



Development Review

Background

Chapter 117 allows “appropriate municipal panels” to evaluate proposed development for compliance with local standards. Several different types of development review, intended to address a variety of concerns, are authorized under Chapter 117. Most communities require a mix of reviews. It’s not uncommon for a single project to require several approvals from one or more municipal panels. (For more information on appropriate municipal panels, see *Bulletin #10*.)

Prior to the 2004, Chapter 117 requirements for public notification and hearings, and for issuing decisions, varied for different review procedures. Chapter 117 was revised under Act 115 to improve consistency between different review processes, to promote early participation in local proceedings though expanded notification requirements, and to clarify the manner in which hearings are conducted and decisions issued. Development review provisions under Chapter 117 were revised to address the following issues.

Public Hearing and Notice:

- establish two categories of public hearing;
- expand public notification requirements under each;

Decisions:

- make the timing for issuing decisions uniform among different review processes;
- clarify the required contents of a decision;

Appeal Rights:

- clarify the procedure for “interested persons” to obtain the right to appeal a decision to the Environmental Court (see *Bulletin #9 Appeals*);

Administrative Review:

- allow “administrative review” – the review and approval of certain applications by the Administrative Officer – as an alternative to review and approval by an appropriate municipal panel;

Review Standards:

- revise mandatory conditional use standards;
- consolidate Planned Residential Developments (PRDs) and Planned Unit Developments (PUDs) into a single statutory provision with expanded authority; and
- expand and clarify the authority and scope of subdivision review processes and standards.

Applications

The procedures for issuing zoning permits are set forth in Chapter 117 (see *Bulletin #7 Zoning Permits*). The Administrative Officer must “act” within 30 days of receiving a complete application for a zoning permit. *Acting on the application is now specifically defined as either issuing a decision or “making a referral to the appropriate municipal panel” in the event that some form of development review is required* [§4448(d)]. In addition, Chapter 117 provides that the Administrative Officer *should provide an applicant with forms required to obtain any municipal*

permit required under this chapter, or under other laws or ordinances that relate to the regulation by municipalities of land development [§4448(c)]. In practice, municipalities have generally adopted one of two administrative procedures for submitting applications for development review:

- *One Application Approach*. The application for development review is combined with the application for a zoning permit. In this case the Administrative Officer refers the

Types of Development Review

Chapter 117 authorizes several types of development review that involve the review of proposed development applications by an appropriate municipal panel (see also *Bulletin #9 Permissible Regulations*). These include review of:

- Access (rights-of-way or easements) for development on parcels lacking frontage [§4412(3)]
- Development within a historic district or with respect to a historic landmark [§4414(1)(F)]
- Development within a design control district [§4414(1)(E)]
- Conditional uses [§4414(3)]
- Planned unit developments [§4417]
- Waiver requests [§4414(9)]
- Site plans [§4416]
- Subdivisions [§4418]
- Act 250 projects, for local impacts [§4420]
- Development within flood hazard, shoreland and other hazard areas [§4424]
- Appeals [§4465] and variance requests [§4469]
- Other, as specified under the bylaw

application, together with any required supplemental materials, to the appropriate municipal panel.

- **Multiple Application Approach.** The applicant is required to first obtain all development approvals prior to, or as a condition of, filing a complete application for a zoning permit. In this case, each required development review procedure would have separate

application submission requirements.

Regardless of the approach, bylaws should clearly explain the requirements for submitting an application, and the timing and sequence of required development review processes – particularly for the issuance of approvals and permits. *Note: if more than one type of development review applies, Chapter 117 now requires that bylaws define the*

sequence of review and the issuance of decisions and, to the extent feasible, that reviews be conducted concurrently [§4462].

Public Notice & Hearings

Notification. Two categories of public hearing, each with different public notification requirements, are now established under Chapter 117. Warned public hearings are required for conditional use review, appeals and variances, final subdivision plat review, site plan review, and for other types of development review specified in the bylaw that are not advisory in nature and may be appealed to Environmental Court. Advisory commissions need only comply with open meeting laws in their review of applications, but any recommendations they make must be presented prior to or at a warned public hearing.

Notifying Adjoiners. Under public notice requirements, the applicant may be required to bear the cost and responsibility of notifying adjoining

Administrative Review:

Delegating Development Review Authority to the Administrative Officer

Revisions to Chapter 117 clarified that municipalities may establish procedures for the Administrative Officer to review and approve new development, and amendments to previously approved development, that would otherwise require review by an Appropriate Municipal Panel [§4464(c)].

If administrative review is authorized, the bylaws must clearly specify the thresholds and conditions under which the Administrative Officer classifies an application as eligible for administrative review. The thresholds and conditions must be

structured so that no new development is approved that results in a substantial impact under any of the standards set forth in the bylaws. In addition, the Administrative Officer may not make a determination that has the effect of substantially altering any of the findings of fact of the most recent approval.

Any decision of an Administrative Officer made as part of an administrative review may be appealed to the Development Review Board or Board of Adjustment (*see Bulletin #9 Appeals*).

Types of Development Review and Public Hearing Notice Requirements

Conditional Use Review, Appeals/Variances, Final Subdivision Plat Review [§§4463, 4464(a)(1)]

Public notice shall be given not less than 15 days prior to the hearing date by all of the following:

- Publication of the date, place and purpose of the hearing in a newspaper of general circulation in the municipality.
- 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.
- Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, to include a

description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and notification that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

- For hearings on subdivision plats located within 500 feet of a municipal boundary, written notification to the clerk of the adjoining municipality.

Advisory Commission Review

(Design, Conservation, Housing, etc.) [§4464(d)]

Meetings must comply with Vermont's open meeting laws

Site Plan Review

And other reviews (as specified in Bylaws) [§4464(a)(2)]

Public notice shall be given not less than 7 days prior to the hearing date by all of the following:

- Posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality.
- Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, in the same manner as described above for warned hearings.

Act 115 Changes to Statutory Standards

Conditional Use Review [§4414(3)]

The test for board review under the five existing statutory criteria was raised. The board must now find that a proposed conditional use will not result in an **undue adverse effect** – an impact that cannot be reasonably mitigated – on community facilities, the character of the area, traffic on roads and highways, bylaws and ordinances in effect, and renewable energy resources.

- **Character of the area affected** must now be defined by *the purpose or purposes of the zoning within which the project is located, and specifically stated policies and standards of the municipal plan*. A conditional use should therefore be evaluated in relation to the desired or planned character and pattern of development within a particular district, rather than only the existing character of a particular area or neighborhood.

Planned Unit Development [§4417]

- Once separately authorized, planned unit and planned residential development provisions are now integrated into a single, more detailed section on planned unit development. Bylaws may still differentiate between different types of PUDs, including those limited to residences and related accessory uses and structures.
- Bylaws may now mandate PUD review for developments based on scale or location.
- PUDs may now be administered concurrently with subdivision or conditional use review.
- Statutory density bonus limits for affordable housing were eliminated; density bonus provisions must now be specified in the bylaws.
- Chapter 117 now requires greater consistency between PUD provisions and the municipal plan, especially with regard to the modification of zoning provisions, including dimensional standards, densities or allowed uses.

Subdivision Review [§§4418, 4463]

- The broad purposes and benefits of subdivision regulations were clarified. Greater consistency between subdivision regulations and municipal plan policies is now required with regard to utilities and facilities, desired settlement patterns, the preservation of open space, and protection of natural and cultural resources.
- Procedural requirements were also changed. Specific authority to require a less formal “sketch plan review” process – already common practice – is now authorized. Public hearing and notice requirements for final plat review are consistent with other review procedures, facilitating concurrent review where appropriate. The period for plat recording was increased from 90 to 180 days, with an option for administrative extensions.
- Subdivision plats, once filed or recorded, do not expire.

property owners; and to demonstrate proof of delivery to adjoining 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.

Conducting Hearings. Chapter 117 requires that appropriate municipal panels elect officers, adopt rules of procedure, and also “rules of ethics with regard to conflicts of interest” (see *Bulletin #10 Appropriate Municipal Panels*). The manner in which a panel conducts development review proceedings, including appeals, is also prescribed in Chapter 117 [§4461]. This section of the statute addresses:

- responsibilities of the chair to call meetings,
- compliance with Vermont’s open meeting laws,
- gathering information and taking testimony,
- administering oaths and compelling

witness attendance,

- requirements for meeting minutes and record keeping,
- the definition of what constitutes a quorum (a majority of the panel), and the requirement that any action of the panel be *taken by the concurrence of a majority of the panel* (as opposed to a majority of members in attendance), and
- authority to appoint an agent or representative (e.g., municipal staff) to act on behalf of the entire panel with regard to the examination of information and evidence related to a proceeding – however that a panel that has adopted the Municipal Administrative Procedures Act (MAPA) may not delegate this authority.

In addition, an appropriate municipal panel must now, as part of any hearing, provide each person wishing to receive party status (i.e., the right to appeal a decision of the panel) the opportunity to demonstrate that they meet one of the

Sorting Through the Evidence:

Independent Technical Reviews

It’s common for local boards and commissions to feel overwhelmed when reviewing technical information for large or complex development projects. The legislature anticipated that panels may occasionally need an objective expert to help review an application for compliance with one or more regulatory standards. To this end, the local legislative body may adopt as part of its fee schedule “procedures and standards for requiring an applicant to pay for reasonable costs of an independent technical review of an application” [§4440(d)].

Use of this provision could include hiring engineers to review traffic impact studies and facility design, landscape architects to consider a project’s visual impact, or attorneys to consider legal matters such as proposed deed covenants, association bylaws, or development agreements.

definitions of "Interested Person." The panel also must keep a written record of the name, address, and participation of each of these persons (see *Bulletin #9 Appeals*).

Decisions

An appropriate municipal panel must issue a decision within 45 days after the adjournment of the final hearing, regardless of applicable hearing notification requirements or type of development review process involved. Failure to issue a decision within the 45-day period is deemed approval as of the 46th day. All decisions must be issued in writing and include a *statement of the factual bases on which the (panel) has made its conclusions and a statement of its conclusions.* The decision must also include a statement of the time within which appeals to the Vermont Environmental Court may be filed. Meeting minutes may serve

as the written decision, provided that the factual basis and conclusions relating to the review standards are provided as described above [§4464]. Decisions must be sent by certified mail, within the 45-days period, to the applicant or appellant. Copies are to be mailed to every person appearing and having been heard, and filed with the Administrative Officer and Municipal Clerk.

Decisions approving an application may include reasonable conditions and safeguards that the panel deems necessary to implement relevant bylaw provisions and municipal plan policies. To ensure the completion of the project or the protection of affected public facilities, the panel may require the issuance of a bond, escrow account or other surety, in a manner acceptable to the legislative body and in accordance with Chapter 117 [§4461(4)].

Development Review Standards

Chapter 117 includes statutory review standards to be applied under specified types of development review. These standards were not – with three important exceptions – substantively revised under Act 115 (see *Bulletin #3 Permissible Regulations*). The three exceptions involve conditional use review, planned unit developments and subdivision regulations.

Vermont Land Use Education and Training Collaborative

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

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