VERMONT LAND USE
Education & Training Collaborative

Manual of Procedures
for Administration & Enforcement of Vermont Zoning Bylaws under 24 V.S.A Chapter 117

Updated October 2009 to revise presentation of §4465(b)(2)

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OVERVIEW

This manual provides sample language for the administration and enforcement of municipal zoning bylaws in Vermont. The administration and enforcement provisions are consistent with the *Vermont Municipal and Regional Planning and Development Act* (24 V.S.A., Chapter 117, hereinafter referred to as the Act), including substantial revisions that took effect on July 1, 2004.

Intended as a document to help municipalities in the drafting of local bylaws, this manual is not designed as a one-size-fits-all model for municipalities to adopt without careful consideration of local needs and circumstances. Partly for this reason, formatting, such as section numbering, was kept to a minimum. Sample language is located in the left column, with explanatory notes placed in text boxes to the right. The explanatory notes contain information related to one or more sample provisions in the adjacent column. Additional notes also are included in bold/italic/brackets within the sample language to highlight where a particular provision is optional, where a provision reflects common practice but does not reflect a specific statutory requirement, and/or where specification is required to reflect local preference. Explanatory notes should not be incorporated into local bylaws.

The document makes wide use of cross-referencing to applicable sections of the Act and to other relevant sections of the bylaw. Cross-referencing can be an effective way to inform readers of the statutory basis of the bylaw and to ensure that related provisions of the bylaw do not get overlooked. Statutory citations are included in appropriate locations throughout the sample text, and blank references to the related municipal bylaw provisions (i.e. see "Section __") are included to illustrate effective cross referencing.

Finally, this model integrates important statutory language into the sample bylaw language to ensure that everyone's rights and responsibilities are clearly explained. This approach to drafting bylaws is designed so that everything needed for bylaw interpretation and administration is in one place, under a single cover. An alternative approach is to prepare streamlined bylaws that adopt statutory provisions by reference, but do not include the specific language in the body of the text. This has the benefit of creating shorter bylaws – the political advantages of which can be significant. The downside, however, is that people using the bylaws, including applicants, local officials, neighbors and other interested persons, may not have easy access to state statutes. Consequently, some people may not be aware of their rights and responsibilities under Vermont law.

For additional assistance regarding the administration and enforcement of zoning bylaws, or preparing new or amended bylaws, contact your local Regional Planning Commission or the Vermont Department of Housing and Community Affairs Planning Division. Contact information is available through the Vermont Planning Information Center website: *www.vpic.info*.

This manual was prepared by Burnt Rock Inc., Associates in Community Planning, through a contract with the Vermont Department of Housing and Community Affairs with funding from Vermont Land Use Education and Training Collaborative

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MUNICIPAL APPOINTMENTS

Administrative Officer (Zoning Administrator).

The Legislative Body ***[Selectboard, Village Trustees, City Council, Board of Aldermen or Supervisor of an unorganized town or gore]*** shall appoint an Administrative Officer from nominations submitted by the Planning Commission for a term of three (3) years in accordance with the Act [§4448]. The Legislative Body may remove an Administrative Officer for cause at any time after consultation with the Planning Commission.

Municipal appointments include all appointments necessary to administer and enforce the bylaw – including the Administrative Officer (Zoning Administrator) and "Appropriate Municipal Panels" responsible for the review of development.

An acting Administrative Officer may be appointed by the Legislative Body, from nominations submitted by the Planning Commission, who shall have the same duties and responsibilities of the Administrative Officer in the Administrative Officer's absence. In the event an acting Administrative Officer is appointed, the Legislative Body shall establish clear policies regarding the authority of the Administrative Officer relative to the authority of the acting Administrative Officer.

The Administrative Officer shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect development, maintain records, and perform other related tasks as is necessary and appropriate.

[Optional] In addition, the Administrative Officer shall coordinate the municipality's development review programs. If other municipal permits or approvals are required, the Administrative Officer shall provide the applicant with necessary forms. The Administrative Officer may also inform any person applying for municipal permits or authorizations that they should contact the Vermont Agency of Natural Resource's Regional Permit Specialist to assure timely action on any related state permits. The applicant retains the obligation to identify, apply for, and obtain relevant state permits.

Planning Commission

The Planning Commission shall consist of not less than three (3) or more than nine (9) members appointed by the Legislative Body in accordance with the Act [§§4321– 4323]. At least a majority of members shall be residents of the municipality. Any member of the Commission may be removed at any time by a unanimous vote of the Legislative Body.

The number of Planning Commission (and other appropriate municipal panel) members is determined by the municipal legislative body (selectboard, trustees, council), provided it is within the range included in the Act. Some municipalities have found it useful to not specify the number of members in the bylaws to provide the legislative body with the flexibility to adjust the size of the panel to address changed circumstances without the need for a zoning change.

[Optional – For municipalities opting to elect their Planning Commission] The Planning Commission shall consist of not less than (3) nor more than nine (9) members elected for terms of one (1) to four (4) years as decided by a vote of the municipality in accordance with the Act [§4323(c)]. Vacancies shall be filled by appointment of the Legislative Body only until the next meeting of the municipality, at which time the voters shall elect a commissioner to fill the unexpired term. Elected commissioners may not be removed by the Legislative Body.

As an alternative to the appointment of a Planning Commission by the Legislative Body, Chapter 117 [§4323(d)] authorizes municipalities to "elect planning commissioners for terms of one to four years. The proposal to elect and the length of terms to be filled shall be determined pursuant to a duly warned article at an annual or special meeting of the municipality." If a municipality chooses to elect planning commissioners:

(1) The length and spacing of terms shall be decided by vote of the municipality.

(2) Elections shall occur only as terms are completed, or as vacancies occur, or as new planning commissions are created.

(3) Vacancies may be filled by appointment of the legislative body only until the next meeting of the municipality, at which time the voters shall elect a commissioner to fill the unexpired term.

(4) Elected commissioners may not be removed by action of the legislative body.

The Commission shall adopt rules of procedure deemed necessary and appropriate for the performance of its functions as required under the Act [§4323(b)] and Vermont's Open Meeting Laws. In accordance with the Act, the Commission shall have the following duties in association with these regulations:

- to prepare proposed amendments to these regulations, and consider proposed amendments submitted by others, including amendments submitted by petition (Section __);
- to prepare and approve written reports on any proposed amendment to these regulations as required by the Act [§4441(c)]; and
- to hold one or more warned public hearings on proposed amendments to these regulations, prior to submission of a proposed amendment and written report to the Legislative Body [§4441(d)].

[Note: In the event a municipality has not appointed a Development Review Board and has authorized the Planning Commission to administer one or more development review procedures, the following will apply.]

The Planning Commission shall adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct, as required under the Act [§4461(a)] and Vermont's Open Meeting Law. The Commission shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to hear and act upon: ***[Note: Specify all that are applicable, in addition to those listed above.]***

- applications for rights-of-way or easements for development lacking frontage (Section ___),
- applications for site plan approval (Section __),
- applications for subdivision approval (Section __),
- applications for planned unit development (Section __), and
- applications for design or historic review (Section ___).

All Appropriate Municipal Panels that act in "quasi-judicial" capacity (i.e., hear appeals and/or conduct one or more development review processes) are required to adopt rules of procedure, and also "rules of ethics with regard to conflicts of interest" [§4461]. Such rules may be adopted under bylaws, although most panels adopt rules of procedure and ethics as separate document(s) that are not subject to formal bylaw adoption or amendment requirements.

Board of Adjustment ***[Municipalities without a Development Review Board]***

The Board of Adjustment shall consist of not less than three (3) nor more than nine (9) members appointed by the Legislative Body for specified terms in accordance with the Act [§4460(b) and (c)]. The Legislative Body also may appoint alternates, for specified terms, to serve on the Board in situations when one or more members of the Board are disqualified or are otherwise unable to serve. Any member of the Board of Adjustment may be removed for cause by the Legislative Body upon written charges and after public hearing.

The Board shall adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct, as required under the Act [§4461(a)] and Vermont's Open Meeting Law. The Board shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to hear and act upon: ***[Note: Specify all that are applicable.]***

- appeals from any decision, act or failure to act by the Administrative Officer (Section ___), and any associated variance requests (Section __),
- applications for conditional use approval (Section __),
- applications for planned unit development (Section ___),
- requests for waivers from one or more dimensional standards (see Section __), and
- applications for design or historic review (Section ___).

The number of members of Appropriate Municipal Panels (including Board of Adjustments and Development Review Boards) is determined by the municipal legislative body (selectboard, trustees, council), provided it is within the range included in the Act. Some municipalities have found it useful to not specify the number of members in the bylaws to provide the legislative body with the flexibility to adjust the size of the panel to address changed circumstances without the need for a zoning change.

Development Review Board ***[Municipalities without a Board of Adjustment]***

The Development Review Board shall consist of not less than five (5) nor more than nine (9) members appointed by the Legislative Body for specified terms in accordance with the Act [§4460(b) and (c)]. The Legislative Body also may appoint alternates, for specified terms, to serve on the Board in situations when one or more members of the Board are disqualified or are otherwise unable to serve. Any member of the Development Review Board may be removed for cause by the Legislative Body upon written charges and after public hearing.

The Board shall adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct, as required under the Act {§4461(a)] and Vermont's Open Meeting Law. The Development Review Board shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to hear and act upon: ***[Note: Specify all that are applicable.]***

A development review board may be created at anytime by an act of the Legislative Body to perform the development review functions of both the Board of Adjustment and the Planning Commission. This has the benefit of providing "one stop permitting" and can help streamline the local permitting process. It also allows for adoption of "local Act 250 review" under municipal bylaws. Once a development review board is created, the Board of Adjustment is terminated. The Planning Commission, however, retains its responsibilities under the Act with regard to bylaw development and amendment.

- applications for rights-of-way or easements for development lacking frontage (Section ___),
- appeals from any decision, act or failure to act by the Administrative Officer (Section ___) and any associated variance requests (Section __),
- requests for waivers of dimensional standards (Section __),
- applications for site plan approval (Section __),
- applications for conditional use approval (Section __),
- applications for subdivision approval (Section __),
- applications for planned unit development (Section __),
- applications for design or historic review (Section ___), and
- Act 250 applications subject to local Act 250 review (Section ___).

[Optional] **Advisory Commission or Committee**

A _____ ***[Specify Type]*** Advisory Committee of not less than three (3) members shall be appointed by the Legislative Body in accordance with the Act [§4433(1)]. The Advisory Committee may be composed of professional and lay members with expertise in related fields, a majority of whom shall reside in the municipality. The committee shall adopt rules of procedure as it deems necessary and appropriate for the performance of its functions as required under the Act and Vermont's Open Meeting Laws. Records of Committee transactions shall be filed with the Municipal Clerk as public records. For purposes of these regulations, as authorized in the Act [§§4433, 4464(d)], the Advisory Committee shall have the authority to:

(1) review applications and prepare recommendations on each of the review standards within the Advisory Committee's purview (see Section ___) ***[Note: reference appropriate section(s) of the bylaw that include conservation, design, housing, historic preservation standards, etc.]*** for consideration by the Appropriate Municipal Panel at the public hearing on the application;

(2) meet with the applicant, interested parties, or both, conduct site visits, and perform other fact finding that will enable the preparation of recommendations; and

(3) inform applicants of any negative recommendations prior to the public hearing, and suggest remedies to correct identified deficiencies in the application.

Chapter 117 provides for the creation of advisory commissions or committees by municipal vote, through the adoption of bylaw(s) or, if allowed under a municipal charter, though an act of the Legislative Body [§4433]. Advisory commissions or committees include conservation commissions (as established under 24 V.S.A. Chapter 118) as well as historic preservation commissions, design review committees, and housing commissions. The powers and duties of each type of commission or committee are specified in statutes.

Advisory commissions or committees may be assigned a role in development review proceedings, as specified in the bylaw or by a resolution of the legislative body [§4464(d)]. Their function, however, is strictly advisory – they do not serve in a quasi-judicial capacity, nor may their recommendations be directly appealed to court.

ZONING PERMIT

Applicability

No land development as defined herein, which is subject to these regulations, shall be commenced in the **[Municipality]** until a zoning permit has been issued by the Administrative Officer, as provided for in the Act [§§4448, 4449].

Exemptions

No zoning permit shall be required for the following activities:
[Note: The following uses are exempted under §4413. Limitations on Municipal Bylaws.]

(1) Accepted agricultural (AAPs), including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets, in accordance with the Act [§4413(d)] and Section ___. Written notification, including a sketch plan showing structure setback distances from road rights-or-way, property lines, and surface waters shall be submitted to the Administrative Officer prior to any construction, as required for AAPs. Such structures shall meet all setback requirements under these regulations, unless specifically waived by the Secretary.

(2) Accepted management practices (AMPs) for silviculture (forestry) as those practices are defined by the Commissioner of Forests, Parks and Recreation, in accordance with the Act [§4413(d)].

(3) Power generation and transmission facilities, which are regulated under 30 V.S.A. §248 by the Vermont Public Service Board. Such facilities, however, should conform to policies and objectives specified for such development in the Municipal Plan.

(4) Hunting, fishing, and trapping as specified under 24 V.S.A §2295 on private or public land. This does not include facilities supporting such activities, such as firing ranges or rod and gun clubs, which for the purposes of these regulations are defined as outdoor recreation facilities [or other use].

[Note: The following are examples of commonly exempted uses, although they are not mandated by statute – see sidebar.]

(5) Subdivisions of land that require subdivision approval under Article __. ***[See sidebar]***

Additional exemptions that are not expressly addressed in the Act may be appropriate in many communities. 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." Commonly exempted activities provided as examples in this model may or may not be appropriate for local adoption. Planning Commissions and municipal staff should carefully consider potential exemptions, including associated dimensional standards, in relation to current practice and what is considered appropriate for the municipality.

(6) Normal maintenance and repair of an existing structure which do not result in exterior alterations or expansion or a change of use.

(7) Interior alterations or repairs to a structure which do not result in exterior alterations or expansion or a change in use.

(8) Exterior alterations to structures which are not located within designated design review districts and which do not result in any change to the footprint or height of the structure or a change in use. Exterior alterations to structures within a designated design review district may be subject to design review under Section ___.

(9) Residential entry stairs (excluding decks and porches), handicap access ramps, walkways, and fences or walls less than four (4) feet in height which do not extend into or obstruct public rights-of-way, or interfere with corner visibilities or sight distances for vehicular traffic.

(10) Minor grading and excavation associated with road and driveway maintenance (e.g., including culvert replacement and resurfacing), and lawn and yard maintenance (e.g., for gardening or landscaping), or which is otherwise incidental to an approved use. This specifically does not include extraction and quarrying activities regulated under Section __.

(11) Outdoor recreational trails (e.g., walking, hiking, cross-country skiing and snow mobile trails) which do not require the installation of structures or parking areas.

(12) Small accessory buildings associated with residential uses which are less than 64 square feet of floor area and less than eight (8) feet in height, and are not located within required setback areas. ***[Note: may also include limit total number of exempted structures.]***

(13) Signs, approved in accordance with Section __ **[or the municipal sign ordinance]**, which are not located in a designated design review district. Signs within a designated design review district also may be subject to design review under Section ___.

(14) Garage sales, yard sales, auctions, or similar activities that do not exceed three (3) consecutive days, nor more than twelve (12) total days in any calendar year.

Land development, as defined in the Act [§44303(10)] includes "the division of a parcel into two or more parcels." Because the Act stipulates that "no land development may be commenced … without the issuance of a zoning permit" [§4449], many communities – especially those that have adopted subdivision regulations or unified bylaws – specifically exempt subdivisions from zoning permit requirements. A reason for this is the common practice of including an expiration provision for zoning permits in the event the permitted development has not been substantially commenced within a one or two year period (see Effective Date provisions below). Once an approved subdivision plat has been recorded, however, the Act states that no expiration shall be applicable regardless of whether the subdivided lots have been further developed [§4463(b)]. Explicitly exempting subdivisions from zoning permit requirements avoids the potential for confusion. If such an exemption is not included, a note indicating that an approved and recorded subdivision plat is not subject to permit expiration requirements should be included under the effective date provision.

Application

Application Requirements. An application for a zoning permit shall be filed with the Administrative Officer on form(s) provided by the municipality. Required application fees, as set by the Legislative Body, also shall be submitted with each application. In addition, the following information will be required as applicable: ***[Note: modify as appropriate.]***

Permitted Uses. Applications for a permitted use shall include a sketch plan, no smaller that 8.5" x 11", drawn to scale, that depicts the following:

(1) the dimensions of the lot, including existing property boundaries,
(2) the location, footprint and height or existing and proposed structures or additions,
(3) the location of existing and proposed accesses (curb cuts), driveways and parking areas,
(4) the location of existing and proposed easements and rights-of-way,
(5) existing and required setbacks from property boundaries, road rights-of-way, surface waters and wetlands,
(6) the location of existing and proposed water and wastewater systems, and
(7) other such information as required by the Administrative Officer to determine conformance with these regulations.

Uses Subject to Development Review. For development requiring one or more approvals from an **[Appropriate Municipal Panel]** prior to the issuance of a zoning permit, application information and fees as required for such approvals shall be submitted concurrently with the application for a zoning permit and referred to the Secretary of the **[Panel]**.

Flood Hazard Area Approval. Any application for development within the Flood Hazard Area Overlay District shall include copies of application information as required for referral to the Vermont Agency of Natural Resources, the Federal Insurance Administrator, and adjacent municipalities in accordance with the Act [§4424(D)] and Section ___.

Municipalities should define what materials comprise a complete application for a zoning permit. At a minimum, applications should include sufficient information upon which the Administrative Officer may determine whether a proposed development complies with applicable zoning standards. The bylaw may reference an application to be provided by the municipality, describe the information required, or a combination of the two (as provided in the model language).

In addition, development review procedures (e.g., conditional use, subdivision review) typically necessitate additional materials that are not required for a basic zoning permit application (such as a site plan or subdivision plat). Those requirements should be defined in the applicable section of the bylaw.

Municipalities that have not established Development Review Boards or otherwise eliminated the need for individual projects to undergo multiple review processes (e.g., site plan and conditional use review) should provide a mechanism for concurrent review. Under the Act [§4462] "(i)f more than one type of review is required for a project, the reviews, to the extent feasible, should be conducted concurrently." Regardless of whether concurrent review is "feasible," the sequence of various review procedures and the subsequent issuance of decisions must be defined within the bylaws.

Issuance

A zoning permit shall be issued by the Administrative Officer only in accordance with the Act [§4449] and the following provisions:

(1) Within thirty (30) days of receipt of a complete application, including all application materials, fees, the Administrative Officer shall act to either issue or deny a zoning permit in writing, or to refer the application to the **[Appropriate Municipal Panel]** and/or state for consideration. In accordance with the Act [§§4448, 4449], if the Administrative Officer fails to act within the 30-day period, a permit shall be deemed issued on the 31st day.

(2) No zoning permit shall be issued by the Administrative Officer for any use or structure which requires the approval of the **[Appropriate Municipal Panel]** or Legislative Body until such approval has been obtained. For permit applications that must be referred to a state agency for review, no zoning permit shall be issued until a response has been received from the state, or the expiration of 30 days following the submission of the application to the state**.**

(3) If public notice has been issued by the Legislative Body for their first public hearing on a proposed amendment to these regulations, for a period of 150 days following that notice the Administrative Officer shall review any new application filed for compliance with the proposed amendment and applicable existing bylaws. 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 all applicable provisions of this bylaw [§4449(d)].

(4) A zoning permit shall include a statement of the time within which appeals may be taken under Section __; and shall require posting of a notice of permit, on a form prescribed by the municipality, within view of the nearest public right-of-way until the time for appeal has expired.

(5) The Administrative Officer, within three (3) days of the date of issuance, shall deliver a copy of the zoning permit to the Listers; and shall post a copy of the permit in the municipal offices **[or other designated public place within the municipality]** for a period of fifteen (15) days from the date of issuance.

Most state agency referral requirements were eliminated with Act 115, although development within a flood hazard area still requires referral to the Floodplain Management Section of the Vermont Department of Environmental Conservation. Municipalities also may want to retain or include other referrals (e.g., for wetlands, highway access approval) as specified in the bylaw. At a minimum, the Administrative Officer should advise applicants to contact the Agency of Natural Resources regional permit specialist to determine whether any state permits are required [§4448(d)].

Under Chapter 117, zoning permits must "require posting of a notice of permit, on a form prescribed by the municipality, within view of the nearest public right-of-way until the time for appeal has expired." Not only should this requirement be stated on the permit, but the Administrative Officer should provide suitable "notice of permit" to the permittee – for example a weather resistant cardboard placard, often emblazoned with a red "Z" – for posting on the site. The permit may also stipulate who is required to physically post the notice (typically the permittee), and the duration in which it is to remain posted (from the date of issuance until the 15 day appeal period has expired).

Effective Date

No zoning permit shall take effect until the time for appeal under Section __ has passed, or in the event that a notice of appeal is properly filed, until final adjudication of the appeal.

[Optional] Zoning permits and associated approvals shall remain in effect for __ year(s) from the date of issuance, unless the permit and associated approvals specify otherwise. All development authorized by the permit shall be substantially commenced within this __-year period or reapplication and approval shall be required to continue development. The Administrative Officer may administratively renew a permit for a period not to exceed one (1) additional year upon finding that there was reasonable cause for delay in the start of the development.

Often permits remain in effect for one or two years from the date of issuance, as specified in the bylaw. If no expiration is specified, however, they run with the land. Setting an expiration date allows reconsideration of development on a previously approved lot that remains undeveloped where applicable bylaws have changed in the interim. "Substantially commenced," however, should be clearly defined in the bylaw in relation to the vested rights of the property owner.

CERTIFICATE OF OCCUPANCY *[Optional]*

In accordance with the Act [§4449], a certificate of occupancy issued by the Administrative Officer shall be required prior to the use or occupancy of any land or structure, or part thereof, for which a zoning permit has been issued.

(1) An application for a certificate of occupancy shall be provided with the zoning permit issued by the Administrative Officer. The applicant shall submit a completed application to the Administrative Officer prior to the use or occupancy of the land or structure.

(2) A certificate of occupancy shall not be issued until all necessary approvals and permits required by these regulations have been obtained for the project, and the Administrative Officer determines that the project has been fully completed in conformance with all such approvals and permits.

(3) Within 14 days of receipt of the application for a certificate of occupancy, the Administrative Officer may **[shall]** inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals, including all applicable permit conditions. If the Administrative Officer fails to either grant or deny the certificate of occupancy within 14 days of the submission of an application, the certificate shall be deemed issued on the 15th day.

Procedures for issuing Certificates of Occupancy are not defined in statute, but must be specified in the regulations. The sample language should be revised as needed to reflect local practice.

APPEALS

Administrative Officer Actions

Any **interested person** as defined under the Act [§4465] may appeal a decision or act of the Administrative Officer within 15 days of the date of the decision or act by filing a notice of appeal with the Secretary of the **[Board of Adjustment/Development Review Board]**, or the Municipal Clerk if no Secretary has been elected, and by filing a copy of the notice with the Administrative Officer.

(1) The Board shall hold a public hearing on a notice of appeal within 60 days of its filing, as required under the Act [§4468]. The Board shall give public notice of the hearing under Section ___, and mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.

(2) The Board may reject an appeal or request for reconsideration without hearing, and render a decision which shall include findings of fact within 10 days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant [§4470].

(3) In accordance with the Act [§4468], all appeal hearings shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in state statutes [3 V.S.A. §810]. Any interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned by the Board from time to time, provided that the date and place adjourned hearing shall be announced at the hearing.

(4) A decision on appeal shall be rendered within 45 days after the final adjournment of the hearing, as required under the Act [§4464(b)]. The decision shall be sent by certified mail to the appellant within the 45 day period. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Administrative Officer and the Municipal Clerk as part of the public records of the municipality, in accordance with Section __. Failure of the Board to issue a decision within this 45 day period shall be deemed approval and shall be effective on the 46th day.

Interested Persons

The definition of an interested person under the Act [§4465(b)] includes the following:

(1) a person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case;

(2) The municipality that has a plan or a bylaw at issue in an appeal brought under this chapter or any municipality that adjoins that municipality;

(3) a person owning or occupying property in the immediate neighborhood of a property which is the subject of a decision or act taken under these regulations, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or bylaw of that municipality;

(4) any ten (10) voters or property owners within the municipality who, by signed petition to the **[Board of Adjustment/ Development Review Board]**, allege that any relief requested by a person under this section, if granted, will not be in compliance with the policies, purposes or terms of the plan or regulations of the municipality; and

(5) any department or administrative subdivision of the state owning property or any interest therein within the municipality or adjoining municipality, and the Vermont Agency of Commerce and Community Development.

Notice of Appeal ***[To Board of Adjustment/Development Review Board]***

A notice of appeal filed under this section shall be in writing and include the following information, in accordance with the Act [§4466]:

(1) the name and address of the appellant,

(2) a brief description of the property with respect to which the appeal is taken,

(3) a reference to applicable provisions of these regulations,

(4) the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations, and

(5) the alleged grounds why such relief is believed proper under the circumstances.

Appeals to Environmental Court

In accordance with the Act [§4471], an **interested person** who has participated in a regulatory proceeding of the **[Appropriate Municipal Panel(s)]** may appeal a decision rendered by the **[Panel(s)]** under Section ___, within 30 days of such decision, to the Vermont Environmental Court. Appeals to Environmental Court shall also meet the following requirements:

The form and content of the notice of appeal filed with the Environmental Court is not described in Chapter 117. Such a notice must be filed in accordance with rules governing appeals of state agency decisions, as provided for in 3 V.S.A §§801-816.

(1) "Participation" in a **[Panel]** proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceeding.

(2) ***[Optional for municipalities with "on the record" appeals provisions]*** For all proceedings of the**[Panel]** that are on the record, as identified under Section ___, appeals to the Environmental Court shall be taken on the record in accordance with the Rules of Civil Procedure.

Provision for appeals to be heard "on the record" by the Environmental Court should only be included if the municipality has adopted provisions for such review, including administering local review procedures in accordance with the Municipal Administrative Procedures Act [24 V.S.A. Chapter 36].

(3) The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the Municipal Clerk, or the Administrative Officer if so designated, who shall supply a list of interested persons (including the applicant if not the appellant), to the appellant within five (5) working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

(4) This provision shall not apply to determinations made by the Development Review Board under Section ___ with respect to local Act 250 review of municipal impacts which are not subject to appeal in accordance with the Act [§4471(d)]. ***[Note: Include only if applicable.]***

VARIANCES

Variance Criteria

The **[Board of Adjustment/Development Review Board]** shall hear and decide requests for variances as required by the Act [§4469(a)] and appeal procedures under Section __. In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect. The Board may grant a variance and render a decision in favor of the appellant only if *all* of the following facts are found, and the findings are specified in its written decision:

(1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located;

(2) Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property;

(3) The unnecessary hardship has not been created by the appellant;

(4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare; and

(5) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

Renewable Energy Structures. Where a variance is requested for a structure that is primarily a renewable energy resource structure, in accordance with the Act [§4469(b)], the Board may grant such variance only if *all* of the following facts are found in the affirmative and specified in its written decision:

As an alternative to some variances, municipalities may now grant "waivers" of specified dimensional standards. Such waivers must be in conformance with the municipal plan and state planning goals [§4302], and may:

- allow mitigation through design, screening or other remedy;
- allow waivers for structures providing for disability accessibility, fire safety and other legal requirements; and
- provide for energy conservation and renewable energy structures.

The bylaw must specify the process by which waivers may be granted and appealed. Waivers may be incorporated as an appeal process similar to a variance (without the strict variance criteria), or as a conditional use or other development review procedure.

(1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations;

(2) The hardship was not created by the appellant;

(3) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and

(4) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

[As Applicable] **Variances within the Flood Hazard Area**. In addition to requirements under Subsection __, variances for development within the Flood Hazard Overlay District shall be granted by the Board only:

(1) in accordance with the Act and the criteria for granting variances found in CFR Section 60.6 of the National Flood Insurance Program;

(2) upon determination that during the base flood discharge the variance will not result in increased flood levels; and

(3) upon determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect.

VIOLATIONS & ENFORCEMENT

Violations

The commencement or continuation of any land development **[or subdivision]** that does not meet the requirements of these regulations shall constitute a violation. All violations shall be pursued in accordance with the Act [§§4451, 4452]. Each day that a violation continues shall constitute a separate offense. The Administrative Officer shall institute, in the name of the

[Municipality], any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected shall be paid over to the municipality.

Notice of Violation

No action may be brought under this section unless the alleged offender has had at least seven (7) days' warning notice by certified mail that a violation exists, as required under the Act [§4451]. The notice of violation also shall be recorded in the land records of the municipality under Section ___. The notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven-day notice period, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the regulations after the seven-day notice period and within the next succeeding 12 months.

Limitations on Enforcement

An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required or duly recorded municipal land use permit may be instituted against the alleged offender if the action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred, and not thereafter, in accordance with the Act [§4454]. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted. No enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit unless the permit or a notice of the permit has been recorded in the land records of the municipality under Section ___.

PUBLIC HEARINGS

Public Notice

In accordance with the Act [§4464], a warned public hearing shall be required for conditional use review (Section __), appeals of decisions of the administrative officer and variances (Sections __, __) and final subdivision review (Section __). Any public notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all of the following:

(1) publication of the date, place and purpose of the hearing in a newspaper of general circulation in the municipality;

(2) posting of the same information in three (3) or more public places within the municipality, including the posting of a notice within view from the public right-of-way nearest to the property for which the application is being made;

(3) written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal; and

(4) for hearings on subdivision plats located within 500 feet of a municipal boundary, written notification to the clerk of the adjoining municipality. ***[Include where applicable.]***

Under the Act, the bylaw may also specify notice by other means, such as a notice board on a municipal Web site.

Public notice of all other types of development review hearings, including site plan review (Section ___), shall be given not less than seven (7) days prior to the date of the public hearing, and shall at minimum include the following:

(1) posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality; and

(2) written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding, is a prerequisite to the right to take any subsequent appeal.

Many communities – especially those with staff – assume the responsibility of notifying adjoining landowners. Regardless of the manner in which notification takes place, all associated costs may be charged to the applicant through a fee structure adopted by the Legislative Body.

[Optional] The applicant shall be required to bear the cost of public warning and the cost and responsibility of notifying adjoining landowners as required above, as determined from the current municipal grand list. The applicant may be required to demonstrate proof of delivery to adjoining landowners either by certified mail, return receipt requested, or by written notice hand delivered or mailed to the last known address supported by a sworn certificate of service.

No defect in the form or substance of any required public notice under this section shall invalidate the action of the **[Appropriate**

Municipal Panel] where reasonable efforts have been made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the Board of Adjustment/Development Review Board or the Environmental Court, the action shall be remanded to the Board to provide new posting and notice, hold a new hearing, and take a new action.

Hearings

In accordance with the Act [§4461], all meetings and hearings of the **[Appropriate Municipal Panel(s)]**, except for deliberative sessions, shall be open to the public. For the conduct of any hearing, and the taking of any action, a quorum shall be not less than the majority of members of **the [Appropriate Municipal Panel(s)]**. The **[Appropriate Municipal Panel(s)]**, in conjunction with any hearing under this bylaw, may:

(1) examine or caused to be examined any property, maps, books, or records bearing upon the matters concerned in that proceeding;
(2) require the attendance of any person having knowledge in the premises;
(3) take testimony and require proof material for its information; and
(4) administer oaths or take acknowledgement in respect of those matters.

Information related to Appropriate Municipal Panel proceedings, if not included in the bylaws (as provided in this model), should be specifically included and expanded upon in adopted rules of procedure.

In any public hearing there shall be an opportunity for each person wishing to achieve status as an interested person to demonstrate that the criteria set forth under Section ___ are met. The **[Appropriate Municipal Panel(s)]** shall keep a record of the name, address, and participation of each of these persons.

[Optional] Any Advisory Committee recommendations shall be submitted in writing at or before the public hearing of the **[Appropriate Municipal Panel(s)]**. ***[Include as applicable.]***

In accordance with the Act [§§4464(b), 4468], the **[Appropriate Municipal Panel(s)]** may recess a hearing on any application or appeal pending the submission of additional information, provided that the next hearing date and place is announced at the hearing.

An important responsibility of an appropriate municipal panel is to maintain an accurate record of the name and address of interested persons who participate in a municipal review procedure or appeal, including a record of their "participation." Participation, as defined in the Act [§4471], consists of "offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceeding." Without an accurate record of participation, the rights of an interested person to appeal a local decision may be jeopardized.

[Optional] Hearings on the Record

In accordance with the Act [§§4420, 4471] , the **[Municipality]** has adopted the Municipal Administrative Procedures Act or "MAPA" [24 V.S.A., Chapter 36] to be applied by the

Bylaws may designate the types of development applications to be heard on the record, including specific review processes, development projects of a specified scale, or projects within a particular district(s).

[Appropriate Municipal Panel(s)] for purposes of hearing, on the record, applications for: ***[specify as appropriate]*** site plan review (Section ___), conditional use review (Section ___), design review (Section), preliminary and final subdivision review, planned unit development review (Article ___), local Act 250 Review (Section ___), and appeals and variance requests.(Sections ___ and ___). Accordingly:

(1) Such hearings shall be considered "contested hearings" as defined under the MAPA, to be conducted in accordance with the requirements of the procedures act.

(2) The **[Appropriate Municipal Panel(s)]** shall comply with the provisions of 12 V.S.A. §61(a) regarding conflicts of interest.

(3) Public notice of hearings shall be provided in accordance with Subsection ___.

(4) The chair or vice chair shall preside over the hearing; in their absence the **[Appropriate Municipal Panel(s)]** shall elect a temporary chair. The presiding officer shall cause the proceeding to be recorded.

(5) All testimony of parties and witnesses shall be made under oath or affirmation.

(6) The rules of evidence as applied in civil cases in superior court shall be followed. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible to proof under those rules, evidence not admissible under those rules may be admitted if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs.

(7) Requirements regarding ex parte communications shall be followed. No member of the **[Appropriate Municipal Panel(s)]** shall communicate on any issue in the proceeding, directly or indirectly, with any party, party's representative, party's counsel, or any interested person in the outcome of the proceeding while the proceeding is pending without additional notice and opportunity for all parties to participate. All ex parte communications received by **[Panel]** members, all written responses to such communications, and the identity of the person making the communication shall be entered into the record.

(8) Members of the **[Appropriate Municipal Panel(s)]** shall not participate in the decision unless they have heard all the testimony and reviewed all the evidence submitted in

the hearing. This may include listening to a recording, or reading the transcripts of testimony they have missed, and reviewing all exhibits and other evidence prior to deliberation.

(9) All final decisions shall be in writing and shall separately state findings of fact and conclusions of law in accordance with Subsection ___.

(10) Transcripts of proceedings shall be made upon the request and payment of reasonable costs of transcription by any party.

Decisions

Any action or decision of an **[Appropriate Municipal Panel]** shall be taken by the concurrence of a majority of the members of the **[Panel]**. In accordance with the Act [§4464(b)], the **[Appropriate Municipal Panel]** shall issue a decision within 45 days after the adjournment of the hearing. Failure to issue a decision within the 45-day period shall be deemed approval and shall be effective the 46th day. In addition:

(1) All decisions shall be issued in writing and shall separately state findings of fact and conclusions of law. Findings of fact shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on evidence of the record. Conclusions shall be based on the findings of fact. The decision shall also include a statement of the time within which appeals may be taken under Section __. The minutes of a meeting may suffice, provided that the factual basis and conclusions relating to the review standards are provided in accordance with these requirements.

(2) In rendering a decision in favor of the applicant, the **[Appropriate Municipal Panel]** may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of the Act, these regulations, and the municipal plan currently in effect. This may include, as a condition of approval:

(a) the submission of a three-year performance bond, escrow account, or other form or surety acceptable to the Randolph Legislative Body, which may be extended for an additional three-year period with the consent of the owner, to assure the completion of a project, adequate stabilization, or protection of public facilities that may be affected by a project; and/or

(b) a requirement that no zoning permit be issued for an approved development until required improvements

have been satisfactorily installed in accordance with the conditions of approval.

(3) All decisions of an **[Appropriate Municipal Panel]** shall be sent by certified mail, within the required 45-day period, to the applicant or the appellant on matters of appeal. Copies of the decision also shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and Clerk as part of the public record of the municipality.

RECORDING REQUIREMENTS

Within 30 days of the issuance of a municipal land use permit or notice of violation, the Administrative Officer shall deliver either the original, a legible copy, or a notice of the permit or violation to the Municipal Clerk for recording in the land records of the municipality generally as provided in 24 V.S.A. §1154(c), and file a copy in the Municipal Office in a location where all municipal land use permits shall be kept, as required under the Act [§4449(c)]. The applicant may be charged for the cost of the recording fees.

Recording requirements apply to all "Municipal Land Use Permits," which include any zoning, subdivision, site plan or building permit or approval, any of which relate to land development as defined in statute, which has received final approval from the applicable board, commission or officer of the municipality [24 VSA § 4303(11)].

For development within the Flood Hazard Area Overlay District, the Administrative Officer shall also maintain a record of: ***[Include as applicable.]***

(1) all permits issued for development in areas of special flood hazard;
(2) elevation certificates that show the elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved buildings;
(3) the elevation, in relation to mean sea level, to which buildings have been floodproofed; all floodproofing certifications required under this regulation; and
(4) all variance actions, including the justification for their issuance.