Land Use and Energy Action Paper

“The one document essential to defining and implementing a community’s vision is the comprehensive municipal plan. The plan provides a framework toward attaining community aspirations ...” Module 1: The Municipal Plan, Agency of Commerce and Community Development [1] (Jan. 2016). Citizens of a municipality undertake the job of land use planning because the municipal plan facilitates their efforts to (1) paint a clear picture of the future; (2) make great places; (3) establish transparent, consistent and predictable public policy; and (4) promote wise investment and help manage future costs.

In 1921, the Vermont Legislature first enabled municipalities to create planning commissions and adopt land use plans. A decade later, the legislature enabled municipalities to adopt zoning. We have been charting our collective community visions and mediating conflicting visions ever since. Over the years, land use planning has shifted from a locally-based endeavor that informs decisions at the regional and state levels, to one that is directed more and more from the state. Historically, cities, towns, and villages that have adopted municipal plans or zoning or subdivision regulations have been the only entities in Vermont that regulate development of all projects within their borders. That also has changed as rules and regulations addressing water and air quality, natural and fragile areas, large developments, state transportation objectives, and energy development have overlaid municipal planning and permitting decisions. Nevertheless, planning and zoning are core functions in those cities, towns, and villages that undertake them.

Municipal Planning and Zoning

“It is the intent and purpose of this chapter to encourage the appropriate development of all lands in this state by the action of its constituent municipalities and regions, with the aid and assistance of the state... In implementing any regulatory power under this chapter, municipalities shall take care to protect the constitutional right of the people to acquire, possess and protect property.” (24 V.S.A. § 4302)

Chapter 117 of Title 24, the Municipal and Regional Planning and Development statute, establishes the purposes of Vermont’s municipal land use law. The ambitious agenda of 18 goals (section 4302 (b) and (c)) and 12 plan elements (section 4382 (a)) expanded virtually every year, is carried out by volunteer boards and planners in municipalities large and small throughout the state. Once embarked on the municipal comprehensive planning path, municipalities receive little professional help and minimal financial or technical support from the state. They do receive technical assistance and oversight from regional commissions or consulting assistance from Vermont’s few professional planners all of whom who must be paid for their services. Once a municipality takes on planning, it must adhere to the constraints
of state and federal mandates or pre-emption on a wide range of issues.

According to the Agency of Commerce and Community Development’s [Planning Your Town’s Future](#) webpage:

- 205 cities, towns, and incorporated villages have in place adopted municipal plans that were confirmed at the regional commission level;
- 204 cities, towns, and incorporated villages adopted zoning bylaws to implement those plans;
- 150 cities, towns, and incorporated villages adopted subdivision bylaws; and
- 120 cities, towns, and incorporated villages replaced zoning boards of adjustment with development review boards.

In recent years, the legislature has incorporated a host of new goals and work items into requirements for municipal plans. In 2013, legislation called for economic growth to be encouraged in designated growth centers and for flood resilience plans to address flood emergency preparedness, protection and restoration of floodplains, fluvial erosion risks, and river corridors. In 2014, the legislature required that planned public investment be directed to reinforce planned growth patterns of the area, and development to take place in accordance with “smart growth” principles. In 2015, town plans were to include maintaining and improving water quality according to policies and actions developed in basins plans established by the Secretary of the Agency of Natural Resources. In 2016, following tremendous fights over several years concerning the siting of energy facilities, Act 174 established an extensive list of plan requirements for municipalities that seek “substantial deference” in the Public Service Board (PSB) Certificate of Public Good (CPG) permitting process for energy generation facilities. At the same time, Act 171 now compels municipal plans to indicate areas that require special consideration for aquifer protection, maintenance of forest blocks, wildlife habitat and habitat connectors, and plan development so as to minimize forest fragmentation and promote the health, viability, and ecological function of forests.

While each of these additions is a manifestation of laudable goals, the steady stream of new mandates leaves local volunteer planning commissions reeling. Although these volunteers have many other talents, few of them are experts in land use planning. It is hard to recruit new people to a local planning commission once they understand the scope of responsibilities. In a nod to the significantly increased workload imposed on municipal planning commissions, the 2016 legislature enacted Act 90, which extends the time that a municipal plan remains in effect from five to eight years. This is important because a municipality may not update or adopt bylaws unless it has a current plan in effect. Even as the Act 90 relief was enacted, however, it came with new strings attached. Requirements for municipal plan updates in advance of re-adoption include community outreach, considering consistency with state planning goals, addressing required plan elements, evaluating the plan for internal consistency, and compatibility with approved municipal and regional plans. One response to an Agency of Commerce and Community Development survey conducted this year said “Let’s concentrate on plan implementation for a while.”

While Vermont law requires municipal plans to address a host of issues, it also limits municipal zoning jurisdiction over many others such as daycare facilities with six or fewer children, accessory apartments, firearms discharges at existing sport shooting ranges, required agricultural or silvicultural practices or forestry operations (added in 2016), churches, schools, electric generation and transmission facilities, telecommunications facilities, solid waste facilities, and more.
The State of Vermont regulates larger developments through Act 250 (Title 10, Chapter 151) and the PSB regulates electric generation and transmission and telecommunications facilities (Title 30, Section 248). State and federal laws require protection and improvement of waters of the state and regulate the impact of developments on rivers and lakes, air, wetlands, archaeological heritage, natural and fragile areas, and historic buildings. Municipalities address many of those issues through the 12 required elements of a comprehensive municipal plan, as well as zoning and subdivision bylaws, local Act 250 review (incorporated into the local bylaws of 30 towns and cities), shoreland protection bylaws, stormwater management, and flood hazard area bylaws.

Despite the considerable attention legislators pay to local planning and zoning issues every year, little financial or technical assistance is provided to sustain them. In FY17, aggregate state appropriations totaled $5.762 billion. The appropriation for municipal planning grants totaled $460,000, a fraction of revenues originally raised from a property transfer tax increase for that purpose. In FY16, municipalities requested $770,000 for those funds from the Department of Housing and Community Development. A 2016 survey indicated that priority for funding should be given to bylaw updates and writing municipal plans and that grants of from $20,000 to 30,000 would most help to complete municipal plans, bylaw updates, and economic development strategies. Respondents, 67 percent of whom were local officials, also overwhelmingly opposed grants of less than $8,000 that were conditioned upon provision of a match. (Currently, a 33-percent cash match is required for requested amounts over $8,000).

**Planning for and Siting Energy Generation Facilities.** Nothing in the municipal planning and permitting world has been more controversial in recent years than the short shrift given to municipal plans, their land conservation measures, and municipal recommendations in the PSB CPG process. Among the goals of the Public Service Department’s 800-plus-page Comprehensive Energy Plan are for Vermont to reduce its total energy consumption per capita by more than one third, and for renewable energy generation to supply 90 percent of Vermont’s energy needs (electric, heating, and transportation), both by the year 2050. These ambitious goals, along with federal and state incentives, do much to drive renewable energy projects around the state. On one hand, local officials strongly support those goals and energy committees dedicate significant time and effort to try to meet them. On the other hand, renewable energy projects proposed by private businesses on particular sites often ignore and then run afoul of other vital municipal planning priorities.

Energy generation and transmission project proposals are heard at the PSB instead of either a municipal panel or Act 250 district commission. While the PSB is required to consider municipal plans and land conservation measures, it has been under no obligation to ensure that priorities expressed in those plans are addressed. The impact of proposed wind projects, transmission projects including natural gas pipelines, and large solar installations – and the PSB’s permitting decisions on these projects – have resulted in significant public outcry, legislative maneuvering, and eventually the passage during the 2016 session of Act 174. By November 1, the Public Service Department is directed to adopt standards and guidance for enhanced energy elements of regional and municipal plans, and the plans must comply with them if a regional commission or municipality wants to receive substantial deference before the PSB.

**Standards are to include:**

- analysis of total energy use across transportation, heating, and electric sectors;
- identification and mapping of existing electric generation and renewable resources;
- establishment of the target years of 2025, 2035, and 2050 for energy conservation, efficiency, fuel-switching, and the use of renewable energy for transportation, heating, and electricity;
• the analysis of the amount of thermal-sector conservation, efficiency, and conversion to alternative heating fuels, transportation system and land use strategies, electric system conservation, and efficiency needed to achieve targets;
• the identification of potential areas for development and siting of renewable energy resources; and
• the potential electric generation from such resources in the identified areas.

Once a determination of energy compliance is made, the Public Service Board is to give substantial deference to the land conservation measures and specific policies contained in a duly adopted regional and municipal plan. Substantial deference means “a land conservation measure or specific policy shall be applied in accordance with its terms unless there is a clear and convincing demonstration that other factors affecting the general good of the State outweigh the application of the measure or policy. The term shall not include consideration of whether the determination of energy compliance should or should not have been affirmative.”

Summary. If all this leaves you confused and exhausted, you are not alone. It has been convenient to respond to calls for action from all sorts of diverse interests by including language that directs local officials to address the “priority de jour” in the municipal plan. The result is a law that often requires incompatible policy decisions at the local level. The members of your planning commissions are left to thread their way through all those requirements and end up with a cohesive, locally generated plan reflective of the collective community vision.

VLCT Supports:
• encouraging collaboration to support policies that best meet the needs of cities and towns;
• substantial deference to local planning, zoning, and siting decisions when state entities issue permits;
• maximum flexibility in decision-making regarding how cities and towns respond to state regulatory and statutory requirements;
• allowing local flexibility in pursuing economic development activity.
• directing incentives and programs to areas designated in the adopted municipal plan for growth and development near jobs, services, and amenities;
• including all local decisions concerning a renewable energy generation project within the Public Service Board docket;
• formulating areas of inquiry based on concerns raised in the local hearing process; and
• specifically addressing concerns raised in local determinations and adopted municipal plans.

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Resource Category:
• Legislative Policy Paper
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