

MUNICIPAL ASSISTANCE CENTER TECHNICAL PAPER #3

Creating a Development Review Board JULY, 2007



INTRODUCTION

This technical paper outlines the benefits and drawbacks of creating a Development Review Board (DRB), explains the process of converting from a Planning Commission (PC)/Zoning Board of Adjustment (ZBA) model to a PC/DRB model, and illustrates how that conversion might affect other boards and officials.

WHAT IS A DRB?

A DRB is a local land use board that holds quasi-judicial proceedings (hearings) to review land use applications. When created, the DRB assumes all development review functions previously held by the ZBA, which includes appeals of decisions of the administrative officer, variances and conditional use permits. The DRB also conducts all land use review functions previously held by the PC, which are typically site plan and subdivision review.

In 1994, the State Legislature amended the planning and zoning laws to encourage communities to move from the historic PC/ZBA model of land use review, where both entities hear certain development applications, to a single land use review board, the DRB. (Land use planning remains with the PC.)

A **quasi-judicial proceeding** “is 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, the result of which is appealable by a party to a higher authority.” 1 V.S.A. § 310 (5) (B)

BENEFITS

This streamlined permit review process eliminates possible conflicts between two land use review boards with overlapping authority. Additionally, when the DRB assumes all development review authority, the planning commission is able to focus on the town plan and bylaw revisions and other long-term planning functions. Most communities find that the conversion to a DRB increases the efficiency and effectiveness of both the planning commission and the DRB by allowing them to specialize in either development review or planning.

Development review is a quasi-judicial function and requires the ability to run effective hearings, interpret and apply the bylaws to specific applications, and write well-reasoned decisions that focus narrowly on the parties and the application.

In contrast, planning is a legislative/policy making function, and requires the ability to think broadly about the future of the community, draft specific bylaws that implement the vision of the town plan, and focus on the long-term welfare of the community instead of on the propriety of a particular application. Dividing these duties – which are functionally very different – tends to simplify the process for all involved, including applicants, board members, interested persons, and members of the public.

One of the biggest benefits is realized when managing conflicts of interest. When development review and planning are commingled, it can be difficult to define and manage a conflict of interest. For example, when considering a new goal for the town plan or a new bylaw, it is important to talk both formally and informally with citizens about the impact of the proposal on the community as a whole, on specific properties, and on various constituencies in the community. However, when reviewing a specific application for development, it is *inappropriate* to discuss the application except in a public hearing. Doing so outside of a public hearing (such as at the local store) is strictly prohibited. Separating these functions makes it easier for board members to distinguish what type of action is appropriate, depending on the context.

In addition, DRBs are authorized to have alternate members, who may be called to serve if primary members are unable to serve. Planning commissions, however, are not authorized to have alternates. This can create problems with obtaining sufficient votes to take action, since under Vermont law the concurrence of a majority of the board is required to take action, even if only a quorum of the board is present. 1 V.S.A. § 172.

Other than time, there is no conflict in serving on both the PC and the DRB. Municipalities with low levels of development and/or small populations can even appoint most members to both boards, though each board must be separately constituted, as the removal provisions are different. Removal of planning commissioners requires a unanimous vote by the legislative body and may occur with or without cause, while members of the DRB may only be removed from the board for cause upon written charges and after a public hearing.

DRBs BECOME EXPERT IN THEIR PERMITTING RESPONSIBILITIES, RESULTING IN:

- consistent reviews;
- focused findings and conclusions;
- quality and timely written decisions; and
- greater ability to handle complex applications.

PLANNING COMMISSION CAN FOCUS ON:

- capital budget plans;
- comprehensive review of municipal plan and bylaws;
- creation of design review or historic districts; and
- telecom, septic, and natural resource planning.

THE DRAWBACKS

Even though there are many positives to converting to a DRB, some communities have raised concerns about continuity of bylaw development and bylaw application in the land use program. The primary concern is that planning may occur in a vacuum if the planning commission does not have the opportunity to interpret and apply the bylaws. This can be remedied by holding joint quarterly or biannual meetings to discuss unclear bylaws, development trends, applicant concerns, and other feedback. And, as noted above, it is permissible for the legislative body to appoint a couple members to *both* the planning commission and the DRB to ensure continuity.

Another potential drawback is the possibility of longer development review meetings. It is true that a single board hearing development review applications can result in longer meetings; however most communities have found that the efficiencies gained by having one board specialize in development review offsets the increased workload for that one board.

THE SWITCH

According to the Vermont League of Cities and Towns' *2006 Municipal Census*, of 153 towns with zoning bylaws, 42 towns have the DRB form of development review. (Full *Census* results are located in VLCT's on-line [Resource Library](#).) When considering changing to a DRB, we recommend the legislative body first consult with the PC and the ZBA before holding at least one public hearing on the issue. This will ensure that all involved public bodies can express their support at the hearing.

A motion by the legislative body and approval by a majority of its members will create a DRB. However, the legislative body should use a formal resolution to memorialize the action. This resolution should include the effective date of transition to a DRB, specify that all matters presently pending before the PC and ZBA shall be completed by those boards (after which they shall cease to exist), and that all new applications for development review received after the effective date will be scheduled for review before the DRB. (See the sample resolution on page 4.)

The zoning board of adjustment will cease to exist after the effective date, so it is important to consider a timeline for conversion or it may result in confusion for applicants. Because the transition to a DRB from a PC/ZBA can be lengthy, it is best not to begin the process at the height of the construction season. A town does not immediately have to amend its bylaws to reflect the change to a DRB, and zoning regulations will not be voided because of references to a ZBA and PC.

Twenty-four V.S.A. § 4460 provides the requisite authority to appoint no fewer than five and no more than nine DRB members, determine term lengths, and fill board vacancies. Be careful not to create too large of a DRB – a larger board can create difficulties with the concurrence of a majority requirement discussed above. A better alternative is to have a smaller board (five to seven) with a healthy list of alternates and a clear policy for how alternates should be selected (such as alphabetically or sequentially).

The duties of the administrative officer are relatively unchanged after the transition. If the administrative officer previously assisted the PC or the ZBA with its quasi-judicial duties, then he or she could continue to do so for the DRB. Of course, the administrative officer should continue to administer the bylaws literally and enforce the bylaws. Finally, he or she cannot be a member of the DRB and should not participate in deliberations with the DRB.

SAMPLE RESOLUTION

WHEREAS, the Town of [] has enacted zoning bylaws and subdivision bylaws pursuant to the provisions of 24 V.S.A. Chapter 117; and

WHEREAS, this Board has established a planning commission and a zoning board of adjustment as authorized by provisions of 24 V.S.A. Chapter 117 to, among other responsibilities, assist in the administration of the above said bylaws; and

WHEREAS, this Board is authorized to establish a development review board to perform all development review functions under 24 V.S.A. Chapter 117 pursuant to Section 4461(a).

NOW, THEREFORE, IT IS HEREBY RESOLVED by this Board that it shall establish for the Town of [], effective [], a development review board which shall consist of [] members and shall have the authority to exercise all of the functions of the zoning board of adjustment as set forth in 24 V.S.A. Chapter 117, and shall further exercise all development review functions performed by the planning commission pursuant to 24 V.S.A. Chapter 117.

BE IT FURTHER RESOLVED that [] members of the development review board shall serve for terms of [] years and [] members for terms of [] year(s), except that initial terms shall be as set forth below; and

BE IT FURTHER RESOLVED that the following individuals are appointed to the development review board for the terms set forth herein:

NAME

TERM

and,

BE IT FURTHER RESOLVED that the Board may appoint up to [] alternate members of the development review board whose terms will be one year:

NAME

TERM

and,

BE IT FURTHER RESOLVED that all matters presently pending before the zoning board of adjustment shall be completed by the zoning board of adjustment, and, upon completion of all pending matters, the zoning board of adjustment shall then cease to exist; and

BE IT FURTHER RESOLVED that all land use review matters presently pending before the planning commission shall be completed by the planning commission.

Dated at Anytown, Vermont this [day] of [month], [year].

[Town] Selectboard signatures