

SUPERIOR COURTS LIMIT APPLICATION OF SUPERMAJORITY PROVISION IN STATE ZONING LAW

In two recent decisions, Vermont Superior Courts have limited the application of the so called “supermajority provisions” of Title 24, Chapter 117, the state zoning enabling legislation.

What does the “supermajority” provision mean? Simply put, it means that under certain circumstances voters in a municipality may demand that a vote to **amend** zoning or subdivision bylaws must be passed by a two-thirds vote rather than by a simple majority vote (more than 50%). In ‘urban’ municipalities, a two-thirds vote of all members of its legislative body is required. In a ‘rural’ municipality, two-thirds of all voters present and voting at a town meeting is required.

Who may file a supermajority petition? Under 24 V.S.A. § 4404(e) either 5% of the voters of a municipality, the owners of 40% of the lots or area included in the proposed amendment or the owners of 40% of the lots or area located outside of the area included in the proposed amendment but within 200 feet from the outer limits of lots included in the proposed amendment may file a supermajority petition.

As indicated in the statute, a request for a supermajority vote may only be made when **amendments** to zoning or subdivision bylaws are proposed. A request for a supermajority vote may **not** be made when zoning or subdivision bylaws are proposed for the first time in a municipality or when a complete repeal of zoning or subdivision bylaws is up for consideration.

The issue before the two Superior Courts with regard to the supermajority provision was, may a petition for a supermajority vote be filed when a petition for a revote is filed pursuant to Title 17 of the Vermont statutes? This identical issue arose in two Vermont towns, Wilmington and Warren, within a period of months.

In both the Wilmington and Warren cases votes, were cast on proposed amendments to zoning and the votes passed. Pursuant to Title 17 voters in both towns exercised their right to file a petition requesting that the vote be reconsidered (Under Title 17, 5% of the voters may petition for reconsideration of a vote within 30 days of the date that the vote took place). In both cases, the petition to reconsider the vote was accompanied by a request that a “supermajority” be required for the vote to pass. In both cases the Courts rejected the “supermajority” petition ruling that such petitions may only be filed when the initial vote is held. In the most recent of the two cases decided, *Warren v. Porter and Edgecomb*, Judge Wright provided the following rationale for ruling that a request for a “supermajority” vote may not be made when a vote is being reconsidered rather than held for the first time:

The general municipal voting statute is carefully crafted to promote the local democratic process, based on an engaged and informed electorate expressing itself by majority rule. The revote provision of 17 V.S.A. § 2661 provides an important safety net for the process, allowing the disappointed participants in an initial vote to more fully inform or more fully engage the rest of the electorate who may not have participated in the initial vote. On the other hand, the provision for a supermajority vote on local land use regulations provides added protection for what may be the minority interests of landowners concerned about the effect

of the proposed zoning amendment on their property interests. The two statutory schemes of protection conflict with one another and produce an unfair and unreasonable result if they are applied to allow a supermajority in a revote when a simple majority decided the initial vote. Warren v. Porter and Edgcomb, Docket No. 377-7-01 Wnev (Washington Superior Ct., Nov. 2001)

The citation for the Wilmington case is *Beaudette v. Town of Wilmington*, Docket No. 342-8-01 Wmev (Windham Superior Ct., Sept. 2001). We are not aware that either of these cases has been appealed to the Vermont Supreme Court. However, VLCT will let you know if an appeal has in fact been filed.

For now, it is clear that in Windham and Washington Counties the “supermajority” provisions of state law do not apply to a revote (e.g. reconsideration) under Title 17. While the Court’s reasoning in both cases appears to be extremely sound to VLCT, other Superior Courts throughout the state are not bound by these rulings. Accordingly, it is still advisable for towns to consult their municipal attorney whenever a supermajority petition is filed. In the meantime, VLCT will continue its efforts in the Legislature to eradicate the “supermajority” provision altogether and at the very least clarify in statute when a supermajority vote may be requested. Look for updates in your *VLCT Weekly Legislative Report*.

- Jon Groveman, Director, VLCT Municipal Law Center

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