SEMINAR MATERIALS

ST. JOHNSBURY PLANNING COMMISSION

March 18, 2009

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TAB 1

Essentials of Local Land Use Planning and Regulation

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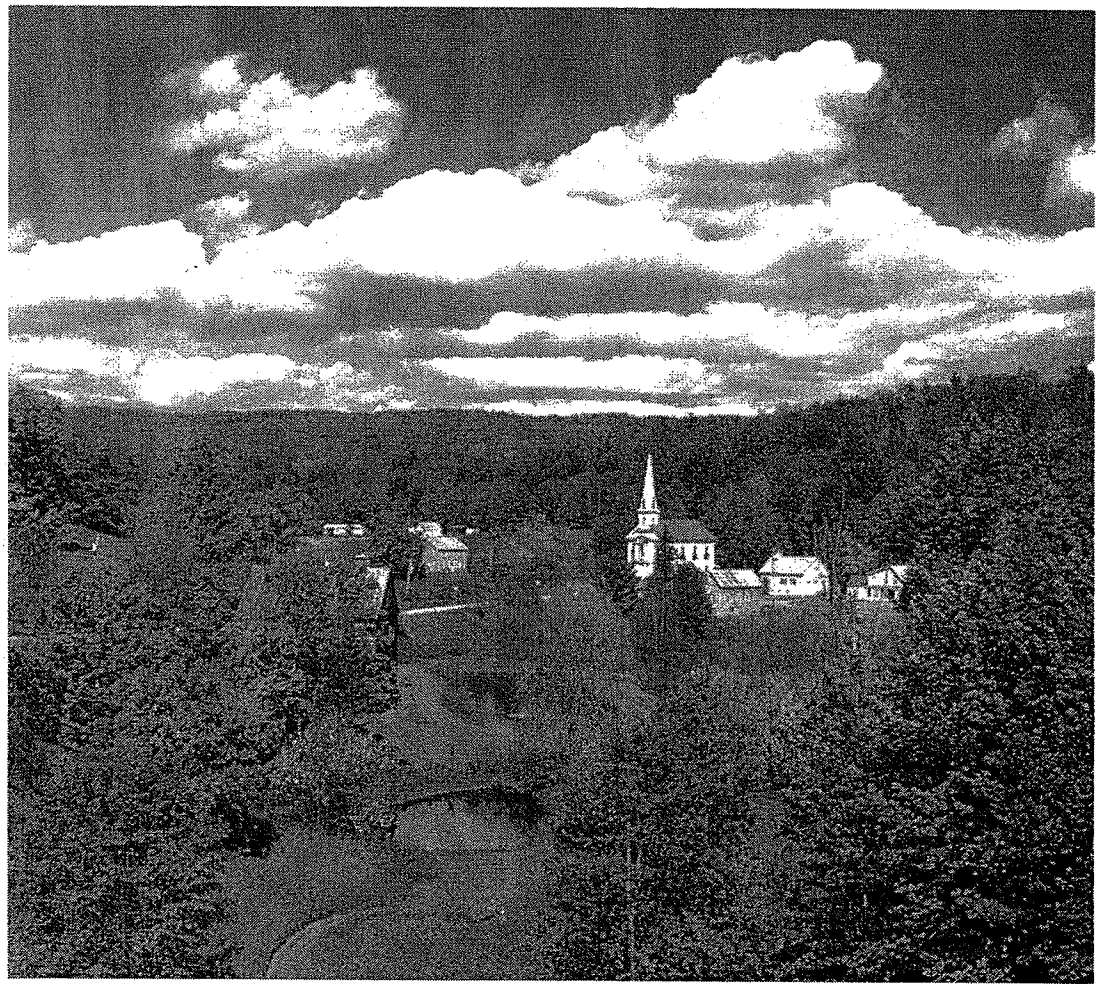

VERMONT LAND USE
Education & Training Collaborative

Dedicated

to all the local volunteers

who work to improve our communities by serving on municipal planning commissions, zoning and development review boards, and other related boards and commissions.

Thank you for your service.

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1 Introduction

Essentials of Local Land Use Planning and Regulation seeks to provide an "operator's manual" for the volunteer officials who willingly dedicate their time in service to their community. It is designed for all local officials involved in municipal land use. In addition to this manual, an accompanying CD features an audio recording of much of this material. Sample documents and other related material are also available on the website of the Vermont Land Use Education and Training Collaborative: www.vpic.info.

Community planning as a democratic exercise takes time and effort. It involves reflecting on history, current assets and challenges, accurately identifying trends and agreeing on a vision for the future. Further work is required to implement creative responses that will help maintain and enhance the community's strengths. Knowing the rules and the context for planning and regulation, as presented in this manual, can help local board and commission members meet these challenges.

Community planning as a democratic exercise takes time and effort.

This chapter introduces the history of land use planning and regulation and discusses the legal foundation for land use planning and regulation in Vermont.

A. Origins of Land Use Planning and Regulation

Land use planning is not a new idea. The ancient Romans designed their cities with two major streets that intersected at the "forum," which was the center of commerce in the city. In the United States, the earliest municipal plans were created for the cities of Philadelphia (1682), Annapolis (1685), Colonial Williamsburg (1699) and Savannah (1733).[1] While these plans are still widely admired, they typically reflected the vision and aspirations of only a few people. Today, developing a comprehensive plan for a municipality involves extensive citizen participation and is a prerequisite to adopting most land use regulations.

Contemporary land use planning and regulation in the United States originated in the social welfare movements at the beginning of the 20th Century that sought to address the environmental and public health problems resulting from heavy industries in urban areas. Responding to exploding growth and diversity of land use in Lower Manhattan, the New York City Council established some of the first land use regulations in 1916. These early regulations established height and setback controls, and separated uses that were seen as functionally incompatible, such as factories and residential neighborhoods. Across the country, cities and towns that were dealing with many of the same burgeoning land use issues began to adopt comparable regulations.

It wasn't long before landowners began to challenge the constitutionality of land use regulations in the courts. In 1926, the U.S. Supreme Court upheld the zoning ordinance of Euclid, Ohio, in a case that is still cited today as the prime example of a community's legal authority to plan for development and regulate land use.[2]

[1] "Back to the Land," Chet Boddy, *Mendocino Coast Real Estate Magazine*, 1995.

[2] *Village of Euclid v. Ambler Realty*, 272 U.S. 365 (1926) "There is no serious difference of opinion in respect of the validity of laws and regulations fixing the height of buildings within reasonable limits, the character of materials and methods of construction, and the adjoining area which must be left open, in order to minimize the danger of fire or collapse, the evils of overcrowding and the like, and excluding from residential sections offensive trades, industries and structures likely to create nuisances."

Brief History of Settlement in Vermont

1600's - mid 1700's: Native American tribes cultivated river valleys with 5-10 acre fields of corn, squash and beans.

1760's: Pioneers settled in isolated farmsteads. Any social or commercial transactions occurred in dispersed sites such as taverns, homes or grist mills.

1780 - 1810: As population grew, village centers developed around busy crossroad taverns and manufacturing sites, or grew in a linear pattern along the most well-traveled rivers and roads, usually in valley locations.

Mid 1800's: The coming of the railroads shifted commercial activity to the rails and stimulated growth of new industrial villages. Some new railroad towns such as Lyndonville and South Royalton were built according to carefully designed plans, with a central green surrounded by impressive public and commercial buildings.

Late 1800's - early 1900's: Village improvement societies were formed to spruce up the general appearance of towns, provide improvements in lighting and public water and sewage systems, and turn empty lots into town commons and parks. Grand civic buildings, extravagant homes and summer camps were built during these prosperous times.

1930's - 60's: The Depression, followed in Vermont by decades of economic stagnation, reduced the rate of change in Vermont landscapes in spite of the rapid pace of technological transformations resulting from the introduction of electricity, telephones and automobiles.

1970 - 2000: The pace of growth accelerated rapidly and communities struggled to deal with the many social and technological changes. Automobile use caused major shifts in settlement patterns, luring commerce away from the downtowns to highway strips. The ability to commute long distances enabled widely scattered residential development.

The regulations in Euclid, which sought to separate uses based on their relative compatibility, were typical of the time. One of the primary concerns was that certain uses could be so incompatible with adjacent uses as to amount to a "nuisance."

"Euclidian" zoning has since fallen out of favor, in part because it uses more land and encourages automobile reliance by segregating uses, such as residential neighborhoods and necessary services. Nonetheless, Euclid established the now settled principle that land use planning and regulation is a legitimate use of the governmental police power. Vermont courts have followed this same general rule, holding that they will not "interfere with zoning unless it clearly and beyond dispute is unreasonable, irrational, arbitrary or discriminatory."[3]

B. Land Use Planning and Regulation in Vermont

Contemporary land use planning in Vermont (like most states) was initiated in the 1920s and has been evolving ever since. In 1921, the Legislature authorized municipalities to create planning commissions that could propose comprehensive plans "for the future development of the municipality which shall be based primarily upon public welfare."[4] Once a plan was adopted, no public improvement could be constructed within the municipality until the proposed location had been submitted to the planning commission. The commission had 30 days to object in writing to the selectboard, city council, or village trustees, who could overrule the objection by majority vote.[5] This early enabling legislation, however, only applied to public improvements and did not yet apply to private projects.

Ten years later, the General Assembly enacted enabling legislation permitting Vermont municipalities to regulate land use in their communities through zoning. This new law authorized the legislative body to appoint two boards: a zoning commission, to recommend bylaws and boundaries for districts to the legislative body (and eventual adoption by the voters), and a board of adjustment that would

[3] City of Rutland v. Keiffer, 124 Vt. 357, 367 (1964).

[4] 1921, No. 107.

[5] *Id.*

deal with appeals of the decisions of the administrative officer and grant special exceptions "subject to appropriate conditions and safeguards," while respecting the "general harmony and intent" of the regulations. It was another 47 years until the Legislature completed a comprehensive revision.[6]

When construction of the interstate highway system fueled economic development in the 1960s, land use planning in Vermont began to focus on environmental protection and growth management. In 1968, the Legislature enacted enabling legislation, which began with a list of the purposes planning and zoning should achieve. The new law also prescribed the contents of municipal plans as well as the process for adoption. Under the new law, the planning commission would hold hearings and send the plan to the legislative body for additional hearings and ultimate adoption. Plans would expire every five years, and any regulations that were adopted could not be amended until the plan was re-adopted or amended.[7] Many of these requirements remain today.

Significant Vermont Legislation

Act 250 (1970) was enacted to provide regulatory review by the state for major developments. To this day, in order for a project to be approved under Act 250, the district commission must find, among other criteria, that the subdivision or development is in conformance with the duly adopted municipal plan.[8]

Act 200 (1988) contained a substantial update to the statutes governing the local land use planning process and focused on increasing coordination between the planning efforts of municipalities, the regions, and the state. Act 200 also began to assist municipalities with those efforts by providing funding from the Property Transfer Tax.

Act 115 (2004) focused on improving the appeals process, improving opportunities for affordable housing, and increased the linkage between planning and regulation by requiring any regulations to be in conformance with the municipal plan by 2011.[9]

In recent years, there has been a renewed integration of social concerns in planning for both economic development and environmental protection with the goal of creating healthy communities. Act 183, the 2006 Growth Centers legislation, reflects this trend by providing incentives for development in and around compact, mixed-use town and village centers. Challenges such as the dependence on the automobile, a rapidly aging population, and a lack of affordable housing will continue to drive many of the planning processes in the state.

C. Today's Legal Structure

As provided in the Vermont Constitution, local governments are creatures of the state and may only undertake those activities that are enabled by state law.[10] This is called Dillon's Rule, which strictly vests the powers of government with the state, and, in practical effect, strictly limits municipal powers. The Vermont Supreme Court, interpreting the Vermont Constitution, has stated, "We have consistently adhered to the so-called Dillon's Rule that a municipality has only those powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate or necessary to the exercise thereof ...Dillon's Rule calls for the strict construction of municipal function: If any fair, reasonable, substantial doubt exists concerning the question, it must be resolved against the [grant of power] ..."[11]

[6] *Vermont By Design*, Vermont Council on Rural Development, 2006.

[7] 1967, No. 334 (adj. Sess.).

[8] 10 V.S.A. § 6086 (a)(10).

[9] 24 V.S.A. § 4481.

[10] Vermont Constitution, Ch. II, § § 6, 69.

[11] Petition of Ball Mountain Dam Hydroelectric Project, 154 Vt. 189 (1990).

Fortunately, Vermont law provides extensive enabling legislation for municipalities to conduct a wide range of activities related to local land use planning and regulation. The statutes that enable local land use planning and regulation have been codified in Chapter 117 of Title 24. Often cited as the Vermont Planning and Development Act[12] (or "the Act"), Chapter 117 serves as a guide to the local process in addition to providing the requisite (and wide-ranging) legal authority to act. The chapter is organized into 12 subchapters, each of which addresses specific subject matters such as municipal planning commissions (subchapter 2), bylaws (subchapter 7), and adoption, administration, and enforcement (subchapter 9). The Department of Housing and Community Affairs regularly publishes a copy of the Act, which is available by contacting the municipality's regional planning commission.

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D. A Practical Introduction

This manual seeks to provide a practical introduction to local land use planning and regulation. It does not cover all of the issues one may encounter, but it is intended to provide local officials with a solid grounding in the fundamentals of land use planning and regulation in Vermont. It begins with one of the most crucial elements: understanding roles and responsibilities. From there, the manual moves on to discussions of planning fundamentals, implementation of the municipal plan, procedural issues, and conducting effective meetings and hearings.

[10] Vermont Constitution, Ch. II, § § 6, 69.

2 Roles and Responsibilities In Municipal Land Use

Most municipal officials have distinct roles that are delineated both by statute and by function. Within the local land use system, there are three primary functions: legislative, quasi-judicial, and administrative.

The broadest function is *legislative* and involves not only drafting and approval of the municipal plan and bylaws, but also conducting public hearings to determine the future direction of the community. The legislative function is shared by the planning commission and the legislative body (selectboard, city council, or village trustees).

Within the local land use system, there are three primary functions: *legislative, quasi-judicial,* and *administrative.*

In contrast, the *quasi-judicial* function involves interpreting and applying the land use regulations. It is occupied by the appropriate municipal panel (AMP), which may be the planning commission, development review board, or zoning board of adjustment, depending on the structure established by the municipality.

The *administrative* function involves mostly non-discretionary acts such as issuing permits, enforcing bylaws and assisting applicants. The administrative function is occupied by the administrative officer, often known as the zoning administrator (ZA).

These distinctions are important because unique ground rules apply depending on whether one is acting in a legislative, quasi-judicial, or administrative capacity. This chapter contains a brief discussion of those ground rules and how they impact the roles and responsibilities of the officials listed above, as well as a discussion of the role of community planners, regional planning commissions, consultants, and others who play pivotal roles in local land use planning and regulation.

A. Planning Commission

A planning commission can be created at any time by the selectboard, village trustees or city council. Planning commissions must have at least three but no more than nine voting members, the majority of whom must be residents of the municipality.[13] Most planning commissions are appointed by the selectboard, city council, or village trustees, which are also responsible for fixing the length of term. As an alternative, state law also permits municipalities to have voters elect planning commissioners for terms of four years.[14]

Whether elected or appointed, the primary function of the planning commission is to prepare and amend the municipal plan and bylaws (and advise on amendments prepared by others.) Planning commissions also engage in many other activities related to their role as leaders of the community on planning matters, including holding public hearings to determine future needs of the town, conducting surveys, holding discussion forums and educating the public about current issues facing the municipality.

The planning commission is charged with bringing a long-term perspective to day-to-day decision-making. As such, it must take care to represent all members and interests of the community. To this end, the board should seek maximum feasible participation by other public officials, interest groups, civic groups, and citizens. Above all else, planning commission members must always act in the public interest and put the general welfare of the community above any personal interests.

[13] 24 V.S.A. § 4321(a).

[14] 24 V.S.A. § 4323(c).

State law provides planning commissions with broad authority to plan for the future needs of their communities. In addition to drafting and maintaining a current municipal plan and tools that implement the plan, the planning commission also has the following powers:[15]

- Prepare and present a capital budget;
- Undertake capacity studies and make recommendations on matters of land development, urban renewal, transportation, economic and social development;
- Require information from other departments of the municipality that relates to the work of the planning commission;
- Participate in a regional planning program;
- Retain staff and consultant assistance; and
- Perform such other tasks as it may deem necessary or appropriate to fulfill the duties and obligations imposed by Chapter 117 of Title 24.

Above all else, planning commission members must always act in the public interest and put the general welfare of the community above any personal interests.

In all of the above duties, the planning commission is functioning in a *legislative* capacity. Like a selectboard or city council, the planning commission is soliciting public input, weighing options and making policy decisions, some of which will chart the future of the community and which may eventually have the force and effect of law.

However, state law also allows planning commissioners to convene as an "appropriate municipal panel" to review development applications under the land use bylaws. When reviewing development applications, the planning commission is acting in a *quasi-judicial* capacity. This distinction is important because what is appropriate in the legislative context is often inappropriate in the quasi-judicial context. For example, when planning (which is a legislative function), it is important to reach out both formally and informally to citizens, developers, town officials, neighboring towns, and local interest groups. However, when considering a development application, it is inappropriate to discuss the substance of an application, except in a public hearing or when deliberating on the application. For a more thorough discussion of this issue, see "Appropriate Municipal Panel" below.

Definition of Appropriate Municipal Panel (AMP):

A planning commission, board of adjustment, development review board, or a legislative body performing development review.

B. Appropriate Municipal Panel

An "appropriate municipal panel" (AMP) is defined as "a planning commission performing development review, a board of adjustment, a development review board, or a legislative body performing development review."[16] When performing development review, the panel is acting in a *quasi-judicial* capacity because it is applying the bylaws to a specific application and, in many ways, acting like a court.

The two most common organizational models consist of either a planning commission and a zoning board of adjustment (PC/ZBA), or a planning commission and a development review board (PC/DRB).

Under the PC/ZBA model, planning commissions have both legislative and quasi-judicial responsibilities. The legislative responsibilities involve drafting the municipal plan and creating the tools that implement the plan, such as bylaws, capital budgets, etc. The quasi-judicial responsibilities involve review of applications for land development (usually applications for site plan and

[15] For the full list of planning commission powers and duties, see 24 V.S.A. § 4325.

[16] 24 V.S.A. § 4303(3).

Conversations About Development

A planning commissioner might run into a citizen at the local market who says, "*that Wildwood subdivision is really going to ruin that part of town.*"

"*Why?*" says the planning commissioner.

"*Well, it's going to break up a large area of winter deer habitat, and you'll be able to see all those houses from miles away.*"

If the planning commissioner serves in a municipality where a development review board conducts all of the quasi-judicial proceedings, the commissioner might reply, "*We might not be able to do anything about this project, but perhaps we need to write some regulations that impose stricter controls on sensitive wildlife areas in town.*"

These are the types of conversations that planning commissioners need to have with their constituents in order to plan for the future. Part of planning for the future involves keeping land use regulations current with trends in land development and with the desires of the community.

However, if that same commissioner will be reviewing the case as a member of an AMP (which could be the planning commission, or another board), the above conversation would be wholly inappropriate. In that context, the commissioner should simply say, "*I'm sorry, I can't discuss this with you unless we're in an open public hearing. It's not fair to others who may be interested in the case for me to speak about it with you.*"

This conversation might be difficult for members of appropriate municipal panels, particularly in small towns; nevertheless, it's the only proper way for a member of an AMP to handle the situation should it arise. (See Chapter 6, D. "Rules of Procedure and Ethics for AMPs ")

subdivision review). Under this model, there is also a zoning board of adjustment, which has no legislative authority but exercises quasi-judicial authority in reviewing applications for conditional use, appeals of administrative officer decisions and requests for variances. Many municipalities operate under the planning commission/zoning board of adjustment model, though an increasing number are seeking to separate the legislative and quasi-judicial functions through the creation of a development review board.

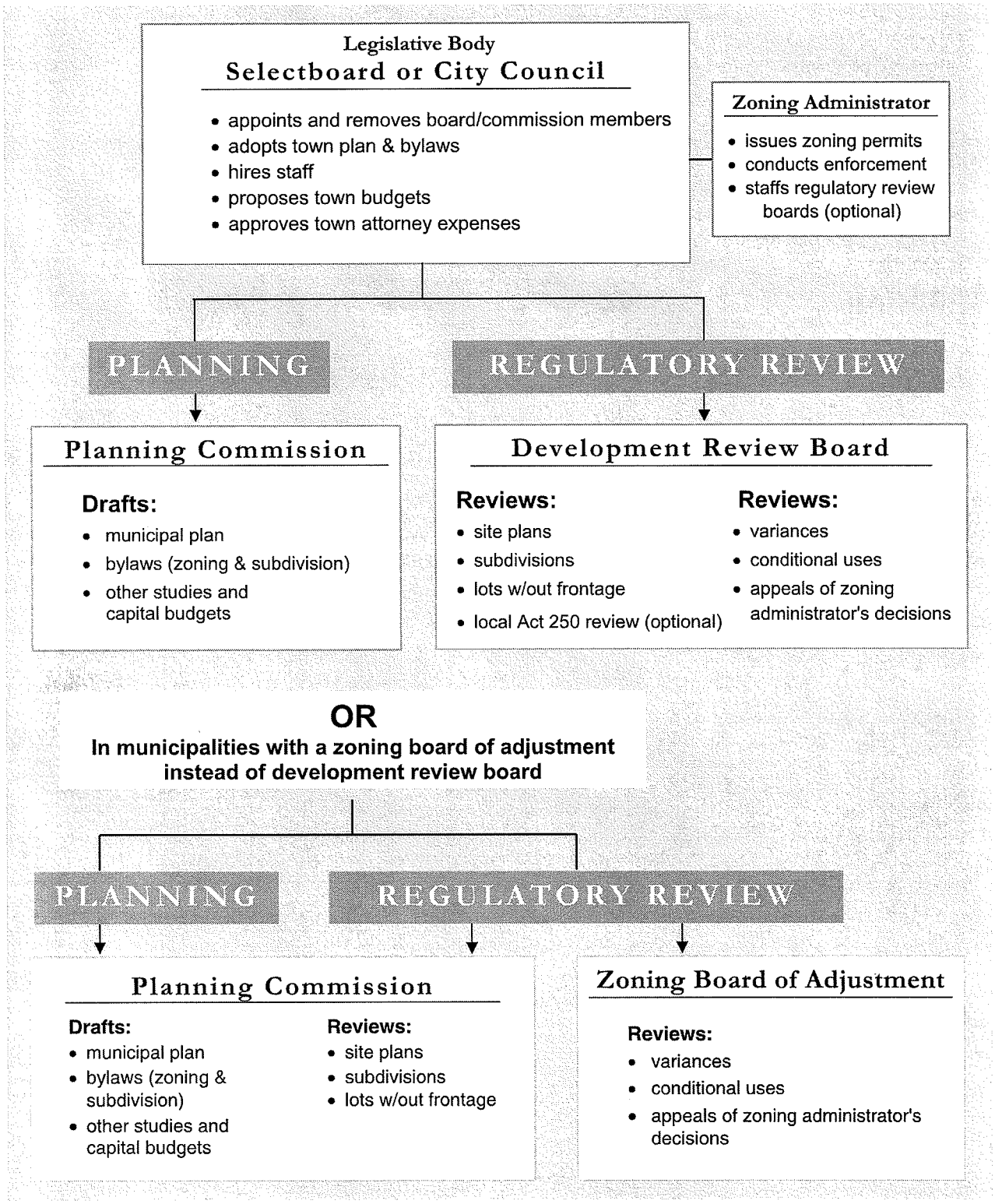
Under the PC/DRB model, the planning commission becomes a purely legislative entity, with authority to draft the municipal plan and create both regulatory and non-regulatory tools that implement the plan. The development review board becomes the quasi-judicial entity responsible for hearing all applications for development review, including applications for site plan, subdivision, variance, conditional use, administrative officer appeals, and any other reviews authorized by the bylaws.

A strength of the PC/DRB model is that it vests all legislative functions with a planning commission, and all development review functions with a development review board. Separating the legislative and quasi-judicial functions allows more planning to occur, simplifies the process for applicants, and makes it easier for members to distinguish between actions that are appropriate in the legislative and planning context but not in the quasi-judicial context (such as speaking to a party about a particular application).

Other than time, there is no conflict for members who wish to serve on both a planning commission and an AMP. Municipalities with low levels of development activity may wish to appoint the same members to both the planning commission and AMP.

Regardless of which local board is serving as the appropriate municipal panel, the role of the AMP is to hear and review applications for development under the applicable regulations. The AMP can only approve applications that comply with the applicable

Roles and Responsibilities in Municipal Land Use



The AMP can only approve applications that comply with the applicable bylaw or state law, and the board can only levy conditions that are permitted under the bylaw.

bylaw or state law, and the board can only levy conditions that are permitted under the bylaw. By the same token, if a project meets the applicable bylaw criteria, the AMP is bound by law to grant the approval. The opinions of individual members about the general level of development in the municipality must not affect the decision-making of the board when acting in a quasi-judicial context. At all times, AMP members must take steps to ensure that the board is perceived as a neutral entity or its credibility will evaporate.

In addition, members of appropriate municipal panels must take care to avoid conflicts of interest and refrain from discussing an application with any of the parties to the proceeding except as part of a properly warned hearing. For example, when serving on an AMP, it is improper for a member to express an opinion about a project or a type of project (e.g., "I really hate clustered development.") prior to hearing the evidence in a particular case. Like a judge, an AMP member must never prejudge a case. (For more on this topic, see Chapter 5, "Conducting Effective Meetings and Hearings.")

C. Administrative Officer

The administrative officer (also known as the zoning administrator or ZA) is the face of local land use regulation, and is the primary point of contact for those affected by local regulations. Though not explicit in statute, the administrative officer has great influence over the integrity of the regulatory program.[17]

An administrative officer must be appointed for a three-year term promptly after the first bylaws are adopted or when a vacancy exists. State law requires the officer to administer the bylaws literally and prohibits the officer from permitting any land development that does not conform with the bylaws.

A primary function of the administrative officer is to review applications that do not require action by the appropriate municipal panel. Typically, these applications are for uses or structures that are permitted so long as they comply with the dimensional and performance standards of the district such as single-family dwellings and accessory structures. Applications that require AMP approval are referred to the AMP by the administrative officer, who may only issue a permit if the AMP approves the application. Any action or inaction by the administrative officer may be appealed to the AMP.

In addition to reviewing and referring applications, the administrative officer plays a vital customer service role by providing the public with the necessary forms and applications and being responsible for "coordinating a unified effort" to administer the municipality's development review program.[18] At many points in the review process, the administrative officer will work with applicants, neighbors, representatives, board members and other municipal officials.

Many administrative officers also play a broader role in staffing the planning commission or appropriate municipal panel. For those staffing AMPs, the role of the administrative officer is varied and may include guidance in the review process, keeping minutes for the board, preparing staff reports on an application or even drafting the written decision for the board. Of course, it would be inappropriate for the administrative officer to write a decision in an appeal of his or her action or decision.

Hiring an administrative officer is a two-step process that requires two boards to work well with each other. The first step is for the planning commission to nominate a qualified candidate, after which it is up to the selectboard, city council or village trustees to appoint the candidate. Statute provides that the administrative

[17] 24 V.S.A. § 4448(a).

[18] 24 V.S.A. § 4448(c).

officer is an employee of the municipality, subject to the municipality's personnel policies, and is only removable for cause by the selectboard, city council or village trustees after consultation with the planning commission.

In addition to administering the land use regulations at the front end of the process, the administrative officer plays a large role in enforcement of violations. For example, the administrative officer often receives the complaint that initiates violation proceedings, and often works closely with the selectboard, city council, or village trustees, and the municipal attorney in any necessary court action. For more on enforcement, see Enforcement of Local Bylaws in Chapter 5.

For more information on the role and function of the administrative officer, see 24 V.S.A. §§ 4448, 4449 and the *Zoning Administrators Handbook*, Vermont Land Use Education and Training Collaborative (2005). available at www.vpic.info.

D. Staff Planner

A growing number of Vermont municipalities have dedicated resources to hire a staff planner. The role of the planner, as with many other staff positions, can vary significantly from one municipality to another. Some municipalities have staff planners with professional degrees in planning and certifications in planning (such as the AICP designation from the American Institute of Certified Planners). Other municipalities have planners who have learned about planning through experience or have degrees in a related field.

A professional planner can make a significant contribution to a successful land use planning and regulation program. Planners are trained in facilitating good public processes when updating the municipal plan or land use regulations. In addition, a planner can provide in-depth analysis of development applications, which ensures a consistent and efficient review process. Planners bring the professional knowledge that is so vital in a unique and rapidly changing field. Oftentimes, a planner's professional expertise can help find solutions that a volunteer board may wrestle with for quite some time.

Many planners also work closely with applicants to help them craft the best possible application prior to formal submission to the administrative officer or AMP. This informal process of working with the applicant can help create a thoughtfully designed project, and will facilitate an efficient and more positive review process.

Some municipalities have agreed to pool resources and share a planner with another municipality. This can be quite useful for municipalities that see the need for some professional planning, but can't afford to commit the resources to hiring a full-time planner.

E. Selectboard, City Council or Village Board of Trustees (Legislative Body)

The selectboard, or other legislative body, such as the city council or village board of trustees, plays an important role in developing a successful land use program in any municipality. Many important land use decisions - including the location of infrastructure such as water supply and wastewater disposal, appointment and removal of officers, and adoption of the municipal plan - are vested with the selectboard, city council or village trustees.

As the elected and most visible board, the legislative body plays a critical role in setting a tone that supports an effective land use planning and implementation program. There are many opportunities for the

legislative body to show its support, including: incorporating the municipal plan into decisions regarding public investment (such as sidewalks); including the planning commission in discussions of ordinances and policies with land use implications (such as those concerning roads or sewers); including reasonable budget requests from the planning commission and AMP; ensuring that the various boards and commissions are comprised of able volunteers and are appropriately staffed; and providing funding for training and education.

One of the legislative body's most important functions is to appoint and remove members of the planning commission[19] and appropriate municipal panel, the administrative officer, and key advisory commissions, such as the conservation commission. In this capacity, the legislative body represents the voters, serves as the accountability mechanism, and ensures that the expectations of the position are being fulfilled.

As the elected and most visible board, the legislative body plays a critical role in setting a tone that supports an effective land use planning and implementation program.

In addition to managing the people involved in the land use program, the legislative body retains much of the final authority over the adoption of the various regulatory and non-regulatory documents, including the municipal plan, capital budget and any regulatory tools such as zoning and subdivision regulations.[20]

Finally, it is crucial for the legislative body to maintain an ongoing relationship with the various land use officials. This open dialogue will foster a better understanding of land use planning and implementation in a community, and will help keep difficult situations from becoming outright political battles. Some municipalities have instituted annual or other regular meetings between the legislative body and the various boards and commissions in order to foster strong relationships and open communication. To this end, it is worth noting that the selectboard members of a rural town, or two appointees of the legislative body in an urban municipality, are "ex-officio members of the planning commission."[21]

F. Municipal Manager/Administrator

Appointed by the legislative body, the municipal manager is the chief administrative officer of the municipality and is responsible for discharging the duties specified in Chapter 37 of Title 24 and as augmented by a job description. Some municipal managers also serve as administrative officers, though most focus on oversight of municipal departments, including police, fire, public works, finance, etc. In the land use realm, the municipal manager often advises the legislative body on appointments, supervises and manages all land use staff, interacts with the municipal attorney, and develops and administers the budget.

Many managers also assist with coordinating communications between the various boards, and serve as the municipality's media contact – a role that allows the manager to frame the discussion about land use planning and regulation in a community, under the direction of the legislative body.

Some municipalities have adopted municipal charters that transfer some of the duties of a municipal manager to a municipal administrator. Others have written job descriptions that specify that the municipal administrator serves as the chief administrative officer of the municipality and supervises all staff. Still other municipalities have written job descriptions that do not establish the administrator as the chief

[19] Planning commissioners may also be elected.

[20] As an alternative, state law also allows voters to act on municipal plan and bylaw adoption and amendments, as discussed in chapter IV.

[21] 24 V.S.A. § 4322.

3 Planning for a Vibrant Community

In its most basic form, municipal planning is the process of assessing current conditions in the community, envisioning a desired future, and charting a course towards that desired future. Just as we plan as individuals, families, and businesses, it is likewise important to plan as a community.

Many municipalities discover the need to plan when changes are occurring. While there is no bad time to begin planning for your community's future, many local officials have found that some of the best opportunities exist when changes are pending but have not yet begun in earnest.[31] Whenever the planning process occurs, a well-facilitated process will offer participants unique opportunities to influence changes in the appearance, economy, and quality of life in their community.

Just as we plan as individuals, families and businesses, it is likewise important to plan as a community.

Both challenges and opportunities will vary from community to community. While some communities experience development pressure, others struggle to attract employers; some communities seek to protect an active and historic downtown, while others propose new growth centers. Thus, whether a community is in a period of expansion, retraction, or relative stability, establishing an engaging, participatory planning process is critical to its long-term vitality. To this end, this chapter explores both the legal and practical requirements for facilitating an effective municipal planning process

A. The Municipal Planning Process

The municipal plan[32] is the visionary document that assesses the current status of a community and lays out a vision for the future. Although the plan itself is the final document, there is as much or more value in the process of engaging stakeholders along the way. One way to analyze the local planning process is to view it as a series of steps.[33] Those steps include the following.

1. **Formulating the planning program**, where planners design the program for seeking public participation, developing or amending the plan and identify sources for technical assistance.
2. **Collecting and analyzing background information**, which is a preliminary assessment of the community's aspirations, problems, and opportunities.
3. **Establishing goals and objectives** related to housing, transportation, public infrastructure and more;
4. **Outlining recommended actions** to achieve the goals and objectives.
5. **Creating an implementation program**, which defines the specific actions the community will take to achieve the plan's goals and objectives, which may include both non-regulatory and regulatory activities.
6. **Adopting the plan**, which usually occurs by vote of the municipality's legislative body.
7. **Implementing the plan**, where both regulatory and non-regulatory measures are implemented to carry out the goals and recommendations of the plan.
8. **Evaluating the plan and planning program**, which results in the cycle starting anew.

[31] *The Small Town Planning Handbook*, Thomas L. Daniels, American Planning Association, 1995.

[32] The municipal plan is also sometimes termed the town plan, comprehensive plan, or master plan.

[33] For more information, see the *Planning Manual for Vermont Municipalities*, Vermont Department of Housing & Community Affairs (2000).

municipal plan.[29] Advisory commissions must have at least three members, all of whom are appointed by the legislative body.

The most common advisory commissions are conservation commissions, historic preservation commissions, design review commissions, and housing commissions. More than a third of Vermont towns have established conservation commissions, which have authority to educate and plan for, protect and administer the public lands and natural resources of the municipality.[30] Many advisory commissions have also been established to deal with historic districts or areas designated as "design control districts," which are areas of unique historic, cultural or architectural value that the community has decided (or may be in the process of deciding) should be subjected to more intensive planning and regulatory review.

Regardless of which type of advisory commission is being created, the role of the commission must be carefully delineated by the legislative body in the resolution or bylaw creating the entity.

K. Municipal Attorney

While the municipal attorney is not a mandatory position, most municipalities find that the position plays a key role in the local land use planning and regulation process. The municipal attorney can guide the municipality through the labyrinth of laws and cases that impact municipal decision-making in both the planning and regulatory phases of the land use program. In particular, the attorney can review proposed plan and bylaw amendments for consistency with state and federal law, and make recommendations based on trends in land use law. Finally, the municipal attorney plays a key role in enforcing any regulatory tools that may be adopted and advising the legislative body on litigation that arises from the bylaws.

[29] 24 V.S.A. § 4433.

[30] 24 V.S.A. Ch. 118.

H. Regional Planning Commission

The General Assembly first envisioned the creation of regional planning commissions (RPCs) in 1957[27] and RPCs now serve every town in the state. Regional planning commissions play a critical role both in land use policy and implementation at the local, regional and state levels. They are staffed by professionals with training in land use, transportation, emergency management and watershed planning, as well as geographic information systems mapping, brownfields planning and other areas of expertise. Each commission is governed by a board of commissioners comprised of representatives from each participating municipality.

The RPCs have multiple roles in the context of local planning. In order to qualify for some state grant funding, municipal plans must be approved by the regional planning commission. In addition, regional commission staff frequently provide extensive technical assistance to local planning commissions in drafting municipal plans and bylaws as well as other local regulatory and non-regulatory documents. Other tasks regional planning commissions may perform include coordination of local and regional mapping projects, and participation in state-level reviews, such as Act 250 or Section 248 proceedings (the certificate of public good process for electric generation and transmission facilities).[28] For a link to each of the eleven regional planning commissions, visit www.vapda.org.

I. Consultants

An often significant player in community land use planning is the expert consultant. Planning consultants play a valuable role in providing expert drafting of municipal plans, bylaws and other regulatory documents. Local land use officials often look to planning consultants to deal with unique planning issues in their municipalities, such as putting together a master plan for a piece of property, traffic planning for a failing intersection or finding creative ways to revitalize a downtown.

Typically, consulting planners work closely with the local planning commission. The planning commission's role in this context is to understand the community, what its needs are, and to hold public hearings to solicit public input in the planning process. The planning consultant can then distill this information into a usable municipal plan or regulatory document to fit the community's vision for its future. An effective consultant will be able to work well with the planning commission, the legislative body and with the public, and will have the ability to translate information gleaned from this collaborative process into a municipal plan, bylaw or other implementation tool. For a list of planning consultants, contact the Vermont Department of Housing and Community Affairs (see contact information on back cover).

J. Advisory Commissions and Others

Another type of municipal body that can play an important role in local planning and regulation is the advisory commission. An advisory commission may counsel the appropriate municipal panel, legislative body, applicants, and interested parties on matters ranging from municipal plan and bylaw amendments to development applications. Oftentimes, communities with historically significant properties, important natural features, unique housing pressures, or other special concerns create an advisory commission to assist the legislative and quasi-judicial boards with their functions.

Advisory commissions (sometimes called committees) have broad authority and may engage in any activity that assists the legislative body or planning commission with preparing, adopting, and implementing the

[27] 1957, No. 286.

[28] 24 V.S.A. § 4345a.

Accountability of Land Use Officials

While removal of local land use officials is not common, it happens from time to time, and there are various rules on removal that board members should be aware of.

Rules for Removal

Most board members are appointed for a set term. If there is no re-appointment at the expiration of such term, the board member is technically no longer a member of the board. This, however, does not constitute "removal." Actual removal of board members is subject to the requirements of state law.

- Appointed planning commissioners can be removed at any time, for any reason, or for no reason at all, so long as there is a unanimous vote of the legislative body.[22] Elected planning commissioners cannot be removed from office.
- The legislative body may only remove Development Review Board or Zoning Board members for cause, after notice and a hearing.[23]
- The legislative body may only remove the administrative officer for cause and after consultation with the planning commission.[24]
- The requirement that there be cause to remove the administrative officer or a member of an appropriate municipal panel requires the legislative body to hold a hearing where the individual has an opportunity to present his or her side of the story.[25]

administrative officer, but rather as the principal assistant to the legislative body without the day-to-day management responsibilities. Unlike the municipal manager form of government, which is statutory, the administrator form varies significantly among municipalities.

G. Municipal Clerk

In many Vermont municipalities, the municipal clerk is the most visible elected official. As such, he or she is expected to understand all aspects of municipal business, from dogs running at large to land use. The municipal clerk is required by law to be the receiver and recorder of the town's archives. The clerk records deeds related to real estate and private property transactions and files vital statistics information records relating to municipal business. Municipal clerks are elected by the voters and are independent of the legislative body, the AMP, and the municipal manager.

While many of the municipal clerk's duties and responsibilities are clearly defined in state statute, others, such as receiving telephone inquiries dealing with anything from the next selectboard meeting to landfill hours, are a result of custom. Within the land use realm, the municipal clerk's duties include conducting votes on plans and bylaws when required, certifying plans and bylaws, and serving as the custodian of public records such as subdivision plats and hearing minutes. For a checklist on certifying the municipal plan and bylaws, see www.vpic.info under "Plan and Bylaw Adoption Tools."

When a local land use decision is appealed, the clerk is also responsible for supplying the list of interested persons to the appellant unless the administrative officer has been designated in the bylaws.[26] For more information on appeals, see Chapter 5: "Procedural Issues."

[22] 24 V.S.A. § 4323(a).

[23] 24 V.S.A. § 4460(c).

[24] 24 V.S.A. § 4448(a).

[25] Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

[26] 24 V.S.A. § 4471(c).

Municipal Plan:

...the visionary document that assesses the current status of a community and lays out a vision for the future.

Although these steps appear very linear and orderly, all planners must accept that, by design, the planning process requires a lot of participation by diverse stakeholders and is inherently a political process. Land use issues evoke strong emotional responses about the rights of property owners and the rights of governments to regulate the use of private property in order to protect the public interest. Moreover, land use planning is frequently intertwined with other public policy issues, such as tax policy, transportation policy, and aesthetic considerations. As a result, land use planning can sometimes challenge the patience of those involved. Those who engage in the process, however, have a unique opportunity to ensure their community remains (or becomes) a vibrant and livable community.

Given the weight of matters under consideration, and the vigor with which individuals may respond to issues in their community, it is important for local planners to provide ample and creative opportunities for community members to weigh in. A golden rule of community planning is to include the public and interested parties at every possible step in the process. Even if certain constituencies are not happy with the final plan, they will be much more satisfied if they feel their opinions have been heard during development of the plan.

B. Public Participation in Local Planning

The planning commission is not the only entity that plans. Others can and should be involved in the process, which means the planning commission must actively solicit input and assistance from others, including members of the public, the local legislative body, other municipal officials such as the AMP and administrative officer, the local chamber of commerce, citizen groups, etc. Vermont's planning processes place a significant emphasis on the involvement of citizens in local, regional, and state planning.

... by design, the planning process requires a lot of participation by diverse stakeholders and is inherently a political process.

While not everyone will be interested in contributing to the planning process, the planning commission should foster an attitude of openness and be creative in developing methods that will encourage as many people as possible to participate. One of the most effective strategies for engaging the public in the process is the community visioning session.

A community visioning session brings large numbers of community members together to involve the public, facilitate collaboration, and provide local planners with valuable input on the values, priorities, needs, and concerns of the community. Often such an event will find planners and citizens working together in groups, conversing in an unstructured manner about important community issues.[34] A unique strength of the visioning process is that it provides the direct face-to-face communication that can be hard to find in other forms of citizen participation. A visioning session is most effective at assessing community values and other broad themes and is best used when the objective is determining broad goals and directions for the community.

Another strategy for public participation is the community planning survey. Planning surveys offer local planners a number of strengths that are not found in the community visioning sessions, including: a higher degree of control over the subject matter, increased confidentiality, and an opportunity to hear from

[34] *Community Visioning Events*, Center for Rural Studies, University of Vermont, 2004. Available at www..vpic.info.

individuals who were not able to attend a public hearing or community visioning session. A weakness is the lack of face-to-face communication and an inability of participants to benefit from the perspective of others.

In addition, technology can help engage citizens in the process. A virtual bulletin board, an email listserv of people interested in the process, web posting of the latest drafts of documents and an email address or website where citizens can send comments can significantly enhance the ability of citizens to participate in the process. (Note, however, that Vermont's Open Meeting law does not allow a website to serve in place of a bulletin board or newspaper for public notice; therefore, you can use a website *in addition to* the primary methods of notice for public hearings, but not *instead of*.)

While there are many different strategies for including the public, involving the public early in the process is critical for the credibility of the program. A citizenry that feels involved in the planning process will have a greater stake in the outcome, which will give legitimacy and public confidence to the process.

For more information on citizen participation strategies, visit www.vpic.info or contact UVM's Center for Rural Studies. For additional information on conducting public hearings, see Chapter 6: "Conducting Effective Meetings and Hearings."

Community Visioning Event Example: *Randolph, Vermont*

Vital Communities' Community Profile Process was used in Randolph, Vermont in 2001. Approximately 150 people attended the visioning weekend entitled, *Our Town, Your Town*. Planning for the event was guided by a local steering committee of as many as 40 community members.

The professional facilitators from Vital Communities were obtained with the help of a grant from the Vermont Department of Housing and Community Affairs.

During the event, participants enjoyed the following:

- Free lasagna and other food
- Local speakers
- Town data presented by the regional planning commission
- A barbershop quartet
- Various door prizes

After ten hours of discussion, the following concerns emerged:

- improving the downtown
- getting more tourist dollars
- keeping young people involved
- more community information
- developing options around the interstate

By the end of the event, dates for committee meetings on each of these topics had been decided.[35]

C. State Planning Goals

As discussed above, the local planning process should include all stakeholders and truly reflect local needs and priorities. However, municipal plans are also creatures of statute and are a prerequisite to adopting any land use regulations. Accordingly, state law establishes goals for both the process and content of municipal planning.[36] (These same goals apply to both the regional and state planning processes as well.)

Chapter 117 also contains 13 specific "content" goals (often referred to as the State Planning Goals) that reflect policy objectives that should be pursued throughout the local and regional planning process.

[35] *Id.*

[36] See 24 V.S.A. § 4302 for the complete text.

The State Planning Goals can be summarized as follows.

1. Plan development to maintain historic settlement pattern of compact village and urban centers.
2. Provide a strong and diverse economy.
3. Broaden access to educational and vocational training opportunities.
4. Provide safe, convenient, economic, and energy efficient transportation systems.
5. Identify and preserve important natural and historic features.
6. Maintain and improve quality of air, water, and wildlife, and land resources.
7. Encourage efficient use of energy and development of renewable energy resources.
8. Maintain and enhance recreational opportunities for Vermont residents and visitors.
9. Encourage and strengthen agricultural and forest industries.
10. Provide wise and efficient use of natural resources.
11. Ensure availability of safe and affordable housing.
12. Provide an efficient system of public facilities and services.
13. Ensure the availability of safe and affordable child care.

The Process Goals

The "process" goals reflect "*... the intent of the Legislature that municipalities, regional planning commissions, and state agencies shall engage in a continuing planning process that will further the following goals*:

1. *To establish a coordinated, comprehensive planning process and policy framework to guide decisions by municipalities, regional planning commissions and state agencies.*
2. *To encourage citizen participation at all levels of the planning process, and to assure that decisions shall be made at the most local level possible commensurate with their impact.*
3. *To consider the use of resources and the consequences of growth and development for the region and the state, as well as the community in which it takes place.*
4. *To encourage and assist municipalities to work creatively together to develop and implement plans.*"[37]

Throughout the statutory language and procedural requirements of Chapter 117, these process goals continually emerge and serve as reminders of the General Assembly's aspirations for the local planning process.

These 13 goals are designed to steer planning activities at all levels of government, from local and regional to state agency planning. On a practical level, state law requires local plans to be consistent with the state planning goals in order to be approved by the regional planning commission.[38]

D. Required Elements of a Municipal Plan

While the municipal plan is written and adopted by local officials with community goals in mind, Vermont law establishes ten elements that, at a minimum, must be included in the plan in order for the plan to be approved by a regional planning commission.[39]

Beyond these ten elements, municipalities have significant flexibility in determining the scope and content of the plan. For example, additional topics may address health care facilities, community "walkability," economic development strengths and weaknesses, redevelopment of contaminated properties and others.

[37] 24 V.S.A. § 4302(b).

[38] See 24 V.S.A. § 4302 for the complete text.

[39] Municipal plans must be approved by the regional planning commission for the municipality to be eligible to receive municipal planning grants through the Vermont Department of Housing and Community Affairs. 24 V.S.A. § 4350(b).

Municipal Plan - Required Elements

1. A statement of the objectives, policies and programs of the municipality
2. A land use plan (map and statement)
3. A transportation plan (map and statement)
4. A utility and facility plan (map and statement)
5. A statement on the preservation of rare and irreplaceable natural areas, scenic and historic features and resources
6. An educational facilities plan (map and statement)
7. A recommended program for the implementation of the plan
8. A statement of how the plan relates to plans and development trends of neighboring communities and the region
9. An energy plan
10. A housing element[40]

While municipalities are not required to adopt a municipal plan, a plan is required prior to the adoption of any land use regulations.[41] Once adopted, the plan will expire after five years unless readopted or amended. Upon the expiration of a plan, all bylaws and programs shall remain in effect but may not be amended until a plan is adopted.[42]

For more information on the process of adopting and amending the municipal plan, see Chapter 5: "Procedural Issues."

E. The Regional Planning Process

In addition to providing technical assistance to local planning commissions and appropriate municipal panels, regional planning commissions are charged with preparing and updating a regional plan every five years. The regional plan must address the same planning goals as local plans, and has similar required elements.[43]

Regional plans are approved by each region's board of commissioners for the general purpose of "guiding and accomplishing a coordinated, efficient and economic development of the region which will, in accordance with the present and future needs and resources, best promote the health, safety, order, convenience, prosperity and welfare of the inhabitants as well as efficiency and economy in the process of development."[44]

One of the regional planning commission's most important planning functions is to harmonize local plans with the regional plan. The regional planning commission must approve a plan if it finds that the plan is compatible with the planning goals established in 24 V.S.A. § 4302, is compatible with the regional plan and the approved plans of other municipalities in the region, and contains all of the

Regional Plan - Required Elements

1. A statement of the basic policies of the region
2. A land use element
3. An energy element
4. A transportation element
5. A utility and facility element
6. A statement of policies on preservation of rare natural areas
7. A program for the implementation of the plan
8. A statement indicating how the regional plan relates to development trends
9. A housing element that identifies the need for housing for all economic groups within the region[43]

[40] See 24 V.S.A. § 4382(a) for a complete list of plan elements required by State law.

[41] 24 V.S.A. § 4410.

[42] 24 V.S.A. § 4387(c.)

[43] 24 V.S.A. § 4348a.

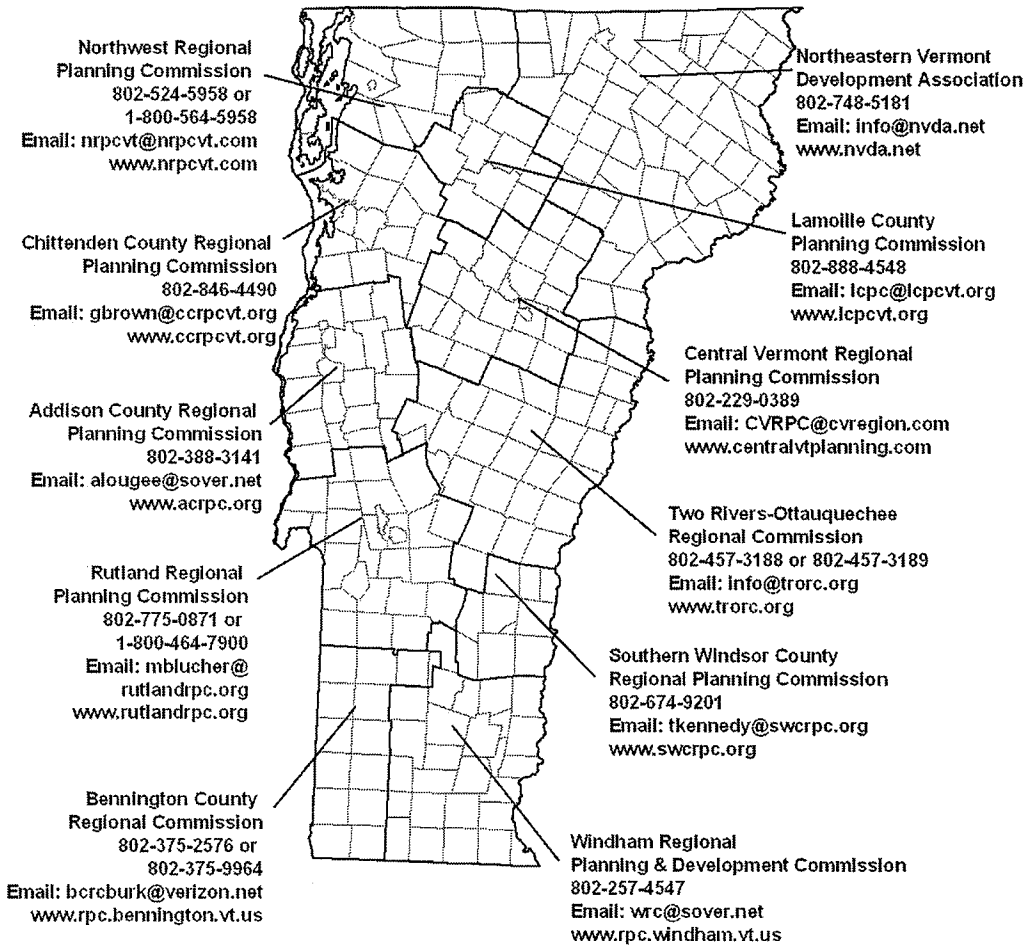
[44] 24 V.S.A. § 4347.

required elements discussed above. If the plan is not approved, it is still in effect.[45] However, an approved plan allows the municipality to attain village or downtown designation[46] and requires state agencies to consider the municipal plan in their planning and development efforts.[47]

For more information on the connections between the local, regional, and state planning processes, contact the municipality' s regional planning commission.

Contact Information

Regional Planning Commissions



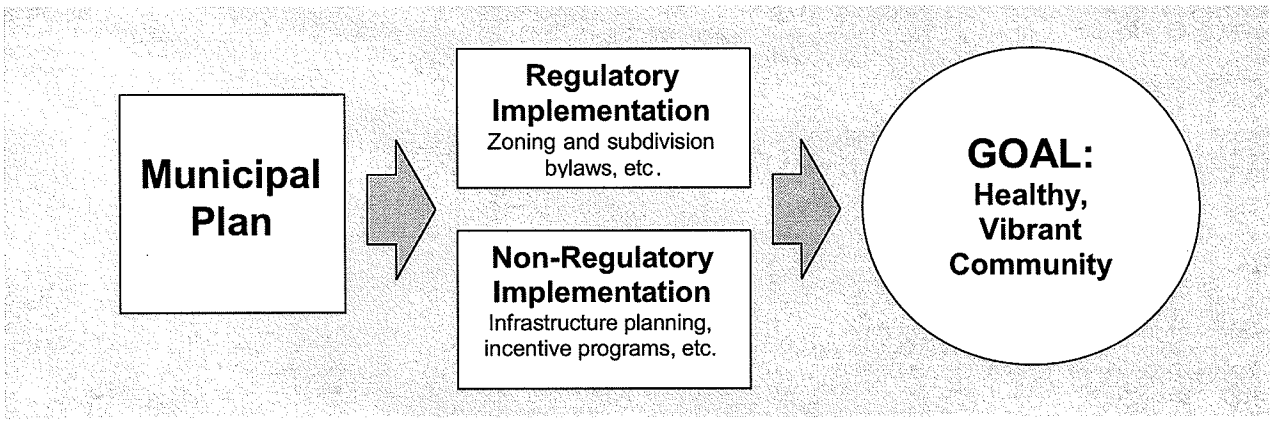
[45] 24 V.S.A. § 4387(d).

[46] 24 V.S.A. Chapter 76A.

[47] 3 V.S.A. 4020(a).

4 Implementing the Plan: Regulatory and Non-Regulatory Options

Any municipality that has created a planning commission and has a municipal plan in effect may implement the plan by adopting both regulatory and non-regulatory tools. Though the most common method of implementing the plan is to establish regulations, over-reliance on regulatory methods can hinder positive measures to shape the pattern of development. This chapter explores both non-regulatory and regulatory options for implementation of the municipal plan.



A. Non-Regulatory Implementation of the Municipal Plan

Either in addition to or instead of using a regulatory hook, municipalities can use non-regulatory tools to implement the plan. Chapter 117 lists some possible non-regulatory tools, including capital budgeting and tax increment financing districts, but municipalities are not limited to the statutory list; any program or initiative that furthers the purposes of the plan is an implementation tool. For example, if expanding business opportunities in a downtown is a goal of the plan, the planning commission might work with local businesses to develop a common marketing theme or work with the legislative body to appropriate money for sidewalks in the downtown.

A land use program can reach its fullest potential by incorporating non-regulatory options in addition to regulatory programs.

One very effective non-regulatory tool is planning for capital improvements. Capital improvement planning is the process of planning for necessary investments in public infrastructure (land, buildings, facilities, and equipment) in order to continue to provide the desired level of service.

Though capital planning is arguably as much about financial management as it is about land use planning, its inclusion in Chapter 117 as a non-regulatory tool serves a prominent reminder that the placement of public infrastructure is a powerful tool for shaping land development and must be done with consideration of the municipal plan. For example, municipalities can significantly influence where development occurs by planning for the wastewater treatment needs of future development. Wastewater treatment continues to be an expensive component of land development; thus, developers will be more likely to build in areas where municipal wastewater treatment is either available or is planned.

Chapter 117 defines a capital budget as the set of capital projects proposed for the coming fiscal year and a capital program as the plan of projects to be undertaken during each of the following five years. Together, they are frequently referred to as a Capital Improvement Program (CIP), which has a combined six-year cycle. Chapter 117 requires that the CIP indicate the order of priority of each capital project and state each project's estimated cost, proposed funding source, and whether or not it will have an impact on annual operating costs.[48]

Non-regulatory components are essential tools for effective land use planning. A land use program can reach its fullest potential by incorporating non-regulatory options in addition to regulatory programs like zoning and subdivision regulations.

For more information on additional non-regulatory tools that can help implement the municipal plan, see the *Implementation Manual* published by the Vermont Land Use and Education Collaborative. It's available at www.vpic.info.

Examples of Non-Regulatory Tools

Tax increment financing – can be used to fund projects within a discrete area of the municipality, such as sidewalks, increased police presence, or a parking garage.

Tax stabilization contracts – can help a municipality promote development in the community by certain businesses or types of businesses.

Purchase or acceptance of development rights – can assist a municipality in preserving undeveloped land.

Plans supporting the municipal plan – sub-plans providing greater detail about issues of particular concern such as affordable housing or particular locations such as a village or growth center.

Advisory commissions – can assist other municipal officials in addressing issues like affordable housing, historic preservation, design review and conservation.

B. Regulatory Implementation of the Municipal Plan

The method most often employed for implementing the plan is to establish regulations that carry out the plan's goals. However, many local planning commissions find they can improve their effectiveness through a combination of both regulatory and non-regulatory tools. This section will focus on some of more familiar regulations enacted by municipalities across the state. Other regulatory tools, including unified development bylaws that combine all regulations such as zoning and subdivision into one document, are further detailed in the *Implementation Manual.*

1. Zoning Regulations

The most common regulatory tool used by local governments throughout the country to manage land use and development is zoning. State law authorizes zoning regulations that "govern the use of land and the placement, spacing, and size of structures and other factors specified in the bylaws related to public health, safety, or welfare."[49]

Typically, zoning bylaws will delineate one or more "zones" or districts within a community, as depicted on a zoning map. Zoning districts normally include dimensional and density standards that apply district-wide, or to particular types of use allowed within the district. Common district standards include minimum lot size, maximum density, minimum frontage, minimum setbacks, maximum height or maximum lot coverage. In addition, many zoning bylaws contain general standards that apply to any development regardless of the district in which it is located. General standards often include access and frontage requirements, parking requirements and sign requirements.

[48] 24 V.S.A. § 4430(b).

[49] 24 V.S.A. § 4411.

Within each district, bylaws will typically define the types of development (uses) and provide dimensional standards for structures that are allowed within the district. Listed uses typically include a mix of compatible, mutually supportive uses, which may be quite extensive in mixed-use districts. A few districts, however, may severely restrict allowed uses in order to avoid hazards, conserve natural resources or to accommodate resource-based industries such as agriculture and forestry. State law authorizes a wide range of zoning districts - including downtown and village center, rural residential, agricultural and shorelands districts - all of which may contain unique requirements as permitted by law and as necessary to implement the municipal plan.

In Vermont, nearly all zoning bylaws rely on categorizing uses in each district as either *permitted* or *conditional*, depending on their potential compatibility with the stated purpose of the district. "Permitted" uses only need to obtain a zoning permit from the administrative officer. "Conditional" uses must first obtain approval from the appropriate municipal panel as designated in the bylaws, after which the administrative officer must issue a permit.

Permitted Uses

A permitted use is often defined as any use that is or may be lawfully established in a particular district, provided it conforms to all of the requirements applicable to a district.[50] A common example of a permitted use is a single-family dwelling in a residential district. Many bylaws create districts where single-family homes are encouraged, and thus applications for single-family homes are not subjected to further development review. In such a case, the homebuilder still must go to the administrative officer to apply for a permit.

In reviewing such an application, the administrative officer has little discretion - the permit must be granted unless the proposal would violate dimensional requirements or other quantifiable standards in the bylaw, such as a setback requirement. Requiring a zoning permit for permitted uses not only helps ensure compliance with the municipal plan, it helps keep a record of land development for property assessment and taxation as well as for planning and policy-making purposes, and helps ensure clear title to property for conveyances.

Conditional Uses

Conditional uses must be reviewed by the appropriate municipal panel. The AMP will consider whether the proposed use will conform to the standards in the district and whether the proposal will have an "undue adverse affect" on the district and the community. State law provides general standards for making the undue adverse effect determination.

In addition to the general standards, conditional use bylaws may be supplemented by more specific criteria defined by the municipality, such as increased setbacks from streams in sensitive areas, and "any other standards and factors that the bylaw may include."[52] Unlike a permitted use, which must

General Standards - Conditional Use Review

The proposed conditional use shall not result in an undue adverse affect on any of the following:

- the capacity of existing or planned community facilities, such as schools or wastewater facilities;
- the character of the area affected by the proposal, which should be considered through the lens of the district purposes, and from the vision laid out by the town plan;
- traffic on nearby roads; and
- performance standards, such as restrictions on noise, odor, vibration, dust, and other standards specified in the bylaws.[51]

[50] *A Planner's Dictionary*, Davidson, Michael, and Fay Dolnick, American Planning Association (2004).

[51] 24 V.S.A. § 4414(3)(A).

[52] 24 V.S.A. § 4414(3)(B)(v).

be approved unless it violates one of the dimensional requirements of the district, a conditional use can only be approved if the AMP determines that the project will not have an undue adverse affect on the concerns listed above and described in greater detail in the local regulations.

Variances

Notwithstanding all of the hard work that goes into writing local regulations, state law requires appropriate municipal panels to hear requests for variances, which would grant permission to vary from the requirements of the bylaw in limited circumstances. State law allows variances to be granted only if all of the following five conditions are met:

Requests for variances are common... granting such requests should not be.

- there are unique physical circumstances or conditions;
- because of these physical circumstances, the property cannot be developed in strict conformance with the bylaws;
- unnecessary hardship has not been created by the applicant;
- the variance will not alter the essential character of the neighborhood; and
- the variance represents the minimum alteration that will grant the relief requested.[53]

Requests for variances are common; nevertheless, granting such requests should not be. It is difficult to meet the variance criteria, and few applicants can actually satisfy them, which puts boards in the uncomfortable position of denying an otherwise worthwhile project. Sometimes variances are granted because board members feel that a project is valuable, and the variance criteria are swept under the rug. This isn't good for the integrity of the zoning bylaw, or for the board granting the variance. Boards that seek a lower threshold for allowing applicants to depart from bylaw requirements should consider adopting waiver provisions, as discussed below. Boards faced with frequent requests for variances should consider whether the requirements of the bylaw are too restrictive, forcing frequent applications to be made for variances to make reasonable use of land. Such a situation should be communicated to the planning commission so that its members can determine whether an amendment to the bylaw is necessary.

Boards faced with frequent requests for variances should consider whether the requirements of the bylaw are too restrictive... Such a situation should be communicated to the planning commission...

Waivers

Legislation adopted in 2004 allows municipalities to grant "waivers" to reduce dimensional requirements in accordance with specific standards in the bylaw.[54] As envisioned, waivers would be used only to provide relief from dimensional requirements in certain situations spelled out in the bylaws and would permit mitigation of a compliance problem through screening, design, or other remedy. Enacting waiver bylaws allows municipalities to preserve the integrity of their bylaws and avoid the pressure to approve an otherwise valuable project by issuing a variance. In order to enact a waiver provision in a local bylaw, the municipality must define the process by which waivers may be granted and appealed.

Zoning bylaws work well for many communities and are a common regulatory tool for implementing the municipal plan. However, many other regulatory tools may be used in addition to or instead of zoning to implement the plan. Some communities, particularly those without significant growth pressure, may choose

[53] 24 V.S.A. § 4469(a).

[54] 24 V.S.A. § 4414(8).

not to adopt zoning bylaws, and adopt only those regulations that address their unique challenges. Two of the most common regulations are site plan review and subdivision, which may be adopted with or without zoning.

2. Site Plan

Site plan review is conducted by an appropriate municipal panel and typically focuses on commercial and industrial development projects. Site plan review is not intended for evaluating the suitability of the use but rather on how the exterior improvements will fit in with the surrounding properties and plan for the area. State law provides authority to impose appropriate conditions on applications, so long as those conditions are consistent with the local regulations.

Site plan review may be required for all uses, including permitted uses, except for single- and two-family dwellings which, by statute, are exempt from site plan review.[55] If a municipality has adopted zoning, site plan criteria can also be incorporated into the conditional use review so that a project that normally would have been required to undergo both site plan and conditional use review will only go through one consolidated review process.

Site Plan Review Standards

In reviewing site plans, the appropriate municipal panel may impose conditions consistent with the following:

- adequacy of parking;
- traffic access;
- circulation for pedestrians and vehicles;
- landscaping and screening;
- the protection and utilization of renewable energy resources;
- exterior lighting;
- the size, location and design of signs, and
- other matters specified in the bylaws.[55]

3. Subdivision

While site plan regulations address the way a particular lot is developed, subdivision regulations control the pattern of development - the way land is divided up to accommodate uses and supporting infrastructure such as roads and utilities. Subdivision review is conducted by the appropriate municipal panel as specified in the regulations. Subdivision regulations may be adopted in the absence of zoning, but are most effective when tied to related dimensional and density requirements typically found in zoning regulations.

In the simplest sense, subdivision regulations are meant to ensure that the division of land into smaller units results in lots or parcels that are useable, safe and reflect the physical characteristics of the site. In practice, subdivision regulations can be used to ensure that:

- new lots are laid out according to local standards - to avoid the creation of nonconforming or oddly shaped lots and, where appropriate (e.g., within downtown, village or historic districts), to reflect traditional settlement patterns;
- each lot has adequate access for its intended use and, where appropriate, for emergency vehicle access;
- new roads, sidewalks and pedestrian paths, whether public or private, effectively connect to existing and planned roads in the surrounding area;
- there is adequate provision for potable water supply, wastewater treatment/disposal and stormwater management systems, and park or recreation areas, and that these and other utilities and improvements are provided in a timely and efficient manner; and
- significant natural, cultural and scenic features are protected.

It's not uncommon for subdivision regulations to differentiate between small or "minor" subdivisions (e.g., of fewer than four lots) and larger, "major" subdivisions; and to establish abbreviated review procedures for smaller projects.

[55] 24 V.S.A. § 4416.

Many subdivision regulations call for a two- or three-step process that includes the following.

Sketch Plan Review, an informal, conceptual or pre-application review that allows the subdivider and review panel to explore different approaches to subdivision design, and to offer some indication that a proposal can be developed in conformance with applicable local regulations.

Preliminary Subdivision Review, intended to provide the review panel with more specific information to determine conformance with local regulations, and to provide additional guidance to the subdivider before the submission of a final application.

Final Subdivision Review, to include final subdivision plan and plat approval, to ensure that the proposed subdivision conforms to all applicable regulations and, where applicable, adequately addresses issues raised during preliminary review.

Subdivision regulations typically refer to applicable zoning standards to regulate lot size and density. In some cases, however, a municipality will decide that effective implementation of its municipal plan calls for more flexibility in the design of subdivisions - for example, to conserve open space, protect natural or scenic resources or to allow for higher densities of development to make affordable housing viable. For this purpose, state law allows local bylaws that include provisions for "planned unit developments" which, when applied concurrently with zoning regulations, allow for the modification or waiver of applicable dimensional requirements. Planned unit development provisions may include additional density and design standards that vary by the type(s) of development proposed, or the zoning district(s) in which developments are located.

Required Provisions for Subdivision Review

State law specifies that subdivision bylaws must contain the following:

- procedures and requirements for design, submission and processing of plats; [56]
- standards for the design and layout of all public facilities;
- standards for the design and configuration of parcels or lots; and
- standards for the protection of natural and cultural resources and open space.[57]

4. Required Provisions and Limitations on Authority

Chapter 117 grants municipalities broad authority to regulate land development in local bylaws. However, such authority is not limitless. Chapter 117 also contains certain "required provisions and prohibited effects."[58] These provisions require equal treatment of housing, prescribe procedures for small lots, and define how municipalities may regulate childcare homes and facilities, among others.[59] In addition, state law specifies that certain uses may only be subjected to limited types of regulations and only to the extent that regulations do not interfere with the intended functional use. Some of these uses include educational institutions, hospitals, and solid waste management facilities.[60]

[56] Though not defined in Chapter 117, the most relevant definition for a "plat" can be found in Act 250, which defines it as "a map or chart of a subdivision with surveyed lot lines and dimensions." 24 V.S.A. § 6001 (12).

[57] 24 V.S.A. § 4418(1).

[58] 24 V.S.A. § 4412.

[59] *Id.*

[60] For more information on required provisions and prohibited effects and the limitations on local bylaws, see 24 V.S.A. §§ 4412, 4413.

More on Regulatory Options

For more information on regulatory tools for implementing the municipal plan, see the *Implementation Manual* published by the Vermont Land Use and Education Collaborative, available at www.vpic.info.

5. Flood Hazard Regulations

As discussed above, some municipalities choose not to adopt zoning or other regulations. Nevertheless, the Federal Emergency Management Agency requires that there be municipal flood hazard regulations before insuring properties located in flood hazard areas. Therefore, many municipalities without regulatory implementation tools will have a freestanding flood hazard bylaw, which allows flood insurance for properties located within flood hazard areas.[61] Some provisions of zoning, such as variance provisions, must be applied to Flood Hazard Regulations and other freestanding bylaws. Municipalities with a zoning bylaw commonly incorporate flood hazard regulations into the bylaw.

[61] For more information on flood hazard regulations, see 24 V.S.A. § 4424.

5 Procedural Issues: Adoption, Amendment, Enforcement & Appeals

Local officials are typically drawn to land use matters because of a concern over outcomes; they see an unmet need in the community or are concerned over a pattern of development. However, local officials must also have a firm understanding of procedural issues as well. Many legal appeals and local conflicts among boards turn (or are overturned) on questions of procedure. For this reason, it is critical that local boards and officials follow protocol and are mindful of their distinct roles throughout the process.

This chapter will explore the procedural issues related to adoption and amendment of the municipal plan and bylaws, enforcement of bylaws, appeals of administrative officer decisions, and appeals of AMP decisions.

A. Adoption and Amendment of the Municipal Plan

State law strictly prescribes the process that municipalities must go through to adopt a plan. Any plan must be prepared by the planning commission, which is required to "solicit the participation of local citizens and organizations by holding informal working sessions that suit the needs of local people."[62] When considering an amendment to a plan - either of its own creation or as submitted by a person or body other than the commission - the planning commission must prepare a written report on the proposal which addresses the extent to which the proposed amendment complies with the planning goals found in 24 V.S.A. § 4302 and discussed in Chapter 3 of this manual.[63]

The planning commission is required to hold at least one public hearing on the proposed plan or amendment after public notice.[64] At least 30 days prior to the first hearing, a copy of the proposed plan or amendment and the written report must be delivered (with proof of receipt or certified mail) to the individuals listed in 24 V.S.A. § 4384(e). After holding one or more hearings, the commission may forward the plan or amendment to the legislative body (selectboard, city council or village trustees).[65] Once the planning commission has sent the plan to the legislative body, the legislative body has between 30 and 120 days to hold at least one public hearing. If a town has more than 2,500 residents, the legislative body must hold at least two hearings.

... municipalities are encouraged to involve the public from the beginning of the process through various informal means rather than waiting for the statutory public hearings.

While the statutes require minimal hearings for both the planning commission and legislative body, many municipalities choose to hold multiple hearings in order to obtain the participation and buy-in they desire from the community. As discussed in Chapter 3, municipalities are encouraged to involve the public from the beginning of the process through various informal means rather than waiting for the statutory public hearings.

After receiving the plan from the planning commission, the legislative body has the authority to make any change it wants to it.

[62] 24 V.S.A. § 4384(a).

[63] 24 V.S.A. § 4384(c).

[64] 24 V.S.A. § 4384(d).

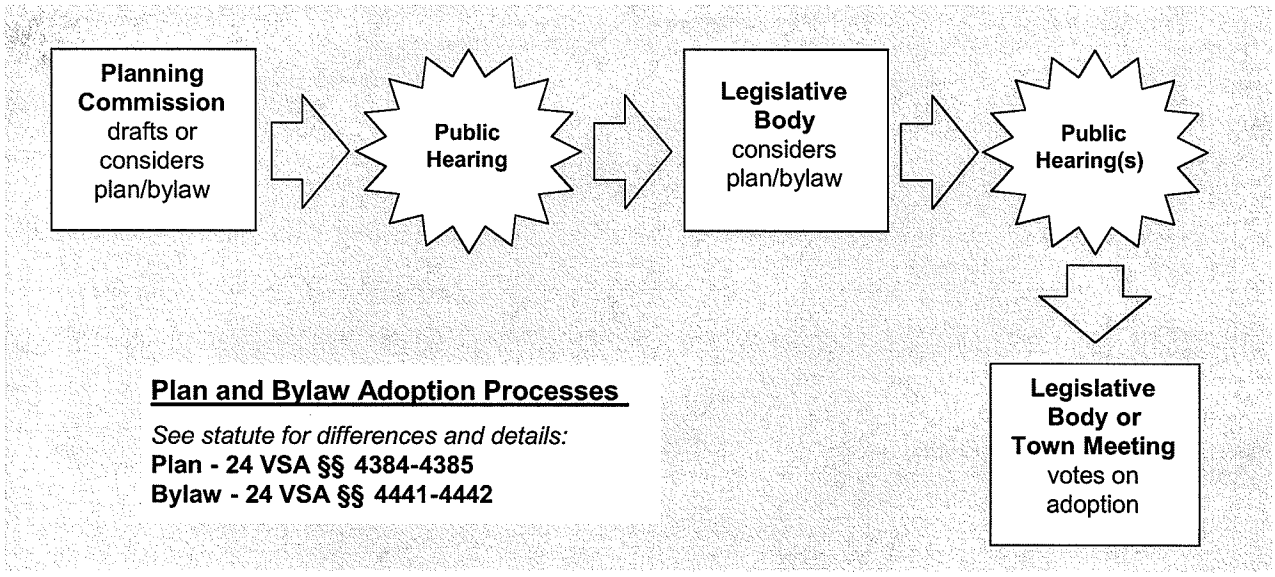
[65] 24 V.S.A. §§ 4384(d) and (f).

However, if the legislative body seeks to change the plan, it cannot do so fewer than 15 days prior to the final public hearing. Additionally, if the legislative body makes any changes in the proposal, it must file a copy of the changed proposal with the municipal clerk, with any member of the public requesting a copy, and with the planning commission. At this point, the planning commission must draft a report for the legislative body - to be presented at or before the public hearing - that analyzes the extent to which the changed proposal is consistent with the municipal plan and the required elements.[66]

After the public hearing, the legislative body may vote by a majority of its members to approve the plan. Unlike the adoption of bylaws (see below), there is no authority for the voters to petition for a vote on the plan after the legislative body has acted. However, the voters can decide to approve municipal plans by Australian ballot if they decide to do so at a regular or special town meeting which occurs before the legislative body has voted on the plan. An Australian ballot is a uniformly printed ballot, typically confined to a secret vote on a specified office or question.[67] The Australian ballot procedure then applies until rescinded by the voters at a regular or special municipal meeting.[68]

B. Adoption and Amendment of Bylaws (Regulations)

If regulatory tools are needed to implement the municipal plan, the planning commission drafts the bylaws much like it does the municipal plan. When considering an amendment to a bylaw, the planning commission must prepare and approve a written report on the proposal. The written report must include findings regarding the proposed bylaw's furtherance of the goals of the municipal plan, its compatibility with proposed uses and densities and how it carries out specific proposals for any planned community facilities. This report is important because it demonstrates the required conformance between the plan and proposed bylaw. At least 15 days prior to the first hearing, a copy of the proposed bylaw and the report must be delivered to the planning commission chair of each adjoining municipality, the executive director of the regional planning commission, and to the Vermont Department of Housing and Community Affairs.



[66] 24 V.S.A. § 4385(b).

[67] 17 V.S.A. § 2103(4).

[68] 24 V.S.A. § 4385(c).

After holding at least one hearing on the proposed bylaw, the bylaw is then forwarded to the legislative body for further review and adoption. Once this happens, it becomes the legislative body's role to hold at least one (in municipalities with a population of 2,500 or less) public hearing on the proposed plan or amendment. For municipalities with more than 2,500 residents, the legislative body must hold at least two public hearings. The legislative body has the authority to make "minor" changes to the proposal, but cannot do so fewer than 14 days prior to the final public hearing. (Note that the term "minor" is not defined.) Any time the legislative body makes "substantial" (another undefined term) changes in the proposal, it must hold a new public hearing on the proposal. A copy of the changed proposal must also be filed with the clerk of the municipality and with the planning commission, which is then charged with amending its final report to the legislative body concerning the proposal's conformance with the municipal plan.

After the final public hearing, the legislative body may adopt the bylaw at a meeting. It takes effect 21 days after adoption, unless the electorate files a petition for an Australian ballot vote within 20 days. As an alternative to adoption by the legislative body, the legislative body or the electorate may vote to adopt bylaws via Australian ballot.[69]

Help with Plan and Bylaw Adoption

Plan and bylaw adoption tools including checklists, clerk's certificates and reporting forms are available at www.vpic.info.

C. Enforcement of Local Bylaws

The only local official directly responsible for enforcing local bylaws and regulations is the administrative officer (zoning administrator, or ZA). Vermont law requires the officer to "administer the bylaws literally and [the officer] shall not have the power to permit any land development that is not in conformance with those bylaws."[70]

The enforcement process is often initiated when neighbors call the municipal office to complain. This phone call does not impose a mandate on the administrative officer to investigate, but it does call for the officer to take appropriate action in light of the office's staffing capacity and the municipality's resources to pursue violations. The administrative officer should keep in close contact with the legislative body (selectboard, city council or village trustees), which provides the funding for the land use program, to keep that board apprised of the need for enforcement in the community. Having initiated a regulatory program, it is important that the legislative body adequately fund the program, including paying for enforcement proceedings.

Once the administrative officer has initiated the enforcement process, the landowner will hopefully come into compliance with the permit or bylaw without any further municipal action. Nevertheless, the administrative officer may need to pursue further enforcement to bring a violator into compliance. Before pursuing enforcement, the administrative officer should contact the town attorney for guidance in how to proceed. The attorney will counsel the officer on whether to continue with the administrative enforcement process, or whether it is appropriate to bring an enforcement action in the Environmental Court (or in the Vermont judicial bureau, if enabled by the bylaw). If bringing a claim in court is likely, the administrative officer and the attorney will need to involve the local legislative body, as only the selectboard, city council or village board of trustees has the authority to pursue the action on behalf of the municipality at this point.

Occasionally, legislative bodies will designate the administrative officer to represent the municipality in the Environmental Court or the judicial bureau, sometimes with the assistance of the municipal attorney. For

[69] The complete bylaw adoption process is described in 24 V.S.A. §§ 4441,4442.

[70] 24 V.S.A. § 4448(a).

Initiating Enforcement Proceedings

After receiving several calls from neighbors alleging that an illegal business was being operated out of a garage, Gary, the administrative officer went out to investigate. Sure enough, the property owner appeared to be operating a significant landscaping business. There were several large trucks parked outside the garage, a large pile of stumps, and a young man was operating a chipper to dispose of material in the back of one of the trucks.

Gary returned to his office and examined the town's bylaws. The bylaws require operators of home occupations to obtain a permit from the administrative officer and prohibit home occupations that result in the outside storage or display of materials or create objectionable noise, vibration, or smoke. Gary drafted a notice of alleged violation, and called the town attorney. The town attorney agreed that a permit was required and reminded Gary to copy the Selectboard in the notice. Gary mailed the notice of alleged violation and began taking some notes for what seemed a likely appeal to the development review board.

more information on enforcement, see the *Zoning Administrator's Handbook*, Vermont Land Use Education and Training Collaborative, 2005, available at www.vpic.info.

A Word about Certificates of Compliance

A certificate of compliance is a tool a municipality can use to ensure compliance with the local bylaw. Different from a certificate of occupancy, a certificate of compliance is typically something that a buyer's attorney or lender's attorney asks for when a property is to be conveyed. That attorney has likely done a title search of the property to ensure that the seller has "clear title" to the property. The goal in asking for the certificate of compliance is to make sure there are no pending unrecorded violations on the property. Because violations must be recorded in the land records, the attorney is looking to make sure there is nothing coming down the pike that has yet to be recorded. The administrative officer should be certifying that there are no pending unrecorded violations in the office, and nothing more. Administrative officers should never do detailed title research about the status of a particular property - that's a job for the title examiner.

The certificate of compliance is a valuable tool for a municipality in ensuring that violations are corrected since it is virtually impossible for a buyer to secure financing for a property with a violation. This process allows the real estate market to correct a violation without requiring any expenditure of town monies.

Call the Vermont League of Cities and Towns (VLCT) Municipal Assistance Center (802-229-9111) or your municipal attorney for a sample certificate of compliance or for assistance in drafting one.

D. Appealing a Local Land Use Decision

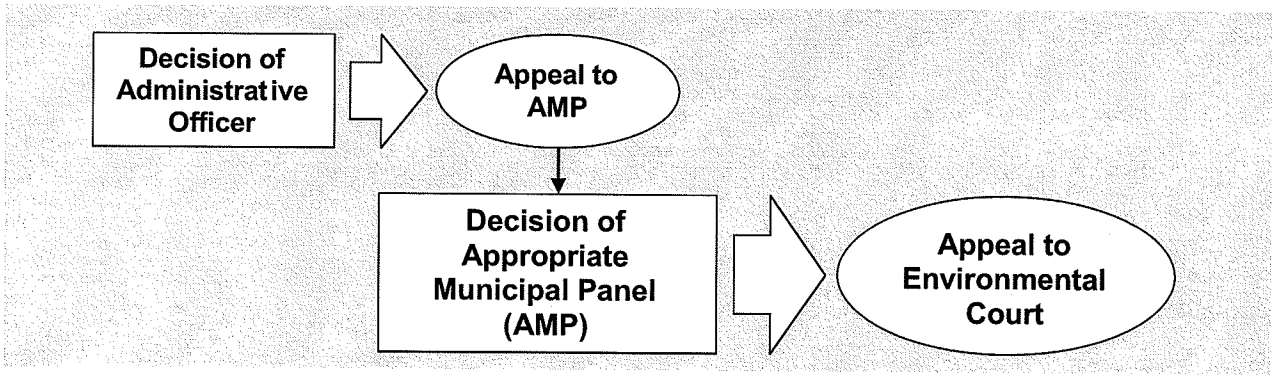
Local land use decisions may be appealed at every level, all the way up to the Vermont Supreme Court. However, not just anyone can appeal. State law provides that only an 'interested person" may appeal a decision or action of an administrative officer or appropriate municipal panel. For a list of who can qualify as an interested person, see 24 V.S.A. § 4465(b). The two different appeal processes we'll examine are the appeal of the administrative officer's decision and the appeal of an appropriate municipal panel's decision.

1. Appeals of Administrative Officer Decisions

Virtually any decision or act of the administrative officer is appealable, including decisions to refer an application to a particular board, or the decision not to act on a violation. When someone appeals an act of the administrative officer, the zoning board of adjustment or development review board must schedule a

hearing, which must be held within 60 days of the filing of the notice of appeal.[71] As part of the hearing, the appropriate municipal panel must determine if the appellant is an "interested person" as defined by 24 V.S.A. § 4465(b).

At the hearing, the appellant should be allowed to present his or her case first, after which the administrative officer must have an opportunity to defend his or her action. The board is not required to defer to the administrative officer, but rather may ask questions of both the appellant and the officer to determine who is correct. A written decision must follow within 45 days of the close of the final public hearing.[72]



2. Appeals to Environmental Court

Appeals of cases that have been heard by an appropriate municipal panel are taken to the Environmental Court, a trial-level court that has many of the same powers as a county superior court. There are currently two judges in the Environmental Court. The court is governed by the Vermont Rules for Environmental Court Proceedings, which are similar to the Rules of Civil Procedure governing traditional court proceedings.

Appeals in Environmental Court are heard by the judges as if there were no proceeding at the municipal level; this is called a *de novo* appeal. The parties are entitled to present entirely new evidence, and the court makes a decision as if the appropriate municipal panel had never considered the case.[73]

Practically, however, there will be some inquiry into the municipal proceeding. The court will want to know what was decided and why such a decision was made. One issue that may be relevant in the Environmental Court is whether there were any glaring procedural problems that prevented the appellant from receiving a fair trial. For example, if there was a significant conflict of interest or if the case was decided by an insufficient number of board members, the court will want to consider those issues when making a decision in how to proceed with the case. The Environmental Court has stated that where there has been a showing of impropriety or conflict of interest, the court has the authority to remand (return) the case to the appropriate municipal panel and require the local board to conduct a new proceeding clear of such problems.[74]

Notwithstanding the consideration given to the local proceeding, there is no obligation for municipalities to participate in an Environmental Court proceeding where a decision of an AMP has been appealed.

[71] 24 V.S.A. § 4468.

[72] 24 V.S.A. § 4464(b)(1).

[73] 24 V.S.A. § 4472(a).

[74] *In re Appeal of Janet Cote*, No. 257-11-02 (2003).

Municipalities may choose to participate in Environmental Court proceedings to defend the AMP's decision, or may choose *not* to participate and instead allow the Environmental Court to address the issues raised in the appeal. As discussed below, there are limited circumstances when the legislative body has standing to appeal a decision of an AMP.

Appeals in Environmental Court are heard by the judges as if there were no proceeding at the municipal level; this is called a *de novo* appeal.

Finally, local officials should be aware that the Environmental Court is increasingly turning to mediation to resolve cases before them. Parties to a local proceeding (including the municipality) may wish to consider involving a mediator in order to resolve local land use disputes. For more information on mediation, contact the Environmental Court at (802)828-1660 or go to www.VermontJudiciary.org.

3. The Role of the Legislative Body in the Appeal Process

When an administrative officer's decision is appealed, the appeal is heard by the AMP. The legislative body's role is minimal at this point, and primarily focuses on clarifying expectations for all involved, including the municipal attorney. The legislative body may have to coordinate with the municipal attorney to clarify who the client is and define the scope of the attorney's services.

When a case is appealed from the appropriate municipal panel to the Environmental Court, the AMP's role ends. It has no authority to appeal, to participate in an appeal, or to represent the municipality.[75] However, the legislative body may appeal a decision of the appropriate municipal panel if "the plan or bylaw is at issue."[76] While this statute may seem to grant broad authority to participate, case law has limited that right to those cases where the legislative body believes there has been an illegal or unconstitutional interpretation of a bylaw.[77] Nevertheless, a legislative body may participate in an appeal that has been initiated by another appellant.

E. On the Record Review

As an alternative to *de novo* review, municipalities may choose to have their decisions heard *on the record.* When a decision from a municipality that has adopted on the record review is appealed to the Environmental Court, the court only examines whether the AMP misinterpreted the bylaw or state law. The court does not hold any new factual hearings and any questions as to the facts will be resolved by looking at the record developed by the appropriate municipal panel. A basic requirement, therefore, is an audio recording of the proceedings.[78]

As an alternative to *de novo* review, municipalities may choose to have their decisions heard *on the record*... the court only examines whether the AMP misinterpreted the bylaws or state law ... and does not hold any new factual hearing.

The first step prior to adopting on the record review is to adopt the Municipal Administrative Procedure Act (MAPA). MAPA may be adopted either by the voters or by the legislative body. The benefit of

[75] The legislative body appoints a designee to act on its behalf at Environmental Court proceedings. This could be the municipal attorney, a member of the legislative body, or perhaps the zoning administrator. The appropriateness of all of these potential designees should be considered. It would not be appropriate for a member of the AMP to serve as the selectboard's designee.

[76] 24 V.S.A. § 4465(b)(2).

[77] *In re 232511 Investments, Ltd.,* 2006 VT 27.

[78] 24 V.S.A. § 1205(c).

Municipal Administrative Procedure Act (MAPA)

24 V.S.A. Chapter 36, § 1205

Any municipality that chooses to have local decisions appealed to Environmental Court to be heard "on the record" (rather than anew), or to conduct local Act 250 reviews, must adopt the Municipal Administrative Procedure Act to apply to specified development review proceedings. MAPA provisions include the following:

- Conflicts of Interest
- Notice Requirements
- Hearing Procedures
- Evidence
- Ex Parte Communications
- Qualification of Members (in rendering decisions)
- Decisions
- Appeals (per Chapter 117)

adopting on the record review is that the municipality retains stronger local control in the outcome of the case. Why go through the effort of holding a hearing if an appeal is going to be heard anew, without any consideration of the proceedings below? On the record review allows local decisions to stay local. The parties have the right to participate at the Environmental Court, but they will only have the right to question whether the AMP made a mistake in interpreting the law. The facts found by the AMP will stand as the facts on which the case is built.

However, there are downsides to adopting on the record review as well. The biggest problem is that, in all matters, the expectations are greater. From managing evidence to finding facts, writing adequate decisions, and managing conflicts of interest, the Environmental Court has higher expectations. As such, the chairperson must run a very orderly proceeding and continually reinforce such matters as requiring speakers to repeat his or her name prior to speaking so that those reviewing the audio can discern the speaker. Municipalities considering adopting on the record review may wish to schedule a workshop with a knowledgeable expert to help determine if on the record review is a good fit with their municipality.

6 Conducting Effective Meetings & Hearings

Believe it or not, there is a difference between conducting a *meeting* and holding a *hearing*. A meeting occurs when a quorum (a majority of the members) of a public body convenes to discuss the business of the body or for purposes of taking any action. Meetings are usually conducted by boards acting in a legislative capacity, such as a planning commission discussing amendments to the municipal plan or by quasi-judicial boards holding an organizational meeting or workshop.

Hearings are more nuanced, and there are two types of them: *legislative* hearings and *quasi-judicial* hearings. A legislative hearing occurs when a board, acting in a legislative capacity, convenes for the purpose of receiving public comment on a proposed course of action, such as a bylaw amendment. This type of hearing is often statutorily mandated, such as the requirement for the planning commission to hold a hearing on the municipal plan, but may also occur when the board desires more public input.

A quasi-judicial hearing occurs when a board, acting in a quasi-judicial capacity, convenes for the purpose of hearing the arguments of parties who seek the board's approval and the board subsequently issues a written decision, which either grants or denies the request. An appropriate municipal panel that convenes for purposes of conducting development review is conducting a quasi-judicial hearing. This chapter will discuss the rules and best practices which apply to meetings and both types of hearings.

A. Conducting Effective Meetings

Open Meeting Law:

... the meeting must be open to the public, minutes must be taken and notice must be given.

1. Requirements of the Open Meeting Law

The Open Meeting law[79] governs the conduct of meetings by public bodies in Vermont, and defines a meeting as "a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action."[80] Under this definition, when a majority of the members of a board have gathered and are discussing the business of the board, they are conducting a meeting. This is the trigger for complying with the requirements of the law.

The salient features of the Open Meeting law are that the meeting must be open to the public, minutes must be taken, and notice must be given. In order to ensure the meeting is truly open to the public, meetings should be held somewhere accessible to the public. Preferably, this should be in the municipal offices, in a school, or in some other neutral location (as opposed to a board member's home).[81] If possible, keep the door to the meeting room open. Boards should demonstrate that the public is welcome, and that the board's policy is an open-door policy. Remain tolerant of members of the public who need to come and go at various times during a meeting. They have busy lives and may only be able to attend for a portion of the meeting. If possible, visit the Vermont Statehouse in Montpelier. Walk down the main hallway and look at the agendas of the various committees along the hallway. Stop in and watch a

[79] 1 V.S.A. §§ 310 et seq.

[80] 1 V.S.A. § 310(2).

[81] It's also useful to meet at a municipal facility because municipal properties typically are more accessible to everyone in town, particularly those with special access needs.

committee meeting. Visitors are often pleasantly surprised by how easy it is for the public to watch legislators in action. While one may not always agree with the substance of the discussion, the open nature of the meeting can be a refreshing parallel for a local board.

2. Minutes and the Open Meeting Law

The Open Meeting law also requires minutes to be kept at all meetings. If possible, hire a board assistant, or have someone other than a board member take minutes. This allows board members to focus on the business at hand. Minutes do not have to be a complicated affair (the law sets a very low bar for what they must contain), but nonetheless require the following:

- all members of the public body present;
- all other active participants in the meeting;
- all motions, proposals and resolutions made, offered, and considered, and what the disposition of those were; and
- the results of any votes, with a record of the individual vote of each member if a roll call is taken.[82]

These requirements are minimal. Minutes do not have to be a verbatim transcript of the meeting. They should read more like an outline of what happened.

3. Public Notice for Meetings

The law puts meetings into three different categories: regular, special and emergency. These categories are important for properly noticing the meeting.

Regular meetings are to be publicly noticed in the following manner: "The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution or other determining authority of the public body and the information shall be available to any person upon request."[83] The best way to comply with this is to hold an organizational meeting at least once a year at which the board determines by resolution when it will regularly meet. The minutes from that organizational meeting serve as the public notice for future regular meetings. The board can provide additional notice beyond the basic requirements of the statute, if appropriate. This could be done by posting notice around town, in the town clerk's office, in the local newspaper, or on the municipal website.

Special meetings are to be publicly announced at least 24 hours before the meeting by posting notices in or near the municipal clerk's office and in at least two other public places in the municipality. The municipal website can also be used in addition to those two public places, but should not be considered in place of them.[84]

Emergency meetings may be held without public announcement, so long as some public notice is given as soon as possible before the meeting. It's highly unlikely that land use boards will have occasion to conduct emergency meetings, as the law envisions such meetings being held only "when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body."[85] Examples of such unforeseen occurrences include floods or other natural disasters or emergencies where there is an overriding public safety interest.

[82] 1 V.S.A. § 312(b)(1).

[83] 1 V.S.A. § 312(c)(1).

[84] 1 V.S.A. § 312(c)(2).

[85] 1 V.S.A. § 312(c)(2).

4. Executive Session

Vermont law permits a narrow exception to the requirement that meetings be open to the public. This exception is called executive session. However, it can only be used in specific statutorily-permitted situations.[86] Executive sessions are most commonly used by selectboards, city councils and village trustees, and it is unlikely that a land use board would find itself in a situation where executive session is permitted. About the only time executive session would be appropriate for a local land use panel is if it were convening to assist the selectboard or municipal manager in the evaluation of a staff person with whom it works closely, such as an administrative officer or staff planner. Generally speaking, the only private session which is appropriate for a local land use board/commission is when an AMP goes into *deliberative session*, which is discussed below.

5. The Role of the Chair and the Public in Public Meetings

The Open Meeting law requires that "the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting so long as order is maintained." However, the law also provides that "such public comment shall be subject to reasonable rules established by the chair."[87] Note that the law protects both the public's right to express its opinion and the chairperson's right to establish reasonable rules and conduct an efficient and timely meeting.

It is up to the chairperson to strike this balance. This can be difficult unless the board has adopted some basic rules of procedure. The law does not explicitly require boards to adopt rules of procedure unless they function as an appropriate municipal panel and conduct development review. However, it is difficult to conduct effective meetings and enforce reasonable rules if they don't exist. Simple questions such as, "How long does the public get to speak?" and "Can the public weigh in whenever they are inspired or must they first be recognized by the chair?" are difficult to answer without rules of procedure.

... the law protects both the public's right to express its opinion and the chairperson's right to establish reasonable rules and conduct an efficient and timely meeting.

While many boards adopt *Robert's Rules of Order*, these rules were written for large legislative bodies such as town meetings and don't fit well with the give and take that occurs on a small board. Unlike a large assembly, on small boards the motion is the last thing to emerge from the discussion, not the first. Adopting some simple rules can go a long way towards conducting efficient, productive meetings. A set of sample rules of procedure for appropriate municipal panels are available at www.vpic.info. This *Rules of Procedure and Ethics Manual* also contains a section on regular meetings, which could be adopted by boards that do not conduct development review, such as a planning commission or an advisory board.

Another effective tool is a well-crafted agenda, with specific times allocated for specific topics. Since many topics can be discussed ad infinitum, specific timeframes for discussion allow the chair to move the conversation along if a motion does not seem to be emerging.

Finally, it is worth exploring the role of the chair in the discussion and voting. Most boards have plenty of members who can advocate for a particular point of view or on behalf of a particular constituency. What can be hard to find is a person who can listen for the common ground, flesh out a motion, manage the agenda and move the discussion along either by calling for a vote or tabling the issue. Ideally, the

[86] 1 V.S.A. § 313.

[87] 1 V.S.A. § 312(h).

The Chair ... a person who can listen for the common ground, flesh out a motion, manage the agenda and move the discussion along either by calling for a vote or tabling the issue.

chairperson has those skills. While the rest of the members will generally tolerate a chairperson moving the discussion along and cutting off debate, they may not tolerate one person fulfilling the roles of both advocate and moderator. A good practice is for the chair to allow others to advocate so that the chair can focus on moderating and finding consensus. However, the chair should not refrain from voting or participating in the discussion if there is a point that others have failed to identify.

B. Conducting Effective Legislative Hearings

The process for adopting and amending legislative documents such as the municipal plan and land use regulations requires multiple hearings throughout the process. (See Chapter 5 for more information on the adoption and amendment process.) In addition, planning commissions and legislative bodies (selectboards, city councils and village trustees) may hold many events designed to gauge public opinion on a policy issue or solicit public participation in determining a course of action. Both of these events can be considered legislative hearings because the board has convened for the purpose of receiving public comment or input, either formally or informally. Whether mandatory or discretionary, legislative hearings may occur as part of a larger meeting, such as a regular selectboard meeting, or may be a freestanding public hearing on a particular topic, so long as proper public notice has been given.

1. Notice Requirements for Legislative Hearings

Public notice for mandatory hearings pertaining to adoption, amendment, and repeal of plans and bylaws must be given as follows:

- publication of the date, place and purpose of the hearing or hearings in a newspaper of general circulation;
- posting of the same in three or more public places, one of which must be in or near the municipal clerk's office; and
- publishing and posting either the full text or publishing and posting a statement of purpose, map or description of areas affected, table of contents and a description of where the full text is available or delivering the full text and notice provisions to each voter and owner of land.[88]

Many times a municipality may choose to conduct additional legislative hearings and/or meetings beyond what is required by the statute in order to better inform the board's decision-making, encourage public participation, build consensus, etc. We believe the best practice for such discretionary hearings is to publicize the date, place, and purpose in a newspaper of general circulation, as well as in three or more public places, one of which must be near the municipal clerk's office. For any additional hearings for a plan or bylaw approval, the text or a map or description of where the text is available, should be published and posted as well.

2. The Role of the Chair and the Public in Legislative Hearings

Unlike a regular meeting of a public body - which must be conducted *in* the public - a legislative hearing is conducted both *in* the public and *for* the public. As such, these hearings are aptly named - the board is primarily there to listen. In formal hearings, rules of procedure continue to play a crucial role as the chairperson is still charged with conducting a timely proceeding and ensuring equitable distribution of time

[88] For more information on public notice requirements for mandatory legislative hearings, see 24 V.S.A. § 4444.

for participants to speak. Additional best practices for chairing a legislative hearing are as follows:

- Distribute copies of the rules of procedure and review relevant sections;
- Review or summarize the source document at the beginning of the hearing and take questions to help the public understand the goals behind the new document;
- Refrain from using the public hearing for board members to debate the merits of the document; and
- Encourage board members to ask questions of the public as necessary to inform their decision-making process.

3. Alternative Public Hearings

In addition to the more formal legislative hearings on a municipal plan or bylaw, many municipalities have had great success with alternative public hearings that are incorporated into a planning process. For example, a planning consultant might facilitate a collaborative session that brings landowners, developers, community members, experts, and other local officials together in one setting to develop a plan for a particular property in town. For more information on alternative public hearings, see Chapter 3: "Planning for a Vibrant Community." Alternative public hearings should be noticed appropriately, at a minimum, satisfying the requirements of the Open Meeting law. If an alternative public hearing is being held on the adoption, amendment, or repeal of a municipal plan of bylaw, we recommend following the statutory notice procedures found in 24 V.S.A. § 4444 and listed above.

C. Conducting Effective Quasi-Judicial Hearings

Vermont law defines a quasi-judicial proceeding as "a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, the result of which is appealable by a party to a higher authority."[89] The proceedings of an appropriate municipal panel - referred to in the statutes as a "hearing" - clearly fall within the definition of a quasi-judicial proceeding. For simplicity, we've used the term quasi-judicial hearing to distinguish from the legislative hearings discussed above.

Quasi-judicial hearings have many of the same features as court proceedings, though the rules governing quasi-judicial hearings are not as formal as those for courts. Rather than flow from statutes, many of the principles by which quasi-judicial boards must abide come from the U.S. and Vermont constitutions, as well as the case law that has interpreted them. The primary constitutional provision at issue is the Fourteenth Amendment to the U.S. Constitution, which states, "... no state shall deprive any person of life, liberty, or property, without due process of law ..." In the land use context, due process requires boards to give *adequate notice* and an *opportunity to be heard* to participants in the development review process.

Protecting due process is important because it's a hallmark of the American judicial system that we should strive to respect. Boards that respect the rights of those who come before them will in turn be respected, and the public will have confidence in the integrity of the process. In addition, boards should protect due process because the failure to do so is a primary reason for participants to appeal the decision. Boards that ensure the protection of due process are less likely to see their decisions appealed.

Boards that respect the rights of those who come before them will in turn be respected, and the public will have confidence in the integrity of the process.

[89] 1 V.S.A. § 310(5)(B).

1. Notice Requirements for Quasi-Judicial Hearings

Chapter 117 divides quasi-judicial hearings into two categories: those requiring a higher degree of notice, and those requiring less notice. It is vital to comply with the notice requirements of the statute to maintain the legitimacy of the hearing process and to limit appeals based on inadequate notice.

Vermont law[90] requires a higher degree of notice for conditional use review, variances, zoning administrator appeals and requests for final subdivision review. To give adequate notice for these proceedings, at least 15 days prior to the hearing, the appropriate municipal panel (or the assistant to the AMP) must take the following steps.

Publish the date, place, and purpose of the hearing in a newspaper of general circulation in the municipality. Some legislative bodies have chosen a "newspaper of record" for the municipality in which all municipal notices will be published. This is not a legal requirement, but it can be helpful in providing notice to concerned citizens.

Post the same information in three or more public places within the municipality. At least one of these places must be located within view from the public right of way nearest to the subject property. Additionally, one of those places must be the municipal clerk's office.

Send written notification to the applicant and to all adjoining property owners, including properties separated from the subject property by a right-of-way. (This includes driveways, trails, and even roads.) The notification must include a description of the proposed project, and must inform the recipient about where additional information may be obtained, and that participation in the proceeding is a prerequisite to the right to take any subsequent appeal. The statute does not specify exactly how this hearing notice is to be sent, therefore, sending it by regular mail is permissible. Public notice for all other types of development review, including site plan review, must be given not less than seven days prior to the hearing. The same posting and notification requirements apply as above, except that publication in a newspaper is not required.[91]

2. An Opportunity to Be Heard

In order to protect the "opportunity to be heard" quasi-judicial boards must consider the following.

... due process requires boards to give *adequate notice* and an *opportunity to be heard* to participants in the development review process.

Proceedings must be free from conflicts of interest, including financial relationships and relationships with family or friends.

Board members must not prejudge a matter or publicly express any opinions on a pending case.

Proceedings must be run in an orderly manner.

Those who deserve to participate must have the opportunity to do so.

Evidence may only be presented at open proceedings.

Board members may not speak with participants outside of the proceeding or prior to the commencement of a potential proceeding.

A board must issue a written decision which clearly shows the evidence it found to be true and believable, as well as the reasoning for making the decision.

In addition to respecting due process rights, quasi-judicial hearings must be conducted in the open and the public must be permitted to attend. However, unlike a legislative hearing, any member of the public *does not* have an automatic right to participate in the quasi-judicial hearing. Appropriate municipal panels can determine whether only interested persons, as defined by 24 V.S.A. § 4465(b), will be allowed to participate,

[90] 24 V.S.A. § 4464(a)(1).

[91] 24 V.S.A. § 4464(a)(2).

or whether anyone who appears at the hearing will be allowed to participate. Most boards follow the latter approach, permitting anyone at the hearing to speak or submit written testimony, though some boards are moving towards a more complex process of determining interested person status at the outset of the proceedings.

Though quasi-judicial hearings are different in many ways from legislative hearings and meetings, appropriate municipal panels still must keep minutes of their hearings. These minutes should then be kept in the planning/zoning office or in the town clerk's office, as they are public records and should be made available to anyone who requests them.

Notwithstanding the requirement to keep minutes of the hearing, many AMPs will close the hearing and enter a deliberative session to make its decision. Note that quasi-judicial entities are not required to take minutes of their deliberations, and may allow the written decision to speak on their behalf.[92] A discussion of deliberative session follows below in Section D.10.

D. Rules of Procedure and Ethics for AMPs

Vermont law requires appropriate municipal panels to adopt rules of procedure and ethics with respect to conflicts of interest.[93] As discussed above, rules of procedure are an invaluable tool to help your board run more efficiently. The Vermont Land Use Education and Training Collaborative has developed two sample rules of procedure in the *Rules of Procedure and Ethics Manual* termed "Rules of Procedure I" (Rules I) and "Rules of Procedure II" (Rules II). Both sets of rules are available online at www.vpic.info. The provisions in Rules I were designed for boards that hold less formal proceedings, where the chair handles administrative issues for the board, and where the board deliberates in public. Rules II provisions were designed for boards that hold more formal proceedings, utilize staff for administrative support and use a private deliberative session to conduct their deliberations. Of course, many boards fall somewhere in the middle and may wish to adapt these models to take advantage of the most appropriate features of each.

One of the most beneficial features a board can derive from rules of procedure is an order of business. This is essentially a skeleton script for the hearing. It details who speaks and in what order. This is important, because, whether a proceeding is a typical request for a site plan approval of a small business or a request for a 50,000 square foot retail facility, the boards will run their hearings in basically the same manner. This consistency demonstrates to the public that the board does not favor particular applicants or individuals, and that the rules are the same whether it's a small local business or an international corporation.

Rules of procedure should also deal with the administrative details that cannot be overlooked in the effective management of a board such as:

- alternate board members, and how alternates will be tapped to sit on cases;
- hearing formalities, such as swearing in speakers and the order of business;
- the role of the chair and his or her authority to run the proceedings;
- the role of the other officers of the board;
- how the board will document participation of attendees in accordance with state law;
- conflicts of interest;

Sample Rules of Procedure

Instructions on writing rules of procedure and the two samples referred to in this manual, *Rules I* and *Rules II*, are available online at www.vpic.info or from your regional planning commission.

[92] 1 V.S.A. § 312(e).

[93] 24 V.S.A. § 4461(a).

- ex parte communication (inappropriate discussion about the case outside of hearings - further discussed below);
- voting and what constitutes a quorum; and
- anything else the board deems appropriate in its rules.

1. The Role of the Chair in Quasi-Judicial Proceedings

The board's rules should detail the role and function of the board chairperson. Traditional board protocol holds that the chair's job is to help the board navigate the issues while refraining from advocating a position. In the AMP context, this is only partially applicable. The chair must guide the board through the meeting and hearing context, but he or she also has full voting rights. Therefore, the chair should always vote on pending applications, and should never refrain from voting, unless the chair has recused him or herself from the proceeding for conflict of interest.

Many boards elect the most senior member as the chair. This may be appropriate, but consider that running a board effectively requires a board member to take an active leadership and managerial role. This skill may not parallel one's tenure on the board.

2. The Role of the Public in Quasi-Judicial Proceedings

It is important to remember that a municipal land use board exists to serve the public. The municipal government is a corporate entity that depends on the public faith invested in it by its citizens. The public must consider the government to be credible, or its ability to regulate, govern or take any action will be lost. Therefore, it is vital that the public's role at all stages of land use planning and regulation be considered and respected.

In the quasi-judicial hearing process, the public's role is necessarily more limited than it is during the planning process. While the public deserves a strong role in the planning process, a quasi-judicial hearing is defined by the parties present in the proceeding. These are the people whose interests are most directly affected by the outcome of the hearing, not necessarily the public at large.

Many AMPs determine that any member of the public should be allowed to speak. However, some boards decide that only persons who have a real and tangible interest in the proceedings are entitled to speak, present evidence and question others in the process. Either approach is fine, but it is important for the board to discuss the role of the public and make an affirmative choice, one way or the other, in its rules of procedure.

Boards that do not wish to limit participation (and, by extension, want to allow anyone to participate), should adopt Rules I. Boards that seek to limit participation to those who meet the statutory definition of an interested person should adopt Rules II.

3. The List of Interested Persons

In either case, Vermont law requires appropriate municipal panels to allow each person who wants to achieve interested person status an opportunity to do so and to keep a record of those who participated at the local level and what the participation was.[94] Participation may consist of either oral or written testimony that offers evidence of a statement of concern. When an appeal is filed, either the municipal clerk or the administrative officer[95] is required to supply a list of interested persons to the appellant within five days of the filing of the appeal of an AMP's decision.

[94] See 24 V.S.A. § 4461(b) for more information.

[95] See 24 V.S.A. § 4471(c) for more information. Either the clerk or zoning administrator must be designated in either the bylaws or rules of procedure to produce the list.

How a Conflict of Interest Policy can Help

Steve is a founding member of the planning commission and has served on the board for 15 years. He possesses much of the board's institutional knowledge and writes many of their decisions. The board only meets once a month, as there is little development pressure.

Steve is also one of two local surveyors in town. His professional expertise is very valuable to the board and is one of the reasons he was appointed. However, about twice a year, an applicant comes before the planning commission and proposes a subdivision plat that Steve has prepared for the applicant.

In the old days, Steve never recused himself, as he did not feel there was a conflict and nobody else did either. In recent years, however, other members have grown increasingly uncomfortable with the appearance of a conflict. Steve was a little offended that they would question his character, but he didn't say anything.

In response to the concerns, the board adopted a conflict of interest policy that requires members to disclose any conflicts. The policy has been in place for several months and appears to be working well. Under the new policy, Steve is required to disclose if one of his clients is appearing before the board. He isn't required to recuse himself, though he usually does just to keep the appearance of a conflict at bay.

To comply with all of these requirements, we recommend boards use a sign-in sheet to collect information about who attended a hearing, who spoke, who participated by submitting written documentation and what issues were discussed. Though in-person participation is preferable, boards must also accept written testimony. Keep in mind, however, that only those present at a hearing can be cross-examined by the other parties to a proceeding. Both sets of rules contain a model service list to assist with this documentation, which is available to be downloaded from www.vpic.info.

4. Managing Conflicts of Interest

Managing conflicts of interest is critical to maintaining the integrity of the development review process. Conflicts of interest fall into four categories:

Financial relationships that jeopardize the decision-maker's ability to make an unbiased decision;

Familial and friendly relationships that jeopardize the decision-maker's ability to make an unbiased decision;

Public expressions of bias or prejudgment of a case prior to hearing the evidence; and

Ex parte communications that harm the board member's ability to make a decision based on the evidence presented in the case.

Situations will undoubtedly arise that fall into one of these categories. How board members address conflicts will be the yardstick by which public confidence in the board will be measured. Adopting a conflict of interest policy is the best way to approach this issue. Board members will need to examine the policy, learn about it and study it from time to time to refresh themselves. When potential conflicts arise, members will need to manage them under the guidelines laid out in the Rules. If the board deviates from the policy, it sets a poor example, one that says to the public that it's all right to change the rules once in awhile. Therefore, once the board adopts a policy, members must follow it. If members do not like certain provisions of the policy, it's fine to change, but such changes should not be done spontaneously, based on the facts of a particular situation.

In any policy, the two primary tools for managing conflicts are *disclosure* and *recusal*. Both sets of model rules address these items, which are discussed below.

5. Disclosure and Recusal

Powerful forces are at play in local development review proceedings, such as constitutional rights and individual and community values regarding private property and environmental protection. With these issues on the table, transparency is crucial for maintaining public trust. Disclosure of a conflict (or a potential conflict) is one of the best ways to achieve that goal of transparency. Under both sets of Rules, board members are required to disclose any real or perceived conflicts of interest or ex parte communication, and the chair is directed to ask for such disclosure at the beginning of each hearing.

Disclosure of a conflict (or a potential conflict) is one of the best ways to achieve the transparency that is so crucial to maintaining public trust.

After disclosing a real or perceived conflict, a member may either choose to recuse him or herself (see below) or may choose to continue in the proceeding, provided the member supplies a statement of why he or she is still able to act fairly, objectively and in the public interest. Whether to recuse oneself (or not) is an act taken by a board member of his or her own volition. Vermont law provides no authority for boards to require a member to recuse oneself. However, failure to recuse when circumstances suggest recusal is appropriate grounds for removal, as discussed below.

6. Removal of Board Members

As discussed in Chapter 3, zoning board of adjustment members and development review board members can be removed by the legislative body, but only for cause, after written notice and a public hearing.[96] The sample rules of procedure, Rules I, permits a board to request that the legislative body remove a member of the board. While the authority to remove is vested with the legislative body, the ZBA or DRB members are in the best position to observe behavior that provides cause for removal. For example, if a member fails to recuse him or herself from a proceeding in which he or she is clearly conflicted, the zoning board may, upon majority vote, request that the member be removed by the legislative body. A progressive disciplinary procedure is also an option and is presented in the sample rules of procedure, Rules II, to be used only for violations of the conflict of interest provisions. Rules I and II are available at www.vpic.info.

7. Ex Parte Communication

Being a member of a quasi-judicial board in a small town can be difficult. Individual members will inevitably interact with people who are applicants or interested persons in cases before the board, and they will want to ask about their case. Don't do it. It's simply inappropriate for members to talk to a party outside of a proceeding regarding a particular case. It's not fair to others involved in the case, because the person who talks with a board member at the general store might tell that board member a lot about the project that may not be true. Because no one else is there to question that person, it's possible that the member will believe that information and no one else will ever have an opportunity to question its veracity. This is an ex parte communication, meaning a conversation between someone hearing a case and a party outside of a warned public hearing. Such a conversation might violate the due process rights of others in the proceeding, and could be grounds for the Environmental Court to

It is simply inappropriate for AMP members to talk to a party outside of a proceeding regarding a particular case.

[96] 24 V.S.A. § 4460(c).

reverse your board's decision. The sample rules of procedure require members to disclose any inadvertent ex parte communication, and indicate that failure to disclose could be cause to remove a member.

8. Deliberations and Decisions

Once the board has heard the evidence in a case, the board will need to deliberate on the evidence and come to a decision. Before the board arrives at a decision, members will need to choose how to deliberate: some deliberate in public, and some deliberate in private. Either method is acceptable under the law, but board members should consider which is appropriate for their community, memorialize it in the rules of procedure and follow it on a consistent basis.

9. Public Deliberations

Many land use boards in Vermont have chosen to deliberate in public. Such "public deliberations" are defined in the sample rules of procedure, Rules I, as the "weighing, examining, and discussing, in a public proceeding, the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties."

Procedurally, the board enters a public deliberation when the chair of the board announces, "This is the close of the hearing. The board will now deliberate. You may stay and watch, but you do not have a right to participate. This is the board's opportunity to deliberate and public comment is now closed." The primary benefit of this public process is that it allows a window into the workings of the board. It shows the public that the board doesn't act in secret and allows participants to see the process that boards use to arrive at a decision. The strength of this process is also its weakness. AMPs are comprised of human beings who make mistakes. These mistakes can compound because the board is now on a stage, and if it missteps, the public, and likely the media, are there to watch.

Each local board should weigh these concerns and decide what type of deliberative process is appropriate in their community.

10. Deliberative Session

In contrast to deliberating in public, many AMPs hear the evidence in a case, and then make a decision during a deliberative session. Appropriate municipal panels, like a jury in a court proceeding, are allowed to make their decisions in private if they wish. The reasoning behind this is to allow the decision to be made without undue influence from the parties in the case. It allows a board member to make a decision more freely than if he or she were making eye contact with a party in the case. Additionally, a discussion is more likely to be free-flowing if there are no spectators present.

The Open Meeting law specifically exempts quasi-judicial bodies from the requirement to deliberate in public.

The Open Meeting law specifically exempts quasi-judicial bodies from the requirement to deliberate in public. "Nothing in this section[97] shall be construed as extending to the judicial branch of the government of Vermont or of any part of the same or to the public service board; nor shall it extend to the deliberations of any public body in connection with a quasi-judicial proceeding …"[98]

Deliberative session is not defined in statute, but it is defined in the model rules as "a private session of the board to weigh, examine, and discuss the reasons for and against an act or decision, from which the public is excluded." The privacy of deliberative session allows the board to freely discuss the evidence presented

[97] "This section" is the statute requiring meetings of public bodies to be open to the public.

[98] 1 V.S.A. § 312(e).

without undue pressure or influence from the applicant, interested persons, or the public at large.

Whether a board chooses to deliberate in a private, deliberative session, or chooses to conduct public deliberations depends on the preferences of the members, the nature of the application and the culture of the community. Above all else, it is the responsibility of the board members to fairly apply the bylaws to the application at hand.

Whether a board chooses to deliberate in a private, deliberative session, or chooses to conduct public deliberations depends on the preferences of the members, the nature of the application and the culture of the community.

11. Rules of Procedure and MAPA

Another option for rules of procedure is the Municipal Administrative Procedure Act. MAPA is a limited set of procedural rules delineated in state law. Adopting MAPA requires a board to formalize its proceedings to more effectively protect the rights of parties. Once a board has adopted MAPA, appeals of that board's hearings may be heard on the record. Additionally, Development Review Boards that adopt MAPA may be given the authority (by the legislative body or voters) to conduct local Act 250 review of municipal impacts. This transfers review authority from the regional district commission to the local development review board to make findings pursuant to criteria 6, 7 and 10 of Act 250, which pertain to the provision of educational and municipal services and conformance with the municipal plan.[99]

If you consider adopting MAPA, a best practice would be to incorporate it into a more detailed set of rules, such as those discussed above, as MAPA contains only minimal guidance for many issues that boards will face, such as running an effective quasi-judicial hearing.

12. How to Craft a Legally Sustainable Decision

Drafting a strong decision can be one of the most difficult tasks for an appropriate municipal panel. Vermont law dictates the following basic requirements for land use decisions.

- Decisions must be issued in writing.
- Decisions must include a statement of the factual bases on which the AMP has made its conclusions.
- Decisions must provide a statement of the conclusions the AMP made in reaching its decision.[100]

While these requirements are basic, they can be difficult for volunteer boards to meet. Municipalities that have chosen on the record review are subject to a higher standard in writing their decisions, something that can be difficult to accomplish. Sample decision templates can be found online at www.vpic.info. Additionally, it would be wise to occasionally work with your municipal attorney or other expert for a tune-up in writing effective decisions.

13. Drafting the Decision: Whose Job Is It?

Putting together a strong land use decision is no easy task. Frequently, this task is either delegated to staff or defaults to the chairperson. Some boards have emulated a practice of many supreme courts and other tribunals: the chairperson taps one member of the board to be the lead board member on the case, to take notes, research the relevant issues, and draft a decision. This is an excellent way to distribute a large workload. Some boards are lucky enough to have a staff person who takes minutes, handles administrative issues for the board and writes decisions.

[99] For more information, see 24 V.S.A. § 4420, 10 V.S.A., Chapter 151, § 6086(d).

[100] 24 V.S.A. § 4464(b)(1).

14. Decision-making Timelines

No matter who writes the board's decisions, the board must always abide by the strict 45-day timeline to issue the decision.[101] The 45-day clock begins to run when the final public hearing (i.e., the evidentiary portion) in a case has been closed. Failure to meet this deadline could result in a decision being "deemed approved." This means that an applicant has the right to appeal to the Environmental Court to assert his or her right to deemed approval. It does not mean the applicant has the right to build his or her project without further inquiry.[102]

Decisions must be sent by certified mail to the applicant and appellant on matters of appeal. Copies must also be mailed to every person or body appearing and having been heard, and a copy of the decision must be filed with administrative officer and the clerk.[103]

[101] *Id.*

[102] *In re Ashline*, 2003 VT 30

[103] 24 V.S.A. § 4464(b)(3).

7 Conclusion

This manual was written to help all local land use officials understand the essential principles and practices of land use planning and regulation, with particular attention to the following points.

- All local officials have distinct roles to play in the process, and it is critical that the players respect the differences in their roles and responsibilities.
- A thorough municipal planning process is critical to a community's long-term vitality.
- Once the municipal plan is approved, it can be implemented through both regulatory and non-regulatory measures.
- State law provides prescriptive procedures for adoption, amendment, appeals and enforcement of plans and bylaws, all of which must be followed very closely.
- One of the most critical functions is to conduct effective meetings and hearings which involve the public in appropriate ways and protect the due process rights of parties.

By following these principles, local officials should experience reduced conflict in the land use planning and regulation arena.

As the state of Vermont continues to change, it will likely become increasingly important that local land use planning and regulation is administered in a manner that inspires public confidence in both the process and institutions involved.

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TAB 2

VERMONT LAND USE
Education & Training Collaborative

Conformance with the Municipal Plan

Background - the Consistency Doctrine

Under state statutes, municipal bylaws, including zoning and subdivision regulations, have long been one tool to implement the municipal plan. The plan provides the basis in public policy for enacting local land use regulations, therefore regulations should be consistent with the municipal plan. This is often referred to as the "consistency doctrine." As originally enacted, Chapter 117 provided that:

> *Any municipality which has adopted and has in effect a plan...may implement the plan by adopting, amending and enforcing any or all of the bylaws or the capital budget and program provided for in this chapter. All such bylaws and the capital budget and program shall have the purpose of implementing the plan, and shall be in accord with the policies set forth therein.* [former §4401]

In practice, local zoning and subdivision regulations are often inconsistent with - and at times may directly contradict - plan policies and recommendations. For example, a plan may include recommendations for more affordable housing or higher densities of development in certain areas of town, but these recommendations are not reflected in zoning district designations or related zoning requirements. Inconsistencies between local plans and bylaws are often most apparent in Act 250 proceedings. Under Act 250 criteria, proposed development must be consistent with the municipal plan, but at the local level, the same project must meet local subdivision and zoning requirements which may differ markedly from plan policies.

When faced with such inconsistencies, the Vermont Supreme Court interpreted this former Chapter 117 language to mean that bylaws must reflect the municipal plan, but need not be "controlled" by it and that only plan policies specifically incorporated in a bylaw were legally enforceable. The court also determined that if plan policies were not stated clearly enough to be applied in Act 250, district commissions could refer instead to local land use regulations - as intended to implement the plan - to determine project conformance. (*Kalakowski v. John A. Russell Corp.*, 137 Vt. 219, 225 (1979) and *In re Molgano*, 163 Vt.25, 30 (1994).)

The fact that many plan recommendations have not been implemented through local bylaws was identified by the Vermont Legislature as a major impediment to sound growth management, and to certain types of development - in particular affordable housing development (see also Bulletin #6 Equal Treatment of Housing). As a result, recent changes to Chapter 117 under Act 115 were specifically intended to strengthen the long-standing statutory relationship between municipal plans and bylaws - and other methods of implementing the plan - while maintaining the status of the plan as a policy, rather than regulatory, document.

What is the *Consistency Doctrine*?

The relationship of a bylaw, and individual development review decisions, to a local plan has been the subject of much analysis, debate and case law nationwide. Under the "consistency doctrine" actions must be directly linked to stated intentions - as such, the plan is intended to serve as more than a rhetorical document by describing those public policies that a local government intends toimplement, through its regulations, review processes, and other actions.

Some states have enacted explicit consistency requirements that mandate bylaw amendments following plan adoption or amendment. This type of mandate was rejected for use in Vermont.

Conformance with the Plan

Definition [§4303(6)]

"Conformance with the Plan" means that a plan implementation tool, including a bylaw or bylaw amendment, is in accord with the municipal plan in effect at the time of adoption, if it:

(A) Makes progress toward attaining, or at least does not interfere with, the goals and policies contained in the municipal plan.

(B) Provides for proposed future land uses, densities and intensities of development contained in the municipal plan.

(C) Carries out, as applicable, any specific proposals for community facilities, or other proposed actions, contained in the municipal plan.

Bylaw Adoption

The reasons for inconsistencies between plans and bylaws are many. Beyond the difficulties inherent in enacting controversial land use regulations, inconsistencies also may arise from differences in the statutory requirements for adopting and amending plans and bylaws. Plans must be updated and readopted every five years or they expire. Bylaws, once adopted, remain in effect until amended or repealed. As a result bylaws often predate the current municipal plan, in some instances by years or even decades.

Prior to Act 115, the statutory adoption process for bylaws was more lengthy and difficult than for plans, especially in "rural" towns. Plans are typically, though not always, adopted by the Legislative Body. Bylaws, until recently, had to be adopted by Australian ballot in rural towns and, by petition, could be subject to adoption by an "extraordinary" (two-thirds majority) vote, making it sometimes difficult to get even minor amendments passed.

The extraordinary voting provision, originally intended to protect the minority rights of property owners, was deemed inherently undemocratic and repealed in 2001. Subsequent Act 115 amendments provided that rural towns adopt and amend bylaws by a majority vote of the Selectboard, rather than by Australian ballot, making it easier to regularly amend bylaws to conform with updated plans. Rural towns, however, retain the option under Chapter 117 to adopt bylaws by Australian ballot. ("Rural" towns, as defined in Chapter 117, include towns having a U.S. Census population of less than 2,500 persons, or a town having less than 5,000 persons that has voted by Australian ballot to be considered a rural town. *See Bulletin #4 Bylaw Preparation & Adoption*).

Addressing "Conformance with the Plan"

Any municipality that has adopted and has in effect a plan and has created a planning commission under this chapter may implement that plan by adopting, amending and enforcing any or all of the regulatory and nonregulatory tools provided for in this chapter. All such regulatory and nonregulatory tools shall be in conformance with the plan, shall be adopted for the purposes set forth in section 4302 of this title, and shall be in accord with the policies set forth therein. [§4401]

Under Act 115, a number of other provisions were incorporated throughout Chapter 117 to address conformance with the municipal plan.

Now all implementation tools, not just bylaws and capital improvement programs, must conform with the municipal plan [§4401]. As defined in statute, these include local land use regulations, official maps, impact fee ordinances, capital improvement programs, tax increment financing districts, tax stabilization contracts, the local purchase or acceptance of development rights, supporting plans, and the creation of advisory commissions. For some implementation measures - including the adoption of flood hazard bylaws

Miscellaneous Conformity Requirements

It is now specified in Chapter 117 that certain development review procedures, and related decisions, must conform with the municipal plan. For example:

- No bylaw shall have the effect of excluding housing that meets the needs of the population as determined in the housing element of the municipal plan [§4412(1)(A)].
- The "character of the area affected" under conditional use review must now be defined by the purpose or purposes of the zoning district within which a project is located, and specifically stated policies and standards of the municipal plan [§4414(3)(A)(ii)].
- Standards of review under zoning and subdivision regulations regarding access to renewable energy structures must be established in conformance with provisions of the energy element of the municipal plan [§4414(6)].
- Inclusionary zoning requirements must be in conformance with specific policies of the housing element of the municipal plan [§4414(7)(A)].
- Specific bylaw standards for granting "waivers" must be in conformance with plan goals and policies [§4414(8)(A)].
- Bylaws should provide for planned unit developments to permit flexibility in the application of land development regulations in conformance with the municipal plan [§4417(a)]. In addition, the approval of a proposed planned unit development shall be based on findings that it is in conformance with the municipal plan [§4417(f)].
- Subdivision bylaws must include standards for the design and layout of streets and other necessary improvements, [§4418(1)(B)], as well as standards for the design and configuration of parcel boundaries and the location of improvements necessary to implement the municipal plan and achieve desired settlement patterns [§4418(1)(C)].
- Under local Act 250 review, a Development Review Board is required to determine an Act 250 project's conformance with the municipal plan (in relation to plan conformance requirements under Act 250) [§4420].
- Freestanding bylaws for flood hazard, shoreland, and other "hazard areas" must now be in conformance with the municipal plan. [§4424]. "Hazard area" is defined as "land subject to landslides, soil erosion, earthquakes, water supply contamination or other natural or human-made hazards as identified within a "local mitigation plan" pursuant to federal requirements under 44 CFR Section 201.6 [§4303(8)(C)].

or many of the non-regulatory tools - this represents a major change.

"Conformance with the Plan" is now specifically defined in statute. This definition in effect serves as a test to help determine if a program, bylaw, or decision based on the bylaw, is in conformance with the plan.

The Planning Commission must determine whether a proposed bylaw or bylaw amendment is in conformance with the municipal plan, as documented in a written report. It is now the responsibility of the Planning Commission to determine whether a proposed bylaw or amendment conforms to the municipal plan [§4441(c)]. Prior to holding a warned public hearing, the Commission is required to prepare a report for public warning and review that states how a proposed bylaw or amendment (in relation to the statutory definition):

(1) Conforms with or furthers the goals and policies contained in the municipal plan, including the effect of the proposal on the availability of safe and affordable housing.
(2) Is compatible with the proposed future land uses and densities of the municipal plan.
(3) Carries out, as applicable, any specific proposals for any planned community facilities.

Guidance on report preparation, including a reporting form, is available from the Vermont Department of Housing & Community Affairs.

Plan Considerations

In the revised Chapter 117, the requirement that bylaws and other plan implementation measures clearly conform to the municipal plan has been identified as one of the constant themes, and greater challenges facing communities. Municipalities, and planning commissions in particular, must now make sure that the plan provides sufficient basis and justification for the adoption, amendment and application of bylaws. This may mean strengthening plan policy language, developing more deliberate and detailed land use district designations, more clearly defining housing and infrastructure needs, and identifying specific types of implementation techniques to be considered for local adoption.

Strengthening the plan as a policy document, without turning it into regulatory document, presents a real challenge. Plans are intended to represent the long-term vision for the community, as expressed in broadly stated community goals or vision statements; but they must also, as policy documents, outline specific objectives and strategies for meeting these goals.

These are not new planning requirements under Chapter 117 - but more detailed attention to certain plan elements, and more specificity, may be in order. The degree of analysis required, and the acceptable degree of specificity, will necessarily vary among communities in relation to local conditions, local concerns and available resources.

As a result of Chapter 117 bylaw amendments, the development of a municipal plan will likely be more time consuming. However, in the end, clear plan policies should make bylaw development more straight forward, if not easier, and also better support the use of the plan in local development review and Act 250 proceedings.

Sometimes it may be necessary to amend the municipal plan to support a proposed bylaw amendment. Plan and bylaw amendment processes can occur concurrently, as long as the adoption procedures for each are met. A "multipurpose hearing" -a public hearing to be held for more than one purpose - is now specifically allowed under Chapter 117 for these types of situations [§4442(e)].

How Specific is *Specific*?

Under Criterion 10 of Act 250 - project conformance with a municipal plan - a determination must be made whether municipal plan provisions at issue are "specific" or "ambiguous." If provisions are ambiguous, the zoning bylaw may be examined to resolve the ambiguity - since zoning bylaws "are more than strong indications of legislative intent in determining the meaning of an ambiguous town plan; they are the specific implementation of a plan" [*In re Molgano*, 163 Vt. 25, 30 (1994)].

For purposes of Act 250, a municipal plan provision plainly shows a specific policy provision if it:

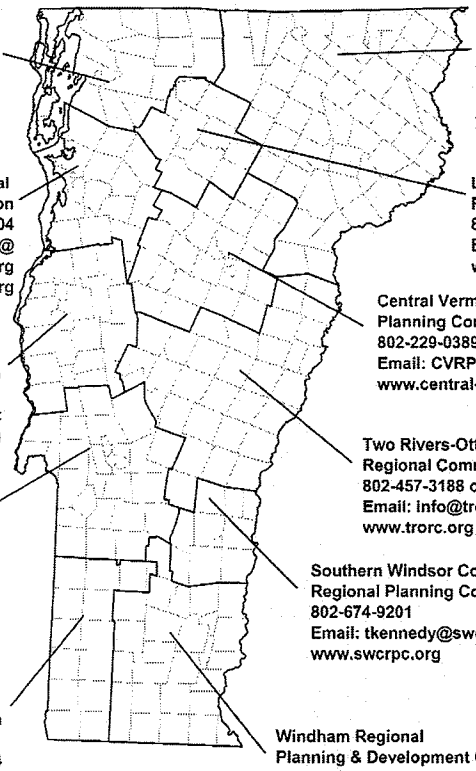
- pertains to the area or district in which the project is located;
- is intended to guide or proscribe conduct or land use within the area or district in which the project is located; and
- is sufficiently clear to guide the conduct of an average person, using common sense and understanding.

Moreover:

- A plan is not ambiguous where a town's prior actions with respect to a project - which represent the local community's interpretation and response to the plan's broad language - are clear.
- The use of the word "should" in a plan is not, by itself, an indication of ambiguity.

Contact information:

Regional Planning Commissions



Northwest Regional Planning Commission
802-524-5958 or
1-800-564-5958
Email: nrpcvt@nrpcvt.com
www.nrpcvt.com

Chittenden County Regional Planning Commission
802-658-3004
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Addison County Regional Planning Commission
802-388-3141
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www.acrpc.org

Rutland Regional Planning Commission
802-775-0871 or
1-800-464-7900
Email: Comments@rutlandrpc.org
www.rutlandrpc.org

Bennington County Regional Commission
802-375-2576 or
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www.rpc.bennington.vt.us

Northeastern Vermont Development Association
802-748-5181
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Lamoille County Planning Commission
802-888-4548
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Central Vermont Regional Planning Commission
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VERMONT LAND USE
Education & Training Collaborative

Chapter 117 Bulletins

The following ten bulletins were published in November 2004 to provide information about the changes to 24 V.S.A. Chapter 117, the state statute governing local planning and regulation, enacted in 2004. These all are available through *www.vpic.info* and from the Education and Training Collaborative partners listed below.

1. **Chapter 117 Overview** (legislative intent and effective dates)
2. **Conformance with the Municipal Plan**
3. **Permissible Regulations**
4. **Bylaw Preparation & Adoption**
5. **Required Provisions & Limitations**
6. **Equal Treatment of Housing**
7. **Zoning Permits**
8. **Development Review Procedures**
9. **Appeals**
10. **Appropriate Municipal Panels**

Vermont Land Use Education and Training Collaborative

Working Together to Provide Improved Learning Opportunities for Vermont's Local Boards and Commissions

Questions about this bulletin and other chapter 117 materials produced by the Collaborative may be directed to the following members of the Vermont Land Use Education and Training Collaborative Steering Committee. For links to websites go to "About Us" at *www.vpic.info*.

Center for Rural Studies (CRS) at the University of Vermont
207 Morrill Hall
University of Vermont, Burlington, VT 05405
(802)656-3021

Department of Housing and Community Affairs (DHCA), Planning Division
National Life Building Dr. 20
Montpelier, VT 05620-0501
(802)828-5249

Vermont Association of Planning and Development Agencies (VAPDA)
Contact your Regional Planning Commission

Vermont League of Cities and Towns (VLCT)
89 Main Street, Suite 4
Montpelier, VT 05602
(802)229-9111

Vermont Secretary of State's Office
26 Terrace Street
Montpelier, Vermont 05609
(802) 828-2363

Vermont Planners Association (VPA)
c/o VLCT
89 Main Street, Suite 4
Montpelier, VT 05602

FOR MORE INFORMATION GO TO WWW.VPIC.INFO

TAB 3

RECOMMENDATIONS	RESPONSIBILITY	COST
Chronic Health Conditions - diabetes, asthma, heart & lung disease, cancer, obesity. Depression in adults and children.		
Reduce # of Adults who smoke		
Reduce % of Youth who binge drink (5 or more drinks on a single occasion)		
Increase the % of Adults who participate in regular physical activity (30 minutes/5 days)		
Indentify Measurable Health Objective Using Healthy Vermonters 2010 Goals		

HOUSING AND NEIGHBORHOODS:

Affordable Housing:

Town establish a Housing Advisory Board to act as a discovery panel to determine the feasibility and benefit of St. Johnsbury's working in collaboration with other towns, developing a Regional Public Housing Authority. Housing Advisory Board should adopt a "Safe, Affordable Hoousing Bill of Rights" to deal with certain critical issues: Discrimination caused by negative credit or criminal backgrounds Sub-standard Housing Units Affordable rental unit replacement for substandard units and loss of units due to fire.	SB	
Town extend municipal water/sewer to those areas identified as good for residential housing.	SB	

Abandoned Buildings:

Selectboard pass and enforce an ordinance that requires property owners to bring their buildings up to safety codes.	SB, PC	

RECOMMENDATIONS	RESPONSIBILITY	COST
Abandoned buildings be torn down by the town after the elapse of a statutory time during which the owner has not brought the building up to code or torn it down.	SB	
Rental Units:		
Town encourage private developers to increase the number of middle income apartments through the creating tax advantages and assistance in getting low cost loans.	Owners, SB	
Town provide incentives to convert the upper floors of downtown buildings to residential use.	SB	
Town enforce its own ordinances with respect to fire and safety standards by instituting a fire and safety inspection program.	SB	
Neighborhoods:		
Town create an aggressive program to repair sidewalks that are in poor shape, Town maintain sidewalks properly all year long.	SB, Highway Department	
Consider creating pathways to connect parts of the downtown.	SB	
Promote better park use and maintenance of park furniture.	SB, Beautification Committee	
Businesses and Neighborhoods:		
Chamber of Commerce promote the downtown for commercial/business offices instead of residential neighborhoods.	Chamber of Commerce	
DRB and PC should study the desirability of discouraging the commercial invasion of neighborhhods, perhaps through changes in zoning and planning ordinances.	DRB, PC, SB	

HUMAN SERVICES

Communication Among Stakeholders:

RECOMMENDATIONS	RESPONSIBILITY	COST
Explore opportunity to establish a separate Industrial Development Park area east of Town accessible to RT 2 and Interstates 91/93. Park owned by Town and planned in a manner to provide specific industrial usage and sold/leased as such.	EDO	
Explore area known as Calkins Pit for industrial/commercial future development.	PC, DRB	Reyne
Review for possible expansion on north side of Portland Street along RT 2 corridor between Concord Avenue and Maple Grove.	PC, SB	Reyne
Encourage residents and businesses to invest in visual appearance and landscaping.	Owners, SB	
Agricultural Land:		
Promote preservation of argricultural land.	PC, SB	Reyne
Work with landowners, PVLT, and VTLT, to protect properties of key scenic, recreational, or ecological significance, through measures such as conveyance of conservation easements or development rights.	SB	

HOUSING:

Town look at expanding water/sewer coverage and take advantage of federal or state funding opportunities to lower cost to taxpayers.	SB	
Town be proactive in this environment and look to entice future housing development instead of being reactive.	PC, SB	
Encourage restoration of existing buildings - and new well-designed, higher density cluster housing for affordability.	Owners, Housing Lenders	
Expand water/sewer to those areas identified as possible future housing areas such as Breezy Hill and other feasible line extension areas.	SB	

RECOMMENDATIONS	RESPONSIBILITY	COST
steps to RR Street, and possibly an attractive amphitheater design. Flower beds and flower boxes.		
Replicate covered passenger platforms which would enable all weather use.		
Town monitor and encourage development of the bike path and the Cross Vermont Trail so that unused space in building can be developed as a trailhead facility - public/private partnerhsips, rentals, lockers, showers, and long-term parking. Highspeed wireless internet connection.		
Boost the creative economy by displaying local arts and crafts.		
Seek additional grants for exterior - and enhance exterior with window boxes and displays.		
Designated groups design displays and videos which document the region's past and present.		
Implement the Donchian grant to develop themes and "brand" the town for promotion.		
Welcome Center Advisory Committee be designated as the committee which will identify future grants and help define future bulding uses, management and ownership.		
Committee monitor development and coordinate with other groups and projects such as Bay Street, and the recreation trail.		
Committee monitor state office building developments and make state aware of public outreach opportunities in the Pomerleau Building,		
Town consider enhancing present economic development roles of Chamber and STJ Works by adding other business and economic assistance offices in the presently unused space.	Chamber of Commerce, EDO, STJ Works, Welcome Center Advisory Committee, RCT, DRB, PC, Cultural Institutions, RR Hertiage Society.	
Town investigate further technological development grants to further the building role as a "gateway" to the future.		

PUBLIC SERVICES:

RECOMMENDATIONS	RESPONSIBILITY	COST
additional day-long parking for those biking and walking.	SB, Chamber, ST Johnsbury WORKS	
Support the Welcome Center to create attractive maps and brochure illustrating walking routes, recreational areas, green spaces and the amenities.	SB, Chamber, ST Johnsbury WORKS	
Town create and maintain an events calendar for the visitors website with a link to town website.	SB, Chamber, ST Johnsbury WORKS	
Town work with NEK Travel & Tourism and Chamber to educate tourism operators to initiate and promote events packaging.	SB, Chamber, ST Johnsbury WORKS	
Town assume responsibility for landscaping, regular maintenance of garden, outdoor decorations, and parking lot around the Pomerleau Building, making property more attractive.	SB, Chamber, ST Johnsbury WORKS	
Renovation to include a space for showing video/film presentations.	SB, Chamber, ST Johnsbury WORKS	
Supporting organizations create media that illustrate the Town's cultural heritage and attractions.	SB, Chamber, ST Johnsbury WORKS	
Calendar to include all annual events, cultural and recreational events, and academic opportunities.	SB, Chamber, ST Johnsbury WORKS	
Welcome Center provide french-speaking staff/volunteers during all hours of operation. Center should create and update a phone directory of staff/volunteers and Town residents who are fluent in languages other than english.	SB, Chamber, ST Johnsbury WORKS	

TRANSPORTATION:

Town contract with a traffic engineer to take a global look at the traffic issues in town and make a prioritized list of recommendations. To include traffic patterns in and around the Town School and Academy during peak hours, Bay Street, and Railroad Street.	SB, VTRANS, PC, RCT	
Ensure speedy recovery of Three Rivers Path.		
Town enforce use of alternative truck route to direct large truck traffic around the		

RECOMMENDATIONS	RESPONSIBILITY	COST
downtown area.	SB, VTRANS, PC, RCT	
Town petition state and federal government to increase interstate weight limits.	SB, VTRANS, PC, RCT	
Town should reduce noise from Interstate 91 by arguing for additional vegetative buffers.	SB, VTRANS, PC, RCT	
Add a three-way stop at intersection of RR and Maple, or add a left-turn lane at the foot of Maple to reduce congestion.	SB, VTRANS, PC, RCT	
Add curb-side travel lanes to enhance safety of mororized and bicycle traffic.	SB, VTRANS, PC, RCT	
Town along with the State recognize increased commercial activitiy on Memorial Drive by improving shoulders and sight lines along the two sections of curves on southern part of Memorial Drive.	SB, VTRANS, PC, RCT	
A railroad grade crossing be constructed at the foot of Eastern Avenue.	SB, VTRANS, PC, RCT	
As Town proceeds with the development of Bay Street, it must simutaneously improve parking for businesses downtown.	SB, VTRANS, PC, RCT	
The "honking tunnel" should be retained for pedestrian and bicycle traffic.	SB, VTRANS, PC, RCT	
Zoning by-laws should be amended to include consideration of pedestrian and bicycle access to basic services and to other parts of town for each site plan and project.	SB, VTRANS, PC, RCT	
Place bicycle racks downtown and on Main Street.	SB, VTRANS, PC, RCT	
Design, implement and maintain bicycle routes through and around town in order to connect neighborhoods with main areas and services of Town.	SB, VTRANS, PC, RCT	
Town should support efforts to make St J & LC railbed an all season recreational trail.	SB, VTRANS, PC, RCT	
Increase "taxi Only" parking spots and reduce fees for using these spaces.	SB, VTRANS, PC, RCT	
Pursue retail and other economic development while maintaining or improving the economic vitality of the railroads.	SB, VTRANS, PC, RCT	

RECOMMENDATIONS	RESPONSIBILITY	COST
Consider replacing the "Catholic Steps". Include new steps from Pearl to Cherry to connect to Downtown.	SB, VTRANS, PC, RCT	
Encourage car-pooling by providing free parking for those who car-pool.	SB, VTRANS, PC, RCT	
Support an FAA approved landing light system at Caledonia County Airport.	SB, VTRANS, PC, RCT	
Establish a helicopter-approved landing strip in town to strengthen the economy by allowing UPS and other transports to expand services.	SB, VTRANS, PC, RCT	
RCT be expanded to provide one or two small vehicles that make a regular loop through St. Johnsbury during the day. Increase the number of stops. Provide marked bus stops with simple roofed shelters.	SB, VTRANS, PC, RCT	

TAB 4

Possible Projects Regarding St. Johnsbury Zoning and Subdivision By-laws

A. Table 204.10 Dissemination of Noise in Excess of 70 Decibels

1. Where? At property line.

2. Possibility of compliance? Accuracy of measurement (duration of noise).

B. Table 204.13

1. Allow some residential or other [minimum] developed use. Otherwise, may be an unconstitutional taking.

C. Section 205.2.1

1. Applicant affirmatively establishes beyond reasonable doubt that the conditional use project will not adversely affect.

a. Never seen reasonable doubt standard in zoning.

b. Test is no longer current. Test is that it may not be unduly adverse.

c. Substantial weight to neighbors? *See* Tab 5.

D. Section 208.1

1. Are required front setbacks necessary from every street?

E. Section 302B Riverfront Setback

1. Reexamine especially if Riparian Buffer bill is passed. See Tab 6.

E. Section 321

1. Size of parking spaces not defined. No waiver provisions.

F. Section 324

1. Noise standard

2. Lighting Standards – *See* Tab 7.

G. Section 327

1. Landscaping - % of project expenses.

H. Section 330

1. Flood plain regulations. *See* Tab 8.

G. Section 331 On Site Sewer

1. Does this section remain in effect?

2. Why?

H. Section 402

1. Are underlying guidelines necessary? *See* Tab 5.

I. Section 403

1. PUD's

a. Is undevelopable land considered in establishing density?

b. Are 20% slopes undevelopable? Is 30% a better limit?

J. Waivers versus Variances

K. Growth Centers

TAB 5

LexisNexis®

In re Appeal of JAM Golf, LLC

No. 2006-307

SUPREME COURT OF VERMONT

2008 VT 110; 2008 Vt. LEXIS 104

August 22, 2008, Filed

NOTICE:

THIS OPINION IS SUBJECT TO MOTIONS FOR REARGUMENT UNDER V.R.A.P. 40 AS WELL AS FORMAL REVISION BEFORE PUBLICATION IN THE VERMONT REPORTS.

PRIOR HISTORY: [**1]
On Appeal from Environmental Court. Merideth Wright, J.

DISPOSITION: Reversed and remanded for the Environmental Court to make findings on the remaining § 26.151 criteria.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant applicant sought a permit for a 10-lot subdivision, which was denied by appellee city's Development Review Board. The applicant appealed to the Environmental Court (Vermont), which denied the application without prejudice. The applicant appealed.

OVERVIEW: The court rejected the applicant's argument that testimony of the city's expert about wildlife corridors was inadmissible under Vt. R. Evid. 702. It was reliable because it was based on the type of facts and data with which wildlife experts were familiar--topographic features and wildlife movement patterns. The expert was accorded the authority to interpret and rely on such technical information, even if he had not observed it firsthand. The general use of his methods suggested that they were a reliable technique to identify potential wildlife corridors. Next, the section of a zoning ordinance requiring planned residential development (PRD) designs to protect important natural resources violated due process because it provided no standards for the court to apply in determining what would constitute a failure to protect the listed resources. Finally, due to the broad authority granted by *Vt. Stat. Ann. tit. 24, § 4410* to towns to implement their city plans, the ordinance was not an unauthorized method of zoning regulation. The city plan, however, did not contain specific standards to guide enforcement. It was too ambiguous to be enforceable.

OUTCOME: The court struck the portions of the ordinance that required PRD designs to protect important natural resources and that incorporated the city plan. It reversed the trial court's conclusions that the project failed to meet those portions of the ordinance. It remanded the case for further findings on the ordinance's other criteria.

LexisNexis(R) Headnotes

Evidence > Testimony > Experts > Admissibility
[HN1] Under Vt. R. Evid. 702, expert testimony will only be admitted if it assists the trier of fact to understand the evidence or to determine a fact in issue, and if: (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. Accordingly, trial courts act as gatekeepers who screen expert testimony ensuring that it is reliable.

Evidence > Testimony > Experts > Daubert Standard
[HN2] To be reliable, expert testimony must be supported by scientific knowledge. The United States Supreme Court in Daubert defined the adjective "scientific"

as "grounded in the methods and procedures of science," and stated that "knowledge" must be more than a subjective belief or speculation.

Evidence > Testimony > Experts > Admissibility
[HN3] In determining whether expert testimony is reliable, trial courts may consider such factors as: (1) whether the scientific technique can be tested; (2) whether the technique was peer reviewed; (3) any potential error associated with the technique; and (4) whether the technique was generally accepted in the scientific community. This list is not exhaustive, however, and the Vt. R. Evid. 702 admissibility standard is flexible.

Civil Procedure > Trials > Bench Trials
Evidence > Testimony > Experts > Admissibility
[HN4] In the context of bench trials, the trial court's gatekeeper function as to expert testimony is not as crucial because it requires a binary choice--admit or exclude; a judge in a bench trial should have discretion to admit questionable technical evidence, though of course he must not give it more weight than it deserves.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion
Evidence > Testimony > Experts > Admissibility
[HN5] An appellate court reviews Vt. R. Evid. 702 determinations for abuse of discretion.

Evidence > Testimony > Experts > Admissibility
[HN6] Expert testimony does not alone have to meet the proponent's burden of proof to be admissible. In order to tease out deficiencies of expert testimony, opponents should attack testimony of this nature through the adversarial process.

Evidence > Testimony > Experts > Admissibility
[HN7] In finding evidence to be reliable, a trial court is not expected to make a substantive decision on the merits of the proponent's argument but is instead required to make an inquiry into the factual basis and methodology used by the expert witness.

Real Property Law > Zoning & Land Use > Ordinances
[HN8] Zoning ordinances must specify sufficient conditions and safeguards to guide applicants and decision-makers. A court will not uphold a statute that fails to provide adequate guidance, thus leading to unbridled discrimination by the court and the planning board charged with its interpretation.

Environmental Law > Zoning & Land Use > Constitutional Limits
Real Property Law > Subdivisions > Local Regulation
Real Property Law > Zoning & Land Use > Constitutional Limits
Real Property Law > Zoning & Land Use > Ordinances
[HN9] From a regulatory standpoint, South Burlington. Vt., Zoning Ordinance § 26.151(g) provides no guidance as to what may be fairly expected from landowners who own a parcel containing wildlife habitat or scenic views--both common situations in Vermont--and who wish to develop their property into a planned residential development. Such standardless discretion violates property owners' due process rights.

Real Property Law > Zoning & Land Use > Local Planning
[HN10] *Vt. Stat. Ann. tit. 24, § 4411* does not authorize towns to mandate that development follow the city plan. While this is true, neither does Title 24 prohibit towns from enforcing such a requirement. *Vt. Stat. Ann. tit. 24, § 4410* grants broad authority to towns to implement their plan through zoning bylaws.

Real Property Law > Zoning & Land Use > Local Planning
[HN11] See *Vt. Stat. Ann. tit. 24, § 4410.*

Real Property Law > Subdivisions > Local Regulation
Real Property Law > Zoning & Land Use > Local Planning
[HN12] *Vt. Stat. Ann. tit. 24, § 4410* speaks in permissive terms. Towns may implement their plans through any regulatory tools or methods not specifically listed, so long as the bylaws are in conformance with the plan. Under South Burlington. Vt., Zoning Ordinance § 26.151(l), a planned residential development will conform with the City's Comprehensive Plan. Due to the broad authority granted to towns to implement their city plans, the Supreme Court of Vermont cannot conclude that § 26.151 is an unauthorized method of zoning regulation.

Real Property Law > Zoning & Land Use > Constitutional Limits
Real Property Law > Zoning & Land Use > Ordinances

[HN13] All ordinances are subject to the limits of the Constitution, and the courts will not enforce laws that are vague or those that delegate standardless discretion to town zoning boards.

Real Property Law > Subdivisions > Local Regulation
Real Property Law > Zoning & Land Use > Local Planning
[HN14] While cities may require subdivisions to conform to their city plan, city authorities may not deny permission for a project when there is not a specific policy set forth in the plan stated in language that is clear and unqualified, and creates no ambiguity. A city plan must contain specific standards to guide enforcement to be given regulatory force.

Environmental Law > Zoning & Land Use > General Overview
Real Property Law > Zoning & Land Use > Ordinances
[HN15] An ordinance cannot leave designations to the unfettered discretion of the Environmental Court.

SUMMARY:

Appeal from denial of application for subdivision permit. Environmental Court, *Wright*, J., presiding. *Reversed and remanded.*

HEADNOTES

VERMONT OFFICIAL REPORTS HEADNOTES

1. Evidence--Expert Testimony--Determination of Admissibility Expert testimony will only be admitted if it assists the trier of fact to understand the evidence or to determine a fact in issue, and if: (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. Accordingly, trial courts act as gatekeepers who screen expert testimony ensuring that it is reliable. V.R.E. 702.

2. Evidence--Expert Testimony--Determination of Admissibility To be reliable, expert testimony must be supported by scientific knowledge. The United States Supreme Court in Daubert defined the adjective "scientific" as "grounded in the methods and procedures of science," and stated that "knowledge" must be more than a subjective belief or speculation. V.R.E. 702.

3. Evidence--Expert Testimony--Determination of Admissibility In determining whether expert testimony is reliable, trial courts may consider such factors as: (1) whether the scientific technique can be tested; (2) whether the technique was peer reviewed; (3) any potential error associated with the technique; and (4) whether the technique was generally accepted in the scientific community. This list is not exhaustive, however, and the admissibility standard is flexible. V.R.E. 702.

4. Evidence--Expert Testimony--Determination of Admissibility In the context of bench trials, the trial court's gatekeeper function is not as crucial because it requires a binary choice--admit or exclude; a judge in a bench trial should have discretion to admit questionable technical evidence, though of course he must not give it more weight than it deserves. V.R.E. 702.

5. Evidence--Expert Testimony--Determination of Admissibility Expert testimony does not alone have to meet the proponent's burden of proof to be admissible. In order to tease out deficiencies of expert testimony, opponents should attack testimony of this nature through the adversarial process. V.R.E. 702.

6. Evidence--Expert Testimony--Particular Cases Despite the hypothetical nature of some of an expert's testimony regarding wildlife corridors, it was reliable for the purposes of Daubert, because the testimony was based on the type of facts and data with which wildlife experts were familiar--topographic features and wildlife movement patterns. The expert was accorded the authority to interpret and rely on such technical information, even if he had not observed it firsthand; the general use of his methods suggested that they were a reliable technique to identify potential wildlife corridors. V.R.E. 702, 703.

7. Evidence--Expert Testimony--Determination of Admissibility In finding evidence to be reliable, a trial court is not expected to make a substantive decision on the merits of the proponent's argument but is instead required to make an inquiry into the factual basis and methodology used by the expert witness. V.R.E. 702.

8. Zoning and Planning--Ordinances--Validity Zoning ordinances must specify sufficient conditions and safeguards to guide applicants and decisionmakers. A court will not uphold a statute that fails to provide adequate guidance, thus leading to unbridled discrimination by the court and the planning board charged with its interpretation.

9. Zoning and Planning--Ordinances--Validity Because a zoning ordinance requiring planned residential development (PRD) designs to protect important natural resources provided no guidance as to what might be fairly expected from landowners who owned a parcel

containing wildlife habitat or scenic views and who wished to develop their property into a PRD, it violated property owners' due process rights.

10. Zoning and Planning--Generally--Zoning Maps and Plans The statute governing implementation of municipal plans grants broad authority to towns to implement their plan through zoning bylaws. *24 V.S.A. § 4410.*

11. Zoning and Planning--Ordinances--Validity All ordinances are subject to the limits of the Constitution, and a court will not enforce laws that are vague or those that delegate standardless discretion to town zoning boards.

12. Zoning and Planning--Generally--Zoning Maps and Plans While cities may require subdivisions to conform to their city plan, city authorities may not deny permission for a project when there is not a specific policy set forth in the plan stated in language that is clear and unqualified, and creates no ambiguity. A city plan must contain specific standards to guide enforcement to be given regulatory force.

13. Zoning and Planning--Generally--Zoning Maps and Plans A city plan contained no specific standards to guide enforcement and thus was not enforceable. While it did specifically identify some generic natural resources to be protected, it failed to define what in particular was to be protected, and provided no standards as to how or when development should be restricted to accomplish protection; furthermore, it provided insufficient guidance as to how competing concerns were to be balanced when applying for or evaluating a permit application.

14. Zoning and Planning--Ordinances--Validity An ordinance cannot leave designations to the unfettered discretion of the Environmental Court.

COUNSEL: *William Alexander Fead* of *Fead Construction Law, PLC*, Burlington, for Appellant.

Amanda S. E. Lafferty of *Stitzel, Page & Fletcher P.C.*, Burlington, for Appellee.

JUDGES: Present: **Reiber, C.J., Johnson, Skoglund and Burgess, JJ., and Reiss, D.J., Specially Assigned.**

OPINION BY: BURGESS

OPINION

[*P1] **Burgess, J.** Property owner JAM Golf, LLC (applicant) appeals the Environmental Court's denial of a permit for a proposed ten-lot subdivision in South Burlington. Applicant raises four issues on appeal, claiming the court erred by: (1) admitting expert testimony concerning wildlife corridors; (2) concluding that the project did not protect wildlife habitat or scenic views; (3) finding that the project did not conform to the city plan; and (4) denying the project a permit, rather than remanding the case to the Development Review Board. We reverse the court's conclusion and remand for further findings under § 26.151 of the South Burlington Zoning Ordinance.

[*P2] Applicant owns part of a 450-acre planned residential development (PRD) known as the Vermont National Country Club. [**2] The property is located in the Southeast Quadrant Zone ("Quadrant") of South Burlington. The parcel is permitted for 296 residential units, as well as for an eighteen-hole golf course. Applicant sought to obtain permits for ten additional lots on an approximately seven-acre portion of the development known as "the woodland."

[*P3] The woodland sits on a ridge in the golf course and is bounded by three fairways and by another residential development. Several species of hard-mast-producing trees, [1] including hickory, butternut, beach, and tall pines, populate the woodland. The grounds contain shrubs, saplings, and berry patches. Wildlife experts directly observed or noted evidence of deer, fox, turkey, raccoon, squirrel, rabbit, other rodents, and birds in the woodland. The woodland is also adjacent to wetlands and an open space located on the golf course.

1 Hard mast trees produce nuts, a food source high in nutritional value for wildlife.

[*P4] Applicant applied to the Board to amend the current PRD to accommodate ten additional lots in the woodland. The Board denied the application, and applicant appealed this denial to the Environmental Court. Four years later, in a six-page decision, the court [**3] denied the application without prejudice. [2] The court held that the project did not satisfy the mandate of § 26.151(g) requiring that PRDs "protect important natural resources including ... scenic views" and "wildlife habitats." In addition, the court concluded that the project violated § 26.151(l), which requires that the amended PRD conform to the city plan. The city plan for the Quadrant requires residential developments to protect wildlife habitat, and the court concluded that the applicant failed to do so here. This appeal followed.

2 Loathe to aggravate what already appears to have been an extreme delay in reaching a decision at the trial level, we regret having to remand, but nevertheless find a remand necessary for further findings based on the existing record evidence as to whether or not the proposed project

satisfies the remaining § 26.151 PRD criteria yet to be addressed by the trial court.

[*P5] On appeal, applicant claims that: (1) expert testimony concerning wildlife corridors was inadmissible, because the testimony was unreliable; (2) the record does not support the court's conclusion that the project does not protect wildlife habitats; (3) the record does not support the [**4] court's conclusion that the project does not protect scenic views; (4) the city plan is not sufficiently specific to be enforceable; and (5) the court should have remanded the application to the Board for guidance instead of denying the application.

I.

[*P6] Applicant contends that the Environmental Court erred in admitting testimony from South Burlington's wildlife expert concerning wildlife corridors. Specifically, applicant faults the court for not making specific findings of reliability necessary under *Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993)*. Had the court conducted the inquiry, applicant maintains, the court would have found the testimony unreliable and thus inadmissible.

[1] [*P7] [HN1] Under Vermont Rule of Evidence 702, expert testimony will only be admitted if it "'assist[s] the trier of fact to understand the evidence or to determine a fact in issue,'" and if: "(1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case." *985 Assocs., Ltd. v. Daewoo Elec. Am., Inc., 2008 VT 14, ¶ 6, ___ Vt. ___, 945 A.2d 381* (citing [**5] V.R.E. 702). Accordingly, trial courts act as "gatekeepers who screen expert testimony ensuring that it is reliable." *USGen New England v. Town of Rockingham, 2004 VT 90, ¶ 19, 177 Vt. 193, 862 A.2d 269.*

[2-4] [*P8] [HN2] To be reliable, expert testimony must be supported by "scientific knowledge." *Daubert, 509 U.S. at 589*. The Court in *Daubert* defined the adjective "scientific" as "ground[ed] in the methods and procedures of science," and stated that "knowledge" must be more than a subjective belief or speculation. *Daubert, 509 U.S. at 589-90*. [HN3] In determining whether expert testimony is "reliable," trial courts may consider such factors as: (1) whether the scientific technique can be tested; (2) whether the technique was peer reviewed; (3) any potential error associated with the technique; and (4) whether the technique was generally accepted in the scientific community. *USGen New England, 177 Vt. 193, 2004 VT 90, ¶ 16, 862 A.2d 269*. This list is not exhaustive, however, and the Rule 702 admissibility standard is flexible. *Id.* In addition, [HN4] in the context of bench trials, the trial court's gatekeeper function is not as crucial because it "requires a binary choice--admit or exclude[;] ... a judge in a bench trial should have discretion [**6] to admit questionable technical evidence, though of course he must not give it more weight than it deserves." *Id. ¶ 26* (quoting *Smithkline Beecham Corp. v. Apotex Corp., 247 F.Supp.2d 1011, 1042 (N.D. Ill. 2003))*. [HN5] We review Rule 702 determinations for abuse of discretion. *Id. ¶ 21*.

[5] [*P9] Applicant claims that the testimony of the City's expert, Mr. Parsons, is unreliable, because it rested on his speculative and subjective beliefs rather than on "scientific knowledge." Applicant cites Mr. Parsons' qualification of his testimony concerning wildlife corridors as "preliminary," "potential," and "hypothetical." Applicant essentially asserts that all such testimony is per se unreliable. Applicant misconstrues the standard. [HN6] Expert testimony "does not alone have to meet the proponent's burden of proof" to be admissible. *USGen New England, 177 Vt. 193, 2004 VT 90, ¶ 19, 862 A.2d 269*. In order to tease out deficiencies of expert testimony, opponents should attack testimony of this nature through the adversarial process. *Daewoo, 2008 VT 14, ¶ 16, 945 A.2d 381*.

[6] [*P10] Despite the "hypothetical" nature of some of Mr. Parsons' testimony, we conclude that the testimony was reliable for the purposes of *Daubert*, because the testimony was based on the [**7] type of facts and data with which wildlife experts are familiar--topographic features and wildlife movement patterns. As a wildlife expert, Mr. Parsons is accorded the authority to interpret and rely on such technical information, even if he has not observed it firsthand. V.R.E. 703; *Daubert, 509 U.S. at 594*. Mr. Parsons' conclusions were not speculative but instead were "based on what is known." *Daubert, 509 U.S. at 590*. In this case, Mr. Parsons relied on the topography of the woodland, the close proximity of major roads, the presence of cover, his observation of wildlife and their nests, dens and scat on the parcel, and the typical movement patterns of common wildlife on the land to offer an opinion that the woodland sat in a "potential" wildlife corridor. According to Mr. Parsons, these methods are used by other scientists, including those employed by governmental entities that map and protect wildlife corridors based on aerial photographs and topographic maps. The general use of Mr. Parsons' methods suggests they are a reliable technique to identify "potential" wildlife corridors. See *USGen New England, 177 Vt. 193, 2004 VT 90, ¶ 16, 862 A.2d 269*.

[7] [*P11] While we agree with applicant that this testimony is not [**8] dispositive as to whether wildlife actually use the woodland as a corridor, we cannot conclude that Mr. Parsons' testimony is the kind of "junk science" that *Daubert* meant to exclude. *Daewoo, 2008*

VT 14, ¶ 8, 945 A.2d 381. [HN7] In finding evidence to be reliable, the trial court is not expected to make a substantive decision on the merits of the proponent's argument but is instead required to make an "inquiry into the factual basis and methodology" used by the expert witness. *Id. ¶ 11.* Because Mr. Parsons offered a sufficient basis for his testimony, we cannot conclude that the court abused its discretion by admitting it as evidence.

II.

[*P12] Applicant next claims that the Environmental Court erred in concluding that the project does not satisfy § 26.151(g) of the Zoning Ordinance, which requires PRD designs to "protect important natural resources including streams, wetlands, scenic views, wildlife habitats and special features such as mature maple groves or unique geologic features." Applicant challenges both the court's interpretation of the ordinance and its underlying findings of fact. Specifically, applicant asserts that § 26.151(g): (1) requires that PRD designs "protect" only *important* wildlife habitat [**9] and scenic views; and (2) allows developers to offer mitigation in order to meet this requirement. Applicant complains that the habitat and view at issue here are not, and cannot be, considered "important" from the court's findings.

[8] [*P13] Unfortunately, the ordinance as written is essentially standardless. Although applicant challenges the court's interpretation of the ordinance, rather than attacking the ordinance itself, § 26.151 is flawed, since it provides no standards for the court to apply in determining what would constitute a failure to "protect" the listed resources. [HN8] Zoning ordinances must "specify ... sufficient conditions and safeguards" to guide applicants and decisionmakers. *Town of Westford v. Kilburn, 131 Vt. 120, 122, 300 A.2d 523, 525 (1973).* We will not uphold a statute that "fail[s] to provide adequate guidance," thus leading to "unbridled discrimination" by the court and the planning board charged with its interpretation. *Id. at 125, 300 A.2d at 526*; see also *In re Handy, 171 Vt. 336, 348-349, 764 A.2d 1226, 1238 (2000)*; *State v. Chambers, 144 Vt. 234, 239, 477 A.2d 110, 112-13 (1984).*

[9] [*P14] "Protect," as defined in § 26.151, cannot be the equivalent of total preservation, [**10] because the same regulations allow for development, which, by necessity, must reduce wildlife habitat and affect scenic views. How much less than total preservation qualifies as sufficient protection, however, we cannot know, because the regulations do not say. Even had the trial court endeavored to apply a "reasonableness" measure to this term, § 26.151 would be unworkable. The language of the regulations offers no guidance as to what degree of preservation short of destruction is acceptable under the statute. [HN9] From a regulatory standpoint, therefore, § 26.151(g) provides no guidance as to what may be fairly expected from landowners who own a parcel containing wildlife habitat or scenic views--both common situations in Vermont--and who wish to develop their property into a PRD. Such standardless discretion violates property owners' due process rights. *In re Miserocchi, 170 Vt. 320, 325, 749 A.2d 607, 611 (2000).* We thus strike this provision of the ordinance and reverse the Environmental Court's conclusion that the project fails to meet its requirements.

III.

[*P15] Applicant next claims that the court erred in denying its application for failure to comply with the city plan. Applicant makes [**11] three distinct arguments: (1) the Vermont Planning and Development Act does not authorize towns to require that subdivisions and PRDs conform with city plans; (2) the city plan is vague and unenforceable; and (3) the application conformed to the city plan.

[10] [*P16] First, applicant asserts that the enabling statute, [HN10] *24 V.S.A. § 4411*, does not authorize towns to mandate that development follow the city plan. While this is true, neither does Title 24 prohibit towns from enforcing such a requirement. We note that *24 V.S.A. § 4410* grants broad authority to towns to implement their plan through zoning bylaws:

> [a] [HN11] municipality that has adopted a plan through its bylaws may define and regulate land development in any manner that the municipality establishes in its bylaws, provided those bylaws are in conformance with the plan and are adopted for the purposes set forth in *section 4302* of this title. In its bylaws, a municipality may utilize any or all of the tools provided in this subchapter and any other regulatory tools or methods not specifically listed.

[HN12] This section speaks in permissive terms. Towns may implement their plans through "any ... regulatory tools or methods not specifically listed," [**12] so long as the "bylaws are in conformance with the plan." Here, the City has chosen to incorporate the city plan into its Bylaws. See § 26.151(l) (a PRD "will [c]onform with the City's Comprehensive Plan"). Due to the broad authority granted to towns to implement their city plans, we cannot conclude that § 26.151 is an unauthorized method of zoning regulation.

[11, 12] [*P17] Nevertheless, [HN13] all ordinances are subject to the limits of our Constitution, and

we will not enforce laws that are vague or those that delegate standardless discretion to town zoning boards. *Handy, 171 Vt. at 348-49, 764 A.2d at 1237-38.* This brings us to applicant's next argument--that the city plan is not sufficiently specific to be enforceable. [HN14] While cities may require subdivisions to conform to their city plan, as here, city authorities may not deny permission for a project when there is not a "specific policy set forth in the plan ... stated in language that is clear and unqualified, and creates no ambiguity." *In re John A. Russell Corp., 2003 VT 93, ¶ 16, 176 Vt. 520, 838 A.2d 906* (citation and quotation omitted). A city plan must contain "specific standards" to guide enforcement to be given regulatory force. *Id.*

[13, 14] [*P18] In this [**13] case, we find no specific standards to guide enforcement. The Environmental Court concluded that the city plan "requires residential development to be designed to protect wildlife corridors and habitat, and to protect scenic views." While the city does specifically identify some generic natural resources to be protected--such as scenic views--the city plan fails to define what in particular is to be protected, and provides no standards as to how or when development should be restricted to accomplish protection. At best, in this regard, the zoning scheme is confusing. For example, although the city's official zoning map specifically labels certain areas of the Quadrant as "important scenic views," the view deemed scenic by the Environmental Court in this case was not so designated by the city. [HN15] The ordinance cannot leave such designations to the unfettered discretion of the Environmental Court. See *Handy, 171 Vt. at 349, 764 A.2d at 1238.*

[*P19] The city plan also lays out a general policy of promoting growth and residential development in the Quadrant that is at odds with the notion of complete preservation of the status quo. This growth-oriented policy is in tension with the goal of protecting [**14] natural resources, and the city plan provides insufficient guidance as to how the Board or a landowner should balance these competing concerns when applying for or evaluating a permit application. As a result, this aspect of the city plan is too ambiguous to be enforceable. We therefore strike this provision of the ordinance, and reverse the Environmental Court's conclusion that the project does not satisfy § 26.151(l). [3]

3 Applicant also claims that the project conforms to the city plan, and challenges the Environmental Court's decision to deny the permit instead of issuing a conditional permit. Because we conclude that the city plan contains insufficient standards to be enforceable, and remand for further findings on the other § 26.151 criteria, we need not address these remaining arguments.

Reversed and remanded for the Environmental Court to make findings on the remaining § 26.151 criteria.

TAB 6

MODEL LOW IMPACT DEVELOPMENT STORMWATER MANAGEMENT BYLAW

SECTION 1. AUTHORITY.

This bylaw is adopted by the Town of _____under authority of 24 V.S.A. § 4410 and 24 V.S.A. § 4414 (9).

SECTION 2. PURPOSE

The purpose of this bylaw is:

(A) To promote stormwater management practices that maintain pre-development hydrology through site design, site development, building design and landscape design techniques that infiltrate, filter, store, evaporate and detain stormwater close to its source;

(B) To protect natural resources, particularly streams, lakes, wetlands, floodplains and other natural aquatic systems on the development site and elsewhere from degradation that could be caused by construction activities and post-construction conditions;

(C) To protect other properties from damage that could be caused by stormwater and sediment during construction activities and post-construction conditions on the development site;

(D) To reduce the impacts from impervious surfaces such as streets, parking lots, rooftops and other paved surfaces; and

(E) To protect public safety from flooding and streambank erosion, reduce public expenditures in removing sediment from stormwater drainage systems and natural resource areas, and to prevent damage to municipal infrastructure caused by inadequate stormwater controls.

SECTION 3. SCOPE AND APPLICABILITY

(A) This bylaw shall apply to all development within the Town of _____requiring a municipal land use permit.

(B) Exemptions:

(1) Any activity that will disturb an area less than *[ ]* square feet or less than *[ ]*% of contiguous property, whichever is less;

(2) Any activity that will increase an impervious area or contiguous impervious area less than *[ ]* square feet;

(3) The construction of any fence that will not alter existing terrain or drainage patterns.

SECTION 4. LID/ STORMWATER MANAGEMENT APPLICATION MATERIALS

For all development requiring a municipal land use permit, the following information shall be presented on a plan or plans drawn to scale with supporting documents and technical details as necessary:

(A) An existing condition site assessment providing baseline information on features including slope profiles showing existing gradients, soil types, tree canopy and other vegetation, natural waterbodies, wetlands and sensitive natural communities, and site features that aid in stormwater management including natural drainage ways and forested and vegetated lands located on stream and wetland buffers;

(B) An erosion and sediment control plan that incorporates accepted management practices as recommended by the state in the most recent editions of the *Low Risk Handbook for Erosion Prevention and Sediment Control* or *The Vermont Standards and Specifications for Erosion Prevention and Sediment Control,* as determined by the *[AMP]*.

(C) A stormwater management plan identifying the construction disturbance area and demonstrating that stormwater runoff is minimized through the use of natural drainage systems and on-site infiltration and treatment techniques. The plan shall demonstrate that soils best suited for infiltration are retained and that natural areas consisting of tree canopy and other vegetation are preserved, preferably in contiguous blocks or linear corridors where feasible, for protection of the best stormwater management features identified in the site assessment. The Administrative Officer or *[AMP]* may consider and impose appropriate safeguards, modifications and conditions relative to the general standards and guidelines listed in Section 7 of this bylaw.

SECTION 5. GENERAL PRE-DEVELOPMENT AND CONSTRUCTION SITE STANDARDS.

All development in the Town of _____ is subject to the following pre-development and construction site standards to ensure that all sources of soil erosion and sediment on the construction site are adequately controlled, and that existing site features that naturally aid in stormwater management are protected to the maximum extent practical.

(A) Minimize Land Disturbance. Development of a lot or site shall require the least amount of vegetation clearing, soil disturbance, duration of exposure, soil compaction and topography changes as possible.

(1) To the extent feasible, soils best suited for infiltration shall be retained and natural areas consisting of tree canopy and other vegetation shall be preserved, preferably in contiguous blocks or linear corridors.

(2) The time the soil is left disturbed shall be minimized. The Administrative Officer or *[AMP]* may require project phasing to minimize the extent of soil disturbance and erosion during each phase of site development.

(3) There shall be no soil compaction except in the construction disturbance area, which shall be identified and delineated in the field with appropriate safety or landscape fencing. In areas outside the disturbance area there shall also be no storage of construction vehicles, construction materials, or fill, nor shall these areas be used for circulation.

(4) Development on steep slopes equal to or in excess of 15%, or which results in such slopes, shall be subject to conditional use review.

(B) Preserve Natural Areas. Development shall not result in an undue adverse impact on fragile environments, including wetlands, wildlife habitats, streams, lakes, steep slopes, floodplains and vegetated riparian buffers.

(1) Open space or natural resource protection areas shall be retained preferably in contiguous blocks or linear corridors where feasible, for the protection of the best stormwater management features identified in the site assessment as required in Section 4(A) of this bylaw.

(2) Forested lands located on stream and wetland buffers and steep slopes are priority areas and clearing them shall be avoided in order to protect wildlife habitats and prevent erosion and sedimentation resulting from stormwater runoff.

(3) A minimum 50-foot vegetated buffer shall be established along any lakes and/or streams located within the property lines. The buffer shall increase to 100-feet for watesheds greater than 2 square miles. The applicant shall default to the Fluvial Erosion Hazard (FEH) zone along streams if one has been established.

(4) Lot coverage and building footprints shall be minimized and where feasible, and development clustered, to minimize site disturbance and preserve large areas of undisturbed space. Environmentally sensitive areas, such as areas along streams, wetlands, and steep slopes shall be a priority for preservation and open space.

(C) Manage Water, Prevent Erosion and Control Sediment During Construction. Applicants shall maintain compliance with the accepted erosion prevention and sediment control plan as required by Section 4(B) of this bylaw.

(1) Runoff from above the construction site must be intercepted and directed around the disturbed area.

(2) On the site itself, water must be controlled, and kept at low velocities, to reduce erosion in drainage channels.

(3) The amount of sediment produced from areas of disturbed soils shall be minimized by utilizing control measures such as vegetated strips, diversion dikes and swales, sediment traps and basins, check dams, stabilized construction entrances, dust control, and silt fences.

(4) Immediate seeding and mulching or the application of sod shall be completed at the conclusion of each phase of construction, or at the conclusion of construction if not phased.

(5) The applicant shall follow the erosion prevention and sediment control practices for construction that occurs from October 15th to May 15th found in Section 3.2 *Winter Construction Limitations* as outlined in *The Vermont Standards and Specifications for Erosion Prevention and Sediment Control*, or the most recent Agency of Natural Resources standards for winter construction.

SECTION 6. LOW IMPACT DEVELOPMENT DESIGN

The use of LID design approaches is preferred and shall be implemented to the maximum extent practical given the site's soil characteristics, slope, and other relevant factors. To the extent that LID design approaches are not proposed in the stormwater management plan, as required in Section 4(C) of this bylaw, the applicant shall provide a full justification and demonstrate why the use of LID approaches is not possible before proposing to use conventional structural stormwater management measures which channel stormwater away from the development site.

SECTION 7. LID/ STORMWATER GENERAL POST CONSTRUCTION REVIEW STANDARDS AND GUIDELINES

All applications for development are subject to the following post construction stormwater management standards and guidelines to ensure that stormwater management approaches that maintain natural drainage patterns and infiltrate precipitation are utilized to the maximum extent practical.

Standards are statements that express the development and design intentions of this bylaw. The guidelines suggest a variety of means by which the applicant might comply with the standards. The guidelines are intended to aid the applicant in the design process and the Administrative Officer and the *[AMP]* when reviewing applications. Options for compliance with the standards are not limited to the guidelines listed.

Standard 1: Vegetation and Landscaping
Vegetative and landscaping controls that intercept the path of surface runoff shall be considered as a component of the comprehensive stormwater management plan.

Guideline 1.1. Utilize two-track surfaces with grass in-between to provide water infiltration for roads, driveways, parking lots and other types of drivable or walkable surfaces.

Guideline 1.2. Design parking lot landscaping to function as part of the development's stormwater management system utilizing vegetated islands with bioretention functions.

Guideline 1.3. Incorporate existing natural drainage ways and vegetated channels, rather than the standard concrete curb and gutter configuration to decrease flow velocity and allow for stormwater infiltration.

Guideline 1.4. Divert water from downspouts away from driveway surfaces and into bioretention areas or rain gardens to capture, store, and infiltrate stormwater on-site.

Guideline 1.5. Encourage construction of vegetative LID stormwater controls (bioretention, swales, filter strips, buffers) on land held in common.

Standard 2: Development on Steep Slopes
Development on steep slopes equal to or in excess of 15% shall be sited and constructed, and slopes stabilized to minimize risks to surface and ground waters and to protect neighboring properties from damage.

Guideline 2.1. Prohibit development, re-grading and clearing of vegetation on land where the slope is greater than 25%.

Guideline 2.2. Locate house sites, subsurface sewage systems and parking areas on the flattest portion of the site.

Guideline 2.3. Minimize crossing steep slopes with roads and driveways and lay them out to follow topographic contours in order to minimize soil and vegetation disturbance. Avoid long driveways.

Standard 3: Reduce Impervious Surfaces
Stormwater shall be managed through land development strategies that emphasize the reduction of impervious surface areas such as streets, sidewalks, driveway and parking areas and roofs.

Guideline 3.1. Evaluate the minimum widths of all streets and driveways to demonstrate that the proposed width is the narrowest possible necessary to conform with safety and traffic concerns and requirements.

Guideline 3.2. Reduce the total length of residential streets by examining alternative street layouts to determine the best option for increasing the number of homes per unit length.

Guideline 3.3. Minimize the number of residential street cul-de-sacs and incorporate vegetated islands to reduce their impervious cover. The radius of cul-de-sacs should be the minimum required to accommodate emergency and maintenance vehicles. Consider alternative turn-around areas.

Guideline 3.4. Reduce driveway lengths by minimizing setback distances. Encourage common driveways.

Guideline 3.5. Use permeable pavement for parking stalls and spillover parking, sidewalks, driveways and bike trails.

Guideline 3.6. Establish parking maximums and utilize shared parking for uses with different peak demand periods.

Guideline 3.7. Reduce building footprints by using more than one floor level.

Standard 4: Low Impact Integrated Management Practices (IMPs)
Stormwater shall be managed through the use of small-scale controls to capture, store and infiltrate stormwater close to its source.

Guideline 4.1. Create vegetated depressions, commonly known as biorention areas or rain gardens that collect runoff and allow for short-term ponding and slow infiltration. Raingardens consist of a relatively small depressed or bowl shaped planning bed that treats runoff from storms of one inch or less.

Guideline 4.2. Locate dry wells consisting of gravel or stone-filled pits to catch water from roof downspouts or paved areas.

Guideline 4.3. Use filter strips or bands of dense vegetation planted immediately downstream of a runoff source to filter runoff before it enters a receiving structure or water body. Natural or man-made vegetated riparian buffers adjacent to waterbodies provide erosion control, sediment filtering and habitat.

Guideline 4.4. Utilize shallow grass-lined channels to convey and store runoff.

Guideline 4.5. Incorporate rooftop gardens which partially or completely cover a roof with vegetation and soil or a growing medium, planted over a waterproofing membrane.

Guideline 4.6. Use permeable paving and sidewalk construction materials that allow stormwater to seep through into the ground.

Guideline 4.7. Use rain barrels and cisterns of various sizes that store runoff conveyed through building downspouts. Rain barrels are generally smaller structures, located above ground. Cisterns are larger, often buried underground, and may be connected to the building's plumbing or irrigation system.

Guideline 4.8. Add minerals and organic materials to soils to increase its capacity for absorbing moisture and sustaining vegetation.

Guideline 4.9. Utilize tree box filters placed below grade, covered with a grate, filled with filter media and planted with a tree, to act both as a water retention tank and a natural filter.

SECTION 8. INDEPENDENT CONSULTANTS.

The *[AMP]* may retain independent consultants to facilitate the review of applications for development subject this bylaw and whose services shall be paid for by the applicant. The consultant(s) shall work at the *[AMP]*'s direction and shall provide the *[AMP]* such reports and assistance, as the *[AMP]* deems necessary to determine compliance with this bylaw.

SECTION 9. OTHER LAWS.

This bylaw is in addition to all other ordinances and bylaws of the Town of _____ and all applicable laws of the State of Vermont.

SECTION 10. SEVERABILITY.

If any section of this bylaw is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this bylaw.

_____ _____
DATE

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SIGNATURES

MUNICIPAL ASSISTANCE CENTER TECHNICAL PAPER #5

VERMONT LEAGUE OF CITIES & TOWNS

Serving and Strengthening Vermont Local Governments

Managing Stormwater through Low Impact Development (LID) Techniques

MAY, 2008

INTRODUCTION

During the past several years, a new trend in stormwater management has been evolving and gaining momentum throughout the country. Low impact development (LID) stormwater management includes a set of practices and design approaches that maintain natural drainage patterns and retain more stormwater where it falls. LID practices help cleanse stormwater by filtering and releasing it slowly into receiving waterbodies, thereby improving water quality and reducing the risk of flash flooding.

Vermont municipalities can encourage LID to reduce the impacts of development on Lake Champlain and other lakes, rivers and streams. For new development, LID stormwater management methods mimic drainage and flow patterns that existed prior to development. LID can also be applied to urban retrofits and to redevelopment and revitalization projects to reduce runoff volumes, pollutant loads, and the overall impacts of existing development on receiving waters. This paper and the VLCT Municipal Assistance Center's model LID stormwater management bylaw offer guidance for municipal officials who want to adopt regulations that promote LID stormwater management practices at the local level.

CONVENTIONAL DEVELOPMENT VS. LID

Stormwater management over the past few decades has relied on highly engineered practices that channel stormwater quickly and efficiently away from the development site and into storm sewers, detention ponds or nearby waterbodies. This often involves clearing vegetation and disturbing and compacting valuable topsoil at a site prior to re-grading and paving. These development practices can reduce soil permeability, increase stormwater volume, increase frequency and magnitude of flood events, increase pollution in waterbodies (due to runoff and erosion), degrade stream channels and decrease groundwater recharge.

In contrast, the LID approach aims to retain the natural ability of the pre-development site to absorb water by capturing, detaining and infiltrating precipitation. These processes clean the water and promote groundwater recharge. LID as a stormwater strategy often uses a series of small-scale non-structural and structural practices linked together on the development site. For example, in lieu of a treatment pond or municipal storm sewer serving a new subdivision's runoff needs, the development site can integrate lot-level practices throughout, such as maintaining native vegetation, incorporating rain gardens, diverting water from downspouts into planting beds (and away from driveway surfaces) and eliminating curbs. This type of integrated approach costs less than conventional methods because the total volume of runoff to be managed is significantly minimized or even eliminated when stormwater is absorbed into the soil, and evaporated and transpired from plant surfaces. Less runoff volume equals less infrastructure and its related maintenance.

LID can also help communities that are looking for ways to reduce the occurrence of combined sewage overflows into surface waters. Combined sewer systems are designed to collect stormwater runoff, domestic sewage, and industrial wastewater in the same pipe. Most of the time, combined sewer systems transport all of their wastewater to a sewage

treatment plant, where it is treated and then discharged to a waterbody. During periods of heavy rainfall or snowmelt the wastewater volume in a combined sewer system can exceed the capacity of the sewer system or treatment plant. When this happens, the excess untreated wastewater is discharged directly into nearby rivers, streams and lakes.

Cities and towns that have not separated their combined sewers can effectively reduce sewer overflows by diverting stormwater away from the sewer system and directing it to areas where it can be absorbed into the ground, evaporated and transpired from plant surfaces, or re-used. This type of LID practice uses soil and vegetation to store and treat the stormwater, keeping it out of the sewer system so that it doesn't contribute to sewer overflows.

Identifying and measuring the full range of benefits and costs of LID as compared to conventional approaches can be challenging. In December, 2007, the U.S. Environmental Protection Agency Nonpoint Source Control Branch released a report concluding that LID practices can reduce project costs and improve overall environmental performance. In the majority of the 17 case studies summarized in the report, LID project costs were significantly lower due to reduced spending for site grading and preparation, stormwater infrastructure, site paving, and landscaping. This report is available on-line at http://www.epa.gov/owow/nps/lid/costs07/.

VLCT Model LID Stormwater Management Bylaw

The VLCT model LID stormwater bylaw is one tool local officials have to help reduce the impacts of conventional development practices on water quality. It is important that prior to adopting any part of the VLCT model LID stormwater management bylaw, municipalities make sure that the LID standards are consistent with their general regulations and standards already in place. Many of the requirements in the model bylaw may already be covered elsewhere in a town's zoning and subdivision regulations, and related road, public works and stormwater management ordinances. For example, standards for natural area preservation, river corridor and vegetated buffer protection and limited development on steep slopes are all low impact development objectives that minimize land disturbance and limit stormwater runoff and erosion. The VLCT model bylaw offers municipalities a framework from which to extract and integrate the LID standards that best fit specific town needs into existing zoning and subdivision regulations.

Pre-development

The VLCT model LID stormwater bylaw includes general pre-development and construction site standards. These standards control all sources of soil erosion and sediment on the construction site and preserve existing site features that naturally aid in stormwater management. They also reflect the accepted management practices recommended by the State in its most recent editions of the *Low Risk Handbook for Erosion Prevention and Sediment Control* and *The Vermont Standards and Specifications for Erosion Prevention and Sediment Control.*

Post-construction

The model bylaw also includes post-construction review standards and guidelines that ensure LID stormwater management design approaches are utilized to the maximum extent practical. The standards express the development and design intentions of the model bylaw. The guidelines for each standard suggest how an applicant might comply with the standard. The guidelines help the applicant during the design process; the administrative officer or review board can also use them to determine compliance with the bylaw. The options for compliance with the standards are not limited to the guidelines listed in the model bylaw, allowing for flexibility and creativity. The four post-construction review standards are as follows:

1. **Vegetation and Landscaping**. Vegetative and landscaping controls that intercept the path of surface runoff shall be considered as a component of the comprehensive stormwater management plan.

2. **Steep Slopes.** Development on steep slopes equal to or in excess of 15% shall be sited and constructed (and slopes stabilized) to minimize risks to surface and ground waters and to protect neighboring properties from damage.

3. **Impervious Surfaces.** Stormwater shall be managed through land development strategies that emphasize the reduction of impervious surface areas such as streets, sidewalks, driveway and parking areas and roofs.

4. **Low Impact Integrated Management Practices (IMPs).** Stormwater shall be managed through the use of small-scale controls to capture, store and infiltrate it close to its source. Some of the more commonly used LID small-scale practices are described in the IMP post-construction review guidelines.

State vs. Local Stormwater Management Control

The State of Vermont issues permits for stormwater runoff from both construction sites and impervious surfaces. Any project that disturbs more than one acre of land requires a construction permit and must include erosion and sediment control measures. Additionally, projects that will result in new impervious surfaces of one or more acres require an "operational" (or "post-construction") permit. To obtain this permit, a project must demonstrate that it meets the State's stormwater treatment standards relevant to water quality, channel protection, groundwater recharge and flood protection.

The potential effects of development involving less than one acre are not addressed under the State's stormwater program. With residential and other small-scale development increasing nearly everywhere, the most important reason to adopt the VLCT LID stormwater management bylaw is to ensure that this incremental development occurs with minimal impact on water quality. Based on local conditions and policies, municipalities using the VLCT model LID stormwater bylaw determine the size of development that they intend to regulate. There are three different ways in which state and local stormwater regulations can interact:

State Approval Equals Local Approval. For projects requiring a state stormwater permit, municipalities may decide to accept that permit as evidence of compliance with their local stormwater bylaw by adding language such as: *For those projects that fall under the jurisdiction of the State stormwater requirements, the Town of _____ may accept a copy of the issued State Stormwater Operational permit and/or the State of Vermont General permit for construction site runoff as evidence of compliance with this bylaw.*

State Approval Equals Local Exemption. It's important to note, however, that local review often precedes state review. There may also be some concern that adopting a state permit as proof that local criteria have been met might require a municipality to enforce the state's permit conditions. Municipalities concerned with local acceptance of state permits can simply exempt projects requiring a state stormwater permit from local regulation.

State and Local Approval. With appropriate technical capacity and staff support, municipalities may decide to require that a development that is subject to a state stormwater permit must also meet the LID standards provided in the LID bylaw. The model bylaw states: *Applicants shall demonstrate why the use of LID approaches is not possible before proposing to use conventional structural stormwater management measures which channel stormwater away from the development site to storm sewer systems, detention ponds, and receiving bodies of water.* For example, a municipality could reject an application for a development with a state permitted stormwater collection system if the proposal did not include LID landscape design techniques that manage stormwater close to its source.

Conclusion

Low impact development can be used almost anywhere that soil and vegetation can be worked into the landscape. It can be customized to fit environmentally sensitive sites and open spaces as well as constrained urban areas. LID is most effective when a variety of storage and infiltration techniques are used on-site at the same time. For example, a single family home might incorporate permeable pavement for infiltration and a rain barrel or cistern to capture and re-use rainfall for watering plants or flushing toilets. Integrating LID stormwater management strategies into local land use regulations is a straightforward way for municipalities to develop economically while improving the water quality of lakes and streams, reducing the risk of flash flooding and conserving natural areas.

The VLCT model LID stormwater management bylaw is designed to offer municipalities a flexible, clear-cut framework that is simple to develop and administer. The stormwater management model language can easily be incorporated into an existing land use regulation and can be adapted to meet the unique conditions in your community. For assistance in reviewing existing regulatory language and manipulating the model to fit specific town needs, contact Milly Archer, Water Quality Coordinator, at the VLCT Municipal Assistance Center, 800/649-7915, or marcher@vlct.org. To access the on-line version of the VLCT model low impact development stormwater management bylaw, please visit the Resource Library at www.vlct.org.

About the MAC Technical Papers

The Municipal Assistance Center began publishing its series of technical papers in 2007. Based on member inquiries, the MAC staff picks topics that need to be treated in more detail than a newsletter article, but less than a handbook. Papers previously issued are:

#1, *Making It Stick: The Art of Writing Effective Zoning Decisions*, March 2007.

#2, *Creating an Effective Riparian Buffer Ordinance*, April 2007.

#3, *Creating a Development Review Board*, July 2007.

#4, *On the Record Review*, February 2008.

Papers on the following topics are coming soon:

- Roles and Responsibilities in Planning and Zoning
- The Intersection of Agricultural Practices and Zoning: Q & A

MODEL RIPARIAN BUFFER ORDINANCE

SECTION 1. AUTHORITY.
This ordinance is adopted by the Town of _____under authority of 24 V.S.A. § 4410.

SECTION 2. PURPOSE.
This ordinance is established for the provision and protection of riparian buffers along streams and lakes in the Town of _____. It is the objective of this ordinance to promote the establishment and protection of heavily vegetated areas of native vegetation and trees along the Town's waterbodies to reduce the impact of stormwater runoff, prevent soil erosion, protect wildlife and fish habitat, and maintain water quality.

SECTION 3. DEFINITIONS.
For purposes of this ordinance, the following terms shall apply:

Lake: A body of standing water, including ponds and reservoirs that may have natural or artificial water level control. For purposes of this regulation, off-stream reservoirs specifically constructed for the following purposes shall not be considered lakes: snowmaking water storage; golf course irrigation; stormwater management; and fire suppression.

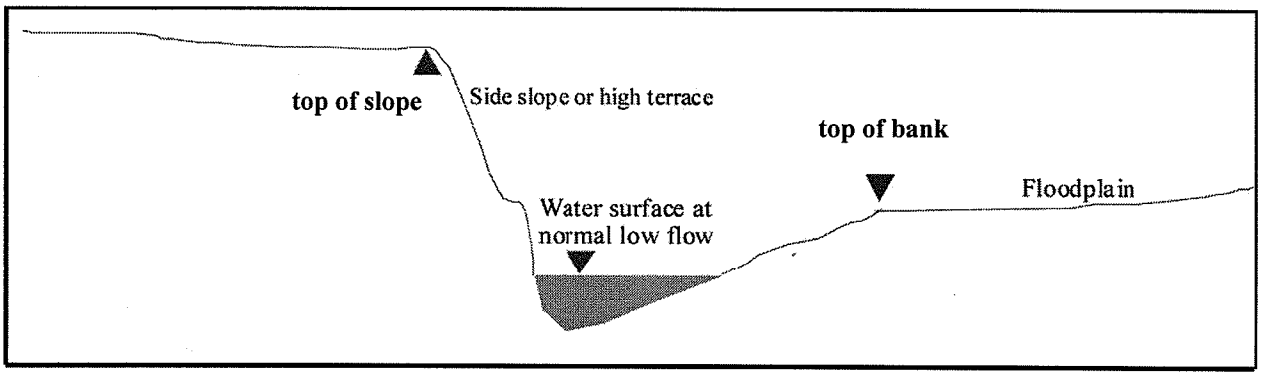
Mean Water Level: The normal summer (June 1 – September 15) water level, measured in feet above sea level, of lakes as determined by an average of water level readings available over time or as established by the Vermont Natural Resources Board.

Riparian Buffer: The width of land measured horizontally from the mean water level for lakes and from top of bank or top of slope for streams, to the edge of other land uses. Riparian buffers are typically undisturbed areas, consisting of trees, shrubs, groundcover plants, duff layer, and a naturally vegetated uneven ground surface.

Stream: The full length and width, including the bed and banks, of any watercourse, including rivers, creeks, brooks, and branches and intermittent watercourses that have a defined channel and evidence of water and sediment transport, even if such watercourses do not have surface water flow throughout the year or throughout the channel. For purposes of this regulation, constructed drainageways including water bars, swales, and roadside ditches, are not considered streams.

Top of bank: The point along a streambank where an abrupt change in slope is evident, and where the stream is generally able to overflow the banks and enter the adjacent floodplain during flows at or exceeding the average annual high water stage.

Top of slope: A break in slopes adjacent to steep-banked streams that have little or no floodplain; or a break in slope where the side slopes adjacent to an incised, or deeply cut channel meet floodplains that have been abandoned or are undergoing abandonment.



SECTION 4. APPLICABILITY.
The requirements of this ordinance shall apply to all riparian buffers in the Town of _____ , described as follows:

1. All land within ___ feet horizontal distance measured from the top of slope, where the channel runs adjacent to a valley wall or high terrace, or top of bank, where the channel has access to its floodplain, for the following streams:

a._____
b._____
c._____

2. All land within ___ feet horizontal distance measured from the top of slope, where the channel runs adjacent to a valley wall or high terrace, or top of bank, where the channel has access to its floodplain, for all tributaries of the above named streams and all other minor streams identified on the 7.5' U.S. Geological Survey quadrangles (or 1:5000 VCGI surface water data map) covering the town, or on field survey maps prepared for the Town of _____.

3. All land within ___ feet horizontal distance measured from the mean water level of all lakes that have more than 21,780 square feet (1/2 acre) of water surface.

SECTION 5. GENERAL STANDARDS

(A) Except as provided in Subsection (B) below, all lands within a riparian buffer shall be left in an undisturbed, vegetated condition.

(B) Removal of dead trees or trees of immediate threat to human safety as well as reasonable pruning of existing trees is permitted.

(C) The creation of new lawn areas within riparian buffers is not permitted. Property owners already encroaching on the riparian buffer are encouraged to return mowed areas to their naturally vegetated state. Supplemental planting with appropriate native vegetation to restore and enhance the effective filtering and bank stabilization functions of a riparian buffer is encouraged.

(D) Any areas within a riparian buffer that are not vegetated or that are disturbed during construction shall be seeded with a naturalized mix of grasses rather than standard lawn grass.

SECTION 6. NEW USES AND ENCROACHMENTS WITHIN RIPARIAN BUFFERS.

(A) Permitted uses:

1. The control of non-native species of nuisance plants including Eurasian milfoil, water chestnut, purple loosestrife and reed grass (Phragmites), where such control is by hand pulling of plants or according to a written plan approved by the Vermont Agency of Natural Resources and under any applicable state law.

2. Buffer re-establishment projects which use "soft" techniques such as tree revetments and root wads.

3. Encroachments necessary to rectify a natural catastrophe for the protection of the public health, safety and welfare.

(B) Conditional uses:

The [planning commission/ development review board/zoning board of adjustment] may authorize the following as conditional uses within riparian buffers subject to the standards and conditions enumerated for each use:

1. Clearing of vegetation and filling or excavating of earth materials, only to the extent directly necessitated for the construction or safe operation of a conditional use on the same property and where the [planning commission/ development review board/zoning board of adjustment] finds that:

a. There is no practical alternative to the clearing, filling or excavating within the riparian buffer; and

b. The purposes of this ordinance will be protected through erosion controls, plantings, protection of existing vegetation, and/or other measures.

2. Encroachments necessary for providing for or improving public facilities where the [planning commission/ development review board/zoning board of adjustment] finds that:

a. There is no practical alternative to the clearing, filling or excavating within the riparian buffer; and

b. The purposes of this ordinance will be protected through erosion controls, plantings, protection of existing vegetation, and/or other measures.

3. Unpaved footpaths for the purpose of public recreation located at least ten (10) feet horizontal distance measured from the top of slope, where the channel runs adjacent to a valley wall or high terrace, or top of bank, where the channel has access to its floodplain.

4. Paved paths for the purpose of public recreation located at least fifty (50) feet horizontal distance measured from the top of slope, where the channel runs adjacent to a valley wall or high terrace, or top of bank, where the channel has access to its floodplain. Access points are allowed, but shall be limited to areas where the stream or river channel is already confined and/or permanently constrained.

5. Stormwater treatment facilities meeting the stormwater treatment practices and sizing criteria set forth in the *Vermont Stormwater Management Manuals Volumes I and II* as most recently amended, where [planning commission/ development review board/zoning board of adjustment] finds that:

a. There is no practical alternative to the clearing, filling or excavating within the riparian buffer;

b. The purposes of this ordinance will be protected through erosion controls, plantings, protection of existing vegetation, and/or other measures; and

c. Evidence of an approved permit from the Vermont Agency of Natural Resources or the Town of ____ for coverage under the applicable permitting requirements shall be required to meet this criterion for encroachment into a riparian buffer.

6. Roadways or access drives for purposes of crossing a riparian buffer to gain access to land on the opposite side of the buffer, or for purposes of providing safe access to an approved use, in cases where there is no feasible alternative for providing safe access. A roadway crossings or access drive shall occur at a right angle to the stream channel.

7. Utility lines, including telephone, cable, sewer and water, to the extent necessary to cross or encroach into the riparian buffer where there is no feasible alternative for providing or extending utility services.

8. Outdoor recreation and education facilities provided that any building or structure (including parking and driveways) associated with such use is located outside the riparian buffer.

9. Stream restoration projects, including dam removals, in accordance with a plan approved by the Vermont Agency of Natural Resources.

SECTION 7. EXPANSION OF NONCONFORMITIES WITHIN RIPARIAN BUFFERS.

Any building, structure, or land or use thereof, which is made nonconforming by reason of the adoption of this Ordinance, may be expanded or reconstructed, subject to the following provisions:

(A) The structure to be expanded or reconstructed was originally constructed on or before the effective date of these regulations.

(B) The nonconforming use shall not be changed to another non-conforming use.

(C) A nonconforming use that is discontinued for one year or abandoned shall not be resumed.

(D) A nonconforming use that is replaced by a conforming use may not revert to a non-conforming use.

(E) If a structure made nonconforming by reason of the adoption of this ordinance is damaged or destroyed over 75% of its market value by floodwater inundation or fluvial erosion, the structure shall not be rebuilt within the riparian buffer unless a variance is obtained in accordance with Section _____ of the Town of _____'s zoning regulations.

(F) Enlargement, repair or reconstruction of pre-existing structures within riparian buffers shall be permitted if the [planning commission/ development review board/zoning board of adjustment] determines that the development activity will not decrease the existing structure setback from the waterbody or increase the encroachment within the riparian buffer, and the total building footprint area of the expanded or reconstructed structure is no more that fifty percent (50%) larger than the footprint of the structure lawfully existing on or before the effective date of these regulations.

(G) New accessory structures appurtenant to a pre-existing structure within a riparian buffer shall only be permitted if it is determined that the accessory structures do not extend into the buffer any further than the existing structure and the total building footprint area of the new accessory structure is no more than fifty percent (50%) of the footprint of the pre-existing structure.

SECTION 8. OTHER LAWS.
This ordinance is in addition to all other ordinances of the Town of _____ and all applicable laws of the State of Vermont.

SECTION 9. SEVERABILITY.
If any section of this ordinance is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this ordinance.

_____ _____
DATE

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SIGNATURES

MUNICIPAL ASSISTANCE CENTER TECHNICAL PAPER #2

VERMONT LEAGUE OF CITIES & TOWNS

Serving and Strengthening Vermont Local Governments

Creating an Effective Riparian Buffer Ordinance

APRIL, 2007

INTRODUCTION

Statewide efforts to improve the water quality in Lake Champlain and other Vermont lakes, rivers and streams have recently drawn a lot of attention. With residential and other land development increasing in most areas, there is an urgent need to ensure that this development occurs with minimal impact on water quality. Poorly planned development along waterbodies can threaten water quality, aesthetics, wildlife habitat, municipal infrastructure and private property.

In Vermont, the impacts of most small scale or incremental development must be addressed locally. One tool that local officials have to help them keep waters healthy is the ability to adopt land use regulations that conserve vegetated riparian buffers in areas that have not yet been developed. They may also implement standards that require developers to maintain and restore vegetated riparian buffers before, during and after construction. This Paper and the VLCT Municipal Assistance Center's model riparian buffer ordinance offer guidance for municipal officials who are interested in adopting regulations that protect and conserve riparian buffers.

WHY ADOPT A RIPARIAN BUFFER?

1. **Local Economy.** It is in the best interest of every town to prevent water quality problems, as clean water is one of a town's most valuable assets. Allowing water bodies to become impaired can bring a local economy to a halt. (A river, stream or lake is impaired if its waters exceed state water quality standards, which set limits of pollution or change allowed by law.) State law prohibits development in areas where the project would create runoff into a waterbody already impaired by stormwater – unless the developer can implement a watershed-based, net-zero discharge system. This can be very expensive, time-consuming and contentious. A town that protects its local rivers, lakes and streams also protects its economic future.
2. **Environmental Protection.** The health of Vermont's streams, rivers and lakes is strongly linked to surrounding land use and development. Riparian buffers store stormwater runoff and moderate stream flows, reduce the effects of flash floods, and help maintain base water levels during dry months. Riparian buffers also hold streambanks together, minimize erosion, remove contaminants and reduce sediment loads to surface waters. Healthy riparian buffers help maintain habitat for fish, amphibians, and terrestrial animals, and also improve aesthetics, thereby increasing property values.
3. **Infrastructure Protection.** Allowing development too close to a waterway can lead to destruction of roads and buildings and threatens the scenic value and sense of place for a community. Sturdy vegetated riparian buffers, on the other hand, can offer protection from flash flooding and provide a flood and erosion "insurance policy" for towns.

HOW MUCH LAND IS NECESSARY FOR AN EFFECTIVE BUFFER?

Your town's specific water quality and conservation goals will dictate how large an area to consider for riparian buffer protection. To determine the appropriate width for a vegetated riparian buffer, towns should take into account the width of the flood plain, channel stability, slope, adjacent wetlands, wildlife corridors, the amount of land draining into the waterbody, and existing land use and structures.

In general, a naturally vegetated 50-foot-wide riparian buffer on each side of a stream will control soil erosion, and a 100-foot-wide buffer will also protect many of the functions associated with healthy riparian habitat. For lakes,

State Act 250 guidelines generally call for a 100-foot vegetated riparian buffer. Towns may need to consider a wider riparian buffer for sites with significant wildlife travel corridors, or site characteristics that indicate increased risk of erosion and/or potential for overland flow of pollutants. To allow for local policy decisions, the VLCT model ordinance includes blank spaces for the buffer widths.

Which Water Bodies should have Protected Riparian Buffers?

Towns have several policy options when it comes to determining which water bodies to include in their riparian buffer ordinance. A town can list specific streams and apply specific buffer widths to each waterbody or the ordinance can apply generally to all perennial and intermittent streams without specifically naming them – if they are portrayed on a map, such as the 7.5' U.S. Geological Survey quadrangle, surface water data map or fluvial erosion hazard map. Towns can also use a combination of specifically named streams and those generally identified on a map.

The same principal applies to lakes: towns can list them specifically or identify lakes portrayed on specific maps. In addition, a town can determine a lake's applicability by its size. For example, a buffer requirement could apply to all lakes within town boundaries that have more than 21,780 square feet (1/2 acre) of water surface. To allow for local policy decisions, the VLCT model ordinance includes blank spaces for the water bodies to be included.

Riparian buffer protection should apply to small streams as well as large rivers and lakes. Small streams are the most vulnerable because they respond most dramatically to changes in nearby land uses and tend to be located on the steepest sloping and erosion-prone lands. Small streams and tributaries also often have the highest quality aquatic and terrestrial habitats and thus warrant riparian buffer protection.

A riparian buffer ordinance is most effective in undeveloped and developing areas. In highly built-out areas water quality goals might best be achieved through site-specific land acquisition and conservation efforts.

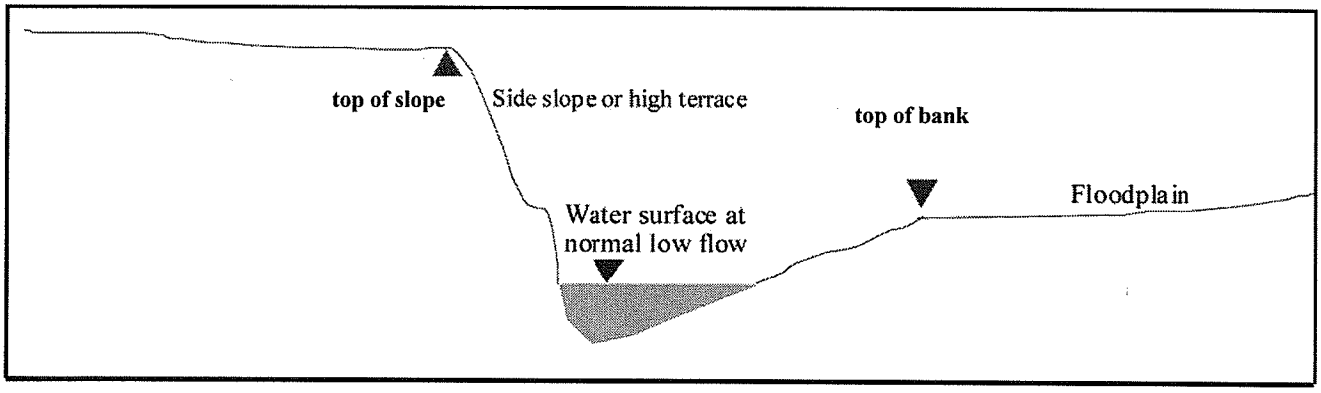
How are Riparian Buffers Measured?

When establishing riparian buffers, it is important to consider the point from which the buffers should be measured. In the VLCT model ordinance, we recommend that riparian buffers on streams be measured inland perpendicular from either the top of bank or the top of slope, depending on the stream channel characteristics.

Stream buffers measured from the top of bank are those with a flat, wide floodplain onto which the stream overflows during periods of high water flow. The top of bank begins at the streamside edge of the adjacent floodplain. If there is a wetland present adjacent to the floodplain, the top of bank begins at the upland edge of the contiguous wetland.

Stream buffers measured from the top of slope are those with steep valley side slopes or high terraces. Streams with steep banks have little or no floodplain for high flows to access, so the threat of slope erosion and slope failure is high, especially during storm and flood events. Therefore, it is important to establish riparian buffers at the top of the slope for steep streams with little or no floodplain.

Riparian buffers on lakes are measured inland perpendicular to the shoreline beginning at the mean water level. Towns can obtain mean water level records for specific lakes by contacting the Vermont Water Quality Division, Lakes and Ponds Encroachment Program, at 802/241-3777. If there is no mean water level on record, a town can request an on-site determination.



Is Participation in the National Flood Insurance Program (NFIP) Enough to Protect our Property and Streambanks?

Municipalities that enroll in the NFIP in order to reduce flood insurance rates for members of the community use NFIP floodway maps to delineate where development can take place along a river corridor susceptible to flood damage. Although NFIP protection is important, a town's participation in the program does not address the water quality goals that riparian buffers can achieve. This is because the NFIP floodway maps and ordinances are based on elevation and can allow significant development in floodplains, as long as the structures are raised above the base flood elevation, with no consideration of riparian buffers.

In addition, many of the NFIP maps are out-of-date because they do not consider all of the development and changes in the years since the maps were first made. The NFIP floodway maps include only those streams susceptible to flooding by inundation (not erosion). Many streams in your town may not be covered under the NFIP, and if water quality is to be protected, towns will require another standard, such as a riparian buffer ordinance.

How would a Riparian Buffer Ordinance Mesh with Efforts to Map Fluvial Erosion Hazards?

Incorporating riparian buffer protection into local land use regulations dovetails easily with the efforts of the Vermont River Management Program's fluvial erosion hazard mapping process, which is based on geomorphic assessment. Both initiatives limit development in areas immediately adjacent to streams. The two initiatives have different, but complementary goals.

The fluvial erosion mitigation strategy focuses on determining how much space is needed along a river corridor for an unstable stream or river to re-establish and maintain a stable slope and floodplain. This determination, based on a geomorphic assessment, considers channel movement and bank and streambed stability issues. The resulting recommended setbacks do not necessarily incorporate vegetated buffers.

On the other hand, the riparian buffer strategy focuses on protecting vegetated zones adjacent to streams in order to protect water quality and aquatic habitat by shading the waters, filtering surface runoff, minimizing erosion, and providing food and shelter to aquatic life. A riparian buffer can incorporate the setback needed for stream stability and also provide for these important functions. For example, if a recommended setback based on geomorphic assessment is deemed to be 100 feet, a town can establish that, at a minimum, one-half of this setback distance be maintained as a naturally vegetated buffer.

The VLCT model riparian buffer ordinance has the flexibility to include waterbodies and buffer widths based

Values of Riparian Buffers

- **Trap and remove sediment in runoff.**
- **Reduce stream bank erosion.**
- **Trap and remove phosphorus, nitrogen, and other nutrients that cause excessive algae blooms and damage to aquatic ecosystems.**
- **Trap and remove other contaminants, such as pesticides, heavy metals and pathogens**
- **Contribute leaves and other energy sources to the stream.**
- **Store flood waters, thereby decreasing damage to property.**
- **Maintain habitat for fish and other aquatic organisms by moderating water temperatures and providing woody debris.**
- **Provide habitat for amphibious and terrestrial organisms.**
- **Maintain base flow in stream channels.**
- **Maintain good water quality.**
- **Protect channel-forming processes and channel stability.**
- **Protect roads and bridges from erosion.**
- **Improve the aesthetic appearance of stream corridors.**
- **Offer recreational and educational opportunities to residents and tourists.**

on geomorphic assessment and can combine with a town's effort to establish fluvial erosion hazard maps as the basis of variable buffer widths along a stream or river corridor.

The model riparian buffer ordinance can also employ fixed buffer widths, based on local policy decisions. Adopting and administering a riparian buffer ordinance that does not require a study to determine the buffer widths may be the best approach for towns to get protections in place sooner. Towns can adopt a riparian buffer ordinance while conducting a geomorphic assessment, and, as the problem areas are identified, they can adjust their ordinances accordingly.

Conclusion

Local governments have clear legal authority under state statute (Chapter 117 of Title 24) to regulate riparian buffers. In Vermont, the impacts of most small or incremental development must be addressed locally. Adopting a riparian buffer ordinance is a straightforward way for towns to safeguard investments in roads and bridges, and to protect water quality.

The VLCT model riparian buffer ordinance is designed to offer towns a clear-cut framework that is simple to develop and administer. The riparian buffer model language can easily be incorporated into an existing land use regulation. For assistance in using and manipulating the model to fit specific town needs, contact Milly Archer, Water Quality Coordinator, at the VLCT Municipal Assistance Center, 800/649-7915, or marcher@vlct.org. To access the on-line version of the VLCT model riparian buffer ordinance, please visit the Resource Library at www.vlct.org.

About the VLCT Municipal Assistance Center

The Municipal Assistance Center (MAC) is comprised of six professionals with diverse backgrounds in municipal law, public management, municipal research and water quality protection. Our mission is to provide local officials with the education, training and professional assistance they need to fulfill their statutory duties. MAC is supported by membership dues, a state grant and fees that are charged for specific services.

With support from the Vermont Agency of Natural Resources, MAC now offers free on-site training and professional assistance for municipalities seeking to take greater steps to protect water quality. We can assist with projects such as recommended updates to land use regulations (zoning bylaws), on-site trainings on water quality regulation, examples of model and sample regulations, stormwater compliance and planning tools.

TAB 7