

VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

February 2004

“LEGISLATURE OF THE PEOPLE”

TIPS TO PREPARE FOR TOWN MEETING

Moderators, selectboard members and others heard from a wide range of distinguished speakers earlier this month at VLCT’s “Town Meeting Tune-up” workshop.

Governor **James Douglas** (who switches hats on Town Meeting Day to become Middlebury Moderator), University of Vermont Professor of Political Science **Frank Bryan**, a panel of experienced moderators, WCAX Reporter **Anson Tebbetts**, and VLCT Executive Director (and Northfield Moderator) **Steve Jeffrey** all gave attendees their best

advice for a successful Town Meeting.

Frank Bryan opened the day with an entertaining and inspiring talk about his research on Town Meeting that led to the recent publication of his book, *Real Democracy: The New England Town Meeting and How It Works*. (See review elsewhere in this issue.) Calling Town Meeting the legislature of the people, Bryan reminded his audience of the importance of the institution (even globally), while at the same time acknowledging that Town Meeting must retain authority to make meaningful decisions if it is to survive the long haul. His advice to moderators included:

- **Try to make your job more difficult than it is.** “To the extent that you have participation and conflict,” Bryan noted, “you’ve got a good meeting.” Bryan reminded his audience that putting decision-making in the hands of the people is risky and scary, but well worth the effort.
- **While still following Robert’s Rules of Order on participation, or an**

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LONG TRAIL PEDOMETER ADVENTURE STEPS OUT SMARTLY

The VLCT Health Trust’s newest wellness program for municipalities got off to a great start earlier this month, when approximately 1,600 municipal employees and their family members (from 75 VLCT member towns) started counting their steps on their way to Canada.

Well, not literally to Canada. VLCT’s Long Trail Pedometer Adventure is a 10-week step-counting program that encourages municipal employees to set walking goals, keep track of their progress on their pedometers, and plot it on special maps of Vermont’s Long Trail. Senior Health Promotion Consultant Heidi Joyce presented the program and the pedometers during a series of workshops she recently held around the state for municipal wellness coordinators. (See article on Page 9 in the December, 2003 *VLCT News*.)

The program uses Vermont’s well-known Long Trail, a hiking trail that stretches from the Massachusetts border to Canada along the spine

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WHAT CAN VLCT DO FOR YOU AND YOUR MUNICIPALITY?

COME FIND OUT AT VLCT’S FIRST LET’S COMMUNICATE TOUR

VLCT staff members will be hitting the road in March and April on their first Let’s Communicate Tour. The post-Town Meeting Tour offers regional “briefing” meetings to introduce new and returning local officials, volunteers and employees to VLCT’s services and programs.

The staff at VLCT is very aware that the issues our member municipalities deal with become more complex each year. We hear it

in your questions to our Municipal Assistance Center attorneys, in your requests of the Legislature, as you struggle to provide affordable benefits for your employees, and as you carefully insure your properties and automobiles.

To help our members meet these challenges, VLCT has grown in recent years. In light of this expansion of VLCT programs

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TOWN MEETING -

(Continued from Page One)

alternate set of rules, try to let voters debate until a compromise is reached. This may require extensive back and forth debate between a proponent and opponent of a particular approach, until they reach agreement. "Treat Town Meeting as a legislature that is going to resolve conflict," Bryan advised, noting that the process "is a lot of work."

• **Try to be invisible.** "Be the windowpane and let the voters see the view," Bryan said. "Remember, they trust you to be absolutely neutral."

After running through the 15 most important state laws on Town Meeting and the 15 most important Robert's Rules, Steve Jeffrey offered his own "Six Common Sense Rules" for Moderators to follow, based on his years as parliamentarian and Moderator in his town of Northfield:

- Be of good humor.
- Always try to appear that you know what you are doing, even if you don't.
- Remain in control of yourself and the meeting.

- Use the same decorum with the assembly that you would require of them.
- Use scripts of common motions and procedures to keep from getting lost.
- Remember that, as moderator, you are not interested in the specific outcome of the vote, but rather in facilitating the smooth functioning of the assembly and the transaction of business, and in resolving questions of procedure that may arise.

During lunch, attendees heard from Governor Douglas about his experiences running Town Meeting, and in particular last year under the intense scrutiny of the media. He was followed, appropriately enough, by WCAX reporter Anson Tebbetts. Tebbetts offered hints to make media coverage of Town Meeting go more smoothly for both the press and municipal officials.

The afternoon wound down with a roundtable of experienced moderators - **Ed Chase**, Waterford, **Sam Lloyd**, Weston (a 34-year veteran of leading Weston's town meeting), and **Stan Amidon**, Waterbury - ably fielded questions (and even skillfully moderated debates between attendees) from the floor.

- Katherine Roe, VLCT Communications Coordinator

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STATE PREEMPTION OF LOCAL ZONING AUTHORITY

LICENSED RESIDENTIAL “GROUP HOME” PERMITTED AS OF RIGHT AND NOT SUBJECT TO CONDITIONAL USE APPROVAL

The Vermont Supreme Court, in *In re Appeal of Bennington School, Inc.*, 2002-367 (Jan. 15, 2004), has held that a state-licensed, residential care facility’s use of a residence in a residential district constitutes a “group home” permitted as

Twenty-four V.S.A. § 4409 (d) provides that “[A] state licensed or registered residential care home or group home, serving not more than six persons who are developmentally disabled or physically handicapped, shall be considered by right to constitute a permitted single-family residential use of property, except that no such home shall be so considered if it locates within 1,000 feet of another such home.”

BSI uses its off-campus residential facilities

campuses where they attend classes and counseling sessions; and the students return to the off-campus sites each evening where they have dinner, do homework, and work on chores. BSI employees provide supervision at the off-campus sites during the day and night, but do not provide any educational or counseling services at the sites.

In ruling that conditional use approval was required, the Environmental Court determined that, despite the fact that the proposed use met the requirements to be considered a permitted use, “the operation of the residences was so closely involved with the school that they were the functional equivalent of boarding school or college dormitories and thus subject to conditional use approval.” The Environmental

(Continued on next page)

[This case] shows that the Court will strictly construe the limitations contained in § 4409 (d) against the exercise of municipal zoning authority when an applicant establishes all of the statutory prerequisites for protection.

of right by 24 V.S.A. § 4409 (d) and does not constitute a “dormitory” nor a “school” requiring conditional use approval.

Bennington School, Inc. (BSI) is a state-licensed, residential care facility for adolescent children with learning disabilities, physical and intellectual handicaps, and emotional and social disorders. BSI’s students live on the school’s two main campuses and in small off-campus residences, located in the Rural Residential and the Village Residential districts of Bennington. The off-campus residences are designed to provide students with family-style living arrangements where they can develop independent living skills to enable them to return to their homes and communities after graduation.

This case arose when BSI applied for a single-family residence permit from the Bennington Zoning Board of Adjustment (ZBA) to operate an additional residence as a group home for the school. BSI asserted that 24 V.S.A. § 4409 (d) prohibits municipalities from excluding group homes from residential areas and that it was entitled to a single-family residence permit. The ZBA denied the permit, concluding that the proposed use was not that of a permitted group home protected by § 4409 (d) and thus required a conditional use permit. BSI appealed the ZBA’s decision to the Environmental Court, which agreed with the ZBA and ruled that BSI’s proposed use required conditional use approval and was not a permitted use under 24 V.S.A. § 4409 (d).

as follows: no more than six students reside in each residence; each weekday BSI transports the students from the residences to the main

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LEGAL CORNER -

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Court also compared BSI's use of the residences to that of "home occupations," such as auto repair shops and dance studios, and concluded "the statutory protection for group homes for the developmentally or physically disabled entitles such homes to be treated the same as a single-family residence, not to receive more protection than a single-family residence would receive under the same circumstances."

In reversing the Environmental Court's decision, the Vermont Supreme Court relied on the "plain language" of the statute and ruled that BSI's use of the residences met the prerequisites necessary to be considered a permitted residential use under § 4409 (d). Specifically, the Court held BSI was entitled to be considered a single-family residence "by right" because 1) BSI is a state licensed group home; 2) it serves no more than six persons who are developmentally disabled or physically handicapped; and 3) the proposed facility was not located within 1,000 feet of another such home. The Court further stated "it is evident that once a proposed land use meets the statutory criteria, it must be considered by right as a permitted single-family residential use..." In

addition to looking to the plain language of the statute, the Court also relied on the Legislature's stated policy supporting § 4409 (d), which states "it is the policy of the state of Vermont that developmentally disabled and physically handicapped persons should not be excluded by municipal zoning ordinances from the benefits of normal residential surroundings." 1977, No. 140 (Adj. Sess.), § 1.

The Court went on to state, "once BSI demonstrated its eligibility as a group home, the environmental court was not permitted to look outside those factors for reasons to deny this statutory protection... [I]f we permit zoning boards and the environmental court to rely on evidence beyond the statutory requirements to subject qualifying uses to conditional use review, we will have rendered the statute and the Legislature's intent meaningless." The Town argued that prohibiting local zoning boards and the Environmental Court from considering facts outside the statutory factors is the equivalent to asking them to apply "evidentiary blinders." In refuting the charge that its ruling limits local zoning authorities' and the Environmental Court's ability to look beyond the statutory requirements of § 4409, thus requiring those bodies to "apply evidentiary blinders," the Court responded by stating that parties seeking

a permit under § 4409 must present sufficient evidence with respect to each statutory element before being entitled to the statutory protection.

This case is important to municipalities for several reasons. First, it shows that the Court will strictly construe the limitations contained in § 4409 (d) against the exercise of municipal zoning authority when an applicant establishes all of the statutory prerequisites for protection. Second, it sends the clear message that local zoning authorities cannot consider facts beyond the specific statutory requirements when considering whether a proposed use is permitted as a single-family residence by right under § 4409 (d). Third, it shows that if a use is permitted under § 4409 (d), it cannot be made subject to conditional use approval by characterizing the use a home occupation. And, finally, it demonstrates the importance the Legislature and the Court place on ensuring that developmentally disabled and physically handicapped persons are not excluded from "normal residential surroundings."

- Julie Fothergill, Attorney, VLCT Municipal Assistance Center

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ASK THE LEAGUE

EDUCATING VOTERS ABOUT TOWN MEETING RULES OF PROCEDURE

Some of the discussion at this year's Town Meeting Tune-up workshop placed a lot of emphasis on educating the public about parliamentary procedure. Many moderators are doing their very best to educate voters about the rules for making motions, speaking, amending the rules, and so on. What are some tricks of the trade that moderators can share with their town meeting legislators – the voting public?

One of the most difficult aspects of town meeting for many voters, in those towns that vote from the floor, is speaking in public. One study has shown that in the United States, glossophobia, the fear of speaking in public, afflicts more than 75% of the population. For most voters, much of this trepidation grows out of not knowing the rules of the game for participating at the meeting. Moderators can address this lack of knowledge in these ways:

- Hold a pre-town meeting informational meeting. While this is required by law for Australian ballot voting, it is not required for floor voting. Moderators can use this opportunity to teach voters how to make motions, how to amend motions, how to appeal decisions of the moderator, etc.
- Many moderators have created their own "How to Participate at Town Meeting" handouts. Typically, these are distributed to voters at the beginning of the meeting. Topics covered include how to make motions, how many votes are required for a motion to pass, and other rules for participation at town meeting. VLCT also maintains a file with samples of these handouts.
- Many towns include the moderator's "How to Participate at Town Meeting" handout in the Town Report. This is an excellent way for voters to read the rules of the game prior to the meeting.
- Make yourself, as moderator, available to the voters. Some moderators in small towns give out their phone numbers well before Town Meeting!

What are some of the parliamentary principles that Town Meeting voters should know about?

- *Only warned business can be voted on for action.* This principle has a number of ramifications, ranging from amending money articles to the prohibition against adding articles for voting that have not been included in the warning. It is "rural legend" that money articles can only be amended down from the floor. Contrary to this belief, the voters have clear authority to amend money articles, whether the amendment increases or decreases the final appropriation. However, such articles can only be amended within reason. While there is no bright line test, some commentators have suggested some sort of ratio between the gross dollar amount and the amount of the increase as related to the original figure. For example, a voter proposes to increase a \$100 line item to \$200. While this is a 100% increase, it is also a fractional amount of total dollars, even in the smallest town's budget. On the other hand, consider an amendment that would bring a \$6,000 line item for an office copier to \$12,000. Clearly, there is a difference between both appropriations; while both are 100% increases, there is a much larger impact on the municipal budget in the second example. At some point, the amendment becomes hostile to the originally warned item. Without the aforementioned bright line test, the moderator must consider at what point an amendment to a budget figure becomes non-germane.
- *The voters have the right to change (some of) the rules of the game.* For example, Vermont law requires the moderator to conduct a vote by paper ballot if seven voters so request, "unless the town has provided some other procedure." 17 V.S.A. § 2658. Some towns have changed this rule from seven voters to a majority of those voting. Others, recognizing the goal of protecting the rights of the minority, require a lower number of

votes to take a vote by paper ballot – 25, for example. Keep in mind that not *all* rules can be changed.

- *Once an article is "passed over," it cannot be reconsidered at the same meeting.* While there is no such motion in Robert's Rules of Order, the motion to pass over may have one of two meanings. If the motion is made before the voters have begun consideration of the merits of the article, it is a motion "to object to consideration of the question," and is only used when it would be strongly undesirable for a motion to even come before the assembly. Henry M. Robert III, *Robert's Rules of Order Newly Revised* § 26 (10th ed. 2000). If the motion to pass over is made while discussing the main question, it is a motion "to postpone indefinitely." In the case of the latter motion, the main question cannot be brought before the voters again at the same meeting. See 17 V.S.A. § 2661 (a) (article cannot be submitted to voters at same meeting after assembly has

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ASK THE LEAGUE-

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begun consideration of another article).

- *Can town meeting can be canceled?* No, town meeting cannot be canceled, but it can be adjourned to a time and date certain. For example, if a Nor'easter lays down 25 inches of wet, heavy snow the night before town meeting, the moderator, with at least two voters in attendance (one to make the motion and one to second it) can adjourn town meeting. Such adjournment should be made to a particular time, and the location should remain the same. Keep in mind that the voters still have an obligation to conduct

TRIVIA

Charleston Town Clerk and Treasurer, **Jeannine Bennett**, deposed the reigning VLCT Trivia queen, **Lisa Mancuso**, when she sent in her correct answer to last month's query.

Jeannine knew that Samuel Worcester, from Peacham, was working as a missionary to the Cherokees in the state of Georgia when he was arrested for violating a state law that required non-natives to obtain a permit and loyalty oath before living on Cherokee lands. The Georgia state court that tried the case sentenced him to four years of hard labor. Upon appeal to the U.S. Supreme Court under John Marshall (*Worcester v. Georgia*), that decision was overturned. However, Georgia refused to recognize the Supreme Court's authority to make this ruling (which stated that the state of Georgia had no right to pass such laws without the assent of the Cherokee nation), and Worcester languished in jail until pardoned by the Governor in 1833 in exchange for a promise to leave the state.

Here is February's Trivia question:

Although more popularly known for another reason, this Vermonter was a composer of a number of tunes (including a piece entitled "Amanda"), was a lister, grand juryman, and town clerk/treasurer. Name the person, the person's hometown and occupation, year of birth and year of death.

Contact us with your answer: VLCT, 89 Main Street, Suite 4, Montpelier, VT 05602; 800/649-7915; fax, 802/229-2211, e-mail, kroe@vlct.org.

town meeting, and that some items require voter approval, such as the election of officers, and the approval of a budget. Therefore, while a meeting may be adjourned, it cannot be put off indefinitely. The town must meet again to finish its annual business.

- *The moderator's role is like that of an air traffic controller.* All the planes in your airspace need to land, and while you may like one pilot more than another, you can't take sides in determining who gets to land first. However, some planes are entitled to greater priority than others. The same goes for your voters – you can't take sides based on whom you like, but some motions made by your voters take precedence over others. The moderator should remain unbiased in making these choices. For the air traffic controller, it's rather easy to figure out which planes need to land first – those running low on fuel. In town meeting, it isn't as clear-cut, and that's why we use parliamentary rules to establish priority. The rules are in place to assure order, impartiality, and at

least a modicum of decorum.

Let's examine a situation where the moderator must lay personal opinions aside, and let the "blind impartiality" of the rules establish order. The voters have been eagerly waiting to sink their teeth into a juicy issue. Debate on the question begins, and it looks like half the voters in the room are holding their hands up. One of those called on moves to "call the question." While the moderator may think the issue at hand is an important one, and doesn't want debate to be cut off, the motion is legitimate and must be entertained. It still requires a second, as well as a two-thirds vote, so the voters retain the authority to reject that motion. See *Robert's Rules* at § 16. However, this is one area where the moderator should steer clear of making policy choices, and stick to procedural ones. Letting the rules establish priority, like the plane's fuel reserve, assures a degree of impartiality that should instill some trust in the voters that your decisions are made on a fair and impartial basis.

- *Brian Monaghan, Attorney, VLCT Municipal Assistance Center*

VLCT BIDS GOODBYE TO GAIL LAWSON

Over the last nine years, many VLCT members have communicated with **Gail Lawson** in her position of Associate with VLCT. First, in the VLCT Law Center and, most recently, in the Municipal Assistance Center. Gail's years at VLCT were marked by patient and always polite and supportive research into our members' many questions about their local government duties.

We will miss her, but she hasn't strayed too far from a field. Gail has accepted the position of zoning administrator for the City of Montpelier.

Always particularly interested in local land use and planning law and regulations (and a former employee of the Williston planning and zoning department), Gail said before she left, "I just can't wait to get my hands on a set of blueprints." She also noted how much she appreciated the support and gratitude she received from our members during her years at VLCT.

Gail joins former VLCT staff members Jana Bagwell (former Director, VLCT Administrative Services) and Irene Manion (former VLCT Finance Assistant) at the City of Montpelier. This puts Montpelier City Manager and VLCT Board of Directors member William Fraser in the hot seat next time he comes to a VLCT Board meeting. Just kidding, Bill!

- *Katherine Roe, VLCT Communications Coordinator*

TWO INTERNS JOIN VLCT MAC FOR THE SPRING TERM

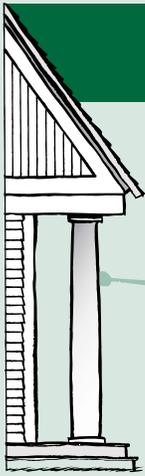
It may not seem like spring outside, but VLCT MAC's spring interns have arrived and are already busy answering our members' telephone and e-mail inquiries.

While our fall intern, **Jennifer Ciarlo**, has returned to her law school studies, we recently greeted Vermont Law School students **Maria Gomez** and **Elizabeth Willhite** to VLCT MAC. Please welcome them aboard if you get the chance!

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ADVENTURE - (Continued from Page One)

of the Green Mountains, for inspiration. If that is not enough, individual weekly prizes are being offered, as well as group prizes at the end of the program. Participants are encouraged to, most importantly, *move more* by setting realistic goals for their particular situation. And while it may not be achievable by all, many are trying to “complete” the Long Trail during the 10-week program by walking approximately 8,000 steps (four miles) a day.

“Most people want to quit smoking, lose weight and get more exercise,” said Joyce. “The VLCT Health Trust is interested in these goals as well, as a way to cut down on the cost of health insurance. We also want people to have fun!” Joyce runs an extensive wellness program for Health Trust members; the Long Trail Pedometer Adventure is just one of many that members can take advantage of. Please contact her at 800/649-7915 or hjoyce@vlct.org if you would like to bring a program to your town.

- Katherine Roe, VLCT Communications
Coordinator



ATTENTION HEALTH TRUST MEMBERS

The 2004 Health Survey was mailed to you mid-January. The survey is due back in our offices **by Friday, February 27, 2004**. Thanks to all of you who have responded so promptly! If you need an additional copy of the survey, please call Niki White in Member Relations at 800/649-7915.

The BCBSVT Preferred Brand Name Drug List has been updated as of February 1, 2004. The list is available at the BCBSVT Web site (<http://www.bcbsvt.com>). Click on RX Center, then click on Preferred Brand-name Drug List. If you do not have Web access and would like a copy of this list, please call Niki White in Member Relations at 800/649-7915.

For those of you enrolled in the VLCT Health Trust Section 125/Cafeteria Plan through Benefit Strategies, please be advised the FlexExpress debit cards cannot be used at Wal-Mart **effective February 1, 2004**. If you make a purchase at Wal-Mart, you will have to pay for it and request

reimbursement of the expense by completing a claim form. Claim forms may be obtained on the Benefit Strategies Web site www.benstrat.com under the Available Forms option on the left hand side. You may also obtain a claim form by calling Member Relations at 800/649-7915. Conversations between Wal-Mart and MasterCard continue. We will keep you posted regarding the status of

(Continued on next page)

Upcoming Dates

GROUP SERVICES DAY

THURSDAY, JUNE 3, 2004
HARTNESS HOUSE
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HIPAA PRIVACY RULE & GROUP HEALTH PLANS

The Health Insurance Portability and Accountability Act of 1996, or HIPAA, has been in the news for the past several years. Much of the attention to date has focused on the Standards for Privacy of Individually Identifiable Health Information, or the HIPAA Privacy Rule.

The Privacy Rule restricts the use and disclosure of health information by health care providers, health plans, and health care clearinghouses. In this context, “health plan” includes health insurance issuers, HMOs, and even group health plans.

As a health plan regulated by HIPAA, the VLCT Health Trust, Inc. (“Trust”) is obligated to comply with the Privacy Rule, and has taken necessary steps to achieve that compliance. For example, the Trust mailed a Notice of Privacy Practices to appropriate persons in April 2003. (You may have received a copy!)

For Trust members, the decision as to whether or not they must comply with the Privacy Rule is more complicated. Ultimately, it is a decision that each member must research and make on its own. We address this issue in more detail below.

DEFINING A GROUP HEALTH PLAN

Generally, a group health plan is any employee welfare benefit plan (as that term is defined in the Employee Retirement Income Security Act of 1974, or ERISA) that provides or pays for medical

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HEALTHCARE TIPS

HOW TO HELP PREVENT MEDICAL ERRORS

Medical errors are one of the leading causes of death and injury in the United States. More people die from medical errors than from motor vehicle accidents, breast cancer or AIDS. Medical errors happen when something that was planned as a part of medical care

doesn't work out, or when the wrong plan was used in the first place. Medical errors can occur anywhere in the healthcare system.

Follow these tips from the Agency for Healthcare Research and Quality:

- Take part in every decision about your health.
- Prepare a written list of questions for your doctor on each visit.
- Make sure your doctors know about everything you are taking, including prescription and over-the-counter drugs, and dietary supplements such as vitamins and herbs.
- Make sure your doctors know about any allergies and adverse reactions you've had to medicines.
- When your doctor writes a prescription, check it to make sure your pharmacist will be able to read it.
- If you have any questions about the directions on your medicine labels, ask. Also ask about side effects.
- Make sure that everyone involved in your health care has important health information about you. Don't assume they know everything they need to.

Find more tips at the Agency's Web site: www.ahrq.gov/consumer/20tips.htm.



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CUTS-

(Continued from Previous Page)

this situation.

Do you know what happens to your employees' and their dependents' health insurance coverage once they turn age 65? We want to give you a heads up on how their insurance coverage will work. There are some decisions your municipality may have to make regarding this topic. For more information, please call our Member Relations Department at 800/649-7915. We will help you sort through the paperwork!

ATTENTION UNEMPLOYMENT TRUST MEMBERS

2003 Annual Wage Report forms were mailed to each member on January 2nd. **These reports are due back at VLCT by February 27, 2004.** The Trust will use this report in determining 2005 rates. Please do not include any volunteer firefighter wages in this report. Thanks to all of you who have returned your forms so promptly! If you did not receive this form and need one, please call Niki White in Member Relations at 800/649-7915.

WELCOME

The VLCT Health Trust welcomes its 288th member, the **Poultney-Mettowee Natural Resources Conservation District.**



LET'S COMMUNICATE -

(Continued from Page One)

and services, now is a good time for our members to familiarize themselves with all that VLCT has to offer.

Come learn how we can help you with your municipal responsibilities. The seven regional meetings are free and will last approximately one and a half hours. You may sign up on the invitation recently mailed to your town office or on the VLCT Web site at www.vlct.org/calendar/. We hope to see you in March or April. However, if you can't make one of the meetings, please remember that we are just a toll-free telephone call (800/649-7915) or e-mail (info@vlct.org) away.

- Katherine Roe, VLCT Communications Coordinator

LET'S COMMUNICATE TOUR DATES

Tuesday, March 16, 2004, 9 a.m.,
Town of Lyndon Municipal Building

Wednesday, March 17, 2004, 9:00
a.m., Town of West Rutland Municipal
Building

Friday, March 19, 2004, 9 a.m.,
Town of Highgate Municipal Building

Tuesday, March 30, 2004, 9 a.m.,
Town of Hartford Municipal Building

Thursday, April 1, 2004, 7:00
p.m., Town of Shelburne Municipal
Building

Saturday, April 3, 2004, 9 a.m.,
Town of Berlin Municipal Building

Thursday, April 8, 2004, 9 a.m.,
Town of Dover Municipal Building

2004 ALL-AMERICA CITY AWARD

The deadline for this community recognition award, sponsored by the National Civic League, is **March 11, 2004**. The Award recognizes exemplary grassroots community problem-solving and is given to communities of all sizes that cooperatively tackle challenges and achieve results.

For more information, contact the Civic League at 303/571-4343 or e-mail aleksh@ncl.org. The application is also available on-line at www.ncl.org/aac/.

the signs of a healthier vermont.



When Vermont's children receive the coverage, care, and comfort they deserve, these are signs of a healthier Vermont.

Vermont's ambulances now come equipped with new tools that help provide comfort and treatment to children—teddy bears. Blue Cross and Blue Shield of Vermont and The Vermont Health Plan learned that emergency crews use such toys to open the lines of communication between EMTs and children, who respond positively to the familiar comfort of a teddy bear. Teddy bears for children, the most innovative health plans, and the largest provider networks in the state—these are signs of a healthier Vermont. To learn more about The Vermont Health Plan, our teddy bear initiative and other programs, visit www.bcbsvt.com.



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Tech Check



A SITE FOR TECH EYES

Looking for something to write about this month, I discovered an interesting Web site that is simple and packed with practical information. Called LGov.org and sponsored by a number of organizations, this site is a clearinghouse for technology information for local governments.

It is user-friendly and has a little something for everyone at every level of expertise. The idea behind it is to provide a forum for information technology (IT) professionals to share ideas and best practices, and offer the platform and services to facilitate this exchange.

A listserv called "Birds of a Feather" is available for software discussion, and LGov.org plans to expand its offering of listservs, particularly in the "Meeting Hall" rooms. These will be open to members who log on. "Birds of a Feather" also has an application group for Pentamation users, an accounting application used by the City of Burlington.

LGov.org offers a Web hosting service and is currently hosting a handful of pilot sites. It also has a feature called "Community Meeting Hall," a nifty place for managers, developers and tech types to meet and discuss issues. The "Meeting Hall," not yet operational (it is scheduled for a July opening), includes CIO (Chief Information Officer), Development, and Tech "rooms." In addition to these rooms, other listservs will be made available as they are developed.

The real jewel in this site is a document library with nearly 350 items (there is also a members' section with additional documents) that include studies and reports, surveys, sample RFPs, job descriptions, policies and a whole lot more. A simple search engine is provided that allows you to look for a document by type (RFP, contract, study, etc.), category (consulting, planning, software, telecommunications), or key word. All documents are pdf files, and a copy of Acrobat Reader may be downloaded from the document page. Once you make your search, a list of the available titles appears with the document type, jurisdiction submitting the document and the date it was added to the library (see illustration). Click on the title for an abstract that includes a description of the contents and a contact if you would like more information.

Just to give you an example of what you can download, there are a number of e-mail policies, including some from Anne Arundel County, Maryland, the City of Gulfport, Florida, Contra Costa County, California, and Pallatine, Illinois. The State of Georgia has a best practices document on "Adopting Electronic Records," and Fairfax County, Virginia has an "E-government" best practices available.

(Continued on next page)



Public Documents Available for Downloading

Select Your Search Criteria

Document Type: Policies or Procedures
 Category: Telecommunications
 Key Words: *Eg: word map for any word that is found in the document title, description, author, platform and jurisdiction

Search

Select the document title to display the abstract

Title	Type	Jurisdiction	Date Added
Occupation, use of cell phones and wireless	Policy or Procedure	Sedgewick County, IA	01/03
Non-Employee IT Usage Agreement	Policy or Procedure	Sedgewick County, Kansas	10/02/03

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CHECKING IN WITH ...

FRANK BRYAN

(Editor's Note: After he spoke at VLCT's "Town Meeting Tune-up" workshop earlier this month, the VLCT News caught up with University of Vermont professor, author and humorist Frank Bryan to ask him a few questions about Vermont's beloved Town Meeting. We thank Professor Bryan for taking the time to speak with our members at the workshop, and with our readers below.)

Q. What is Town Meeting good at? What isn't it good at?

A. It is better at resolving fundamental issues than it is at selecting among detailed options. Thus, it is better at deciding whether or not to buy a new town truck than deciding what sized engine it should have. It is better at deciding whether or not to increase a school sports budget than deciding which sports get which amounts of money.

Q. What was the most surprising thing you learned about Town Meeting in the course of researching and writing your book, *Real Democracy*?

A. Other than a town's size there is little connection between the "kind" of town in which the meeting is held (socio-economic profile for instance) and attendance at town meeting. Also, how well attendance has held up in the face of the barrage of forces that combine to drive it down.

Q. What gives you hope that we can maintain Vermont's Town Meeting tradition?

A. First, the powerful, almost instinctive, urge for real democracy that so many Vermonters demonstrate. Second, the growing, decentralized life styles more and more Vermonters, like other Americans, are beginning to live. (Working at home is an example.) While the last half of the 19th and the 20th century were [times] of big places and their suburbs, the 21st century and beyond will see the return to (small) community. In short, the computer will do for the 21st century what the car did for the 20th - but in the opposite direction. Third, the capacity for the electronic technological revolution to do three things:

- Allow small places to "administer" complicated (formerly work-intensive) public policies.
- Make voting at town meeting easier - handheld devices, for instance, are now economically feasible for all town meeting attendees and will allow almost instantaneous (and secret, if desired) decisions to be made.
- Allow "shutins" to participate from home.

This sounds weird to some, but it is not only possible now but being used in all manner of instances.

Q. Why should we try?

A. The best thing to do is to read the last several pages of *Real Democracy* ... I doubt I could do better here.

Q. Not that you have written the definitive book about Town Meeting, what is your next project?

A. Susan Clark and I are writing a little paperback tentatively entitled "Hot Buttered Democracy," which is kind of a celebration of and owner's manual for town meeting. We hope to mass distribute it ... [to] help make sure town meeting flourishes as it should in the coming century.

Locked in to, as so many are, the paradigms that dominated the last "wave" (the urban-industrial third wave), it would be a disaster if we let town meeting slip away in the dark, just hours before the dawn of a new era (an era when the world will be actively seeking models of real democracy). Town meeting will be the quintessential example!

A second project is to answer all the questions that will (already are) crop up because of *Real Democracy*. For instance, we have no systematic data on the difference between voting turnout for the Australian Ballot and turnout at town meeting. I have only begun to mine the database for answers to questions that are very important. In fact, the original title of *Real Democracy* had a "Volume I" attached to it! No one study can do justice to town meeting, as no one study can do justice to the U.S. Congress. Indeed, because there are so many town meetings, it is much harder to study than Congress!

TECH CHECK -

(Continued from previous page)

There are RFPs on disaster recovery, data communication cabling, e-payment services, various types of consulting services, software applications, imaging systems and hardware installations. There are sample contracts for server hosting, service and support, security, GIS, and various consulting arrangements. And for the intellectually curious, there are a number of studies and reports on a range of topics from strategic technology planning, to trends in e-government, to guidelines for leasing versus purchasing.

You can check out LGov.org at www.lgov.org. For more information about the organization, contact George November, Executive Director, at george@lgov.org.

*- Michael Gilbar, Director, VLCT
Administrative Services*

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BOOK REVIEW: *REAL DEMOCRACY*

Real Democracy: The New England Town Meeting and How It Works. University of Chicago Press, 2004. 312 pp. \$37.00 (\$19.00 softcover).

There are many facets to Frank Bryan, Professor of Political Science at the University of Vermont and author of the recently published book, *Real Democracy: The New England Town Meeting and How It Works*. His students and fellow academicians know him as a scholar in the field of political science with a PhD and several textbooks under his belt. Other Vermonters involved in community or government work know him as a passionate defender of direct democracy and “local control” through his co-authorship of (among other works) *The Vermont Papers: Recreating Democracy on a Human Scale*. Many others know him as a humorist, co-author of *Real Vermonters Don't Milk Goats* and *The Vermont Owner's Manual*.

The appeal of reading *Real Democracy* is that all three of these sides of Frank Bryan jump out of every page. For the first time ever, we have been given the keys to unlocking the questions of “Can direct democracy still work in the 21st century?” and “What makes a good Town Meeting?” By analyzing the results and recordings of 1,435 town meeting over three decades, *Real Democracy* tells us whether people do a better job of governing themselves directly in larger rather than smaller towns, in night meetings rather than day, in liberal or conservative towns, with blue-collar or “professional” populations, and other variables. The results

measure the action of governing through attendance figures as well as acts of participation – including “speaking” and “talking.” Bryan also reports on the role of women in town meeting relative to their male peers, and, more generally, on their role in the process and results of governing locally. His most important findings – those about which we can actually do something – will add weight to arguments supportive of letting more decisions be made at the local rather than the regional, state or national level.

His most important findings ... will add weight to arguments supportive of letting more decisions be made at the local rather than the regional, state or national level.

For the political science geeks among us who need to see the numbers for a point to be proven, *Real Democracy* is replete with numerous charts and graphs and numbers – from the “Gini index of participation equality” to the “Pearson product moment correlation coefficient.” For those who still break out in cold sweats remembering the brain freeze you suffered in introductory statistics, the numbers are only there if you need proof of Bryan's points. These points are simply stated and shown in real life examples of real town meetings, with real people acting on issues near and dear to any of us who spend the first Tuesday in March gathered with our fellow townspeople making real democracy. Finally, for those who need to laugh or have tears well up for them to feel that they have had a good

read, *Real Democracy* provides ample passages demonstrating the humor and poignancy of Vermonters as they stumble through the complexities of Roberts Rules, or argue with their neighbors and friends over issues of near life and death importance.

For each conclusion he draws, Bryan recounts the tales of two town meetings that exemplify the point he makes. For example, the book starts out by comparing and contrasting the democracy against which all government is measured – Athens, Greece – with the Town of Athens, Vermont. The book is interspersed with “witnesses” that are stories and quotes from real Vermonters, Vermont town

meetings, world leaders past and present and political scientists reminding us of how good we have it, how fragile it is, and what it takes to make it better. They also serve to focus us once again on the big picture that is represented in the multitude of meeting microcosms happening around the state and the lessons learned therein.

Real Democracy contains over three hundred footnotes, but readers should not gloss over them. Many are the standard referencing of research and other scholarly works on which Bryan's hypotheses are based or which he is debasing. It is really amazing to learn of the body of work done in studying democracy in recent years, but how little focus our actual doing of it has garnered. Other footnotes contain gems of stories and asides that will make you laugh and realize how true the

findings of the book are and how deeply the author feels about the subject.

Real Democracy is required reading for anyone who cares about the act of governing and its importance, rather than just the product of such activities. Those whom we send to Montpelier to pass laws affecting our towns, our communities and our Vermont way of life should also read it.

Real Democracy is published by the University of Chicago Press and should be available in local bookstores. However, as another valuable benefit of living in such a small state, we know someone who might help you find a copy if you can't.

- Steve Jeffrey, VLCT Executive Director



Frank Bryan autographs a copy of his book for a Town Meeting Tune-up workshop attendee.

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HIPAA -

(Continued from Page Eight)

care (as defined under another federal law, the Public Health Service Act), to employees or their dependents, directly or through insurance, reimbursement or otherwise. A plan is not a HIPAA group health plan, however, unless it has 50 or more participants (another ERISA term) or is administered by an entity other than the employer that established and maintains the plan. In other words, even a very small plan, with only a few participants, can still be subject to the Privacy Rule. For example, a medical plan with only three participants that is administered by a third party administrator is very likely a "group health plan" under the Privacy Rule.

Even plans that fall outside of ERISA coverage are subject to the Privacy Rule (at least that is the best thinking on this issue to date). Medical, drug, dental, vision, flexible spending, and certain long-term care benefits are typically considered covered as "group health plans." In addition, employee assistance programs, and possibly even wellness programs, may, depending on the circumstances, be considered group health plans under the Privacy Rule.

Technically, the Privacy Rule does not regulate the "employer" that sponsors a group health plan, but rather, regulates the group health plan itself. In the ERISA context, an employee welfare benefit plan is considered a separate and distinct legal entity from the employer that sponsors it. In the non-ERISA context, this distinction does not exist, leading to some confusion for employers that sponsor non-ERISA plans in determining the true focus of the compliance efforts.

All group health plans are covered by the Privacy Rule. However, there can be lesser obligations for those group health plans that provide benefits solely through an insurance contract with a health insurance issuer or HMO, and that only create or receive very minimal amounts of health information. Self-insured group health plans seem to have the full gamut of compliance responsibilities, including the designation of a Privacy Official, the creation and distribution of a Notice of Privacy Practices, and the creation and implementation of detailed policies and procedures designed to comply with the myriad obligations created by the Privacy Rule.

DEADLINE APPROACHING

The Privacy Rule compliance date for "small health plans" is April 14, 2004. "Non" small health plans had to comply with the Privacy

Rule by April 14, 2003. A "small health plan" is one that had less than five million dollars in receipts for its last full fiscal year before April 14, 2003. (In this regard, "receipts" are measured by the total amount of premiums paid for a fully-insured plan, the total claims paid for a self-insured plan, and by a combination of both for those plans that combine full and self-insured elements.)

THE BOTTOM LINE VIS-À-VIS THE TRUST

As explained at its recent HIPAA educational sessions, the Trust has attempted to ascertain whether Privacy Rule compliance obligations for Trust plans should rest solely with the Trust, or whether the Trust members have their own independent obligations with respect to those plans. In that regard, a central question is determining whether the Trust, following ERISA principles, acts as the

"employer" that "established or maintained" the plans that might be considered "group health plans" under the Privacy Rule. In short, we believe there are good arguments that would support the conclusion that the compliance obligations for those plans that were established or maintained by the Trust, for the benefit of its members and member employees, should rest with the Trust, and not its members. However, because of the complexity of the legal and factual issues involved, and the lack of clear guidance from the federal government, we cannot offer any guarantees in this regard, and thus cannot provide assurances that each individual member will not have separate compliance obligations for Trust plans.

Of course, the argument that Privacy Rule compliance obligations should exist at the Trust level, and not at the individual member level,

(Continued on next page)



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HIPAA -

(Continued from previous page)

only applies with respect to Trust plans. As a result, a Trust member may have significant compliance obligations with respect to any plan that was established or maintained outside of the Trust.

Further, some members may offer their employees additional benefits, such as the reimbursement of a deductible or a co-pay. As we explained at the sessions, these additional benefits, which are not part of the Trust programs, may create significant obligations under the Privacy Rule. The argument that compliance obligations should exist at the Trust level will likely be of little assistance to those members offering such benefits, at least with respect to such benefits.

As a courtesy to its members, the Trust made available at its recent HIPAA educational sessions form policies and procedures to those members who will pursue compliance with the Privacy Rule. (Editor's Note: Attorney Frank Fontana is updating these policies and procedures, and asks that those who received the previous version utilize the revised documents, which he will make available at the workshop mentioned below, or via individual request. You can contact Attorney Fontana at ffontana@drm.com. The materials will be available within the next one to two weeks). The Trust will also offer a workshop for those members, in the event they desire general guidance in customizing those policies and procedures for a specific use. Please watch this newsletter and the VLCT Web site (www.vlct.org) for more information about this upcoming workshop.

- Frank Fontana, Esq., Director, Downs Rachlin Martin, PLLC

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Plows. The Town of Berlin, Vt. is accepting bids on the following plows: one 10-foot reversible plow, two 11-foot one-way plows, and one V plow (never used) for a grader or truck. Persons interested in viewing the plows may do so by contacting the Road Superintendent at 802/223-7337. Please submit bids to the attention of Town Administrator, Municipal Office Building, 108 Shed Road, Berlin, VT 05602. Selectboard reserves the right to accept or reject any and all bids. **Open until all items are sold.**

HELP WANTED

Associate, VLCT Municipal Assistance

Center. A key VLCT MAC staff member, the Associate provides local government officials with technical assistance, educational workshops, and timely information about their roles, responsibilities, and statutory authority. Primary duties include responding to telephone inquiries from local governments; writing monthly articles on municipal governance; developing model ordinances; and delivering educational workshops. Bachelor's degree and two years experience in state/local government preferred. Hiring range: \$26,000-\$33,000 DOQ. Excellent benefits package. Please send resume and cover letter in confidence to Human Resources, VLCT, 89 Main Street, Suite 4, Montpelier, VT 05602, or e-mail to jobsearch@vlct.org. **Resume review begins 2/23/04.** EOE.

Zoning Administrator. The Stockbridge, Vt. Planning Commission is seeking applicants for the part-time position of Zoning Administrator. The position is responsible for administering the Town's Zoning Bylaws, assisting the public with permit applications, processing permit applications, attending zoning hearings, maintaining records and filing systems for all zoning-

related matters, responding to zoning complaints and allegations of violations and taking appropriate action on behalf of the Town in accordance with state statutes and the zoning bylaws. Candidates must have personal transportation, writing and computer skills. Salary commensurate with experience and knowledge. Hours are flexible, 4-8 hours per week anticipated, more if interested in Health Officer responsibilities. Please send letter of interest and resume to Planning Commission, Town of Stockbridge, P.O. Box 39, Stockbridge, VT 05772.

Planning Director. Town of Milton, Vt., pop. 10,000. Search re-opened. Growing, progressive, community seeks an experienced planning professional. Serves as senior in-house resource for planning, zoning, conservation and economic development issues. Directs Planning and Zoning Dept. Starting salary, \$40s to \$50s, DOQ/E; excellent benefits. Masters preferred. Reports to Town Manager. To apply, send cover letter, resume and salary history/requirements to: Planning Director, c/o Sanford Miller, Town Manager, 43 Bombardier Road, Milton, VT 05468 or smiller@town.milton.vt.us. **Open until filled.** EOE.

Water Department Maintenance

Technician. Town of Shelburne, Vt. Water Dept. is seeking to fill this full-time temporary position, which is open now and runs to Sept. 30, 2004. Principal functions are maintenance of the water distribution system and reading meters. 40 hours per week, with on-call rotation and some overtime in a 3-person dept. Most of the work is outdoors, in all weather conditions. High school diploma or equivalent required. Vocational or technical education and two years of public works or related experience desirable. Valid Vt. driver's license and excellent past work record required. Must work well in team-oriented, customer-driven environment, and communicate well with co-workers and customers. Pay rate is \$12.50/hour. Benefits are not available. To apply, submit letter of interest and resume to Town Manager, P.O. Box 88, Shelburne, VT 05482, or e-mail to pbohne@shelburnevt.org, or fax to P. Bohne at 802/985-9550. EOE.



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Calendar

Planning and Zoning Series #3, Child Care Facilities. Thursday, March 11, 2004, Vermont Interactive Television, sites throughout the state. Co-sponsored by the VLCT Municipal Assistance Center and Vermont's regional planning commissions.

Town Highways. Thursday, March 18, 2004, Suzanna's Restaurant, Berlin. Sponsored by the VLCT Municipal Assistance Center. Please contact Jessica Hill, VLCT Conference Coordinator, tel., 800/649-7915; e-mail, jhill@vlct.org, for

more information about either of these workshops. For on-line registration, visit www.vlct.org, select the Calendar, and select this workshop.

For more information about VLCT workshops, see www.vlct.org.



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