination of the land records, whether a property is in compliance with Act 250. A requirement that a WW/WS permit show the length of a road puts an attorney in a much better position to render such an opinion. In the absence of such a requirement the attorney would have little, if any information of record that they can rely on in providing such an opinion. Simply stated, if accepted CATIC’s proposal, while not foolproof, is much better than nothing.

Secondly, Mr. Weiss points out that over time non jurisdictional roads, i.e., roads of less than 2,000 feet in length, may be added to with extensions and driveways which, cumulatively, make the roads on the property collectively longer than 2,000 feet. However, CATIC’s proposal, which has been agreed to by the Natural Resources Board and ANR/DEC, provides that the NRB is to issue guidance as to how the length of a road or roads should, for the purposes of the road rule, be determined. It then provides that in applying for a WW/WS permit an applicant is to use that guidance in stating the length of the road on the application. The fact scenarios Mr. Weiss cites can easily be addressed in the NRB’s guidance.

Accordingly, it is respectfully submitted that Mr. Weiss’s comments concerning CATIC’s proposal are misplaced and should not be the basis for rejecting CATIC proposal.

Thank you for considering the foregoing. If desired I would be happy to speak to the committee.

Sincerely—Chuck Storrow

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