

Local Land Use Regulations: A Vermont Primer

Developed by the Two Rivers-Ottawaquechee Regional Commission

Vermont's communities can affect the ways in which land in their town is used through a variety of methods. This fact sheet is meant to briefly describe the various traditional land use regulatory methods, and why a town's citizens might *choose* to adopt any one, or several, of them. Land use planning and regulation is a choice, and is not required in Vermont.

First, it is important to cover the fundamentals of land use planning.

◆ **All land use is planned.** It can be planned by individuals, businesses, the town, or a combination of all of these, but no one just starts nailing boards together with no plan. Communities that decide not to plan for their future land development are saying they are comfortable with others doing the planning for them. That is a community's choice to make.

◆ **Towns can best exert local control over their future through local land use regulations.** Opposition to having any local regulations, such as zoning, is actually promoting no local control. In Vermont, that leaves some larger developments under the control of Act 250, and others without regulation. Again, it is a community's choice to exert their legal abilities to control land use or not.

◆ **Landowners' rights are always within certain limits.** Even if a town chooses not to have local regulation of land use, landowners may not do whatever they want to with their land. To illustrate this point, no one has the right to just go out and start a landfill in their yard or fill in wetlands. This may rankle some people's perceptions of unlimited property rights, but it is true nonetheless.

◆ **Towns cannot regulate land use in any way they want.** Land use regulations do tell people what they can and cannot do with their land, but they cannot deprive landowners of *all reasonable use* of their property without compensation. Towns may only adopt zoning if they have a town plan, and the regulations must fit with the plan's goals. Local regulations must be adopted through a public process and administered fairly.

Under Vermont law, local land use regulations also CANNOT:

- Treat mobile or modular homes different than standard homes
- Regulate most electric distribution and generation
- Regulate farming or forestry that is done according to state standards
- Regulate most aspects of farm buildings
- Prohibit the use of part of a home for a "home occupation"
- Prohibit any home from adding on a single unit apartment
- Make a structure or use that predated the adoption of the regulation a violation.
- Prohibit small child care, residential care, or group homes
- Prohibit cellular towers
- Have the effect of creating only unaffordable housing

Additionally, certain "public" land uses are protected by law, in that they must be allowed in at least part of town. Local land use regulations also cannot be so strict that they overly interfere with these uses. Protected types of development include:

- State or town buildings or facilities, schools, churches, hospitals, and landfills.

◆ **Permitting is largely not meant to be a democratic process.** The democracy happens during the drafting and adoption of the town plan and subsequent regulations. A town should put its desires in plain English in the town plan, and then implement this vision through adoption of regulations. It is neither fair, inexpensive, or totally legal to be making all sorts of decisions during a permit process that are not grounded in your adopted plan and bylaws. The role of the Selectboard is in the adoption process, not in the permitting process.

Now that the basics have been reviewed, what are the various tools towns have to regulate land use?

Access (curb cut) Permits

Towns may or may not have road policies or ordinances, but regardless, they are actually *required* to regulate any access onto a town highway (VTrans regulates access onto state highways). Access permits are given by the Selectboard (unless formally delegated as a duty to the Road Foreman or Road Commissioner), and are needed for new *or modified* accesses. The idea is that towns can protect public safety and the huge public investment in roads by making sure that accesses occur at safe points, that vehicles have a safe spot to stop before entering the highway, and the water and gravel from the drive don't wash into the town road. These permits only look at the access point and shoulder, not the road or drive, however you can require that a lot only have a single access point and that culverts are upgraded to handle projected stormwater runoff from the drive.

For more information on this subject, contact Chuck Wise at TRORC, cwise@trorc.org or (802) 457-3188, extension 15.

Flood Regulations

In order for anyone in town to purchase insurance to protect their property from flooding (which standard property insurance never covers), a town must enroll in the National Flood Insurance Program (NFIP) and regulate land uses in mapped flood areas to a set of minimum standards. This can be done in a freestanding regulation or in part of the zoning. These regulations do not necessarily require that buildings are not built in the floodplain, though, just that they are built high enough to avoid flooding. However, it is widely recognized that the required minimum standards can lead to increased flooding and unwise development, so adopting more stringent regulations is recommended.

For more information on this subject, contact Kevin Geiger at TRORC, kgeiger@trorc.org or (802) 457-3188, extension 24; or Barry Cahoon, Vermont NFIP Coordinator at barry.cahoon@state.vt.us or (802) 241-3759.

Ordinances

Towns can adopt ordinances under a different part of Vermont law than where zoning is enabled. The most common ordinances are for signs or junk vehicles. Ordinances are easier to draft and adopt, and can give towns greater ability to more quickly fine violators.

For more information on this subject, contact Kevin Geiger at TRORC, kgeiger@trorc.org or (802) 457-3188, extension 24.

Town Plan

Town plans are visionary documents for all aspects of what a town would like to see happen to it over the next five years. Town plans are generated by Planning Commissions and approved by either a town vote or a vote of the legislative body (Selectboards for most towns). Both Planning Commissions and legislative bodies have publicly warned hearings on drafts.

Town plans need to have a section on the town's desired future land use, and this section is not meant to be regulatory, but to guide subsequent regulations. However, they can have regulatory effect in two

places. First, if a town plan has *specific, directive language* (for example: gas stations shall be prohibited from floodplains), conformance by a project with that language can be required in Act 250. Towns desiring less regulatory effect should use words such as “should”, “encourage”, and “consider” to ensure that their plans are not used in this way.

Town plans can also have a regulatory effect in the granting of access permits, in that these permits have to be compatible with the town plan.

For more information on this subject, contact Chris Sargent at TRORC, csargent@trorc.org or (802) 457-3188, extension 12.

Zoning

Zoning is used to regulate all lands within a town, and is commonly thought of as the primary way to regulate land use. Zoning has been around in the nation for over a century, and in Vermont for almost 40 years. Zoning gets its name from the common use-based splitting up of a town into zones or districts (such as Rural Residential, Commercial, Industrial, or Agricultural). This geographic splitting was based upon the idea that many uses did not go well together. This type of *use-based* zoning is slowly being modified in many towns into more complex regulations that reflect that people can often live and work in the same places. *Form-based* regulations concentrate more on what buildings look like, but allow uses to mix, while *standards-based* zoning takes into account the effects of uses – noise, light, traffic, etc – more than what the uses are. New local zoning regulations should probably use bits of all three approaches.

Just because a town adopts zoning, does not mean that all development requires a permit, though. Under zoning, a development can either be exempted, permitted, or need a conditional use approval, site plan approval, waiver, or variance. Exempted (or sometimes called allowed) development are types of development that towns have decided not to regulate. Common examples of exempted development are: fences, maintenance of structures, interior remodeling, exterior appearance of homes, small sheds, and those uses described above that are outside of legal review.

A person who wants to undertake development that does require just a zoning permit, say a house, simply submits a plan (that can be hand drawn) to the town’s zoning administrator showing that the house will be the required distance from lot lines, pays the local fee, and receives the permit. The zoning administrator’s job is to just make sure that the proposed development meets any requirements, and they either approve or deny a permit application based solely on the regulations. Applicants can appeal what they think is a wrong denial to a local board (either the development review board or the zoning board of adjustment). Although the access permit for a driveway and the septic permit are separate from zoning permits, it is wise to have these in hand first, since all of these pieces need to work together.

Some uses, usually limited to non-residential uses, are required by zoning bylaws to get a conditional use approval or site plan approval from a local board before they can get a zoning permit. This approval usually involves a larger application fee and always requires a publicly warned hearing, including notification to the neighbors. As its name implies, conditional use approval entails the placement of conditions on the development in order to ensure that it will not create traffic or visual concerns, or burden town services. Site plan review is largely concerned with the proposed layout of the development. The local board’s approval decision is appealable to the Vermont Environmental Court.

There are times when, for specific reasons, a proposed use cannot fit the requirements of a permitted or conditional use. Zoning allows for such unusual development, but only within certain bounds. A land use that existed before the zoning and is non-conforming may be able to be continued, and even

changed, with special approval from the local board. Development that only needs a dimensional change from the established standards (such as less setback from lot lines) may be able to get a waiver. Development that cannot get a waiver, and that cannot be permitted in strict conformance with the bylaw, may be able to get a variance, but it must meet a tough five-part test.

For more information on this subject, contact Sally Mansur at TRORC, smansur@trorc.org or (802) 457-3188, extension 17.

Subdivision

Towns may regulate the subdividing of land. Subdivision regulations can be a freestanding bylaw or combined with the zoning into a unified bylaw. Some towns treat any new lot as needing a subdivision permit (they may also need a *zoning* permit), and other towns only require a subdivision permit when more than a couple of lots are being created. A subdivision permit is granted after a hearing by the local board. The purpose of a subdivision permit is to permit on paper a multi-lot development so that lots can be safely sold or developed. During the subdivision review process towns can limit access points, protect natural areas, reduce fragmentation of fields and forests, and control private road placement if they desire. Whether or not developers obtain a local subdivision permit, they must also get a state subdivision permit (this is *not* an Act 250 permit) for any new lot so that shows they can safely handle expected septic systems and wells, regardless of whether a town has issued a local subdivision permit or not .

For more information on this subject, contact Kevin Geiger at TRORC, kgeiger@trorc.org or (802) 457-3188, extension 24; or the DEC Regional Engineer. For persons in Orange County this is Donald Wernecke, don.wernecke@state.vt.us or (802) 476-0192, and for the remainder of the region this is Dan Wilcox, dan.wilcox@state.vt.us or (802) 885-8847.

Septic Regulations

Many towns have septic or health regulations that prescribe how septic systems may be installed. All of these local regulations will be superceded by state law on July 1, 2007.

For more information on this subject, contact Kevin Geiger at TRORC, kgeiger@trorc.org or (802) 457-3188, extension 24; or the DEC Regional Engineers above.

Act 250

Vermont's Act 250 is a statewide permit process for certain land uses that is required in addition to any local permits that may also be required. There is a connection between your regulations and Act 250, though. As noted above, your town plan can affect developments through the Act 250 permitting process. If you have a vague town plan, the Act 250 Commission may also use any zoning you have to try to determine what the town's desires are. What level of regulation you have adopted also affects the size of projects Act 250 will review in your town. If you have adopted both zoning and subdivision regulations, Act 250 will only regulate commercial projects over 10 acres in size or subdivisions that create more than 9 lots. If you have not adopted both (or if you have opted out of this provision by ordinance), then any commercial project over 1 acre in size or subdivision that creates more than 5 lots will need an Act 250 permit.

For more information on this subject, contact Peter Gregory at TRORC, pgregory@trorc.org or (802) 457-3188, extension 11; or the DEC Permit Specialist for your town. In Orange County that is John Miller, john.miller@state.vt.us or (802) 476-0195, and in the remainder of the region it is Sandra Conant, sandra.conant@state.vt.us or (802) 885-8850.