

(Note from the VLCT Municipal Assistance Center: On August 25, 2005 VLCT MAC mailed a memo to all local zoning officials about complying with the September 1, 2005 changes to Vermont's zoning laws. As a follow-up, this special ATL offers further explanation of the saving clause of Act 115, the 2004 legislation revising the state's zoning statutes.

The saving clause provides that, effective September 1, 2005, the provisions of 24 V.S.A. §§ 4412 and 4413, subchapters 9, 10, and 11 of Chapter 117, and the related definitions found at 24 V.S.A. § 4303, will control over any inconsistent provision of a municipal zoning bylaw. While some towns have already amended their bylaws to comport with the new statutory requirements, others have not yet begun. Many towns are at some point in between. The Municipal Assistance Center has received several inquiries asking how zoning permit applications should be handled in this period before municipal zoning bylaws are revised to comply with the new state law.

Unfortunately, there is no blanket formula for determining whether a bylaw provision is consistent with state law. The following is intended as general guidance. For particularly complex or contentious permit applications, towns are advised to consult their municipal attorney for additional assistance.)

Much of the new law addresses matters of procedure, such as the requirements for holding a hearing and dealing with interested persons. Our existing zoning bylaw is largely silent on these procedural matters, but it does conflict with state law in some respects. What should we do?

Subchapters 9, 10, and 11 of the revised Chapter 117 set out the steps for adoption, administration, and enforcement of zoning bylaws. They also address the composition of appropriate municipal panels (AMPs), (development review boards, zoning boards of adjustment, and planning commissions conducting development review) hearing and notice requirements, and the avenues for appeal.

The provisions of subchapters 9, 10, and 11 (and their predecessors) are largely procedural. They are prescriptive and give towns little or no leeway for deviation or interpretation. Most existing local bylaws are, for the most part, silent on matters of procedure. To the limited extent that some towns have attempted to address procedure in their existing bylaws, they have usually adopted the relevant provisions of state law verbatim, or nearly so. As a result, zoning officials in most towns have traditionally followed state statute on procedural issues.

Accordingly, VLCT recommends that, effective September 1, 2005, zoning administrators and AMPs should follow the procedural requirements set forth in the new subchapters 9, 10, and 11 of Chapter 117, regardless of the presence of contrary provisions in existing bylaws.

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