



Appropriate Municipal Panels

Background

Appropriate Municipal Panel is the Chapter 117 term, introduced under Act 115, for any municipal body or "panel" designated in the bylaw to review development applications or to hear appeals. An appropriate municipal panel may include a planning commission, board of adjustment, development review board, or occasionally the legislative body - any panel that serves in a quasi-judicial capacity under locally adopted land use regulations. The appointment, roles and responsibilities of such panels are covered under Subchapter 10 of Chapter 117 [§§4460-4464]. This subchapter also

clarifies the role of "advisory commissions" in reviewing development applications, which is addressed separately below.

The "Appropriate" Panel

Act 115 did not alter the types of review panels authorized by statute - municipalities do not have to appoint new boards or reassign existing responsibilities. Prior to Act 115, however, the roles and responsibilities of each type of panel were clearly defined in the statute, as reflected in local practice and in most existing zoning and subdivision regu-

lations. Now, for the most part, it's up to the municipality to determine which panel is most appropriate to conduct a particular type of review. The only review board required under Chapter 117 - to hear appeals under zoning - is a Board of Adjustment or Development Review Board. Chapter 117 specifies that zoning appeals be heard by a board of adjustment or development review board, and that local Act 250 review be conducted by a development review board. *(For more information on development review options and procedures, see Bulletin #3 Permissible Regulations and Bulletin #8 Development Review.)*

The intent of these and related Chapter 117 amendments under Act 115 was to give municipalities more options to coordinate and consolidate local review procedures under one board - and potentially under one "unified development bylaw" - to make local permitting more timely and efficient. Now, at least in theory, a planning commission can also conduct conditional use reviews - though given its many other responsibilities under Chapter 117, this is not advised.

Development Review Boards. The creation of a development review board (authorized in 1993 under a

Types of Development Review

Responsibilities of the Appropriate Municipal Panels

Designation of a particular board or commission for each type of development review was more clearly defined in Chapter 117 before the Act 115 changes to the statute. The following list shows the responsibilities "Before" and "After" passage of Act 115.

Access (to non-frontage lots)

Before: PC or DRB
After: as specified in bylaw

Site Plan Review

Before: PC or DRB
After: as specified in bylaw

Conditional Use Review

Before: ZBA or DRB
After: as specified in bylaw

Subdivision Review

Before: PC or DRB
After: as specified in the bylaw

Planned Development (PRD/PUD)

Before: PC or DRB
After: as specified in the bylaw

Appeals/Variances [§4465]

Before: ZBA or DRB
After: ZBA or DRB

Waivers

Before: not previously authorized
After: as specified in the bylaw

Local Act 250 Review

Before: PC or DRB
After: as specified in the bylaw

Key to Acronyms

AMP=Appropriate Municipal Panel
DRB=Development Review Board
PC=Planning Commission
ZBA=Zoning Board of Adjustment
LB=Legislative Body (Selectboard, etc.)

previous Chapter 117 amendment), remains the most effective - and increasingly popular - means of consolidating local development review functions under one board. Where a development review board exists, by statute it must perform all the quasi-judicial functions traditionally assigned to planning commissions and boards of adjustment, including those noted above. Once a development review board is created, the board of adjustment is terminated. The quasi-judicial role of the planning commission also ends, but the commission retains its responsibilities to plan for the community and prepare municipal plans, bylaws and amendments to these documents. The DRB is created by resolution or vote of the legislative body. A transition period is often specified in the resolution or vote creating a development review board to allow time for the board of adjustment and planning commission to finish reviewing applications already

in the pipeline. The appointment of a development review board is a first step in streamlining the local review process - consideration also should be given to coordinating or consolidating existing review procedures under a unified development bylaw.

Appointment Requirements

An appropriate municipal panel is typically appointed by the legislative body - the town selectboard, village trustees, city council or aldermen. Planning commissions are also usually appointed, but may be elected in municipalities that vote to elect their planning commissioners. Chapter 117 specifies the makeup of each type of panel. "Alternates" may be appointed to boards of adjustment or development review boards to serve in the event that one or more members are disqualified (e.g., due to a conflict of interest) or are otherwise unable to serve. This is especially important for meeting Chapter 117 quorum requirements (a majority of the membership) to conduct hearings or take action. Because of the quorum requirement, it's also important that vacancies are filled by the legislative body in a timely fashion.

Procedural Requirements

As noted, appropriate municipal panels are those commissions or boards that serve in a "quasi-judicial" capacity with regard to the review and approval of development applications. As such, an appropriate municipal panel sits in judgment of the application and must use its discretion in reviewing testimony and evidence, in interpreting and applying the bylaw, and in rendering a decision - to include written findings and conclusions - based on the merits of the information presented. Also, any deci-

sion of the panel is subject to judicial review on appeal to the Environmental Court (*see Bulletin #9 Appeals*).

Act 115 amended some of the statutory requirements for how a quasi-judicial body conducts its business. Now, in addition to "rules of procedure" for running meetings and hearings and taking action, any commission or board serving in a quasi-judicial capacity must also adopt "rules of ethics with regard to conflicts of interest" to ensure that its affairs are conducted in an open, honest and impartial manner. Rules of procedure must be consistent with Vermont's open meeting laws [1 V.S.A. §§316-320] as well as Chapter 117 hearing and notice requirements. Rules of ethics should be consistent with any local ethics ordinance and, if adopted for use locally, the Municipal Administrative Procedure Act.

Chapter 117 [§4461] also specifies that:

- A municipal panel must elect its own officers, including a chairperson.
- Meetings are to be held at the call of the chairperson, and at such times as the panel may determine.
- All meetings, except for deliberative sessions, must be open to the public.
- The panel must keep minutes of its proceedings, showing the vote (or failure to vote) of each member on each question, and records of its examinations and other official actions. Minutes and records must be filed immediately with the municipal clerk as public records.
- The quorum for conducting a hearing or taking action cannot be less than a majority of the full membership. Any action must be taken by a concurrence of the majority of members of the panel - not a majority of those present.
- Officers, in connection with any development review proceeding, may administer oaths, compel the attendance of witnesses, take testi-

Appointment Requirements

Planning Commission

- 3 to 9 members
- Appointed by LB, or elected
- Terms as specified by LB, or 1 to 4 years as decided by voters
- If appointed may be removed at any-time by unanimous vote of LB

Board of Adjustment

- 3 to 9 members
- Appointed by the LB
- Terms specified by the LB
- May consist of PC members
- May be removed for cause by LB upon written charges, after public hearing

Development Review Board

- 5 to 9 members
- Appointed by the LB
- Terms specified by the LB
- May consist of PC members
- May be removed for cause by LB upon written charges, after public hearing

Conflicts of Interest

What constitutes a conflict of interest is not specifically addressed in Chapter 117. However, state law applying to the disqualification of judges [12 V.S.A. §61] also applies to any person acting in a quasi-judicial capacity. Accordingly, no member of a panel with a direct or personal interest in the outcome of a decision may participate in making that decision. This also applies if the person is related to parties in the case - including relatives by blood or marriage, or any officer, trustee or agent of a corporation.

The following is the definition recommended in state law for use in local ethics ordinances [24 V.S.A. §1984]:

"Conflict of interest" means "...a direct personal or pecuniary interest of a public

official, or the official's spouse, household member, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the agency or public body in which the official holds office or is employed. "Conflict of interest" does not arise in the case of votes or decisions in which the official has a personal or pecuniary interest in the outcome, such as in the establishment of a tax rate, that is no greater than that of other persons generally affected by the decision"

Some communities also include extended relations and close friends. Specific conflict of interest provisions are also found under the Municipal Administrative Procedures Act.

mony, and require the submission of materials for examination.

These powers also may be delegated to "a specifically authorized agent or representative" (e.g., a hearing officer) except where the Municipal Administrative Procedure Act (MAPA) applies.

- In any public hearing, opportunity must be provided for persons to demonstrate, for the record, that they meet the criteria to participate as an "interested person" and thereby retain the right to appeal a panel decision to court (*see Bulletin #9 Appeals*).

For local appeal hearings, Chapter 117 also specifies that the rules of evidence applicable to these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before state agencies under 3 V.S.A. §810.

Municipal Administrative Procedure Act. A municipality also may adopt the Municipal Administrative Procedure Act for application in specified development review proceedings. The adoption of MAPA is required for "on the record review" of local decisions that are appealed to court, or for local Act 250

review. The intent is to ensure that local hearings ("contested" proceedings) are conducted in an impartial manner, and that an adequate record is produced for review by the court or in state Act 250 proceedings. Even if MAPA is not formally adopted for local use, it should be considered when developing rules of procedure - particularly with regard to such matters as conflicts of interest and ex parte communications.

Advisory Commissions & Committees

Chapter 117, as amended under Act 115, more specifically provides for the appointment of advisory commissions or committees to implement the municipal plan, including but not limited to conservation commissions, historic preservation commissions and design review committees, and housing commissions [§4433]. Advisory commissions or committees may be assigned a role in development review proceedings, as specified in the bylaw or by a resolution of the legislative body [§4464(d)]. Their function,

however, is strictly advisory - they do not serve in a quasi-judicial capacity, nor may their recommendations be directly appealed to court. Under Chapter 117 an advisory commission is authorized to:

- Meet with the applicant and interested parties, conduct site visits, and perform other fact-finding, in accordance with open meeting laws (not Chapter 117 public hearing requirements).
- Review applications and prepare recommendations on standards within the commission's purview.
- Present written recommendations at or before the public hearing, or orally at the hearing.
- Prior to the hearing, make every effort to inform the applicant if an application fails to comply with one or more review standards, to give the applicant time to withdraw the application, or prepare a response. The commission may also suggest remedies to correct noted deficiencies.

Municipal Administrative Procedure Act

[24 V.S.A. Chapter 36]

Any municipality that chooses to have local decisions appealed to Environmental Court to be heard "on the record" (rather than anew), or to conduct local Act 250 reviews, must adopt the Municipal Administrative Procedure Act to apply to specified development review proceedings. MAPA provisions include the following:

- Conflicts of Interest
- Notice Requirements (per Chapter 117)
- Hearing Procedures
- Evidence
- Ex Parte Communications
- Qualification of Members (in rendering decisions)
- Decisions
- Appeals (per Chapter 117)

Is a Development Review Board Appropriate for Your Municipality?

Considerations	Pros	Cons
Planning	<ul style="list-style-type: none"> • PC can focus all its efforts on planning • Municipal plans and bylaws get updated more often • PC has time for special studies and non-regulatory activities, including public outreach 	<ul style="list-style-type: none"> • PC can lose touch with the realities of development review • DRB may lack a long-range planning perspective when making development review decisions
Legal	<ul style="list-style-type: none"> • Eliminates the potential for issuing contradictory PC/ZBA decisions for a particular application • Allows for "Local Act 250 review" to include determinations that become rebuttable presumptions in state Act 250 review proceedings • Can reduce the potential number of local decisions that may be appealed to court 	<ul style="list-style-type: none"> • May limit the application of bylaw provisions, as interpreted by one review board, and narrow the scope and breadth of review decisions • The DRB lacks party status in Act 250, which may result in determinations that conflict with positions of the PC or LB
Administrative	<ul style="list-style-type: none"> • Allows for coordinated review of applications, including the potential consolidation of several review processes under one board • Can reduce the number of hearings, notices, staff reports and decisions to be issued and deadlines to be managed by the municipality 	<ul style="list-style-type: none"> • Individual review proceedings - if more comprehensive in scope - may take longer and require more administrative and technical capacity - particularly if hearings are conducted on the record in accordance with the Municipal Administrative Procedure Act (as required for "on the record" or local Act 250 review)
Human Resources	<ul style="list-style-type: none"> • Only one board (the DRB) needs to be trained in quasi-judicial hearing processes • PC is free to conduct all its affairs with broad public participation (free from concern for ex parte communications) 	<ul style="list-style-type: none"> • Where application numbers are high, the DRB could become overwhelmed by the caseload - additional administrative assistance (e.g., the appointment of a hearing officer or expanded administrative review) may be required
Public Relations	<ul style="list-style-type: none"> • Allows for "one-stop shopping" • Has the potential to streamline the local permitting process, making it more understandable, timely and efficient 	<ul style="list-style-type: none"> • Fewer hearings could reduce opportunities for public input and participation in the development review process

Vermont Land Use Education and Training Collaborative

Working Together to Provide Improved Learning Opportunities for Vermont's Local Boards and Commissions

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