

While it is correct that a municipality may write an exemption into a new bylaw, and is not obligated to apply a new bylaw to all categories of uses at once, an exemption must be held to the same standard as any other element of the bylaw, that is, the category it creates must be rationally related to a legitimate municipal purpose, both as a principle of constitutional law and under 24 V.S.A. ' 4405(a). Thus, an exemption from the new Telecommunications Facilities Bylaw for existing tower structures in their existing locations would be a legitimate exemption, and would be authorized by 24 V.S.A. ' 4408. Similarly, an exemption for towers used to provide improved coverage for emergency services communications might very well be a legitimate exemption within the power of the municipality. However, that is not what the Town has done in the version of ' 1.22 here before the Court.

Section 1.22 as it is written merely exempts an assembly of materials already existing within the town if it is being moved to a new site, while requiring the same assembly of materials in the same new site to meet the stricter standards of the Telecommunications Bylaw if those materials are moved in from an out-of-town or an out-of-state location. It is as if the Town had created an exemption for houses that are jacked up and moved to another location within town (or houses disassembled and reconstructed in a new location from lumber already existing within the town) from having to comply with the setback or other requirements with which all other newly-built houses in town must comply. Or it is as if the Town had created one requirement for lot size within a mobile home park for mobile homes already existing in town and moved to their new location, and another lot size requirement for mobile homes moved in from out-of-town, whether new or used. There is no rational basis derived from any of the legitimate purposes of zoning that justifies such a distinction based on the source of the structure= s materials, rather than on the location of the structure or the use to which it is to be put.

Accordingly, based on the foregoing, it is hereby ORDERED and ADJUDGED that Appellants= Motion for Summary Judgment is GRANTED and the Town= s and Appellee-Applicant= s Motion for Summary Judgment are DENIED. The exemption, as written, is not reasonably related to any legitimate governmental purpose under zoning. The Town may, of course, amend its Telecommunications Facilities Bylaw to provide for other exemption language drafted so as to relate to a legitimate governmental purpose, such as an exemption for telecommunications towers that are primarily used for providing emergency services, or an exemption for towers that improve the Town= s or the region= s ability to provide emergency services. This ruling appears to the Court to conclude this appeal. It will be entered as a final order effective on May 20, 2003, unless one or more of the parties telephones the Court to request a telephone conference to discuss this issue; in which case the conference will be held on May 20, 2003 at 11:30 a.m.

Done at Barre, Vermont, this 12th day of May, 2003.

Merideth Wright
Environmental Judge