

## Practical Tips for Writing Local Land Use Board Decisions

VLCT Municipal Assistance Center Webinar on October 22, 2020

### Questions and Answers

**Notes:**

***These answers were provided by law clerks, with the goal of clarifying materials covered in the presentation. Answers are based on the hypothetical examples given in the presentation.***

***Response to questions provided on the recording are not transcribed here and noted accordingly.***

***A few questions were omitted, because they were unclear, or court staff were not able to respond.***

Question Asked	Answer Given
In your example condition, how can the board be sure that the landscaping will be adequate. Can the board continue the hearing to a date certain and request that the applicant bring the site plan with the additional landscaping for review by the board?	In our simplified example, the board is relying on the evidence in the record to demonstrate that the west side will be adequately covered. The details in the landscaping plan and other evidence in the record for the other three sides provide a basis for concluding that an identical arrangement will work for the west side.
What if a permit is conditioned on another permit not yet received? is that 'condition subsequent'?	If the bylaws require, for example, an ANR/State wastewater permit, then adding a condition requiring an applicant to get that permit is not a condition subsequent. On the other hand, if the bylaws require the board to examine details related to water pollution or wastewater, it would be a condition subsequent to simply approve the project conditioned on the receipt of an ANR permit. The key is that the board should review all substantive criteria in the bylaws before deciding whether to approve or deny a project.
Are you suggesting a continuation of a hearing so that issues identified in deliberation are discussed before the applicant and interested persons present?	If issues are identified in the course of a hearing, it is best to raise them for discussion or clarification while all interested parties are present. If an issue arises during deliberation (after the hearing is closed), the board should determine whether the issue requires a denial. If so, the board could either deny the application or re-open the hearing to gather more information.

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If an OTR DRB finds that the evidence presented is inadequate, or suspects that it is not factual to the hearing, can the DRB call its own witnesses to counter, or offer additional evidence?	Answered - see recording
For an OTR DRB, can you address Ex Parte communication during a recessed hearing?	Answered - see recording
What, if any, is the role of the town in a de novo review? Does the town have the option of participating in the hearing?	Answered - see recording
Are the OTR proceedings ever sent back for a redo before it is heard at the Court? What do the Judges like better De Novo or OTR?	Answered - see recording
Is it wise to issue a separate approval letter for each step of review (sketch, preliminary and final)? It is my understanding that each step could be appealed, correct?	Answered - see recording
We have a regulation that requires the applicant to pay for all legal doc reviews (post approval.) The applicant pays his attorney to submit deeds, we send to the town attorney, and we bill them for the town attorney review. Is your previous answer on legal fees preapproval the same for post approvals?	Apologies - we are not sure what this question is referring to.
Is the court able to look at the local decision in a de novo review and if so, how are they able to utilize it?	Answered - see recording
Is there a formal process for an applicant referred to as "request for reconsideration" after a DRB has published a decision denying an application or approving an application with conditions?	The answer would depend on the local bylaws.

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<p>We as staff are concerned about what might be called "decision bloat." How important is it for decisions issued by OTR communities to address the entirety of the bylaw as opposed to focusing most or entirely on those issues that were most discussed/debated during hearing?</p>	<p>Answered - see recording</p>
<p>Do the judges have any advice regarding the writing of decisions where the municipality itself is the applicant? Does nothing change? Alternatively, should the DRB take any special steps in recognition of the fact there is the potential for appearance of a conflict?</p>	<p>On the surface, there is nothing inappropriate about a municipality applying for zoning approval. This is quite common and does not present any immediate issues.</p>
<p>In the example, you have testimony for N, S, W but not east but your write up suggests that the visual blocking on the east is good - is this "filling the gaps?"</p>	<p>This would not be "gap filling" on the part of the DRB. In our example, there is a landscaping plan and other evidence showing the details of the proposal for the east side. The board can use that evidence to conclude that the east side will comply with the bylaw. Testimony is one type of evidence among many that can help a board reach a decision.</p>
<p>A bit unclear on if adding condition or condition subsequent. What is preferred?</p>	<p>A condition subsequent is improper. Appropriate conditions are commonplace and can be useful.</p>
<p>Can you speak at all to the relative pace of things with telephonic/remote trials during covid? How much slower than prior? Thanks! Thanks!</p>	<p>Remote hearings are much slower, as compared to in-person hearings.</p>
<p>So, Towns have the option to either have on the record or de novo? How does that happen?</p>	<p>Answered - see recording</p>
<p>So, is that through a Town vote?</p>	<p>Depending on the municipality, either the city council or the selectboard would make the decision. For more detail see 24 V.S.A. 4471(b)</p>
<p>Does the DRB or ZA issue a permit if the FOF find in the positive?</p>	<p>Answered - see recording</p>
<p>Do recommend site visits?</p>	<p>Answered - see recording</p>

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Does the DRB or ZA issue a permit if the FOF are positive?	Answered - see recording
I believe in site visits - do you recommend them in all if not most cases.	Answered - see recording
Re: Example of Condition Subsequent	
Should the condition specifically state the plantings on the west side should be the same as the other three sides?	In this case, the requirement to replicate the landscaping from the north, south, and east sides means that the landscaping for the west side will be the same.
The assumption, which should be stated, would be that the screening on the other 3 sides is appropriate for the 4th side.	
What are the most common shortcomings of decisions written by an AMP?	Answered - see recording
What is the benefit of being an on the record town?	Answered - see recording