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*Agency of Commerce &
Community Development*

MEMORANDUM

TO: Municipal and Regional Planning and Development Review Officials
FROM: John S. Hall, Commissioner
Department of Housing and Community Affairs
DATE: October 30, 2007
RE: **2007 Legislative Revisions of Note to Vermont's Planning and
Development Act and Downtown Development Act.**

The following are three key 2007 statutory amendments affecting local land use planning and regulation which are not captured in the current reprint of 24 V.S.A. Chapter 117 and the Downtown Development Act.

These amendments include:

- 1) Act 32 – An act relating to potable water supply and wastewater system permitting;
- 2) Act 69 – An act relating to the requirements for an application to be a designated new town center; and
- 3) Act 79 – An act relating to establishing the Vermont Telecommunications Authority to advance broadband and wireless communications infrastructure throughout the state.

Onsite wastewater permits – Act 32

Act 32 makes several technical amendments to 10 V.S.A. Chapter 64, the Potable Water Supply and Wastewater System Permit statute originally enacted in 2002. Among other things, the 2007 revisions simplify the definitions of “failed supply” and “failed system” and redefine the exemptions available under the statute’s permitting requirements. Act 32 also enables municipalities to adopt bylaws that prohibit the initiation of construction pursuant to a zoning permit unless or until a wastewater and potable water supply permit is issued by the state (or the municipality if the program has been delegated).¹

New Town Centers – Act 69

Act 69 amends the requirements for an application for a new town center designation contained in 24 V.S.A. § 2793b(b) by amending the sizing requirement from requiring that new town centers “be designed to accommodate a majority of the community’s growth needs for the next 20 years” to “the total area of land encompassed within a designated new town center shall not exceed 125 acres” and by eliminating the

¹ Act 32 adds the following to 24 V.S.A. § 4414:

“§ 4414. ZONING; PERMISSIBLE TYPES OF REGULATIONS

(13) Wastewater and potable water supply systems. A municipality may adopt bylaws that prohibit the initiation of construction under a zoning permit unless and until a wastewater and potable water supply permit is issued under 10 V.S.A. chapter 64.”

requirement for a downtown development nonprofit corporation to support the long-term development of the new town center.²

Broadband and Wireless Telecommunications Infrastructure – Act 79

Act 79, among other things, establishes the Vermont Telecommunications Authority to provide all residences and businesses in the state with broadband and telecommunication services by the end of 2010. Act 79 also contains several provisions that affect municipal land use regulatory authority and in most communities will require changes in local procedures. Specifically, Section 15 of the Act amends 24 V.S.A. § 4412 (6), (8), and (9) as follows:

- 1) 24 V.S.A. § 4412 (6)³ states that antennae that extend above 50 feet above the ground and are part of a telecommunications facility as defined 30 V.S.A. § 248a may be exempt from local zoning review. Section 248a, which was created by Act 79, provides that an applicant in a single application seeking approval for the construction or installation within three years of three or more telecommunications facilities as part of an interconnected network may obtain a certificate of public good from the Public Service Board if the Board finds the facilities will promote the general good of the state consistent with 30 V.S.A. § 202c(b) and shall be exempt from local zoning permitting requirements and Act 250. Local ordinances adopted pursuant to 24 V.S.A. §

² **Act 69 amends 24 V.S.A. § 2793b(b)(2)(A) and (G) as follows:**

(b) Within 45 days of receipt of a completed application, the state board shall designate a new town center development district if the state board finds, with respect to that district, the municipality has:

(2) provided a community investment agreement that has been executed by authorized representatives of the municipal government, businesses, and property owners within the district, and community groups with an articulated purpose of supporting downtown interests, and contains the following:

(A) A map of the designated new town center designed to accommodate a majority of the community's growth needs for the next 20 years. The total area of land encompassed within a designated new town center shall not exceed 125 acres.

(G) An organizational structure necessary to sustain a comprehensive long term development effort, including a local board or designation of the entity that will qualify as the downtown development nonprofit corporation under subdivision 2791(5) of this title, with funding provided as necessary to support the organizational effort.

³ **24 V.S.A. § 4412(6) is amended to read:** “Heights of certain renewable energy resource structures. The height of ~~antenna structures~~, wind turbines with blades less than 20 feet in diameter, or rooftop solar collectors less than 10 feet high, any of which are mounted on complying structures, shall not be regulated unless the bylaws provide specific standards for regulation. ~~However, if an antenna structure is less than 20 feet in height and its primary function is to transmit or receive communication signals for commercial, industrial, municipal, county, or state purposes, it shall not be regulated under this chapter if it is located on a structure located within the boundaries of a downhill ski area and permitted under this chapter. For the purposes of this subdivision, “downhill ski area” means an area with trails for downhill skiing served by one or more ski lifts and any other areas within the boundaries of the ski area and open to the public for winter sports. In addition, the regulation of antennae that are part of a telecommunications facility, as defined in 30 V.S.A. § 248a, may be exempt from review under this chapter according to the provisions of that section.”~~

2291(19) or a municipal charter for the construction or installation of facilities subject to 30 V.S.A. § 248a shall also be preempted.

- 2) 24 V.S.A. § 4412 (8)(A)⁴ states that no zoning permit shall be required, except to the extent bylaws protect historic landmarks and structures listed on the state or national register of historic places, for the placement of antennae used to transmit or receive communications signals if the aggregate area of the largest faces of the antennae is not more than eight square feet *and* the antennae and any mast support do not extend more than 12 feet above the roof of that portion of the building to which the mast is attached.
- 3) 24 V.S.A. § 4412 (8)(B)⁵ exempts antennae that are less than 20 feet in height and primarily used to transmit or receive communication signals for commercial, industrial, institutional, nonprofit or public purposes from local zoning regulation if the structure is located within the boundaries of a downhill ski areas. This section is substantively similar to the provisions previously contained in 24 V.S.A. § 4412 (6).
- 4) 24 V.S.A. § 4412 (8)(C)⁶, similar to the effect of the amendment to 24 V.S.A. § 4412 (6) mentioned above, exempts from local zoning regulation antennae that are part of a telecommunications facility, as defined in 30 V.S.A. § 248a, to the extent that the Public Service Board has assumed jurisdiction.

⁴ **24 V.S.A. § 4412 (8)(A) is amended to read:** “(A) Except to the extent by-laws protect historic landmarks and structures listed on the state or national register of historic places, no permit shall be required for placement of antennae used to transmit, receive, or transmit and receive communications signals on that property owner’s premises if the aggregate area of the largest faces of the antennae is not more than eight square feet, and if the antennae and any mast support does not extend more than 12 feet above the roof of that portion of the building to which the mast is attached.”

⁵ **24 V.S.A. § 4412 (8)(B) is amended to read:** “(B) If an antenna structure is less than 20 feet in height and its primary function is to transmit or receive communication signals for commercial, industrial, institutional, nonprofit or public purposes, it shall not be regulated under this chapter if it is located on a structure located within the boundaries of a downhill ski area and permitted under this chapter. For the purposes of this subdivision, “downhill ski area” means an area with trails for downhill skiing served by one or more ski lifts and any other areas within the boundaries of the ski area and open to the public for winter sports.”

⁶ **24 V.S.A. § 4412 (8)(C) is amended to read:** “(C) The regulation of antennae that are part of a telecommunications facility, as defined in 30 V.S.A. § 248a, shall be exempt from municipal bylaw review under this chapter when and to the extent jurisdiction is assumed by the public service board according to the provisions of that section..”

- 5) 24 V.S.A. § 4412(8)(D)⁷ requires that municipal regulation of communication towers, antennae and related facilities be consistent with 24 V.S.A. § 4412 (8)(A)-(C).
- 6) 24 V.S.A. § 4412 (9)⁸ requires municipalities to establish criteria in their bylaws to determine whether a telecommunications facility will have no impact or de minimis impact. If the zoning administrator or appropriate municipal panel makes such a finding, a permit must be issued.

Finally, Section 15a of the Act amends 24 V.S.A. § 4414(12)⁹ to require that municipalities regulate telecommunications facilities consistent with *state* law in addition to federal law.

If you have questions on any of the above, please contact DHCA's Planning Division staff at 828-3211. You can also find assistance from the Vermont League of Cities and Towns, or your regional planning commission.

⁷ **24 V.S.A. § 4412 (8)(D) is amended to read:** “(D) A municipality may regulate communications towers, antennae and related facilities in its bylaws provided that such regulations do not have the purpose or effect of being inconsistent with subdivisions (A) through (C) of this subdivision (8).”

⁸ **24 V.S.A. §4412 (9) is amended to read:** “(9) De minimis telecommunications impacts. An officer or entity designated by the municipality shall review telecommunications facilities applications, and upon determining that a particular application will impose no impact or de minimis impact upon any criteria established in the bylaws, shall approve the application.”

⁹ **24 V.S.A. § 4414 is amended to read:** “(12) Wireless telecommunications facilities and ancillary improvements. A municipality may adopt bylaws to regulate wireless telecommunications facilities and ancillary improvements in a manner consistent with state or federal law. These bylaws may include requiring the decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements, and may establish requirements that a bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities.”