

Our town's zoning bylaw has a provision requiring applicants to obtain a septic permit before applying for a zoning permit. This has worked fine until now, but our town is not accepting delegation of the state program and we are concerned that after July 1, 2007, state septic permits may be delayed, thereby holding up zoning permits. We are also concerned that we will have no record of where state-approved septic systems are located. What should we do?

It has been the practice in several communities around the state to condition local zoning permits on the issuance of a septic permit. The fact is that towns have never had the legal authority to do this. Now that the law expressly provides that state regulations will supersede provisions of local zoning bylaws regulating wastewater systems, the practice is more suspect than ever. See 10 V.S.A. § 1974(b).

As a concession to towns that want to retain some interest in septic permitting, the Legislature recently changed the state's zoning statute to allow municipalities to add provisions to local zoning bylaws prohibiting the initiation of construction under a local zoning permit unless and until a state septic permit is issued. 24 V.S.A. § 4414(13).

It should be noted that this does not give towns authority to require zoning applicants to obtain a state septic permit prior to obtaining a local zoning permit, but it does allow towns to prohibit construction until a state septic permit is obtained. Acting under this authority, towns could require the submission of state septic permits and design plans but could not, for example, substantively evaluate or review those plans or issue local septic permits based on those plans.

Jim Barlow, Attorney, VLCT Municipal Assistance Center

VLCT News, July 2007