

# Zoning Administration 101

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## Zoning Administrator AKA - Administrative Officer

**You're not only the ordinance enforcement agent – you're the face of your town zoning program.**

- You're often the first face an applicant encounters when they're looking to get town approval for their development. Or...if a person has a complaint.**
- You play an important role as the town's public relations person, and again, as the "complaint department."**
- You're an educator. Citizens, developers and other town zoning officials will look to you for answers.**
- You're the custodian of the Town's zoning files.**



## Appointment/Dismissal

The Zoning Administrator is appointed by the Selectboard after nomination by the Planning Commission. The appointment is for 3-years.

24 V.S.A. § 4448

A ZA may be removed after consultation with the Planning Commission “for cause.”

ZA is subject to the personnel policy, position’s salary set by either voters or the Selectboard.

“Where an action is given to any appointed or elected municipal officer...the action shall be brought in the name of the town in which the officer serves...”

24 V.S.A. § 901



## Role and Responsibilities

“The administrative officer shall administer the bylaws literally and shall not have the power to permit any land development that is not in conformance with those bylaws.”

24 V.S.A. § 4448(a)

This “literal administration” however often requires you to have an appreciation of context and precedent and you must exercise good judgment in your interpretation of zoning bylaws.



## Rules...Regs... But What Else?

You need to know what statute requires of you – you need to know state and local land use regulations to varying degrees but you also should be familiar with your town:

- previous / potential zoning
- appropriate municipal panels
- land records/posting areas
- regional planning commission
- ongoing zoning violations
- flood plain regulations
- geography
- zoning files/records
- towns municipal plan
- settlement patterns
- pending applications



the listers, town clerk, selectboard, town attorney, road foreman, etc.

## Essential ZA Qualifications

**Ability to read development plans in relation to the town's land use regulations and state law.**

**Active Listening – Give your full attention to what others are saying, asking questions and understanding the points being made.**

**Comfortable speaking with the public, applicants and other municipal officials.**



**Ability to describe complicated concepts to a lay public.**

## Essential ZA Qualifications

**Ability to convey information effectively and with confidence.**

**Reading comprehension – handbooks, statutes, bylaws and caselaw.**

**Non confrontational – You are a public officer and are expected to serve the public.**

**Unbiased and honest – Neither an advocate nor opponent of land use projects. You apply bylaws as they are written and you treat applicants fairly and equally.**



## Essential ZA Qualifications

**Knowing when to ask for help and where to look for answers when you're unsure.**

**Organization and attention to detail – You must be able to track applications, pending applications, pending projects, notices of violations, potential violations, record keeping, etc.**

**Report back to the Planning Commissions errors, concerns or ideas you may have with the bylaws.**

**Know what your job IS and what your job IS NOT.**



## Permits and Approvals

**“No land development may be commenced within the area affected by the bylaws without a permit issued by the administrative officer.”**

**24 V.S.A. § 4449(a)(1)**

**“If the bylaws...so provide, it shall be unlawful to use or occupy or permit the use or occupancy of any land or structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure...until a certificate of occupancy is issued...by the administrative officer, stating that the proposed use of the structure or land conforms to the requirements of those bylaws.”**



**24 V.S.A. § 4449(a)(2)**

## Permits and Approvals

**“The administrative officer should provide an applicant with forms required to obtain any municipal permit or other municipal authorization required under this chapter...”**

*and*

**“...should inform any [applicants to] contact the regional permit specialist employed by the agency of natural resources in order to assure timely action on any related state permits”**

**24 V.S.A. § 4448(c)**



**<http://www.anr.state.vt.us/dec/ead/pa/index.htm>**

## Permits and Approvals

**Must provide applicants with a copy of applicable residential or commercial building energy standards as provided in 30 V.S.A. §§ 51 and 53.**

**24 V.S.A. § 4449**

**[http://publicservice.vermont.gov/topics/energy\\_efficiency/rbes](http://publicservice.vermont.gov/topics/energy_efficiency/rbes)**



## Permits and Approvals

**All permits issued by the ZA must contain a statement of an individual's right to appeal the action to the AMP.**

**24 V.S.A. § 4449(b)**

**All permits issued must contain a statement of the period of time within which an appeal may be taken i.e. 15-days from date of the decision, action, or non-action.**



**24 V.S.A. § 4465**

## Permits and Approvals

**“If the administrative officer fails to act with regards to complete application for a permit within 30-days, whether by issuing a decision or by making a referral to the AMP, a permit shall be deemed issued on the 31<sup>st</sup> day.”**

**24 V.S.A. § 4448(d)**

*Deemed approval is an equitable remedy that must first be asserted in the Environmental Division of Superior Court.*



## Permits and Approvals

**After the Zoning Administrator issues a permit:**

- **within 3-days must deliver a copy to the listers office**
- **post a copy in at least one public place until the 15-day appeal period has run**
- **within 30-days of issuing a permit OR a notice of violation you must deliver a copy to the town clerk for recording in the land records**
- **within 30-days of issuing a permit OR a notice of violation you must file with the land use permits in the zoning offices.**
- **fees for recordings apply for applicants**



**24 V.S.A. § 4449**

## Referrals to DRB/ZBA/PC

The zoning administrator must determine that applications are complete, and if required, must refer certain applications to a DRB/ZBA.

24 V.S.A. § 4460(e)

“...Unless the matter is an appeal from the decision of the administrative officer, the matter shall come before the panel [AMP] by referral from the administrative officer....”

24 V.S.A. § 4460(e)



- Conditional use review
- Variances
- Subdivisions

- Site plan review
- Plat review

## Referrals to DRB/ZBA/PC

“...Unless the matter is an appeal from the decision of the administrative officer, the matter shall come before the panel [AMP] by referral from the administrative officer. Any such referral decision shall be appealable as a decision of the administrative officer.”

24 V.S.A. § 4460(e)

*“Appropriate Municipal Panels” (AMPs) are planning commissions performing development review, a board of adjustment, a development review board, or a legislative body performing development review.*



## Role in the Hearing Process

The ZA's role in the hearing process is ill-defined by statute but is defined by a job description.

In some towns the ZA only does the statutory minimum of forwarding applications to the DRB/ZBA. In other towns the ZA may serve as the board's clerk and:

- Schedule hearings
- Manage agendas
- Posting and notices of hearings and meetings
- Draft minutes, draft decisions, staff reports
- Other administrative functions delegated under the job description



## Zoning Enforcement

In the eyes of the law, zoning enforcement is mandatory.  
24 V.S.A. §§ 4451, 4452

- Failure to regularly enforce violations undermines the planning and zoning process and goals.
- Failure to enforce zoning bylaws consistently will make enforcement that much more difficult.
- Lack of enforcement fosters disrespect for the bylaws and sends the wrong message.



## Zoning Enforcement

**PRIORITIZE:** Identify the most important provisions of your bylaws and focus your enforcement resource there first.

**COMMUNICATE:** The ZA and the selectboard need to communicate regularly about zoning enforcement.

**REPLICATE:** Develop a system for enforcement and utilize the system consistently.

Once municipalities get in the habit of regular enforcement of violations, most find that enforcement actions will generally get quick results without resorting to court action.



## Zoning Enforcement

The goal of the ZA is to achieve compliance by all means necessary before resorting to court action – sometimes property owners are just totally unaware – so informal or “soft” enforcement is really effective at achieving compliance.

Informal enforcement is more cost-effective than formal enforcement, but even informal enforcement should be part of a formal process.

The Vermont Supreme Court recognizes that, although the ZA must enforce zoning regulations, “the nature of the remedy sought is discretionary.”

*In re Letourneau, 168 Vt. 539 (1998)*



## Zoning Enforcement: Inspections

The ZA must investigate whenever there is reason to believe that a violation may exist.

Wherever a Girl Scout may go to sell cookies is the same area you may go on a private property: driveway, walkway to the front door or other obvious primary entrance.

If you are not permitted on the property you may still proceed with enforcement if you have eyewitness reports, photographs, other evidence, etc.



It will be the property owner's burden to prove the violation DOES NOT exist.

## Zoning Enforcement: Standard Procedure

Any person who violates any bylaw shall be issued a Notice of Violation (NOV)...

7- days warning notice by certified mail

- state the provision of the bylaws that was violated
- facts giving rise to the alleged violation
- state the alleged offender has an opportunity to cure within 7- days and that no additional warning will be given
- state their right to appeal and the terms of an appeal (to whom/when)



Failure to appeal renders the NOV final. Notice of appeal must be filed within 15-days of the NOV.

24 V.S.A. § 4451

## Zoning Enforcement: Judicial Bureau

Zoning enforcement action may be brought in the Judicial Bureau if your bylaws so allow.

- An alternative procedure for issuing the notice of violation and the penalty may be undertaken.
- The ZA will issue a ticket –a “municipal complaint”– for a zoning violation on forms provided by the Judicial Bureau.
- A copy of which is then sent to the bureau.
- The violation is considered a civil infraction with a maximum penalty of \$800.



## Appeals of Notice of Zoning Violation to ZBA/DRB

You are a party in the proceedings.

- Participate in the appeal proceedings by explaining the action that is under appeal
- Present evidence to support the action.
- May question any witness or evidence presented during the hearing.



*If the ZA normally in the board's clerk, the ZA must not act as clerk during the hearing and decision process. The board must make arrangements for the duties of clerk to be handled by someone else.*

## Zoning Enforcement and the Selectboard

**You are legally obligated to enforce violations however a ZA cannot spend municipal money to bring an action or hire an attorney to take a case to court.**

**A ZA must get authorization from the Selectboard to spend the money.**



## Zoning Enforcement and the Selectboard

**No authorization is needed to issue an initial NOV or ticket. However, what if the Selectboard refuses to allocate money to enforce zoning regulations or refuse to authorize an enforcement action? You can:**

- **Defer to the SB decision and not act – let the NOV in the land records speak for itself.**
- **Attempt to convince the SB to change its mind**
- **Bring suit in court on your own – with your own money**
- **Attempt to enforce the violation without expending funds – (namely via the Judicial Bureau)**
- **Resign.**



# RESOURCES

<http://list.uvm.edu/archives/vtzoningadmins.html>

- Listserve for VT ZAs. A communication/sharing platform for information about zoning, development review and other topics relevant to ZAs.

Your Regional Planning Commission

- [www.vapda.org](http://www.vapda.org)

<http://legislature.vermont.gov>

- 24 V.S.A. §§ 4301 et seq.

[www.vpic.info](http://www.vpic.info)

- Essentials of Land Use Planning & Regulation
- Zoning Administrators Handbook



# RESOURCES

## State Agencies

- Agency of Commerce & Community Development  
<http://accd.vermont.gov/>
- Agency of Natural Resources  
<http://www.anr.state.vt.us/>
- Agency of Agriculture, Food & Markets  
<http://agriculture.vermont.gov/>

## VLCT

- Municipal Assistance Center  
[www.vlct.org](http://www.vlct.org)
- [info@vlct.org](mailto:info@vlct.org) / 802-229-9111

