



Zoning Permits

Background

The issuance of a zoning permit is the primary administrative requirement for land development under a zoning bylaw. Under Chapter 117, ... *no land development may be commenced within the area affected by the bylaws without a permit issued by the administrative officer. No permit shall be issued by the administrative officer except in conformance with the bylaws* [§4449(a)].

The general administrative procedures for issuing zoning permits remain largely unchanged by Act 115, (2004 amendments to Chapter 117) with the important exception of the

Acting Administrative Officer

A municipality may appoint an "acting administrative officer" to fulfill all of the duties and responsibilities of the administrative officer in that person's absence. This is often necessary when an administrative officer is away on vacation or suffering from an extended illness.

Some larger municipalities appoint acting administrative officers to assist with day to day permitting responsibilities. The appointment is made according to the same process as that for an administrative officer.

To avoid confusion that may arise from two individuals sharing the authority to act on applications for zoning permits and enforce local bylaws, Chapter 117 [§4448(b)] requires communities to establish clear policies regarding the authority of the acting or assistant officer relative to the authority of the administrative officer.

expanded notification requirements that are intended to alert neighbors potentially affected by a proposed development. The processes for applying for and issuing zoning permits were revised to:

- require the posting of a "notice of permit" within view of the public right-of-way nearest the property subject to the permit application;
- clarify what constitutes an action of the Administrative Officer regarding a permit application;
- clarify that the local Legislative Body - rather than the Planning Commission - is ultimately responsible for appointing an Administrative Officer;
- require that when an acting or assistant Administrative Officer is appointed, clear policies must be in effect that address their authority relative to the Administrative Officer;
- provide that certain types of development considered to have minimal impact may be exempted from permit requirements.

Role of the Administrative Officer

The Administrative Officer, often referred to as the "Zoning Administrator," is responsible for processing and acting on zoning permit applications. Both the Planning Commission and Legislative Body (i.e., Selectboard, Trustees, Council or Aldermen) are involved in appointing an Administrative Officer. The Commission is responsible for nominating one or more persons to fill the position; the Legislative Body makes

the final appointment.

Administrative Officers are appointed for three-year terms and are subject to all personnel rules and policies of the municipality. They may hold other municipal offices, though they may not sit on a Board of Adjustment or Development Review Board. An Administrative Officer may be removed by the Legislative Body at any time for cause, but only following consultation with the Planning Commission.

As required under Chapter 117 [§4448(a)], an Administrative Officer *shall administer the bylaws literally and shall not have the power to permit any land development that is not in conformance with those bylaws.* Acting in this capacity, the Administrative Officer is usually the point person for dealing with applicants and anyone else with questions regarding the local regulations. While not specifically required, this role is clearly encouraged under Chapter 117 [§4448(c)]:

The Administrative Officer should provide an applicant with forms required to obtain any municipal permit or other municipal authorization required under this chapter, or under other laws or ordinances that relate to the regulation by municipalities of land development. If other municipal permits or authorizations are required, the administrative officer should coordinate a unified effort on behalf of the municipality in administering its development review programs. The administrative officer should inform any person applying for municipal permits or authorizations that the person should contact the regional permit specialist employed by the agency of natural resources in order to assure

timely action on any related state permits; nevertheless, the applicant retains the obligation to identify, apply for, and obtain relevant state permits.

The most important duty of the Administrative Officer is to receive applications for zoning permits, and to take action on those applications in the manner prescribed in Chapter 117.

Zoning Permit Applications

Any property owner wishing to undertake a development project, as defined in the zoning bylaw (see sidebar), is required to submit an application and any associated fees to the Administrative Officer. In addition to individual property owners, a municipality or a solid waste management district empowered to condemn property may also apply for zoning permits.

Often some application requirements are specified in the bylaw, however a separate application form is usually provided by the municipality, and should provide enough information for the Administrative Officer to determine whether a proposed development complies with all applicable bylaw standards. Application fees, set by the Legislative Body, may cover reasonable administrative costs, including the cost of posting notices and conducting hearings and inspections.

The Administrative Officer has 30 days to act on a complete application. Failure to act within 30 days results in the application being "deemed approved" on the 31st day. Act 115 clarified what constitutes "acting" on an application - the Administrative Officer may either issue a decision approving or denying the application, or refer the application to an Appropriate Municipal Panel (and Advisory Committee where appropriate)

in the event one or more development review approvals are required (see *Bulletin #9 Development Review Procedures*).

In issuing a decision on an application that does not require separate approvals, the Administrative Officer must determine that the proposed use or development conforms to all applicable standards and requirements of the bylaw. All permits issued by the Administrative Officer must contain a statement that the permit may be appealed within 15 days of the date of issuance.

A notice of permit, on a form prescribed by the municipality, must also be posted within view from the public right-of-way most nearly adjacent to the property until the time for appeal has passed. Most municipalities provide a placard emblazoned with a large red "Z," with information related to the permitted project and procedures for filing an appeal, for posting

Exemptions from Permit Requirements

"Land Development" is defined very broadly in Chapter 117. Consequently, minor construction and maintenance activities may be subject to permit requirements unless specifically exempted under local bylaws. To avoid unnecessarily burdening property owners (and staff), many communities exempt minor improvements to buildings and temporary or infrequent accessory uses from permit requirements.

Under Chapter 117 [§4446], bylaws may exempt "any land development determined to impose no impact or merely a de minimus impact on the surrounding area and the overall pattern of land development."

Minor driveways and landscaping, entry steps and handicap ramps, small fences, and yard and garage sales, are activities commonly exempted from permit requirements.

on the site. The exact form of the notice, however, is left to the discretion of the municipality.

In addition to requiring that a notice of the permit be posted within view of the nearest public right-of-way, within three days of issuing a permit the Administrative Officer must also deliver a copy of the permit to the listers of the municipality and post a copy of the permit in at least one place in the municipality - typically in the municipal offices - until the expiration of the 15 day appeal period.

Permit Applications under Proposed Bylaws

In order to balance the vested rights of property owners to apply for permits under the regulations currently in effect -with the ability of the community to amend bylaws and correct deficiencies in a timely manner, Chapter 117 [§4449(d)] makes special provisions for permit applications submitted during a bylaw adoption or amendment process (see also *Bulletin #4 Bylaw Preparation & Adoption*).

For a period of 150 days following public notice of the first public hearing of a Legislative Body (not the Planning Commission) on a proposed bylaw or bylaw amendment, the Administrative Officer must review any new application for compliance with the proposed bylaw or amendment, and all other applicable existing bylaws and ordinances. In effect, this allows the community to require compliance with proposed bylaws or amendments during the adoption process - provided that process does not exceed 150 days.

Chapter 117 further provides that: *...if the new bylaw or amendment has not been adopted by the conclusion of the 150 day period, or if the proposed bylaw or amendment is rejected, the permit shall be reviewed under existing bylaws and ordi-*

nances. An application that has been denied under a proposed bylaw or amendment that has been rejected or that has not been adopted within the 150-day period shall be reviewed again, at no cost, under the existing bylaws and ordinances, upon request of the applicant.

Certificates of Occupancy

In addition to zoning permits, Chapter 117 [§4449(a)(2)] authorizes communities to require that a certificate of occupancy be issued prior to the use or occupancy of any land or structure *created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure* that has been permitted under local bylaws.

A certificate of occupancy is an effective means of ensuring that a project has been developed in compliance with all applicable bylaw standards and permit conditions, including conditions imposed by one or more Appropriate Municipal Panels as a result of a development review process. Chapter 117 does not establish specific procedures for applying for or issuing certificates of occupancy. Bylaws should, however, describe:

- the manner in which certificates of occupancy must be applied for,
- whether an inspection of the property by the Administrative Officer is required, and
- the time in which a certificate will be issued or denied after receipt of the application by the Administrative Officer.

In some instances, such as with projects subject to conditional use or site plan review, certificates of occupancy may be discretionary in the event an Appropriate Municipal Panel requires a certificate as a condition of approval.

Effective Dates & Permit Expiration

Effective Date: Any decision or action of the Administrative Officer - including the issuance or denial of a zoning permit or notice of zoning violation - may be appealed to the Board of Adjustment or Development Review Board (*see Bulletin #9 Appeals*). If a zoning permit is appealed, it does not take effect until adjudication of the appeal by the Board is complete, and the time for filing an appeal of the Board's decision to Environmental Court has

expired.

If an appeal is filed with the Environmental Court, the permit does not take effect until the court rules in accordance with 10 V.S.A. §8504 on whether to issue a stay, or until the expiration of 15 days, whichever comes first.

Permit Expiration: Zoning permits "run with the land," meaning they remain binding on "successors and assigns" - people who may acquire the property in the future, after an approved project has been completed or established. Many communities, however, limit the period of time in which development activities authorized by a zoning permit must be undertaken. Chapter 117 does not provide any guidance regarding permit expiration, although expiration provisions in bylaws are common to allow new or amended regulations to apply to properties that have received prior approval but remain undeveloped.

Bylaws often specify that a project be "substantially commenced" (e.g., defined as the installation of a foundation, water and/or wastewater system) or "substantially completed" (e.g. defined as the completion of 50% or more of approved work) within a specified period of time - typically one or two years from the date a permit is issued. Many communities, however, also allow permit extensions of one or two years from the initial date of expiration, either by action of the administrative officer or an appropriate municipal panel, in instances where a project has been unavoidably delayed.

If not carefully defined and applied, permit expiration provisions can raise legal questions regarding the vested rights of landowners who have made significant improvements to their property. For this reason, these types of provisions should be reviewed by your municipal attorney.

Permit Recording Requirements

In addition to ensuring that the public is notified when zoning permits are issued, the Administrative Officer is also responsible for maintaining an accurate record of permits and decisions. According to Chapter 117 [§4449(c)], within 30 days after a municipal land use permit - which includes zoning permits as well as decisions of an Appropriate Municipal Panel - has been issued, or within 30 days of the issuance of any notice of violation, the "appropriate municipal official" shall:

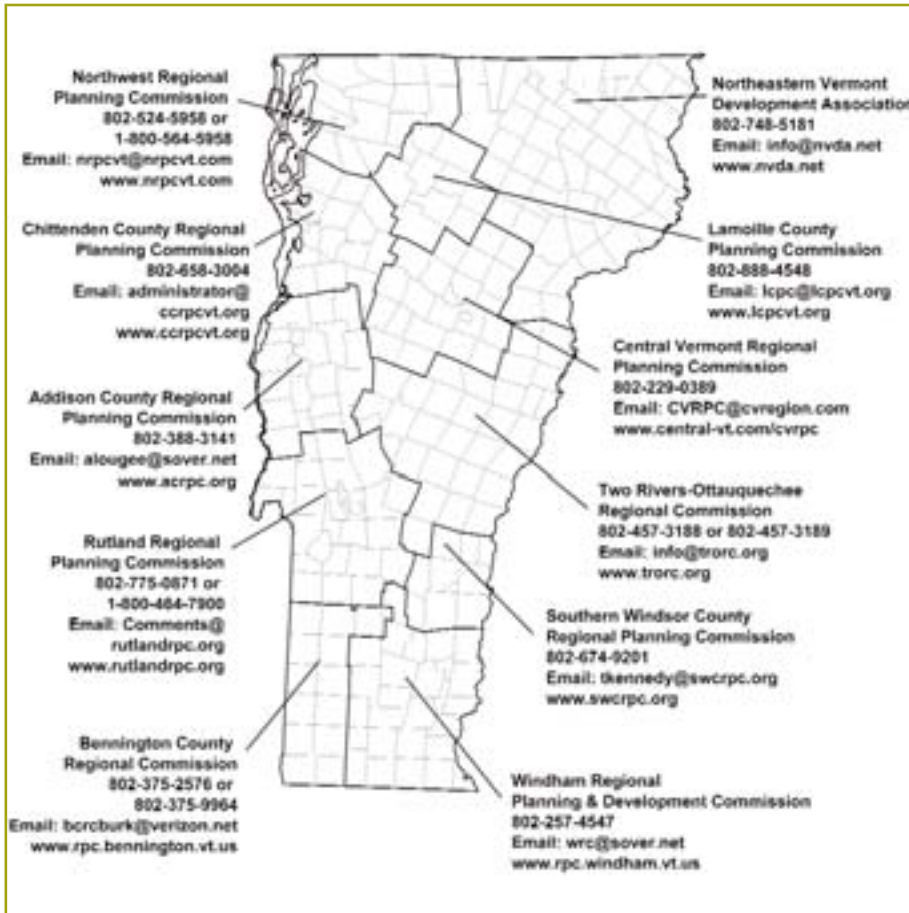
- deliver the original or a legible copy of the municipal land use permit or notice of

violation or a notice of municipal land use permit generally in the form set forth in subsection 1154(c) of this title to the town clerk for recording as provided in subsection 1154(a); and

- file a copy of that municipal land use permit in the offices of the municipality in a location where all municipal land use permits shall be kept.

The municipal officer - who is usually the Administrative Officer but may be the municipal clerk, a member of a local panel, or another staff person - may charge the applicant for the cost of the recording fees as required by law.

**Contact information:
Regional Planning Commissions**



Chapter 117 Bulletins

The following ten bulletins were published in November 2004 to provide information about the changes to 24 V.S.A. Chapter 117, the state statute governing local planning and regulation, enacted in 2004. These all are available through www.vpic.info and from the Education and Training Collaborative partners listed below.

1. **Chapter 117 Overview** (legislative intent and effective dates)
2. **Conformance with the Municipal Plan**
3. **Permissible Regulations**
4. **Bylaw Preparation & Adoption**
5. **Required Provisions & Limitations**
6. **Equal Treatment of Housing**
7. **Zoning Permits**
8. **Development Review Procedures**
9. **Appeals**
10. **Appropriate Municipal Panels**

Vermont Land Use Education and Training Collaborative

Working Together to Provide Improved Learning Opportunities for Vermont's Local Boards and Commissions

Questions about this bulletin and other chapter 117 materials produced by the Collaborative may be directed to the following members of the Vermont Land Use Education and Training Collaborative Steering Committee. For links to websites go to "About Us" at www.vpic.info.

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