

ARE POST OFFICES EXEMPT FROM ZONING?

The answer to this question turns on who owns the property. If the federal government owns it, then the doctrine of preemption applies and the project is exempt from local land use regulation. If the federal government is merely leasing the property from a private landowner, then preemption does not apply and a local land use permit will be required.

Preemption is a legal principle derived from the Supremacy Clause of the U.S. Constitution (Article VI, Section 2) that laws of the federal government supersede inconsistent state or local laws. In the land use context, preemption authority is also derived from the Property Clause of the U.S. Constitution (Article IV, Section 3), which grants Congress the authority to regulate federal property. Together these clauses give Congress preemptive power over state and local control of federal property. *Mayo v. United States*, 319 U.S. 441 (1943). Despite this authority, the U.S. Postal Service, in striving to be a good neighbor, usually tries to work with local officials to comply with local zoning.

If the U.S. Post Office is merely leasing the space from a private landowner, the property is not exempt. While there appears to be a difference of opinion amongst courts around the country on this point, here in Vermont the Supreme Court has determined that “where a governmental agency which may be entitled to exemption from state and local land use regulations is a lessee from a private lessor, the private lessor cannot claim governmental exemption, in the absence of contrary legislative intent.” The Court reasoned that allowing otherwise would result in the private lessor “avoiding local planning considerations and disregarding community sensibilities.” *Montgomery v. Town of Sherburne*, 147 Vt. 191 (1986).

Garrett Baxter, Staff Attorney, VLCT Municipal Assistance Center

VLCT News, November 2008