

LEGAL AND REGULATORY NOTES, MAY 2017

Not even a puppy will get you a permit: dog breeding business not permissible as a home occupation

Apparently puppies – cute as they may be – aren’t always good neighbors. In their youthful exuberance, they bark frequently and loudly. And by their very nature they must frequently be let outside to relieve themselves. As such, the Vermont Environmental Court recently found that the breeding of puppies was not permissible as a “home occupation” under the provisions of the Town of Fair Haven’s zoning bylaws. In *Blazer Home Occupation*, 99-8-16 Vtec (2017), the court denied the application for such permit and vacated the approval granted by the Fair Haven Planning Commission.

The “home occupation” statute, 24 V.S.A. § 4412(4), provides a limited right of a Vermont resident to use part of his or her home to conduct certain activities that generate income. The law states that “[n]o bylaw may infringe upon the right of any resident to use a minor portion of a dwelling unit for an occupation that is customary in residential areas and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.” The statute therefore limits the authority of a town to prohibit home occupations. Specifically, a home occupation must be allowed if it is (1) conducted by a resident of the property; (2) conducted in a “minor portion of a dwelling unit”; (3) is an occupation “customary in residential areas”; and (4) does not have “an undue adverse effect upon the character of the residential area in which the dwelling is located.” However, the language of 24 V.S.A. § 4412 does not provide any absolute rights as to the use of property. A town is free to specify the standards by which home occupation applications may be reviewed or conditioned, so long as those standards are consistent with state law.

The Town of Fair Haven has imposed several home occupation standards in its zoning regulation. Those regulations require that a home occupation business must take place “wholly within the principal building and accessory building.” The regulations also require that “obnoxious or excessive noise ... that is detectable at the boundaries of the lot ... shall not be generated” by a home occupation. Finding that the puppy breeding business could not meet these standards, the court stated that the *Blazer* home occupation application must be denied.

The court noted that the breeding of puppies necessarily involves letting dogs outside multiple times a day and night to run, play, and relieve themselves. It also noted that “barking often accompanies the play” of the dogs. The adjoining property owner in *Blazer* established that the barking sometimes continued for hours at a time and interfered with the enjoyment of his home. Based on those facts, the court found that the business was not operated wholly within the applicant’s home and that the business generated “obnoxious or excessive noise ... that is detectable at the boundaries of the lot” in violation of the town’s zoning bylaw. Puppies may be cute, but they can be obnoxious neighbors.

It should be noted that 24 V.S.A. § 4412 provides the minimal rights that must be afforded to a property owner, but a town's zoning bylaws may be more generous. For instance, a bylaw may allow a home occupation that involves not only the residents but also one or two non-resident employees. Likewise, a bylaw may allow the use of not only a minor portion of the dwelling unit, but also the use of an accessory structure on the property such as a garage or barn. More information about home occupations is available from the Vermont Planning Information Center at <http://vpic.info/Publications/Reports/Implementation/Home.pdf>.

The *Blazer* case is archived [here](#).

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