

## DEEMED APPROVAL

In the law of zoning, the applicant's remedy of deemed approval has been strengthened by the Vermont Supreme Court's decision in *In re Appeal of McEwing Services, LLC*, 2004 VT 53. In the decision, the Court granted the deemed approval remedy to the applicant because the case involved an "untimely decision that resulted from protracted deliberations." *Id* at 21.

Municipal zoning boards constantly face the specter of deemed approval, and hurry to avoid that result by issuing decisions within the statutorily prescribed time periods. In this case, the application was for a telecommunications tower, which was a conditional use under the Town of Moretown's Zoning Regulations. The law that governed conditional uses at the time, 24 V.S.A. § 4407 (5), required that decisions in conditional uses be issued within 60 days of the close of the final public hearing (*Editor's Note: Decisions in development review proceedings will now be required to be issued within 45 days of adjournment of the final public hearing, based on the new 24 V.S.A. § 4464 (b)*).

Here, the Development Review Board (DRB) issued a decision within 60 days of what it considered to be the "close of evidence," which was when it was satisfied that it had received the information it needed to make a decision. However, the decision was *not* issued within 60 days of the final public hearing. This is a subtle but necessary line of demarcation that zoning boards must be aware of. If your board believes it will need more information in order to render a proper decision, you should *adjourn the hearing and continue it to a time and date certain*. The board should then have sufficient time to issue a timely decision after the final public hearing. The law allows a board to do this where it believes that it will need more evidence before issuing a decision.

Finally, please note that this case was decided under the former 24 V.S.A. § 4467, which is now § 4468.

- Brian Monaghan, Attorney, VLCT Municipal Assistance Center

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