

HOW DOES A MUNICIPALITY REGULATE THE IMPACTS OF TELECOMMUNICATION FACILITIES?

In June 2007, the Vermont Legislature passed Act 79, “Establishing the Vermont Telecommunications Authority to Advance Broadband and Wireless Communications Infrastructure Throughout the State.” This law made a number of changes to how wireless communication facilities are permitted at both the state and local level by imposing several new constraints on municipal regulatory authority. In addition to precluding municipal regulation of a wireless telecommunication facility that has received a certificate of public good from the Vermont Public Service Board and exempting certain small telecommunication antennas from local permitting, the law also requires every municipality that regulates wireless telecommunication facilities to have a process in place for de minimis application review. “An officer or entity designated by the municipality shall review telecommunications facilities applications, and upon determining that a particular application will impose no impact or de minimis impact upon any criteria established in the bylaws, shall approve the application.” 24 V.S.A. § 4412(9). If an application has no or only a “de minimis impact,” it must be approved. While the law does not define what a “de minimis” impact is, Black’s Law Dictionary defines it as one that is minimal or an impact that is “so insignificant that a court may overlook it in deciding an issue or case.” *Black’s Law Dictionary*, 8th ed.

Municipalities may regulate telecommunication facilities by means of either a zoning bylaw or a stand-alone municipal ordinance. These should be amended to reflect designation of an officer or entity to both review telecommunication facility applications and set forth clear and definite criteria against which the de minimis standard will be assessed. Until that time, selectboards in municipalities that utilize zoning to regulate telecommunication facilities may adopt interim bylaws pursuant to 24 V.S.A. § 4415.

If a municipality’s ordinance or bylaw does not specifically designate an officer or entity to make impact determinations, that authority should be exercised by whichever one currently reviews telecommunication facilities applications. Presumably, de minimis review decisions issued by a zoning administrator could be appealed to the municipality’s appropriate municipal panel pursuant to 24 V.S.A. § 4465, decisions issued by an appropriate municipal panel appealed to the Environmental Court pursuant to 24 V.S.A. § 4471, and decisions issued by a selectboard appealed to superior court pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

You can learn more by reading VLCT’s two relevant model documents: Telecommunications Zoning Bylaw and Telecommunications Stand-Alone Ordinance. Both are available for your consideration in the VLCT Resource Library at:
<http://resources.vlct.org/results/?s=telecommunications&c=1&cname=VLCT+Model+Ordinances+%26+Policies>.

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