
ARTICLE IX. ADMINISTRATION & ENFORCEMENT

Section 9.1 Permits & Approvals

(A) **Permit Requirements.** No land development or subdivision of land, as defined under Section 10.2, may commence in the Town of Bolton until all applicable **municipal land use permits** and approvals have been issued as provided for in the Act [§4446] and these regulations, unless the development is specifically exempted from these regulations under Section 7.2. Such permits and approvals include:

Municipal Land Use Permit: (1) a zoning, subdivision, site plan or building permit or approval, any of which relate to land development as defined in statute, which has received final approval from the applicable board, commission or officer of the municipality; (2) wastewater system permits; (3) certificates of occupancy and compliance, and (4) any amendments to the above [24 V.S.A. 4303(11)].

- (1) **zoning permits** issued by the Zoning Administrator under Section 9.3 for all development (including signs), except for subdivisions of land requiring subdivision approval and any activity exempted under Section 9.2;
 - (2) **site plan approval** issued by the Development Review Board under Section 5.3 for all uses subject to site plan review;
 - (3) **conditional use approval** issued by the Development Review Board under Section 5.4 for uses subject to conditional use review, including uses within any overlay district;
 - (4) **subdivision approval** issued by the Development Review Board under Section 6.5 for the subdivision or re-subdivision of land;
 - (5) **planned residential or planned unit development (PRD or PUD) approval** issued by the Development Review Board under Section 8.4 in association with subdivision approval;
 - (6) **certificates of occupancy** issued by the Zoning Administrator under Section 9.4(A), for development for which a zoning permit has been issued prior to occupancy or use; and
 - (7) **certificates of compliance** issued by the Zoning Administrator under Section 9.4(B), as required by the Development Review Board in association with final subdivision approval, following the completion of required improvements.
- (B) **Additional Permits & Approvals.** Additional permits or approvals may be required for activities associated with land development and subdivision including, but not necessarily limited to, the following:
- (1) **Wastewater Disposal (Septic) System Construction & Use Permits** issued by the Bolton Sewage Officer and/or the Vermont Agency of Natural Resources for any development that will result in the disposal of domestic or other wastewater or effluent, including the expansion, conversion or change of use of a structure that will result in an increase in the volume of wastewater or effluent.
 - (2) **Highway Access (Curb Cut) Permit** issued by the Bolton Selectboard and/or the Vermont Agency of Transportation (VTrans).
- (C) The Zoning Administrator will coordinate the development review process on behalf of the Town of Bolton, refer applications to the appropriate board or municipal officer, and provide information and assistance to applicants for municipal land use permits as appropriate [§§4448(c), 4460(e)].

Section 9.2 Exemptions

(A) In accordance with the Act [§4446], the following uses and structures have been determined to impose no impact or a *de minimus* impact on the surrounding area and the overall pattern of land development in the town and are exempted from these regulations. No permit or approval shall be required for:

- (1) The normal maintenance and repair of existing structures, utilities and infrastructure which does not result in any change to the footprint or height of a building, nor result in a change of use.
- (2) Residential entry stairs (excluding decks and porches), handicap ramps, walkways, and fences or walls less than six (6) feet in height which do not obstruct public rights-of-way, or interfere with corner visibility or sight distances for vehicular traffic.
- (3) Minor grading and excavation associated with road and driveway maintenance (including culvert replacement and resurfacing), and residential lawn and yard maintenance (e.g., for gardens or landscaping).
- (4) Outdoor recreational facilities which do not involve or require the development, construction or use of structures or parking areas (e.g., walking, hiking, cross-country skiing and/or snow mobile trails).
- (5) Up to two (2) accessory structures per lot, provided that each structure does not exceed eighty (80) square feet in floor area and 10 feet in height and meets all setback distances for the district in which it is located.
- (6) Transit or bus stop shelters which do not exceed two hundred (200) square feet in area and twelve (12) feet in height, are set back at least five (5) feet from edge of the travel lane, and do not otherwise interfere with corner visibility or sight distances for vehicular traffic.
- (7) Signs specifically exempted from these regulations under Section 3.14.
- (8) Garage sales, yard sales, auctions or related activities not exceeding three (3) consecutive days, nor more than twelve (12) days in any calendar year.
- (9) A home office within a principal dwelling or attached garage which is carried on by a resident of that dwelling, and which involves no signs, public access or outdoor storage or displays.

(B) The following uses are specifically exempted from local land use and development regulations in accordance with the Act. No zoning permit or approval shall be required for:

- (1) Accepted agricultural and best management practices (AAPs, BMPs), including farm structures, as defined by the Secretary of the Agency of Agriculture, Food and Markets in accordance with the Act [§4413(d)]. Written notification, including a sketch plan showing structure setback distances from road rights-of-way, property lines, and surface waters shall be submitted to the Zoning Administrator prior to any construction, as required under AAPs. Such structures shall meet all setback requirements under these regulations, unless waived by the Secretary.
- (2) Accepted management practices (AMPs) for silviculture (forestry) as defined by the Commissioner of Forests, Parks, and Recreation, in accordance with the Act [§4413(d)].
- (3) Public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board [30 V.S.A. §248], in accordance with the Act [§4413(b)].

- (4) Hunting, fishing and trapping on public or private land as specified under 24 V.S.A. §2295. This specifically does not include facilities that support such activities, such as firing ranges and rod and gun or fish and game clubs, which are subject to these regulations.
- (C) Decisions of the Zoning Administrator as to whether a use is exempted from permit requirements under this section may be appealed to the Development Review Board under Section 9.5.

Section 9.3 Zoning Permit

- (A) **Applicability.** No land development subject to these regulations shall commence in the Town of Bolton until a zoning permit has been issued by the Zoning Administrator in accordance with the Act [§§4448, 4449] and these regulations.
- (B) **Application Requirements.** The application for a zoning permit must be submitted to the Zoning Administrator on forms provided by the town, along with any application fees as established by the Selectboard. In addition, the following will be required as applicable:
- (1) Applications for permitted uses shall include a statement describing the existing and intended use of the land and structures and/or any proposed structural changes, and be accompanied by two (2) copies of a sketch plan, no smaller than 8" x 11", drawn to scale, that accurately depicts the following:
 - (a) the dimensions of the lot, including existing and proposed property boundaries;
 - (b) the location, footprint, and height of existing and proposed structures and additions;
 - (c) the location and dimensions of existing and proposed accesses (curb cuts), driveways and parking areas;
 - (d) the location of existing and proposed easements, rights-of-way and utilities;
 - (e) setbacks from property boundaries, road rights-of-way, surface waters, and wetlands;
 - (f) the location of existing and proposed water and wastewater systems; and
 - (g) such other information as may be needed to determine compliance with these regulations.
 - (2) For development requiring one or more approvals from the Development Review Board, Selectboard and/or Sewage Officer prior to the issuance of a zoning permit, application information and fees shall be submitted concurrently with the application for a zoning permit. The Zoning Administrator shall refer the application to the appropriate board or municipal official following submission.
 - (3) Additional copies of applications which require referral to a state agency shall be provided by the applicant and will be forwarded by the Zoning Administrator to the appropriate state agency within 10 business days of receipt of the application. This includes all applications for development within the Flood Hazard Area Overlay District (see Section 5.5).
- (C) **Issuance of Zoning Permits.** A zoning permit shall be issued by the Zoning Administrator only in accordance with the Act [§4449] and the following provisions:
- (1) No zoning permit shall be issued by the Zoning Administrator for any use or structure that requires approval of the Development Review Board or Selectboard until such approval has been obtained.
 - (2) No zoning permit shall be issued by the Zoning Administrator for the development of a lot for which subdivision approval is required until approval has been obtained and, where also required, a certificate of compliance has been issued in accordance with Section 9.4.

- (3) For uses requiring state agency referral, no zoning permit shall be issued until a response has been received from the state, or the expiration of 30 days following the submission of the application to the state, whichever is sooner.
- (4) If public notice has been issued by the Selectboard for their first public hearing on a proposed amendment to these regulations, the Zoning Administrator shall issue a zoning permit for development that is subject to the proposed amendment only in accordance with the requirements of the Act [§4449(d)].
- (5) Within 30 days of receipt of a complete application, including all application materials, fees and required approvals, the Zoning Administrator shall act to either issue or deny a zoning permit in writing, or refer the application to the Development Review Board and/or state for consideration. If the Zoning Administrator fails to act within the 30-day period, a permit shall be deemed issued on the 31st day.
- (6) In accordance with the Act [§4449(b)], all zoning permits shall include a statement of time within which appeals may be taken under Section 9.5; and shall require the posting of a notice of permit, on a form prescribed by the town, on the property within view of the nearest public right-of-way until the time for appeal has expired.
- (7) The Zoning Administrator shall, within three (3) days of the date of issuance, deliver a copy of the permit to the Listers, and post a copy of the permit at the town office. The permit shall be posted for a period of 15 days from the date of issuance.

(D) **Effective Dates.**

- (1) **Zoning Permits.** No zoning permit shall take effect until the time for appeal under Section 9.5 has passed, or in the event that a notice of appeal is properly filed, until the appeal has been decided. Permits shall remain in effect for one (1) year from the date of issuance, unless the permit specifies otherwise. All development authorized by a zoning permit shall be substantially commenced within this period or the zoning permit shall become null and void and reapplication and approval for further development shall be required. A one (1)-year administrative extension may be granted by the Zoning Administrator if the extension is requested prior to the permit expiration date and the Zoning Administrator determines that there was reasonable cause for delay in the start of development.
 - (2) **Board Approvals.** Approvals granted by the Development Review Board, including conditional use approvals and variances, shall expire upon the expiration of the zoning permit issued subsequent to Board approval. The Board may grant a longer period of approval to accommodate phased development or other projects that reasonably require a longer period of time for project commencement and/or completion. In addition, the Board may grant a one (1) year extension to an approval if the extension is requested prior to the permit expiration date, and the Board determines that there was reasonable cause for delay in the start of development, and that the proposed development remains unchanged from the time of the initial approval.
- (E) **Display of Zoning Permit.** In accordance with the Act [§4449(b)], the notice of a zoning permit must be posted on the property within view of the nearest public right-of-way until the time for appeal under Section 9.5 has passed.

Section 9.4 Certificates of Occupancy & Compliance

(A) **Certificate of Occupancy.** A certificate of occupancy issued by the Zoning Administrator is required prior to the use or occupancy of land or a principal structure, or part thereof, for which a zoning permit has been issued.

- (1) An application for a certificate of occupancy shall be provided with the zoning permit issued by the Zoning Administrator. The applicant shall submit the application to the Zoning Administrator upon completion of required improvements, but prior to the use or occupancy of the land or structure.
- (2) A certificate of occupancy shall not be issued until the applicant demonstrates that all necessary permits and approvals required by these regulations have been obtained, and the Zoning Administrator determines that the development has been completed in conformance with all such permits and approvals. The applicant also must provide certification from a professional engineer or site technician licensed by the state that any wastewater system has been installed and tested as approved by the town and/or state. The Zoning Administrator may inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals prior to issuing a certificate.
- (3) A temporary certificate of occupancy may be issued for a development that is substantially complete. A development shall be deemed substantially complete if it meets all applicable permit requirements and conditions, is habitable or otherwise able to be occupied or used for its intended purpose, and all that remains to be done is landscaping, paving or other incidental structural or site improvements which, for practical purposes as demonstrated to the satisfaction of the Zoning Administrator, cannot be completed prior to occupancy or use. Full completion shall occur within a reasonable period of time, not to exceed a period of one (1) year, as specified under the temporary certificate of occupancy. A final certificate of occupancy will be issued upon full completion of all required improvements.
- (4) A final or temporary certificate of occupancy shall be issued or denied by the Zoning Administrator within 14 working days of receipt of the application. If the Zoning Administrator fails to either grant or deny the certificate of occupancy within 14 days of the submission of an application, the certificate shall be deemed issued on the 15th day. Temporary and final certificates of occupancy shall be recorded in accordance with Section 9.9(G). The decision of the Zoning Administrator may be appealed to the Development Review Board under Section 9.5.

(B) **Certificate of Compliance.** After the effective date of these regulations the Development Review Board may require that, as a condition of final subdivision approval under Section 6.5, a certificate of compliance be obtained to ensure that public and private improvements have been installed in accordance with the conditions of subdivision approval prior to any further land development.

- (1) The application for a certificate of compliance shall be submitted to the Zoning Administrator, to include plans drawn to scale which show the location of all monuments, utilities, structures, roadways, easements, and other improvements as constructed. The Zoning Administrator shall rely on any information submitted as part of the subdivider's application for subdivision approval to determine whether the as-built drawings conform to the approved plat and associated conditions of approval.
- (2) Within 14 working days of receipt of the application for a certificate of compliance, the Zoning Administrator may inspect the subdivision to ensure that all work has been completed in conformance with the conditions of final subdivision approval. If the Zoning Administrator fails to

either grant or deny the certificate of compliance within 14 working days of the submission of an application, the certificate shall be deemed issued on the 15th day. The certificate of compliance shall be recorded in accordance with 9.8(G). The decision of the Zoning Administrator may be appealed to the Development Review Board under Section 9.5.

Section 9.5 Appeals

(A) **Zoning Administrator Decisions.** In addition to the applicant, any other **interested person** as defined under the Act [§4465] may appeal a decision or act of the Zoning Administrator within 15 days of the date of the decision or act by filing a notice of appeal with the Secretary of the Development Review Board, or the Town Clerk if no Secretary has been elected, and by filing a copy of the notice with the Zoning Administrator.

- (1) The Development Review Board shall hold a public hearing on a notice of appeal within 60 days of its filing, as required under the Act [§4468]. The Board shall give public notice of the hearing under Section 9.8(D), and shall mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.
- (2) The Development Review Board may reject an appeal or request for reconsideration without hearing, and render a decision which shall include findings of fact within 10 days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant [§4470].
- (3) In accordance with the Act [§4468] and Section 9.8(E), all appeal hearings shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in state statutes [3 V.S.A. §810]. Any interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned by the Board from time to time, provided that the date and place of the adjourned hearing shall be announced at the hearing.
- (4) A decision on appeal shall be rendered within 45 days after the adjournment of the hearing, as required under the Act [§4464(b)] and Section 9.8(F). The decision shall be sent by certified mail to the appellant within the 45-day period. Copies of the decision also shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and the Town Clerk as part of the public records of the municipality, in accordance with Section 9.8(G).

Interested Person: The definition of an interested person under the Act [§4465(b)] includes the following:

- A person owning title to property, or a municipality or solid waste district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
- The Town of Bolton or an adjoining municipality.
- A person owning or occupying property in the immediate neighborhood of a property which is the subject of a decision or act taken under these regulations, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or regulations of the town.
- Any ten (10) registered voters and/or property owners within the town who, by signed petition to the Development Review Board, allege that any relief requested by a person under this section, if granted, will not be in compliance with the plan or regulations of the town; and
- Any department or administrative subdivision of the state owning property or any interest therein within the town or an adjoining municipality, and the Vermont Agency of Commerce and Community Development.

(B) **Development Review Board Decisions.** In accordance with the Act [§4471], the applicant, appellant, or any other **interested person who has participated** in a regulatory proceeding of the Development Review Board may appeal a decision rendered by the board, within 30 days of such decision, to the Vermont Environmental Court.

- (1) "Participation" in a board proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceeding.
- (2) The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the Bolton Town Clerk, or the Zoning Administrator if so designated, who shall supply a list of interested persons (including the applicant if not the appellant) to the appellant within five (5) working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

(C) **Notice of Appeal.** A notice of appeal filed with the Development Review Board under this section shall be in writing and include the following information, in accordance with the Act [§§4464, 4466]:

- (1) the name and address of the appellant;
- (2) a brief description of the property with respect to which the appeal is taken;
- (3) a reference to applicable provisions of these regulations;
- (4) the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations;
- (5) the alleged grounds why such relief is believed proper under the circumstances; and
- (6) proof of notice by registered or certified mail to all adjoining and facing property owners in accordance with Section 9.8(D).

Section 9.6 Variances

(A) The Development Review Board shall hear and decide requests for variances in accordance with the Act [§4469(a)] and appeal procedures under Section 9.5. A variance may be granted upon approval of the Development Review Board only if literal enforcement of these regulations will result in an undue hardship to the appellant. The Board may grant a variance, and render a decision in favor of the appellant, only if **all** of the following facts are found, and the findings are specified in its written decision:

- (1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located.
- (2) Because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is necessary to enable the reasonable use of the property.
- (3) The unnecessary hardship has not been created by the appellant.
- (4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or

development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

- (5) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

(B) Renewable Energy Structures. Where a variance is requested for a structure that is primarily a renewable energy resource structure (solar structure, wind generator, and other similar renewable energy structures), in accordance with the Act [§4496(b)], the Board may grant such variance only if *all* of the following facts are found in the affirmative and specified in its written decision:

- (1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations.
- (2) The hardship was not created by the appellant.
- (3) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.
- (4) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

(C) Variances within the Flood Hazard Area. In addition to requirements under Subsection (A), variances for development within the Flood Hazard Overlay District shall be granted by the Development Review Board only:

- (1) in accordance with the Act and the criteria for granting variances found in CFR Section 60.6 of the National Flood Insurance Program;
- (2) upon determination that during the base flood discharge the variance will not result in increased flood levels; and
- (3) upon determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(D) In granting a variance, the Development Review Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the town plan currently in effect.

Section 9.7 Violations & Enforcement

(A) Violations. The commencement or continuation of any land development, subdivision or use that is not in conformance with the provisions of these regulations shall constitute a violation. All violations will be pursued in accordance with the Act [§§4451, 4452]. Each day that a violation continues shall constitute a separate offense. The Zoning Administrator shall institute in the name of the Town of Bolton, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected for violations shall be paid over to the town.

(B) **Notice of Violation.** No action may be brought under this section unless the alleged offender has had at least seven (7) days notice by certified mail that a violation exists, as required under the Act [§4451]. The warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven (7) days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven (7) days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the regulations after the seven (7)-day notice period and within the next succeeding 12 months.

(C) **Limitations on Enforcement.** An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required or duly recorded municipal land use permit may be instituted against the alleged offender if the action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred, and not thereafter, in accordance with the Act [§4454]. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted. No enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit unless the permit or a notice of the permit has been recorded in the land records of the municipality in accordance with Section 9.8(G).

Section 9.8 Administrative Requirements & Procedures

(A) **Appointments.** The following appointments shall be made in association with the administration and enforcement of these regulations, as provided for in the Act:

(1) **Zoning Administrator (Administrative Officer).** The Selectboard shall, from nominations submitted by the Planning Commission, appoint a Zoning Administrator for a term of three (3) years in accordance with the Act [§4448]. In the absence of the Zoning Administrator, an acting Zoning Administrator may be appointed by the Selectboard from Planning Commission nominations who shall have the same duties and responsibilities of the Zoning Administrator in the Zoning Administrator's absence. The Zoning Administrator shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect development, maintain records, and perform other related tasks as is necessary and appropriate.

(2) **Development Review Board.** Development Review Board members and alternates shall be appointed by the Selectboard for specified terms in accordance with the Act [§4460]. The Board shall adopt rules of procedure and rules of ethics with regard to conflicts of interest to guide its official conduct. The Development Review Board shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to hear and act upon:

- applications for rights-of-way or easements for development lacking frontage (Section 3.2);
- applications for site plan approval (Section 5.3),
- applications for conditional use approval (Section 5.4),
- applications for subdivision approval (Article VI),
- applications for planned unit and planned residential development (Article VIII), and
- appeals from any decision, act or failure to act by the Zoning Administrator and associated variance requests (Sections 9.5 and 9.6).

(3) **Conservation Commission.** For purposes of these regulations the Bolton Conservation Commission, as appointed by the Selectboard in accordance with the Act [§§4433, 4464(d)]and other applicable state statutes [24 V.S.A. Chapter 118], shall have the authority to:

- review applications and prepare recommendations on each of the review standards under these regulations that are within the Conservation Commission's purview for consideration by the Development Review Board at a public hearing on the application;
 - meet with the applicant, interested parties, or both, conduct site visits, and perform other fact finding that will enable the preparation of Commission recommendations; and
 - inform applicants of any negative recommendations prior to the public hearing, and suggest remedies to correct identified deficiencies in the application.
- (4) **Planning Commission.** Planning Commission members shall be appointed by the Selectboard in accordance with the Act [§§4322, 4323]. The Commission shall adopt rules of procedure and rules of ethics with regard to conflicts of interest to guide its official conduct as required under the Act and Vermont's Open Meeting Laws. In accordance with the Act [§§4441, 4460], the Commission shall have the following duties in association with these regulations:
- prepare proposed amendments to these regulations, and consider proposed amendments submitted by others, include amendments submitted by petition (Section 1.5);
 - prepare and approve written reports on any proposed amendment to these regulations as required by the Act [§4441(c)]; and
 - hold one or more warned public hearings on proposed amendments to these regulations, prior to submission of a proposed amendment and written report to the Selectboard [§4441(d)].
- (B) **Fee Schedule.** In accordance with the Act [§4440], the Selectboard shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering the town's administrative costs. Such fee schedule may be reviewed and revised periodically.
- (C) **Independent Technical Reviews.** Pursuant to the Act [§4440(d)], the Development Review Board may require an applicant for development that requires Board approval to pay for the reasonable costs of an independent technical review of the application. Accordingly:
- (1) The Board shall prepare a detailed scope for the technical review. The scope shall be strictly limited and relevant to specific review criteria upon which the Board is required to base its decision on the application, and require that the review be completed in a timely manner, as specified by the Board.
 - (2) The Board, in consultation with the Selectboard, shall retain a competent and, where applicable, licensed individual or company qualified in the pertinent field(s) to conduct the independent review.
 - (3) The cost of the review shall be paid for by the applicant, in accordance with procedures established by the Selectboard.
- (D) **Public Notice.**
- (1) In accordance with the Act [§4464], a warned public hearing shall be required for conditional use review (Section 5.4), appeals and variances (Sections 9.5 and 9.6) and preliminary and final subdivision review (Sections 6.4 and 6.5). Any public notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by *all* of the following:
 - (a) publication of the date, place and purpose of the hearing in a newspaper of general circulation in the town,
 - (b) posting of the same information in three (3) or more public places within the municipality in conformance with the requirements of state statute [1 V.S.A., §312(c)(2)], including the posting

- of a hearing notice within view from the public right-of-way nearest to the property for which the application is being made;
- (c) written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal; and
 - (d) for hearings on subdivision plats located within 500 feet of a municipal boundary, written notification to the clerk of the adjoining municipality.
- (2) Public notice of all other types of quasi-judicial development review proceedings, including site plan review hearings (Section 5.3), shall be given not less than seven (7) days prior to the date of the public hearing, and shall at minimum include the following:
- (a) posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality in conformance with the requirements of state statute [1 V.S.A., §312(c)(2)], and
 - (b) written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.
- (3) The applicant shall be required to bear the cost of public warning and the cost and responsibility of notifying adjoining landowners as required under Subsections (D)(1) and (D)(2), as determined from the current municipal grand list. The applicant also shall demonstrate proof of delivery to adjoining landowners either by certified mail, return receipt requested, or by written notice hand delivered or mailed to the last known address supported by a sworn certificate of service.
- (4) No defect in the form or substance of any required public notice under this section shall invalidate the action of the Development Review Board where reasonable efforts have been made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the Development Review Board or the Environmental Court, the action shall be remanded to the Board to provide new posting and notice, hold a new hearing, and take a new action.
- (5) Public hearings concerning proposed amendments to these regulations shall be noticed and warned in accordance with the Act [§§ 4441, 4444].
- (E) **Meetings & Hearings.**
- (1) **Development Review Board.** In accordance with the Act [§§4461, 4464], all meetings and hearings of the Development Review Board, except for deliberative and executive sessions, shall be open to the public. In addition:
- (a) For the conduct of any meeting and the taking of any action a quorum shall be not less than a majority of the members of the Board.

- (b) The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating this, and shall keep records of its examinations and other official actions which shall be filed immediately in the Town Office as public records.
 - (c) Public hearings shall be noticed and warned in accordance with Subsection (D). In any regulatory hearing of the Development Review Board there shall be an opportunity for each person wishing to achieve status as an interested person, for purposes of participation or appeal under Section 9.5 to demonstrate that the criteria for achieving such status are met. The Board shall keep a written record of the name, address, and participation of each of these persons.
 - (d) The Board may recess the proceedings on any application pending submission of additional information, and should close evidence promptly after all parties have submitted requested information.
 - (e) No member of the Board shall communicate on any issue in an application proceeding, directly or indirectly, with any party, party's representative, party's counsel, or any interested person in the outcome of the proceeding while the proceeding is pending without additional notice and opportunity for all parties to participate. All ex parte communications received by Board members, all written responses to such communications, and the identity of the person making the communication shall be entered into the record.
 - (f) Members of the Board shall not participate in the decision on an application unless they have heard all the testimony and reviewed all the evidence submitted in the hearing. This may include listening to a recording, or reading the transcripts of testimony they have missed, and reviewing all exhibits and other evidence prior to deliberation.
- (2) **Conservation Commission.** In accordance with the Act [§4464(d)], meetings of the Conservation Commission to review an application under these regulations shall comply with Vermont's Open Meeting Law and requirements of the Commission's rules of procedure, but shall not be conducted as public hearings before a quasi-judicial body. Commission recommendations may be presented in writing at or before Development Review Board public hearing on the application, or may be presented orally at the public hearing.
- (F) **Decisions.** In accordance with the Act [§4464(b)], the Development Review Board may recess proceedings on any application pending the submission of additional information. The Board will close evidence promptly after all parties have submitted requested information, and shall issue a decision within 45 days after the adjournment of the hearing. Failure to issue a decision within the 45-day period shall be deemed approval and shall be effective the 46th day.
- (1) All decisions shall be issued in writing and shall separately state findings of fact and conclusions of law. Findings of fact shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on evidence of the record. Conclusions shall be based on the findings of fact. The decision shall also include a statement of the time within which appeals may be taken under Section 9.5.
 - (2) In rendering a decision in favor of the applicant, the Board may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of the Act, these regulations, and the town plan currently in effect. This may include, as a condition of approval:
 - (a) the submission of a three (3)-year performance bond, escrow account, or other form or surety acceptable to the Bolton Selectboard, which may be extended for an additional three (3)-year

period with the consent of the owner, to assure the completion of a project, adequate stabilization, or protection of public facilities that may be affected by a project; and/or

- (b) a requirement that no certificate of occupancy or certificate of compliance be issued for an approved development until required improvements have been satisfactorily installed in accordance with the conditions of approval.
- (3) All decisions shall be sent by certified mail, within the required 45-day period, to the applicant or to the appellant on matters of appeal. Copies of the decision also shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and Town Clerk as part of the public record of the municipality, in accordance with Subsection (G).
- (4) In accordance with the Act [§4464(c)], any decision issued by the Development Review Board may authorize that subsequent changes or amendments to an approved project may be allowed subject to administrative review by the Zoning Administrator, rather than Board review, in accordance with the following, which shall be specified in the Board's decision:
 - (a) The decision shall clearly specify the thresholds and conditions under which administrative review and approval shall be allowed.
 - (b) The thresholds and conditions shall be structured such that no new development shall be approved that results in substantial impact under the requirements of these regulations, or any of the thresholds or conditions set forth in the decision.
 - (c) No amendment issued as an administrative review shall have the effect of substantially altering the findings of fact of any Board approval in effect.
 - (d) Any decision of the Zoning Administrator authorized in this manner may be appealed to the Board in accordance with Section 9.5(A).

(G) Recording Requirements.

- (1) Within 30 days of the issuance of a municipal land use permit or notice of violation, the Zoning Administrator shall deliver either the original, a legible copy, or a notice of the municipal land use permit or notice of violation to the Town Clerk for recording in the land records of the town generally as provided in 24 V.S.A. §1154(c), and file a copy in the Town Office in a location where all municipal land use permits shall be kept, as required under the Act [§4449(c)]. The applicant may be charged for the cost of the recording fees.
- (2) For development within the Flood Hazard Area Overlay District, the Zoning Administrator shall also maintain a record of all permits, elevation certificates, elevations, floodproofing certifications and variance actions issued for development within the district as required under Section 5.5(I).

(H) Availability & Distribution of Documents. In accordance with the Act [§4445], copies of these regulations, other related municipal regulations and ordinances, and the town plan shall be made available to the public during normal business hours in the Town Clerk's Office.