

Essentials of Land Use Planning: Making Effective Local Land Use Decisions in Vermont

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Definitions

- Legislative: creating and amending rules and laws
- **Quasi-Judicial: interpreting and applying rules and laws in a formal hearing process**
- Administrative: implementing rules through issuing permits, etc.

Who Serves These Roles in Your Town?

Legislative

Selectboard

City Council

Village Trustees

Planning
Commission

Quasi-Judicial

Development
Review Board

OR

Zoning Board of
Adjustment
&
Planning
Commission

Administrative

Zoning
Administrator

Administrative
Officer

Advisory

Conservation
Commission

Housing
Committee

Energy Committee

Design Review

Quasi-Judicial Functions

Development Review Board

- Site plans
- Subdivisions
- Conditional uses
- Variances & Waivers
- Appeals of ZA decisions

OR

Planning Commission

- Site plans
- Subdivisions

Zoning Board of Adjustment

- Conditional Uses
- Variances & Waivers
- Appeals of ZA decisions

Why is it important to run effective hearings?

- **Statutory Duty:** Ensure due process rights are protected for the applicant and interested parties.
- **Fair:** Maintain and foster public trust in the decision-making process.
- **Understandable:** Clear Rules of Procedure and Ethics policies

Why is making an effective decision hard?

- The review process asks us to be:
 - Formal
 - Precise
 - Decisive
 - Justified

Who is involved in the hearing?

- Appropriate Municipal Panel (DRB, ZBA and/or PC)
- Town Staff
- Applicant
- Interested Persons
- Advisory panels give advice to decision makers

Board Quorum Requirements

- A majority of the Board (including unfilled/vacant seats)
- One or more members may attend the meeting remotely and may fully participate in the discussion and vote
- At least one member of the Board, or a town staff member, must be physically present at the designated meeting location

Role of Board Members during Hearing

To determine a project's conformance with your regulations and protect due process:

- Listen to testimony and evidence;
- Ask germane and neutral questions;
- Refer to your regulations;
- Avoid conflicts of interest;
- Base decision on evidence presented
- Must not prejudge a matter or publicly express opinions on a pending case.



Role of a Board Chair

A Chair administers the agenda, keeps board members focused on the issue at hand, and ensures the Board finishes on time.

- A Good Chair Should:
 - State the Question
 - Ask For Discussion (without giving own opinion)
 - Bring The Board To Resolution After Discussion (Coaxing a Motion)



Role of Applicant During Hearing

An advocate, seeking approval from the board for their project. May be represented by engineers, consultants, or occasionally attorneys.

Has the right to:

- Present evidence,
- Ask questions of other witnesses (cross examine),
- Question written evidence presented by other parties, and
- To appeal the decision

Role of Town Staff

- ZA, town planner or board assistant may provide staffing assistance to AMPs
- Roles might include:
 - Receiving applications and deeming complete
 - Preparing and noticing agendas
 - Staff report on application
 - Reference to applicable regulations
 - Other relevant information on the property or historic decisions
 - Recommendations to the board
 - Coordinating and supporting deliberations
 - Writing and issuing the decision

Interested Persons

- Interested persons are those with the right to appeal a decision
- Interested persons is defined as
 - The applicant
 - The municipality and any adjoining municipality
 - Property owners and residents in the immediate neighborhood of the subject proposal
 - Any petition of 20 persons (combination of voters, residents or property owners)
 - Any department or administrative subdivision of the state owning property or any interest
 - ACCD

Flow of Quasi-Judicial Hearing

1. Chair opens hearing



2. The applicant presents the proposal/request.



3. Board members ask questions in relation to conformance with specific provisions in regulations.



4. Comment from interested parties/public



5. Chair closes public hearing and opens deliberations (public or private).



6. Board decides on application and issues a written decision.

What if we need more information?

- Continue the hearing
 - Announce when it will be continued (date, time, location)
- Request a Site Visit
 - For observation purposes only – no testimony, no ex parte communication
 - Open to the public
 - A quorum is not required
 - Reflected in the next meeting – who was present, relevant observations added to the record

When to Close the Hearing

- Will we need to take more evidence?
- Have we heard enough to make a decision?
- Are there parties that were not able to attend this night's proceedings?
- How do we actually “close” the hearing?



Options:

- 1) Recess or adjourn hearing to another date and time certain.
- 2) Recess or adjourn until a new hearing is warned.
- 3) Final adjournment, hearing closed, no further evidence or testimony accepted

How do we make a decision?

- Deliberation is the process by which a decision is made
- Deliberation is exempt from Open Meeting Law- no requirements for notice or minutes
- Deliberations can be done in public or private
 - Private deliberations are recommended



What should be in the decision itself?

Findings of Fact

- Factual basis for AMP conclusions
- The difference between reciting the evidence and making factual findings

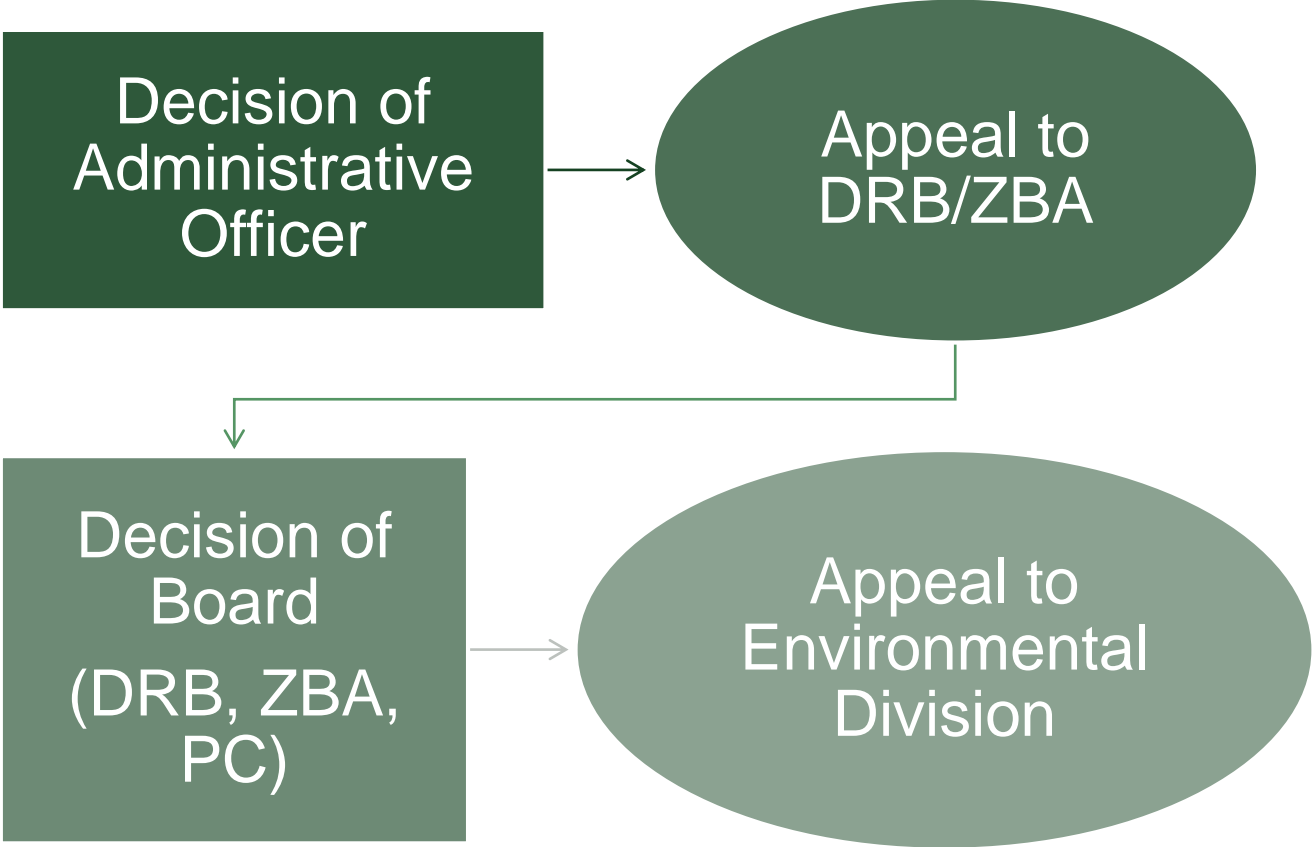
Conclusions of Law

- Making conclusions relate to the facts
- AND**
- Conformance with Bylaw Standards

Decisions & Conditions

- Approval or Denial
- Reasonable conditions and safeguards

Appeals



Conflicts of Interest

- Financial interest (direct or indirect)
- Personal interest (direct or indirect)
- Known bias or prejudice
- Ex parte communication



It takes years to build trust with the public, but just one misstep to destroy it.

Managing Conflicts of Interest

- Disclose possible conflicts of interest
- Discuss the conflict of interest
- Consider and decide whether a member should recuse themselves
- Record it in the minutes

Reminder: Protecting Due Process

- Proper public notice
- People are given an opportunity to be heard
- An orderly proceeding
- Proper management of evidence
- Proper management of conflicts of interest

Resources

- Statute
 - Planning Commissions: [24 V.S.A. § 4321 - § 4328](#)
 - Zoning Administrators: [24 V.S.A. § 4448, § 4449, § 4451, § 4452, § 4454](#)
 - Appropriate Municipal Panels: [24 V.S.A. § 4460](#)
 - Appeals: [24 V.S.A. § 4465 - § 4471](#)
- Vermont League of Cities & Towns: <https://www.vlct.org/>
- Zoning Administrator's Handbook: https://www.vapda.org/uploads/1/3/1/8/131894470/za_handbook_vlct_may_2025_copy.pdf

Assistance with Planning

- VLCT or town attorney for legal advice
- RPC staff for hearing process

