STRENGTHENING VERMONT LOCAL GOVERNMENT

March 2000

LOCAL GOVERNMENT DAY IN THE LEGISLATURE — AN ENORMOUS SUCCESS!

Professor Phil Cooper put the essence of Local Government Day 2000 in a nutshell at his noon luncheon address to attendees. Cooper stated that the "fabric of Vermont" is strained because the people who hold it together, particularly those willing to serve in local government, are stressed, frequently almost to the point of giving up. Burlington Mayor and VLCT President Peter Clavelle suggested one solution, and set the tone for the day, when he urged attendees to tell legislators they need authority to make meaningful governance decisions locally. Clavelle also noted that local governments need funds, particularly for education, so that the local property tax can be relieved of this funding burden.

Many local officials took this message to the House Local Government and Senate Government Operations Committees on February 16. They told committee members that there is little authority to be exercised at the local level once the legislature and executive branches of Vermont government are finished establishing all of their oversight functions and regulations. Many spoke to the need for flexibility in administering municipal responsibilities, whether it be determining what is to be counted on the grand list; how to handle dog complaints; providing innovative solutions for local land-use management; deciding on the mechanism for running council meetings or undertaking audits. Many also commented on the lack of people willing to serve, a fact demonstrated at town meetings around the state this month by uncontested seats on local boards or seats with no volunteers at all. Hours are long, family life suffers, compensation is scant, administrative rules are overwhelming, and criticism can be abundant.

Nonetheless, Cooper noted, many fairminded, capable people take up the responsibilities of local government. The lunch room at Local Government Day was full of them,

(Continued on next page)

WELCOME NEW AND RETURNING LOCAL OFFICIALS

The Vermont League of Cities and Towns extends its congratulations to all local officials who were elected to office on Town Meeting Day.

If your are returning to office, thank you for your continued willingness to serve Vermont local government and Vermont citizens. Your past experience will be invaluable to your town, village or city, and to your new colleagues. If you are new to local office, we welcome you to the ranks of Vermonters who are doing the vital work of running our communities.

To assist new local officials, an insert outlining the League's services is included in this issue. Our **publications**, **workshops**, and **municipal research and information** services can help orient you to your new responsibilities. Chances are, VLCT's **Group**

(Continued on Page Three)



Burlington Mayor Peter Clavelle addresses a joint hearing of the Senate Government Operations and House Local Government Committees as Essex Town selectperson Martin Myers looks on.

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VICT NEWS

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The **VLCT News** is published monthly by the Vermont League of Cities and Towns, a non-profit, nonpartisan organization founded in 1967 to serve the needs and interests of Vermont municipalities. The **VLCT News** is distributed to all VLCT member towns. Additional subscriptions are available for \$25 to VLCT members and \$63 for non-members. Please contact the League for subscription and advertising information.

LOCAL GOV'T. DAY -

(Continued from previous page)

both local and state officials. More than 220 local officials and all of Vermont's 14 counties were represented. In addition, more than 65 legislators took a break from their busy session to join local officials for lunch. The message that was repeated throughout the entire day was simple: the Legislature needs to loosen the reins on local government and trust that the people who were knowledgeable enough to elect them to the House and Senate are also capable of making other kinds of decisions without disaster or chaos resulting.

Several other important municipal issues were addressed at Local Government Day. The Senate and House Transportation



Middlebury manager Betty Wheeler and Addison County Senator Tom Bahre.

Committees held a well-attended hearing where topics included big trucks, spending of transportation fund dollars and municipal categorical programs. Local officials flooded into committee rooms throughout the State House to hear about Act 250 and sprawl, designated downtowns, gravel extraction from rivers, municipal charters, appropriations and property tax exemptions.

If you were not at Local Government Day this year, please consider attending next year on February 14, 2001. If you were there this year, thank you! We look forward to seeing you again in 2001.



Springfield manager Bob Forguites, Southern Windsor/Windham County Solid Waste Management District board member Forrest Randall, and Windsor County Senator Cheryl Rivers.



Putney administrator Jim Mullen addresses a joint session of the House and Senate Transportation Committees.



WELCOME -

(Continued from Page One)

Services insurance programs are already serving your municipality, and, once you have been in your position for a few months, you will probably have a state law or two that you would like our **legislative staff** to take to the State House for improvements.

Please circulate this insert to officials and staff who might not receive their own copy of the *VLCT News* (One copy of the *News* is mailed to the clerk, treasurer, mayor, manager, zoning administrator, administrative assistant and selectboard/city council/village trustees in each member municipality. The *News* is also on-line at the VLCT web site, www.vlct.org, and additional subscriptions are also available to members for \$25 per year.) Finally, in a few weeks, new local officials will also receive a letter from VLCT Executive Director Steven Jeffrey providing more information on League services.

Please call us if we can be of assistance as you settle in for your new term as a Vermont local official – or you can call if you just want to introduce yourself! The League's toll-free number is 800/649-7915.

VLCT NEWS NOW AVAILABLE ONLINE

Beginning with the January 2000 issue, the *VLCT News* is now available on-line at the VLCT web site (www.vlct.org). The newsletter is located in the members' section of the site on the *VLCT News* page. You will be prompted for a user name and password to access this part of the site. Please contact the League if you do not have this information. (You may e-mail your request through the members' section or call us at 800/649-7915 for password information.)

Many members have asked that the newsletter be put online so that they can be sure to have access to a copy. However, VLCT recognizes that each member will probably have a preference for either the print or online version. For this reason, VLCT will continue to mail one printed version to each of the officials who have received one in the past: clerk, treasurer, mayor, manager, zoning administrator, administrative assistant and selectboard/city council/village trustees. For officials in member municipalities who do not receive a printed version and wish to, subscriptions are available for \$25 per year.

NEW MUNICIPAL CIVIL ORDINANCE COMPLAINT FORMS AVAILABLE

Last year the Legislature amended the municipal civil ordinance complaint form to add in waiver and full penalty provisions. The amendment also clarifies that the *full penalty* will be assessed in the event that the defendant fails to answer the complaint or denies the allegations but then fails to appear at the hearing. 24 V.S.A. § 1977.

The newly revised complaint forms ("ticket books") are now available and can be obtained by contacting the Court Administrator's office in Montpelier at 802/828-5797. The new Schedule of Fines will be available on April 1, 2000; municipal officials must request a copy of this schedule as it will not automatically be mailed to them.

Please note that Court officials have asked that you do not return unused municipal complaint booklets to the Judicial Bureau or the Court Administrator. The municipal custodial official in charge of the ticket books should store the booklets in a safe place until the Court issues further instructions as to their disposal.

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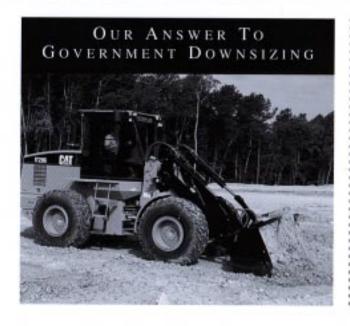
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Summarizing recent court decisions of municipal interest



HOW TO COUNT ABSTENTIONS; LISTERS' PROPERTY INSPECTIONS

ABSTENTIONS DO NOT COUNT WITH MAJORITY

The Vermont Supreme Court has issued its decision about how abstentions are counted in votes of local boards. *In re Appeal of Reynolds,* No. 98-580 (Feb. 11, 2000). Contrary to the arguments of the town and VLCT as *amicus curiae,* the Court ruled that abstentions do *not* count with the majority.

The case involved a vote of the Planning Commission in the Town of South Hero. The Commission consists of seven members, and six were present for the hearing and deliberation on the project at issue. When the motion was made to approve the project, three members voted in favor of the application, two voted against it, and one abstained. The Planning Commission concluded that the abstention counted with the majority of three in favor, and approved the project. Mr. Revnolds, a neighbor, appealed to the Environmental Court, which ruled that the abstention should not count and thus that the project had not been approved. The Town appealed to the Supreme Court.

The Town and VLCT argued that at common law, abstentions counted with the majority, and that the common law rule had not been changed in Vermont. However, the Supreme Court relied on 1 V.S.A. § 172, which provides, "When joint authority is given to three or more, the concurrence of a majority of such number shall be sufficient and shall be required in its exercise." This is the familiar "majority of the board" rule that applies in Vermont. The question in this case was whether the word "concurrence" means that a majority of board members must vote for the motion, rather than abstaining, in order for the motion to pass. The Court looked at the "plain meaning" of the word, and concluded that "... the term 'concur' means more than silent acquiescence: it requires consent expressed in an overt way. ... concurrence requires expressed assent through a vote for the proposition." Therefore, since the project had received only three affirmative votes, it had not been approved by a majority

of the board. The case was sent back to the Town so that the applicant could resubmit the application to the Planning Commission for a vote to be counted consistent with the Court's decision.

Although the Court did not accept the Town's argument, we are pleased that the issue has been clarified. In a practical sense, this decision means that abstentions do not count at all. For any motion to pass, a majority of a board must vote in favor of it. A vote of less

any aspect of the hearing or decision. That member should "recuse" himself or herself and not be present at the table with the other board members.

It can sometimes be difficult to make decisions, but there is almost always no good reason to abstain. You are elected or appointed to make decisions and, hard though it may be, it is important to decide every issue after carefully considering it.

For any motion to pass, a majority of a board must vote in favor of it. A vote of less than a majority of a board means that no action has been taken. In light of this, it becomes more important than ever for board members to listen carefully at meetings and hearings, weigh the arguments on all sides, and then vote for or against a motion, rather than abstaining.

than a majority of a board means that no action has been taken. In light of this, it becomes more important than ever for board members to listen carefully at meetings and hearings, weigh the arguments on all sides, and then vote for or against a motion, rather than abstaining.

Of course, if a board member has a conflict of interest, he or she should not participate in

LISTERS' RIGHT TO INSPECT PROPERTY WITHOUT PERMISSION UNDER APPEAL

Another case, which is currently on appeal to the Vermont Supreme Court, has implications for how listers conduct their work. *State v. Tripp,* Nos. 581-6-99 Cacr and 575-6-99 Cacr (Caledonia District Court, Oct. 22, 1999). In May of 1999, two listers for the *(Continued on next page)*

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LEGAL CORNER -

(Continued from previous page)

Town of Walden were appraising a residential property. They noticed a new addition on the house next door, and went there to get information about it. They knocked on the door, no one answered, and they then walked around the outside of the house and took measurements of the addition. On the side of the house, they saw a number of marijuana plants in buckets about 15 feet from a basement door. Later in the day, one of the listers went to the police and gave a sworn statement about the plants. The police used this information to get a search warrant, and then conducted a search and seized the plants and other drug paraphernalia. The two



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residents of the house were charged with cultivation and possession of marijuana.

At a pre-trial hearing, the defendants, Mr. Tripp and Ms. Schofner, moved to suppress the seized evidence on the grounds that listers are government agents for purposes of the Fourth Amendment to the U.S. Constitution. The Fourth Amendment protects the "right of the people to be secure in their persons. houses, papers, and effects, against unreasonable searches and seizures " Simply stated, if listers fall into the category of government agents, they cannot conduct a search without the consent of the home's resident or a search warrant. The question at the pre-trial hearing focused on whether non-law enforcement government activity, such as what listers do, is a "search" or "seizure" under the Fourth Amendment.

Judge Cook of the Caledonia District Court agreed with the defendants that the listers are government agents and that they had conducted an unreasonable search. It is clear, from rulings by the United States Supreme Court, that the Fourth Amendment's warrant requirement covers regulatory searches such as OSHA inspections and searches by municipal health and safety inspectors. Relying on these cases and a case from the federal Ninth Circuit Court of Appeals, Judge Cook reasoned that because listers appraise property to ensure compliance with the tax laws, they "elicit a benefit for the government in either its investigative or administrative capacities." United States v. Attson, 900 F.2d 1427, 1430 (9th Cir. 1990). Under that standard, he decided that they are limited by the requirements of the Fourth Amendment.

Judge Cook further ruled that the particular search in this case was unreasonable.

The reasonableness of a particular search requires the court to balance the type of intrusion to the individual against the governmental interests in conducting the search. Here, Judge Cook reasoned, the listers had no immediate need to conduct the measurements that day, and the home's residents had a strong interest in protecting the privacy of the area immediately surrounding the house. He concluded that the evidence seized by the police, based on the lister's information, should be suppressed.

The State has appealed the case to the Vermont Supreme Court. Until the Court issues its decision (which will take a few months at a minimum), we offer the following advice to listers. Listers should always get consent to examine property for appraisal purposes. This may be done either by knocking on the door and getting permission from the occupant, or calling ahead and telling them when you plan to view the property. If the occupant gives you verbal permission to go on the outside of the property when he or she is not home, that is fine. Be sure to make a written note of this consent, and the date it was given, in your file.

If the occupant refuses you entry to the property after you have explained why you need to go there, you should list the property as accurately as you can from the information you do have. If the taxpayer grieves his or her assessment, there will need to be a viewing of the property during the grievance process.

This is an important case, and we will report the Supreme Court's decision to you as soon as we have it. In the meantime, getting consent from the property owner to do an appraisal is the course you should take.

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Questions asked by VLCT members and answered by the League's legal and research



LISTERS' ERROR; SUBDIVIDING LAND IN TWO TOWNS; FAILURE TO ELECT

As a new lister, if I make a mistake while compiling the grand list, or find an existing error, can I correct it? If so, what steps should be taken?

Fortunately, the law recognizes that everyone makes honest mistakes from time to time, and provides procedures to remedy the most common types of listing errors. However, the corrective procedures vary according to the type of error and the timing.

First, a word about proper terminology. From the time the listers first compile and lodge the list with the town clerk for public inspection until the date it is lodged with the town clerk a second and final time, it is called the "abstract of individual lists," or just the "abstract." You may also hear it called the "preliminary grand list." Only after all grievance hearings are closed and the book is turned over to the town clerk does it become the "grand list."

The statutes contain different procedures for correcting different types of errors. Very often, errors in an appraisal or listing are discovered during grievance hearings. These may be corrected according to the provisions for amending an abstract, and written notices of the amendment must be sent to the affected taxpayers. The notice must inform the taxpayer that he or she has the right to appeal the board of listers' decision to the board of civil authority by filing an appeal with the town clerk within 14 days of the mailing of the written notice of the amendments. Although the statutes advise notice by registered or certified mail, this is not required. 32 V.S.A. § 4224.

If the error or omission is discovered in the listing of property before the grand list has become final, the listers can correct it without asking for approval from the selectboard. Again, written notice of the correction must be sent to the affected taxpayer allowing him or her to grieve. 32 V.S.A. § 4111(f).

In the event of a procedural error that affects the validity of the abstract of individual lists (such as missing the deadline for filing the abstract with the town clerk, or a defective

notice), the listers can correct this on or before February 1 of the following year. 32 V.S.A. § 4112 et sea.

Corrections that must be made after the grand list has become final – that is, turned over to the town clerk – require selectboard approval. This occurs when the listers discover that real or personal estate has been accidentally omitted from the grand list, or there is an obvious error in a listing. Such errors or omissions of individual property listings may be corrected until December 31. 32 V.S.A. § 4261.

The process for correcting the final grand list is this: The board of listers makes its request to the selectboard. If the selectboard approves, it provides the information on such changes to the town clerk. The town clerk makes the changes in the grand list book. For those towns with computerized grand list data, the changes can also be made to the grand list file, but it is not recommended that a complete new grand list report be printed. Even though not expressly required by statute, it is advisable to notify the taxpayer of the correction and allow the person to grieve the decision, if requested.

Lastly, Vermont law does provide for penalties in some instances. If you fail to or neglect to perform a duty imposed on you by law, as a town officer you can be fined \$100. 24 V.S.A. § 902. Mistakes made in bad faith or with malice, which deprive persons of any of their civil rights, are punishable under the federal Civil Rights Act. Mistakes involving misuse of office, such as accepting bribes or commissions, are punishable under state law. 13 V.S.A. Chapter 21. Listers who knowingly make or return an incorrect abstract can be fined up to \$500. 32 V.S.A. § 4182. These are all good reasons why town officers should have a thorough knowledge of the laws under which they work.

A more comprehensive guide to the legal duties and responsibilities of the town lister is available in the 1999 edition of the *Vermont Listers Handbook*, published by the Vermont Department of Taxes, Division of Property

Valuation and Review.

(Question adapted from the **Vermont Listers Handbook**, with the assistance of Mary Jane Grace,
Division of Property Valuation and Review.)

Our zoning and subdivision bylaws require that when two or more lots are being created, a subdivision permit is needed. Recently, it came to our attention that the owner of a nine-acre parcel of land that straddles the town boundary line wants to sell off the entire four-acre piece that lies in our town. Does the landowner need to get a subdivision permit from us before he sells the land?

No. In this case, because that part of the nine-acre lot that lies in your town is being sold in its entirety, no subdivision permit is needed. (Should the landowner wish to sell only a portion of the four-acre parcel in your town, it would be subject to subdivision review.)

The principal reason why the bylaws do not apply in the current proposal is that a municipality only has the authority to enact zoning and subdivision regulations within its legal jurisdiction, that is, within the established political boundaries of the municipal

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ASK THE LEAGUE -

(Continued from previous page)

entity itself. 24 V.S.A. § 4401(b). Your regulations do not extend to the portion of the property that lies in the adjacent town, even though the land is contiguous and may even have been purchased in its entirety by a single deed conveyance. The fact remains that part of the parcel lies in one town's jurisdiction and part in another. The common boundary line between the two municipalities essentially 'subdivides' the parcel.

MUNICIPAL MANAGERS SPRING CONFERENCE

The annual spring conference of the Vermont Town and City Managers
Association (VTCMA) will take place on Thursday, May 11 and Friday, May 12, 2000 at the Middlebury Inn, Middlebury, Vermont. The location will give VTCMA members a chance to bid outgoing Middlebury manager **Betty Wheeler** goodbye, as she is leaving her position after 13 years on the job!

Other recent manager comings and goings include:

Scott Dunn, new administrator of Stowe, replacing interim administrator **Bill Steele**.

Keith Arlund, new manager of Ludlow, replacing interim manager **Jeffrey Wennberg**.

Linda Foisy, new manager of Weathersfield, replacing **Jeffrey Whittemore**.

Violet Bates, new manager of Williamstown, replacing interim manager **Ken Magoon**.

Beverly Davidson, interim manager of Castleton who became permanent manager last year.

Michael Barsalow, interim manager of Fair Haven who became permanent manager last year.

John Ward, new Newport City manager, appointed last year.

Carolyn Gregson, new manager of Underhill, replacing **Jeffrey Keeney**.

Ann Cookson recently left her position as Winooski city manager. Pauline
 Schmoll has replaced her as acting city manager.

The League and VTCMA welcome the new managers and wish the outgoing managers well in their new endeavors.

Sometimes this act of law actually creates a non-conforming sized lot in one or both towns. Under this circumstance, the bylaws of one town would not recognize that portion of the parcel in the adjacent town. For example, a landowner proposing to develop the portion of the property that lies within your town cannot add in the acreage of the portion of the lot that lies in the adjacent town when calculating lot size in order to make it conforming. It may help to think of this situation as analogous to a municipality's taxing authority. Municipalities do not have the authority to tax property in an adjacent municipality, even if the property is contiguous and under same ownership.

Although, in this case, the landowner is not subject to municipal subdivision review, the zoning administrator should refer the landowner to the Department of Environmental Conservation regional permit specialist since a state permit may be required. 24 V.S.A. § 4442(c). That is because state law does not recognize municipal boundaries when determining when a subdivision permit is required. The law defines "subdivision" as:

... a tract or tracts of land, owned or controlled by a person, which the person has partitioned or divided for the purpose of resale into 10 or more lots within a radius of five miles of any point on any lot, or within the jurisdictional area of the same district commission, within any continuous period of five years... 10 V.S.A. § 6001(19).

If no one is elected to the office of town

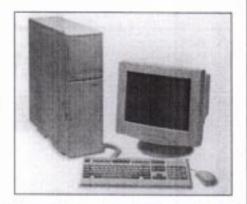
clerk at the annual town meeting can the selectboard appoint the assistant clerk, who is a non-resident, to serve that term until the next election?

No, only a resident will do. The law is very clear in this regard, "if no person is ... elected to fill the office, a majority of the legislative body may appoint a voter of the municipality to fill the office until the next annual meeting." 17 V.S.A. § 2682(d).

It is interesting to note that the board's authority to fill a vacancy when there is no one elected to office is more restrictive than the board's general authority to fill a vacancy caused by other reasons. Generally speaking, if an elected town officer resigns, is removed from office, moves out of town, dies, or becomes insane, the selectboard is charged with filling the vacancy "forthwith" without fulfilling a residency requirement. Perhaps this is the result of the required haste, or perhaps it was just a legislative oversight - we can only speculate. The fact remains, however, that under these vacancy conditions, there is no clear restriction against the appointment of a non-resident to fill the office until the next general or special election. The only exception to that rule is when a majority of selectboard seats are vacant at the same time. In this case, a special town meeting for the purpose of electing replacements is required. If there are *no* selectpersons in office, then the Secretary of State is responsible for calling a special election. 24 V.S.A. § 963. And, to be elected, the person must be a resident.

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LOSS PREVENTION NOTES

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



MUNICIPAL MANAGEMENT AND THE DYNAMICS OF CHANGE

OR, "I'D RATHER BE A BETTER LEADER"

On April 1 and 2, 2000, VLCT PACIF will present a workshop for Vermont's

WHAT: Dynamics of Change: Municipal Management Workshop

WHEN: April 1 and 2, 2000 (two-day

training)
WHERE: Quechee Country Club,

Quechee, Vermont (There are only FIFTY seats available.)

WHO: FREE for VLCT PACIF member officials.

WHY: Excellent municipal leadership is a shared goal of Vermont municipalities and VLCT PACIF.

municipal managers, mayors, selectboard members, and fire and law enforcement officers. This workshop will differ from PACIF's usual offering of specific safety and loss prevention trainings as it will ask municipal leaders to step back for a bit from their day-to-day duties and take the "big picture" view of their work.

The workshop will focus on the changing paradigm of the public sector: how followers and leaders must work together as professional colleagues; how they need to have a common vision; and how they can communicate this vision with each other. Dr. Lawrence Ritcey, workshop presenter, will look at many of the

issues that are changing the way municipal leaders govern: public sector competition, privatization, managing conflict, customer service, technology, mission and diversity. Dr. Ritcey is known for his humor and instructive small group activities, both of which will make this a very interesting seminar. He offers a brief story below that highlights some of the themes he will take up next month.

TRUE STORY

BY DR. LAWRENCE RITCEY

"What could I learn about leadership?" you may ask yourself when you consider adding a seminar or workshop to your already busy schedule. In response, I ask you to look at the case of Bud N. who, at the age of 35, knew more about the job than almost anyone he supervised. But his confidence, at times, was shaken because he didn't understand the people who worked for him.

(Continued on next page)

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LEADERSHIP -

(Continued from previous page)

What did 'the doc' advise for Bud? "Learn about the attitudes; values, and personalities that affect you and others. See what makes people 'tick' and then treat individuals differently to get them to do the same thing." Bud's boss, after Bud took the seminar, liked the improvements in Bud's people-handling skills.

What was the "the doc's" advice? "Theoretically, bosses tell people what to do. Actually, it's far better to involve them in deciding what you need done. When leaders take the calculated risks of involving (or not involving) others, mistakes are not failures, and successes belong to us all."

Opportunities for improvement can happen with top-level managers, too. Like an old broom, Bud's boss knows what needs doing. Like a new broom, he wanted to give his organization a fresh start. Bud's boss not only wanted to make things change; he also needed to persuade others to be part of the revitalized organization.

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N E W!!! MODEL ZONING PERMIT APPLICATION

As zoning administrator, do you ever feel like you're shuffling just *too much paperwork* when it comes to processing a single zoning request? Well, you're not alone! It is not uncommon for zoning offices to have separate applications for each of the types of zoning permits required: one for a change of use; one for site plan approval; one for subdivision approval; one for an appeal variance; one for a conditional use approval; and, finally, one for the actual zoning permit to commence construction or a new use!

The law does not require separate zoning applications, nor are they necessary, since much of the information requested in the



multiple applications is the same. In an attempt to help towns streamline the application process (thereby making your job simpler), municipal land-use attorney, Steven F. Stitzel, has developed a model one-step zoning permit application.

The information-gathering portion of the application is concise and fits on two pages. Page One of the application identifies basic information that should be requested of all applicants for *any* type of zoning permit:

- applicant's name and address
- property owner's name and address (since in many cases, the applicant is not necessarily the owner)
- property location
- tax parcel ID number
- parcel size
- present use of property
- structures/improvements on property
- proposed use and/or structures/improvements
- estimated cost of improvements
- property access
- sketch or site plan of the property
- identification of any adjoining property owned by the applicant/property owner.

Page Two is a little more technical and consists of a series of questions in which the applicant is asked to provide additional information to address the specific requirements of the town's bylaws. *Suggested* questions in the model relate to:

- watercourses, wetlands or floodplains located on or adjoining the subject property
- steep slopes
- performance standards such as, storage of flammable/explosive materials, electromagnetic radiation, storage or use of radioactive material, noise, odors.

This list, of course, is not meant to be all-inclusive, and is simply a sample of the kind of technical information you may wish to request from each applicant. It is recommended that your municipality revise the model so that it reflects the requirements of your bylaws. Each set of bylaws is different, and your local review board must conduct a thorough review and make a decision based upon *your* town's bylaws – not those of another town. Lastly, by way of a signature and date, the application requires the

(Continued on next page)



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ZONING APPLICATION -

(Continued from previous page)

applicant/owner's certification as to the validity of the information provided.

Pages Three and Four of the model are for the zoning administrator's (ZA) use. Page Three documents receipt of the application, payment of fees, processing and various actions taken by the ZA and by the local review boards, if applicable, as the application wends its way through the approval process. In the simplest of cases, if the ZA has sole authority to act on the zoning request, he or she will approve or deny, distribute and record the permit and that's the end of it! If the bylaws require approval from the planning commission or zoning board before the ZA can issue a zoning permit, then the form allows the ZA to "deny pending site plan approval" (or pending subdivision, CU or variance). Once the appropriate board has reviewed the application, and the application is deemed approved or denied, it goes back to the ZA for "final" action.

The only unusual feature of this consolidated zoning application is in its approval/denial format. If a project requires multiple zoning approvals, the ZA is required to make a decision regarding each (for example, "denied pending site plan approval" and note [it] on the application form). Thus, each "act" of the ZA is potentially subject to appeal. This is not a concern, however, since in reality there is no greater risk of appeal than if separate zoning application forms were used, since whether the ZA makes the decision as to the type of approval required verbally or in writing, his or her decision is subject to appeal.

Lastly, Page Four is offered as an example of one of the many types of checklists that may be required for various kinds of applications. Of course, again, you will want to revise this template to reflect your bylaw requirements.

To obtain a copy of the model zoning permit application, contact the VLCT Municipal Law Center at 800/649-7915 or email info@vlct.org. You may also pick up a copy at the VLCT display table at the April UVM Extension Service's Town Officer Education Conferences.

(Our many thanks go to attorney Steve Stitzel for making this model available to VLCT members. Mr. Stitzel is a senior partner in the Burlington law firm of Stitzel, Page & Fletcher, PC, and is a member of the VLCT Municipal Law Center Advisory Committee.)

COMMENTS SOUGHT ON PROPOSED VERMONT COMMUNITY DEVELOPMENT PROGRAM CHANGES

Over the past six months, the Vermont Department of Housing and Community Affairs, with the help of an advisory group, has been evaluating the Vermont Community Development Program (VCDP), in order to develop a program more responsive to client needs. (See article in the December 1999 issue of the *VLCT News*)

The VCDP annually distributes approximately \$8.5 million in federal Community Development Block Grant funds to Vermont communities throughout the state. It is an important source of funds for affordable housing, retention and creation of quality jobs, and the provision of public facilities and services, all in support of low- and moderate-income persons.

The Redesign Advisory Group, made up of VCDP constituents, has developed a list of recommendations for a more effective program. There will be a public hearing and a public comment period related to these draft recommendations. The hearing will be held on Vermont Interactive Television on Thursday, April 13, 2000, from 4:30 p.m.- 6:30 p.m. at all VIT sites. They are:

Bennington, Medical Office Building, Suite 308, tel. 753-1003

Brattleboro, VT Agricultural Business
Education Center, tel. 257-2697
Canaan, Old Town Hall, tel. 266-3081
Colchester, St. Michael's College, North Campus, tel. 654-7777

Middlebury, Patricia Hannaford Career Center, Rm. 206, tel. 385-1001

Newport, North Country Union High School, tel. 334-1002

Randolph Center, Vermont Technical College, Morrill Hall, tel. 728-1357

Rutland, Stafford Technical Center, Room 222, tel. 776-1776

St. Albans, Bellows Free Academy, tel. 524-0238

St. Johnsbury, St. Johnsbury Academy, tel. 748-1478

Springfield, CCV/VIT Building, 380 River Street, tel. 886-2199

Waterbury, State Office Complex, Stanley Hall. tel. 882-1002

For specific directions, call the VIT sites directly. For other information, call Polly McMurtry, VCDP, tel.802/828-5227. If you need an interpreter, please call her with enough advance notice.

Public comment on the draft recommendations must be received in writing by 4:30 p.m., April 24, 2000. The draft recommendations will be posted on the website, www.CDBGredesign.com. Hard copies are also available from Polly McMurtry.

In early May the Redesign Advisory Group will finalize its recommendations to the Department, based on public comment. The Department is expected to announce the final decision by late May or early June 2000 as to which recommendations will be adopted.

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DOG LICENSING Q'S & A'S

As April 1st quickly approaches, many town clerks are engaged in the unwieldy task of dog licensing. Over the years, the State Veterinarian's Office has received many questions via telephone and fielded a multitude of others while visiting town clerks throughout Vermont. In an effort to reduce the understandable confusion, we offer the following information to clarify a few points.

What is the purpose of a kennel permit? 20 V.S.A. § 3681.

A kennel permit is issued by the town for the purpose of establishing that a resident is keeping domestic pets or wolf-hybrids for reasons other than for his or her own use, i.e. for sale or breeding purposes. Bear in mind the kennel permit applies to wolf-hybrids and domestic pets, which include dogs, cats and ferrets as defined in Title 20 Chapter 193 § 3541(3).

Inevitably, we hear each year from a disenchanted breeder who would like to obtain a kennel permit only to be told that the town ordinance does not allow kennels either for boarding or for construction of kennel facilities. Please do not mistake the intent of the kennel permit. The kennel permit has no relationship to any zoning ordinance pertaining to kennels for boarding or for construction of kennel facilities. The kennel permit also has no relationship to dog licensing.

What is the dog licensing schedule? 20 V.S.A. § 3581.

Dog licensing is an annual event. Dogs more than six months of age may be licensed any time after January 1 of a calendar year, but must be licensed no later than April 1 of the same year in order to avoid an additional 50% fee assessment. If a dog reaches six months of age after April 1, the owner has 30 days to apply for a license; after October 1, the fee is reduced by half.

What is the purpose of the special license? 20 V.S.A. § 3583.

A point of clarification. Domestic pets, as you know, includes dogs, cats and ferrets. Unless your town requires cats and ferrets to be licensed, this provision only refers to dogs and wolf-hybrids.

Think of a "special license" as a discount incentive for breeders who agree to maintain their breeding animals within "proper enclosures," defined as a locked fence or structure of sufficient height and sufficient

depth into the ground to prevent the entry of young children and to prevent the animal from escaping. The special license is not intended to provide a reduced license fee to any individual possessing more than three breeding animals. When a special license is requested, consider the following:

- 1. All animals registered under the special license must be maintained within a proper enclosure. Many breeders, especially hound owners, have questioned the requirement to maintain their dogs within a "proper enclosure." The word enclosure is not taken in a literal sense but permits the removal of dogs under supervision from the fenced area for necessary training, as in the case of hunting dogs.
- 2. If the holder of a special license also maintains spayed and neutered animals they must be licensed individually at the \$4.00 rate and are not to be included on the special license.

What is a current rabies vaccination?

Changes to the Vermont Statutes with regards to current rabies vaccination requirements for licensing are being considered, to help eliminate much of the confusion generated by the current definition and address some of the concerns with vaccination. At least for now, we must continue to follow current requirements.

A great deal of confusion arises because of different interpretations of what the expiration date is. There are two expiration dates.

- 1. One is the expiration date for the duration of protection that the vaccine has been approved for by the USDA. For example, an approved three-year vaccine is considered to have a duration of protection that will expire three years from the date the vaccine was given. This is the expiration date that many veterinarians are accustomed to writing on the rabies vaccination certificate.
- 2. The other expiration date is the date the vaccine is no longer considered current as defined in the Vermont statutes with regards



to dog licensing. Even though a vaccine may be approved as a three-year vaccine, for the purposes of licensing an adult dog, the vaccine is only considered current if it was administered within the previous two years.

The easiest way to decide if a rabies vaccination is current for the purposes of licensing a dog is to consider the following: for dogs over two years of age, the vaccination must have been given within the previous 24 months; for dogs under two years of age, the vaccination must have been given within the previous 12 months. Forget about expiration dates. Pay attention only to when the vaccination was given. Is it within 24 months for dogs older than two years, or within 12 months for dogs younger than two years? If not, they should be revaccinated before renewing their license. This is frustrating for owners who are not aware that vaccinations are no longer considered current for licensing even though it is within the expiration date that the vaccine is approved for. Veterinarians are not always good about explaining this difference to their clients. Some towns have been printing the date to renew vaccinations right on the license.

If you have further questions please call the State Veterinarian at 802/828-2421.

Dog licenses, kennel permits and special license forms may be obtained through: Vermont Correctional Industries, RR 1, Box 680, Windsor, VT 05089, tel. 802/674-6724.

Please forward the duplicate copies of the kennel permit and special licenses issued in your town to: Vermont Department of Agriculture, Food & Markets, Animal Health Section, 116 State Street, Drawer 20, Montpelier, VT 05620-2901.

(By Dr. Todd E. Johnson, State of Vermont Veterinarian.)



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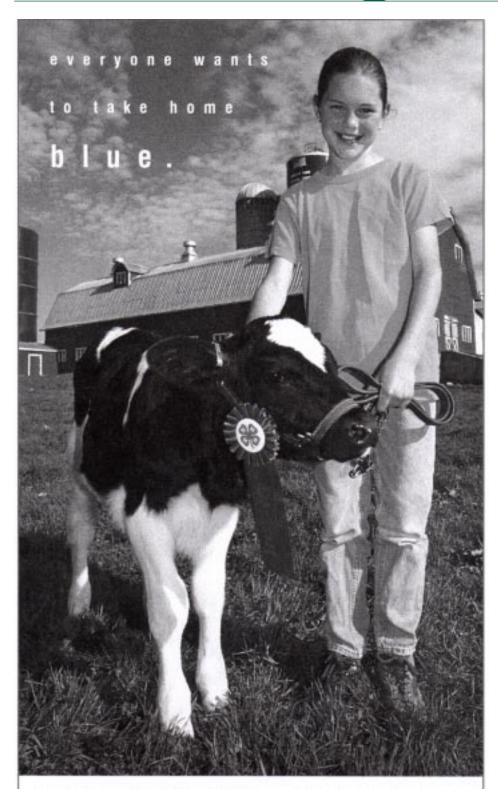
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AGENCY OF NATURAL RESOURCES PLAN Unveiled

In late January, the Agency of Natural Resources (ANR) issued its strategic plan for 2001 - 2005, a beautifully laid out and informative document that addresses the Agency's goals in a number of different, but related, areas. Those areas include sustainability, improved health, outdoor recreation, and effective operation. This plan is clearly the product of some soul searching at the Agency.

It is also the product of some new efforts to coordinate the functions of different ANR departments around those areas emphasized in the strategic plan and its goals. Comprehensive goals are:

- to promote the sustainable use of Vermont's natural resources:
- to protect and improve the health of Vermont's people and ecosystems;
- to promote sustainable outdoor recreation; and
- to operate efficiently and effectively as an agency so ANR can fulfill its mission.

The Agency's mission is to protect, sustain, and enhance Vermont's natural resources, for the benefit of this and future generations.

The plan's sections on sustainability and improved health may be the most significant for local governments. In the sustainability section the plan indicates that Vermont's population has grown by 40% since 1960 (200,000 people). Chittenden County's population has doubled in that time and projections are for an additional 20,000 jobs to be created in Vermont by 2003. The Agency defines sustainability as the production and use of resources to meet the needs of present generations without compromising the ability of future generations to meet their needs. (This definition is the same as that in the 1987 report, *Our Common Future* by the United Nations World Commission on Environment and Development.) The ANR plan defines its challenge as managing growth pressures while sustaining our natural and human communities - sustaining Vermont's quality of life.

In the section on sustainability, the Agency describes the issue and then establishes

(Continued on next page)



ANR PLAN -

(Continued from previous page)

strategies for achieving the goals of the plan. They are not especially specific, however the plan also indicates which departments are responsible for implementing a particular strategy, and which will have more detail. For instance, the strategies to "develop information needed to understand, protect and enhance ecosystems within a changing environment and to coordinate multi-disciplinary environmental monitoring and research among federal, state and private entities" are to be implemented by multiple departments. They are the Central



Budgeting and Finance Workshop:

Thursday, March 30, 2000, Suzanna's Restaurant, Berlin. The VLCT Municipal Law Center offers this workshop for new and experienced local officials. Sessions will cover budgeting basics, including how to implement a voted budget, surpluses and deficits, and sinking funds; municipal fund accounting, capital budgeting and bonding through the Vermont Municipal Bond Bank. Contact VLCT at 800/649-7915 or jhill@vlct.org for more information or to register.

Municipal Attorneys Forum: Thursday, April 20, 2000, Hampton Inn, Colchester. Offered by the VLCT Municipal Law Center, this program is designed for attorneys who practice municipal law and those who are interested in doing so. Sessions will cover federal preemptions (telecommunication towers, railroads, arbitration, etc.); the roles of local boards and limitations on their authority; and an ethics panel. Please contact VLCT at 800/649-7915 or e-mail jhill@vlct.org for more information or to register.

New Selectboard Training: Thursday, May 25, 2000, Vermont Interactive Television sites in Waterbury, Rutland, St. Johnsbury, St. Albans and Brattleboro, 4 p.m. – 8:30 p.m. Co-sponsored by the VLCT Municipal Law Center and the Windham, Rutland, Northwest, and Central Vermont Regional Planning Commissions. This seminar will cover selectboard responsibilities; Open Meeting Law and Public Records; and ordinance adoption and enforcement. Please watch your mail for program and registration materials.

Office, and the Departments of Environmental Conservation, Fish and Wildlife, and Forest Parks and Recreation.

In the section on improved health, the Agency indicates that it is turning its attention from point sources of water pollution to non-point sources of runoff, and that strategies other than regulation will be required in addressing these sources. The strategies to address goals in the improved health section are fairly specific and include involvement

from local governments. One strategy that caught our eye is to "implement stream channel restoration projects that include public education to reduce conflicts between human investments (such as buildings, bridges and culverts) and river dynamics."

Copies of the ANR strategic plan are available from the Agency of Natural Resources, 103 S. Main Street, Waterbury, VT 05671-0301. It is also available on the Agency's website at www.anr.state.vt.us.

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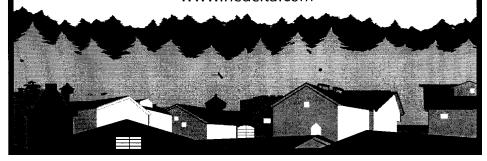
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GRANT OPPORTUNITIES

BULLETPROOF VEST GRANT PROGRAM

The federal Department of Justice is offering a grant program to pay for up to 50% of the total cost of approved bulletproof vests for law enforcement personnel. Cities, towns and villages are eligible to apply for the funds, which will be made available in early June. Applications are being accepted until May 13,

2000 through an Internet-based application process, at http://vests.ojp.gov.

This grant program is funded for three years by the federal Bulletproof Vest Partnership Grant Act of 1998. Last year was its first year, and \$23 million was provided to more than 3,500 state, local and tribal jurisdictions to purchase more than 92,000 vests for law enforcement officers.

Classifieds

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Fire Pumper: Colchester Fire District #2 has for sale a 1979 Mack Model MB-487 pumper. The unit has a 250 HP turbo diesel with Allison automatic transmission with 25,000 miles. Capacity of 1000 GPM with a 750 gallon tank and Honda generator. The vehicle may be seen at the Malletts Bay Fire Station located at 844 Church Road, Colchester. Call Dick Desautels at 802/862-

4621 for additional information or to schedule an appointment to see the unit. The District is asking \$29,900 for the unit.

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

LAKE CHAMPLAIN BASIN PROGRAM

Two hundred thousand dollars will be made available this spring to organizations and local governments seeking to undertake projects that will strengthen the Lake Champlain Basin's environmental, cultural and historic resources. The monies will be disbursed by the Lake Champlain Basin Program's Annual Priorities Partnership Program (deadline, April 10, 2000) and the Annual Priorities Grants (deadline, March 31, 2000). For information, contact the Program's Vermont office at 800/468-LCBP.

HANDBOOK FOR TOWN OFFICERS CORRECTION

The chapter on Tree Wardens in the VLCT Municipal Law Center's *Handbook for Town Officers* (1999) contains an error. In the chapter's introduction, it is written that the tree warden does not have to be a town resident. However, 24 V.S.A. § 871 states that the selectboard appoints a tree warden "from among the legally qualified voters." We apologize for the error and ask that you note this correction in your copy of the handbook.

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