

VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

STRENGTHENING VERMONT LOCAL GOVERNMENT

February 2000

1999 CENSUS PROFILES HOW MUNICIPALITIES DO THEIR WORK

The results of the VLCT 1999 Municipal Census are in and provide a wealth of information on how Vermont's local governments perform their vast and diverse functions and responsibilities. How often are property taxes collected? When is town meeting held? Which municipalities have zoning? How often do selectboards meet? These questions, and many more, were asked and answered (thank you!) in late 1999 by Vermont municipalities participating in VLCT's 1999 Municipal Census.

The goal of the Census survey is to gather and then provide information on the many unique ways municipalities "get the job done." The 1999 Municipal Census is the third of its kind; VLCT first gathered information in 1995 and again in 1997. (See February 1995, April 1995 and May 1997 issues of the *VLCT News* for summaries of the 1995 and 1997 census results.)

The 1999 Municipal Census Survey was mailed to all municipalities in October 1999

and asked questions regarding a variety of municipal government policies and practices. Of the 275 questionnaires sent out, 248 were completed and returned – an outstanding response rate of 90%. What follows is a sampling of information gleaned from the survey results. A published report of the 1999 Municipal Census will be forthcoming by late spring. One free copy will be mailed to all participating municipalities; additional copies will be available for a nominal fee.

ADMINISTRATIVE OPERATIONS

When it comes to the choice of fiscal year, municipalities are almost evenly split. Fifty-six percent of respondents, 139, operate on a January 1 – December 31 fiscal year while 100, or 40%, of respondents operate on a July 1 – June 30 fiscal year. Eight municipalities operate under some other fiscal year basis as set by their charter. The choice of when to hold the annual town meeting is much more uniform throughout the state. The clear

majority, 77%, holds its annual meeting on the traditional first Tuesday in March. Ten percent, or 26 respondents, begin their annual meeting on the Monday preceding the first Tuesday in March and just eight municipalities, or 3%, begin their annual meeting on the Saturday preceding the first Tuesday in March. The remaining respondents indicated an alternate day based on their charter provisions.

The Census results tell us that most local legislative bodies (selectboards, trustees and councils) meet twice per month (65%), on a Monday (50%) and the meetings last between 2 to 4 hours (60%). The number of members on local legislative bodies varies somewhat with 52%, or 130 municipalities, operating with a three-member board while 35%, or 86 municipalities, have a five-member board.

PROPERTY TAX COLLECTION PRACTICES

Although state law provides municipalities the option to collect property taxes in installments most municipalities, 58% of respondents, still collect property taxes once per year. Forty-nine, or 20%, collect in two installments, 21 municipalities collect in three installments and 31, or 12.5%, collect property taxes in four installments. Twenty-two municipalities, 8.8%, offer a discount rate

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TOWN MEETING QUESTIONS? CALL VLCT

The League office will be open during its usual business hours of 8 a.m. - 4:30 p.m. on Town Meeting Day, Tuesday, March 7. Though some staff members may be out of the office for all or part of the day attending their town meetings, Law Center staff will be



available throughout the day to answer your town meeting questions. Please give the Center a call at 800/649-7915 if we can be of assistance.

We wish good attendance and good outcomes for all of our members' town meetings.

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VLCT NEWS

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CENSUS -

(Continued from previous page)

to taxpayers who pay on or before the due date. The discount can be between one and four percent and nearly half of those municipalities that offer the discount provide a 4% break.

Many municipalities have voted to exempt the business inventory and business machinery and equipment taxes. Two hundred and twelve, or 86%, have exempted the inventory tax and 55%, or 135 municipalities, have exempted the machinery and equipment tax.

ELECTION PRACTICES

The Australian ballot system has become very popular in Vermont municipalities. The Census results indicate that 62% of respondents elect municipal officers through the Australian ballot system. The next most popular use of the Australian ballot system is for public questions, with 32% using it for that purpose. A smaller percentage, 19%, uses this voting system to determine the municipal budget.

Most municipalities are similar when it comes to the choice of electing or appointing municipal officials. The vast majority of municipal clerks are elected - 94%, or 233. Most constables are also elected positions; 70% of respondents indicated that their constable is elected. Most planning commissions, on the other hand, are appointed - only 28 municipalities, or 11% of those responding, elect planning commission members. Road commissioners are also most often appointed with 165 municipalities, or 67%, indicating they appoint this position.

LOCAL ORDINANCES AND REGULATIONS

The 1999 Census results tell us that municipalities are very interested in regulating land development within their town boundaries. Seventy-seven percent, or 190 respondents, have adopted zoning bylaws. Fifty-nine percent, or 146 respondents, have enacted subdivision regulations.

The siting of telecommunication towers has recently become an important issue to some communities. Thirty municipalities, or 12%, indicated that they regulate the placement of telecommunication towers by incorporating regulations into their existing zoning bylaws. Nine municipalities have enacted free-standing ordinances to regulate tower placements in their communities.

The 1999 Census results also tell us that many municipalities are utilizing the Judicial Bureau (formerly the Traffic and Municipal Ordinance Bureau) to enforce civil ordinance violations. Seventy-four municipalities, or 30% of respondents, regularly use the judicial bureau for the adjudication of municipal civil ordinances such as noise, open container, animal control and many others.

Much more information was collected in the 1999 VLCT Municipal Census and is available to you with a quick phone call (800/649-7915) or e-mail to VLCT Associate, Legislative and Information Services, Molly Dugan (mdugan@vlct.org). As noted above, a full report of the results will be sent to participating municipalities in the near future. Thank you to all the municipal officials who completed the survey. The results provide us the opportunity to share ideas and best practices among all municipalities throughout the state.



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FIRE EQUIPMENT GRANTS AVAILABLE



The Vermont Rural Fire Protection Task Force recently announced the availability of \$540,000 in grant funds to assist fire departments to purchase new or replace existing personal safety equipment for their volunteer firefighters. The grant program is federally funded, through monies included in the 1999 federal veterans and housing bill at the request of Senator Jim Jeffords.

The program comes with the following guidelines:

1. Grants are needs based and will be distributed geographically;
2. Grants are only available for volunteer/paid-on-call, non-career firefighters;
3. A competitive purchasing process is required (a cooperative buying option will be available); and
4. A dollar for dollar local match is required.

The application deadline for the program is March 31, 2000. For more information and an application, contact Dennis Borchardt, Executive Director, George D. Aiken RC&D, HC 67, Box 17A, Randolph, VT 05060, tel. 802/728-9526, e-mail, dennis.borchardt@vt.usda.gov.

VLCT STAFF NOTES

Linda Becker, VLCT Financial Assistant, Trusts, and her husband Ken recently welcomed their adopted son, Chandra, to Vermont. Chandra Lokabandhu Verchereau-Becker was born on May 14, 1999 in Calcutta, India and arrived in Vermont just in time to experience his first snowy winter. His airplane flight to his new home and family took him from Calcutta to Bangkok to San Francisco to Minneapolis to Boston, and his proud mom says he still came off the plane smiling! Welcome Chandra and congratulations to Linda and Ken.

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CENSURING BOARD MEMBERS; POLICE STOPS OF POTENTIAL SUSPECTS

BOARD'S RIGHT TO CENSURE OWN MEMBER UPHOLD

A recent decision of the Vermont Supreme Court upheld the right of a school board to censure one of its members. *LaFlamme v. Essex Junction School District and Essex Junction Prudential Committee*, No. 97-493 (Jan. 21, 2000). In Essex Junction, the Prudential Committee (hereafter "Committee") functions as the school board.

Over a period of time, other Committee members had found Mr. LaFlamme disruptive and difficult to work with. Among other things, he had made statements that they believed were inaccurate and offensive at a meeting of the Village Board of Trustees meeting. The Committee members tried to discuss these and other issues with Mr. LaFlamme, but were unsuccessful. They therefore explored the possibility of censuring him, and consulted with legal counsel. Two Committee members then drafted a censure motion.

At a subsequent regular Committee meeting, the Committee presented Mr. LaFlamme with the censure motion in executive session. The motion proposed to censure Mr. LaFlamme for violating the Vermont School Boards Association and National School Boards Association "Code of Ethics, district policy, and standards of good boardsmanship." Among other specific things, the motion stated that he had failed to uphold the following tenets of the codes of ethics: "(1) Attend all regularly scheduled

regardless of how individuals voted. Mr. LaFlamme spoke publicly against the board-approved draft budget. . . . (3) Listen to legal counsel and constructive criticism to protect the board and the school system from liability. Mr. LaFlamme has made public unsubstantiated allegations which have exposed the district to liability." Additional sections charged that he had acted without delegated authority and that he had not fulfilled his responsibilities with respect to subcommittee work.

The Court did state clearly that censure, as a form of reprimand, is permissible under Robert's Rules of Order. If your board has voted to adopt Robert's Rules and you wish to censure a board member, consult carefully with your town attorney before taking any action.

board meetings insofar as possible, and become informed concerning the issues to be discussed . . . Mr. LaFlamme . . . failed to attend executive sessions at which information critical to sound decision-making was presented. (2) Abide by board decisions

In executive session, Mr. LaFlamme was told that the Committee would vote on the censure motion during the regular meeting, unless he was willing to discuss the Committee's concerns. He was not, so the

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LEGAL CORNER - (Continued from previous page)

executive session ended. At the open meeting, Mr. LaFlamme spoke in his own defense and disputed many of the allegations made in the motion. The Committee then granted the motion to censure by a vote of four to one.

Shortly thereafter, Mr. LaFlamme sued the Committee, raising four claims, one of which he later withdrew. The case went to a jury trial and the jury found against Mr. LaFlamme on two of the claims – failure to accommodate a handicap and denial of his free speech rights. However, the jury ruled in his favor on the remaining claim, alleging the denial of his right to procedural due process. The jury found that the Committee had damaged Mr. LaFlamme’s reputation so severely that “his opportunity and ability to associate with others were significantly limited and that the damage resulted without due process of law.” The Committee appealed to the Supreme Court on the grounds that as a matter of law, it should have won the case.

Before discussing the legal principles involved in Mr. LaFlamme’s due process claim, the Court noted that Robert’s Rules of Order govern the conduct of school board meetings, under 16 V.S.A. § 554. Robert’s Rules allows reprimand as one of several disciplinary actions that an organization may take. As the Court explained, “Censure is a form of reprimand, defined [in Black’s Law Dictionary] as ‘[t]he formal resolution of a legislative, administrative, or other body reprimanding a person, normally one of its own members, for specified conduct.’” According to Robert’s Rules, a reprimand could apply either to offenses committed during a

meeting, or offenses committed by members outside a meeting. During the trial of the case in the Superior Court, the Superior Court ruled that the Committee had the right to censure Mr. LaFlamme for conduct that occurred during Committee meetings, but not for conduct that occurred outside a meeting. The Supreme Court did not decide whether the Superior Court was correct in this ruling, however, because it found that Mr. LaFlamme had not proved that he had been deprived of his due process rights.

The Court explained that the “stigma” that may result from a disciplinary action does not give rise to a due process claim so long as it only injures a person’s reputation. In order to establish a due process violation, Mr. LaFlamme would have had to show that he had been deprived of either *liberty* or *property* without due process of law. Liberty interests include the rights of free speech and free association. In this case, the jury rejected Mr. LaFlamme’s claim that his free speech rights had been infringed. The Court itself concluded that Mr. LaFlamme had not shown evidence of an interference with his right of free association, noting that the Committee had not imposed any restrictions on his ability to associate with others.

Nor was Mr. LaFlamme denied a property interest. Even if school board members have a “property interest” in their membership on the board (which the Court did not rule on), in this case Mr. LaFlamme remained on the Committee for about a year after the censure, and then voluntarily resigned. The Committee did not remove him from office. Mr. LaFlamme had also charged that the Committee’s actions had prevented him from being elected a village trustee, a position for

which he had run and lost. The Court found no property interest there. A property interest is created when a person has a “legitimate claim of entitlement” to a government benefit, not, as in this case, a “unilateral hope” of becoming a village trustee.

Because Mr. LaFlamme had not been deprived of either a liberty or property interest, he could not prevail on his due process claim and the Supreme Court therefore reversed the jury verdict in his favor.

Although the school board won this case, it is important to remember what the Supreme Court did *not* decide. It did not rule on whether it is proper to censure a board member for conduct that occurs outside a meeting, and it did not decide whether members of Vermont school boards have a “property interest” in their positions. (Members of local boards who by statute may only be removed “for cause” may have such a property interest). The Court did state clearly that censure, as a form of reprimand, is permissible under Robert’s Rules of Order. If your board has voted to adopt Robert’s Rules and you wish to censure a board member, consult carefully with your town attorney before taking any action.

CIRCUMSTANCES FOUND TO JUSTIFY POLICE STOPS

Two recent cases, one from the U.S. Supreme Court and one from the Vermont Supreme Court, have dealt with circumstances under which police officers may stop and question potential suspects. Both cases revealed divided courts and involved the same legal standards for making a stop, but the cases involved very different facts. The U.S.

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ASK THE LEAGUE

LUNCH BREAKS; FUEL TAXES; INFORMATIONAL HEARINGS AND BYLAW ADOPTION; PREPAYMENT DISCOUNTS

Must Vermont municipal employers provide their employees with a lunch break?

Yes. Although the federal Fair Labor Standards Act (FLSA) *does not* mandate that an employer provide meal or rest periods, Vermont law does. In 1997, the Vermont Legislature added a provision to the employment laws that states:

"An employer shall provide an employee with 'reasonable' opportunities during work periods to eat and to use toilet facilities in order to protect the health and hygiene of the employee." 21 V.S.A. § 304

To determine what is "reasonable," we suggest using federal regulations regarding compensation as a guide. A bona fide meal period *is not* work-time, and does not include coffee breaks or snack time – those are 'rest' periods. The intent of a meal period is to free employees from work duties so that they can sustain themselves by eating and relaxing. It is not necessary that the employee be permitted to leave the premises if he or she is otherwise completely freed from duties during the meal period. Ordinarily, 30 minutes or more is long enough and is common among employ-

ers. The general rule is that if an employee is given 30 minutes or more to eat, the employee need not be paid for that period of time. If, however, the employee is required to use that time to work, it is compensable. For example, if an employee must remain at his or her desk during the mealtime to answer the telephone, that time must be included as "time worked." 29 C.F.R. 785.19(a). Also, there is nothing that prohibits an employer from offering paid lunch breaks as part of an employee benefit package (although we are not aware of any employer that does this).

In contrast with the general lunch break rule, short rest periods or coffee breaks (usually five to 20 minutes long) are counted as hours worked. 29 C.F.R. 785.18. Local governments, like any other employer, must comply with the law.

Is a town subject to gasoline and diesel fuel taxes if the town buys from an out-of-state distributor?

Vermont law exempts governmental agencies from taxes assessed on diesel fuel purchases only. 23 V.S.A. § 3003(d)(3). But there is no municipal exemption for the gasoline tax (quite often, the price that the fuel distributor pays already includes the tax).

Even if the town deals with a fuel dealer located in a state that exempts municipal purchases of both gasoline and diesel fuel from state taxes (such as New Hampshire and Maine), the Vermont gasoline tax must still be paid to the Vermont Department of Motor Vehicles. Municipalities do not lose the money, however, since it comes back to them through the state transportation fund in the form of state aid for highway maintenance. 23 V.S.A. § 3106(c).

If you have specific questions about this, contact Doug Bessette in the Fuel Tax Division of the Vermont Department of Taxes, tel. 802/828-2077.

In a 'rural town', where the law requires voters to approve or disapprove a bylaw or amended bylaw by Australian ballot, must a public informational hearing be held within 10 days of the vote?

No. Although as a general rule, it is true that a public informational meeting *must be held* within the 10 days prior to an Australian ballot vote on a public question, this requirement does not apply to bylaw adoption by rural towns. The simple reason is that under 24 V.S.A. Chapter 117, § 4404(d) (bylaw

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ASK THE LEAGUE -

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adoption in rural towns), the law requires the voters to use the Australian ballot system. In contrast, under the general Australian ballot laws in 17 V.S.A., the voters themselves must first vote to use the Australian ballot system in voting public questions (or other matters, such as the budget). In this case, an informational hearing is required by statute as a precursor to the vote: "[W]henever a municipality has voted to adopt the Australian ballot system of voting on any public question... the legislative body shall hold a public information hearing on the question..." 17 V.S.A. § 2680(g).

The intent of the Australian ballot public informational hearing is plain. It is to provide the voters with an opportunity they otherwise would not get to gain information and to ask questions about the issue to be decided. There is no real harm done by not applying the informational hearing requirements to bylaw adoption, since the relevant law (24 V.S.A. Chapter 117, § 4403 et seq.) sets forth a detailed public hearing process before both the planning commission and the selectboard.

Once the voters have voted to apply a prepayment discount to real estate taxes, must the question be asked again each year at town meeting?

The answer to this question depends upon how the original question was phrased. For example, if the article read, *Shall the town give a 4% discount on real estate taxes paid on or before the tax due date?* the answer to your question would be "no," it does not have to be re-voted each year. It is the Law Center's

opinion that the prepayment discount policy continues into future years until the voters vote to repeal it. On the other hand, if the original question was worded, *"Shall the voters give a 4% discount on real estate taxes paid on or before the July 1, 2000 due date?"* the answer would be "yes" because the prepayment discount clearly only applies to a specific tax due date. As you can see, it is important to phrase the question in a manner that clearly accomplishes the intended goal.

LEGAL CORNER -

(Continued from Page Five)

Supreme Court case, a five to four decision, is *Illinois v. Wardlow*, No. 98-1036 (Jan. 12, 2000). Two police officers were driving in a police car caravan which was heading toward an area in Chicago known for heavy drug trafficking, in order to investigate drug transactions. One of the officers saw Mr. Wardlow standing next to a building holding an opaque bag. Mr. Wardlow looked in the direction of the officers and then fled, running through an alley. The officers were able to follow him and corner him on the street, where they stopped him and conducted a pat-down search. They found a handgun with live ammunition in the bag he was carrying, and arrested him.

The question on appeal to the U.S. Supreme Court was whether the officers had reasonable suspicion enough to justify an investigative stop, as required by the case of *Terry v. Ohio*, 392 U.S. 1 (1968). In order for the police to stop a person, *Terry* requires the officer to have a "reasonable, articulable suspicion that criminal activity is afoot." A stop is not justified if a person simply happens to be in an area of expected criminal activity. *Brown v. Texas*, 443 U.S. 47 (1979). Nor is a stop justified if a person fails to cooperate with the police when they approach him, but simply ignores them and goes about his business. *Florida v. Royer*, 460 U.S. 491 (1983). However, in this case, it was Mr. Wardlow's flight that attracted the officers' attention. The Court observed, "... nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. [citations omitted] Headlong flight - wherever it occurs - is the consummate act of evasion... the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior." The five-justice majority ruled that the totality of the circumstances in this case created a reasonable suspicion of criminal activity and thus justified the stop. Here, the circumstances

involved both Mr. Wardlow's presence in a high-crime area and his flight when he saw the officers. The four dissenting justices disagreed that these circumstances were sufficient to rise to the level of reasonable suspicion.

The Vermont Supreme Court case, *State v. Kindle*, No. 99-041 (Jan. 14, 2000), was a three to two decision. In this case, two Burlington police officers were stopped at a red light at an intersection at 2:10 a.m. They saw a car go through the intersection and, as it passed them, a steady red beam of light passed across the windshield of their cruiser. They thought the beam resembled a laser-sighting device sometimes used for aiming a gun, so they pursued the car and stopped it. They patted down the occupants of the car and discovered that the red beam had come from a hand-held laser pointer used as a visual aid for presentations, not a gun sight. They also saw that the driver, Mr. Kindle, appeared to be intoxicated, so they arrested him for driving under the influence.

The case was appealed on the question whether the officers had a reasonable suspicion to stop the car. Vermont's formulation of the legal rule for a vehicle stop is "whether, looking at the entire picture, police officers could reasonably surmise that occupants of [the] vehicle they stopped were engaged in unlawful activity." *State v. Kettlewell*, 149 Vt. 331, 335 (1987). As in the *Wardlow* case discussed above, the justices disagreed on whether this entire picture justified the stop. Three of the justices ruled that it did. They observed that it was reasonable for the officers to conclude that an occupant of the car might have been pointing a firearm, potentially threatening not only the officers' safety but that of others. Noting that "laser-sighting devices are a part of the gun culture" and that there have been attempts to regulate or ban certain uses of them in other parts of the country, the Court concluded that the stop was lawful. The two dissenting justices believed that the fact that the car moved away from the officers and down the road was inconsistent with the actions of a person pointing a firearm, and therefore that it was unreasonable for the officers to stop the car.

Both cases reaffirm the "totality of the circumstances" or, stated another way, the "entire picture" rule that applies to police stops. Although it is very difficult, if not impossible, for officers on the street to predict how a court will rule in a close case, officers must continue to use their common sense and take all the circumstances into account when making the rapid decision whether or not to stop a person.

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LOSS PREVENTION NOTES

A monthly column by the VLCT Property and Casualty Intermunicipal Fund (PACIF)



MUNICIPAL SOVEREIGN IMMUNITY

WHAT IS IT? WHAT DOES IT MEAN FOR VLCT PROPERTY AND CASUALTY INTERMUNICIPAL FUND (PACIF) MEMBERS?

Sovereign immunity is a judicial doctrine that prevents the initiation of a lawsuit against a municipality. It was established in England and based on the concept that "the king can do no wrong." However, leaders during the American Revolution clearly rejected this idea and chose instead to formulate another rationale to protect their power. What they came up with is that "the sovereign is exempt from suit on the practical ground that there can be no legal right against the authority that makes the law on which the right depends." 205 U.S. 349, 353.

Although completely abolished in some states, Vermont continues to recognize sovereign immunity if a municipality is

engaged in *governmental functions* rather than *proprietary ones*. Over time, the distinction between governmental and proprietary functions has been addressed on a case by case basis by Vermont's courts. This makes the issue very complex when determining whether a particular activity is protected from suit by sovereign immunity or not.

However, there are some general guidelines that municipalities can use. *Governmental functions are usually activities provided only by a municipality*. Court rulings have been based on whether the municipal activity in question is a necessary governmental function that benefits all citizens of the municipality. A

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CRITICAL INCIDENT MANAGEMENT FOR VERMONT MUNICIPALITIES

From time to time, VLCT PACIF and Health Trust staff members become aware of a service that is valuable to municipalities, but that they do not currently offer themselves. One of these services is Critical Incident Stress Debriefing (CISD), a technique developed to mitigate and prevent post-traumatic stress among high-risk occupational groups. These groups include fire fighting, law enforcement, emergency medicine, disaster response, emergency dispatch and public safety personnel. Other high-risk business and industrial groups have also adopted these

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IMMUNITY -

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proprietary function is one in competition with a private enterprise, or an activity engaged in for a special profit or benefit. Governmental activities have been ruled as proprietary when the activity is optional, not mandated by state government, and benefits a limited group within the city or town. Some examples are:

Governmental Functions - Immunity applies:

1. Construction, repair or maintenance of streets, highways and sidewalks.
2. Construction of public parks.
3. Activities associated with fire and police protection.
4. Enforcement of health and safety ordinances.

Proprietary Functions - Immunity does not apply:

1. Maintenance and operation of city water or sewer systems.
2. Activities of a municipal housing authority.
3. Activities of a ski tow in a public park.

In Vermont, 29 V.S.A. § 1403 declares that when a municipality purchases a policy of

liability insurance, it waives its sovereign immunity to the extent of the coverage of the policy and consents to be sued. However, the Legislature has specified participation in a municipal insurance pool, such as PACIF, does not constitute the purchase of insurance. 24 V.S.A. § 4946.

If you have any questions about sovereign immunity, or would like more information about VLCT PACIF, feel free to contact a member of the claim staff at 800/649-7915. The League also offers a handbook entitled *Municipal Liability and Risk Management*, (1995) which is an excellent resource on sovereign immunity and risk management. Please contact the League if you would like to order a copy.

CRITICAL INCIDENT -

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techniques, which were developed by Jeffrey T. Mitchell.

The CISD process uses group meetings or discussions about a traumatic event to mitigate the psychological impact of the traumatic event, prevent post-traumatic stress, and serve as an early identification mechanism for those who may require mental health follow-up.

The peer-led meetings have psychological and educational elements, but are not considered psychotherapy. Personnel are given the opportunity to discuss their thoughts and emotions about a distressing event in a controlled, structured, and rational manner. They also get the opportunity to see that they are not alone in their reactions and that many others may be experiencing the same reactions.

The Green Mountain Critical Incident Stress Management Team, directed by Frank Silfies, offers CISD services in Vermont. Any group or municipality needing CISD is encouraged to contact Frank at 802/674-5717. He will put together a team to work with your group. The GMCISMT conducts these trainings at no charge, and relies on experienced volunteers to staff the teams.

VLCT staff members David Sears and Heidi Joyce recently attended the Basic Critical Incident Stress Management Course instructed by Frank Silfies, and are members of the Green Mountain Critical Incident Stress Management Team.

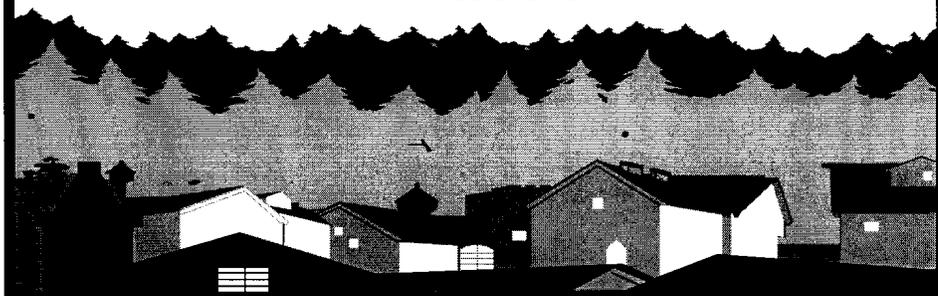
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MUNICIPAL ASSISTANCE PROGRAM

In an effort to meet the needs of small, rural towns and villages, the Economic Development Council of Northern Vermont offers a new program that is designed to provide professional services to communities that do not have a town administrator. The Municipal Assistance Program (MAP) will provide an experienced individual to work with towns in Caledonia, Essex, Franklin, Grand Isle, Lamoille and Orleans counties, on such issues as grant research and writing, impact fee studies, personnel policies, local ordinance review, cooperative purchasing and much more.

If you would like more information on what this Program can do for your town, contact Jim Fitzgerald at 802/524-4546.



TWO VIEWS ON MAKING LOCAL PLANS WORK FOR TOWNS IN THE ACT 250 PROCESS

(Editor's note: One of the criteria that Vermont's Act 250 administrative bodies must look at before issuing permits for land development is whether or not the proposed project conforms with the local or regional plan. This decision is, of course, based on the interpretation of the municipal plan by the Act 250 Environmental Board and district commissions, with input from local officials' testimony. There are divergent opinions on how well this process is working to preserve a municipality's control of its local land use planning and permitting process in the course of the Act 250 review process. We offer this month two, very different suggestions on how to draft municipal plans so that their interpretation by the Act 250 Board and district commissions is consistent with the municipality's intent. One, by attorneys Jon Anderson and Brian Sullivan, suggests language that effectively removes the plan's provisions as benchmarks for Act 250 review unless otherwise specified in the plan. The other, by attorney David Grayck, suggests that municipalities make sure that their plan and zoning/subdivision bylaws work together to clearly spell out development standards in their municipality, so that land use permit applications will be found locally, and before Act 250, to be in conformance with the municipal plan. While VLCT does not endorse one solution or the other, and recognizes that there may be other ways to bolster municipal planning's fate under Act 250, we thought it valuable to offer these two views on the issue.

Finally, it must be noted that VLCT has suggested language to the Vermont Legislature that will remove much of the ambiguity around this issue. The VLCT 2000 Municipal Policy states: "Decisions about conformance to municipal plans under Act 250 Criterion 10 must be non-rebuttable presumptions."



WHEN IN DOUBT, TAKE PLAN STANDARDS OUT OF CONSIDERATION

Whether intended or not, the Act 250 process has the potential to reduce local control over land use regulation. This issue and a response that Vermont municipalities may easily take are described below.

Under Criterion 10 of Act 250, the Vermont Environmental Board and District Environmental Commissions may only issue a Vermont Land Use Permit if the proposed project "is in conformance with any duly adopted local or regional plan." Historically, the Board and Commissions - charged with hearing Act 250 applications - have given some deference to a municipality's implementation of its plan. Typically, that implementation occurs through the enactment of permanent zoning bylaws. A municipality

(Continued on next page)

MAKE LOCAL PLAN AND BYLAW STANDARDS CLEAR AND IN ACCORD

Much has been written on how local planning and zoning overlap with Act 250, but many communities remain unsure about the best way to guarantee local control over development. Here are the basic rules about how a community can use local planning and zoning to control its destiny in Act 250:

- If a town has both a zoning bylaw and a subdivision ordinance, then a private, commercial development needs an Act 250 permit only if it's built on a tract of land that is 10 or more acres in size. For more local control and less Act 250, adopt both a zoning bylaw and a subdivision ordinance.
- Under Criterion 10, a specific town plan provision can control what will or won't get an Act 250 permit. If a town plan says no

new commercial construction in residential areas, then an Act 250 permit will not be issued for such new construction even if the remaining Act 250 criteria are satisfied.

- Under Criterion 10, *ambiguous town plan provisions mean that the local zoning bylaw is used to clarify what the town plan means.* If a town plan says new commercial construction is discouraged, but not prohibited, in residential areas, then Act 250 probably will look to the zoning bylaw. If the bylaw allows commercial construction as either a permitted or conditional use, then commercial construction is allowed under the town plan, and the project satisfies Criterion 10. While the project still has to satisfy the rest of the Act 250 criteria to get a permit, it will be allowed under the town plan.
- Under Criterion 8, a town plan or zoning bylaw can establish a clear, written community standard as to how projects should look or as to how an area of the town should look.

Two fairly recent Vermont Environmental Board decisions illustrate these rules. In the *Town of Stowe* case, the Environmental Board denied a permit for a sewer line extension under Criterion 10. The Board read the local plan and found three specific provisions that had to be complied with before the project could be built. In the *John Russell* case, the Environmental Board denied a permit for an asphalt plant in a residential area. The Board read the local plan and found that, since the purpose of a residential area was to provide for residential and other compatible uses, an

(Continued on next page)

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CLEAR STANDARDS -

(Continued from previous page)

asphalt plant was not allowed in a residential area. Whether the Environmental Board got it right in the *John Russell* case remains to be seen since the applicant appealed to the Vermont Supreme Court. But one thing for sure is certain - local planning and zoning can help a town control its destiny in Act 250 if the town knows how to use planning and zoning to its advantage.

Whether a town adopts zoning and subdivision to become a 10-acre town, or writes a clear written community standard into its town plan, the way for a town to win in Act 250 is embrace planning and zoning.

(By David L. Grayck, Esq. Grayck is counsel to the law firm of Cheney, Brock, & Saudek in Montpelier. Prior to this he served as General Counsel to the Vermont Environmental Board and Water Resources Board, and as Deputy Secretary of State.)

REMOVE STANDARDS -

(Continued from previous page)

applies those bylaws through the quasi-judicial permit hearings conducted by its zoning board of adjustment or development review board. The Act 250 authorities have also given some deference to the decisions of those municipal bodies.

Recently, however, the Environmental Board has shown a willingness to interpret arguably ambiguous plan provisions in a manner that opposes actions or decisions by the applicable municipality. In a well-publicized case, *In Re Town of Stowe*, Docket No. 10035-9-EB (Slip Op. dated May 22, 1998), the Board construed the Town of Stowe's plan to deny a permit for a sewer extension project even though that project was supported by town officials and approved through a bond vote by town residents.

This outcome should be of concern to municipal officials for at least two reasons:

1. It limits local control over projects. Even if local permits have been granted, an Act

250 permit will issue only if officials do not identify a plan passage that can be interpreted to oppose such development.

2. It limits the ability of municipal officials to determine if, when and how a town's plan will be implemented. For example, all language that arguably restricts development in town plans may be construed to be effective immediately without being incorporated in zoning bylaws. In contrast to zoning bylaws, where the nuance of every word is usually debated, historically much less attention has been focused on the language of town plans. Responsible town officials and the citizens they represent need to examine plan language that could be interpreted to restrict development much more carefully than in the past.

For some of our clients concerned about these issues, we have developed what we believe is a simple and effective way to address this challenge. A preamble to your town plan should state clearly that nothing in the plan is

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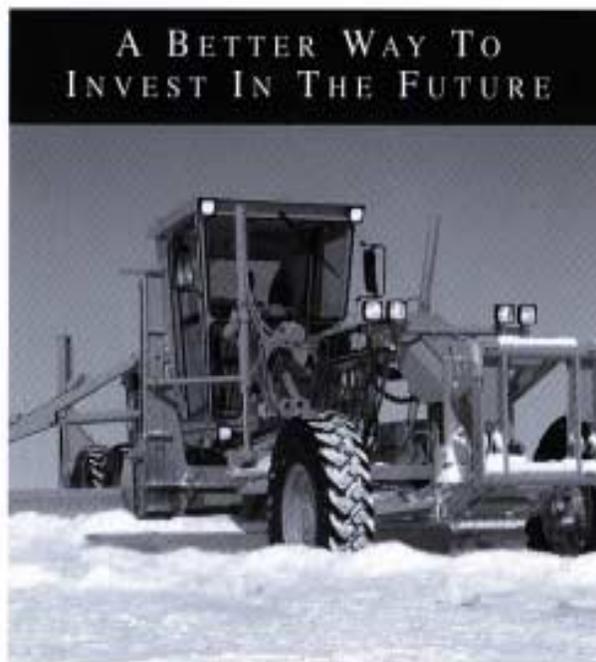
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REMOVE STANDARDS -

(Continued from previous page)

enforceable through Act 250 unless explicitly identified as such. Explicit identification enables townspeople to focus their attention on and debate the restrictions they are approving in adopting a town plan.

Specific recommended preamble language is as follows:

The Town intends this document as a general plan for further action. Except as specified in the space provided therefor immediately below, no statement in this plan shall be interpreted as a standard with which an applicant for any state or local land use permit or approval must comply in order to obtain that permit or approval. In particular, except as specified in the space provided therefor immediately below, this plan does not enunciate any standard with which a project must comply in order to satisfy Criteria 8 and 10 of Act 250.

The same challenge arises for regional

plans. We believe town officials would be well advised to direct their representatives to insert similar language in regional plans as follows:

The Regional Planning Commission intends this document as a general plan for further action. In general, we leave the specific means of implementing these general goals to the constituent municipalities of this regional commission. Therefore, except as specified in the space provided therefor immediately below, no statement in this plan shall be interpreted as a standard with which an applicant for any state or local land use permit or approval must comply in order to obtain that permit or approval. In particular, except as specified in the space provided therefor immediately below, this plan does not enunciate any standard with which a project must comply in order to satisfy Criteria 8 and 10 of Act 250.

(By Jon Anderson, Esq. and Brian J. Sullivan, Esq., members of the Burlington firm of Burak, Anderson & Melloni, PLC.)

AGENCY'S MAPPING INFORMATION NOW ON-LINE

In the 11 years since the Vermont Agency of Natural Resources began developing and maintaining geographic information system (GIS) data, the Agency has created or maintained more than 350 GIS data sets describing elements of the Vermont landscape. A major challenge has been finding the best means to make this geographic information available to more Vermonters.

Late last year, the Agency's new Internet Mapping Site went on-line. The site (www.anr.state.vt.us/gismaps/index.htm) currently links to 12 map views of Agency GIS data, including special planning and mapping projects currently taking place within the Agency. Each of these views is interactive via the user's web browser, allowing an individual to turn themes (data layers) on and off, zoom in and out, pan, query data layer databases and print out maps. More views will be added, and it is hoped that the site will meet Vermonters' growing demand for GIS data. Try it out today!

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A THOROUGH AUDIT OF HUMAN RESOURCES OPERATIONS CAN PREVENT POTENTIAL LAWSUITS

All too frequently, employers unknowingly violate state and federal laws, or have policies and practices in place that are likely to generate problems.

That is why audits of an organization's Human Resources (HR) department - whether done internally or through outside consultants - are a critical facet of every HR professional's responsibilities. A detailed audit can identify and resolve issues before an employee's lawsuit or a government audit uncovers them.

Employers should audit the entire employment process, from hiring through employment to termination. Following are some of the more common problem areas:

Employment Applications. Most employers use some form of employment application. While applications serve several valuable functions, an outdated or carelessly worded form can be the basis of a lawsuit. Employers should review their application to ensure that they are only asking for information that is necessary to make a hiring decision.

For example, asking for an applicant's marital status or number of dependents may be necessary for benefit purposes after hire, but should not be asked prior to hire. Applications should also have a section the employee signs that includes a clear at-will employment statement and a release for reference-checking purposes.

This section should also include a statement that if the applicant is hired and any of the information on the application is subsequently shown to be false or misleading, the individual's employment may be terminated.

Handbooks. Employee handbooks should be reviewed on a regular basis to ensure they comply with all relevant laws and regulations. Handbooks should include language disclaiming any contractual obligations and reiterating that employment is at-will. Handbooks should also give employers proper flexibility so they may respond efficiently and fairly to workplace issues.

Wage and Hour Concerns. Perhaps one of the most common problems in all organizations is the misclassification of positions as exempt from overtime requirements. Employers should review all positions that do not qualify for overtime to determine whether they truly fall within the definition of an exempt position.

Employers should keep in mind that simply paying an employee on a salaried basis rather than at an hourly rate does not make an individual exempt. The individual must also perform the types of duties that the law recognizes as exempt. The law can be very complicated in this area, but generally it is the true nature of the employment that defines exempt and non-exempt status.

Sexual Harassment. Certain states require employers to train their supervisors or employees regarding sexual harassment prevention. Such requirements should be observed and processes should be in place to ensure that new hires are appropriately trained.

Employers should also note that in certain circumstances they may have an affirmative defense to a sexual harassment claim if they have properly notified and trained employees. Employers should have a strong, effective policy that is communicated to all employees. Also, appropriate individuals should be trained to respond effectively to sexual harassment complaints.

Leave Practices. The overlap of various laws, such as workers' compensation, family and medical leave, and disability discrimination laws can make administering an attendance policy complicated. Employers should be certain that no one is being disciplined or terminated for absences that may be protected under state or federal law.

Reference Procedures. To avoid being sued by former employees, employers should review their procedures for providing references. Some states have laws that outline what information an employer may provide without being subject to suit. Other states provide no statutory protection whatsoever.

Employers should carefully consider what they will tell prospective employers and should limit the number of people who have the right to speak on behalf of the company. Prior to providing information, the employer should consider requiring written authorization from the former employee that releases it from any liability for providing a reference.

Once an audit has been completed, employers should be certain that any deficiencies identified by the audit are corrected. In addition, in view of the ever-changing and ever-increasing complexity of employment law, employers should consider re-auditing their departments on a regular basis, perhaps once a year.

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Calendar

Getting Your Message Across: Wednesday, March 22, 2000, Margate Resort, Laconia, New Hampshire; March 28, 2000, Old Mill Restaurant, Epsom, NH; April 11, 2000, Manchester Fire and Rescue, Manchester, VT. Jointly sponsored and presented by the Vermont Local Roads Program, VLCT, the New Hampshire Technology Transfer Center and the New Hampshire Municipal Association, this one-day workshop is intended for municipal highway and public works personnel. Other municipal officials would also benefit, and are welcome to attend as well. Topics to be covered include good customer relations, elements of good communication, and communicating with the public, your boss and co-workers. For more information, contact the Local Roads Program at 800/462-6555.

Confined Space Entry: Thursday, March 23, 2000, Colchester Fire District #1, Colchester. Sponsored by the Northeast Rural Water Association, this seminar will cover identifying a confined space, guidelines for entering a confined space, and the equipment needed to enter such a work area. Rob Gentle, VLCT Senior Loss Prevention Representative, will be one of two presenters at the workshop. For more information, contact the Northeast Rural Water Association at 802/660-4988.

Dynamics of Change Management: Saturday and Sunday, April 1 and 2, 2000, Quechee Inn, Quechee. Sponsored by the VLCT Property and Casualty Intermunicipal Fund (VLCT PACIF), this two-day seminar will focus on changing paradigms in the public sector. Presented by Lawrence A. Ritcey, Ph.D., the seminar will cover public sector competition, privatization, managing conflict, customer service, technology, mission diversity and, most importantly, the common vision that municipal leaders and their employees must develop to successfully deal with each of these challenges. Please watch your mail for a seminar announcement and registration form, or call VLCT at 800/649-7915 for more information.

Town Officer Educational Conferences: Wednesday, April 5, 2000, Lyndon State College, Lyndon; Thursday, April 13, 2000,

Holiday Inn, Rutland; Tuesday, April 18, 2000, Lake Morey Inn, Fairlee; Monday, April 24, 2000, St. Michael's College, Colchester; Thursday, April 27, 2000, Mt. Snow Resort, West Dover. This annual series of one-day workshops is designed for a variety of local officials and is sponsored by the University of Vermont Extension Service. Please call the Extension Service at 802/223-2389 tel, or e-mail, mary.peabody@uvm.edu.

Vermont Town and City Management Association Spring Conference: Thursday and Friday, May 11 and 12, 2000, Middlebury Inn, Middlebury. Vermont's municipal managers and administrators should mark their calendars for this annual conference. Please watch your mail for a conference announcement and registration form, or call VLCT at 800/649-7915 for more information.

New England GIS 2000 Conference: Wednesday and Thursday, June 7 and 8, 2000, Holiday Inn, Boxborough, Massachusetts. Sponsored by URISA, GITA and ASPRS, this annual conference on computerized geographic information systems offers numerous seminars, exhibits and demonstrations. For more information about the conference, contact Wendy Francis, tel. 847/824-6300, e-mail, wfrancis@urisa.org or visit www.negis.org.

Government Finance Officers Association Annual Conference: Sunday through Wednesday, June 11 to 14, 2000, Chicago, Illinois. Over 8,000 government finance officers gather from around the United States and Canada for this annual conference on public finance. For more information, contact the Association at 312/977-9700, tel., or e-mail, conference@gfoa.org.

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Fire Engine. Town of Shelburne Volunteer Fire Department offers for sale by sealed bid a 1979 Duplex/Middlesex Fire Engine. 1500 gpm Darley single stage pump, 750 gallon tank, 20 gallon Rockwood Foam Tank and Proportioner. Powered by Detroit 6V92 6-cylinder 552 cubic inch diesel engine with an Allison HT740D9F20 automatic transmission. Vehicle currently has 13,600 miles on it, is red and white in color, and includes ladders, hard suction, 500 GPM deck gun, and a 3.5 kilowatt generator. Vehicle is to be sold with no warranty or guarantee written or implied. Vehicle will be sold AS IS and WHERE IS. Bids shall be received by 3:00 p.m. EST March 3, 2000 and shall be opened at that time. The Town of Shelburne reserves the right to reject any and all bids. Availability of the engine will be in April 2000. Please mail bids to "Town of Shelburne, P.O. Box 88, Shelburne, VT 05482. Attn: FIRE TRUCK BID." Questions or arrangements to view the apparatus shall be made to Chief Craig Wooster at 802/985-2366.

Fire Pumper. Colchester Fire District #2 has for sale a 1979 Mack Model MB-487 pumper. The unit has a 250 HP turbo diesel with Allison automatic transmission with 25,000 miles. Capacity of 1000 GPM with a 750 gallon tank and Honda generator. The vehicle may be seen at the Malletts Bay Fire Station located at 844 Church Road, Colchester. Call Dick Desautels at 802/862-4621 for additional information or to schedule an appointment to see the unit. The District is asking \$29,900 for the unit.

Fire Pumper. West Weathersfield Volunteer Fire Department has for sale a 1975 International Mini Pumper, 500 series, 396 V/8 engine, 4 spd. transmission, 11,700 miles, 350 GPM pump (2 yrs. old), 250 gallon tank, 1 ext. ladder, 1 roof ladder, 4 halogen lights, hose reel w/150' 1" hose, two 3" suction

hoses, one 2 1/2" gated inlet, one 2 1/2" side discharge, one 2 1/2" rear discharge. Truck may be seen at the West Weathersfield Volunteer Fire Department by contacting: Clarence Grover, 802/263-5531, Chic Barr, 802/263-5586, Richard Ballantine, 802/263-5233, or Gene Adams, 802/263-9277. Offers less than \$6,000 will not be considered. All bids may be rejected. Bid deadline is March 16, 2000. Please send bids to: Town of Weathersfield, Attn: Bids, P.O. Box E, Ascutney, VT 05030.

Dump Truck. 1988 Chevrolet Kodiak, 3208 engine, dump body, with plow frame and sander. Sold as is. Contact: Jack Smith, days: 802/626-1060, evenings and weekends: 802/626-8720. Send bids to: Town of Wheelock, P.O. Box 1328, Lyndonville, VT 05851.

Misc. Town Equipment. The Town of Randolph has the following used vehicles and equipment available for sale. Items may be seen at the Village Garage on Hedding Drive. Vehicles will be sold in AS IS condition. No warranty or statement of condition is implied. Bids will be accepted until close of business March 8, 2000. The Town retains the right to reject all bids. 1990 Dodge Colt Vista; 1988 International Dump, plow and sander; 1992 Chevrolet Caprice; 1987 Dodge 1/2 ton pickup w/plow; 1994 Fiat Allis Loader w/3-cy bucket; Clam shell bucket for Fiat Allis loader; 1980 (?) Kawasaki landfill compactor; 1983 John Deere Motor Grader; V-box sander for pick-up installation.

HELP WANTED

Town Manager. The Town of Waterville Valley, New Hampshire, is currently seeking qualified applicants for the position of Town Manager. Waterville Valley is a four-season resort in New Hampshire's White Mountain National Forest and home to the Waterville Valley Ski Area. It is a unique and special community that offers an excellent quality of life, a fine school system, and outstanding recreational and natural amenities. The Town offers a wide variety of high-quality municipal services. The Town Manager's job responsibilities encompass the administration, direction, and supervision of all aspects of town government, including daily operations, financial control, budgetary preparation,

personnel management, and liaison with the community. The Town Manager reports to a three-member Board of Selectmen in accordance with applicable NH statutes. The Town Manager must be a strong communicator (oral and written) with solid interpersonal and organizational skills; must be familiar with accounting principles and financial reporting and capable of creating and implementing budgets; proficient in computer applications; and have the ability to establish and manage multiple priorities and meet deadlines.

Requirements include at least five years of progressively responsible financial, administrative, and personnel management experience and at least a Bachelor's degree or equivalent education. Significant municipal management experience is preferable. Please send resume including salary history to: Chairman, Board of Selectmen, P.O. Box 500, Waterville Valley, NH 03215.

Executive Director. Upper Valley Lake Sunapee Regional Planning Commission in Lebanon, New Hampshire seeks mature, energetic planner to lead agency into 21st century. Responsible for overall work program, staff management, budget, contracts, grant applications, liaison with member towns, state and federal agencies. Reports to board composed of representatives from 30 member communities in New Hampshire and Vermont. Must have political savvy, public speaking ability, top-notch writing skills. Prefer a planner with broad experience.

Expertise in historic preservation, engineering, landscape design and/or economic development would complement current staff skills. Qualifications include a master's degree in planning or closely related field, plus seven years professional planning experience, including at least three years of supervisory experience, and a good sense of humor. Send cover letter, resume, salary requirements and references to Search Committee, UVLSRPC, 77 Bank Street, Lebanon, NH 03766. No faxes or e-mails please. Applications accepted until position filled. EOE.

ATTENTION

Don't forget to check the Members/VLCT News section of the VLCT web site (www.vlct.org) for classified ads that do not appear here due to publication deadlines.



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