



Sample Bylaws and Definitions
for Savings Clause Compliance
24 V.S.A Chapter 117
§§ 4412, 4413, 4462, 4464 and 4471

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Overview

This document provides tools to assist regional planning commissions and local officials with changes to local zoning necessitated by the “saving clause” requirements of 24 V.S.A. § 4481. The saving clause provides that on September 1, 2005, the provisions of sections 4412, 4413, and subchapters 9, 10, and 11 of Title 24 will control over any inconsistent local zoning bylaws.

To that end, this document provides sample definitions and bylaw language. Many of the sample definitions and bylaw provisions were derived from actual Vermont bylaws that have been amended to comply with the statutory changes. Others have been borrowed from the American Planners Association Planning Dictionary. Where existing samples were not available, new definitions and bylaw provisions have been crafted. Where required or appropriate, language has been taken directly from the recently revised Vermont statutes.

This document is intended to help municipalities in drafting of local bylaws; it is not a one-size-fits-all model. The inclusion of a sample definition or bylaw provision in this document is not a recommendation or endorsement of that definition or provision. Crafting a zoning bylaw requires careful consideration of local needs and circumstances. For additional assistance with new or amended bylaws, please contact your local Regional Planning Commission or the Vermont Department of Housing and Community Affairs Planning Division. Contact information is available through the Vermont Planning Information Center website: www.vpic.info.

Finally, this document covers only the requirements set out in 24 V.S.A. §§ 4412 and 4413. It does not address those administration and enforcement requirements set out in subchapters 9, 10, and 11 of Title 24, which have been addressed in the *Manual of Procedures for Administration and Enforcement of Vermont Zoning Bylaws* prepared for the Vermont Land Use Collaborative by Burnt Rock, Inc.

Required Provisions and Prohibited Effects

A. Low And Moderate Income Housing

24 V.S.A. § 4412(1)(A)

Chapter 117 prohibits bylaws from having the effect of excluding housing that meets the needs of the population as determined in the housing element of its municipal plan. This is intended to ensure that communities plan for future housing needs of low and moderated income residents and avoid exclusionary regulations of low and moderate-income housing.

1. Statutory Requirement

No bylaw shall have the effect of excluding housing that meets the needs of the population as determined in the housing element of its municipal plan as required under [24 V.S.A. § 4382(a)(10)]. 24 V.S.A. § 4412(1)(A).

A plan for a municipality ... shall include ... a housing element that shall include a recommended program for addressing low and moderate income persons' housing needs as identified by the regional planning commission pursuant to [24 V.S.A. § 4348a(a)(9)]. The program should account for permitted accessory dwelling units, as defined in [24 V.S.A. § 4412(1)(E)], which provide affordable housing. 24 V.S.A. § 4382(a)(10).

2. Sample Definitions

Low Income Housing: Housing that is affordable, according to the U.S. Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy for households with a gross household income that does not exceed 50 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

Moderate Income Housing: Housing that is affordable, according to the U.S. Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that is greater than 50 percent but does not exceed 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

Affordable housing (Statutory Definition): means either of the following:

- *Housing that is owned by its inhabitants, whose gross annual household income does not exceed 80 percent of the county median income, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes and insurance, is not more than 30 percent of the household's gross annual income, or*

- *Housing that is rented by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than 30 percent of the household's gross annual income. 24 V.S.A. § 4303(1)(A).*

3. Sample Bylaw Provisions

[While inclusion of one of the following provisions is suggested, inclusion of such a provision will not by itself meet the requirements of the statute. Ensuring conformance with 24 V.S.A. § 4412(1)(A) will require review of the bylaw to determine whether the bylaw will, in part or in total, have the effect of excluding low and/or moderate income housing.]

Example 1: This bylaw shall not have the effect of excluding low and moderate income housing.

Example 2: No provision of this bylaw may have the effect of excluding from the municipality housing to meet the needs of the population as determined in accordance with 24 V.S.A. § 4382(c).

B. Mobile Homes, Modular Housing, Prefabricated Housing 24 V.S.A. § 4412(1)(B)

A bylaw may not have the effect of excluding mobile homes, modular housing, or prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded. For example, within districts that regulate or prohibit other types of single-family dwellings, mobile homes and modular or prefabricated housing may be prohibited in the same manner. However, where single-family dwellings are a permitted use, a bylaw can make no distinction among mobile homes, modular or prefabricated housing and other types of construction.

1. Statutory Requirement

Except as provided in [24 V.S.A. § 4414(1)(E) and (F)], no bylaw shall have the effect of excluding mobile homes, modular housing, or prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded. 24 V.S.A. § 4412(1)(B).

2. Sample Definitions

Mobile Home (Statutory Definition): *A structure or type of manufactured home that is built on a permanent chassis and is designed to be used as a dwelling with or without a permanent foundation, includes plumbing, heating, cooling, and electrical systems, and is:*

- *transportable in one or more sections; and*
- *at least eight feet wide or 40 feet long or when erected has at least 320 square feet or if the structure was constructed prior to June 15, 1976, at least eight feet wide or 32 feet long; or*
- *any structure that meets all the requirements of this subdivision except for size and for which the manufacturer voluntarily files a certification required by the U.S. Department of Housing and Urban Development and complies with the standards established under Title 42 of the U.S. Code. 10 V.S.A. § 6201(1).*

Modular (or Prefabricated) Housing: A dwelling unit constructed on-site and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation.

Modular (or Prefabricated) Housing: A factory-built structure which is manufactured or constructed to be used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing it to be attached or towed behind a motor vehicle, and which does not have permanently attached to its body or frame any wheels or axles.

3. Sample Bylaw Provisions

[Note: While inclusion of the one of the following provisions is suggested, inclusion of such a provision will not, itself, meet the requirements of the statute. Ensuring conformance with the statute will require review of the entire bylaw to determine whether the bylaw will, in part or in total, have the effect of excluding low and/or moderate income housing.]

Example 1: Pursuant to 24 V.S.A. § 4412 (1)(B), a mobile home [modular housing or prefabricated housing] must be considered a single-family dwelling and must meet the same zoning requirements applicable to single-family dwellings.

Example 2: No zoning regulation shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded.

Example 3: Pursuant to 24 V.S.A. § 4412 (1)(B), a mobile home shall be considered a single-family dwelling and shall meet the same zoning requirements applicable to single-family dwellings, except when unoccupied and displayed in a mobile home sales establishment or allowed as a temporary structure under this bylaw.

C. Mobile Home Parks

24 V.S.A. § 4412(1)(C)

Chapter 117 prohibits bylaws from having the effect excluding mobile home parks from the municipality. While mobile home parks may be subject to review processes, (e.g., site plan or conditional use), as with multifamily housing, a municipality must designate districts and reasonable regulations for mobile home parks. If a mobile home park is a nonconformity, the entire park, not individual lots, must be treated as a nonconformity. 24 V.S.A. § 4412(7)(B).

1. Statutory Requirement

No bylaw shall have the effect of excluding mobile home parks, as defined in 10 V.S.A. chapter 153 from the municipality. 24 V.S.A. 4412(1)(C).

2. Sample Definition

Mobile Home Park (Statutory Definition): Any parcel of land under single or common ownership or control which contains, or is designed, laid out or adapted to accommodate, more than two mobile homes. Nothing herein shall be construed to apply to premises used solely for storage or display of mobile homes. Mobile Home Park does not mean any parcel of land under the ownership of an agricultural employer who may provide up to four mobile homes used by full-time workers or employees of the agricultural employer as a benefit or condition of employment or any parcel of land used solely on a seasonal basis for vacation or recreational mobile homes. 10 V.S.A. § 6201(2).

3. Sample Bylaw Provision

Example 1: Mobile homes are permitted in approved mobile home parks subject to the requirements of this section and state law. Mobile home parks where permitted as a conditional use in the specific zoning district are subject to review under section __ of these bylaws. New mobile home parks and any addition or alteration to an existing mobile home park, requires conditional use approval by the [AMP]. The following requirements shall apply to mobile home parks: [Guidelines for new mobile home parks are being developed. Contact your regional planning commission or the VT Department of Housing & Community Affairs to check on availability].

D. Multifamily and Multiunit Dwellings

24 V.S.A. § 4412(1)(D)

The revisions to chapter 117 now require that no bylaw have the effect of excluding multiunit or multifamily dwellings. Bylaws must designate districts and reasonable regulations for multiunit or multifamily dwellings. A bylaw may require site plan or conditional use review, so long as the effect is not to exclude multiunit or multifamily dwellings from the municipality.

1. Statutory Requirement

Bylaws shall designate appropriate districts and reasonable regulations for multiunit or multifamily dwellings. No bylaw shall have the effect of excluding these multiunit or multifamily dwellings from the municipality. 24 V.S.A. § 4412(1)(D).

2. Sample Definitions

[Note: Because the term multifamily dwelling is not defined in Chapter 117, municipalities are free to define it in their bylaws. However, since the Legislature has specifically exempted one- and two-family dwellings from site plan review, bylaws should not define multifamily dwellings as anything less than three dwellings per unit. 24 V.S.A. § 4416. Also, the statute refers to “multiunit or multifamily dwellings.” While we believe that these terms were intended to be interchangeable, municipalities should pick one term or the other and use it consistently in their bylaw.]

Multiunit Dwelling: A building containing three or more individual dwellings with separate cooking and toilet facilities for each dwelling.

Multifamily Dwelling: A dwelling containing separate living units for three or more families.

Multifamily Dwelling: A building designed for occupancy by three or more families living independently of each other in individual dwelling units.

Multifamily Dwelling: A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

3. Sample Bylaw Provisions

Example 1: A multifamily dwelling shall be considered a conditional use in the _____ residential district. Multifamily dwellings shall be subject to the following conditions: [List conditions.]

Note: A bylaw must designate at least one district where multifamily or multiunit dwellings are allowed. While the following language may be included, ensuring conformance with the statute will require review of the entire bylaw to determine whether the bylaw will, in part or in total, have the effect of excluding multifamily or multiunit housing:

- This bylaw shall not have the effect of excluding multiunit or multifamily dwellings from the Town of _____. 24 V.S.A. § 4412(1)(D).

Example 2: List “multifamily dwellings” as a ‘permitted use’ or a ‘conditional use’ in district uses.

E. Accessory Dwelling Units

24 V.S.A. § 4412(1)(E)

Previously, bylaws were required to allow certain accessory apartments but could subject such accessory apartments to conditional use review. Now, zoning bylaws must allow, as a permitted use, one accessory dwelling located within or appurtenant to a single-family dwelling. The optional requirement limiting occupancy of the accessory dwelling to an elderly or disabled relative of the homeowner has also been eliminated. Less restrictive accessory dwelling provisions may be adopted, and bylaws may require conditional use approval for a new accessory structure, an increase in the height or floor area of the existing dwelling, or an increase in the dimensions of the parking areas.

While the term “appurtenant” has not been defined, the apparent intent of the new law is that the word means “next to” an owner-occupied single-family dwelling. It is recommended that municipalities further define the word in their zoning bylaw. Bylaw drafters may wish to have the word mean “physically attached,” or may broaden the term to mean “incidental or subordinate to the primary dwelling.” Additionally, municipalities that choose the broader meaning of the term may wish to include a permissible measurable distance between the two structures.

1. Statutory Requirement

No bylaw shall have the effect of excluding as a permitted use one accessory dwelling unit that is located within or appurtenant to an owner-occupied single-family dwelling. An accessory dwelling unit means an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

- (i) The property has sufficient wastewater capacity.*
- (ii) The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.*
- (iii) Applicable setback, coverage, and parking requirements specified in the bylaws are met. 24 V.S.A. § 4412(1)(E).*

2. Sample Definitions

Accessory Dwelling Unit (Statutory Definition): *An efficiency or one-bedroom apartment, located within or appurtenant to an owner-occupied single-family dwelling, that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:*

- The property has sufficient wastewater capacity.*

- *The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.*
- *Applicable setback, coverage, and parking requirements specified in the bylaws are met.* 24 V.S.A. § 4412(1)(E).

3. Sample Bylaw Provisions

Example 1: An accessory dwelling unit that is located within or appurtenant to an owner occupied single family dwelling shall be a permitted use. An accessory dwelling unit shall be defined as efficiency or one-bedroom apartment, located within or appurtenant to an owner-occupied single-family dwelling, that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

- The property has sufficient wastewater capacity.
- The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.
- Applicable setback, coverage, and parking requirements specified in the bylaws are met.

Note: 24 V.S.A. § 4412(1)(E)(i) allows municipalities to create bylaws that are *less* restrictive of accessory apartments. Towns that want to provide for less restrictive treatment could, for example, increase the permissible relative size of the accessory dwelling unit and/or allow the owner to occupy either the accessory unit or the primary dwelling:

An accessory dwelling unit that is located within or appurtenant to *a* single family dwelling shall be a permitted use. An accessory dwelling unit is an efficiency or one-bedroom apartment, located within or appurtenant to *a* single-family dwelling, that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

- *The owner occupies either the primary dwelling or accessory dwelling.*
- The property has sufficient wastewater capacity.
- The unit does not exceed **50 percent** of the total habitable floor area of the single-family dwelling.
- Applicable setback, coverage, and parking requirements specified in the bylaws are met.

Note: Towns may also require conditional use review for one or more of the following that is involved in creation of an accessory dwelling unit: (i) a new accessory structure; (ii) an increase in the height or floor area of the existing dwelling; or, (iii) an increase in

the dimensions of the parking areas. Towns wishing to provide for conditional use approval in these circumstances could use the following language:

Notwithstanding the provisions above, the creation of an accessory dwelling unit will require conditional use approval when one or more of the following is involved:

- A new accessory structure, constructed after the enactment of these bylaws,
- An increase in the height or floor area of the existing dwelling, or
- An increase in the dimensions of the parking areas.

F. Residential Care and Group Homes

24 V.S.A. § 4412(1)(G)

Residential care homes and group homes must be treated the same as a single-family dwelling under zoning bylaws, provided that the home is operated under state licensing or registration, serves not more than eight persons who have a statutorily defined handicap or disability, except that if the home is located within 1,000 feet of another existing or permitted residential care or group home, the municipality is not required to treat it as a single-family dwelling.

1. Statutory Requirement

A residential care home or group home to be operated under state licensing or registration, serving not more than eight persons who have a handicap or disability as defined in 9 V.S.A. § 4501, shall be considered by right to constitute a permitted single-family residential use of property, except that no such home shall be so considered if it is located within 1,000 feet of another existing or permitted such home. 24 V.S.A. § 4412(G).

2. Sample Definitions

Residential Care Home (Statutory Definition): *A place, however named, excluding a licensed foster home, which provides, for profit or otherwise, room, board and personal care to three or more residents unrelated to the home operator. 33 V.S.A. § 7102(1).*

Group Home: Any residential facility operating under a license or registration granted or recognized by a state agency, that serves not more than eight unrelated persons, who have a handicap or disability as defined in 9 V.S.A. § 4501, and who live together as a single housekeeping unit. In addition to room, board and supervision, residents of a group home may receive other services at the group home meeting their health, developmental or educational needs.

3. Sample Bylaw Provisions

Example 1: The following uses shall be considered permitted uses in the _____ districts: State licensed or registered residential care or group home for not more than

eight persons who have a handicap or disability, except that no such home shall be considered a permitted use if it locates within 1,000 feet of another existing or permitted home.

Example 2: A residential care home or group home, to be operated under state licensing or registration, serving not more than eight persons who have a handicap or disability as defined in 9 V.S.A. § 4501, shall be considered to constitute a permitted single family residential use of property, except that no such home shall be so considered if it locates within 1,000 feet of another existing or permitted home. A residential care home or group home, to be operated under state licensing or registration, serving nine or more who have a handicap or disability as defined in 9 V.S.A. § 4501, shall be reviewed as a multi family dwelling and shall be subject to conditional use and site plan review.

G. Existing Small Lots

24 V.S.A. § 4412(2)

Under prior law, certain existing small lots (those lots not meeting the minimum size requirement for the district in which the lot is located) that came into common ownership after the enactment of a bylaw specifying a minimum lot size were required to be merged into one lot. Policy has shifted to encourage development in existing village areas, where most existing small lots are located. Accordingly, the law now provides towns the flexibility to require, or not to require, merger. By September 1, 2005, local bylaws should specify whether merger of small lots will or will not be required. If no action is taken, merger will not, as under prior law, be the default.

1. Statutory Requirement

Any lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of any bylaw, including an interim bylaw, may be developed for the purposes permitted in the district in which it is located, even though the small lot no longer conforms to minimum lot size requirements of the new bylaw or interim bylaw.

(A) A municipality may prohibit development of a lot if either of the following applies:

- (i) the lot is less than one-eighth acre in area; or*
- (ii) the lot has a width or depth dimension of less than 40 feet.*

(B) The bylaw may provide that if an existing small lot subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot shall be deemed merged with the contiguous lot. However, a nonconforming lot shall not be deemed merged and may be separately conveyed if all the following apply:

- (i) The lots are conveyed in their preexisting, nonconforming configuration.*

(ii) On the effective date of any bylaw, each lot was developed with a water supply and wastewater disposal system.

(iii) At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner.

(iv) The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in 10 V.S.A. chapter 64. 24 V.S.A. § 4412(2).

2. Sample Bylaw Provisions

Example 1 (No Merger, No Minimum Lot Size): Any lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of this bylaw, may be developed for the purposes permitted in the district in which it is located, even though the lot does not conform to minimum lot size requirements of the district in which the lot is located. If a lot not conforming to the minimum lot size requirements in the district in which it is located is or subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot(s) shall not be deemed merged and shall be considered separate lots.

Example 2 (No Merger, Minimum Lot Size): Any lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of this bylaw, may be developed for the purposes permitted in the district in which it is located, even though the lot does not conform to minimum lot size requirements of the district in which the lot is located, provided such lot is not less than one eighth acre or has a minimum width or depth dimension of at least 40 feet. If a lot not conforming to the minimum lot size requirements in the district in which it is located is or subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot(s) shall not be deemed merged and shall be considered separate lots.

Example 3 (No Merger, Specified District, Minimum Lot Size): Any lot located in the _____ district that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of this bylaw, may be developed for the purposes permitted in the _____ district, even though the lot does not conform to minimum lot size requirements of the _____ district, provided such lot is not less than one-eighth acre or has a minimum width or depth dimension of at least 40 feet. If a lot not conforming to the minimum lot size requirements in the district in which it is located is or subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot(s) shall not be deemed merged and shall be considered separate lots.

Example 4 (Merger, Any District): If a lot not conforming to the minimum lot size requirements in the district in which it is located subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot shall be deemed

merged with the contiguous lot. However, a nonconforming lot shall not be deemed merged and may be separately conveyed if all the following apply:

- The lots are conveyed in their preexisting, nonconforming configuration.
- On the effective date of any bylaw, each lot was developed with a water supply and wastewater disposal system.
- At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner.
- The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in 10 V.S.A. chapter 64.

Example 5 (Merger, Specified District): If a lot not conforming to the minimum lot size requirements in the _____ district subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot shall be deemed merged with the contiguous lot. However, a nonconforming lot shall not be deemed merged and may be separately conveyed if all the following apply:

- The lots are conveyed in their preexisting, nonconforming configuration.
- On the effective date of any bylaw, each lot was developed with a water supply and wastewater disposal system.
- At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner.
- The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in 10 V.S.A. Chapter 64.

H. Required Frontage/Access to, Public Roads or Public Waters

24 V.S.A. § 4412(3)

Chapter 117 permits development on lots that lack the minimum road (or surface water) frontage required under a local bylaw, provided that approval is granted in accordance with a process and standards specified in a subdivision bylaw. Where a subdivision bylaw does not apply, another review process and related standards must be established in the bylaw. Such standards must assure safe and adequate access, and in no case may allow access over an easement or right-of-way of less than 20 feet in width.

1. Statutory Requirement

Land development may be permitted on lots that do not have frontage either on a public road or public waters, provided that access through a permanent easement or right-of-way has been approved in accordance with standards and process specified in the bylaws. This approval shall be pursuant to subdivision bylaws adopted in accordance with section 4418 of this title, or where subdivision bylaws have not been adopted or do not apply, through a process and pursuant to standards defined in bylaws adopted for the

purpose of assuring safe and adequate access. Any permanent easement or right-of-way providing access to such a road or waters shall be at least 20 feet in width. 24 V.S.A. § 4412(3).

2. Sample Definitions

Frontage: That portion of a lot adjacent and parallel to a state highway, town road, town right-of-way, or public waters. In the case of corner lots, it shall be that portion that has or is proposed to have access.

Frontage: Length of the lot boundary measured along the public road right-of-way or mean watermark of a public waterway.

3. Sample Bylaw Provisions

Example 1: No land development is permitted on lots that do not have either frontage on a public road or a permanent easement or right of way of record approved by the AMPas a conditional use in accordance with section __ of the bylaw. Minimum frontage is established in section __ for each district. Frontage applies to all property lines bordering public or private roadways but not driveway easements. Permits may be granted for land that does not have frontage on a public road provided access is available by a permanent easement or right-of-way. The required easement or right-of-way shall be at least 50 feet in width for any such landlocked parcels.

Example 2: No land development may be permitted which does not have adequate means of access, either frontage on a maintained public road (Class 1, 2, 3, or 4) or, with the approval of the [AMP] granted in accordance with section __ of the bylaw, access by means of a permanent easement or right of way to such a public road, or to public waters. Access easements or rights-of-way shall not be less than 20 feet in width. If serving more than two lots or uses, the [AMP] may require a right-of-way up to 40 feet in width to ensure public safety and orderly development. Access on a state highway must be permitted by Vermont Agency of Transportation.

I. Home Occupations

24 V.S.A. § 4412(4)

A bylaw may not prevent a resident from using a minor portion of a dwelling unit for an occupation that is customary in residential areas and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located. However, a bylaw may establish different categories of home-based businesses in order to allow home occupations meeting the statutory requirement as permitted uses, while subjecting other, more extensive home businesses to review procedures.

1. Statutory Requirement

No bylaw may infringe upon the right of any resident to use a minor portion of a dwelling unit for an occupation that is customary in residential areas and that does not have an

undue adverse effect upon the character of the residential area in which the dwelling is located. 24 V.S.A. § 4412(4).

2. Sample Definitions

Home Occupation: An occupation that is customary in a dwelling in a residential area and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.

Home Occupation: An accessory use conducted within a minor portion of a dwelling by the residents thereof, such that the floor area dedicated to the business use is less than 25% of the total floor area of the dwelling unit.

Home Occupation: Commercial activities conducted within less than 50% of the floor area of a dwelling or accessory building, which is clearly secondary to the dwelling's use as living quarters, is customary in residential areas and does not have an undue adverse effect on the character of the neighborhood.

Home Occupation: An occupation, carried on within a principal or accessory residential structure, which is customarily incidental and secondary to the use of the premises for dwelling purposes, and which does not substantially alter the character thereof.

3. Sample Bylaw Provisions

Example 1: No provision of this bylaw shall infringe upon the right of any resident to use a minor portion of a dwelling for an occupation which is customary in residential areas and which does not have an undue adverse effect upon the residential area in which the dwelling is located. The home occupation shall be carried on by residents of the dwelling unit. One additional employee who is not a resident of the dwelling unit is permitted. Home occupations are:

- accessory uses to residential properties, which are clearly incidental and secondary to the residential use.
- conducted wholly within the principal structure and occupy less than 25% of the entire floor area of such structures.
- not retail in nature.

In order to ensure that a home occupation will not have an undue adverse effect upon the residential area in which the dwelling is located, the owner must demonstrate that it will comply with all of the following standards:

- All business activities or transactions associated with the home occupation shall be carried on entirely within the dwelling unit; no outside storage shall be permitted.
- No traffic shall be generated which would be uncharacteristic of the neighborhood.
- New parking required for the home occupation shall be provided off-street and shall not be located in front yards.

- No objectionable vibration, odor, smoke, dust, electrical disturbance, heat, or glare shall be produced by the home occupation.
- Exterior displays other than those normally permitted in the district shall be prohibited excepting signs which do not conflict with applicable ordinances.

Where it is determined by the zoning administrator that the proposal does not meet the definitions or standards of home occupations above, the applicant may apply for a permit under the broader use regulations (commercial, industrial, etc.) as determined by the district in which the parcel is located.

Example 2: No provision of this bylaw shall infringe upon the right of any resident to use a minor portion of a dwelling that is customary in residential areas, which does not have an undue adverse effect upon the character of the residential area in which the dwelling is located. Home occupations are permitted as an accessory use in all districts where residential uses are permitted subject to the following provisions:

- The home occupation shall be clearly incidental and secondary to the residential use of the property, and shall be conducted wholly within the principal or accessory structures;
- The home occupation shall be carried on by members of the family residing in the dwelling unit. Two additional employees who are not members of the family are permitted;
- No traffic shall be generated which would be uncharacteristic of the neighborhood;
- Exterior displays or signs other than those normally permitted in the district, exterior storage of materials, and exterior indications of the home occupation or variation from the residential character of the principal or accessory structures shall be prohibited.

J. Home Child Care

24 V.S.A. § 4412(5)

A family childcare home or facility providing care to up to six children on a full-time basis within a single-family dwelling must be considered a permitted use of the dwelling. Facilities that care for up to six full-time children and four part-time children may be subject to site plan review. This only applies to facilities where the owner or operator is required to be licensed or registered by the state.

1. Statutory Requirement

A “family child care home or facility” as used in this subdivision means a home or facility where the owner or operator is to be licensed or registered by the state for child care. A family child care home serving six or fewer children shall be considered to constitute a permitted single-family residential use of property. A family child care home serving no more than six full-time children and four part-time children, as defined in subdivision 33 V.S.A. § 4902(3)(A), shall be considered to constitute a permitted use of property but may require site plan approval based on local zoning requirements. A family

child care facility serving more than six full-time and four part-time children may, at the discretion of the municipality, be subject to all applicable municipal bylaws. 24 V.S.A. § 4412(5).

2. Sample Definitions

Example 1 (Statutory Definition): *A family day care home is a day care facility which provides for care on a regular basis in the caregiver's own residence for not more than ten children at any one time. Of this number, up to six children may be provided care on a full-time basis and the remainder on a part-time basis. For the purpose of this subdivision, care of a child on a part-time basis shall mean care of a school-age child for not more than four hours a day. These limits shall not include children who reside in the residence of the caregiver; except:*

(A) these part-time school-age children may be cared for on a full-day basis during school closing days, snow days and vacation days which occur during the school year; and

(B) during the school summer vacation, up to 12 children may be cared for provided that at least six of these children are school age and a second staff person is present and on duty when the number of children in attendance exceeds six. These limits shall not include children who are required by law to attend school (age 7 and older) and who reside in the residence of the caregiver. 33 V.S.A. § 4902((3)).

3. Sample Bylaw Provisions

Example 1: No permit shall be issued for the creation or operation of a child care facility without obtaining all licenses and/or registrations required under state law. Operation of a facility in violation of licenses or registration shall constitute a violation of these bylaws. Child care facilities that are exempt from state licensure and registration through 33 V.S.A. § 3502(b) are not regulated under these provisions but may be regulated in other sections of this bylaw. Such exemptions include:

- Persons providing care for children of not more than two families;
- Hospitals or establishments holding a license issued by the Department of Health, or a person operating a program primarily for recreation or therapeutic purposes;
- Day care facilities operated by religious organizations for the care and supervision of children during or in connection with religious services or church sponsored activities;
- Nursery schools or other preschool establishments, attended by children of less than compulsory school age, which are subject to regulation by the Department of Education (33 V.S.A. § 3502(b)(1-4));
- A state registered or licensed family child care home operated within a single family dwelling shall be considered by right to constitute a permitted single family residential use of the property.

Such uses that meet the above requirements shall not require a permit issued by the zoning administrator but the applicant shall notify the zoning administrator in writing of intent to establish use.

A state registered or licensed family child care home operating in a dwelling other than a single family dwelling (e.g. duplex, multifamily housing) shall be treated as a permitted use and therefore must receive a zoning permit and shall also be required to obtain site plan approval.

Licensed day care facilities shall be reviewed as a service establishment and are subject to conditional use and site plan review as appropriate.

Example 2: A “family child care home or facility” as used in this subdivision means a home or facility where the owner or operator is to be licensed or registered by the state for child care. A family child care home serving six or fewer children shall be considered to constitute a permitted single family residential use of property. A family child care home serving no more than six full-time children and four part-time children, as defined in 33 V.S.A. § 4902(3)(A), shall be considered to constitute a permitted use of property but requires site plan approval based on local zoning requirements. A family child care facility serving more than six full-time and four part-time children shall be reviewed as a conditional use.

K. Nonconformities

24 V.S.A. § 4412(7)

Zoning bylaws must define how nonconformities (nonconforming uses, structures and lots) will be addressed. Bylaws may also specify a time period for determining the abandonment or discontinuance of a nonconforming use (which may not be less than six months); the extent to which and circumstances under which a nonconformity may be maintained, repaired, changed or expanded; standards for the relocation or enlargement of structures containing nonconforming uses; circumstances under which a nonconformity that is destroyed may be rebuilt; and other appropriate circumstances in which the nonconformity must comply.

1. Statutory Requirement

Nonconformities. All bylaws shall define how nonconformities will be addressed, including standards for nonconforming uses, nonconforming structures, and nonconforming lots.

(A) To achieve the purposes of this chapter set forth in section 4302 of this title, municipalities may regulate and prohibit expansion and undue perpetuation of nonconformities. Specifically, a municipality, in its bylaws, may:

(i) Specify a time period that shall constitute abandonment or discontinuance of that nonconforming use, provided the time period is not less than six months.

(ii) *Specify the extent to which, and circumstances under which, a nonconformity may be maintained or repaired.*

(iii) *Specify the extent to which, and circumstances under which, a nonconformity may change or expand.*

(iv) *Regulate relocation or enlargement of a structure containing a nonconforming use.*

(v) *Specify the circumstances in which a nonconformity that is destroyed may be rebuilt.*

(vi) *Specify other appropriate circumstances in which a nonconformity must comply with the bylaws.*

24 V.S.A. § 4412(7)(A)(i)-(iv).

2. Sample Definitions

Nonconforming lots or parcels (Statutory Definition): *Lots or parcels that do not conform to the present bylaws covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a lot or parcel improperly authorized as a result of error by the administrative officer. 24 V.S.A. § 4303(13).*

Nonconforming structure (Statutory Definition): *A structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the administrative officer. 24 V.S.A. § 4303(14).*

Nonconforming use (Statutory Definition): *Use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the administrative officer. 24 V.S.A. § 4303(15).*

3. Sample Bylaw Provisions

Example 1: Any lawful structure or any lawful use of any structure or land existing at the time of the enactment of these regulations may be continued, although such structure or use does not conform with the provisions of these regulations, provided the conditions in this section are met.

- The nonconforming use may be continued provided that such structure shall not be enlarged or extended unless the use therein is changed to a conforming use.
- A nonconforming structure that is devoted to a conforming use may be reconstructed, structurally altered, restored or repaired, in whole or in part, with the provision that the degree of nonconformance shall not be increased.
- A nonconforming structure, or part thereof, shall be maintained, repaired, or restored to a safe condition as required by the zoning administrator.
- A nonconforming structure shall not have its degree of non-compliance increased.

- A nonconforming use shall not be extended or enlarged, nor shall it be extended to displace a conforming use, nor shall it be changed to another nonconforming use, nor shall it, if changed to a conforming use, thereafter be changed back to a nonconforming use.

A conforming structure used by a nonconforming use shall not be reconstructed, structurally altered, restored or repaired to an extent exceeding 100 percent of the gross floor area of such structure unless the use of such structure is changed to a conforming use.

Any nonconforming building or structure may be altered, including additions to the building or structure, provided such alteration does not exceed in aggregate cost 35 percent for residential properties and 25 percent for industrial and commercial property of the current assessed value as determined by the city assessor. If an addition or an expansion to a building or structure is proposed, the addition or expansion itself must comply with the provisions of these regulations (e.g., setback requirements).

Any nonconforming structure damaged by any means to an extent greater than 50 percent of its current assessed value shall be permitted to be reconstructed only if the future use of the structure and the land on which it is located is in conformity with these regulations. Any nonconforming structure damaged by any means to an extent less than 50 percent of its current assessed value, may be rebuilt provided that:

- The resumption of any nonconforming use (if any) takes place within one year of the time of its interruption.
- The cost of such reconstruction or structural alteration is less than 50 percent of said fair market value.
- The reconstruction or structural alteration is commenced within six months of the date of interruption and completed within 18 months of the date of interruption.
- Where such reconstruction or structural alteration can reasonably be accomplished so as to result in greater compliance with these regulations, then the reconstruction or structural alteration shall be so done.
- No later than six months after a permanent or temporary structure has been damaged, made uninhabitable, or has been abandoned, all scrap, debris, damaged or unsafe materials shall be removed from the site and any remaining excavation, foundation or cellar hole shall be covered over or filled to the existing grade by the property owner. Upon application by the property owner, the [AMP] may enlarge the time to undertake such remedial work as a conditional use.

No nonconforming use may be resumed if such use has been abandoned for a period of six months or more. A nonconforming use shall be considered abandoned when any of the following conditions exist:

- when it is replaced by any other use,

- when the intent of the owner to discontinue the use is apparent. Any one of the following may constitute prima facie evidence of a property owner’s intent to abandon a use voluntarily:
 - failure to take necessary steps within six months to resume the nonconforming use with reasonable dispatch in any circumstances, including without limitation failing to advertise the property for sale, rent, lease, or use,
 - discontinuance of the use for six months, or for a total of 18 months during any three-year period, or
 - in the case where the nonconforming use is of land only, discontinuance of the use for 120 consecutive days or for a total of six months during a one-year period.
- when the characteristic equipment and furnishings have been removed from the premises and have not been replaced by similar equipment and furnishings within six months, except in the event that the structure is damaged. In that case, Section 3.11(F) above shall apply.

Example 2: Subject to conditional use approval by the [AMP], the following may be permitted:

- Any nonconforming use of a structure or land may be altered or expanded, not exceeding 25% of its size as it existed upon the effective date of this bylaw. However a nonconforming use shall not be re-established after being abandoned or discontinued for a period of 18 months, or after being changed to a conforming use, regardless of evidence of intent to re-establish such use.
- Any nonconforming structures may be altered or expanded, providing such action does not increase the degree of nonconformance. In the event a nonconforming structure is at least 75% damaged or destroyed by fire, collapse or “Act of God,” it may be rebuilt only in compliance with this bylaw. The [AMP] may grant a waiver from this in consideration of remaining features such as foundation, water and sewage systems, underground utilities, etc.
- Any alteration or expansion of a nonconforming use or nonconforming structure for the sole purpose of compliance with environmental, safety, health or energy codes, laws or regulations.

Example 3: Any expansion, extension, enlargement, or relocation of a nonconforming structure or any alteration, expansion, relocation, or change in a nonconforming land use must be approved by the [AMP], and is subject to this Bylaw. Such changes may only be allowed when they are required for the continued economic use of the property and when the [AMP] finds that the overall degree of non-conformity will not increase. When there is a question as to what is the current level or degree of use, the burden of proof shall be on the landowner to prove that such use was in compliance when it was established.

Example 4: Any legal structure or part thereof, which is not in compliance with the provisions of these bylaws concerning setback, height, size, or other structural requirements (including such things as parking, lighting, buffers, and lowest floor elevation in floodplain

zoning) shall be deemed a nonconforming structure. Legal nonconforming structures exist as a result of construction prior to adoption of bylaws, or construction under an earlier set of less restrictive bylaws. Any nonconforming structure may be allowed to exist indefinitely, but shall be subject to the following provisions:

- Subject to conditional use approval the [AMP], a nonconforming structure may be restored or reconstructed after unintentional loss provided the reconstruction is commenced within two years and does not increase the degree of non-compliance that existed prior to the damage.
- A nonconforming structure which has been demolished shall not be reconstructed except in conformance with these bylaws. The [AMP] may grant a waiver from this provision if a hardship would be created by rebuilding in strict conformance with the requirements of these bylaws. In considering a waiver from these provisions, the [AMP] shall take into consideration the ability of the applicant to use remaining features of the property such as foundation, water supply, sewage disposal system, underground utilities, etc.
- A nonconforming structure shall not be moved, altered, extended, or enlarged in a manner which will increase the existing degree of non-conformance.
- The phrase ‘shall not increase the degree of non-conformance’ shall be interpreted to mean that the portion of the structure which is nonconforming shall not increase in size (or decrease in the event of failing to meet minimum standards such as parking and lighting). Therefore, portions of a structure within a setback area cannot be enlarged, portions above the maximum height cannot be expanded, a nonconforming deck or porch cannot be enclosed, where parking is deficient the number or size of spaces cannot be reduced, etc. This phrase is not intended to prevent existing unfinished space from being finished or other similar scenarios provided there is no increase in size.
- Nothing in this section shall be deemed to prevent normal maintenance and repair of a nonconforming structure provided that such action does not increase the degree of non-conformance.
- The [AMP] shall permit the alteration or expansion of a nonconforming structure for the sole purpose of compliance with mandated environmental, safety, health, or energy codes.

Any use, which does not conform to uses allowed in the district in which it is located or is otherwise not in compliance with the provisions of these bylaws, shall be deemed a nonconforming use. Nonconforming uses are those that exist legally as a result of existing prior to adoption of bylaws, or permitted under an earlier set of less restrictive bylaws. Any nonconforming use may be continued indefinitely, but shall be subject to the following provisions:

- The nonconforming use shall not be changed to another nonconforming use without approval by the [AMP][zoning administrator], and then only to a use that, in the opinion of the [AMP] [zoning administrator], is of the same or of a more conforming nature.
- The nonconforming use shall not be re-established if such use has been discontinued for a period of at least two-years or has been changed to, or replaced by, a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.
- The nonconforming use shall not be expanded, extended, moved or enlarged unless the [AMP] finds that such expansion, extension, movement, or enlargement does not increase the degree of non-conformance. Examples of enlarged or expanded uses can include increased hours of operation, increased numbers of tables, number of employees or an increase in the size of the operation through the expansion of a complying structure.
- The [AMP] shall permit the alteration or expansion of a nonconforming use for the sole purpose of compliance with mandated environmental, safety, health, or energy codes.

Other Sections

L. Limitations

24 V.S.A. § 4413

Some land uses (i.e., state or community owned and operated institutions and facilities, public and private schools and other educational institutions certified by the state department of education, churches and other places of worship, convents, and parish houses, public and private hospitals, and certain regional waste management facilities) may only be regulated with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use.

Communities may specify districts in which these uses are not allowed but there must be opportunity for these uses to locate somewhere in the community. And, while a bylaw may require that a protected use comply with one or more development review procedures, conditions of approval are limited to these statutory considerations. A bylaw may not impose standards associated with other review processes (e.g., conditional use, site plan review), unless those standards are consistent with the statute.

Municipal bylaws may not regulate power generation and transmission facilities regulated by the Vermont Public Service Board, accepted agricultural and silvicultural practices (including the construction of farm structures, as defined by the Secretary of Agriculture, Food and Markets or the Commissioner of Forests Parks and Recreation, respectively), or hunting, fishing or trapping.

1. Statutory Requirement

(a) The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

- (1) State- or community-owned and operated institutions and facilities.*
- (2) Public and private schools and other educational institutions certified by the state Department of Education.*
- (3) Churches and other places of worship, convents, and parish houses.*
- (4) Public and private hospitals.*
- (5) Regional solid waste management facilities certified under 10 V.S.A. Chapter 159.*
- (6) Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.*

(b) A bylaw under this chapter shall not regulate public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248.

(c) Except as otherwise provided by this section and by 10 V.S.A. § 1976, if any bylaw is enacted with respect to any land development that is subject to regulation under state statutes, the more stringent or restrictive regulation applicable shall apply.

(d) A bylaw under this chapter shall not regulate accepted agricultural and silvicultural practices, including the construction of farm structures, as those practices are defined by the secretary of agriculture, food and markets or the commissioner of forests, parks and recreation, respectively, under subsections 1021(f) and 1259(f) of Title 10 and section 4810 of Title 6.

(1) For purposes of this section, “farm structure” means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as “farming” is defined in subdivision 6001(22) of Title 10, but excludes a dwelling for human habitation.

(2) A person shall notify a municipality of the intent to build a farm structure and shall abide by setbacks approved by the secretary of agriculture, food and markets. No municipal permit for a farm structure shall be required.

(3) A municipality may enact a bylaw that imposes forest management practices resulting in a change in a forest management plan for land enrolled in the use value appraisal program pursuant to 32 V.S.A. chapter 124 only to the extent that those changes are silviculturally sound, as determined by the commissioner of forests, parks and recreation, and protect specific natural, conservation, aesthetic, or wildlife features in properly designated zoning districts. These changes also must be compatible with 32 V.S.A. § 3755.

(e) A bylaw enacted under this chapter shall be subject to the restrictions created under section 2295 of this title, with respect to the limits on municipal power to regulate hunting, fishing, trapping, and other activities specified under that section.

(f) This section shall apply in every municipality, notwithstanding any existing bylaw to the contrary. 24 V.S.A. § 4413

2. Sample Definitions

Place(s) of Worship: A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such place for worship and religious activities.

3. Sample Bylaw Provisions

Example 1 (Public Facilities): The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

- State- or community-owned and operated institutions and facilities.
- Public and private schools and other educational institutions certified by the state department of education.
- Churches and other places of worship, convents, and parish houses.
- Public and private hospitals.
- Regional solid waste management facilities certified under 10 V.S.A. Chapter 159.
- Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.

Example 2 (Farm Structures): Farm structure means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as “farming” is defined in subdivision 6001(22) of Title 10, but excludes a dwelling for human habitation. This bylaw shall not regulate accepted agricultural practices, as defined by the Secretary of Agriculture, Food, and Markets, including the construction of farm structures, except that a person shall notify the Town of _____ of the intent to build a farm structure and shall abide by setbacks approved by the Secretary of Agriculture, Food and Markets.

Example 3 (Farm Structures): Pursuant to 24 V.S.A. § 4413(d) farm structures, excluding dwellings, accepted agricultural practices and accepted silvicultural practices are exempt from local permitting requirements. However, farmers intending to erect a

farm structure must notify the municipality of the intent to build a farm structure, and abide by setbacks contained within the zoning ordinance, unless they provide an approval of lesser setbacks by the Commissioner of Agriculture, Food and Markets. The notification must contain a sketch of the proposed structure and include the setback distances from adjoining property owners and the street right-of-way. Additionally, all farm structures within the Flood Hazard Overlay District must comply with the National Flood Insurance Program. Lastly, the municipality may report violations of Accepted Agricultural Practices or accepted silvicultural practices to the appropriate state authorities for enforcement.

Example 4 (Silvicultural Practices): This bylaw shall not regulate accepted silvicultural practices, as those practices are defined by the commissioner of forests, parks and recreation under subsection 1021(f) and 1259(f) of Title 10 and section 4810 of Title 6.

M. Establishing A Combined Review Process

24 V.S.A. § 4462

Under the 2004 revisions to Chapter 117, municipalities are authorized, to the extent feasible, to conduct combined review of proposed development projects.

1. Statutory Requirements

If more than one type of review is required for a project, the reviews, to the extent feasible, shall be conducted concurrently. A process defining the sequence of review and issuance of decisions shall be defined in the bylaw. 24 V.S.A. § 4462.

2. Sample Bylaw Provisions

In accordance with 24 V.S.A. § 4462, in cases where a proposed project will require more than one type of development review, the (planning commission/zoning board of adjustment/ development review board) may warn and hold a joint hearing or single hearing for the purpose of reviewing and acting on the proposal. The zoning administrator shall identify proposed projects appropriate for combined review and assist applicants in preparing and submitting coordinated applications to facilitate combined review.

Notice for a combined review hearing shall be made in accordance with 24 V.S.A. § 4464(a)(1). The hearing notice shall include a statement that the hearing will be a combined review of the proposed project and list each review processes that will be conducted at the hearing.

As applicable, the combined review process shall be conducted in the following order:

1. Site Plan
2. Access by right-of-way
3. Requests for Waivers or Variances

4. Subdivision Approval (preliminary and final) or PUD approval
5. Conditional Use Review

All hearing and decision requirements, and all deadlines applicable to each review process shall apply. Separate written decisions may be issued for each review conducted as part of the combined review, but shall be coordinated where appropriate.

N. Permit Notice Posting Requirements

24 V.S.A. § 4464

Twenty-four V.S.A. § 4449(b) requires posting of a notice of permit on a form prescribed the municipality within view from the public right-of-way most nearly adjacent to the subject property until the applicable appeal period has passed. Many have questioned who should be responsible for this requirement: the municipality, which is typically required to fulfill the other notice and posting requirements under the statute, or the applicant, who is arguably in a better position to ensure that the notice is posted during the entire appeal period.

Generally, if a bylaw does not require the zoning administrator to post, the burden lies with the applicant to post the notice. Municipalities may decide that this is a job best handled by the zoning administrator and include a bylaw provision requiring the ZA to post the notice. Applicants are advised that if the posting provision is not satisfied, an interested person could question the validity of the permit.

1. Statutory Requirement

Each permit issued under this section shall contain a statement of the period of time within which an appeal may be taken and shall require posting of a notice of permit on a form prescribed by the municipality within view from the public right-of-way most nearly adjacent to the subject property until the time for appeal in section 4465 of this title has passed. 24 V.S.A. § 4449(b).

2. Sample Bylaw Provisions

Example 1 (Zoning Administrator): Within three days following the issuance of a zoning permit, the zoning administrator shall post a copy of the permit in the Town Clerk's office until the expiration of the appeal period. The zoning administrator must also post a permit notice, on a form prescribed by the Town of _____ within view of the public right of way most nearly adjacent to the subject property until the time for appeals has passed. The notice shall contain a statement of the appeal period and information as to where a full description of the project and approval can be found.

Example 2 (Applicant): Within three days following the issuance of a zoning permit, the zoning administrator shall post a copy of the permit in the Town Clerk's office until the expiration of the appeal period. The applicant must also post a permit notice, in a form prescribed by the Town of _____ within view of the public right-of-way most nearly

adjacent to the subject property until the time for appeals has passed. The notice shall contain a statement of the appeal period and information as to where a full description of the project and approval can be found.

O. Providing the Interested Person List to Appellants

24 V.S.A. § 4471(c)

24 V.S.A. § 4471(c) provides that notice of an appeal of an appropriate municipal panel (AMP) decision must be filed by certified mailing, with fees, to the environmental court and by mailing a copy to the municipal clerk or the zoning administrator, who must supply a list of interested persons to the appellant within five working days. A bylaw should specify whether the municipal clerk or the zoning administrator is responsible for supplying the list.

1. Statutory Requirement

Notice of the appeal shall be filed by certified mailing, with fees, to the environmental court and by mailing a copy to the municipal clerk or the administrative officer, if so designated, who shall supply a list of interested persons to the appellant within five working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person, and, if any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene. 24 V.S.A. § 4471(c).

2. Sample Bylaw Provisions

Example 1 (Clerk): Within thirty days following the date of decision rendered by the DRB, notice of the appeal shall be filed by certified mail with fees to the environmental court and mailing a copy to the municipal clerk who shall supply a list of interested persons to the appellant within five working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person and, in any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

Example 1 (Zoning Administrator): Within 30 days following the date of decision rendered by the DRB, notice of the appeal shall be filed by certified mail with fees to the environmental court and mailing a copy to the zoning administrator who shall supply a list of interested persons to the appellant within five working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person and, in any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.