

ASK THE LEAGUE

When regulating property owned by an entity such as a school, church, or the state, what does “location” mean under 24 V.S.A. § 4413?

Towns are given rather broad discretion in regulating land uses under state law, but there are certain cases in which the town’s regulatory power is limited. Under 24 V.S.A. § 4413, towns may only regulate certain aspects of development for state- or community-owned and run facilities, public and private schools, places of worship, public and private hospitals, and solid and hazardous waste facilities. Those properties may only be regulated as to size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, screening, and location. This last aspect of regulation – “location” – may appear rather straightforward, but this term has in fact had a rather tortuous history. Courts have stated the term is “ambiguous” and, unfortunately, no definition is given in statute. This ambiguity left towns unsure about whether the term means the location of various components within a project development site, or whether it limited the general location of the project within the entire town. Fortunately, courts in Vermont have stepped in to provide more guidance, and now towns have some clarity of just what “location” truly means.

In the 2011 case *In re Town of Charlotte Recreational Trail, Docket No. 98-5-08 Vtec*, the Environmental Court looked to the legislative history behind this section of state statute to determine the legislative intent behind the definition of “location.” The court held that “... the legislative intent in using the term ‘location’ was to give municipalities the ability to regulate the general location of public facilities, but not the specific siting of the improvements within the project site.” The court noted that when the term “location” was added to this portion of state statute in 1972, the person who drafted the legislation testified that the wording was added “... to give a town the opportunity to regulate the location of such things as certain public utilities and other kinds of things that are listed. ... The philosophy has been up to this point that they should be regulated in terms of all things with the exception of their location in a community.” The Environmental Court concluded that since no other conflicting authority was offered, the original testimony from 1972 provides that “location refers only to the general location within a municipality.”

Prior to the *Charlotte Recreation Trail* case, it was understood that towns could regulate the location of these limited uses on individual parcels, however it was unclear whether “location” referred to the location in the municipality. The Environmental Court has since clarified that the term “location” in 24 V.S.A. § 4413 refers to the general location within a town. Towns are now aware that they may regulate the location of state- or community- owned and run facilities, public and private schools, places of worship, public and private hospitals, and solid and hazardous waste facilities within the town’s geographic borders. Of course, towns also may regulate a certain project site via the other enumerated criteria, such as size, height, and setbacks.

The *Charlotte Recreation Trail* decision is archived at <https://www.vermontjudiciary.org/gtc/environmental/ENVCRTOpinions2010-Present/Town%20of%20Charlotte%20Rec%20Trail%2098-5-08%20Vtec%20and%20Map.pdf>.

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