

Conflicts In Land Use FAQs

VLCT's Municipal Assistance Center (MAC) often receives questions about conflicts of interest in the land use regulatory world, so here we examine some of the main conflicts that can arise. The following three questions illustrate some of the specific examples of potential conflicts, and how local officials can address and manage them.

Disclaimer: This resource is only intended to provide information and it does **NOT** constitute legal advice. Readers with specific legal questions are encouraged to contact an attorney. The use or downloading of this resource does **NOT** create an attorney-client relationship and will not be treated in a confidential manner.

If you have additional questions please use the ask a question button to submit them.

Ask a Question

[Can a selectperson also serve as the administrative officer \(i.e., the zoning administrator\), on the planning commission, or an Appropriate Municipal Panel \(AMP, e.g., zoning board of adjustment or development review board\)?](#)

Yes, yes, and yes; these are not statutorily incompatible offices according to [17 V.S.A. § 2647](#) and nothing prohibits a selectperson from holding any one of these positions simultaneously in [24 V.S.A. Chapter 117](#). However, holding these dual positions presents multiple opportunities for both apparent and actual conflicts of interest. This is an important distinction because statutorily incompatible offices in Title 17 are not the same as conflicts of interest. While holding two offices simultaneously may not be prohibited legally by Vermont statutes, it may present opportunities for conflicts of interest – indirect, direct, personal, financial – that must be managed in accordance with the towns' and AMP's adopted conflicts of interest policies.

Administrative officer (i.e., zoning administrator). State law expressly allows an administrative officer to “hold any other office in the municipality other than membership in the zoning board of adjustment or development review board...” [24 V.S.A. § 4448\(a\)](#). Do not take this statutory permission as an endorsement, as opportunities for conflict abound. Examples may include:

- **Scenario:** Administrative officer is nominated by the planning commission and appointed by the selectboard. [24 V.S.A. § 4448\(a\)](#). **Conflict:** Selectperson votes for themselves as administrative officer.
- **Scenario:** Selectboard has the authority to adopt personnel policies governing the administrative officer's behavior, evaluate the administrative officer's performance, and remove the administrative officer at any time (for cause after consultation with the planning commission and a public hearing). [24 V.S.A. § 4448\(a\)](#). **Conflict:** Selectperson evaluates their own performance, lobbies/votes against their removal from office.
- **Scenario:** Selectboard is authorized by statute to settle lawsuits brought against the town in an appeal of an administrative officer's action or decision. **Conflict:** Selectperson votes against overturning their own action or decision as administrative officer.
- **Scenario:** Selectboard is authorized to set compensation for town officers and employees pursuant to [24 V.S.A. § 933](#). **Conflict:** Selectperson lobbies and votes to give themselves a raise.

Appropriate municipal panel. The statutes are silent as to whether a selectperson may also serve on an appropriate municipal panel, such as the zoning board of adjustment (ZBA) or development review board (DRB). Therefore, the MAC considers the practice allowable, but does not recommend it because of the following possible scenarios:

- **Scenario:** ZBA/DRB members are appointed by the selectboard. [24 V.S.A. § 4460\(c\)](#). **Conflict:** Selectperson votes for themselves as ZBA/DRB member.
- **Scenario:** Selectboard may remove ZBA/DRB member for cause, upon written charges and after public hearing. [24 V.S.A. § 4460\(c\)](#). **Conflict:** Selectperson votes against their own removal from the ZBA/DRB.
- **Scenario:** Selectboard has authority to represent the town in appeals to the environmental division of superior court and, in limited circumstances, may initiate an appeal of a ZBA/DRB decision as an interested person. **Conflict:** Selectperson votes against appealing a decision they approved or denied as a ZBA/DRB member.

Planning Commission. Selectpersons in rural towns, by virtue of their office, are already non-voting ex officio members of the planning commission (PC). Again, state law does not prohibit selectboard members from serving as full voting members of the PC. Therefore, MAC considers it permissible but not advisable because of the following possible scenarios:

- **Scenario:** Planning commissioners may be appointed by the selectboard. [24 V.S.A. § 4323\(a\)](#). **Conflict:** Selectperson votes for themselves as planning commissioner.
- **Scenario:** If appointed, planning commissioners may be removed at any time by unanimous vote of the selectboard. [24 V.S.A. § 4323\(a\)](#). **Conflict:** Selectperson's vote blocks their own removal.
- **Scenario:** Selectboard may vote to adopt the town plan and/or bylaws. [24 V.S.A. § 4442\(c\)](#). **Conflict:** Selectperson votes on the very town plan/bylaws that they had a hand in drafting and approving as a planning commissioner. [24 V.S.A. § 4325](#).

The above scenarios bring into question a selectperson's ability to impartially represent the public. For the other officers, questions arise as to their ability to impartially create, administer, and interpret a town's bylaws. Remember, too, that an appearance of conflict can be just as damaging to the public's faith in a town's system of zoning administration as an actual conflict.

While such dual office holding is not considered ideal for the various reasons stated, MAC understands that it can be difficult to recruit volunteers for these positions and sometimes there is simply no other option. When those occasions arise, it is important to ensure you address the potential occurrence of such conflicts and take appropriate measures to mitigate their impacts. Such measures could include adopting a conflict-of-interest policy that requires a selectperson to recuse themselves from all decisions involving their role as administrative officer, planning commissioner, or ZBA/DRB member (with the caveat that the final decision of whether or not to recuse rests with the individual board member who cannot be compelled by other members of the board). Finally, appropriate municipal panels (ZBAs/DRBs and PCs that exercise development review authority) must adopt rules of ethics with respect to conflicts of interest in addition to whatever conflict of interest policy the town is required to adopt. Those rules could address the possible membership and

participation of a selectperson. [24 V.S.A. § 4461\(a\)](#).

[Can the AMP \(DRB/ZBA\) provide comments on zoning bylaw amendments to the PC for consideration or would this pose a conflict?](#)

It is entirely appropriate for an AMP, as a public body, to communicate whatever issues it may have with draft bylaws to the PC. In fact, we encourage this type of cooperative dialogue. We often point out to our members that are considering switching to a PC/DRB model that the law allows dual office holding between the PC and DRB, so that they can maintain that important connection between the drafting of bylaws, their interpretation, and their administration.¹ We also recommend that PCs and AMPs have regularly scheduled meetings, at least once a year, so that the AMP can communicate to the PC any concerns or issues it has with how the zoning regulations are written so that the PC may address them. In our eyes, such communications are crucial to the improved implementation of a town's development vision as set forth by its town plan and implemented through its zoning regulations.

1. "The board of adjustment or the development review board for a rural town or an urban municipality may consist of the members of the planning commission of that town or may include one or more members of the planning commission." [24 V.S.A. § 4460\(b\)](#).

[Can a member of an AMP \(DRB/ZBA\) participate in a land use development permit review hearing if they have a conflict of interest?](#)

Probably not. AMPs are required to have rules of ethics which should define what a conflict of interest is and how they should be addressed. In most instances, the rules will require the conflicted member's recusal. Otherwise, it could be grounds for appeal on which the environmental division of the superior court could overturn the decision. While AMPs are required to have rules of ethics, there are no statutorily prescribed contents (as opposed to conflict-of-interest policies under [24 V.S.A. § 1984](#)).

[Which conflict of interest policy should an AMP follow- its own or the town's?](#)

Vermont law requires an AMP to adopt its own ethics rules with respect to conflicts of interest. See [24 V.S.A. § 4461\(a\)](#). While the selectboard is required to adopt a conflicts of interest policy, which also applies to the AMP's members, the AMP must additionally adopt its own. The reason that AMPs are required to have their own rules regarding ethical conduct and conflicts of interest is because they are quasi-judicial boards and the concerns particular to their hearings (bias, ex parte communications, etc.) may not be adequately addressed (or addressed at all) by those adopted by a selectboard for its public officials. It is

important that the decision-makers are held to a high standard of conduct in order to preserve due process in such quasi-judicial proceedings. Keep in mind that AMPs may have provisions that are more specific to the type of hearings they conduct. Of course, AMP members will need to abide with both its own policy and the town's policy but, where there is a conflict, the more specific of the two will control. However, we recommend the two policies should be coordinated so that following its own policy does not result in violating the selectboard's policy.

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