ESSENTIALS OF LAND USE PLANNING AND REGULATION

1. Planning for a Vibrant Sustainable Community
2. Roles and Responsibilities
3. Implementing the Plan
4. Meetings, Hearings and Due Process
PLANNING FOR A VIBRANT SUSTAINABLE COMMUNITY

Section 1
Statutory Basis for Planning and Regulation

Municipal and Regional Planning and Development Act – Chapter 117

1921 – The Vermont Legislature first authorized municipalities to create planning commissions that could draft municipal plans.

1931 – The Vermont Legislature first authorized Zoning Regulations.

1968 – Municipal and Regional Planning and Development Act – Chapter 117
- Included purposes of planning and zoning
- Contents of municipal plans
- Adoption process for municipal plans
- Authorized zoning including specific types of review and regulations

1988 – Act 200 substantially updates local and regional planning portions of Chapter 117

2004 – Act 115 incorporates additional significant updates to the zoning portions of Chapter 117.
What is a Municipal Plan? Why have one?

**What:** A guide for accomplishing community aspirations and intentions through public investments, land use regulations and other implementation programs.

**Why:**
- Inclusive process develops community-wide vision
- Empowers communities to respond to change in ways that reflect their own goals, needs, priorities and values.
- Allows communities to designate growth areas to attract new business and other areas to preserve rural character or protect natural resources.
If you Plan, then you can...

- Adopt Zoning, Subdivision and Flood Hazard Regulations
- Act 250 Applications must conform to your Town Plan
- Your Town Plan will be considered in Section 248 Certificate of Public Good Applications
- More competitive grant applications
The Planning Process

1. Collect and analyze background information
2. Establish goals and objectives
3. Outline actions to achieve those goals and objectives
4. Create an implementation program
5. Adopt the plan
6. Implement the plan
7. Evaluate the plan and planning program
   - Collect and analyze background information

Vermont Planning Process Goals

Planning Process

- Coordinated comprehensive process to guide decision
- Citizen participation at all levels
- Consider use of resources and consequences of growth and development locally and beyond
- Work with neighboring municipalities and region to implement plans

The process is often more important than the product!
Who Should be Involved in Planning?

Everyone!
VERMONT PLANNING GOALS

Vibrant Sustainable Community

- Safe Convenient Transportation
- Compact Centers
- Strong Diverse Economy
- Education and Vocational Training
- Available Child Care
- Efficient Public Facilities and Services
- Recreational Opportunities
- Quality Housing Available
- Efficient Energy Use and Renewable Resources
- Agricultural and Forest Industries
- Use Natural Resources Efficiently
- Flood Resiliency
- Preserve Natural Resources
It’s Your Municipal Plan
(But there are requirements)

1. Objectives, Policies and Programs
2. Land Use (Map and Statement), including any state designation
3. Transportation (Map and Statement)
4. Utilities and Facilities (Map and Statement)
5. Education (Map and Statement)
6. Energy
7. Economic Development
8. Housing
9. Flood Resilience
10. Policies on Preserving Rare Natural Areas
11. Compatibility with Adjacent Municipalities and Region
12. Implementation Program
Plan Adoption and Regional Approval

- **Plans expire every 5 years**
  - Must make minimum necessary edits to data and implementation program, OR
  - Revise or rewrite

- **Adoption process can take several months**
  - Planning Commission hearing with notice to adjacent communities
  - Selectboard hearing (1 in rural towns and 2 in urban)
  - Shall be adopted by Legislative Body, unless the Legislative Body or voters have elected to adopt by Australian Ballot
  - Plans go into effect upon adoption

- **Regionally approved plans allow municipalities to:**
  - Attain village or downtown designation
  - Apply for municipal planning grants
  - Levy Impact fees
  - Requires state agencies to consider local plan in their planning
ROLES AND RESPONSIBILITIES

Section 2
Local Roles and Responsibilities

- Roles and responsibilities are delineated both by statute and by function:

- Legislative
- Quasi-Judicial
- Administrative
Local Roles and Responsibilities

- Legislative Body
  - Legislative Planning Commission
  - Quasi-Judicial
    - EITHER
      - Development Review Board
      - OR
        - Zoning Board of Adjustment and Planning Commission
  - Administrative
    - Zoning Administrator
Legislative Function

- **Planning Commission**
  - Municipal Plan
  - Zoning Bylaws/Development Regulations
  - Capital Budget
  - Other Studies

- **Legislative Body**
  - Edits Municipal Plan and either adopts or sends to voters
  - Edits Zoning Bylaws/Development Regulations and either adopts or sends to voters
  - Edits and adopts Capital Budget
Quasi-Judicial Function

**Development Review Board**
- Site plans
- Subdivisions
- Conditional uses
- Lots without frontage
- Variances
- Appeals of ZA decisions

**Planning Commission**
- Site plans
- Subdivisions
- Lots without frontage

**Zoning Board of Adjustment**
- Conditional Uses
- Variances
- Appeals of ZA decisions

OR
Administrative Function

- **Zoning Administrator**
  - Issues zoning permits
  - Conducts Enforcement
  - Assists applicants
  - May staff DRB, PC, or ZBA
IMPLEMENTING THE MUNICIPAL PLAN

Section 3
Implementing the Plan

Municipal Plan

Regulatory Implementation
- Zoning and Subdivision Bylaws
- Flood Hazard Bylaws
- Local Ordinances

Non-Regulatory Implementation
- Infrastructure Planning,
- Tax Increment Financing
- Advisory Commissions, etc.
Why Have Local Land Use Regulations?

- Implement the vision and goals in your municipal plan, such as:

  - Promote compact development
  - Protect important natural resources
  - Minimize fragmentation of farmland
  - Incentivize affordable housing
  - Encourage efficient use of infrastructure
  - Ensure compatibility with historic character
  - Establish safe vehicular and pedestrian circulation
  - Make communities more flood resilient
Limits of Local Regulation

- Land use regulations do tell people what they can and cannot do with their land, but they cannot deprive landowners of all reasonable use of their property.

- Land use regulations can only regulate what is enabled in Vermont Statute (Dillon's Rule State).

- Vermont Limitations and Prohibited Effects (§4412 and §4413):
  - Treat housing types equal and avoid discrimination against affordable housing.
  - Protect home occupations and home daycares.
  - Ensure continuation of "nonconformities"; small lots may be developed.
  - Lots without frontage may be developed with adequate access.
  - Regulation of public facilities shall not interfere with intended functional use.
  - No local regulation of accepted agricultural and silvicultural practices and applications requiring a Certificate of Public Good.
Players and processes potentially involved in local regulation

- Zoning Administrator Receives Application
  - Administrative Applications
    - Zoning Administrator Conducts Review
  - Quasi-Judicial Applications
    - DRB, ZBA or PC Conducts Review
  - Zoning Administrator Issues or Denies Permit
  - Quasi Judicial Panel Issues Decision
  - Opportunity for Appeal

# Local Regulation: Types of Review

<table>
<thead>
<tr>
<th>Type of Review</th>
<th>Function of Review</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zoning</td>
<td></td>
</tr>
<tr>
<td>Permitted Use</td>
<td>Established by right</td>
</tr>
<tr>
<td>Conditional Use</td>
<td>Can be established if found to be compatible</td>
</tr>
<tr>
<td>Variances</td>
<td>Stringent statutory standards</td>
</tr>
<tr>
<td>Waivers</td>
<td>Flexible local standards</td>
</tr>
<tr>
<td>Site Plan Review</td>
<td>Ensures good site design</td>
</tr>
<tr>
<td>Planned Unit Developments</td>
<td>Allows for flexible design</td>
</tr>
<tr>
<td><strong>Subdivision</strong></td>
<td>Controls the pattern of future development</td>
</tr>
</tbody>
</table>
Regulatory Decisions

Decisions must:
- Be in writing and contain:
  - Findings of fact on which each decision is based, and
  - Conclusions of law on how the bylaw applies
- Be based on review standards in bylaw
- Minutes may suffice

Timeline:
The quasi-judicial panel must issue written decision within 45 days of close of final public hearing. DOES NOT NEED TO BE THE SAME NIGHT OF HEARING!

Who is responsible for preparing decisions?
Appeals may be at either local or state levels.

- **Decision of Administrative Officer** → **Appeal to DRB**
- **Decision of Board (DRB, ZBA, PC)** → **Appeal to Environmental Court**
Interested Persons May Appeal

Pursuant to 24 V.S.A. § 4465(b)

- The applicant
- The municipality and any adjoining municipality
- Property owners in the immediate neighborhood of the subject proposal
- Any petition of ten persons (combination of voters or property owners)
- Any department or administrative subdivision of the state owning property or any interest
- ACCD

Only interested persons who have participated may appeal!

Board can choose not to make interested person determinations and leave it to the Environmental Court!
Non-Regulatory Implementation

Complements regulatory implementation

Chapter 117 authorizes:

- Capital Budget and Program
- Tax Increment Financing
- Tax Stabilization Contracts
- Purchase/Acceptance of Development Rights
- Supporting Plans
- Advisory Commissions
- Other projects and studies (does not have to be related to land use and development)
MEETINGS, HEARINGS AND DUE PROCESS

Section 4
# Meetings vs. Hearings

**What happens...**

<table>
<thead>
<tr>
<th>Meetings</th>
<th>Legislative Hearings</th>
<th>Quasi-judicial Hearings</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Discuss business or take action</td>
<td>• Receive public comment on a course of action (e.g. a plan or bylaw update)</td>
<td>• Hear arguments from parties seeking board approval</td>
</tr>
<tr>
<td>• Generally legislative</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Who does it...**

<table>
<thead>
<tr>
<th>Meetings</th>
<th>Legislative Hearings</th>
<th>Quasi-judicial Hearings</th>
</tr>
</thead>
<tbody>
<tr>
<td>• ALL boards</td>
<td>• The Planning Commission • Selectboard</td>
<td>• Any board that reviews proposed development</td>
</tr>
</tbody>
</table>
Vermont’s Open Meeting Law
(1 V.S.A. §§310-314)

- Post advance notice
- **Make the agenda available before the meeting**
  - At the municipality
  - 2 other designated places
  - A Web site, if your town has one
- Let the public participate
- **Make the minutes available within five days**
- Address complaints of violations

www.vlct.org/vermont-local-government/vermont-open-meeting-law/
<table>
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<tr>
<th>Meetings</th>
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</table>
| • For regular meetings: 1 VSA §§310-314  
• At least 48 hours*  
• At town and 2 other places | • For plans and bylaw amendments  
• 15 days  
• Newspaper of record  
• Certified Mailings | • For development review  
• 7/15 days notice**  
• Newspaper**  
• 3 or more public places  
• Mailed to applicants and adjoiners  
• Posting within view of nearest public ROW |
Legislative Hearings

- To receive public comment on proposed plans, bylaw, and policies.
- Public notice is mandatory:
  - Plans: 24 VSA §§4384-4385
  - Bylaws: 24 VSA §§4441-4442
- At least two public hearings
- Make summary of plan/bylaw available in notice
Quasi-Judicial Hearings (24 V.S.A. §4464)

- **Conditional Use Review, Subdivision Review, Appeals**
  - 15 days’ notice in the newspaper
  - 3 or more public places
  - Mailed to applicants and adjoiners
  - Posting within view of nearest ROW

- **Site Plan Review**
  - Seven days’ notice
  - 3 or more public places
  - Mailed to applicants and adjoiners
  - Posting within view of nearest ROW
Flow of Quasi-Judicial Public Hearing

1. Chair opens hearing

2. The applicant presents the proposal/request.

3. Board members ask questions in relation to conformance with specific provisions in land use regulations.

4. Comment from interested parties/public

5. Chair closes public hearing and opens deliberations (public or private).

6. Board decides on application and issues a written decision.
Opening a Quasi-Judicial Hearing

1. Review order of events

2. Remind of the importance of order

3. Make copies of the rules of procedure and ethics policies available.

4. Review definition of interested persons and ensure documentation of participants. Administer oath.

5. Request disclosure of conflicts of interests or ex parte communications
Board Member Role at Quasi-Judicial Hearing

In order to determine a project’s conformance with your regulations and protect due process:

- Listen to Testimony and Evidence;
- Ask Questions;
- Refer to your regulations;
- Avoid conflicts of interest;
- Must not prejudge a matter or publicly express opinions on a pending case.
Deliberative Session

- Exempt from Open Meeting Law
- No requirement for notice or minutes
- Don’t have to reveal how the board voted
- Public or private
- 45 days to issue a decision or deemed approved
Conflicts of Interest

• Financial interest (direct or indirect)
• Personal interest (direct or indirect)
• Known bias or prejudice
• Ex parte communication

*It takes years to build trust with the public, but just one misstep to destroy it.*
Managing Conflicts of Interest

- Adopt Rules of Procedure and Ethics – know them and follow them!
- Ex parte communication is very difficult to avoid, so ALWAYS disclose
- Recuse oneself when necessary
- Use alternates
In Summary: Protecting Due Process

- Proper public notice
- People are given an opportunity to be heard
- A fair hearing presenting all sides of the issue
- Impartial standards for decision making
- Accurate and accessible public records
- Decision makers acts without bias
- MUST adopt rules of procedure and ethics (24 V.S.A. §4461)
QUESTIONS?
Tools and Resources Available:

• Essentials of Local Land Use Planning and Regulation Manual (online at VPIC.info).

• Purple Book – Title 24, Chapter 117 V.S.A. and other land use relevant statute as amended through 2012 (online at VPIC.info).

• Title 24, Chapter 117, V.S.A, current and up to date: www.leg.state.vt.us/statutes

• Land Use Planning Implementation Manual (online at VPIC.info).

• Your local Regional Planning Commission: www.vapda.com

• www.vpic.info – Vermont Planning Information Center (VPIC)

• www.vlct.org – Vermont League of Cities and Towns (VLCT)

• www.accd.vermont.gov/strong_communities – Department of Housing and Community Development