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House Committee on Natural Resources and Energy
State House
Montpelier, Vermont

Subject: H.509 Act 250 jurisdiction in one-acre towns.

Dear Committee:

Thank you for taking this step to correct a discrepancy in Act 250 as interpreted by the Supreme Court. Before you pass this bill, please correct the remaining difference between 1-acre towns and 10-acre towns.

My understanding is that part of the Supreme Court's decision is based on the differences between the definitions of development for commercial and industrial purposes in 1-acre towns and 10-acre towns.. If this bill passes (or gets incorporated into some larger bill), it still will have a difference: the preposition "in" in one case and the preposition "within" in the other.

As an engineer, I have learned (through workshops and reading legal articles in engineering magazines) about writing and interpretation of contract documents. The principle with contract documents is to cover a topic only once. When one covers the same topic in different locations, and it is not exactly the same each time, then that leads to ambiguity. The courts interpret that as: if it is written differently, then each version must mean something different. And that appears to be part of the basis of the Supreme Court's decision. I acknowledge there is a difference between interpreting the meaning of contract documents and of statutes. However, I think that one should strive to avoid ambiguity in either situation.

If H.509 passes as introduced, it still contains a difference. The difference between "in" and "within" may seem small, but the two prepositions do have different meanings. And could lead again to different interpretations, particularly on the grounds that you intended to make them both the same and did not do that completely.

If the bill passes as written it will result in:

(3)(A) "Development" means each of the following:

- (i) The construction of improvements on a tract or tracts of land, owned or controlled by a person, involving more than 10 acres of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes **in** a municipality that has adopted permanent zoning and subdivision bylaws.
- (ii) The construction of improvements on a tract or tracts of land, owned or controlled by a person, involving more than one acre of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes **within** a municipality that has not adopted permanent zoning and subdivision bylaws.

I am not going to get into which preposition is correct or better. A case can be made either way. I suggest that the same preposition be used in both (i) and (ii), and based on the Court's decision, probably "in" is the one.

Please amend the bill to remove this remaining ambiguity.

Thank your for taking the time to read this letter.

Sincerely,
Thomas Weiss