Local Government Day

Local officials get stuff done. They are all rightfully proud of the cities, towns, and villages in which they serve, and for so many reasons. And Local Government Day is their day (that is, your day) to demonstrate this to the legislature, to shine the light on what makes your community unique and what drives you to govern it well. The event this year takes place on Thursday, February 13. Please join us for this often cathartic experience!

Nearly two-thirds of the members of Vermont’s General Assembly have never served in local government and are not aware of the ramifications their actions have for cities and towns. Many have never even visited your neck of the woods. They don’t, for example, know:

- What your town has accomplished during the past year and what projects you are especially proud of.
- The primary stresses on your budget and how have state requirements contribute to the day-to-day challenges.
- If people are moving to and investing in your home town. If you are seeing a declining trend, why might that be?
- How could the state help you achieve your town’s vision.
- What new legislative regulations and requirements are hampering your ability to govern.

Legislators should be held accountable to answer these questions and more.

The Joint Transportation Committee will meet at 10:30 in Room 10. Last session, the legislature amended the statutory formula for Town Highway aid, which resulted in a $442,000 increase in FY21 and provided that the figure will continue to increase over time. The Agency of Transportation did not attempt to override that decision in the next year’s budget. Please thank the committee members for the increase. And talk to them about:

- The increase in your highway budget in the last three years;
- How you handle the requirements of the Municipal Roads General Permit;
- How you address the impact of overweight vehicles (over 80,000 pounds or 24,000 pounds on posted roads);
- The appropriate role of the tree warden relative to town rights-of-way;
- If you have had difficulty recruiting road crew or staff.
The House Energy and Technology Committee also expects to hear from local officials. The committee is working on several issues important to municipalities, including the Global Warming Solutions Act (H.688), cybersecurity (H. 692), and progress on expanding broadband coverage (Act 79 of 2019). Committee members need to hear:

- What your town is doing to prepare for and reduce the effects of climate change;
- How extreme weather events have affected your community in the past five years;
- What you perceive to be the biggest threats to the security of your computer networks;
- What kind of help or information would be most useful to your town;
- If your town has joined a community fiber network or if it has access to high-speed internet and reliable telecommunications service.

Following lunch, both the House and Senate will engage in floor sessions, and the House and Senate Government Operations committees will meet in the Senate Chamber to hear from you. S.106, the compromised self-governance bill passed last year, is in House Gov Ops. We hope you will ask the committee the status of S.106. Explain to them how the authority to make local decisions at the local level makes you more effective and your town more successful. Discuss charter changes your voters have approved or are expected to approve at town meeting. Describe any difficulty your town has experienced in recruiting emergency medical service personnel and keeping fire safety or ambulance services adequately staffed.

These legislators represent you. Don’t be shy about asking them questions! We look forward to seeing you on Thursday, February 13.

**Act 250 and Downtown Development**

The 2020 session is still young, but the House Natural Resources, Fish and Wildlife Committee already has an agenda full of Act 250 proposals. Act 250 is the state land use law that has been in effect in Vermont for the last fifty years. New for the committee’s consideration this session is a proposal the Agency of Natural Resources (ANR) and the Vermont Natural Resources Council (VNRC) hammered out last summer.

**Exemption from Act 250 for Designated Downtowns and Neighborhood Areas.** The ANR/VNRC draft bill would exempt development in state-designated downtowns and neighborhood development areas from Act 250. The bill recognizes that these areas are compact and previously developed, have limited natural resource values, and are served by municipal sewer and water and governed by robust zoning bylaws that promote smart growth. The exemption would apply to the 23 designated downtowns and six neighborhood development areas in the state, which together total six and a half square miles. The Act 250 law would apply to the other 9,616 square miles of Vermont.

Local officials have long argued that where there is demonstrated robust local planning and zoning bylaws in compact settlement areas, compliance with local zoning is sufficient to address land use issues, and Act 250 is a largely redundant, expensive, and time-consuming permitting process. The exemption from Act 250 needs to be all encompassing and clear.

**Professional Natural Resources Board.** The ANR/VNRC bill would replace the Natural Resources Board with a professional board comprising a chair and two members nominated by the governor and approved through the legislative judicial nominating process plus two advisory members selected from six (instead of the current nine) watered-down district commissions and who function sort of like side judges who may rule only on findings of fact. The district commissions themselves would be reduced from nine to six and authorized to determine if a project is minor or major, then make determinations on minor projects only. The new board would hear appeals from district commission minor permit and amendment decisions, regional commission decisions regarding development at interstate interchanges, and, adding a completely new responsibility, appeals of Vermont Downtown Development Board decisions. The state land use regulation board would effectively be put in charge
of the Downtown Designation Program. Major Act 250 permit decisions would be appealable from the Natural Resources Board to the Supreme Court.

At its January 16 meeting, the VLCT Board of Directors endorsed both a clear exemption from Act 250 for development in at least designated downtowns and neighborhood areas and the broad concept of a professional Natural Resources Board.

This week, the committee also considered a different model, a semi-professional board with five members and hearing officers that would hear Act 250 permit appeals which, if not resolved, would go to the Supreme Court. District commission decisions would be on the record and that record would be the basis of an appeal at the Natural Resources Board level. In order for a district commission to issue a decision that could be heard on the record, staff capacity at the district commission would likely need to be increased so as to manage the required more legalistic process.

This week, VLCT Advocacy staff testified before the committee. We said that, unlike the model of the Public Utility Commission, a professional Natural Resources Board’s process, rules, and actions must be user-friendly, transparent, respectful of local government priorities, affordable for and responsive to municipalities and individual citizens, and also result in a shorter permitting process.

A professional board might decrease the length of time needed obtain a permit – long a goal of permit reform – and render more consistent decisions. It would lose the regional perspective that district commissions currently provide unless those commissions were retained in some form and their decisions were accorded some standing in the permitting process. However, the process, as currently written, could be substantially more expensive because it would allow agencies to charge applicants for their expertise, consultants and work without limits.

Nevertheless, questions remain. Say, an appeal from a professional Natural Resources Board went to the Supreme Court and a municipal permit for the same project were appealed at the same time to the Environmental Court. Would there be any opportunity to consolidate appeals? Would contradictory permit decisions on the same project be reconciled in any forum? Or divorced from each other? The committee needs to decide how to align these processes at the appeal level.

**Act 250 Criteria.** A second goal established in statute (24 V.S.A. § 4302 (b)(2)) is “to encourage citizen participation at all levels of the planning process, and to assure that decisions shall be made at the most local level possible commensurate with their impact.” Municipalities are the traditional governmental entities to regulate land use, and, these proposed amendments would in many respects further usurp local land use authority, turning that longstanding purpose on its head. Everything a municipality does – planning, zoning, mapping, securing state designation for downtowns, neighborhood areas, growth centers, village centers or new town centers – would now have to be approved by a higher authority and eventually by the state Natural Resources Board. Recently, several battles have taken place between regional commissions and member municipalities about the standing of their plans in permitting cases, and whether or not municipal plans should be approved.

The ANR/VNRC bill would expand jurisdiction – and potentially complicate development – in many small towns and rural areas. But these places, which define Vermont, struggle to remain viable in the face of a declining and aging population and a lack of affordable housing, including for the “missing middle” (affordable to middle income families). It would create even more of a challenge to provide an incentive to foster economic growth.

The draft bill would also:
- expand jurisdiction to commercial and industrial projects at interstate exits, unless local bylaws addressed Act 250 concerns;
- expand jurisdiction to forest blocks not currently developed for non-forest use (which incorporates no size parameters) and connecting habitat (including the undefined phrase “patches of habitat within a landscape”),
• establish a rule whereby a road or aggregation of roads and driveways of more than 2000 feet accessing more than one acre within a ten-year period;
• require approval of a municipal plan by a regional commission to be considered under Criterion 10 of Act 250 and require conformance to land use maps in local and regional plans and written provisions of those plans;
• require that to address climate adaptation, developments employ building orientation, site and landscape design and building design to ensure that all the improvements withstand and adapt to the effects of climate change.

The House committee hopes to decide the board’s role today. Look for the bill to be voted out of committee in the next week or so.

There is much to digest here, but we hope local officials will take the time to consider the implications for your community as the discussion evolves.

Resources:
• Act 250 Discussion Document (Jan. 14, 2020)

The Continuing Cannabis Conundrum

After a short hiatus, the House is back at work on S.54, a bill that would regulate the production and sale of cannabis. On Wednesday, the House Ways and Means Committee sent the bill back to the House Government Operations Committee for further review and editing. That committee has also been reviewing suggestions from three other House committees: Natural Resources Fish and Wildlife, Agriculture, and Health Care. Last week, VLCT Advocacy staff testified for the first time this year on the bill in the House Natural Resources and Energy Committee. Gov Ops, however, may vote the bill out as soon as today, January 31, giving us no new opportunity to testify directly to any potential changes. We do remain hopeful that legislators will be responsive to municipal needs as the bill continues to move through the House and back to the Senate.

By now, you are likely familiar with the concerns we have with the bill, but we’ve distilled the main concerns below. Please contact your legislators now or use the opportunity at Local Government Day to speak frankly and directly to them about the needs of your town.

• Municipal representation on the Cannabis Control Board. The Cannabis Control Board does not have any municipal representation, which is troubling. Although the bill creates an advisory board that includes one municipal official, an advisory role does not guarantee that municipal needs will be appropriately or adequately addressed in any Cannabis Control Board recommendations to the legislature. That board will be promulgating rules that significantly affect how –and if – local governments regulate cannabis establishments and corresponding matters.

• Basic time, place, manner regulatory authority. Municipalities need basic ordinance and zoning bylaw authority under 24 V.S.A § 2291 and 24 V.S.A. Chapter 117. This aligns with current municipal authority to regulate medical cannabis dispensaries pursuant to 18 V.S.A. § 4471l. It also gives some level of regulatory authority to towns that have no zoning bylaws. Not all communities will adopt regulations, but those that choose to do so need authority and mechanisms in law.

• Meaningful local licensing authority, modelled off current municipal liquor licensing authority. Under S.54, local cannabis licenses are currently designed to be perfunctory under and, therefore, are of no value to municipalities that might choose to specifically zone or regulate the time, place, manner of operations of establishments. As S.54 currently reads, local cannabis boards (selectboards/city councils) will oversee permitting operations through state rules, but with no additional local standards or criteria allowed beyond signage and nuisance ordinances, and very specific enumerated zoning provisions of 24 V.S.A. § 4414, which local governments may already regulate. That renders this language useless, and makes local licensing a rubber-
stamp step that is worthless to both a municipality and to applicants. If local governments were empowered to adopt local ordinances to regulate the time, place, and manner of cannabis operations, local licenses and permits could then be issued to applicants that comply with the underlying regulation.

- **Unclear language proposed in new section 7 V.S.A. § 862(d).** Under this section of the bill, municipalities may not prohibit “the operation of a cannabis establishment within the municipality through an ordinance adopted pursuant to 24 V.S.A. § 2291[enumeration of regulatory powers] or a bylaw adopted pursuant to 24 V.S.A. § 4414.” This language, as we understand it, was meant to prevent municipal zoning bylaws and ordinances from banning a cannabis establishment after a community voted to allow it. Unfortunately, this language can also be read to mean that all communities that vote to allow a cannabis establishment must also accommodate cannabis establishments within zoning regulations, regardless of whether related operations – such as laboratories, manufacturers, industrial facilities, or retail operations – are permitted. Think about this through the lens of current alcohol laws: Towns and cities can vote to allow the sale of alcohol in their community, but that does not therefore mean they have to change zoning to accommodate bars, restaurants, or liquor stores. The current language can be used to challenge a town’s zoning that doesn’t accommodate the types of establishments authorized by an opt-in or opt-out vote of the voters. Clarification is needed to ensure cannabis establishments are treated the same as similarly situated uses and are not given special accommodation within local land use regulations. VLCT recommends this language be removed from S.54.

- **Local taxing authority and local opt-in/out authority:** At its December meeting, the VLCT Board of Directors called for a local cannabis tax to be set at one-third of the state’s taxation amount, whatever that amount ends up being. If that local cannabis tax is established, the board would support an opt-out provision for towns which the chair of the Senate Government Operations Committee insists on. The modified proposal would set a local cannabis tax at one-third of the state tax, regardless of what state tax rate the legislature eventually passes.

**Promoting Housing Development**

For the past two weeks, the Senate Committee on Economic Development, Housing and General Affairs has taken testimony on S.237, a bill that recommends amending existing law to promote increased development of housing, including “missing middle” housing – that is, housing with a smaller footprint, and simple construction that is affordable to families of middle incomes. A companion bill, H.782, is in the House General Housing and Military Affairs Committee.

As is the case with the unnumbered Act 250 Committee bill in the House Natural Resources, Fish and Wildlife Committee, both S.237 and H.782 would exempt development in designated downtowns and neighborhood areas from Act 250. The bills would also exempt developers from having to obtain a state permit to connect to municipal water and wastewater systems in addition to the municipal permits they must already obtain.

The Senate bill would mandate allowing at least four unit dwellings in any multiunit residential district, accessory dwelling units of any size relative to the primary unit in all residential districts, residential lots of at least one-quarter acre in any area served by water supply and one-eight acre in any place served by water and sewer, duplexes in any residential district served by water and sewer, and reduced parking requirements. A municipality could opt out of those requirements if it filed a Substantial Municipal Constraint Report and the Department of Housing and Community Development sent the report to all agencies providing grants or loans to municipalities, regional commissions, and any person requesting notice. These provisions are not in H.782 and are not supported by either the Administration (which had drafted the language) or local governments, which are already well aware of the need for more affordable and available housing at the same time they struggle under the weight of existing municipal planning and zoning statutes.
The House bill would provide new funding to help municipalities update inclusionary bylaws and train developers of the “missing middle” housing. It would provide increased downtown tax credits to assist with housing redevelopment, create housing provider grants to redevelop blighted and vacant rental units, and establish a crowd grant program for placemaking projects in state designated centers.

**Accessory Dwelling Units.** According to a Vermont AARP survey, a vast majority of people aged 50 or over want to remain in their homes as they age rather than relocate. Those surveyed also reported that they preferred living in walkable neighborhoods that offer a mix of housing and transportation options, boosting the demand for smaller homes in compact neighborhoods.

Accessory dwelling units (ADUs) can take many forms and styles. They may be attached to an existing house; they may be internal and partitioned off to become a separate residence; or they can be a stand-alone residence on the same lot as the larger primary dwelling. An ADU is an independent living space with a kitchen, a bathroom, and a sleeping area.

According to data from a number of sources including the U.S. Census, the number of single-person households now exceeds nuclear family households. ADUs and smaller housing units in compact settlement areas provide a needed option for people of all ages by enabling homeowners to offer different housing options as well as providing older adults a way to downsize on their own property. Since homeowners can legally rent out an ADU, it can be an income source.

S.237 attempts to limit barriers to ADUs by restricting some municipal zoning oversight. Under the bill, “a bylaw may require a single-family dwelling with an ADU to be subject to the same review, dimensional or other controls, as required for a single-family dwelling without an ADU.” In other words, the bill would explicitly allow ADUs to be permitted in all zoning districts where single-family housing is permitted. If a dwelling unit is to be accessory, its size would be subordinate to the size of the primary dwelling unit. How to encourage zoning that is more permissive of ADUs and establish their subordination to primary dwelling units comprises much of the discussion around the proposed legislation.

The Agency of Commerce and Community Development is working with the Congress for the New Urbanism, a consultant, as well as with communities to address the mismatch between available houses and the sharp increase in smaller households. The guidance and model regulations will help towns develop land use code innovations and changes to zoning that allow a variety of housing types in walkable communities. That work will provide models for towns across the state to implement and will prove far more helpful than additional mandates in the municipal land use law.

References:
- The ABCs of ADUs
- Zoning for Great Neighborhoods

**Elsewhere in the State House**

On Thursday, the House General, Housing and Military Affairs Committee took testimony on recovery residences that H.783 defines as shared living residences supporting persons recovering from a substance use disorder. The bill addresses municipal zoning under 24 V.S.A. § 4412 – Required Provisions and Prohibited Effects of municipal zoning bylaws. Under the current provision of the statute that relates to equal treatment of housing, residential care and group homes must be treated as single-family residential uses under all zoning bylaws. H.783 amends this provision to include a recovery residence, “regardless of its proximity to another existing or permitted home.”
The Senate Transportation Committee is working through the miscellaneous Department of Motor Vehicles (DMV) bill. One issue in the draft bill of significance to municipalities relates to the weight limits of trucks. The very end of the bill addresses the potential for an online truck permitting system. DMV is authorized to spend $250,000 in FY21 to develop a centralized truck permitting system that would allow truckers to obtain overweight and overlength permits online. DMV would be required to also design a portal so that municipal permits could also be purchased at the discretion of the municipality. Additionally, DMV would need to consult with VLCT to determine “if there are established routes, for which individual municipal permits are currently required, that can be consolidated under a master permit that will be issued by the Agency [of Transportation].” Those permits would also be available through the online system. VLCT supports a centralized system if done correctly and if they accommodated the needs of municipalities. We would like to hear from local officials about this proposal – specifically what, exactly, municipalities would need in such a system, whether a master permit would work, and any other questions you have about a centralized system.

VLCT testified before House Transportation this week about municipal needs in general. We discussed funding for local roads (See our Weekly Legislative Report No. 4) and made clear to the committee that the year-after-year decreases in funding is taking its toll on our local road infrastructure. Vermont is a Dillon’s Rule state, meaning the legislature guarantees that it will oversee, and theoretically care for all 246 cities and towns – but it sure doesn’t feel that way when local needs are regularly discounted and communities are left with more mandates and fewer resources. We encourage you to attend Local Government Day and tell your infrastructure and transportation network stories to the Transportation committees. (See article on page __.) Explain your municipality’s five-to-ten-year outlook if state funding to towns maintains its steady decline. Legislators are more apt to respond if they can associate a face with these requests, so don’t be shy!

Also this week, House Health Care discussed H.742, a bill that would increase funding for EMS education and training relating to grants for emergency personnel training, and heard from the chair of the Emergency Medical Service Advisory Board. The Senate Government Operations Committee is considering introducing a similar bill and heard from the emergency medical services community last week We are grateful that the legislature is addressing this pressing issue, and we hope the bill moves forward and, ultimately, more training and resources are given to our EMS providers across the state.

New Bills

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<tr>
<th>BILL NUMBER</th>
<th>SUMMARY OF NEW BILLS</th>
<th>CURRENT LOCATION</th>
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<tbody>
<tr>
<td>H.891</td>
<td>Would impose a residency requirement for the owner of a short-term rental property.</td>
<td>House Gen., Housing, and Military Affairs</td>
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<td>H.905</td>
<td>Would have the State Auditor perform a public accountability and oversight function and have enforcement authority concerning rules that an agency or department must promulgate pursuant to potential legislation to adopt a plan to address climate change. The auditor would review any proposed rules and plans to reduce greenhouse gas emissions for effectiveness and issue a report within three months. If the auditor deemed the proposed rules were insufficient, and if the selectboards of at least 20 municipalities within 30 days of the issuance of the report requested that the auditor file suit, the auditor would have to do so, asking a court to direct the relevant agency or department to rewrite the rules.</td>
<td>House Government Operations</td>
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<td>H.909</td>
<td>Would require the Agency of Education or the Joint Fiscal Office to calculate and report on the cumulative under- and overtaxing that resulted from inequitable and inadequate student equalized pupil weighting from 2000-2018.</td>
<td>House Education</td>
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<td>H.910</td>
<td>Would add a poverty weight, population density student weight, and a geographic necessity weight to the weightings used to calculate equalized pupils.</td>
<td>House Education</td>
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<td>H.911</td>
<td>Would require the Agency of Education to identify the costs in student outcomes related to inadequate funding through inequitable and inadequate equalized pupil weights from 2000-2018.</td>
<td>House Education</td>
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<td>BILL NUMBER</td>
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<td>H.912</td>
<td>Would prohibit any changes to the education tax finance mechanism until such time as the Pupil Weighting Factors Report, dated December 23, 2019, has been fully considered and its recommendations acted on by the General Assembly.</td>
<td>House Education</td>
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<td>S.315</td>
<td>Would transfer from the Secretary of Agriculture, Food and Markets to the Secretary of Natural Resources all authority to administer and enforce water quality requirements on farms in Vermont.</td>
<td>Senate Agriculture</td>
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<td>S.317</td>
<td>Would direct the Department of Housing and Community Development to conduct a Statewide Housing Study focusing on age-specific housing needs and recommendations.</td>
<td>Senate Economic Development, Housing and General Affairs</td>
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<td>S.318</td>
<td>Would require the Joint Fiscal Committee to retain a consultant to evaluate options for financing public, educational, and government access channels and services throughout Vermont.</td>
<td>Senate Finance</td>
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<td>S.333</td>
<td>Would create an expedited eviction process for a tenant who vandalizes property.</td>
<td>Senate Economic Development, Housing and General Affairs</td>
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(As of January 30, Vermont legislators had introduced *five hundred and seventeen* new bills this session.)

VLCT Advocacy’s usual suspects: Karen Horn, Gwynn Zakov, Milly Archer.