



HOME BUILDERS & REMODELERS ASSOCIATION  
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*Your Home  
Is Our  
Business*

February 13, 2013

To: Senator Steve Cassano, Co-Chairman  
Representative Jason Rojas, Co-Chairman  
Members of the Planning and Development Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: **Proposed Bill 814, AAC Intervention in Permit Proceedings Pursuant to the Environmental Protection Act of 1971**

The HBRA of Connecticut is a professional trade association with about nine hundred (900) member firms statewide employing tens of thousands of CT's citizens. Our members, all small businesses, are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to our diverse industry and to consumers. While our membership has declined over the course of our seven-year Great Recession from its high of 1,500 members, we build between 70% to 80% of all new homes and apartments in the state each year.

**We support SB 814 as a vehicle to adopt the attached substitute language. As drafted, SB 814 picks up one of last year's versions but in response to discussions held by stakeholders last year we offer the attached substitute language.**

Background: CT's environmental intervention statute, sec. 22a-19, was and is intended to ensure that government agencies and commissions that review development proposals also properly address environmental issues within the jurisdiction of the body. Under this forty-plus year old law, adopted before most other environmental laws and not amended since, any person or organization can intervene or step into an application or into an appeal of a decision on an application to raise environmental issues.

**However, too many times this otherwise good environmental statute has been misused by intervenors to merely delay the final outcome of an application. Delay is the deadliest form of denial – and opponents of new development know it.** Without showing any evidence to justify their environmental claim, an intervenor can delay for months, even years, the final outcome of a development application. These *abusive* intervenors, i.e., those who simply do not want development of any kind or a competitor aiming to harm the success of another developer or their client, hope the extra time and costs will wear down the applicant so that they will give up and abandon a project.

In addition, knowing 22a-19 exists and how it has been misused, many developers do not even start certain projects. These potential economic and housing development projects create countless untold lost opportunities for Connecticut.

**Section 22a-19 must be amended with reasonable reforms to ensure intervention claims raise only legitimate environmental issues that would otherwise go improperly addressed. The attached substitute language does several things:**

- **Subsection (a)(1):** editorial clarification of existing law that is consistent with new subsection (a)(2);
- **Subsection (a)(2):** new section that codifies the Nizado State Supreme Court case from 2002, which requires an intervention petition to state specific factual allegations of the nature of alleged environmental harm, and the material facts upon which the intervention is based;
- **Subsection (a)(3):** creates a time within which intervention petitions must be filed to give the reviewing municipal or state agency time to deal with it; and
- **Subsections (c)(1) and (2):** these sections provide that, in order to have standing to appeal a decision by a local agency or commission, that entity/person appealing must have participated in the underlying process as an intervenor. This adds an element of certainty and efficiency to the appeals process and requires those parties who wish to appeal to become involved prior to approval at the local level. Specifically, (c)(1) allows an intervenor to appeal a decision; (c)(2) allows an intervenor to participate in an appeal brought by another party.

**Even with these proposed changes, necessary environmental protections will remain in place. The revised law will still provide those who wish to raise real environmental issues about proposed projects the ability to do so. However, the proposed changes provide clarity, certainty and efficiency to a process that can be bogged down by extraordinary delays that deter investment in economic, housing and job growth in Connecticut.**

**Please support the attached proposed substitute for SB 814 to put an end to the misuse of an otherwise good intentioned law.**

Thank you for considering our comments on this critically important legislation.

Attachment

**Proposed substitute language for SB 814**

New language is underlined; omitted language is in [brackets].

Sec. 22a-19 Administrative Proceedings.

1 (a)(1) In any administrative proceeding where a public hearing is required  
2 or held, and in any judicial review thereof made available by law, the Attorney  
3 General, any political subdivision of the state, any instrumentality or agency of  
4 the state or of a political subdivision thereof, any person, partnership,  
5 corporation, association, organization or other legal entity may intervene as a  
6 party on the filing of a verified pleading demonstrating [asserting] that the  
7 proceeding or action for judicial review involves conduct [which has, or which]  
8 that will, or that is reasonably likely to [have the effect of unreasonably polluting,  
9 impairing or destroying] unreasonably pollute, impair or destroy the public trust  
10 in the air, water or other natural resources of the state.

11  
12 (2) The verified pleading shall: (A) contain specific factual allegations  
13 setting forth the environmental issue that the intervenor intends to raise, and (B)  
14 state the material facts upon which the intervention is based in sufficient detail to  
15 allow the reviewing authority to determine from the face of the petition whether  
16 the intervention implicates an issue within the reviewing authority's jurisdiction.

17  
18 (3) In administrative proceedings to which statutory deadlines apply, the  
19 verified petition must be submitted within the requirements of the statutory  
20 deadlines applicable to accepting evidence or testimony, giving the agency  
21 involved adequate time to consider and rule on the petition. In court  
22 proceedings, verified petitions must be submitted within the deadlines that  
23 otherwise apply to pleadings in such proceedings. Petitions shall be rejected by  
24 administrative agencies or courts if not filed within the applicable time frames  
25 for such proceedings. Petitions rejected for untimely filing are not subject to  
26 appeal.

27  
28 (b) In any administrative, licensing or other proceeding, the agency  
29 shall consider the alleged unreasonable pollution impairment or destruction of  
30 the public trust in the air, water or other natural resources of the state and no  
31 conduct shall be authorized or approved which does, or is reasonably likely to,  
32 have such effect as long as, considering all relevant surrounding circumstances  
33 and factors, there is a feasible and prudent alternative consistent with the  
34 reasonable requirements of the public health, safety and welfare.

35  
36 (c)(1) The decision of an administrative agency may be appealed to  
37 Superior Court by intervenors whose petition to intervene in the underlying  
38 matter was granted by the agency.

39  
40 (2) In the case of an appeal to Superior Court from a decision of an  
41 administrative agency, a party may intervene in that appeal under authority of  
42 this section only if that party has successfully intervened in the administrative  
43 proceeding from which the appeal is taken.

