

***Can an appropriate municipal panel make minor changes to conditions contained within a final decision after the decision is issued?***

No. Regardless of how small a change is contemplated, changing a decision after the close of a quasi-judicial proceeding creates the appearance of a conflict, and infringes on an individual's due process rights. Ultimately, this type of action by an appropriate municipal panel (AMP) would affect the integrity of the development review process.

If an interested person wishes to contest conditions contained within a decision, the most common course of action is to file an appeal in Environmental Court. A less common practice is for an applicant to request *reconsideration* by the AMP under 24 V.S.A. § 4470. If an AMP decides to honor the request for reconsideration, it is important for the AMP to protect the due process rights of all parties. Hallmarks of due process include providing adequate notice to parties, and an opportunity to be heard. The notification process for reconsideration is the same as for any development review hearing, as outlined in 24 V.S.A. § 4464 (a). The focus of the reconsideration hearing could be on specific concerns that an interested person might have with the issued decision (for example, timeframes for which a financial guarantee must be provided).

An AMP may reject a request for reconsideration without a hearing if it considers the issues raised by an interested person to involve substantially or materially the same facts as were considered the first time around - frequent use of reconsideration could create a slippery slope if a board reconsiders its decision where the facts of the application have not changed. However, it must still render a written decision ten days from the filing of the request. To guide a panel's decision on whether or not to reconsider a matter, the panel could incorporate into its rules of procedure the circumstances under which it might use this process. This may also lessen chances of inconsistent application of the statute.

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