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*Agency of Commerce and
Community Development*

MEMORANDUM

TO: Municipal Planning and Development Review Officials
FROM: John Adams, Planning Coordinator of Community Planning and Revitalization Division
Vermont Department of Housing and Community Development (DHCD)
DATE: July 12, 2013
RE: **2013 Legislative Revisions to Vermont’s Planning and Development Act and to the
Downtown Development Act**

A number of laws and amendments affecting local planning and regulation were enacted during the 2013 Vermont legislative session. As in past years, we are issuing this memo to inform municipal officials of changes in statute and to provide web links to the pertinent statutory language.

The [Vermont Statutes Online](#) are scheduled to be updated sometime in October, until then they do not incorporate the 2013 changes. An updated copy of the – the [Vermont Municipal and Regional Planning and Development Act](#) (24 V.S.A Chapter 117 and related statutes) will be available for [download](#) on the ACCD website in the coming weeks. DEHCD memos summarizing the statutory changes starting in 2007 can be found at http://accd.vermont.gov/strong_communities/opportunities/planning/statute.

In assembling this list of 2013 statutory amendments, we are indebted to Sharon Murray, for the comprehensive summaries she produced for the [Vermont Planners Association](#) (VPA) and to the Vermont League of Cities and Towns for the 2013 Legislative Updates.

2013 Amendments

Flood Resilient Communities Element Required in Municipal and Regional Plans

Act 16 (H.401) - <http://www.leg.state.vt.us/docs/2014/Acts/ACT016.pdf> - amends 24 V.S.A. §4382(a), adding subsection (12).

Section 4 of the bill, amends current statute, adding an 11th required element for municipal plans (see underlined):

§ 4382. THE PLAN FOR A MUNICIPALITY

(a) A plan for a municipality may be consistent with the goals established in section 4302 of this title and compatible with approved plans of other municipalities in the region and with the regional plan and shall include the following:

* * *



(12)(A) A flood resilience plan that:

(i) identifies flood hazard and fluvial erosion hazard areas, based on river corridor maps provided by the Secretary of Natural Resources pursuant to 10 V.S.A. § 1428(a) or maps recommended by the Secretary, and designates those areas to be protected, including floodplains, river corridors, land adjacent to streams, wetlands, and upland forests, to reduce the risk of flood damage to infrastructure and improved property; and

(ii) recommends policies and strategies to protect the areas identified and designated under subdivision (12)(A)(i) of this subsection and to mitigate risks to public safety, critical infrastructure, historic structures, and municipal investments.

(B) A flood resilience plan may reference an existing local hazard mitigation plan approved under 44 C.F.R. § 201.6.

This requirement goes into effect on July 1, 2014. DHCD interprets this effective date to mean that any municipal or regional plan adopted or readopted after July 1, 2014 must include a flood resilience plan element. Those plans adopted before that date will continue to remain in effect until expiration or until they are amended or readopted, at which point they must include the new flood resilience plan element. The bill also requires the Agency of Natural Resources to establish a program to aid and support municipalities in adopting the new plan element.

Act 16 also amends 24 V.S.A. §4412, giving municipalities the authority to regulate accessory dwelling units in flood hazard and fluvial erosion areas.

§ 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

(E) Except for flood hazard and fluvial erosion area bylaws adopted pursuant to section 4424 of this title, 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...

This section went into effect upon passage of the act.

Energy Standards, Zoning Permits and Certificates of Occupancy

Act 89 (H.520) - <http://www.leg.state.vt.us/docs/2014/bills/Passed/H-520C.pdf> - Section 9 of the bill.

Provisions of this bill require administrative officers to provide applicants with building energy standards when issuing applicable zoning permits and also require the permittee to provide the administrator with the required Residential Building Efficiency Standards Certificate prior to the issuance of a Certificate of Occupancy. Free copies of the Vermont Residential Building Energy Code Handbook are available from the Department of Public Service (contact kelly.laundry@state.vt.us.)

Sec. 9. 24 V.S.A. § 4449 is amended to read:

§ 4449. ZONING PERMIT, CERTIFICATE OF OCCUPANCY, AND MUNICIPAL LAND USE PERMIT

(a) Within any municipality in which any bylaws have been adopted:

(1) No land development may be commenced within the area affected by the bylaws without a permit issued by the administrative officer. No permit may be issued by the administrative officer except in conformance with the bylaws. When an application for a municipal land use permit seeks approval of a structure, the administrative officer shall provide the



applicant with a copy of the applicable building energy standards under 21 V.S.A. §§ 266 (residential building energy standards) and 268 (commercial building energy standards). However, the administrative officer need not provide a copy of the standards if the structure is a sign or a fence or the application certifies that the structure will not be heated or cooled. In addition, the administrative officer may provide a copy of the Vermont Residential Building Energy Code Book published by the Department of Public Service in lieu of the full text of the residential building energy standards.

(2) If the bylaws so adopted so provide, it shall be unlawful to use or occupy or permit the use or occupancy of any land or structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure after the effective date of this chapter, within the area affected by those bylaws, until a certificate of occupancy is issued therefor by the administrative officer, stating that the proposed use of the structure or land conforms to the requirements of those bylaws. Provision of a certificate as required by 21 V.S.A. § 266 (residential building energy standards) or 268 (commercial building energy standards) shall be a condition precedent to the issuance of any such certificate of occupancy.

Regional Planning Commission Powers

Act 36 (H.450) - <http://www.leg.state.vt.us/docs/2014/Acts/ACT036.pdf> - Amends Sec. 1. 24 V.S.A. § 4345

This act grants administrative powers to regional planning commissions to permit them to apply for grants, purchase property, borrow money to purchase such property, act as an escrow agent for municipal projects, and enter into contracts to provide regional planning services.

Municipal Plan Requirements for Designated Centers and New Neighborhood Designation

Act 59 (H.377) - <http://www.leg.state.vt.us/DOCS/2014/ACTS/ACT059.PDF>- amends 24 V.S.A., Chapter 76A

The bill updates the Village Center (24 V.S.A § 2793a) and Downtown (24 V.S.A § 2793) designation definitions. It also requires all new and renewal applications after July 1, 2014 to include certain provisions in town plans:

For applications filed on and after July 1, 2014, the intention to apply for designation under this section shall be included in the plan of the municipality, and the plan shall explain how the designation would further the plan's goals and the goals of section 4302 of this title

On and after July 1, 2014, any community applying for renewal shall explain how the designation under this section has furthered the goals of the town plan and shall submit an approved town plan map that depicts the boundary of the designated district.

Designated Downtowns will also need to measure annual progress in accordance with Department guidelines.

On July 1, 2013, the Vermont Neighborhoods designation will be replaced with the new Neighborhood Development Area (NDA) designation. The NDA designation broadens the potential benefit areas to include 1/4 and 1/2 mile "walksheds" or rings around designated Downtown, Villages, and New Town Centers (and sub-areas within designated Growth Centers).

Current benefits of the designation remain mostly the same as the Vermont Neighborhood designation:

- Qualified "mixed income" projects are exempt from Act 250 regulations;
- Act 250 projects not qualifying for the exemption receive a 50% discount on application fees;
- Agency of Natural Resources fees for wastewater review are capped at \$50.00 for projects that have



- received sewer allocation from an approved municipal system;
- Exemption from the land gains tax;

The bill also requires the Commissioner of DHCD to review the Growth Center and New Town Center Designation programs and to consider:

Reviewing and modifying the designation process; the unique circumstances of different municipalities; how best to include communities of all sizes and growth pressures; additional incentives for all the designation programs, including the downtown, village center, new town center, and growth center programs; the potential integration of industrial parks and rural development; and the protection of natural resources. The Department will form a working group and consult stakeholders including state agencies and independent departments, municipal officials, environmental organizations, developers, and representatives from the manufacturing, business, housing, historic preservation, agricultural, silviculture, and planning communities in its process to develop legislative and policy recommendations and proposed statutory revisions to make the Program more efficient and effective. The Department will report its findings, legislative and policy recommendations, and proposed statutory revisions to the General Assembly on or before December 15, 2013.

In addition to updating Chapter 76a of 24 V.S.A, H.377 adds a ‘Blighted Property Improvement Program’ at 32 V.S.A. § 3850:

At an annual or special meeting, a municipality may vote to authorize the legislative body of the municipality to exempt from municipal taxes for a period not to exceed five years the value of improvements made to dwelling units certified as blighted...

This section will go into effect upon passage of the act.

Technical Corrections to Chapter 117

Act 34 (H.26) - <http://www.leg.state.vt.us/docs/2014/Acts/ACT034.pdf> - amends 24 V.S.A. §4303(8) and § 4424(a)

24 V.S.A. § 4303(8) is amended to read:

(8) “Flood hazard area” for purposes of ~~section~~ sections 4411, 4424, and 4469 of this title shall have the same meaning as “area of special flood hazard” under 44 C.F.R. § 59.1. Further, with respect to flood, river corridor protection area, and other hazard area regulation pursuant to this chapter, the following terms shall have the following meanings:

24 V.S.A. § 4424(a) is amended to read:

(a) Any municipality may adopt freestanding bylaws under this chapter to address particular hazard areas in conformance with the municipal plan or, for the purpose of adoption of a flood hazard area bylaw, a local hazard mitigation plan approved under 44 C.F.R. § 201.6, ~~including~~. Such freestanding bylaws may include the following, which may also be part of zoning or unified development bylaws:

Miscellaneous Amendments Relevant to Local Planning and Regulation

A number of other bills that have some bearing on local planning or regulation but that do not directly involve changes to Chapter 117 were also passed. These include the following.

Tax Increment Financing Districts

Act 80 (S.37) - <http://www.leg.state.vt.us/DOCS/2014/ACTS/ACT080.PDF>



Act 80 provides a mechanism to resolve the issues in dispute between the auditor and several municipalities, both looking back and going forward.

The bill also includes amendments to the TIF statute to clear up ambiguities in the statute and provide for rulemaking, oversight and enforcement, so the cities and towns with approved TIFs can better understand the rules going forward and to provide the State with a clear mechanism to enforce those rules, safeguarding taxpayer dollars.

The bill also allows for one more TIF District approval for South Burlington, clearing up a situation where two municipalities submitted applications at the same time and only one could be approved.

Renewable Energy Siting

Act 38 (S.30) - <http://www.leg.state.vt.us/docs/2014/Acts/ACT038.pdf>

What began as a bill proposing a three year moratorium on wind-development ended with Act that simply requires the House and Senate Natural Resources and Energy committees to jointly review the recommendations of the Governor Energy Siting Policy Commission.

Act 250 Definitions and Ethical Standards

Act 11 (S.159) - <http://www.leg.state.vt.us/docs/2014/Acts/ACT011.pdf>

This act amends the Act 250 definition of ‘development,’ altering it with regards to certain telecommunications facility support/ancillary structures and withdrawals of more than 340,000 gallons of groundwater per day. The definition of ‘subdivision’ is also modified in a number a specific ways related to public auctions and conservation easements. The Natural Resources Board is reconstituted to eliminate the land use and water resources panels, and its number of members shrinks from nine to five. Act 11 also establishes ethical standards for the board and enables the board to issue notices of violation of Act 250 and emergency orders with respect to Act 250 permits.

