



Equal Treatment of Housing

Background

The effort to update Chapter 117 - which culminated in Act 115 - was an outgrowth of work undertaken by a legislative study committee established to review regulatory subchapters of the statute and recommend ways to further improve the local permitting process for affordable housing development. Consequently, many significant changes to Chapter 117 relate to the manner in which municipalities may - and may not - regulate different types of housing.

Most provisions related to housing are included in §4412(1), under the sub-heading *equal treatment of housing and required provisions for affordable housing*. These address such topics as

Planning for Affordable Housing

A plan for a municipality should be consistent with Vermont's planning and development goals set forth in Chapter 117 [§4302], and be compatible with approved plans of other municipalities in the region and with the regional plan.

Municipalities are not required to adopt a plan. If they choose to, however, the plan must include 10 specific chapters or "elements," including 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 the regional plan."

protected accessory dwellings (as expanded under Act 115), reasonable provision for mobile home parks and multi-family housing (added under Act 115), protection of mobile homes and group homes, and conformance with the municipal plan's housing element. In addition, Chapter 117 establishes a process in which the Vermont Attorney General must investigate allegations that a bylaw is "exclusionary" - that is, a provision of the bylaw would have the effect of excluding one or more categories of people, typically those with low incomes, from reasonable opportunities to secure housing in the community. [§4453]

Conformance with the Municipal Plan

The relationship between the municipal plan and the bylaws intended to implement that plan is especially important with regard to affordable housing. According to Chapter 117 [§4412(1)(A)], *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 subdivision 4382(a)(10)*. This is intended to ensure that communities plan for future housing needs, especially for low and moderate income residents, and avoid exclusionary regulations. The equal treatment of housing provisions included in Chapter 117 (described below) were adopted to prevent specific exclusionary practices.

Accessory Dwellings

Prior to Act 115, bylaws were required to allow an accessory apartment either within or attached to a principal single family dwelling, subject to specified floor area and occupancy requirements. Bylaws could, however, require accessory apartments to obtain conditional use approval. That provision of Chapter 117 was replaced with a requirement that zoning bylaws allow, as a permitted use, "one accessory dwelling unit

Accessory Dwellings

Attached, Detached and Appurtenant

Municipalities must treat accessory dwellings that are, "located within or appurtenant to a single family dwelling," as a permitted use.

A standard definition of "appurtenant" is *belonging to as a subsidiary or incidental property right or privilege* [The New Shorter Oxford Dictionary]. As it relates to accessory dwellings, "appurtenant" is generally interpreted as meaning the accessory dwelling may be attached or detached from the single family dwelling.

However, if the accessory dwelling is located within a "new" accessory structure (e.g., one constructed after the effective date of the bylaw, or after some other specified date), or if the existing dwelling or parking area serving the dwelling is expanded, the bylaw may require that the accessory dwelling be approved as a conditional use.

that is located within or appurtenant to an owner-occupied single family dwelling" [§4412(1)(E)].

An accessory dwelling unit is defined as 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 it complies with all of 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; and
- applicable setback, coverage, and parking requirements specified in the bylaws are met.

The optional requirement limiting occupancy of the accessory dwelling to an elderly or disabled relative of the homeowner was eliminated under Act 115. Municipalities may adopt less restrictive accessory dwelling provisions in local bylaws, however, and bylaws may require "conditional use review for one or more of the following that is involved in the creation of an accessory dwelling unit:

- 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.

Thus, in some instances communities may impose conditional use review on accessory dwellings. Those choosing to do so, however, should establish clear parameters in their bylaws. (see sidebar).

Multi-Family Dwellings

Chapter 117, as amended by Act 115, requires that *no bylaw shall have the effect of excluding ... multiunit or multi-family dwellings from the municipality*. To be in compliance, bylaws must designate appropriate districts and reasonable regulations for multiunit or multifamily dwellings. This might be accomplished by allowing multi-family dwellings in a

village, downtown neighborhood or mixed-use growth center - or in a rural setting as a planned unit development. A bylaw also may require one or more development review approvals (e.g., site plan or conditional use review) provided that there is a realistic opportunity for such a use to locate within the designated district(s) or area(s) in accordance with established standards.

Group Homes

Act 115 expanded the protection granted to residential care homes and group homes under Chapter 117.

[§4412(A)(G)]. Such facilities must be treated the same as a single-family dwelling under zoning bylaws, provided:

- the home is operated under state licensing or registration,
 - the home serves not more than eight persons who have a handicap or disability as defined in 9 V.S.A. § 4501, and
 - 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.
- Some municipalities simply define

Related Definitions from Other Statutes

Handicap or Disability

According to 9 V.S.A. §4501, a "handicap" or "disability," with respect to an individual, means: (a) a physical or mental impairment which limits one or more major life activities; (b) a history or record of such an impairment, or (c) being regarded as having such an impairment.

"Physical or mental impairment" is further defined to mean:

(a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine;

(b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(c) The term "physical or mental impairment" includes but is not limited to such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism. A handicapped individual does not include any individual who is an alcoholic or drug abuser who, by reason of current alcohol or drug use, constitutes a direct threat to property or safety of others.

Mobile Home

According to 10 V.S.A., Chapter 153, "Mobile home" means a prefabricated dwelling unit which:

- is designed for long term and continuous residential occupancy;
- is designed to be moved on wheels, as a whole or in sections;
- on arrival at the site, is complete and ready for occupancy, except for incidental unpacking, assembly, connections with utilities, and placing on support or a permanent foundation, or installation as a unit in a previously prepared structure;
- meets all other criteria and standards established by rule of the agency for distinguishing mobile homes from other types of residential units.

Mobile Home Park

"Mobile home park" is defined under 10 V.S.A. Chapter 153 to mean 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.

"family," "household," or "single-family dwelling," to include residential care or group homes. Others define these facilities as a separate use and include a standard prohibiting them from locating within 1,000 feet of a comparable facility, as allowed under Chapter 117.

Mobile Homes

Mobile homes have been protected from exclusionary zoning practices in Vermont since 1975. Under Chapter 117 [§4412(1)(B)], *except as provided (for design review and historic districts), 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.* Therefore, within a design control or historic district, mobile homes, modular and prefabricated housing may be held to the same design or historic preservation standards as other types of housing. And, within districts that regulate or prohibit single-family dwellings - such as a conservation or industrial district - mobile homes may be regulated or prohibited in the same manner. Where single family dwellings are a permitted use, however, no distinction may be made between mobile homes and other construction methods.

Mobile Home Parks

Under Chapter 117 [§4412(1)(C)], *no bylaw shall have the effect of excluding mobile home parks, as defined in 10 V.S.A. chapter 153, from the municipality.* As with multi-family housing, this provision requires that bylaws designate one or more area(s) or district(s) in which mobile home parks have a realistic opportunity to locate. Mobile home parks may be subject to one or more review processes, such as site plan or conditional use review, provided the standards imposed do not have the effect of being exclusionary.

In addition to general development review processes, municipalities are authorized to *establish specific site stan-*

dards in the bylaws to regulate individual sites within preexisting mobile home parks with regard to distances between structures and other standards as necessary to ensure public health, safety and welfare, provided the standards do not have the effect of prohibiting the replacement of mobile homes on existing lots. It is noteworthy that the Vermont Agency of Natural Resources' on-site wastewater disposal regulations included detailed site design standards for mobile home parks until those rules were overhauled in 2002, at which time the mobile home park standards were eliminated. Many communities adopted the Agency's standards by reference in bylaws. Communities wanting to regulate mobile home park density, site design and related provisions should be sure to eliminate outdated references and include appropriate standards when preparing new or amended bylaws.

As a result of Act 115, Chapter 117 [§4412(7)(B)] now addresses mobile home parks that are either nonconforming uses or nonconforming structures. If a mobile home park is a nonconformity under a municipality's bylaws, *the entire mobile home park shall be treated as nonconformity under those bylaws, and individual lots within the mobile home park shall in no event be considered nonconformities.*

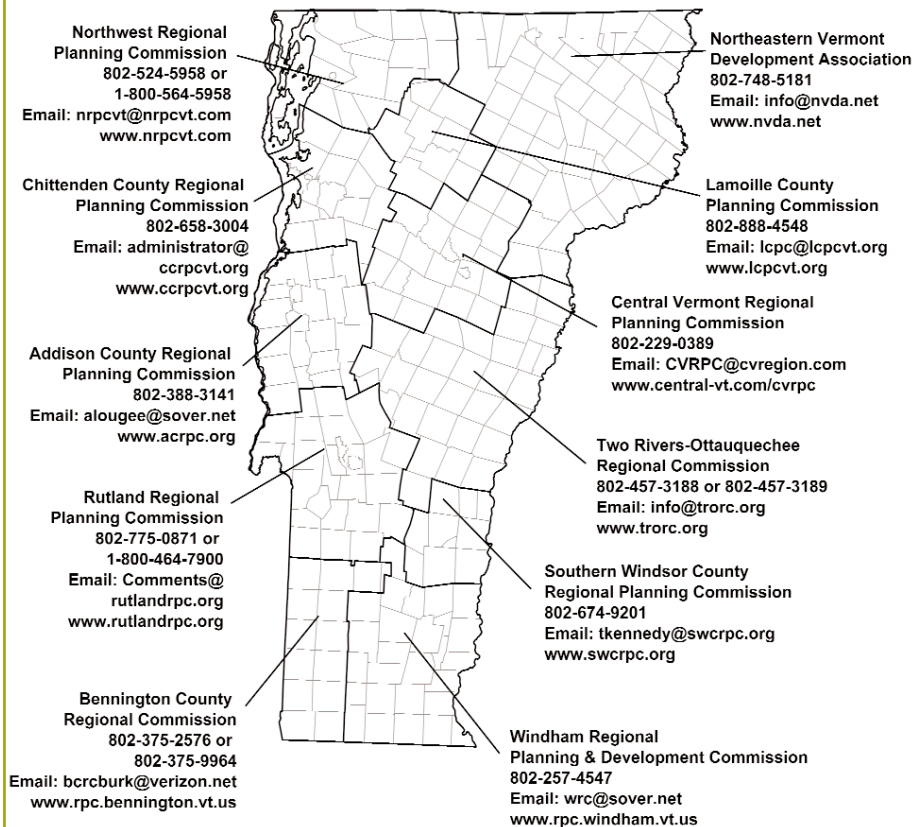
This provision is intended to ensure that individual mobile homes within nonconforming mobile home parks may be replaced. However, Chapter 117 further provides [§4412(7)(b) that *unless the bylaws provide specific standards as described (above), where a mobile home park is a nonconformity under bylaws, its status regarding conformance or nonconformance shall apply to the parcel as a whole, and not to any individual mobile home lot within the park.* Thus, if a bylaw includes site design standards, this implies that new or replacement mobile homes may be held to the same standards as the replacement of any other non-conforming use or structure. However, this section goes on to state that *an individual mobile home lot that is vacated shall not be considered a discontinuance or*

Challenges to Housing Provisions in Bylaws

To ensure that the equal treatment of housing provisions of Chapter 117 [§4412(1)] are strictly adhered to, Chapter 117 provides a special mechanism for investigating alleged violations of one or more of those provisions (described in this bulletin). According to Chapter 117 [§4453], the attorney general, or a designee, is directed to investigate a complaint that a bylaw, or the manner in which a bylaw has been administered, violates an equal treatment provision. Upon determining that a violation has occurred, the attorney general may file an action in the environmental court to challenge the validity of the bylaw or its manner of administration. In this action, the municipality shall have the burden of proof to establish by a preponderance of the evidence that the challenged bylaw or its manner of administration does not violate the provisions of §4412(1) of this title. If the court finds the bylaw or its administration to be in violation, it shall grant the municipality a reasonable period of time to correct the violation and may extend that time. If the violation continues after that time, the court shall order the municipality to grant all requested permits and certificates of occupancy for housing relating to the area of the continuing violation.

abandonment of nonconformity. Under the non-conformities provisions of Chapter 117 (*see Bulletin #5. Required Provisions & Limitations*), bylaws may specify a time period that constitutes an abandonment or discontinuance of a nonconforming use or structure, after which such use or structure may not be reestablished. Thus, despite an apparent inconsistency in the statutory language, it is advisable that nonconforming mobile home parks be treated as a nonconforming use or structure in their entirety, and that bylaws not restrict the replacement of individual mobile homes within such parks.

**Contact information:
Regional Planning Commissions**



**VERMONT LAND USE
Education & Training Collaborative**

Chapter 117 Bulletins

The following ten bulletins were published in November 2004 to provide information about the changes to 24 V.S.A. Chapter 117, the state statute governing local planning and regulation, enacted in 2004. These all are available through www.vpic.info and from the Education and Training Collaborative partners listed below.

1. **Chapter 117 Overview** (legislative intent and effective dates)
2. **Conformance with the Municipal Plan**
3. **Permissible Regulations**
4. **Bylaw Preparation & Adoption**
5. **Required Provisions & Limitations**
6. **Equal Treatment of Housing**
7. **Zoning Permits**
8. **Development Review Procedures**
9. **Appeals**
10. **Appropriate Municipal Panels**

Vermont Land Use Education and Training Collaborative

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

Questions about this bulletin and other chapter 117 materials produced by the Collaborative may be directed to the following members of the Vermont Land Use Education and Training Collaborative Steering Committee. For links to websites go to "About Us" at www.vpic.info.

Center for Rural Studies (CRS) at the University of Vermont
207 Morrill Hall
University of Vermont, Burlington, VT 05405
(802)656-3021

Department of Housing and Community Affairs (DHCA), Planning Division
National Life Building Dr. 20
Montpelier, VT 05620-0501
(802)828-5249

Vermont Association of Planning and Development Agencies (VAPDA)
Contact your Regional Planning Commission

Vermont League of Cities and Towns (VLCT)
89 Main Street, Suite 4
Montpelier, VT 05602
(802)229-9111

Vermont Secretary of State's Office
26 Terrace Street
Montpelier, Vermont 05609
(802) 828-2363

Vermont Planners Association (VPA)
c/o VLCT
89 Main Street, Suite 4
Montpelier, VT 05602

FOR MORE INFORMATION GO TO WWW.VPIC.INFO