



**Testimony submitted by the Massachusetts Association of Conservation Commissions in opposition to S.841, *An Act Relative to Standing to File Certain Appeals in the Superior or Land Court***

**Joint Committee on the Judiciary  
January 11, 2012**

Thank you Chairwoman Creem and Chairman O'Flaherty, and members of the Joint Committee on the Judiciary for this opportunity to testify in opposition to S.841, *An Act Relative to Standing to File Certain Appeals in the Superior or Land Court*. My name is Linda Orel, Executive Director of the Massachusetts Association of Conservation Commissions (MACC).

MACC is a statewide organization that builds support for community conservation by working with Conservation Commissions, state agencies, legislators, the courts, nonprofits and the general public. MACC advocates for strong, science-based laws, regulations and policies; and assists relevant agencies in their outreach efforts and serve as mentor for partner groups.

MACC strongly opposes *An Act Relative to Standing to File Certain Appeals in the Superior or Land Court* because it would make it procedurally more difficult and expensive for abutters and abutters-to-abutters within 300 feet to challenge zoning relief and adverse zoning decisions on enforcement requests. Abutting landowners and their neighbors would be equally harmed whether individuals, commercial and industrial businesses, government agencies, nonprofit organizations, land trusts, religious institutions, utilities or farms.

The bill requires that a citizen landowner interested in appealing a local zoning decision first establish via expert affidavit that they are aggrieved and do so under an unreasonable deadline. A plaintiff

would have to hire an expensive technical consultant, such as a registered engineer, and the expert must file the affidavit within thirty days of filing a complaint in court. This new procedural requirement would make civil complaints more vulnerable to dismissal. Tactically, tardy plaintiffs waiting for expert affidavits would be at risk of filing late; and most defendants would challenge the sufficiency of an affidavit, such as, on the expert's qualifications or sufficiency of the statements. In effect, passage of this bill would engender a new type of unnecessary legal skirmish.

Moreover, the bill is vague and does not seem to address standing to challenge other zoning decisions like rezoning (Town Meeting process, constitutionality, uniformity, spot zoning), standing to sue directly to enforce zoning, or standing to appeal building permits, foundation permits or occupancy permits and actions of a zoning board of appeals.

Finally, the bill attempts to solve a problem that does not exist. Frivolous cases and appeals are quite rare in Massachusetts. Those frivolous cases that may be filed are already quickly dismissed as Massachusetts has some of the strictest standing requirements in the nation.

MACC strongly opposes *Act Relative to Standing to File Certain Appeals in the Superior or Land Court* because it would have a chilling effect on landowner's rights and is trying to solve a problem that does not exist. This bill would shift the burden so that prima facie aggrieved or presumptive status is eliminated for aggrieved landowners, and replaced with costly and burdensome conditions to otherwise appropriate appeals.

If you have questions, please contact Linda Orel, Executive Director, MACC at 617-489-3930 or [Linda.Orel@maccweb.org](mailto:Linda.Orel@maccweb.org).

Thank you for your attention on this important matter.