TOWN OF WEATHERSFIELD

LAND USE ADMINISTRATOR'S OFFICE

(802)674-2626 P.O. BOX 550 ASCUTNEY, VT 05030 landuse@weathersfield.org

Zoning Board of Adjustment Agenda

Martin Memorial Hall – 5259 Route 5, Ascutney, Vermont 05030

Remote option – Zoom details below

Thursday, July 21, 2022 – 7:00 PM

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1. Call to order
2. Agenda review
3. Comment from citizens regarding items not on the agenda
4. Approval of meeting minutes – June 9, 2022
5. Member training
6. Meeting dates
7. Communication with other boards and committees
8. Zoning Bylaws update
9. Zoning maps
10. Discussion of items for future agendas
11. Adjourn

Due to public demand and COVID-19; the Town has changed its public meeting platform from GoToMeeting to Zoom. For computer access, please go to this website, where you will find instructions and links to the meeting: https://www.weathersfieldvt.org/home/news/public-meetings-zoom

To join any public meeting via phone, dial (929) 205-6099. When prompted, enter meeting ID 542-595-4364. You will not have a participant ID. Please press # when prompted to skip this section. The passcode for all meetings is 8021.

AGENDA ITEM

4

Zoning Board of Adjustment

June 9, 2022

Draft Meeting Minutes

1. Introductions

Board members present at the meeting were Todd Hindinger, Willis Wood, and David Gulbrandsen. Willis Wood and deForest Bearse, alternates, were participating Board members at tonight's meeting. Ryan Gumbart, land use administrator, was also in attendance.

The audience members were Dwight Phelps and Nancy Phelps.

2. Call to order

Todd Hindinger called the meeting to order at 7:04 PM.

3. Agenda Review

David Gulbrandsen made a motion to move the public hearing to first on the agenda. Willis Wood seconded it. All were unanimous.

4. Comments from Citizens regarding items not on the agenda

There were none.

5. Approval of Meeting Minutes – April 14, 2022 and May 12, 2022

Todd Hindinger made a motion to approve the 2nd draft minutes of April 14, 2022 with the understanding that one of the three Board members was not present tonight. deForest Bearse seconded it. deForest Bearse and Todd Hindinger voted in favor of the motion. Willis Wood and David Gulbrandsen abstained.

Willis Wood made a motion to approve the minutes of May 12, 2022 as written. Todd Hindinger seconded it. The motion passed.

6. Ethics Policy

Ryan Gumbart sent all the Board members a copy of the Town's Ethics Policy approved by the SelectBoard on August 15, 2016.

Willis Wood made a motion to adopt this Ethics Policy as theirs. deForest Bearse seconded it. All were in favor of the motion. The Board members at this meeting signed the Ethics Policy. Ryan Gumbart will have the other members sign it later.

7. Sign Rules of Procedure

Todd Hindinger took the Board's suggestions from the previous meeting and added them to this document. The Board members reviewed the revised Rules of Procedure. The Board members at this meeting signed the Rules of Procedure. Ryan Gumbart will have the other members sign it later.

8. Public Hearing Chris Yurek Parcel ID 12-00-42, C10, conditional use

Todd Hindinger opened the hearing at 7:09 PM. Ryan Gumbart stated that the applicant would like to continue this hearing two or three months. They would like to speak with Mr. & Mrs. Phelps and are waiting on a couple more permits.

Todd Hindinger stated that Jaime Wyman is staying on as a Board member because of this application. She thought she would be on for only an extra month or so. This is not fair to her due to her professional life. David Gulbrandsen stated that the applicant is not doing anything on purpose. He is fine with the hearing being delayed two to three months. Willis Wood is recused from this hearing due to being an abutter. He had no comments. deForest Bearse wanted to know how many times this hearing has been postponed. Todd Gulbrandsen stated that this would be the third continuation. The Board stated that if the applicant is not ready for the next hearing, he could withdraw without prejudice and reapply again. He would have to pay for the notices again.

deForest Bearse made a motion to continue the hearing till August 18, 2022 at 7:00 PM with the understanding that this is the last continuation. Todd Hindinger seconded it. The motion passes.

9. Welcome new members

Joseph Bublat will be joining the Board. He is not sworn in yet, but has been approved by the Select Board.

10. Future Agendas

The next Board meeting will be July 7, 2022 at 7:00 PM.

a. Member Training - Each new Board member will receive a copy of the Policies and sign them.

b. Meeting dates

c. Zoning Bylaws updates

d. Means of communication with other Boards

e. Bylaws Maps

11. New business

There was none.

12. Adjournment

Willis Wood made a motion to adjourn at 8:22 PM. deForest Bearse seconded it. All were in favor.

Respectfully submitted,

Diana Stillson

AGENDA ITEM

5

VERMONT LAND USE
Education & Training Collaborative

DEVELOPMENT REVIEW TRAINING MODULES

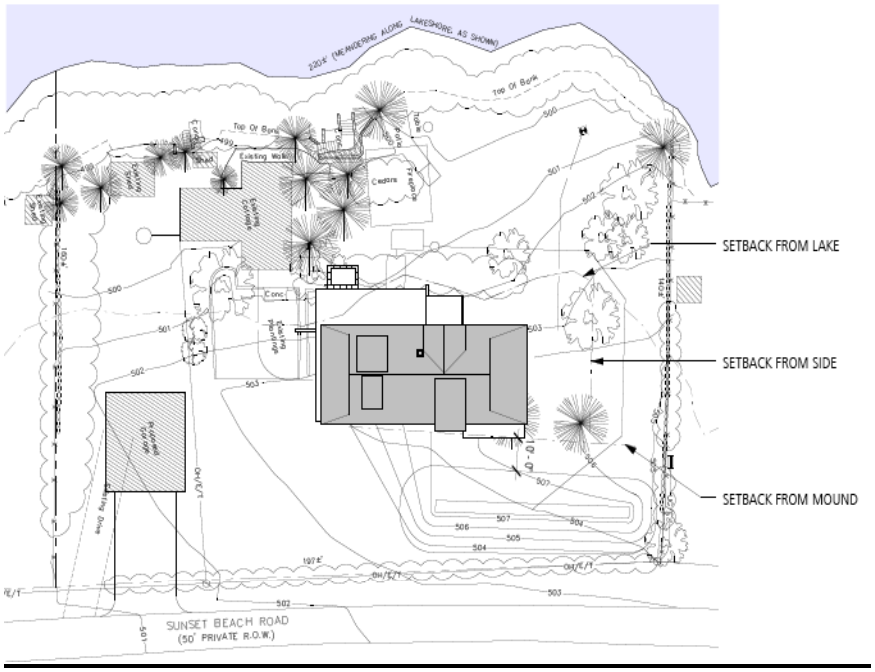
Reading Subdivision Plats and Site Plans

Definitions:

An *Appropriate Municipal Panel* (AMP) is a Planning Commission exercising development review, Zoning Board of Adjustment, or Development Review Board.

A *sketch plan* or *concept plan* may be used during the preliminary phase of the subdivision permitting process. This plan gives a rough overview of the proposed development, so that the viability of the project may be assessed prior to hiring a surveyor and incurring the substantial cost of more formal drawings.

A *plat* is defined by statute as a "map or plan drawn to scale of one or more parcels, tracts or subdivisions of land, showing, but **not limited to**, boundaries, corners, markers, monuments, easements and other rights". The AMP must ensure that it meets the requirements detailed in the municipal subdivision regulations. The "final" and approved plat is the plan of the subdivision that will be recorded in the municipal land records. A complete package of subdivision plans will contain other information in addition to the plat. A site plan package can include: information relative to roads, lighting, landscaping, natural features, access, soil erosion control, and stormwater management. Subdivision plats must be completed by a licensed surveyor and meet the survey plat recording requirements of 27 V.S.A. § 1401.



This Site Plan shows the location of a single family residence (and outbuildings) in relation to the street, waterfront, and side property lines. Contour lines indicate the terrain and landscaping as shown. Courtesy Rolf Kielman and Truex Cullins.

A *site plan* is a drawing that is a bird's eye view of the project. It shows the major features of the land and the footprint of existing structures and structures to be built. The complexity of a site plan varies with the size of the project, local regulatory requirements, the consulting engineer, and budget. It should contain standard features, such as a location map, title block, scale, and dimensional and zoning information. A basic site plan may be accompanied by other plans that detail landscaping, utility corridors, building design, easements, lighting, soil erosion control, stormwater management, and more.

Overview

Understanding site development plans (often called "site plans" for short) and subdivision plats is essential to effectively review projects and apply local regulations. This module explains key features to look for when reading a subdivision plat or a site plan for a proposed project.

Site plans reveal how a project design addresses siting challenges such as topography, water supply and wastewater treatment, water resource protection, storm water runoff, erosion, human and vehicular circulation, and aesthetic concerns. Those who know how to read and interpret plats and plans are also better able to

communicate with the developer and other parties about the project.

Some Vermont municipalities have trained professional staff to assist review, while others have none. Regardless, all AMP members should have baseline knowledge adequate to:

- Determine if an application is complete.
- Evaluate an application for compliance with adopted municipal standards and regulations.
- Answer questions about the project posed by adjoiners, town officials and community members.*
- Make findings of fact.
- Develop conditions of approval.

Mapped information should give reviewers a clear picture of how the development will impact the environment and community as well as how the development will conform to bylaws and fit in with the surrounding area. Plans visually represent an array of features, as specified for identification in the bylaws and associated application materials. Examples of such features include: whether the development is viable and whether it meets municipal siting standards, resource protection or buffer requirements, and infrastructure needs. Interpreting mapped information calls on a different set of skills than reading a written description, but with practice gives a clearer picture of the scope of development.

*Note that discussion of the merits outside the context of a hearing is considered impermissible ex parte communication. Also, it is the applicant's job to answer questions during the hearing—AMP members should not answer questions at the hearing that are appropriate for the applicant to answer. See module "Taking Evidence".

"Bylaws and associated maps should identify and define all features considered and regulated by the municipality."

What is required to be on a Plat?
27 V.S.A. §1403 requires that all filed plats:

•Be an *appropriate size* and *have correct margins* determined by the municipality.
•Conform to municipality's *specifications*.
•Be clearly *legible*.
•Have a *scale* that allows pertinent data to be shown.
•Have a *title block* that states the location of the land; scale in engineering units; date of compilation; name of record owner as of that date; the land surveyor's certification with the surveyor's seal, name and number, and a certification that the plat conforms with the requirements of section 1403. (There is an exception for this requirement when Site Plan Review is done. See *24 V.S.A. § 4416 & 27 V.S.A. § 1404(b).*)
•Correctly describe the *directional bearings* used.

Application Review

Development is regulated on both the state and municipal level. The extent of regulation on the municipal level varies greatly, so it is important to familiarize yourself with your municipality's bylaws. The state enables municipalities to adopt land use regulations to specifically implement adopted municipal plans.

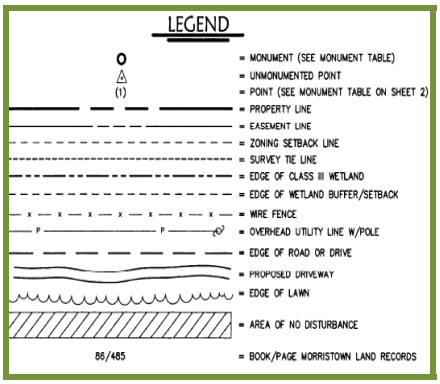
A site plan is used in development review to describe proposed land development. Therefore, the term "site plan" is used in two different ways—one is a mapped representation of a project and the other is a review process called Site Plan Review. State law allows a host of factors to be written into bylaws for consideration during Site Plan Review. Since each municipality has its own bylaws, the required content of site plans will vary. Municipalities must adopt specific guidelines regarding maps, data, and other information for Site Plan Review and the other various review processes. Other review processes include Subdivision Review, Planned Unit Development Review, and Design Review. Understanding mapped representations is important for every review process.

Application requirements—like those imposed by site plans and subdivision plats—must relate to standards written into bylaws. Likewise, the bylaws should mimic the goals and objectives of the municipal plan. Bylaws and associated maps should identify and define all features considered and regulated by the municipality.

Features Common to Both Plats and Plans:

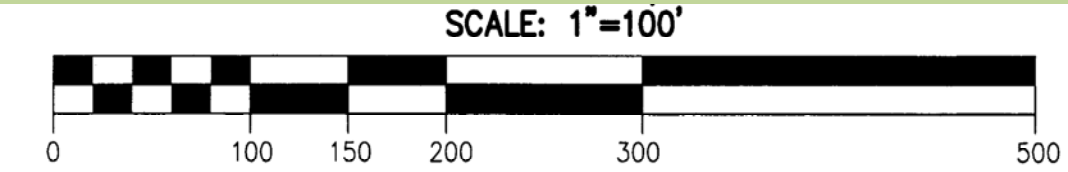
Plats and plans should have a *location map*, usually an inset, which allows reviewers to locate the subject parcel in the municipality.

Plats and plans should have a *legend* or key, indicating what the line types and symbols signify on the plan.



A legend is essential to make sense of features shown on a subdivision plat or site development plan.

The *title block* contains basic information, including project title, landowner, site address, professional consultant or name of the firm that prepared the plan, date the drawing was done, revision dates, and more. The *north arrow* in combination with the *location map* allows the reader to orient the map to the project's location. It also allows a reviewer to orient themselves when a submission includes multiple plans.



Scale is the relationship between the distance shown on a plan and the corresponding distance in the field. All plats and site plans should have both a written and a graphic scale. This is an example of both a written linear scale and corresponding graphic scale, where one inch equals 100 feet. It is important to include both a graphic scale and a written scale. The graphic scale allows for size reduction or size expansion in photocopies. While the written scale becomes obsolete in this process, the graphic scale remains true.

A scale is also the tool used to measure the distances between features in a plan. An *engineer's scale* is the most commonly used scale in drawing plans. An engineer's scale is divided into increments of 10, 20, 30, 40, 50, and 60 divisions per inch. In combination with the written scale, the reviewer uses this tool to measure the size of or the distances between features.

Zoning and Dimensional Information

Development plans should provide the title and section of the zoning or subdivision regulations being followed, along with details on the project's conformance. The engineer may prepare a chart, including the name of the zoning district in which the project is located and the zoning bylaws' dimensional requirements for lot size, building coverage, parking spaces, total lot coverage, setbacks, and frontage. However, AMP members should refer to bylaws to ensure that information contained on the plan is accurate.

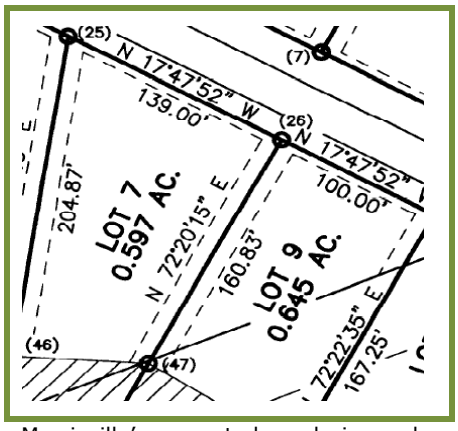
A plan's main purpose is to show these zoning requirements visually. Use the map's legend to identify property boundaries and setback lines on a development plan. Boundaries on development plans should be shown clearly for the entire tract: any proposed lots, roads, easements, right-of-way, or land reserved to mitigate natural resource impacts should be obvious.

The exact location of property boundaries may be presented on plats and plans using *metes and bounds*. The metes and bounds method is a very old, low tech method to describe property.

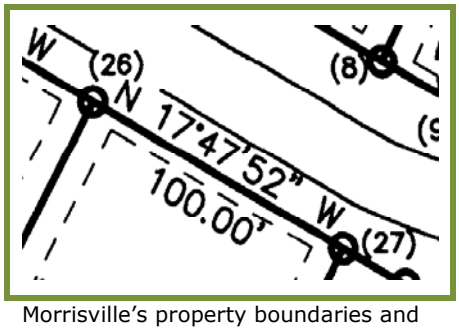
The letters and numbers direct the reader on the proper course to take using a compass. In the graphics to the right, *N 17°47'52" W* means to begin at the monument labeled (26) and go 100.00 feet 17 degrees, 47 minutes and 52 seconds west of north. There are 60 minutes in one degree and 60 seconds in one minute. Someone interested in following the lot's boundary in-person can begin at north and turn counter clockwise to the west 17°14'12", then walk in a straight line for 100 feet to reach point 27.

Plats and plans may show where existing and proposed utilities are located, such as water or sewer lines. Additionally, plats will often state the zoning regulations' dimensional standards for the proposed area. This makes it easier to evaluate the setbacks and lot size. As always, standards listed on maps should be cross-referenced directly with the bylaws.

Using Metes and Bounds:



Morrisville's property boundaries and required set backs displayed using metes and bounds. Map courtesy Charles Grenier.



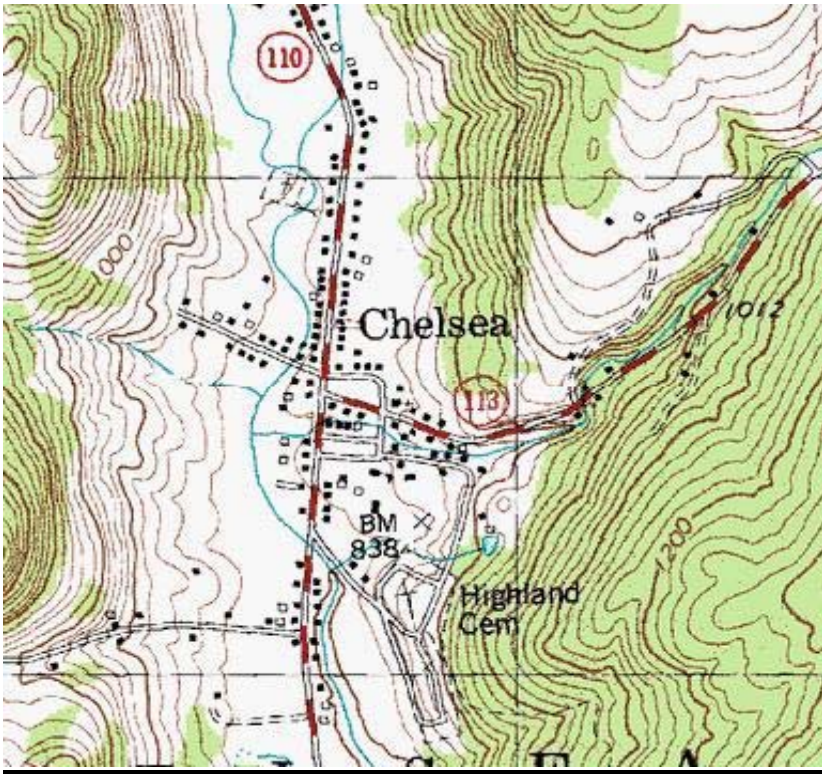
Morrisville's property boundaries and required set backs displayed using metes and bounds. Map courtesy Charles Grenier.

Contour Lines

Contour lines connect points of equal elevation. The spacing between the lines denotes the topography. Contour lines that are far apart indicate there is a small change in vertical elevation given the horizontal distance. When contour lines are close together, the terrain is steeper. Lines spaced further apart indicate flatter and gentler terrain. Every fifth line is usually drawn in bold for ease in reading the map, and labeled with the elevation.

Plans should show the existing and proposed topography, usually in two or five-foot contour intervals. Contour interval is the vertical distance between the contour lines. Contour interval is not standard on any plan because the engineer selects the interval for various reasons. However, it is very important to note the interval in order to calculate slope. Slope ratios derived from the contour lines are important to engineering, particularly grading for erosion control, stormwater management, and road design. It also assists review of aesthetic and solar orientation for energy conservation. The plans should indicate existing topography (usually shown as a dashed line), as well as changes in grade that will result from construction (usually shown as a solid line).

The map given here shows contour intervals at every twenty feet: you can tell because the dark lines are labeled at every 100 feet and there are five lines between each dark line. (100 divided by five is twenty.) In contrast, the site plan given on the front page of this module has a contour interval of one foot.



Contour lines, shown on a topographic map of Chelsea. Map displays village, river, and hills.

Considerations

Clarity for both the applicant and reviewers is the most important consideration. Application forms and instructions should clearly specify for prospective applicants what information is required and should be related to specific requirements in regulations derived from the adopted municipal plan. Plats and plans submitted by the applicant should provide all information required to assist an AMP to understand the proposal and to make findings under the regulations.

Resources

Vermont Land Use Education & Training Collaborative, Subdivision Regulations, available at http://www.vpic.info/pubs/implementation/pdfs/26-Subdivision.pdf.

Natalie Mecris, 2000, Planning In Plain English, APA Planning Press.

Dana Farley and Robert Sanford, 2004, Site Plan and Development Review: A Guide for Northern New England; Putney Press.

Credits

Additional material, collaborative assistance, and external review for the Subdivision Plats and Site Plans module provided by Dana Farley, Town of Essex; Faith Ingulsrud, Vermont Department of Economic, Housing & Community Development; Sharon Murray, Front Porch Community Planning; David Rugh Esq, Burak, Anderson & Meloni; Stephanie Smith, Vermont League of Cities and Towns.

This project has been supported by financial contributions from generous sponsors. Please see www.vpic.info/pubs/devreview/ for more information.

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This module is a general discussion of legal issues but is not legal advice, which can only be provided by a licensed attorney.

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Taking Evidence

What is Evidence?

Evidence is broadly defined as "testimony, documents, and tangible objects that prove or disprove the existence of an alleged fact." *Black's Law Dictionary 8th Edition.* Evidence appears in many forms. Evidence includes testimony given by an applicant, an interested party, a witness, members of staff or advisory committees, and often members of the general public. Testimony can be an oral statement by an individual present at a hearing or a written statement, such as a letter. Evidence also includes documents and tangible objects, such as site plans or written staff or advisory committee reports. Evidence must be received either prior to or during a public hearing.

Evidence Plays an Important Role in:

1. Conducting Hearings: Hearings are held to allow authorized parties to present facts. Testimony is heard and documents are received. This information is evidence.

2. Issuing a Decision: Findings of fact are determined by reviewing, analyzing, and deliberating over the evidence and choosing what is credible and relevant. These findings are then applied to criteria contained in statutes or bylaws to determine an applicant's legal rights

3. Providing Due Process and an Opportunity to be Heard.

Well organized evidentiary procedures are essential. Effectively gathered evidence is the key to making decisions consistent with a municipality's bylaws. Evidence takes varying forms, comes from multiple sources, and potentially amounts to an overwhelming body of diverse information—making organization paramount.

Why is Evidence Important?

Determining Legal Standards and Applying Facts to the Law

An Appropriate Municipal Panel (AMP) is a Planning Commission exercising development review, Zoning Board of Adjustment, or Development Review Board. The AMP analyzes, reviews, and determines which evidence is reliable, relevant and credible. It consequently makes the findings of fact to use in the decision-making process. The AMP then applies these findings to the municipality's bylaws or state statute to determine an applicant's legal rights. An AMP can only approve applications or permit conditions that comply with the municipality's bylaws and state statutes. If a project meets applicable standards within a municipality's bylaws, then an AMP must approve the application.

Gathering evidence involves collecting information but not all information admitted as evidence will be applied as a finding of fact in an AMP decision. An AMP must sort through the evidence and determine which information will constitute findings of fact that support its final decisions. This module primarily focuses on the proper procedures for gathering evidence. It will also briefly discuss how an AMP should use evidence to make the factual findings necessary to apply bylaw standards and state statutes.

Acting in a Quasi-Judicial Capacity

An AMP acts in a quasi-judicial capacity when conducting a hearing. In this forum, members of an AMP act as judges. They determine people's rights by interpreting and applying the municipality's bylaws to specific applications. A quasi-judicial hearing is defined by statute as: "a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority." *V.S.A. § 310(5)(B).* Therefore, at a quasi-judicial hearing, members of an AMP serve as both judge and jury by presiding over hearings, taking evidence, reviewing evidence, determining findings of fact, and, finally, applying findings of fact to the law to issue a decision.

Written and spoken testimony also serves as an essential tool for protecting citizens' rights to due process—testimony is an opportunity to be heard.

"Effectively gathered evidence is the key to making decisions consistent with a municipality's bylaws."

Adopting Evidence Procedures

An AMP should establish evidentiary procedures that are appropriate for hearings within its municipality. For example, an AMP from a municipality with volunteer boards or limited staff may aim to establish best practices to receive and identify testimony and exhibits. These procedures may be minimal and relatively informal but will promote and further a well-informed, organized decision making process. In contrast, an AMP for a municipality that chooses to adopt on-the-record review or local Act 250 review must follow specific evidence procedures required by the Municipal Administrative Procedure Act (MAPA). *24 V.S.A. §§ 1205(c)* and *4471(b).*

Required Rules of Procedure

Although an AMP is not required to adopt specific or formal "rules of evidence," an AMP must adopt rules of procedure and rules of ethics.

> "An appropriate municipal panel shall . . . adopt rules of procedure, subject to this section and other applicable state statutes, and shall adopt rules of ethics with respect to conflicts of interest." *24 V.S.A. § 4461(a).*

This provision authorizes an AMP to govern hearings and many other acts essential to evidentiary procedures:

- Administering oaths.
- Compelling attendance of witnesses.
- Compelling production of material germane to any issue under review.
- Taking testimony and requiring participants to produce material proof of that information or proof "bearing upon matters concerned in a hearing." *24 V.S.A. § 4461.*
- Requesting a staff or advisory committee report, including conservation or housing commission reports, under the bylaws. *24 V.S.A. §§ 4461(b)* and *4464(d).*

Presenting Evidence

An AMP must allow the parties to present evidence. An AMP must also allow other persons wishing to achieve status as an interested person the opportunity to speak. *24 V.S.A. § 4461(b).* Further, an AMP may allow anyone to participate in a hearing and may allow any person to present evidence—including members of the general public. The AMP can limit the presentation of evidence to applicants, parties, and interested persons in two ways. First, the AMP may opt to identify interested persons and limit hearing participation accordingly. Second, the AMP can choose to conduct on-the-record hearings and follow the MAPA's procedures for the presentation of evidence. *24 V.S.A. §§ 1206(a)* and *1201(4).*

Procedures for Taking Evidence

Minutes and Recording Evidence

An AMP must keep minutes of its hearings. *24 V.S.A. § 4461(b).* Minutes are kept as a public record in the clerk's office. Minutes must include:

1. A list of members of the public and all other active participants.
2. All motions, proposals, and resolutions made, offered and considered. All decisions made on motions, proposals, and resolutions.
3. Voting results, with a record of votes from each member if roll call is taken.

1 V.S.A. § 312(b).

The minutes must be filed "immediately as a public record" and may be used as the written decision. *1 V.S.A. § 312(2)* and *24 V.S.A. § 4464(b)(1).*

Minutes are an essential tool for tracking and recording evidence presented at hearings. Evidence used in rendering a decision must be noted in an AMP's final decision.

The municipality or AMP should appoint a secretary, clerk or staff recorder—preferably someone who is not a member of the AMP. In the absence of staff support, an AMP may choose to limit evidentiary procedures to an abbreviated form of best practices. One member may be designated to record speakers and write a brief description of the subject addressed. The member should mark each physical exhibit and give a short, descriptive list of all exhibits.

Taking Minutes

The AMP should establish procedures for recording hearing minutes and should begin recording as soon as the hearing begins.

1. The applicant presents evidence regarding an application or proposal. An applicant will present the proposed development by offering evidence in the form of oral testimony, written testimony, documents and/or objects. For example, an applicant may present a site plan, letters from state agencies, covenants for a subdivision, photographs, maps, surveys, traffic studies, and other documents supporting the proposed development.
2. AMP members ask questions regarding the applicant's proposal.
3. Interested persons and the public should present evidence. Interested persons and the public will most often offer evidence in the form of oral testimony. However, an AMP must accept written testimony or documented evidence from these participants as well.
4. AMP members should question the other participants.
5. The AMP should provide the applicant an opportunity to respond to new evidence and submit additional evidence.
6. The AMP, interested persons, and public may respond to additional evidence provided by the applicant.
7. The applicant should always receive a final opportunity for comments and questions.

Administering Oaths

Before participants present evidence, an AMP Chair should direct all participants providing testimony or offering evidence to take an oath. Administering an oath to those who participate conveys the importance of the hearing and encourages individuals to offer credible evidence. It is recommended that the AMP Chair direct all participants providing testimony or offering evidence to take an oath:

"I hereby swear that the evidence I give in the cause under consideration shall be the whole truth and nothing but the truth under the pains and penalties of perjury."

Who are "Interested Persons"?

An individual wishing to gain interested person status must be allowed the opportunity to do so. *24 V.S.A. § 4461(b).*

General AMP Review

An interested party is defined in *24 V.S.A. § 4465(b)* and in MAPA as:
1. A property owner affected by a bylaw.
2. A municipality or any adjoining municipality that has a plan or a bylaw at issue.
3. A person on whom the project will have a "demonstrated impact." Defined as: "A person owning or occupying in the immediate neighborhood of a property subject of any decision . . . who can demonstrate a physical environmental impact on the person's interest under the criteria reviewed."
4. Any ten persons who sign a petition to an AMP alleging that granting the applicant's project will not be in accord with the municipality's bylaws. The ten persons may be any combination of voters or property owners. However, one person must be designated to serve as a representative of petitioners.

In order to appeal, an interested person must participate at the hearing by **"offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding."** *24 V.S.A. § 4471(a).*

Only interested persons may initiate an appeal from an AMP decision. *24 V.S.A. § 4471(a). 24 V.S.A. § 4465(a).*

Interested Persons and Local Act 250 Review

A person whose interests may be affected by a proposed development under a relevant provision of the ten Act 250 criteria, as described in *10 V.S.A. § 6086(a)(1).*

Requirements for Listing Interested Persons

- An AMP must keep a written list containing the name, address, and subject matter addressed by each interested person who participates. *24 V.S.A. § 4461(b).*
- An AMP may request those attending a hearing provide their name and contact information upon entering the hearing or may circulate a form during the hearing.
- The Chair should review the definition of "interested person" before receiving evidence and should explain that those who wish to appeal must participate at the hearing.
- The Chair should also request that those who believe they meet the definition identify themselves and provide contact information.

The Vermont Land Use Education and Training Collaborative provides a model interested persons list in its Rules of Procedure and Ethics Manual, available at www.vpic.info.

Best Practices for Gathering Evidence

Relevant and Credible Evidence

An AMP should aim to accept only evidence that is relevant—evidence tending to support the existence of facts key to the application. Relevant evidence helps an AMP determine whether or not an applicant demonstrates that a project meets the requirements of local bylaws and state statutes.

The standard for evidence to be "relevant" is generous. It errs on the side of admitting evidence. The Vermont Rules of Evidence state: **"Irrelevant, immaterial or unduly repetitious evidence shall be excluded… [evidence] may be admitted if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs."** *24 V.S.A. § 1206(b).*

Hearsay

A speaker's statement is hearsay when the speaker offers someone else's statement, made outside the hearing, as evidence to prove a fact about the proposal currently up for review. This statement is therefore dependent on the credibility of someone other than the speaker. Using hearsay undermines the requirement that decisions should be made on credible and reliable evidence and facts.
Black's Law Dictionary defines hearsay as "testimony that is given by a [speaker] who relates not what he or she knows personally, but what others have said."
For example, it is hearsay when a community member offers a statement made by his brother that a proposed waste facility has been dispatching six trucks every morning as evidence that the proposed waste facility will increase local traffic.

An AMP should exclude comments regarding other projects that have no bearing on the project at hand. These comments would be irrelevant and immaterial.

An AMP should also attempt to exclude hearsay when gathering evidence. Hearsay statements are less reliable because the speaker is not present at the hearing and therefore cannot be questioned—the statement's credibility cannot be tested by the AMP, the applicant, and other participants. However, the Vermont Rules of Evidence do not prohibit accepting this type of evidence. Although this form of evidence is less credible, an AMP may admit this evidence if "it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs." *24 V.S.A. § 1206(b).* An AMP may also choose to admit written evidence that would normally be presented as oral testimony "when a hearing will be expedited and the interests of the parties will not be prejudiced substantially." *24 V.S.A. § 1206(c).* However, the person submitting the written statement must be present at the hearing, in case the AMP wishes to question the person. *24 V.S.A. § 1206(c).*

Credible evidence is a term that describes evidence that can be trusted as reliable and truthful. Credible evidence is based on personal experience or observation. The following forms of evidence are listed from most credible to least credible evidence:

1. Witness providing testimony at a hearing.
2. Written testimony where the writer is present for questioning.
3. Written testimony under affidavit.
4. Hearsay—most forms of evidence are more credible than hearsay.

Forms of Evidence

Oral Testimony: An AMP's recorder or clerk should note who speaks, whether the participant was administered an oath, and the subject matter addressed. A clear record is important.

Written Testimony: An individual may participate in a hearing through written testimony, such as a letter. *24 V.S.A. § 4461(a).* For statements originally made outside of the current hearing, best practice requires an AMP Chair or designated official to read statement to all present at the hearing. This provides an opportunity for interested persons to question the evidence. *1 V.S.A. § 310(5)(b).*

Documents and Tangible Objects: Tangible evidence must be marked, labeled and identified. An AMP clerk should mark and create a list of all exhibits received from anywhere.

The recorder should review all exhibits before the AMP and designate different labels for each party. For example, a site plan from an applicant may be identified and marked as "A1," while a photo from an interested party may be labeled as "I1." The recorder may indicate whether exhibits were submitted prior to the hearing or during the hearing. The recorder should create a list, noting evidence corresponding to labeled physical exhibits.

Staff and advisory committee reports and observations made at site visits are evidence and should be recorded and gathered according to best practices.

Staff and Advisory Committee Reports: In municipalities that have not adopted MAPA, an AMP may delegate "any of the power granted . . . to a specifically authorized agent or representative." *24 V.S.A. § 4461(b).* A staff member or advisory committee "may review an application and make recommendations on review standards." *24 V.S.A. § 4464(d)(2).* These recommendations may be presented in writing either before or at a hearing. Recommendations may also be presented as oral testimony at the hearing. *24 V.S.A. § 4464(d)(4).* If presented in writing, reports should be marked and filed as a document. If presented as oral testimony, the recorder or clerk should follow best practices for oral testimony and should administer an oath, as well as recording the speaker's name and what was said.

Site Visits: An AMP may conduct a site visit. *24 V.S.A. §§ 4461(b)* and *4464(d)(2).* Site visits place a project in context. Site visits may take place before or during a hearing. It is important to enter all observations and evidence gathered at the site visit in the record by providing oral testimony at the hearing regarding what was observed. Oral testimony should describe when the visit was conducted, who was present, and what the individual/board saw. The person/board conducting the visit should then offer other parties who were present at either the site visit or present at the hearing an opportunity to make additional comments.

Group site visits trigger the open meeting law and require public notice. This is a more common practice than solo site visits, which are not considered a public meeting and do not require public notice. A group visit is helpful because one person may notice details that another does not. However, unless the site visit is actually conducted as a public meeting, which can be difficult and awkward, the only evidence that should be gathered at a site visit is visual evidence. Further, the AMP or member(s) conducting a site visit should strive to avoid ex parte communication. Although interested parties and members of the public must be able to attend site visits along with applicants, site visits should not be used as a forum for receiving testimony. The person conducting a site visit should clarify that individuals attending are expected to remain quiet and that the appropriate time to testify will be at the scheduled hearing.

Additional Considerations Required by MAPA for On-the-Record Review

An AMP serving a municipality that has adopted MAPA must adhere to the evidentiary limits set forth in *24 V.S.A. § 1206*. It is not essential to memorize the Vermont Rules of Evidence to adhere to MAPA. MAPA § 1206 permits: "evidence not admissible under the rules of evidence may be admitted if it is of a type commonly relied upon by prudent people." For example, an AMP may admit a statement made outside the current hearing, such as a letter from an interested party, as long as a reasonably prudent person would rely on the statement. The Vermont Rules of Evidence do not prohibit this statement just because it is hearsay.

MAPA Requires:

1. An AMP to only admit relevant evidence.
2. An AMP to only receive evidence presented under oath by a party and party witnesses. *24 V.S.A. § 1206(a).*
3. Parties and interested persons must deliver testimony under oath.
4. AMPs to create audio recordings of their proceedings.
5. Most importantly, an on-the-record evidentiary record must be complete, clear and understandable. The Environmental Court vacates (ie: dismisses and returns to the local board) decisions when an AMP's record of a hearing is incomplete. A vacated decision requires additional local hearings, delays, and, ultimately, reduces confidence in local development review.

MAPA defines a *party* as an "interested person." *24 V.S.A. § 1201(4).*

MAPA defines an *interested person* as an individual with the authority to initiate an appeal from an AMP decision to the Environmental Court.

Considerations

Applying Evidence to "Findings of Fact"

An AMP must sift through the evidence presented at a hearing and select only the evidence that is credible and relevant to make findings of fact. Not all evidence presented at a hearing needs to be included as a finding of fact. An AMP should first consider the presented facts, then consider a municipality's bylaws, and finally apply findings of fact to determine whether a specific project meets the established bylaws pursuant to state statute.

Importantly, an AMP should be careful to provide findings of fact adequate to explain its decision. An AMP's decision must be explained and supported by facts. For example, reciting testimony without analysis is inadequate. Inadequate findings of fact lead to greater likelihood for appeal.

Through statute, an AMP has all of the tools necessary to gather evidence for well-supported findings of fact. An AMP may request or issue an order compelling an applicant or other parties to provide additional evidence, including witness testimony, to decide the matter under review. *24 V.S.A. § 4461(b).*

Appeals

The Environmental Court usually reviews an AMP's land use decisions *de novo*. De novo means an applicant's case is heard "anew," so the Environmental Court does not consider findings of fact by the AMP or evidence gathered in the original AMP hearing. Parties are entitled to present new evidence. The Environmental Court finds its own facts, applies those facts to the municipality's bylaws, and issues a decision.

In contrast, where municipalities have adopted MAPA and elect for on-the-record review, the Environmental Court may not receive new evidence and looks to the evidentiary record developed by the AMP. The Environmental Court may only review whether the facts found by an AMP, as applied to the municipality's bylaws and state law, support the AMP's decision. That is, whether or not the AMP misinterpreted the bylaw or state law or made a procedural error. *24 V.S.A. §§ 1201(1)(A)&(B)* and *1202(A)*. The Environmental Court will not consider new evidence that is not submitted during the local hearing before the municipality.

"An AMP should be careful to provide findings of fact adequate to explain its decision".

On-the-Record Review

Benefits

On-the-record review empowers communities by deferring to facts and information gathered by the local authorities most familiar with the people, place, and project at issue in each specific case. On-the-record review can lead to fewer appeals—it therefore saves in attorneys' fees, prevents permitting delays, and can make the municipality appear professional and competent in the eyes of the public. An appeal of an on-the-record decision does not afford the parties an opportunity to build a new case with new facts. Appellate review is limited to whether an AMP misapplied the law or made procedural error.

Drawbacks

On-the-record review requires a municipality to follow specific procedures under MAPA and requires a more precise, organized, and thorough system of gathering and recording evidence. MAPA requires municipalities to follow specific ethics procedures, admit testimony only under oath, provide an audio recording and transcript of all hearings, generally adhere to the Vermont Rules of Evidence, and write clear decisions. The Environmental Court consistently vacates decisions when an AMP's record of a hearing is incomplete and inaudible.

Ethics, Ex Parte Communications, and Misrepresentation

Evidence should be received without bias and without considering the character or personal history of an applicant. For example, an AMP should avoid considering evidence based on an applicant's financial situation. Similarly, details about a person that are not related to the bylaws at issue should be rejected. An AMP should strive to review projects, not personalities.

Possible ethical conflicts arise when AMP members engage in *ex parte communications*: direct or indirect communication with an applicant, fellow board members, or interested persons concerning the merits of an application outside a formal hearing. The prudent AMP member will only discuss the merits of development review at a hearing. When community members ask about or comment on a pending project, the appropriate response is to offer nothing more than the time and date of the hearing. Ethics and best practices require that evidence should be tested by providing all concerned parties the opportunity to be present when that information is heard at a public hearing. This lets the parties question the content and veracity of the evidence received by an AMP.

"The prudent AMP member will only discuss the merits of development review at a hearing. When community members ask about or comment on a pending project, the appropriate response is to offer nothing more than the time and date of the hearing."

An AMP "may reject an application . . . that misrepresents any material fact." *24 V.S.A. § 4470a.* An AMP may strive to gather credible evidence by administering oaths and a municipality may require information provided in an application to be accurate and truthful. Ultimately, an AMP must decide which evidence is "competent"—reliable, relevant, and credible.

Conditioning Projects

An AMP may use evidence from a hearing to add conditions to a project permit. The conditions should be tailored to following the objectives of the municipal plan, bylaws and state statutes. It is important to connect what was said and presented in evidence at a hearing with any conditions placed on a permit. An AMP should first examine evidence to determine which facts reflect a need for placing conditions on a permit. An AMP should next examine the municipality's bylaws and the state statutory criteria to determine what conditions may be allowed by law.

Conclusion

Effective evidentiary procedures should further an AMP's goal to provide a consistent, fair, and efficient decision making process. An applicant, an interested party, or the public should be able to review an AMP's decision and follow the facts found, rationale for conditions and conclusions made according to the adopted community standards in the plan and bylaws. Ambiguity and error in the development review process increases the likelihood of appeals and may result in unfortunate costs and delays. In serving their community, AMPs should strive to implement best practices when gathering evidence in order to most effectively implement the rules and standards set forth in local and state laws.

Resources

Vermont Rules of Evidence, Michie's Legal Resources, available at http://www.michie.com/vermont/lpext.dll?f=templates&fn=main-h.htm&2.0.

Vermont Land Use Education and Training Collaborative, 2006, Essentials of Local Land Use Planning and Regulation.

Municipal and Regional Planning and Development, Vt. Stat. Ann. tit. 24, ch. 117, available at http://www.leg.state.vt.us/statutes/sections.cfm?Title=24&Chapter=117.

Credits

Additional material, collaborative assistance, and external review for the Taking Evidence module provided by Sharon Murray, Front Porch Community Planning; Stephanie Smith, Abigail Friedman and Garrett Baxter, Vermont League of Cities & Towns; Faith Ingulsrud, Vermont Department of Economic, Housing & Community Development; David Rugh Esq, Burak, Anderson & Meloni; Mike Miller, City of Barre; Brian Monaghan, Esq and Paul Gillies, Esq.

This project has been supported by financial contributions from several sponsors. Please see www.vpic.info/pubs/devreview/ for more information.

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Interpreting and Applying Development Standards

Overview

The Due Process Clause of the 5th and 14th Amendments of the United States Constitution requires fairness in the drafting, application, and implementation of local land use laws. The Due Process Clause is the primary influence on how legal proceedings, like development review, are conducted. This Due Process Clause has been interpreted by courts to require land use bylaws provide measurable standards for what property owners can and cannot do with their land. Additionally, measurable standards allow reviewing authorities to make consistent and fair decisions. Courts may not otherwise uphold a bylaw as constitutional. Another key requirement of the Due Process Clause is to clearly notify the regulated person or entity of what the measurable standards are. However, measurable standards are more easily talked about than accomplished.

Many municipalities prefer bylaw language broad enough to be flexible when dealing with unique land parcels and changing circumstances. This tension between specific language and flexibility in a town's bylaws may result in ambiguous bylaws that do not provide the requisite notice and guidance. Ambiguous bylaws may even result in violating the constitutionally guaranteed due process rights of applicants and other parties.

Development review officials generally have no authority to draft or approve municipal bylaws. However, they may have the difficult task of applying ambiguous development standards. This paper strives to make that difficult task easier by clarifying what is and is not ambiguous and by discussing how to apply a potentially ambiguous standard in a manner that will survive a court's scrutiny.

Definition:
An *Appropriate Municipal Panel* (AMP) is a Planning Commission exercising development review, Zoning Board of Adjustment, or Development Review Board.

Application

What is Ambiguous? What is Specific?

In general, bylaw language is ambiguous if it is not specific enough for the AMP to make consistent and fair decisions. The level of ambiguity can be ascertained by asking whether the applicable bylaws contain language stating that the AMP "shall", "should" or "may", consider certain factors. Ambiguity is a problem if the bylaw contains language stating that something is required "where appropriate", "where feasible", or "where reasonable." Ambiguity is a problem when the bylaw states that the AMP "may" require certain actions, without stronger guidance on the level of protection expected, provided elsewhere in the regulations or municipal plan.

The consistency and fairness of bylaw language can be ascertained by asking the following questions. Do applicable standards describe *if* and *how* development will be restricted? Do they provide the applicant with *notice* of what will be required throughout the permitting and development process? Are the terms used and referenced *clearly defined*? Does the bylaw contain language such as "shall" or "must" rather than "encourage" or "promote"? Does the language contain a measurable objective?

Examples of measurable standards include:
- No development allowed on slopes of over 20 percent;
- A Planned Residential Development ("PRD") must have a minimum of 60 percent open space;
- Side-yard setbacks must be six feet.

Clearing up all the grey areas is not always simple. For example, the unambiguous side yard setback described above can be ambiguous when applied to three-sided lots, if the bylaw does not outline how to address this or other irregularly shaped lots. Further, the method for measuring setbacks should be specified; such as whether it is from building foundation or roof line.

Bylaws accompanied by explanatory illustrations aid the AMP in making consistent and fair decisions because they make the bylaws clearer and easier to implement.

Reading Bylaws in Context

The AMP must remember that isolated language must be viewed in the context of the entire bylaw and municipal plan. A mix of general and specific standards in a bylaw is constitutional as long as the reviewing authority has sufficient overall standards to grant or deny the permits in a consistent and fair manner. Vague and ambiguous bylaw language may be made unambiguous when read in conjunction with the municipal plan. For example, a bylaw may state that development in scenic areas is restricted to a certain height and must meet certain design standards. This language appears ambiguous if the bylaw doesn't define what areas of the community qualify as scenic areas. The term "scenic" is subjective and could mean different things to different reviewing authorities. However, potential ambiguity may be resolved with a town plan that maps scenic areas. The same is true of bylaws that refer to protecting significant water bodies and wetlands. Importantly, a document should be *incorporated by reference* and clearly defined as being applicable with the regulations when municipalities use municipal plan policies and maps to interpret bylaws.

Definition:
"Incorporation by reference" is when you make an outside document part of the document you are currently writing. You do this by writing that the outside document "should be treated as if it were contained within this document." *Black's Law Dictionary 7th Edition.*

Vermont courts have cited the following three principles in determining whether bylaw standards are unconstitutional due to ambiguity:

1. Delegation of legislative power to administrative officials without adequate standards violates the separation of powers between the different branches of government. AMP members are appointed administrative officials, making them members of the executive branch. Members of the executive branch are not allowed to make laws—members of an elected legislative body must do that. When AMP members are acting without adequate guidance and standards, they are considered to be impermissibly legislating.

2. The absence of standards denies applicants equal protection of law. Without measurable standards, a land use bylaw can become a tool for favoritism and discrimination. In the small town environment of Vermont, the people involved and affected by the development review process have frequent interactions with each other and those interactions can appear to be the basis of development review decisions when there are no clear objectives.

3. The absence of standards denies permit applicants due process because it does not give them notice of how they can develop property in accordance with the law. Essentially, applicants are entitled to know what uses are allowed and what facts they must present to the reviewing authority in order to obtain approval.

See, In re Handy, 764 A.2d 1226 (Vt. 2000); In re Pierce Subdivision Application, 965 A.2d 468 (Vt. 2008).

Considerations

Presumption of Validity for Local Bylaws

Municipal bylaws have a presumption of validity. A property owner challenging a municipal bylaw has the burden of proving to the reviewing court that the bylaw language is not valid. Consequently, it is not the role of municipal officials to invalidate bylaws during the local hearing process. Instead, a court must rule an ambiguity in a zoning or subdivision bylaw as unconstitutional. AMPs must deal with ambiguity without the power to invalidate. As discussed below, it may be helpful to bring ambiguities to the attention of bylaw drafters by emphasizing the risk of costly litigation and other factors.

How to Interpret and Apply Potentially Ambiguous Standards

It is the AMP's responsibility to apply potentially ambiguous standards in a reasonable and consistent manner. Thus, if an AMP finds it difficult to interpret, apply, and make findings on a particular development application because of ambiguous language, it should consult with the municipal staff, regional planning commission staff, the Vermont League of Cities and Towns ("VLCT") and/or the town attorney. The AMP may gain guidance based on how the language has previously been interpreted in that municipality or elsewhere in Vermont.

There have been a number of decisions decided by the Vermont Supreme Court providing guidance on what bylaw language is sufficiently specific. Here is one example:

Natural Resource Protection: In the 2008 case, *In re Appeal of J.A.M. Golf LLC*, the Vermont Supreme Court ruled that two sections of a South Burlington zoning bylaw were unconstitutionally vague and therefore invalid. Specifically, the South Burlington bylaws that were not upheld required PRDs to "protect important natural resources including…scenic views" and "wildlife habitats," and required all developments to "protect…wildlife habitat." This case highlights the need to define all terms used.

Helpful Vermont Supreme Court decisions:

Steep Slopes: In the 1990 Act 250 case, *In re Green Peak Estates,* the Vermont Supreme Court found that Bennington County Town Plan language that did not permit residential development on slopes of greater than 20 percent was specific and thus could be applied to an Act 250 permit application. In contrast, in the 2000 case, *In re Kisiel,* (another Act 250 case) the Supreme Court found that Waitsfield's steep slopes regulations were too abstract. The Waitsfield bylaw prevented the creation of parcels which would result in development on "steep slopes." The difference between the two standards is that "steep slopes" were defined as greater than 20 percent in one case and not defined in the other.

Aerial photograph indicating location of J.A. McDonald Corp's proposed development of a formerly "reserved" portion of a subdivision in South Burlington. Courtesy Steven F. Stitzel of Stitzel, Page & Fletcher, P.C.

In addition, AMP members should make note of potentially ambiguous language and suggest to their planning commissions that further specificity may be needed during a future bylaw update. Communication between those involved in development review and the drafters of the regulations is valuable and should be on-going. A bylaw that may seem clear when drafted may be found vague or confusing in its application. Planners do not necessarily have the benefit of applying bylaws, or foreseeing all possible ramifications, and thus may need guidance from those who do.

Finally, the AMP should maintain a written record of all previous decisions. The AMP should provide clear findings of facts with foundations in both the town plan and bylaws. Development conditions should be based solely on clear findings of fact. This will allow the AMP to have access to how its local bylaws have been interpreted historically and allow for consistent application of all bylaws, whether ambiguous or not. Further, quality record keeping and recorded explanation of the AMP's reasoning will increase the chances that the decision will be upheld if appealed to the Environmental or Supreme Court.

Density Restrictions: In a1994 Act 250 case, *In re Molgano,* the Vermont Supreme Court found that the town of Manchester's density requirement that "zoning dimensional requirements should encourage a relatively low density of development while promoting open space preservation along the highways" was unenforceable due to being too vague. In contrast, in the 2009 municipal zoning case, *In re Pierce Subdivision Application,* the Supreme Court found a Ferrisburg bylaw that required "the minimum acreage for a planned rural development [to] be 25 acres and a minimum of 60 percent of the total parcel [to] remain undeveloped" met the specificity requirement.

What if the Potentially Ambiguous Bylaw is Challenged by an Applicant?

If an applicant challenges the AMP's interpretation of the bylaw in question, AMP members can consult with their municipal attorney to receive guidance on the application. As mentioned above, local bylaws have a presumption of constitutionality. It's the AMP's responsibility to interpret and make findings on the bylaws as written as best they can, not to determine whether bylaws are valid. While some permit applicants may assert that a particular bylaw is so vague it must be considered void and thus not apply to their projects, it is the job of the courts, not AMP's and applicants, to determine the validity of local bylaws. Widespread invalidation of local bylaws has not occurred over the years and is not anticipated in the wake of recent State Supreme Court decisions on the matter.

Conditional Use Permits: In the 2008 case, *In re Times & Seasons LLC,* the Vermont Supreme Court found that a Royalton town plan requirement that commercial development be located close to town villages "where feasible" was too vague. The Court stated that it was unclear whether the town plan language intended the language to mean economic feasibility, physical feasibility, a combination of the two, or some other measure altogether. Thus, it did not give sufficient guidance on where commercial development should occur.

"Development conditions should be based solely on clear findings of fact."

Planned Residential Developments: In *Pierce*, the issue was whether a PRD bylaw that contained some general standards and some specific standards was invalid due to vagueness. The Vermont Supreme Court decided the standards were not too vague; pointing out that the legislature authorized PRDs to encourage flexibility of design in land development so that it could be used in the most appropriate manner. In order to achieve these goals, modification of zoning regulations may be permitted simultaneously with approval of a subdivision. Thus, the court said, the proper inquiry in whether a bylaw is valid or not is "whether the bylaw provides the Commission with sufficient overall standards to grant a PRD permit, and whether the waivers granted comply with these standards."

Resources

Vermont League of Cities and Towns, 2009, "*What JAM Golf Decision Might Mean to Municipal Land Use Programs,"* http://resources.vlct.org/results/?s=JAM+&go=search+%C2%BB.

Vermont League of Cities and Towns, 2008, "*VT Supreme Court: Zoning Bylaw Must Include Specific Standards to Ensure Property Owners' Due Process*," http://resources.vlct.org/results/?s=JAM+&go=search+%C2%BB.

Katherine Garvey; 2009, Vermont Journal of Environmental Law, "*Local Protection of Natural Resources After JAM Golf: Standards and Standard of Review,"* www.vjel.org/journal/pdf/VJEL10110.pdf.

List of useful cases to review:

1. *In re Appeal of J.A.M. Golf LLC,* 969 A.2d 47 (Vt. 2008).
2. *In re Handy*, 764 A.2d 1226 (Vt. 2000).
3. *In re Green Peak Estates,* 577 A.2d 676 (Vt. 1990).
4. *In re Pierce Subdivision Application*, 965 A.2d 468 (Vt. 2008).
5. *In re Molgano*, 653 A.2d 772 (Vt. 1994).
6. *In re Times & Seasons LLC*, 950 A.2d 1189 (Vt. 2008).

Credits

External review and contribution for the Interpreting and Applying Development Standards module provided by Sharon Murray, Front Porch Community Planning; Stephanie Smith, Abigail Friedman and Garrett Baxter, Vermont League of Cities & Towns; Faith Ingulsrud, Vermont Department of Economic, Housing & Community Development; David Rugh Esq, Burak, Anderson & Meloni; Mike Miller, City of Barre; Brian Monaghan, Esq and Paul Gillies, Esq.

This project has been supported by financial contributions from generous sponsors. Please see www.vpic.info/pubs/devreview/ for more information.

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This module is a general discussion of legal issues but is not legal advice, which can only be provided by a licensed attorney.

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Alternative Dispute Resolution: Why, When and How

Overview: What is ADR?

Alternative Dispute Resolution (ADR) is a voluntary, non-adversarial problem-solving process. Appropriate municipal panels (AMPs), courts, applicants, and those potentially affected by a development project may use ADR to facilitate the development process and develop plans that benefit the community while minimizing time and expenses.

An Appropriate Municipal Panel is a Planning Commission exercising development review, a Zoning Board of Adjustment, or a Development Review Board.

Stakeholders in the project development process have a variety of interests and positions. Experienced applicants identify these interests and potential conflicts early on by involving the community in project design even before submitting an application. Vermont law does not require applicants to participate in ADR, but ADR is available as a tool to resolve conflicts before and during the development review process.

Interests (as defined in the ADR context): A party's needs, desires, hopes and fears that lead them to take a particular position. An interest is the reason, underlying need or concern that motivates people to ask for certain outcomes. The parties' interests serve as the motive for their positions.

Positions: A party's ideal, unilateral solutions to a dispute, describing possible outcomes or solutions.

ADR promotes solutions unavailable in the traditional project development process. ADR exists in various forms, with each offering a unique formula for identifying a solution that both satisfies as many interests as possible and represents a position satisfactory to everyone involved.

Types of ADR Processes:

Negotiation: A voluntary process of resolving disputes without a third-party's involvement or binding resolutions.

Mediation: A negotiation that utilizes a third-party process manager to assist disputants in collaborating to produce an outcome based on consensus. Mediation is non-binding.

Arbitration: Less formal than adjudication, this method empowers a neutral decision-maker to decide how to resolve a dispute. The results can be binding or non-binding.

For the multi-party disputes commonly arising in the project development process, the most effective form of ADR is mediation because it is voluntary, non-binding, and confidential. Unlike arbitration the non-binding nature of mediation allows parties to reach a mutually satisfactory agreement without the pressure of the decision being permanent. Mediation may provide a more formal structure than negotiation, and can be confidential.

Collaborate: Interested persons assume collective responsibility for achieving jointly agreed upon objectives.

Consensus: A mutually acceptable agreement that takes into consideration the interests of all parties.

Process Manager: An individual who has no conflict of interest or bias toward any party to the dispute, and oversees a process to facilitate collaborations between parties to reach a consensus. Though any neutral trusted third-party may perform this role, a list of mediators can be found at the bottom of: http://www.vermontjudiciary.org/GTC/Environmental/mediation.aspx.

Why use ADR?

Many applicants never consider using ADR, but those who do often credit ADR with saving them time and money, as well as improving their community relationships. Those involved in an ADR process learn to collaborate with one another to develop a plan that satisfies all interests instead of solidifying stakeholders' already polarized positions. By encouraging a collaborative instead of adversarial method of resolving disputes, ADR facilitates communications that often improves relationships as well as the process's effectiveness and fairness.

AMPs can assist in promoting ADR's ultimate goal of achieving a win-win for the applicants, relevant stakeholders, and the municipality. The applicant wins because the development may be approved faster and at a lower cost. The community wins because its concerns may be taken into account earlier or may be given more weight in the ultimate design of the development. The municipality wins because the development process works more efficiently when interests are clearly identified and the concerns of potential opponents are resolved early in the process. While the AMP will not conduct ADR, design the project for the applicant or weigh in on the community's concerns, the AMP may encourage an applicant to use ADR to promote consensus. Conversely, the regulatory review process and court appeals create an adversarial climate where positions often become inflexible and the results perpetuate existing disputes.

Illustration: Imagine two cooks having a disagreement of who deserves the last orange. A judge would listen to both cooks reasoning and award the orange to one of the cooks. Alternatively a judge might split the orange in half. In contrast, a process manager would allow each cook to explain their interests in receiving the orange. At this point, the process manager could discover one cook needs zest from the peel to make marmalade, while the other requires the flesh to create juice. A process manager might then produce a result that satisfies both cooks by giving the rind to the first cook and the flesh to the second cook.

When to use ADR?

Before the Hearing: Though applicants, AMPs, and relevant stakeholders can initiate ADR at various points throughout a project's life, an applicant anticipating the need for ADR could identify potential stakeholders and begin ADR prior to submitting an application.

In general, applicants and other participants in the development review process are more likely to be flexible in their positions before having spent significant time and resources on planning a project. An applicant is more likely to have solidified its position if it submits an application prior to identifying and meeting with community stakeholders. At this point, reaching a consensus proves difficult and unlikely.

Though it may often be difficult for an AMP to contact the parties and encourage ADR prior to the hearing, staff may be in the position to do so. Thus, ADR is most effective in producing consensus-based development projects when used as early as possible in the site development process. By waiting for conflicts such as neighborhood opposition to emerge, an applicant is gambling that the project will not be delayed or appealed, either of which would cost time and money.

An applicant proposing a project that will dramatically alter a community's landscape might organize an optional, applicant-driven "community planning" phase, or charrette process.

If the applicant fails to do this pre-submission, the municipality may have an opportunity to require ADR post submission. If the municipality has provided a foundation for utilizing ADR in its plan, adopted bylaws, an ordinance or a resolution of the legislative body, the municipality may create an advisory commission to promote ADR post submission. An advisory commission can perform facilitative functions such as identifying stakeholders within the community along with their positions and interests.

A municipality's legislative body may "create one or more advisory commissions to assist the legislative body or the planning commission in preparing, adopting, and implementing the municipal plan." *24 VSA §4433.* An advisory commission must perform the functions outlined in statute. For example, the commission must comply with the open meeting law, but these meetings are not public hearings before a quasijudicial body. *24 VSA §4464(d).* The advisory commission may review the application and prepare recommendations for consideration by the AMP at the public hearing, according to the procedures adopted in the bylaws. By providing the community with an opportunity to resolve disputes, all relevant stakeholders' interests can be worked out with the applicant before the applicant spends time and money completing an application.

During the Hearing: Though much less likely to be effective once the public hearings have convened, AMPs may allow for ADR in the context of a statutory hearing process. The AMP may suspend the hearing to provide participants the opportunity to submit a written agreement stating that they will participate in ADR. At this time, the parties will agree to return to the AMP within a certain period of time. The applicant can then resubmit the application or submit an amended application based on the agreed upon terms. AMPs or their staff should consider requiring or promoting ADR prior to a public hearing in all complex, multi-party development plans that potentially affect community interests.

ADR is a voluntary process; therefore if the applicant and other stakeholders agree, it can be used effectively under subdivision, site plan and conditional use review.

After the hearing. After the hearing the AMP makes a decision. The parties are invested in the determination of whether the findings, conclusions, and conditions represent their interests.

Parties with a still unresolved dispute, who discover they "lost," may now have an incentive to negotiate. Unfortunately, at this point positions may be too polarized, entrenched and adversarial. Unless there exist particular grounds for an AMP to reconsider, it is too late in the process to voice one's objections at the local level. At this point in the process parties with existing disputes may file an appeal with the Environmental Division of Vermont Superior Court. The court can then require ADR under the Environmental Division's rules of procedure.

An agreement reached through consensus may not satisfy each participant's interests equally or receive similar levels of support from all participants. However, employing ADR early can prevent polarization from occurring during the development review process because ADR addresses all participants and their interests.

Application: How to use ADR?

The most effective method of encouraging ADR is for an applicant or municipality to convene formal meetings to identify community interests and positions prior to submitting an application. This effectively adds a "pre-submission" phase to the development review process, the results of which the applicant can draft into its application and plans before submitting them to the AMP.

Having experienced such meetings' influence on producing consensus-based projects, Burlington's Department of Planning and Zoning may soon require applicants to discuss projects with neighborhood planning associations or potential stakeholders prior to submitting applications.

The most effective method of encouraging ADR is for an applicant or municipality to convene formal meetings to identify community interests and positions prior to submitting an application.

However, because Vermont's enabling statute neither requires nor encourages this step before submitting an application, applicants often do not realize potential conflicts until after spending significant time and money. One way to prevent this is through the scoping process. Convening a scoping process allows for an applicant to better understand and prevent potential community disputes. Often, though, the applicant wishes to avoid this process because of the up-front expenses. An applicant hopes to move an application through a local development review process without interested persons contesting the plan. If that seems likely, the applicant would skip the scoping process. However, as mentioned before, this is a gamble. The scoping process and ADR may improve the likelihood that development projects will be approved more quickly and at a lower cost to the applicant by addressing potential opposition at an early stage.

Scoping Process: At the applicant's request, all interested persons may collaborate prior to formal hearings for a "scoping" process that may lead to consensus on certain issues. At the beginning of this process is a public meeting wherein "the applicant or a representative of the applicant shall present a description of the proposed project and be available for questions from the public concerning the proposed project. The purpose of the meeting shall be to provide public information and increase notice about the project, allow discussion of the proposed project, and identify potential issues at the beginning of the project review process." *3 VSA §2828(f).*

Another option to encourage ADR is for the AMPs to call a recess to encourage and allow time for dispute resolution to occur. *24 VSA §4464(b)(1).* By providing for this pause in time, an AMP may allow for ADR in the hearing process. To require ADR, it must be incorporated into the municipal bylaws. If an agreement is reached during a recess, the application may be resubmitted or amended to reflect agreed upon changes. Additionally, though ADR often eliminates the need for appeals, its non-binding nature does not preclude appeals.

If its members find that the development project resulting from the agreement complies with local regulations, the AMP will grant the permit. At this point, relevant stakeholders may appeal. The appeals court encourages mediation in all cases because mediation addresses issues frequently not addressed in municipal regulations. Since the Environmental Division of Vermont Superior Court may require ADR on appeal anyway, an applicant could use ADR earlier. All parties to complex development decisions can benefit from encouraging the ADR option at the start.

For examples of successful applications of ADR, see the case studies in Smart Growth Vermont's Community Toolbox at: http://www.smartgrowthvermont.org/toolbox/casestudies/

Considerations:

AMPs may encourage ADR. Vermont's legal framework empowers AMPs with significant responsibility in determining the future of Vermont's built landscape based on fairness, stability, efficiency, and cohesiveness within their communities. Inexperienced applicants may particularly benefit from AMPs encouraging ADR because of its capacity to offer superior solutions in

some situations. Ultimately, applicants gain wisdom from witnessing and learning from the benefits that ADR provides.

Encourage the use of a competent, neutral process manager whom all parties trust. This is integral to ensuring procedural fairness. Dispute resolution processes are more effective when they ensure procedural fairness, promote stability and efficiency, and evolve through experiential learning. An effective process manager can identify potential stakeholders and convene informal meetings prior to filing an application, to make certain all concerns are heard.

Recommend the use of ADR early on. By encouraging collaboration early in the process, AMPs can assist in promoting responsible development and less adversarial and divisive development review. Identifying shareholders early is an effective means of preventing conflicts from arising after the applicant has spent time and money drafting and submitting an application.

Encouraging ADR throughout the development review process, and especially as a precursor to an application, can be a positive force for the community and make the development review process more efficient.

Resources:

Consensus Building Institute
http://cbuilding.org/

"Integrating Consensus-Building – A Chart & Narrative"
www.seannolon.com

The Lincoln Institute
http://www.lincolninst.edu/

Smart Growth Vermont toolbox on ADR
http://www.smartgrowthvermont.org/toolbox/tools/alternativedisputeresolution/

Vermont Judiciary Mediation Resources
http://www.vermontjudiciary.org/GTC/Environmental/mediation.aspx

Credits

Additional material, collaborative assistance, and external review for the Taking Evidence module provided by Sharon Murray, Front Porch Community Planning; Stephanie Smith, Abigail Friedman and Garrett Baxter, Vermont League of Cities & Towns; Faith Ingulsrud, Vermont Department of Economic, Housing & Community Development; David Rugh Esq, Stitzel, Page & Fletcher; Mike Miller, City of Barre; and Paul Gillies, Esq., Tarrant, Gillies, Merriman & Richardson.

This project has been supported by financial contributions from several sponsors. Please see www.vpic.info/pubs/devreview/ for more information.

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VERMONT LAND USE
Education & Training Collaborative

Development Review Templates

for Savings Clause Compliance

24 V.S.A Chapter 117

§§ 4461, 4462 and 4464

May, 2005

Table of Contents

A. Hearing Notice Requirements for Development Review

Conditional use review, variances, administrative officer appeals, and final plat review for subdivisions require a warned public hearing. Not less than 15 days prior to the hearing, notice must be given by newspaper publication, public posting (including posting within view from the public right of way most nearly adjacent to the property for which the application is made), and written notice to the applicant and adjoining property owners. 24 V.S.A. §4464(a)(1). Other types of development review (e.g., site plan review, access review, waiver requests) require at least seven days notice and require at a minimum, posting in three public places, and written notification to the applicant and adjacent property owners. 24 V.S.A. §4464(a)(2).

1. Appeal of Zoning Administrator Decision

a. Model Hearing Notice

TOWN OF _____
NOTICE OF HEARING FOR APPEAL OF ADMINISTRATIVE OFFICER DECISION

__Name of Applicant__ of __Applicant's Address__ has submitted a notice of appeal regarding a decision of the administrative officer dated _____, 200_, for a for property located at __Property Address__ in the Town of _____. The proposed project is described as follows_____.

The Town of _____ Development Review Board/Zoning Board of Adjustment/ Planning Commission will hold a hearing on this application on __(Date)__ at __(Time)__ at the _____(Hearing Location)_____. A copy of the administrative officer decision and additional information may be obtained at: _____.

Pursuant to 24 V.S.A. §§ 4464(a)(1)(C) and 4471(a), participation in this local proceeding is a prerequisite to the right to take any subsequent appeal.

Dated at _____, Vermont this ____ day of _____, 200_.

_____
[Secretary of zoning board of adjustment/development review board/municipal clerk/other]
Town of _____, Vermont

b. Model Cover Letter for Hearing Notice – Property Owner and Adjoining Property Owners

(Appeal of Zoning Administrator Decision)

Dear _____:

In response to the notice of appeal dated _____, 200_, for _____, a public hearing has been scheduled by the Town of _____ (Development Review Board/Zoning Board of Adjustment/Planning Commission) for, _____ __, 200_ at __ pm.

Enclosed please find a copy of the hearing notice. Your participation in this proceeding is a prerequisite to the right to take any subsequent appeal. If you need any further assistance, I can be contacted at the address above.

Sincerely,

_____
[Secretary, zoning board of adjustment/development review board/municipal clerk/other]
Town of _____

enc.
cc: Zoning Administrator

2. Conditional Use Permit/Variance/Subdivision Permit

a. Model Hearing Notice

TOWN OF _____
NOTICE OF HEARING FOR CONDITIONAL USE PERMIT/VARIANCE/SUBDIVISION PERMIT

(Name of Applicant) of (Applicant's Address) has submitted an application for a (Conditional Use Permit/Variance/Subdivision Permit) for property located at (Property Address) in the Town of _____. The proposed project is described as follows_____.

The Town of _____ (Development Review Board/Zoning Board of Adjustment/ Planning Commission) will hold a hearing on this application on (Date) at (Time) at the (Hearing Location). A copy of the application and additional information may be obtained at: _____.

Pursuant to 24 V.S.A. §§ 4464(a)(1)(C) and 4471(a), participation in this local proceeding is a prerequisite to the right to take any subsequent appeal.

Dated at _____, Vermont this ____ day of _____, 200_.

_____
Zoning Administrator
Town of _____,
Vermont

b. Model Cover Letter for Hearing Notice – Property Owner and Adjoining Property Owners

(Conditional Use Permit/Variance/Subdivision Permit)

Dear _____:

In response to an application for a (Conditional Use Permit/Variance/Subdivision Permit) dated _____, 200_, a public hearing has been scheduled by the Town of _____ (Development Review Board/Zoning Board of Adjustment/Planning Commission) for, _____ __, 200_ at __ pm.

Enclosed please find a copy of the hearing notice. Your participation in this proceeding is a prerequisite to the right to take any subsequent appeal. If you need any further assistance, I can be contacted at the address above.

Sincerely,

_____
Zoning Administrator
Town of _____

enc.

B. Findings of Fact and Decision Templates

1. Appeal of Administrative Officer Decision

TOWN OF _____

[Development Review Board/Zoning Board of Adjustment/Planning Commission]

Appeal of Administrative Officer Decision
Findings and Decision

In re: _____

Permit Application No. _____

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves a notice of appeal submitted by _____ for an appeal of an administrative officer decision under the Town of _____ Zoning Bylaw.

2. The notice of appeal was received by the [secretary of the board of adjustment/development review board/municipal clerk] on _____, 20__. A copy of the notice of appeal was filed with the administrative officer on _____, 20__.

A copy of the notice of appeal is available at _____.

3. On _____, 20__, notice of a public hearing was published in the _____.

4. On _____, 20__, notice of a public hearing was posted at the following places:

   a. The municipal clerk's office.
   b. _____, which is within view of the public-right-of-way most nearly adjacent to the property for which the application was made.

c.
d.

5. On _____, 20__, a copy of the notice of a public hearing was mailed to the appellant. On _____, 20__, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the appeal [or, ATTACH CERTIFICATE OF SERVICE]:

    - _____
    - _____
    - _____
    - _____
    - _____

6. The appeal was considered by the [development review board/zoning board of adjustment/planning commission] at a public hearing on _____, 20__, which was held within 60 days of the filing of the notice of appeal. [The hearing was adjourned and continued on _____, 20__. The final public hearing was held on _____, 20__]. The [development review board/zoning board of adjustment/planning commission] reviewed the appeal under the Town of _____ Zoning Bylaw, as amended _____ __, 2005 (the Zoning Bylaw).

7. Present at the hearing were the following members of the [development review board/zoning board of adjustment/planning commission]:

    - _____
    - _____
    - _____
    - _____
    - _____

8. At the outset of the hearing, the [development review board/zoning board of adjustment/planning commission] afforded those persons wishing to achieve status as an interested person an opportunity under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that statute could be met. A record of the name and address of persons wishing status as an interested person, a summary of their evidence with regard to the criteria, and a record of their participation at the hearing is attached hereto. **Rules I**

or

8. At the outset of the hearing, the [development review board/zoning board of adjustment/planning commission] afforded an opportunity for persons wishing to achieve status as an interested person under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that subsection are met. After a deliberative session, the [development review board/zoning board of adjustment/planning commission] granted interested person status to the following persons:

- _____
- _____
- _____
- _____
- _____

A record of the name and address of persons wishing status as an interested person, a summary of their evidence with regard to the criteria, and a record of their participation at the hearing is attached hereto. **Rules II**.

9. During the course of the hearing the following exhibits were submitted to the [development review board/zoning board of adjustment/planning commission]:

- _____
- _____
- _____
- _____
- _____

These exhibits are available at: _____.

FINDINGS

Based on the application, testimony, exhibits, and other evidence the [development review board/zoning board of adjustment] makes the following findings:

1. The applicant appeals a decision of the zoning administrator dated _____, 20__. In that decision the zoning administrator [describe the act or decision subject to the appeal].

2. Notice of appeal was filed on_____, 20__, which is within the 15 day period required under 24 V.S.A. § 4465(a).

3. In accordance with 24 V.S.A. § 4466, the notice of appeal was in writing and included the name and address of the appellant, a brief description of the property with respect to which the appeal was taken, a reference to the regulatory provisions applicable to the appeal, the relief requested by the applicant, and the alleged grounds why the relief requested was believed proper under the circumstances.

4. The appellant is an interested person as defined at 24 V.S.A. § 4465(b).

5. The subject property is a ____ acre parcel located at _____ in the Town of _____ (tax map parcel no. _____). [The property is more fully described in a _____ Deed from _____ to

_____, dated _____, 20__, and recorded at Book ___, Page ____, of the Town of _____ Land Records.]

6. The property is located in the _____ District as described on the Town of _____Zoning Map on record at the Town of _____ municipal office and section ___ of the Zoning Bylaw.

7. The appeal requires review under the following sections of the Zoning Bylaw: [Reference the particular section(s) of the bylaw under which the application is being reviewed. E.g., "Article IV, Section 2 of the Town of _____ Zoning Bylaw provides for a minimum setback of ..."]

8. [Other facts pertinent to the decision]

DECISION

Based upon these findings, the [development review board/zoning board of adjustment] concludes that [no error has been committed by the zoning administrator/the zoning administrator committed the following error:]

[The matter is remanded to the zoning administrator for issuance of a permit in accordance with this decision]

Dated at _____, Vermont, this __ day of _____, 20__.

_____, Chair

_____

_____

_____

_____

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the [planning commission/zoning board of adjustment/development review board]. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

2. Application for Conditional Use Review

TOWN OF _____

[Development Review Board/Zoning Board of Adjustment/Planning Commission]

Application for Conditional Use Review
Findings and Decision

In re: _____

Permit Application No. _____

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for conditional use submitted by _____ under the Town of _____ Zoning Bylaw.

2. The application was received by _____ on _____, 20__. A copy of the application is available at _____.

3. On _____, 20__, notice of a public hearing was published in the _____.

4. On _____, 20__, notice of a public hearing was posted at the following places:

   a. The municipal clerk's office.
   b. _____, which is within view of _____, the public-right-of-way most nearly adjacent to the property for which the application was made.
   c.
   d.

5. On _____, 20__, a copy of the notice of a public hearing was mailed to the applicant. On _____, 20__, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application [or, ATTACH CERTIFICATE OF SERVICE]:

- _____
- _____
- _____
- _____
- _____

6. The application was considered by the [development review board/zoning board of adjustment/planning commission] at a public hearing on _____, 20__. [The hearing was adjourned and continued on _____, 20__. The final public hearing was held on _____, 20__]. The [development review board/zoning board of adjustment/planning commission] reviewed the application under the Town of _____ Zoning Bylaw, as amended _____, 2005 (the Zoning Bylaw).

7. Present at the hearing were the following members of the [development review board/zoning board of adjustment/planning commission]:

   - _____
   - _____
   - _____
   - _____
   - _____

8. At the outset of the hearing, the [development review board/zoning board of adjustment/planning commission] afforded those persons wishing to achieve status as an interested person an opportunity under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that statute could be met. A record of the name and address of persons wishing status as an interested person, a summary of their evidence with regard to the criteria, and a record of their participation at the hearing is attached hereto. **Rules I**

or

8. At the outset of the hearing, the [development review board/zoning board of adjustment/planning commission] afforded an opportunity for persons wishing to achieve status as an interested person under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that subsection are met. After a deliberative session, the [development review board/zoning board of adjustment/planning commission] granted interested person status to the following persons:

   - _____
   - _____
   - _____
   - _____
   - _____

A record of the name and address of persons wishing status as an interested person, a summary of their evidence with regard to the criteria, and a record of their participation at the hearing is attached hereto. **Rules II**.

9. During the course of the hearing the following exhibits were submitted to the [development review board/zoning board of adjustment/planning commission]:

    - _____
    - _____
    - _____
    - _____
    - _____

    These exhibits are available at: _____.

FINDINGS

Based on the application, testimony, exhibits, and other evidence the [development review board/zoning board of adjustment/planning commission] makes the following findings:

1. The applicant seeks a conditional use permit to construct a _____. The subject property is a ____ acre parcel located at _____ in the Town of _____ (tax map parcel no. _____). [The property is more fully described in a _____ Deed from _____ to _____, dated _____, and recorded at Book _____, Page ___, of the Town of _____ Land Records].

2. The property is located in the _____ District as described on the Town of _____Zoning Map on record at the Town of _____ municipal office and section ___ of the Zoning Bylaw.

3. Conditional use approval is requested for the project as a _____ as that term is defined in section ____ of the Zoning Bylaw. The application requires review under the following sections of the Town of _____ Zoning Bylaw:

    - _____
    - _____
    - _____
    - _____
    - _____

4. [Reference to the particular section(s) of the bylaw under which the application is being reviewed. E.g., "Article IV, Section 2 of the Town of _____ Zoning Bylaw provides for a minimum setback of ..."]

5. The application will require the following existing or planned community facilities: _____. [Add a finding for each required public improvement.]

6. The application will have the following impact on its surrounding area: _____. [Add findings as necessary.]

7. The application will cause the following [truck trips, vehicle trips, etc.].

8. The application will utilize the following renewable energy resources: _____. [Add findings as necessary.]

9. [Recitation of other facts pertinent to the decision]

DECISION AND CONDITIONS

Based upon these findings, and subject to the conditions set forth below, the [development review board/zoning board of adjustment/planning commission] [grants/denies] the application for _____.

As conditioned, the proposed development meets the requirements of Sections ___ of the Zoning Bylaw. [The decision should reference each section of the zoning bylaw identified in findings and state **why or why not** it meets the requirements set forth in each of these sections.]

1. [The application [will/will not] have an undue adverse impact the capacity of existing or planned community facilities]

2. [The application [will/will not] have an undue adverse effect on the character of the area affected, as defined by Section _____ of the Town of _____ Zoning Bylaw].

3. [The application [will/will not] have an undue adverse effect on traffic and roads and highways in the vicinity].

4. [The application [will/will not] have an undue adverse effect on the following bylaws currently in effect:_____].

5. [The application [will/will not] have an undue adverse effect on utilization of renewable energy resources].

6. [The application [will/will not] satisfy the requirements of the bylaw with respect to: [minimum lot size/distance from adjacent or nearby uses/performance standards/site plan review criteria/any other criteria required by the bylaw.]

The [development review board/zoning board of adjustment/planning commission] approves the application subject to the following conditions:

Dated at _____, Vermont, this __ day of _____, 20__.

_____, Chair

_____

_____

_____

_____

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the [planning commission/zoning board of adjustment/development review board]. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

3. Application for Variance

TOWN OF _____

[Development Review Board/Zoning Board of Adjustment/Planning Commission]

Application for Variance
Findings and Decision

In re: _____

Permit Application No. _____

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves [review of an application for variance/review of an appeal of an administrative officer decision and request for variance] submitted by _____ under the Town of _____ Zoning Bylaw.

2. The [application/notice of appeal] was received by _____ on _____, 20__. A copy of the [application/notice of appeal] is available at _____.

3. On _____, 20__, notice of a public hearing was published in the _____.

4. On _____, 20__, notice of a public hearing was posted at the following places:

   a. The municipal clerk's office.
   b. _____, which is within view of the public-right-of-way most nearly adjacent to the property for which the application was made.
   c.
   d.

5. On _____, 20__, a copy of the notice of a public hearing was mailed to the [applicant/appellant]. On _____, 20__, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the

property subject to the [application/appeal] [or, ATTACH CERTIFICATE OF SERVICE]:

- _____
- _____
- _____
- _____
- _____

6. The [application/appeal] was considered by the [development review board/zoning board of adjustment/planning commission] at a public hearing on _____, 20__. (In appeals of administrative officer decisions, this hearing must be held within 60 days of the date of the filing of the notice of appeal). [The hearing was adjourned and continued on _____, 20__. The final public hearing was held on _____, 20__]. The [development review board/zoning board of adjustment/planning commission] reviewed the [application/appeal] under the Town of _____ Zoning Bylaw, as amended _____, 2005 (the Zoning Bylaw).

7. Present at the hearing were the following members of the [development review board/zoning board of adjustment/planning commission]:

- _____
- _____
- _____
- _____
- _____

8. At the outset of the hearing, the [development review board/zoning board of adjustment/planning commission] afforded those persons wishing to achieve status as an interested person an opportunity under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that statute could be met. A record of the name and address of persons wishing status as an interested person, a summary of their evidence with regard to the criteria, and a record of their participation at the hearing is attached hereto. **Rules I**

or

8. At the outset of the hearing, the [development review board/zoning board of adjustment/planning commission] afforded an opportunity for persons wishing to achieve status as an interested person under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that subsection are met. After a deliberative session, the [development review board/zoning board of adjustment/planning commission] granted interested person status to the following persons:

- _____
- _____

- _____
- _____
- _____

A record of the name and address of persons wishing status as an interested person, a summary of their evidence with regard to the criteria, and a record of their participation at the hearing is attached hereto. **Rules II**.

9. During the course of the hearing the following exhibits were submitted to the [development review board/zoning board of adjustment/planning commission]:

- _____
- _____
- _____
- _____
- _____

These exhibits are available at: _____.

FINDINGS

Based on the application, testimony, exhibits, and other evidence the [development review board/zoning board of adjustment/planning commission] makes the following findings:

1. The applicant seeks a variance to construct a _____. The subject property is a ____ acre parcel located at _____ in the Town of _____ (tax map parcel no. _____). [The property is more fully described in a _____ Deed from _____ to _____, dated _____, and recorded at Book ____, Page ____, of the Town of _____ Land Records.]

2. The property is located in the _____ District as described on the Town of _____Zoning Map on record at the Town of _____ municipal office and section ___ of the Zoning Bylaw.

3. The following variance is sought by the applicant: _____. The variance request requires review under the following sections of the Zoning Bylaw: [Reference to the particular section(s) of the bylaw under which the application is being reviewed. E.g., "Article IV, Section 2 of the Town of _____ Zoning Bylaw provides for a minimum setback of ..."]

4. The following unique physical circumstances or conditions peculiar to the subject property are found: [Describe the irregularity, narrowness, or shallowness of lot size or shape, exceptional topographic or other physical conditions that were found.]

5. Because of these unique circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Bylaw and authorization of a variance is necessary to enable the reasonable development of the property.

6. Unnecessary hardship has not been created by the applicant.

7. [Describe the character of the neighborhood, the adjacent property, etc.] For the following reasons, the variance 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:

8. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

DECISION AND CONDITIONS

Based upon these findings, [and subject to the conditions set forth below], the [development review board/zoning board of adjustment/planning commission] approves the following the variance:

[This approval is subject to the following conditions:]

Dated at _____ Vermont, this __ day of _____, 20__.

_____, Chair

_____

_____

_____

_____

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the [planning commission/zoning board of adjustment/development review board]. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

4. Application for Subdivision Review

TOWN OF _____

[Development Review Board/Zoning Board of Adjustment/Planning Commission]

Subdivision Review
Findings and Decision

In re: _____

Permit Application No. _____

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application for subdivision of land submitted by _____ for subdivision approval under the Town of _____ [Subdivision Regulations/Unified Development Bylaw].

2. The application and plat were received by _____ on _____, 20__. A copy of the application and plat are available at _____.

3. On _____, 20__, notice of a public hearing for final plate review was published in the _____.

4. On _____, 20__, notice of a public hearing for final plat review was posted at the following places:

   a. The municipal clerk's office.
   b. _____, which is within view of _____, the public-right-of-way most nearly adjacent to the property for which the application was made.
   c.
   d.

5. On _____, 20__, a copy of the notice of a public hearing was mailed to the applicant. On _____, 20__, a copy of the notice of public hearing was mailed to the following owners of properties adjoining the property subject to the application [or, ATTACH CERTIFICATE OF SERVICE]:

   - _____

- _____
- _____
- _____

6. The application and plat were considered by the [development review board/zoning board of adjustment/planning commission] at a public hearing on _____, 20__. [The hearing was adjourned and continued on _____, 20__. The final public hearing was held on _____, 20__]. The [development review board/zoning board of adjustment/planning commission] reviewed the application and plat under the Town of _____ [Subdivision Regulations/Unified Development Bylaw], as amended _____, 2005.

7. Present at the hearing were the following members of the [development review board/zoning board of adjustment/planning commission]:

   - _____
   - _____
   - _____
   - _____
   - _____

8. At the outset of the hearing, the [development review board/zoning board of adjustment/planning commission] afforded those persons wishing to achieve status as an interested person an opportunity under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that statute could be met. A record of the name and address of persons wishing status as an interested person, a summary of their evidence with regard to the criteria, and a record of their participation at the hearing is attached hereto. **Rules I**

or

9. At the outset of the hearing, the [development review board/zoning board of adjustment/planning commission] afforded an opportunity for persons wishing to achieve status as an interested person under 24 V.S.A. § 4465(b) to demonstrate that the criteria set forth in that subsection are met. After a deliberative session, the [development review board/zoning board of adjustment/planning commission] granted interested person status to the following persons:

   - _____
   - _____
   - _____
   - _____
   - _____

A record of the name and address of persons wishing status as an interested person, a summary of their evidence with regard to the criteria, and a record of their participation at the hearing is attached hereto. **Rules II**.

10. During the course of the hearing the following exhibits were submitted to the [development review board/zoning board of adjustment/planning commission]:

    - _____
    - _____
    - _____
    - _____
    - _____

These exhibits are available at: _____.

FINDINGS

Based on the application, testimony, exhibits, and other evidence the [development review board/zoning board of adjustment/planning commission] makes the following findings:

1. The applicant seeks a permit to subdivide land. The subject property is a ____ acre parcel located at _____ in the Town of _____ (tax map parcel no. _____). [The property is more fully described in a _____ Deed from _____ to _____, dated _____, and recorded at Book _____, Page ____, of the Town of _____ Land Records].

2. The property is located in the _____ District as described on the Town of _____Zoning Map on record at the Town of _____ municipal office and section ___ of the [Zoning Bylaw].

3. Subdivision approval is requested for the project pursuant to review under the following sections of the Town of _____ [Subdivision Regulations/Unified Development Bylaw]:

    - _____
    - _____
    - _____
    - _____
    - _____

4. [Reference to the particular section(s) of the [Subdivision Regulations/Unified Development Bylaw] under which the application is being reviewed. E.g., “Article

IV, Section 2 of the Town of _____ [Subdivision Regulations/Unified Development Bylaw] provides for a minimum setback of ..."]

5. [Recitation of facts pertinent to the decision]

DECISION AND CONDITIONS

Based upon these findings, and subject to the conditions set forth below, the [development review board/zoning board of adjustment/planning commission] [grants/denies] the [application and plat] for _____.

As conditioned, the proposed subdivision meets the requirements of Sections ___ of the [Subdivision Regulations/Unified Development Bylaw]. [The decision should reference each sections of the [Subdivision Regulations/Unified Development Bylaw] identified in findings and state **why or why not** it meets the requirements set forth in each of these sections.]

The [development review board/zoning board of adjustment/planning commission] approves the application and plat subject to the following conditions:

1. [All roads shall be constructed to A-76 standards, pursuant to Section ___ of the [Subdivision Regulations/Unified Development Bylaw] (example).

2. [The fire chief has certified that the fire department may safely access all new parcels created by this approval] (example).

3. _____.

The approved plat is hereby attached to this decision. Every street or highway shown on this plat is deemed to be a private street or highway until it has been formally accepted by the municipality as a public street or highway by ordinance or resolution of the [legislative body] of the municipality.

The approval of the [development review board/zoning board of adjustment/planning commission] shall expire 180 days from the date of this decision, unless the approved plat is duly filed or recorded in the office of the municipal clerk. [If permitted by Section ___ of the Subdivision Regulations, the administrative officer may extend the date for filing the plat by an additional 90 days, if final local or state permits or approvals are still pending].

Dated at _____ Vermont, this __ day of _____, 20__.

_____, Chair

_____

_____

_____

_____

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the [planning commission/zoning board of adjustment/development review board]. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

AGENDA ITEM

6

July 2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4 6:30 SB (1st Monday)	5	6 6:00 P&R (1st Wednesday)	7 7:00 ZBA (1st Thursday)	8	9
10	11 6:30 PC School Board (2nd Monday)	12	13	14	15	16
17	18 6:30 SB (3rd Monday)	19	20	21 7:00 ZBA (3rd Thursday) 7:00 BoLT?	22	23
24	25 6:30 PC (4th Monday)	26	27 6:30 BAC (4th Wednesday)	28 7:00 CC (4th Thursday)	29	30
31						