



ZONING 101:

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ZONING 101: ADMINISTRATIVE OFFICER ROLES AND RESPONSIBILITIES

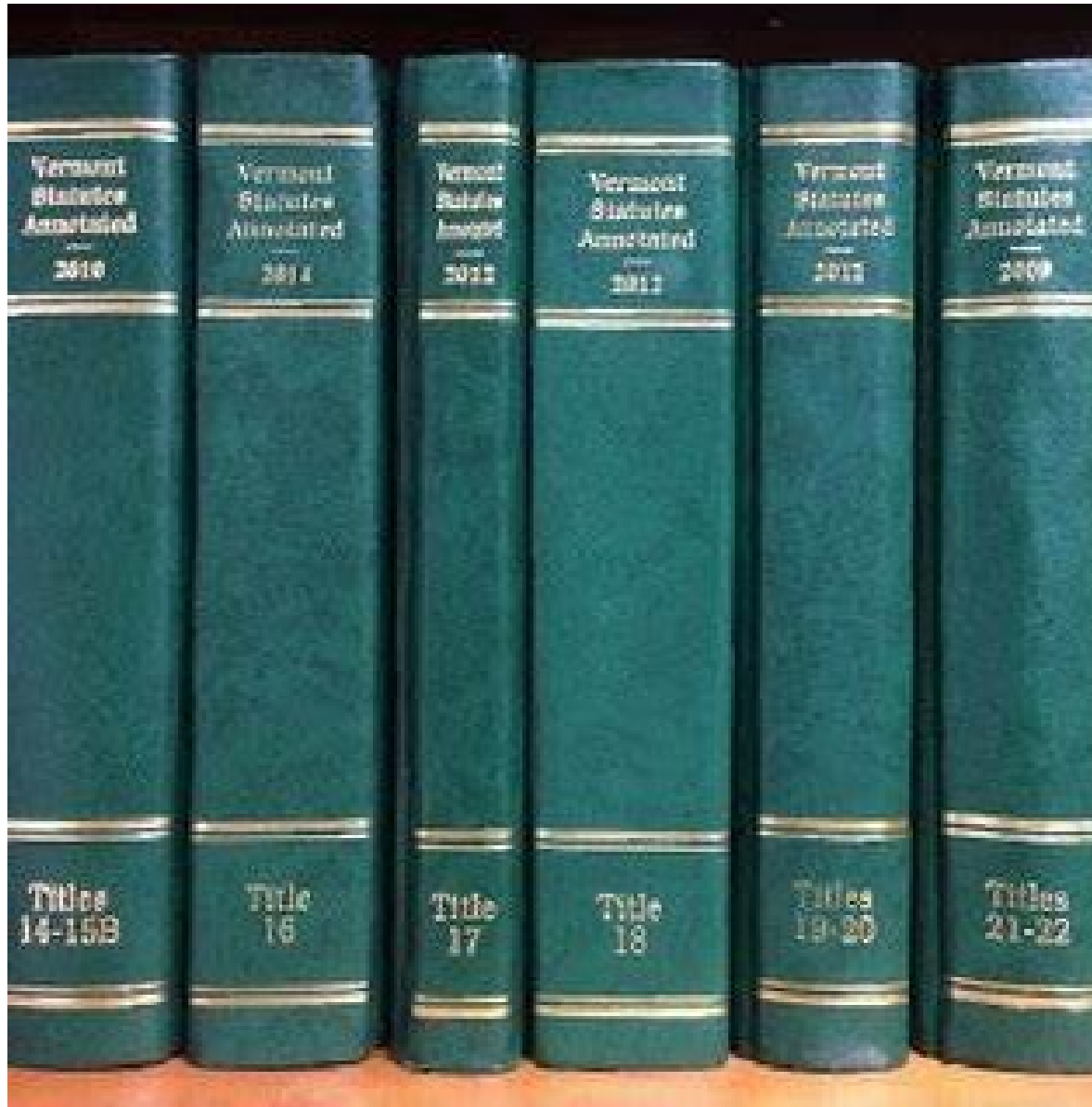
■ AGENDA

Sources of Authority

Scope of Authority & Duties

Special Issues

Resources



SOURCES OF AUTHORITY

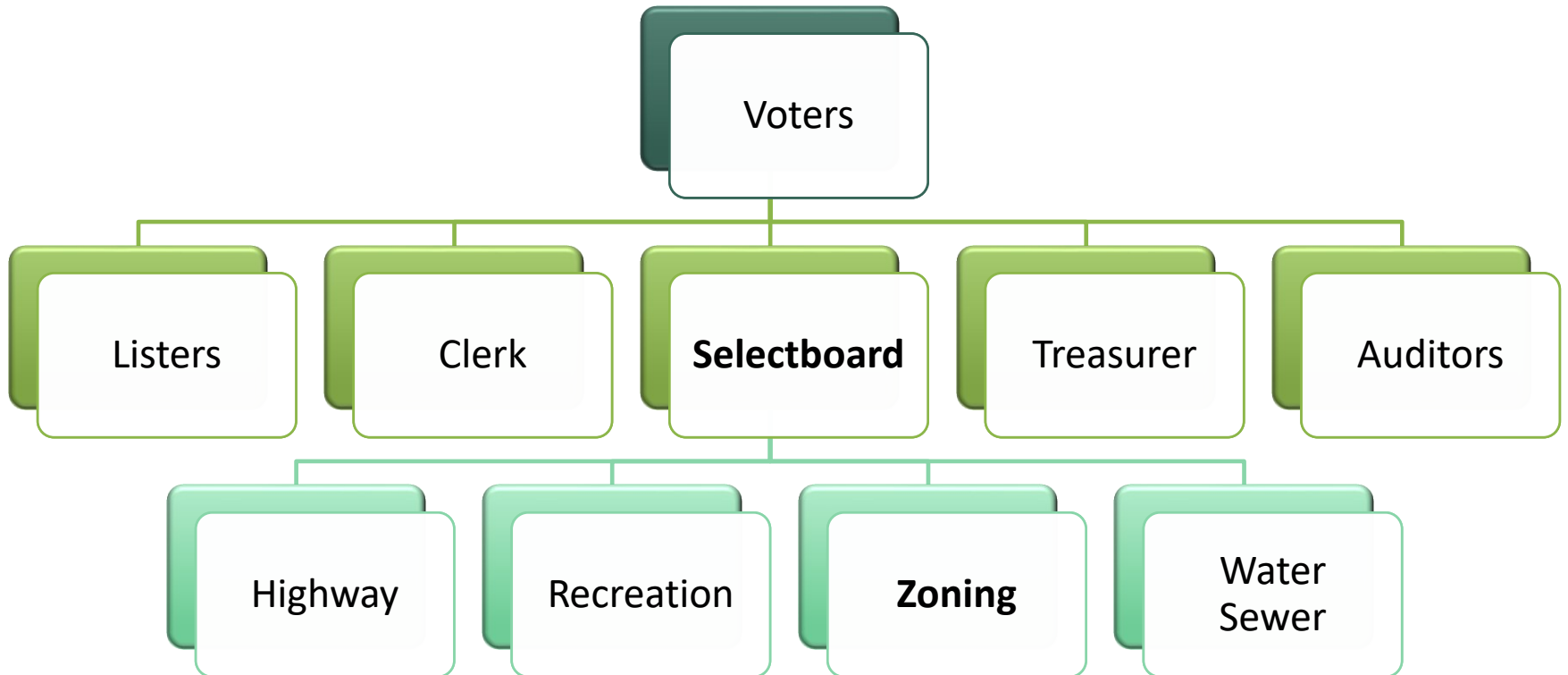
SOURCES OF AUTHORITY: LEGISLATURE

- Legal authority comes exclusively from the Vermont Legislature – Statutes & Bylaws

*“We have consistently adhered to the so-called **Dillon’s Rule** that a municipality has only those powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate or necessary to the exercise thereof.”* *Petition of Ball Mountain Dam Hydroelectric Project, 154 Vt. 189 (1990)*



STRUCTURE OF MUNICIPAL GOVERNMENT / INDEPENDENCE OF OFFICE



SOURCES OF AUTHORITY:

24 V.S.A. § 4448

[24 V.S.A. § 4448](#) - Appointment and powers of administrative officer

(a) *“nominated by the planning commission and appointed by the legislative body for a term of three years”*

“An administrative officer may be removed for cause at any time by the legislative body after consultation with the planning commission.”

SOURCES OF AUTHORITY: 24 V.S.A. § 4448

24 V.S.A. § 4448 -
Appointment and powers of
administrative officer

(a) *“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.”*

SCOPE OF AUTHORITY

Duties:

1. Administrative Function
2. Land Use Permits
3. Appeals
4. Enforcement



ADMINISTRATIVE FUNCTION

SCOPE OF AUTHORITY

ADMINISTRATIVE FUNCTION

*“The administrative officer should **provide an applicant with forms required to obtain any municipal permit or other municipal authorization . . . [and] should coordinate a unified effort on behalf of the municipality in administering its development review programs.**”*

[24 V.S.A. § 4448\(c\)](#)

SCOPE OF AUTHORITY: ADMINISTRATIVE FUNCTION

- “The administrative officer **should provide an applicant with forms required to obtain any municipal permit or other municipal authorization . . . [and] should coordinate a unified effort on behalf of the municipality in administering its development review programs.**” [24 V.S.A. § 4448\(c\)](#)
- (e) “. . . Unless the matter is an appeal from the decision of the administrative officer, **the matter shall come before the panel 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\(e\)](#)



SCOPE OF AUTHORITY: ADMINISTRATIVE FUNCTION

Additional administrative duties:

- Inform applicants of potential need for related state permits – [24 V.S.A. § 4448\(c\)](#)
 - Community Assistance Specialist:
<https://dec.vermont.gov/assistance/permits/specialists>
- Provide applicant of any proposed heated or cooled structure a copy of the residential or commercial building energy standards under 30 V.S.A. § 51 & 53 – [24 V.S.A. § 4448\(a\)\(1\)](#)
 - Residential building energy standards (RBES):
https://publicservice.vermont.gov/energy_efficiency/rbes
 - Commercial building energy standards (CBES):
https://publicservice.vermont.gov/energy_efficiency/cbes



Permits

LAND USE PERMITS


SCOPE OF AUTHORITY

LAND USE PERMITS:
ADMINISTRATIVE REVIEW

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

[24 V.S.A. § 4449\(a\)\(1\)](#)





“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\(a\)](#)

LAND USE PERMITS:
LITERAL ADMINISTRATION

LAND USE PERMITS

Time to Act:

ZA must act on a “complete application for a permit within 30 days, whether by issuing a decision or by making a referral to the appropriate municipal panel, a permit shall be deemed issued on the 31st day.”

[24 V.S.A. § 4448\(d\)](#)

LAND USE PERMITS:

DEEMED APPROVAL

“If the administrative officer fails to act with regard to a complete application for a permit within 30 days, whether by issuing a decision or by making a referral to the appropriate municipal panel, , ***a permit shall be deemed issued on the 31st day.***”

[24 V.S.A. § 4448\(d\)](#)

Deemed Approval = Equitable Remedy

LAND USE PERMITS

NOTICE of ZONING PERMIT REQUEST

ADDRESS: _____
DESCRIPTION: _____

APPLICANT: _____
DEVELOPMENT REVIEW BOARD DATE: _____

For more information
contact

**City of Burlington
Permitting & Inspections**

645 Pine Street,
Burlington VT

Posting & Notice:

1. Post notice (big red “Z” or “P”) within view of nearest *public* R.O.W. for duration of appeal period;
2. Within 3 days, deliver copy to the listers; and
3. Post copy in one public place for duration of appeal period

[24 V.S.A. § 4449\(b\)](#)

LAND USE PERMITS

Recording Permit:

Within 30 days the ZA must:

1. Delivery a copy of the permit to town clerk for recording.
2. File a copy in zoning files or other permit filing system.

[24 V.S.A. § 4449\(c\)](#)



SCOPE OF AUTHORITY: APPEALS

APPEALS

Appeal Period:

“No permit issued pursuant to this section shall take effect until the time for appeal in section 4465 of this title has passed.”

[24 V.S.A. § 4449\(a\)\(3\)](#)

“Each permit issued under this section shall contain a statement of the period of time within which an appeal may be taken . . .”

[24 V.S.A. § 4449\(b\)](#)

*“This notice of appeal must be filed within **15 days** of the date of that decision or act, and a copy of the notice of appeal shall be filed with the administrative officer.”*

[24 V.S.A. § 4465\(a\)](#)

APPEALS: WHAT CAN BE APPEALED?

“An interested person may appeal **any** decision or act taken by the administrative officer in any municipality by filing a notice of appeal with the secretary of the board of adjustment or development review board of that municipality . . .” [24 V.S.A. 4465\(a\)](#)

APPEALS: WHO CAN APPEAL?

An interested person is any of the following:

1 – Applicant / landowner

2 – The Municipality

3 – A person owning or occupying property in the *immediate neighborhood*

4 – Gang of ten

5 – The State

[24 V.S.A. 4465\(b\)](#)

SCOPE OF
AUTHORITY:

Enforcement



ENFORCEMENT

The zoning administrator (ZA) must take action to, “prevent, restrain, correct or abate” violations.

In re Fairchild, 159 Vt. 125 (1992) & [24 V.S.A. 4452](#)

“Although a zoning administrator must enforce the zoning ordinance, the nature of the remedy sought is discretionary.”

In re Letourneau, 168 Vt. 539 (1998)

ENFORCEMENT:
DISCOVERING A
VIOLATION

The first step in enforcement is identifying and confirming that a violation exists.

- Direct Observation
- Complaint (in writing)
- Site Visit
- Landowner

ENFORCEMENT:
INVESTIGATING
A VIOLATION

1. Informal communication with the landowner on potential violation.



2. If uncertainty persists, ask for site visit.



3. If the landowner fails to permit site visit, proceed as if a violation exists.

ENFORCEMENT:
INVESTIGATING
A VIOLATION

Search and Seizure Law

1. You need permission or a warrant to enter private property

2. Can enter “public” portions of property such as the driveway, front walkway, and stoop

ENFORCEMENT: A VIOLATION EXISTS

1. Informal Warning Letter
2. Formal Notice of Violation (NOV)



ENFORCEMENT: NOTICE OF VIOLATION

Statutory requirements for a notice of violation (NOV) (24 V.S.A. 4451):

- Certified mailing
- Reference to provisions violated
- 7-days to cure
- Each day thereafter a separate offense
- Per day fine amount
- No new 7-day notice if violation repeated
- Appeal, in writing, within 15-days (24 V.S.A. 4465)

ENFORCEMENT:
JUDICIAL BUREAU

Judicial Bureau Alternative:

- Municipal complaint ticket
- Civil infraction - \$800 max fine
- No notice or opportunity to cure
- No continuing violation

SPECIAL ISSUES:



***BUT WAIT...
THERE'S MORE!***

SPECIAL
ISSUES

Preemption

The principal that a [state] law can supersede or supplant any inconsistent [municipal] law or regulation.

Black's Law Dictionary

PREEMPTION

Wastewater &
Potable Water
Supply (WW
permit)

Agriculture

Utilities (Solar
Panels)



[Zoning Administrators Handbook](#) – VT Land Use and Training Collaborative (2005)



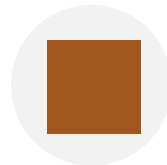
Vermont Zoning Administrators Email Discussion List ([listserv](#))



Wastewater Systems & Potable Water Supplies Program [page](#), DEC



Agency of Agriculture, Farms, and Markets (AAFM) Required Agricultural Practices ([RAPs](#)) – see section § 3.1



VT ANR Maps & Mapping [Page](#) – includes varies GIS datasets that are open to the public – e.g. wetland, wildlife, & forest data, well locations, flood zones, slopes, etc.

RESOURCES:



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MAC MEMBER
INQUIRY SERVICE

INFO@VLCT.ORG
(802) 229-9111