

SPECIAL SECTION:  
CHAPTER 117 UPDATE  
PART 2

This article is the second in a two-part series focusing on the recent changes to the local planning and zoning laws (Chapter 117 of Title 24). In the first article (see Special Section in the July 2004 *VLCT News*), we focused on the “Saving Clause” Provisions – those six areas in which municipalities must amend their bylaws by September 1, 2005 or they will be overridden by state law. In this second article, we focus on some of the remaining provisions of Act 115 that towns can take advantage of when they amend or update their zoning bylaws.

Act 115 includes a general reorganization and updating of the enabling legislation for planning and zoning. The changes are intended to reflect current tools and practices in planning and zoning, clarify statutes in response to court decisions, address regulation of affordable housing, and preserve local control over bylaws. The most significant of these changes are described below.

**PERMISSIBLE TYPES OF REGULATIONS (24 V.S.A. § 4414)**

This section provides clear authority for municipalities to establish particular zoning districts, review conditional uses, adopt inclusionary zoning, and develop standards for granting waivers. While special districts are a long-standing tool for planning and zoning, Act 115 provides specific authority for establishing downtowns, village centers, and new town centers as specific districts without seeking state designation. The new law provides specific objectives for establishing boundaries such as creating “compact settlements oriented toward pedestrians,” and providing for a “variety of housing types,” “interconnecting streets and blocks,” a “coordinated transportation system,” and “natural features and undisturbed areas.” This section also authorizes specific overlay districts to account for shorelands, flood plains, ridgelines, highway intersections, etc. 24 V.S.A. §§ 4414 (1), (2).

The conditional use review process has also been amended. The general standards by which proposed uses are reviewed now must include provisions that prevent “undue adverse impact” on the character of the area affected “as defined by the purpose or purposes of the zoning district” where the project is located. This language is derived from particular cases and is intended to harmonize the statutes with case law. In addition, municipalities may also adopt bylaws for conditional use review that allow one or more of the Act 250 criteria to be considered in conditional use review. 24 V.S.A. § 4414(3)(c).

This section of law also provides specific authority for “inclusionary zoning.” For example, bylaws may now provide that a certain percentage of housing units in a subdivision or PUD meet affordability standards, though such standards may be lower than the statutory definitions for affordable housing and affordable housing developments. 24 V.S.A. § 4414 (7).

Finally, Act 115 authorizes “waivers” as an alternative to variances and the legal requirement for proof of necessity. Municipalities that adopt waiver provisions in their bylaws may reduce dimensional requirements in accordance with specific standards that are in conformance with the town plan. Standards may allow mitigation through design, screening or other remedies and may also allow for waivers to be granted for disability accessibility, fire safety or other legal requirements, or for energy conservation and renewable energy structures. Waiver bylaws must also include procedures for granting and appealing such waivers. 24 V.S.A. § 4414(8).

**IMPROVING THE OVERALL PROCESS**

In addition to the expansion of permissible regulations described above, many other statutory provisions were clarified or expanded to grant additional authority to local boards, recognize common practices, and encourage streamlining of the process. Some of these changes are described below.

**1. Conformance with Town Plan (24 V.S.A. § 4401)**

One of the most constant themes throughout the new law is the requirement that all regulatory and non-regulatory tools be in conformance with the town plan. This will require municipalities to give more attention to strengthening town plan language to ensure it provides a basis and justification for bylaws. The new definition of “conformance with the plan” is specifically defined as relative to the plan that is in effect at the time the bylaw (or bylaw amendment) was adopted. 24 V.S.A. § 4303. With the increased emphasis

on compliance with the plan, towns may wish to consider simultaneous amendments to the plan and bylaws.

## **2. Site Plan Review (24 V.S.A. § 4416)**

Municipalities may continue to adopt site plan review bylaws, however, the previous requirement to act within 60 days has been removed and replaced with the notice and decision requirements found in 24 V.S.A. § 4464. The new law requires decisions within 45 days after adjournment.

## **3. Planned Unit Developments(24 V.S.A. § 4417)**

Act 115 consolidates enabling legislation for Planned Residential Developments under new Planned Unit Development (PUD) provisions. Under the new law, municipalities are encouraged to provide for PUD's and to permit flexibility in the application of regulations so long as it is in conformance with the municipal plan. The new law also removed language that limited the size of density bonuses.

## **4. Subdivision Bylaws (24 V.S.A. § 4418)**

This enabling legislation continues to provide minimum requirements for subdivision bylaws. All bylaws must continue to contain procedures and requirements for submission and processing of plats and other documentation and standards for design and layout of streets, water and sewer facilities, public utilities, etc. The new law also contains several timely additions including standards for stormwater facilities, improvements necessary to implement the municipal plan and achieve desired settlement patterns, and standards for protection of natural resources and preservation of open space as appropriate in the municipality.

## **5. Unified Development Bylaws(24 V.S.A. § 4419)**

Municipalities may also utilize "unified development bylaws" in order to streamline the review process. For example, a town could incorporate site plan review criteria under conditional use review in order to enable combined site plan/conditional use review. Section 4419 provides that "any bylaws authorized under this chapter may be integrated into a unified land development bylaw that combines the separate requirements into a consolidated review and permitting process." Such integration will continue to meet the requirements of permanent zoning under 10 V.S.A. § 6001(3).

## **6. Availability and Distribution of Documents (24 V.S.A. § 4445)**

Municipalities are also required to provide copies of all final adopted bylaws, amendments, or repeals to their regional planning commission and to the Department of Housing and Community Affairs.

## **SUMMARY**

Act 115 is the most comprehensive rewrite of Chapter 117 since 1968. It contains broad changes in both process and substance and is an attempt to harmonize the law with current practice, recent court cases, and policy concerns over affordable housing. Perhaps the most difficult aspect of the new law is the multiple effective dates. To recap, the Act became effective on July 1, 2004, and is presently available to enable the adoption of revised local bylaws. All bylaw revisions after July 1, 2004 must follow the new law. On September 1, 2005, regardless of whether municipalities have updated their bylaws by then or not, the provisions of Sections 4412 and 4413 as well as subchapters 9, 10, and 11 and the related definitions in Section 4302 will supercede any inconsistent local bylaws. Municipalities have until September 1, 2011 to comply with the remaining provisions.

For more information on implementing Act 115 and the activities of the Land Use Education Collaborative visit [www.vpic.info](http://www.vpic.info).

— *Dominic Cloud, Manager, VLCT Municipal Assistance Center*

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