CHAPTER 10
HIGHWAYS AND BRIDGES

A. INTRODUCTION

As any selectperson knows, the condition of town roads is the source of much discussion among town citizens – especially during mud season and following the winter's biggest storm. Roads also dominate discussion at many selectboard meetings, as Vermont statutes place town highways "under the general supervision and control of the selectmen ... [who] shall supervise all expenditures." 19 V.S.A. § 303.

The specific duties and responsibilities of the selectboard regarding roads are enumerated in 19 V.S.A. § 304. This section lists 23 different areas of responsibility, from the broad taking of "any action consistent with the provisions of law which are necessary for or incidental to the proper management and administration of town highways" to the specific "receive grant funds and gifts" to be used toward town highway maintenance.

It is worth noting, too, that in many of Vermont's smaller municipalities, the town road crew makes up all or most of the town's paid staff. This draws the selectboard into the important areas of personnel management and workplace safety, in addition to road repair and bridge maintenance. For more information, consult the VLCT Municipal Assistance Center's *Highway Handbook* (2001).

B. TOWN HIGHWAYS: CLASSES 1, 2, 3 AND 4

Town highways are divided into four classes (1, 2, 3 and 4), which determine maintenance requirements and state funding. For example, Class 1, 2 and 3 roads must be kept "in good and sufficient repair during all seasons of the year" but Class 4 highways need only be maintained to the extent required by "the necessity, ... public good and ... convenience." 19 V.S.A. § 310. The State of Vermont appropriates highway funds for Class 1, 2 and 3 highways and their bridges, 19 V.S.A. § 306, but these funds are conditioned on the town meeting certain maintenance standards, and funds may be withheld or returned by the town if it fails to meet the standards. 19 V.S.A. §§ 302(b), 308. (See Section H below.)

In addition to the four classes of town highways, another type of town right-of-way is the town trail. State statutes define a trail as "a public right of way which is not a highway." A trail may be an old town highway, 19 V.S.A. § 775, or it may be a new right-of-way laid out by the selectboard, 19 V.S.A. § 301(7). Towns are not responsible for any maintenance on trails. 19 V.S.A. §§ 301(c), 302 (a)(5).

C. CONDEMNATION

The selectboard has the authority to lay out a new town highway or alter an existing one, 19 V.S.A. § 304(12), two actions that usually involve the condemnation, or taking, of private property. The request to lay out or alter a road may be initiated by petition of five percent of town voters or landowners, or by the selectboard on its own motion. 19 V.S.A. § 708. (See also Section D below.)

Although the term "condemnation" is not found in the statutes that deal with laying out or altering town highways, the sense of these statutes is that the selectboard has the authority to take land "for the public good, necessity and convenience." 19 V.S.A. § 710. If the board determines that a new, expanded or rerouted highway is necessary for the public good, it must next decide if the landowners affected by the change are entitled to damages. If so, the board must "pay or tender to him or her, damages as the selectmen determine reasonable." 19 V.S.A. § 712. Such taking and payment of compensation for damages constitutes actual condemnation.

For guidance on the meaning of "necessity" and "damages" see 19 V.S.A. § 501. Though this chapter of the statutes deals with the State of Vermont Transportation Board, state highways, and condemnation, it is a helpful reference during the process of laying out or altering town highways.

As a final step in the condemnation process, the selectboard "shall fix ... the time within which the owner of the lands taken shall remove his or her buildings, fences, [etc.]." 19 V.S.A. § 713.

The landowner or other interested person has several remedies if he or she is dissatisfied with the selectboard's decision. First, he or she may appeal the award for damages to "disinterested persons mutually selected" or to the district or superior court. 19 V.S.A. §§ 725-726, 740. Second, if he or she objects "to the necessity of taking the land, or ... with the laying out, altering or resurveying of the highway ..." he or she may apply to the superior court for relief. 19 V.S.A. § 740. An appeal of the amount of damages will not interfere with beginning work on the highway. However, an appeal as to the necessity of the taking of the land or the correctness of the plan generally will stay the opening of the highway until the court renders its decision. 19 V.S.A. § 743.

Interestingly, there is a flip side to the condemnation powers of the selectboard. In 19 V.S.A. §§ 750 et seq., persons who are dissatisfied with the selectboard's decision not to lay out, alter, build or open a new highway may apply to the superior court for relief.

D. LAYING OUT HIGHWAYS

The authority to lay out, alter, classify or discontinue town highways is given to the selectboard in 19 V.S.A. § 304(a)(12). The procedure for each option is roughly the same. 19 V.S.A. §§ 708 et seq.

As noted in Section C above, proceedings to create or change a town highway may be initiated by the selectboard or by a petition signed by "persons who are either voters or landowners, and whose number is at least five percent of the voters, in a town." 19 V.S.A. § 708. The selectboard's next step is to set a time and date for inspection of the premises and for a hearing. Notice requirements for the hearing are fairly extensive and are spelled out in 19 V.S.A. § 709. The hearing is quasi-judicial, as defined in 1 V.S.A. § 310(5). Following the hearing, the board has 60 days in which to make a decision based on "the public good, necessity and convenience of the inhabitants of the municipality." 19 V.S.A. § 710. It is worth noting that regardless of the origin of the request, it is ultimately the selectboard's decision whether or not to change the status of a town highway.

Until recently, the board's decision in these matters was treated with great deference by the courts. However, in 1991 the Vermont Supreme Court upheld a superior court decision that required a town to upgrade a Class 4 road even though the selectboard had decided not to.

Hansen v. Town of Charleston, 157 Vt. 329 (1991). That decision threatened to have severe financial implications for towns since it meant that courts could force towns to spend thousands of dollars on road construction and upgrading. However, much of the financial impact of that case was mitigated by a subsequent amendment to 19 V.S.A. § 711 that provides that the town may require the petitioner to bear the cost of upgrading a road and may require that payment to be made within a stated time.

Class 4 roads are often the subject of petitions to upgrade, as more and more landowners build on them or seasonal homes located on Class 4 roads become occupied year round. Many towns have adopted a Class 4 road policy that sets forth the type and extent of maintenance the town will do on Class 4 roads. (Work ranges from minimal repairs to bridges and culverts in the summer to more extensive, year round grading and snowplowing.) It may also state the terms upon which the selectboard will consider reclassifying the road to Class 3 status. A Class 4 road policy ensures that the town treats all town residents who live on Class 4 roads equally and that people who seek to move to or build on a Class 4 road are aware of the level of road maintenance they can expect from the town, if they inquire.

A good Class 4 road policy does not mean a town won't be petitioned to upgrade a Class 4 road, or be sued over the road's maintenance. It will, however, go a long way toward clarifying the town's position in any such proceeding. Note that the selectboard should reconsider the Class 4 road policy each year. A new selectboard is not bound by the previous board's policy and may change it to reflect what the board believes is "the public good, necessity and convenience of the inhabitants of the municipality." Contact the VLCT Municipal Assistance Center (800-649-7915) or the Vermont Local Roads Program (800-462-6555) for sample Class 4 road policies.

If the selectboard decides in favor of laying out a new highway or altering an existing one, the town may have to pay damages to persons through whose land the road passes or abuts. 19 V.S.A. §§ 808 et seq. (See also Section C above.) Laying out or altering highways and bridges that lead from one town to another is addressed in 19 V.S.A. §§ 790 et seq.

Questions frequently arise concerning the status of roads and streets created in private developments. Even though town planning and zoning authorities have approved developments and plats, Vermont law states that new streets and highways "shall be deemed to be ... private ... until formally accepted by the municipality as a public street or highway by ordinance or resolution of the legislative body." 24 V.S.A. § 4463(c). That said, there are some actions that, if taken by a town on a regular basis, can blur the distinction between a private and a public road. It is worth a note and warning that if the town appears to take over some of the private road's maintenance by activities such as plowing snow and fixing potholes, it may be deemed to have acquired the road by "dedication and acceptance." In this case, the town might have inadvertently taken on a new street or highway with all of its costs and liabilities.

When petitioned by citizens to take over a previously private road, many selectboards refer to their town's highway acceptance policy, or general highway ordinance that include standards which must be met (and paid for) by the owners of the road before the town will take it over. The Vermont Local Roads Program (c/o St. Michael's College, One Winooski Park, Colchester, VT 05439, telephone 800-462-6555) is a good source of technical standards and advice when developing a highway acceptance policy. You can also visit the Vermont Local Roads website at http://personalweb.smcvt.edu/vermontlocalroads/welcome_home_page.htm.

The selectboard may also discontinue town highways. 19 V.S.A. §§ 701, 771. The highway can be totally discontinued, in which case the right-of-way reverts to the owners of adjoining land, or the highway may be designated "as a trail, in which case the right-of-way shall be continued at the same width." 19 V.S.A. § 775. In each case, the selectboard must weigh the costs (upkeep, liability, etc.) to the town of keeping ownership of the right-of-way with current and future benefits the right-of-way confers on its citizens (recreational use, access to remote areas of town, use by loggers and farmers, suitability for future growth, etc.). Note, too, that when the selectboard decides to discontinue a highway, it must notify the commissioner of the Department of Forests, Parks and Recreation of its decision. The commissioner may then decide to designate the discontinued highway as a trail.

If your town has a town plan and zoning bylaw, they should be consulted by the selectboard before making a decision on discontinuing a town road. The town plan's transportation section should also be consulted before other major decisions are made with regard to expanding or shortening the town's highway system.

For sample Class 4 road policies, highway acceptance policies and general highway ordinances, please contact the VLCT Municipal Assistance Center.

E. RIGHTS-OF-WAY

"The right-of-way for each highway and trail shall be three rods wide unless otherwise properly recorded." 19 V.S.A. § 702. (One rod equals five and a half yards, or 16' 6".) At times, there is no survey data to define the exact location of a road, in which case one can "presume that the width of a highway is three rods, and that the width is to be measured from the center line of the currently existing highway." *Town of Ludlow v. Watson*, 153 Vt. 437 (1990). According to 19 V.S.A. § 775, a public trail resulting from downgrading a road retains the width of the road.

Permits are required for any work done in the town's rights-of-way and are issued by the selectboard. 19 V.S.A. §§ 304(a)(21), 1111. Projects must comply with local zoning and highway ordinances and regulations. Applicants must apply in writing for the construction, installation or alteration of driveways, fences, buildings, ditches, culverts, sewers, pipes and wires. When issuing permits, the selectboard takes into consideration highway protection and safety standards, while allowing reasonable access to abutting properties.

One of the most common requests for a right-of-way permit is for a "curb cut," or driveway access to a town highway. Many towns have specifications for driveway access written into their highway ordinance or included in a separate curb cut policy adopted by the selectboard. This policy or ordinance generally addresses issues of drainage (appropriate installation of culverts, slope, etc.) and safety (adequate sight lines, angle of entry, location vis-à-vis intersections, etc.). Towns that undergo continuing development should be aware of the authority granted to selectboards by 19 V.S.A. § 1111(f) to eliminate access previously permitted and require the construction of a common frontage road as a condition for a new permit.

Placement and relocation of utility wires also prompts many requests for right-of-way permits, and is specifically addressed in 30 V.S.A. §§ 2502-2504.

F. REPAIRS, MAINTENANCE AND IMPROVEMENTS

The selectboard has "the duty and responsibility" to properly maintain the town highways. 19 V.S.A. § 304. Maintenance and repair are addressed in 19 V.S.A., Chapter 9, which discusses brush removal, curb cuts, crosswalks, change of grade, snowfences, etc.

Most of the town's road repair and maintenance will be done within the town's right-of-way. While Vermont statutes grant the town the authority to perform work within, and in some cases even beyond, its highway right-of-way, this authority does not completely negate the abutting landowner's rights to his or her property. Thus, when the selectboard's maintenance and repair decisions on behalf of the town conflict with the individual rights of property owners, the board must follow the quasi-judicial process described in 19 V.S.A. § 923, allowing for notice, a right to be heard, and the payment of damages where appropriate. Such a situation would occur, for example, when the town decides to put snow fences up on private property, divert streams or lay out temporary logging roads – all activities that must follow a proper hearing. Also, keep in mind that before altering any streams or other watercourses, a town must receive the appropriate permits from state environmental agencies.

Maintenance for general safety purposes and road crossing accommodations for persons with handicaps are addressed in 19 V.S.A. §§ 901-906. Municipalities must also "erect or cause to be erected" warning signs in school districts. 19 V.S.A. § 921. Finally, two or more towns that share a road are granted the authority in 19 V.S.A. § 910 to jointly undertake a maintenance project on the road.

Towns are liable for injuries and damages that occur as a result of bridge or culvert defects, including problems with guardrails and abutments. Liability extends to any defective bridge or culvert where the town officers knew or should have known of the existence of the defect. However, damages suffered as a result of crossing a bridge or culvert with a vehicle weighing more than the posted weight limit are not the responsibility of the town. Please note, too, that unless written notice of damage or injury is given to a member of the selectboard within 20 days of the incident, the town will not be held liable. 19 V.S.A. § 987.

G. PROTECTION OF HIGHWAYS

Highways are to be kept open and safe for people and cattle and are to be protected from undue damage. 19 V.S.A., Chapter 11. Artificial lights that create a traffic hazard may be removed or altered by the selectboard. 19 V.S.A. § 1104. Any unauthorized obstruction of public highway or trail that hinders traffic or causes injury may result in fines, actual damages and attorney's fees. 19 V.S.A. §§ 1105-1106. Cattle crossings are addressed in 19 V.S.A. § 1107.

Wanton or willful damage to highways or bridges and damage caused by obstruction or diverting water or by dragging logs or other objects are also subject to fines and damage awards. The Agency of Transportation or the selectboard may restrict the use of highways under some circumstances in order to protect them. 19 V.S.A. §§ 1109-1110. In particular, section 1110 allows municipalities to post roads, as necessary, for conditions such as mud and other restrictions on travel. Postings under this section are designed to be temporary, in response to unique conditions, and do not have to be registered with the State Department of Motor Vehicles (DMV) as outlined below for permanent local weight limits.

Vehicle weights allowed by state statute on state highways and local roads are listed in 23 V.S.A. § 1392. Those weights apply unless the local legislative body establishes lower weight limits on its local roads and bridges. 23 V.S.A. § 1396.

In order for local limits (other than those set forth in the statutes) to be enforceable, the board must set the weight limit, post both ends of the highway or bridge with signs "of a permanent nature" and file a complete copy of local weight limits with the Vermont DMV no later than February 10 of each year. 23 V.S.A. §§ 1393, 1396 and 1400b. The listing with the DMV must include a complete list of local weight limits, the time of year they are in effect (such as mud season), and the person responsible for local permits. 23 V.S.A. § 1400b(a). The selectboard may vary the weight limits on roads and bridges throughout the year but limits become effective only if the town notifies the DMV within three working days of such posting. 23 V.S.A. § 1400b (a) and (b).

Each municipality is responsible for issuing permits to allow vehicles to operate in excess of the legal road limit on its Class 2, 3 and 4 highways. (Permits issued by the state are valid for travel on Class 1 highways.) The law requires that towns wishing to issue permits use a uniform permit form developed by the commissioner of motor vehicles. 23 V.S.A. § 1400a(b). Sample forms are available from the DMV (802) 828-2064. Towns may charge a $5.00 administrative fee for each annual permit. As an alternative, upon payment of a $10.00 fee, an applicant may obtain a permit to operate all of his or her registered vehicles in that municipality. When such a fleet permit is obtained, individual permits need not be carried in each vehicle. 23 V.S.A. § 1400a(c).

Municipalities may retain fines for violation of local weight limits (minus a $6.00 administrative fee) if "the fines are the result of enforcement action on a town highway by an enforcement officer employed by or under contract with the municipality." 23 V.S.A. § 1391a(d).

H. STATE AID

A wide variety of grant programs is available for towns to assist them in maintaining their highways, bridges and culverts. First and foremost is the state aid for town highways grant program. 19 V.S.A. § 306(a). The state distributes the bulk of its transportation assistance to towns through this program. Towns need not apply for the grants; they receive funds based on the number of miles of roads they maintain. Class 1 town highways receive the most aid per mile, with Class 2 receiving less and Class 3 receiving the least per mile. Towns having Class 1 town highways of greater than two lanes receive a larger per mile figure. State aid funds for highways depend on keeping an up-to-date record of miles and classes of town highways, on maintaining highways to an acceptable standard, and on the town annually appropriating at least $300.00 per mile for its class 1, 2 and 3 highways. 19 V.S.A. §§ 305, 307, 308. The amount of state aid is calculated according to the formula in 19 V.S.A. § 306(a)(1-5). Interestingly, selectboard members can be held personally liable to the state for unauthorized expenditures of state highway funds. 19 V.S.A. § 306 (a)(5).

Separate funds for bridges over six feet in length are available and are distributed after towns go through an application process and get on a bridge project list. 19 V.S.A. § 306 (c). This is a multi-year process where the Agency of Transportation (VTrans) annually reviews the list of hundreds of town bridges needing repair or replacement, and subjects them to the same process it uses to replace or repair state bridges. The state does all the work, including planning, engineering, right-of-way acquisition and the actual construction.

Other programs for state aid for town highways are available. Nineteen V.S.A. § 306(e) provides a program for towns to apply for and receive assistance in repairing bridges, culverts, and other structures intended to preserve the integrity of the traveled portion of class 1, 2, and 3 town highways. There is also a grant program for reconstruction and resurfacing projects on Class 2 town highways. This program is similar to the "bridge and culvert" program in that the funds are available on a competitive basis, and the town is responsible for getting the project done. 19 V.S.A. § 306(h). Finally, there is an emergency aid program for repairing class 1, 2, and 3 highways and bridges damaged by natural or man-made disasters. 19 V.S.A. § 306(d).

Since 1993 the state has been responsible for all scheduled surface maintenance for Class 1 town highways. 19 V.S.A. § 306a. There is no local match required for projects funded under this program. Class 1 town highways have now become part of the state highway system for purposes of resurfacing scheduling. The town retains jurisdiction over Class 1 town highways, including, but not limited to, spot patching, traffic control devices, curbs, sidewalks, drainage and snow removal. Major reconstruction of Class 1 town highways continues to be the responsibility of the town, but is eligible for federal and state matching funds as part of the state transportation capital plan. These projects would be handled by the state.

VTrans is responsible for marking all paved Class 1 and 2 town highways with "painted center lines." Towns must notify the Agency when repaving has obliterated these markings. Towns remain responsible for other pavement markings. 19 V.S.A. § 311.

Other types of town highway work, including repairs, construction and pavement markings, may be done by the state on a contractual basis or as a shared project under 19 V.S.A. § 309.

VTrans also offers financial assistance in the form of low-interest loans for municipal purchases of highway construction and snow removal equipment. For more information on its Heavy Equipment Loan Fund, contact VTrans Financial Services, 133 State Street, Montpelier, VT 05633-5001, (802) 828-2631.

There is also interest in the development of bicycle routes that may be "lanes" (part of the paved highway) or "paths" (separated from the highway). 19 V.S.A. § 2301. It is state policy to facilitate the development of an integrated bicycle route system. VTrans may acquire property for that purpose and shall assist other groups in the development and construction of local and regional projects. 19 V.S.A. Chapter 23. Municipal legislative bodies have many of the same powers as VTrans for the purpose of developing bike routes along town highways. 19 V.S.A. § 2307. Helpful resources are VTrans for financial and technical assistance, (802) 828-2093, and the State Department of Forests, Parks and Recreation, (802) 241-3655, for recreational path planning and funding.

I. SCENIC ROADS

A town highway may be designated or discontinued as a "town scenic highway" by the legislative body after a public hearing. If a road becomes a "scenic highway," the town may then have to meet certain standards set by the transportation board. 19 V.S.A. § 2502. A town will receive normal state highway funding and may qualify for special funds "for the purpose of enhancing or establishing designated scenic roads." 19 V.S.A. § 2504. Adjacent landowners may develop their properties "so long as the development is in accordance with existing law or ordinance." 19 V.S.A. § 2505.

J. TRAFFIC ORDINANCES: SPEED LIMITS, STOP SIGNS, PARKING

The selectboard has the authority to set speed limits on town highways. 19 V.S.A. § 304(a)(7). Based on a rudimentary engineering and traffic study, the limit may be set between 25 and 50 miles per hour and may be in effect at all times or only during certain times, so long as appropriate signs are posted. 23 V.S.A. § 1007(a). Cities may also regulate speeds on some state highways. 23 V.S.A. § 1007 (b). Many towns incorporate their speed limits into a general traffic ordinance, which addresses parking, crosswalks, one-way streets and other regulations involving the use of town highways. Towns enact traffic ordinances under the authority granted to the legislative body to regulate the operation, use and parking of motor vehicles on town highways and streets. 23 V.S.A. § 1008; 19 V.S.A. § 304(a)(6). However, adequate notice must be provided and traffic signs must meet the standards of the U.S. Department of Transportation, Federal Highway Administration's Manual on Uniform Traffic Control Devices. Unauthorized signs, signals and markers are prohibited under 23 V.S.A. § 1027, and a municipality may not regulate parking on state highways within its borders without the authorization of the traffic committee. 23 V.S.A. § 1025.

K. STREET NAMING AND NUMBERING

Selectboards are granted the authority to name and address streets by 19 V.S.A. § 304(17) and 24 V.S.A. § 4421. Boards usually find that the process of formally naming or renaming streets can provoke a great amount of public sentiment. Because of the adoption of the enhanced 911, selectboards should refer to the State of Vermont Enhanced 911 Board's Addressing Handbook. Copies of the Addressing Handbook, guidelines, and general information on addressing are available from the State of Vermont Enhanced 911 Board, 94 State Street, Drawer 20, Montpelier, VT 05620, (800) 342-4911. Visit their website at http://www.state.vt.us/e911. For sample address ordinances, contact the VLCT Municipal Assistance Center.

L. REGISTRATION OF MUNICIPAL VEHICLES

Motor vehicles owned by municipalities, volunteer fire fighting organizations or rescue squads and used exclusively for official purposes are charged a reduced fee for registration. All such vehicles must be plainly marked on both sides to indicate their ownership. 23 V.S.A. § 376.

M. COIN DROPS

From time to time, municipalities will receive requests from charitable organizations to hold "coin drops" on a town road. This fundraising practice, which involves a person standing in the road soliciting contributions from passing motorists, is regulated in 23 V.S.A. § 1056. Only not-for-profit and municipal organizations may conduct coin drops, and permission must be obtained from the selectboard before conducting a coin drop. The selectboard must ensure that the organization has liability insurance that provides adequate coverage for the municipality, and the board has the option of denying permission if it feels the coin drop would create safety hazards or undue traffic congestion.

CHAPTER 11
TOWN MEETINGS

A. INTRODUCTION

Although severely curtailed by legislative actions over the years, a Vermont town meeting is still democracy being practiced in its purest form. It is the key to town government, as voters assemble to discuss issues, debate budgets, air grievances, elect officers, and determine the town and school district business for the coming year.

The manner in which Vermonters vote has always been dictated by the General Assembly. With its awesome constitutional grant of powers, the Legislature is allowed to propose and enact laws, notes Professor Andrew Nuquist in *Vermont State Government and Administration*, "upon almost every subject conceived by the mind of man." The result has been that until 1820 no detail of a town's or even an individual's day-to-day life was too minute to be acted upon or responded to by the General Assembly. Beginning in the 1820s, Vermont towns have been controlled by the terms of general laws, though each town is permitted to consider itself a separate government.

In the past, there had been something of a cracker barrel quality to town meeting day – a day for both serious business and a much-needed social respite toward the end of a long Vermont winter. Everyone in the community knew each other, the issues had been debated at quilting bees, grange meetings, and the village store for months, and, considering the amount of money many towns had, discussion on how to spend it was secondary to the impact of raising it from the property taxpayers.

Today, voters are better educated, the system of government is much more sophisticated, and both budgets and business are so complex that there is little latitude for a casual approach to the annual meeting. Town meeting is, however, one of the few opportunities that many voters have to speak their minds, and it is in this open discussion and subsequent voting that many observers find democracy at work.

Vermont law stipulates that town meeting must be held on the first Tuesday in March. The first elections authorized by the Vermont Constitution of 1777, when Vermont became a republic, were held on the first Tuesday in March 1778. Whether or not that first election date has any bearing on the current date for town meeting, the fact is that "a meeting of the legal voters of each town shall be held annually on the first Tuesday of March for the election of officers and the transaction of other business, and it may be adjourned to another date." 17 V.S.A. § 2640(a).

It is important to note that 34 cities and towns in Vermont have special governance charters that may differ from and supersede the town meeting guidelines in this chapter. Officials from cities and towns with such charters should consult them for town meeting guidelines that may be in addition to or in conflict with the general town meeting statutes.

B. THE WARNING

1. **Posting and Publication of Warning.** The selectboard of a municipality is responsible for drafting and posting the warning for annual and special town meetings. The warning for town meetings must be posted in at least two public places within each voting district and in or

near the town clerk's office at least 30 but not more than 40 days prior to the meeting. The posted notice that accompanies the warning shall include information on voter registration, information on absentee voting where applicable, and other appropriate information. 17 V.S.A. §§ 2521, 2641. The warning must also be published in a newspaper of general circulation unless it has been printed in the Town Report and distributed to the voters at least 10 days prior to the meeting. Publication is not required for meetings that are informational only, at which no voting will take place. 17 V.S.A. § 2641.

It is the school board's responsibility to warn all school district meetings. If the annual town meeting is held in conjunction with the annual town school district meeting, they must be separately warned or the joint warning must be signed by both legislative bodies.

The original warning must be signed by a majority of the selectboard and must be filed with the town clerk and recorded with the date and time received noted upon it before it may be posted. In the event that all positions on the selectboard are vacant, the warning may be signed by the clerk, 17 V.S.A. § 2644, and the Secretary of State must call a meeting. 24 V.S.A. § 963.

The auditor's report must also be ready 10 days before town meeting. 24 V.S.A. § 1682.

2. **Contents of Warning.** The warning must include the date, time, and location of the meeting as well as information about voter registration, absentee voting, and voting problems or violations. The specific items of business to be acted upon, such as election of officers, determination of the budget, and public questions, must be itemized and numbered individually. 17 V.S.A. §§ 2521(a), 2642(a).

   The annual town meeting must begin at the time set by the selectboard unless the town has voted otherwise at a preceding meeting. 17 V.S.A. § 2655. Also, if a town has so voted, it may start its annual meeting "on any of the three days immediately preceding the first Tuesday in March at such time as it elects." By convening the annual meeting on one of those three days, the public hearing required for Australian ballot votes scheduled for the first Tuesday in March could be held simultaneously with the "pre-annual" meeting session. Finally, no matter when it is held, annual meeting may transact any business that does not involve Australian ballot voting or voting required by law to be by ballot and to be held on the first Tuesday of March. 17 V.S.A. § 2640(b).

   There is also some flexibility as to the start of special meetings, as the town may vote to start them at 7:30 p.m. on the day before the day the polls are to be opened for voting by ballot. 17 V.S.A. § 2643. Special meetings also do not have to be held on any particular day of the week.

   The board must be careful not to put language into an article that may be construed to sway the voter. For example, adding "If this article is approved it will mean an increase of three cents on the tax rate" or "This article is on as a special request of the recreation department" could reasonably be interpreted to influence a voter's thought process and likelihood of voting in a certain way. Even a parenthetical "On the warning by petition" should not appear, as it may be interpreted to mean that the selectboard really does not approve of it and is throwing in a disclaimer of responsibility for it.

   a. **Petitioned Articles.** State statutes grant voters the authority to petition for certain articles to appear on the warning. Therefore, the warning must include these articles if the

petitioners have followed statutory requirements for filing them (petition has been signed by at least 5% of the legally qualified voters and filed with the town clerk at least 40 days prior to town meeting day). 17 V.S.A. § 2642(a).

As for a non-binding article, such as one calling for an abolition of nuclear power, it is up to the selectboard to decide whether or not to place such an article on the warning. This is an area of conflicting opinion: some court cases have said that selectboards must warn all petitions correctly presented which "constitute business proper and appropriate for transaction at the meeting." Others, however, have been more restrictive and have said the selectboard can refuse items which are "frivolous, useless or unlawful," or which are not "within the province of the town meeting to grant or refuse through its vote." *Royalton Taxpayers Protective Association v. Wassermansdorf*, 128 Vt. 153, 260 A.2d 203 (1969); *Whiteman v. Brown*, 128 Vt. 384, 264 A.2d 793 (1970). In summary, selectboards are not required to place an advisory article on the annual meeting warning, but may do so if they decide, in good faith, that such a referendum is worthy of consideration.

Keep in mind that an article in the warning regarding "other business which may properly come before the voters" cannot be used for taking binding municipal action, as such other business was not fully warned. 17 V.S.A. § 2660.

On occasion, a petition will be made to include a town meeting article that conflicts with state law. At this point it must be remembered that all law in Vermont is derived from the General Assembly. No matter how well intentioned the local petitioners may be, if the General Assembly has not given the town the right to vote on a particular issue, it should not be put in the warning.

Naturally, if a petition is denied, an explanation should be given to the makers of the petition. It should also be explained that if the voters wish to do something contrary to state law or beyond the powers granted to a town, that the proper forum would be for the town to consider adopting a charter (see Chapter 7). Through a charter a town can empower its voters to do almost anything, so long as it does not violate the state constitution or the federal constitution or any of its laws.

C. AUSTRALIAN BALLOT

An Australian ballot means a uniformly printed ballot, typically confined to the secret vote on previously warned articles. The Australian ballot system involves having the polls open for an extended period of time for the purpose of voting on previously warned matters. The time the polls are open may be during or after a municipal meeting or both. 17 V.S.A. § 2103(4).

Some matters must be voted by Australian ballot. For example, whether to appoint rather than elect constables, 17 V.S.A. § 2651a, and approval of bond votes, 24 V.S.A. § 1758, are matters that must be decided by Australian ballot. In other matters, municipalities may vote to use the Australian ballot for election of officers, adoption of a budget, all public questions or only specific public questions. When a town has made the decision to vote particular matters by Australian ballot, that system goes into effect at the next meeting after the vote was held and stays in effect until the town votes otherwise. The town clerk is the presiding officer for all Australian ballot elections or as otherwise provided by 17 V.S.A. § 2452. 17 V.S.A. § 2680.

As in general elections, there can be no campaigning or electioneering within a certain distance of the polling place. Therefore, when warned articles are being voted by Australian ballot during a meeting, there can be no discussion of the matter while the polls are open and voters are going in and out. In order to remedy this lack of discussion time, 17 V.S.A. § 2680(g) provides that "the legislative body shall hold a public informational hearing on the question by posting warnings at least 10 days in advance of the hearing … [and] the hearing shall be held within the 10 days preceding the meeting at which the Australian ballot system is to be used." This informational meeting may be held in conjunction with a town meeting that convenes prior to the first Tuesday in March, as allowed by 17 V.S.A. § 2640. If the two occur concurrently, the town moderator shall preside.

When officers are to be elected by Australian ballot, they must be nominated by petition. Petitions must state clearly what office the person is running for and the length of the term, must be signed by 30 voters or one percent of the legal voters in town (whichever number is less) and must be filed with the town clerk within the time prescribed by 17 V.S.A. § 2681. Ballots for local elections must meet the standards set in 17 V.S.A. § 2681a and the municipality is responsible for the expense of preparing them.

When officers are voted by Australian ballot, the person receiving the highest number of votes shall be declared elected. A write-in candidate must receive 30 votes or one percent of the registered voters (whichever is less) in order to win. If no one is running by petition and no write-in candidate receives the required number of votes, the selectboard may appoint a voter to fill the office. If there is a tie vote, a run-off election shall be held between the tied candidates. 17 V.S.A. § 2682.

A process for recounts of votes for local officials and for an appeal of the result of the recount are provided in 17 V.S.A. §§ 2683-2687. In addition, any voter may demand a recount on any question voted by Australian ballot, if the margin of vote was less than five percent of the total votes cast.

D. EXPLANATION AND EXAMPLES OF ARTICLES

As mentioned above, the warning must list, by separate article, all the business to be transacted during the meeting, including election of officers, budget issues, and other questions to be voted upon. 17 V.S.A. § 2642(a). A selection of "example articles" as they might be worded in a typical warning follows.

1. **Headings.** The exact style of headings for your warning will depend upon the manner in which your meeting is conducted, whether or not you use the Australian ballot system, if your meeting begins before the first Tuesday and is recessed for Australian ballot voting on Tuesday, and whether you have more than one polling place. Examples of headings include:

    a. The legal voters of the Town of Ferdinand are hereby warned and notified to meet in the town hall in said Town on Tuesday, March 2, 1999, at 10:00 a.m. to transact the following business:

    b. The legal voters of the Town of Ferdinand are hereby notified and warned to meet at the elementary school in said Town on Saturday February 27, 1999, at 7:00 p.m. to transact the following business (voting for town officers to be by Australian ballot on Tuesday March 2, 1999 with polls open from 10:00 a.m. until 7:00 p.m.):

c. The legal voters of the Town of Ferdinand are hereby warned and notified to meet at the polling places designated for the several districts in said Ferdinand on Tuesday, the 2nd day of March, 1999, at 9:00 a.m. to act on the following articles:

2. **Election of Moderator** (17 V.S.A. § 2646). As the moderator is responsible for the conduct of the town meeting, the first article should provide for his or her election.

   a. To elect a moderator for the ensuing year.

   b. To elect all town officers as required by law.

   The specific Article "a" above would be used when the general election of officers provided by Article "b" is not placed at the beginning of the warning.

3. **Town Clerk and Treasurer (17 V.S.A. § 2646).** A town clerk and a town treasurer are chosen from among the legally qualified voters of the town for a term of one year unless a town votes for a term of three years. The town clerk and treasurer are two different offices and must be decided separately.

   a. To choose a town treasurer for the ensuing year.

   b. To see if the town will vote to elect a town clerk for the term of three years as provided in 17 V.S.A. § 2646(2).

   c. To see if the town will vote to elect a town treasurer for the term of three years as provided in 17 V.S.A. § 2646(3).

4. **Road Commissioner (17 V.S.A. §§ 2646(16), 2651).** The town may vote to elect one or two road commissioners rather than to have them appointed by the selectboard.

   a. To choose a road commissioner for the ensuing year.

5. **Reports of Officers.** An article as to the disposition of officers' reports is customary, although it is unclear exactly what the voters' role is other than having an opportunity to question the authors of the reports.

   a. To hear the reports of the town officers for the past year, and to take action thereon.

   b. To see if the voters will accept the town report.

6. **Appropriations.** Money is always a sensitive issue. There are 246 municipalities and almost as many different ways of warning the budget. The basic requirement for the article is that it must tell the voters what their "yes" or "no" vote will mean as a tax burden. Under the statute, the budget may be expressed as "the specific amounts, or the rate on a dollar of the grand list." 17 V.S.A. § 2664. Neither method gives the voter an exact figure for his or her tax bill, but each method will provide a comparison to last year's budget, which really provides the information that voters want. The following are different ways appropriations may be warned:

   a. To see if the voters will appropriate an amount not to exceed $1,356,000.00 to pay the expenses and indebtedness of the Town for the 1999-2000 fiscal year [or "for the ensuing year" or "for the current year"].

   b. To see what rate on a dollar of the grand list the town will appropriate to pay its expenses and liabilities for the [ensuing, or current or fiscal] year.

c. To vote a budget to meet the expenses and liabilities of the town.

Special appropriations can be handled in some of the following ways:

d. To see if the town will appropriate the sum of $750.00 for the rescue squad.

e. To see if the town will vote to appropriate a sum of money to defray the expenses of the recreation commission.

7. Taxes. Don't forget to provide for the collection of taxes and related matters.

a. To see if the town will vote to have its taxes collected by the treasurer and to fix the date or dates for the payment of same and the amount of any discounts to be allowed.

b. To see if the town will vote to pay its real estate and personal property taxes to the treasurer in quarterly installments, with due dates being March 1, June 1, September 1, and December 1.

c. To see if the town will vote to exempt the first $15,000 of appraised value of new buildings (constructed within the last 12 months) from taxes for a period of three years as provided in 32 V.S.A. § 3836.

The law permits towns to charge interest of up to one percent per month on all delinquent taxes for the first three months they are delinquent and up to one and one-half percent for each month thereafter (32 V.S.A. §§ 4873 or 5136), in addition to the penalty for the tax collector (32 V.S.A. § 1674). A suggested article is:

d. Will the town levy an interest charge on all delinquent taxes on real and personal property of 1% per month or fraction thereof from the due date of each installment for the first three months, and 1½% per month or fraction thereof for every month thereafter, as provided for in 32 V.S.A. § 4873?

Some towns provide for a vote to authorize borrowing in anticipation of taxes. However, such a vote is unnecessary because 24 V.S.A. § 1786 provides statutory authority for the selectboard to do so.

8. Fiscal Year versus Calendar Year. Municipalities may elect to operate on a fiscal year or on the calendar year. (Note that this is in contrast to school districts that must use the fiscal year ending on June 30.) 24 V.S.A. § 1683. (For more information on this topic, see the *VLCT News*, November 1998 issue.)

a. Shall the town vote to adopt a July 1 through June 30 fiscal year, effective for the fiscal year beginning July 1, 20__ as provided by 24 V.S.A. § 1683?

9. Energy Issues. Under 32 V.S.A. § 3845, municipalities have the option of exempting alternative energy sources from real and personal property taxes. If so voted by the town, the selectboard may appoint a town energy coordinator. 24 V.S.A. § 1131.

a. Shall the town vote to exempt from real and personal property tax alternate energy sources as defined in 32 V.S.A. § 3845?

b. Shall the town authorize the selectboard to appoint an energy coordinator as provided in 24 V.S.A. § 1131?

10. Other Business. An article entitled "other business" may not be used for taking any binding municipal action. It is the responsibility of the moderator to rule on such matters. 17 V.S.A. § 2660(d).

E. DETERMINING THE BUDGET

A chief concern at town meetings is to consider and vote upon the town budget. Vermont election law states that "A town shall vote such sums of money as it deems necessary for the interest of its inhabitants and for the prosecution and defense of the common rights. It shall express in its vote the specific amounts, or the rate on a dollar of the grand list, to be appropriated for laying out and repairing highways and for other necessary town expenses." 17 V.S.A. § 2664.

An adequate town budget, noted the late Andrew Nuquist in *Vermont State Government and Administration*, should include a statement by the selectboard which: (1) reports the total financial condition of the town; (2) gives a detailed comparison of one or more previous years; (3) includes the expenditures of the year just passed; and (4) presents the proposed budget for the coming year. This should be followed by the dollar amount required (or suggested by the board). Usually someone will ask, "If we approve this, what will that mean on the tax rate?" There is no way to predict this down to the last penny because the grand list for the current year has not been finalized. The best answer is, "Based on last year's grand list [or perhaps, on the best guess of the listers for this year], this will mean a 3 cent [or 8 cent or whatever] increase over last year's tax rate. On a $100,000 property, that will mean an increase of $XX.xx."

F. WHAT CAN BE DONE TO A BUDGET AT TOWN MEETING?

Many myths abound about what action can be taken on a budget: "It can't be amended;" or "it can only be amended down." The Secretary of State and VLCT agree that town budgets and budget line items properly warned for an open town meeting may be amended up or down. New line items cannot be added, but existing line items can be deleted. School budgets, however, can only be amended in the total; line items are determined by the school board. 16 V.S.A. § 563. Budgets considered by Australian ballot can only be approved or disapproved; no amendments are possible. Examples of acceptable amendments to town budgets are:

- "I move we amend the line item *fire trucks and equipment* from $15,250 to $17,500."
- "I move we strike the line item *playground activities*."
- "I move the total budget figures be reduced from $512,876 to $500,000 and direct the selectpersons to determine the line items to be reduced to meet the lower figure."

Examples of unacceptable budget amendments are:

- "I move we add a line item for $500 for the humane society."
- "I move we take the money budgeted for *equipment repair* and buy a new pick-up truck with a plow."

The moderator has the final decision on whether a proposed amendment is germane and allowable. Some amendments are obviously not allowable; others are a judgment call. For

example, how much can the budget be amended up or down? Can someone move to double it or to reduce it to $1.00? Probably not. What about $10.00?; $1,000.00?

When any article has been voted on and the body has begun to discuss another article, there can be no further discussion or revote of that article at that meeting. (See Section H., below.)

G. SPECIAL MEETINGS

Whether it's to vote on a bond issue, elect someone to fill a recent vacancy, or to purchase a new fire truck, a town may wish to call special meetings outside of the annual town meeting. As a rule of thumb, the same regulations that apply to town meeting also apply to special meetings, but there are certain exceptions.

A special meeting may be called either by the legislative body or by five percent of the municipality's registered voters. If the legislative body receives a valid petition for a meeting from the voters, then it must set a date (or "call") for the meeting within 15 days. That date set for the meeting must be not fewer than 30 or more than 40 days from the date the meeting was warned or called. Special meetings may be held on any day of the week and, if the town so votes, may begin at 7:30 p.m. on the day before the polls will be open for ballot voting. If voting will be by Australian ballot, then the rules governing Australian balloting must be followed. (See Section C, above.) 17 V.S.A. § 2643.

The legislative body may cancel a special meeting called by it but may not cancel a special meeting called by five percent of the voters. 17 V.S.A. § 2643(c).

H. RECONSIDERATION OR RESCISSION OF VOTE

A warned article voted on at town meeting (or a special meeting) may not be submitted to the voters for reconsideration or rescission at the same meeting after the body has begun consideration of another article. It may only be submitted to the voters at a subsequent annual or special meeting warned for that purpose. Such special meeting may be called by the selectboard on its own motion or by a petition signed by at least five percent of the qualified voters and filed with the town clerk within 30 days of the date of the meeting. 17 V.S.A. § 2661.

"Reconsideration" and "rescission" are two very different actions. *Robert's Rules* gives the purpose for reconsideration as a vote "to permit correction of a hasty, ill-advised or erroneous action, or to take into account added information or a changed situation that has developed since the taking of the vote." To rescind is to cancel or countermand a previously adopted article, which strikes out the entire motion. For example, if one wishes to defeat a bond vote already approved by the voters, one would call a special meeting to rescind. But, if one wanted to take another stab at a bond vote that had been defeated, or wished to add or take away money from a town budget that had been passed, the call would be for reconsideration. *Robert's Rules of Order, Newly revised*, Scott, Foresman, 1990 ed., pp. 299, 309.

A question voted on may not be presented for reconsideration or rescission at more than one subsequent meeting except with the approval of the selectboard. 17 V.S.A. § 2661(c). However, the same article may be placed on the ballot for the next annual town meeting by the proper petition of five percent of the voters.

I. IMPROPER INFLUENCE

"Neither the warning, the notice, the official voter information cards, nor the ballot itself shall include any opinion or comment by any town body, officer, or other person on any matter to be voted upon." 17 V.S.A. § 2666. The Vermont Supreme Court has held that there was no improper influence where the school board sent an informational letter to voters which had no opinion or comment. *Conn v. Middlebury Union High School District*, 162 Vt. 498 (1994).

J. ERRORS AND VALIDATION

Errors on a warning or a notice may occur even when care is used in preparation. If the meeting and the business transacted during it is otherwise legal and within the scope of municipal powers, the omission or non-compliance may be corrected and legalized by vote at a regular or special meeting of the municipality called and duly warned for that purpose. 17 V.S.A. § 2662.

Errors or omissions in the conduct of an original meeting which are not the result of an unlawful notice or warning or non-compliance may be taken care of by a two-thirds vote of the selectboard at a regular or special meeting called for that purpose. It should be stated that the defect was the result of oversight, inadvertence or mistake. It is of the utmost importance when validating a meeting or action to use the language in 17 V.S.A. § 2662:

> "Shall the action taken at the meeting of this town [city, village, or district] held on [date] in spite of the fact that [state the error or omission], and any act or action of the municipal officers or agents pursuant thereto be re-adopted, ratified and confirmed."

K. ELECTIONS – NO CANDIDATE

If no person files a petition for an office to be filled at town meeting, and if no person is elected by write-in votes, the selectboard may appoint a voter of the municipality to fill the office until town meeting next year. 17 V.S.A. §§ 2647, 2682(d). Even though the vacancy might be for an office that runs for more than one year, the appointment may only be until the next annual meeting.

In the case of a tie vote for any office, the selectboard (or the clerk on its behalf) shall, within seven days of the annual meeting, warn a run-off election to be held not less than 15 nor more than 22 days after the warning has been published. The only candidates whose names shall appear on the ballot for the run-off are those who were tied in the original election. 17 V.S.A. § 2682(e).

L. THE TOWN REPORT

The town report is the responsibility of the town auditors or the selectboard, if the town has voted to eliminate the office of auditor, as allowed under 17 V.S.A. § 2651b. The report must show:

- a detailed statement of the financial condition of the town and school district;
- a classified summary of receipts and expenditures;
- a list of all outstanding orders and payables more than 30 days past due;

- the deficit, if any;
- any such other information as the municipality may direct; and
- the report and budget of the supervisory union required by 16 V.S.A. § 261A(10).

24 V.S.A. § 1683.

This gives the selectboard the authority to include a selectboard report, stating the condition of the town and events of the past year, as well as the vital statistics of the town and other such information.

CHAPTER 12
PUBLIC WORKS

A. AIRPORTS

1. **Construction, Operation.** Municipalities may individually or jointly construct and operate an airport, landing field or air navigation facility or may lease or sublet the same. 5 V.S.A. § 601. The selectboard by resolution can establish the airport. 5 V.S.A. § 602. If more than one municipality is involved, an intermunicipal committee must be created, composed of the selectpersons from each town. The real estate will be owned jointly. The resolution approved by the joint committee may specify the matters subject to joint approval of the bodies, and prescribe the proportion of the cost of the project to be borne by each municipality. 5 V.S.A. § 603. A joint airport must be located within the county in which at least one of the municipalities is located. 5 V.S.A. § 604. A Vermont municipality may establish a joint airport with municipalities from adjacent states. 5 V.S.A. § 605.

   The selectboard may direct an appropriate officer, board or body to acquire or lease real property for an airport or it may set apart and use municipal property that, in its judgment, is not needed for any other public use. However, the selectboard must approve the site. 5 V.S.A. § 605. An airport shall not be established, constructed or improved without a vote of the town fixing the maximum amount of money that may be spent on such a project. 5 V.S.A. § 606. All income derived from the operation of the airport and the proceeds from bonding may be used for the maintenance and upkeep of the airport. 5 V.S.A. § 606. The voters must approve such an expenditure limit even if some or all the money comes from private sources or state or federal grants. Atty. Gen. Opinion, 1962-64, 171, 327.

   Towns owning or operating airports may accept grants, loans and assistance from the federal government, subject to State Agency of Transportation approval. They may contract with the federal government for any airport facilities. 5 V.S.A. § 608. The State may also provide funds to towns for various airport purposes. 5 V.S.A. §§ 691-774.

   Towns have eminent domain authority for airport purposes, with the process established in 5 V.S.A. §§ 651-655 and 19 V.S.A. Chapter 5.

   Of the 17 airports in Vermont that are open for public use, only Burlington and Fair Haven are municipally owned. There are ten state and five privately owned airports. Municipalities interested in establishing a municipal airport should contact the State Agency of Transportation's Rail and Aviation Division.

2. **Zoning**. In accordance with 5 V.S.A. Chapter 17, a municipality may adopt special bylaws governing the use of land, location, and size of buildings and density of population within two miles from the boundaries of an airport under an approach zone and for a distance of one mile from the boundaries of the airport elsewhere. The designation of that area and the bylaws applying within that area must be in accord with the applicable airport zoning guidelines, if any, adopted by the Vermont transportation board. 24 V.S.A. § 4414(1(C).

   Under 5 V.S.A. Chapter 17, a political subdivision or a joint airport zoning board appoints a commission that recommends airport zones and regulations to be adopted. The legislative body of a single municipality or the joint board where more than one municipality is

involved may adopt, administer and enforce regulations. Such regulations must be filed with the clerk of each affected city or town and notice must be given as described in 5 V.S.A. § 1008. Provision is made for existing non-conforming use, variances and conditional uses. Appeals shall be made to a board of adjustment provided for under the regulations; appeals from that body go to the superior court. Penalties for violations of airport regulations may be fines up to $500 or 90 days in jail or both.

B. UTILITY PLANTS

State statutes authorize municipalities to buy and sell electric current and to construct, purchase or lease, and maintain and operate gas and electric manufacture and distribution plants. 30 V.S.A. Chapter 79. Fourteen cities, towns and villages currently do provide electricity, though none is in the gas business. Chapter 79 sets forth the process for the creation, purchase, bonding, operation, eminent domain authority, and administration of such services.

Municipal officials interested in creating or operating an electric plant can call the Vermont Public Service Department at (802) 828-2811 or the Vermont Public Power Supply Authority at (802) 244-7678.

C. WATER TREATMENT SYSTEMS

There are several ways in which municipalities may be involved in providing water and water treatment. Any municipal corporation is empowered to acquire property, water rights and real estate for the purpose of providing water for fire protection or other purposes. 24 V.S.A. § 3301. The municipality may be a village, town, city, fire district or a separately formed municipal corporation. Under 24 V.S.A. Chapter 89, such corporation has broad powers and is under the management of water commissioners, subject to the will of the legal voters of the municipality. Ordinances may be adopted related to the water system and its operation, including the authority to require existing customers to remain connected to the municipal system. 24 V.S.A. § 3315.

The corporation has the authority to take land, so long as it gives adequate compensation. The compensation may be agreed upon between the parties or by a commission appointed by the superior court. 24 V.S.A. §§ 3303, 3304. The corporation has the power to tax properties, issue bonds and borrow money for capital and operating expenses. 24 V.S.A. §§ 3309, 3310. Charges for water usage may be made on the basis of metering or an annual rent and all money collected must be used for operation of the water system. 24 V.S.A. §§ 3311, 3313. Charges, rates and rents that are not paid become a lien against the property. 24 V.S.A. § 3306. Municipalities also have a collection tool in the water and sewer disconnect statutes found in 24 V.S.A. Chapter 129.

Contracts may be made to supply water to other municipalities, corporations, or individuals. In addition, the corporation may enter into contracts and lease purchase agreements for construction, operation and maintenance of the system, so long as the contract period is no more than 40 years or for the useful life of the system, whichever is less. 24 V.S.A. § 3305.

There is sometimes confusion about the difference between a fire department and a fire district. A fire department is an entity whose purpose is to provide fire protection, whereas a fire district is a municipal entity established under 20 V.S.A. Chapter 171. It may consist of a town, part of a town, or two or more towns organized for the purpose of providing fire protection, water and sewer services or other services. 20 V.S.A. § 2601. It has voters, a prudential committee, clerk,

treasurer, collector of taxes and a board of tax abatement. It may adopt a town manager form of government.

Under 24 V.S.A. Chapter 91, two or more municipal corporations may form a consolidated water district. After being approved by Australian ballot vote by the voters of each municipality and certified by the Secretary of State, such a consolidated district becomes a separate entity and must then hold an organizational meeting. 24 V.S.A. § 3343. Thereafter it holds annual meetings much as towns do.

The commissioners set water rates and may enter into contracts to supply service to non-members. Rates must be adequate to provide payment for current expenses, interest on debts, and improvements. Extra money may be put into a sinking fund. 24 V.S.A. § 3348(a)(3). The annual budget, apportionment, assessments and taxes are set as described in 24 V.S.A. § 3349. Debts may be incurred under 24 V.S.A. Chapter 53 (general indebtedness of towns) or 24 V.S.A. Chapter 89 (indebtedness for water works). A process is provided for new member towns to join the district or for current member towns to withdraw. 24 V.S.A. §§ 3354, 3355. The legislative body may impose special assessments to fund improvements, construction, etc. Special assessments are taxes imposed only on the properties to benefit from the improvement, as opposed to all properties on the entire grand list. 24 V.S.A. Chapter 87.

Chapter 95 of Title 24 V.S.A. addresses both water mains and sewers where there is a municipality within a municipality (e.g. a village in a town or a fire district within another municipality). The chapter is a little confusing, but it appears that persons who live in a town in which there is a village water or sewer system may petition the village system for an extension outside of the village if such an extension will be to their benefit. The selectboard and the trustees may then agree as to the change and apportionment of expenses, after which the construction may take place, subject to an appeal process. 24 V.S.A. §§ 3401-3407.

The statutes 24 V.S.A. §§ 3410-3412 address the situation where both water mains and sewage pipes serving the village must, for "the public good and necessity" extend out into the town (or already extend into the town and need to be altered). In that case, the trustees and selectboard members may agree to proper compensation or the parties may petition the superior court to determine damages and compensation.

All public water systems are subject to federal standards and to state regulation by the Agency of Natural Resources (ANR). The subject of public water supply generally, including important definitions, is in 10 V.S.A. chapter 56. Construction or modification of any water supply system or wastewater treatment system requires a permit from ANR. 10 V.S.A. chapter 61.

There is money available to help finance water supply projects. In 24 V.S.A. Chapter 120, a number of environmental revolving loan funds are established, including the Vermont drinking water planning loan fund and the Vermont drinking water source protection fund. Funding help for advance planning for water supply projects is also covered in 10 V.S.A. §§ 1591 et seq. In addition, there is some financial assistance for construction, improvement or expansion of potable water supply systems, pollution abatement facilities or combined sewer separation facilities provided in 10 V.S.A. §§ 1621 et seq.

D. SEWAGE TREATMENT PLANTS

Several chapters in Title 24 of the Vermont Statutes Annotated govern sewage systems. Chapter 95 addresses sewers and mains, which are owned by one municipality and serve users in another municipality (e.g., a village system that serves residents outside of the village, or a town system that serves a village within its borders). Chapter 97 applies to a "sewage system" defined as "such equipment, pipeline system and facilities as are needed for and appurtenant to the disposal of sewage and waters …, including a sewage treatment plant and separate pipelines for storm, surface and sub-surface waters." 24 V.S.A. § 3501(6). Chapter 101 applies to a "sewage disposal system" which seems to mean "such plant, equipment, system and facilities as are needful for and appurtenant to the disposal of approved sanitary methods of domestic sewage, garbage, or industrial wastes." 24 V.S.A. § 3601(3). Chapter 105 provides for consolidated sewer districts that may be created by two or more contiguous municipal corporations to create a single system for disposal of sewage.

Sewage systems in a single municipality may be governed by the legislative body of the municipality (selectboard, trustees, prudential committee or mayor and aldermen) or by a board appointed by the legislative body. 24 V.S.A. §§ 3506, 3614. An appointed board may consist of three to seven members, each of whom serves a term of four years. Appointed commissioners may be removed for just cause. The legislative body may designate the board of sewage system commissioners as the board of sewage disposal commissioners. The commissioners have authority to set rates, rents and assessments. The water and sewer disconnect procedures outlined in 24 V.S.A. Chapter 129 may be used to collect delinquent assessments. However, it appears that where the sewer system is operated by appointed commissioners, the disconnect order must be issued by the selectboard, city council, trustees, or prudential committee. 24 V.S.A. § 5142(1).

A consolidated sewer district is a separate municipality and is governed by a board of commissioners who are elected. 24 V.S.A. §§ 3672(b), 3674. The structure and election of the board are described in 24 V.S.A. § 3674. Commissioners of consolidated districts may order water and/or sewer disconnect as a method of collecting delinquent assessments. 24 V.S.A. Chapter 129.

E. SOLID WASTE MANAGEMENT

A lightening rod in the early 1990s, the issue of solid waste management became less volatile later in the decade as Vermont municipalities joined regional solid waste districts or elected to individually manage their waste. In so doing, Vermont cities and towns were fulfilling their statutory responsibility to manage and regulate solid waste in conjunction with a statewide solid waste planning effort. 24 V.S.A. § 2202a. Each municipality, through its district, regional commission or on its own must adopt a solid waste plan that is consistent with the State Solid Waste Plan.

Towns may use various methods for handling solid waste, including recycling centers, transfer stations, composting plants, etc. 24 V.S.A. § 2203a. In addition, they have the authority "to regulate or prohibit the storage or dumping of solid waste … [and] may require the separation of specified components of the waste stream" by adopting a solid waste ordinance. 24 V.S.A. § 2291(12). Such an ordinance may be specific (regulates open burning only) or quite broad (regulates dumping, burning, recycling, etc.).

Enforcement of solid waste ordinances was deemed important enough by the Vermont Legislature that in 1991 it enacted a separate statute (24 V.S.A. Chapter 61, subchapter 12) that outlines a special municipal solid waste ordinance enforcement procedure. Briefly, when there is a violation, the selectboard issues a solid waste order that may require the violator to comply with the ordinance, abate hazards created or restore the environment to its pre-violation state. In addition, fines of up to $500.00 per violation or $100.00 per day for an ongoing violation may be imposed. The alleged violator must receive notice and be given the opportunity to be heard. After a final order has been issued, the violator has a right to appeal to the Environmental Court. The municipality may also separately pursue enforcement via the Environmental Court or the superior court. The State also has enforcement authority under state law, which it will exercise for significant violations.

As mentioned above, a municipality may manage its solid waste alone or it may join with other municipalities. If a municipality chooses to work with others, they may together form a solid waste management district by following 24 V.S.A. Chapter 121 (union municipal districts) or by amending their respective municipal charter provisions.

Forming a solid waste district under the union municipal district statutes involves several steps, including creation of a joint survey committee, submittal of the draft agreement to the Attorney General for approval and an extensive public review process. Because of this, a municipality would be well advised to review 24 V.S.A. Chapter 121 before proceeding. Once it is created, the solid waste management district has the power to hire and fix compensation, enter into contracts, promote cooperation and coordinated action among its members, make recommendations for review and action, borrow money and exercise powers which are exercised or are capable of exercise by its member municipalities. It may issue bonds, with the approval of the voters of the member municipalities. 24 V.S.A. § 4866. Solid waste district boards include representation from each member municipality in accordance with the district bylaws.

An alternative to the establishment of a solid waste district is also found in 24 V.S.A. Chapter 121, subchapter 4 – the establishment of an "interlocal contract." In this situation, municipalities may contract with each other "to perform any governmental service, activity or undertaking which each municipality entering into the contract is authorized by law to perform…" Such an arrangement may be finalized after the joint survey committee, the Attorney General and the voters of each participating municipality have approved it. The contract between member municipalities must conform to the requirements of 24 V.S.A. § 4902. Funding for both the interlocal contract and the union districts is discussed in 24 V.S.A. §§ 4931-4933.

Finally, the general subject of waste management, including radioactive and other types of hazardous materials, landfills, and funding and incentives for source separation, is found in 10 V.S.A. chapters 159-162.

F. BICYCLE ROUTES

Selectboards have the authority to establish and maintain bicycle ways, routes and paths, either along highways in their jurisdictions (bicycle lanes) or as separate paths. 19 V.S.A. § 2307. They have the same authority to take private lands for such purposes as they do for highways as set forth in Chapters 5 and 7 of Title 19. Several towns, including Burlington and Stowe, have established significant systems of bicycle paths and routes within their communities.

Note that the State has a policy to help maintain and improve a "Vermont trails system," which includes trails for recreation, transportation and other compatible purposes. Assistance, advice and funding for trails may be available through the Agencies of Natural Resources and Transportation or from the Vermont Trails and Greenways Council, Inc. 10 V.S.A. Chapter 20.

G. PARKING METERS, PARKING LOTS

Municipalities have the authority to regulate parking on town highways, 23 V.S.A. § 1008; 19 V.S.A. § 304(a)(6), and, with a town vote, to purchase and maintain parking meters on streets and in public parking lots. 24 V.S.A. § 1862.

Selectboards may pass regulations on the parking of motor vehicles, including angle parking on town highways. They may also regulate parking on a state highway in a thickly settled area with the permission of the state traffic committee. 23 V.S.A. § 1008. Though the section refers to "making special regulations," it does not specify the process to follow in doing so. Therefore, it is recommended that such parking restrictions be adopted through the ordinance adoption process set forth in 24 V.S.A. Chapter 59. Limited enforcement of parking violations by towns and incorporated villages with a population of one thousand or more is allowed under 23 V.S.A. Chapter 19.

The selectboard may set the rates for parking. The rates need not be uniform throughout the town, "but regard shall be had for the congestion of the different areas" and "the rates shall be so adjusted as to provide for the maintenance of the services only." 24 V.S.A. § 1864.

Towns have the right of eminent domain to condemn land for a public parking lot, subject to certain restrictions. 24 V.S.A. § 1865. Such authority is restricted if taking any land of religious, charitable or educational organization (unless it is already used by the organization for commercial purposes) without the consent of the organization, unless two-thirds of the voters of the towns approve it. 24 V.S.A. § 2805. Also, such taking is prohibited by 18 V.S.A. § 5318 from applying to any burial ground without special authority from the General Assembly.

Revenues generated by parking lots may only be used to:

- purchase lots;
- purchase and maintain meters;
- collect and process the deposits;
- police, light and maintain the meters and lots, "including painting of parking lines";
- control and regulate traffic within the lot; and
- pay principle and interest on any bonds issued to purchase or improve such lots.

  24 V.S.A. § 1865.

Municipalities have the authority to issue "revenue bonds" to pay for parking lot purchase, construction and/or improvement. 24 V.S.A. § 1868. They are revenue bonds because only the revenues generated by the lot may be used to pay the principle and interest. The bonds do not become a general obligation of the town and taxes cannot be used to retire them.

The process to issue such bonds is described in 24 V.S.A. § 1873. Five percent of the voters or the selectboard, by a motion approved by two-thirds of its members, can call a special town meeting or add an article at the annual town meeting. The warning must include the purpose for

the bond, the estimated cost of the project, notice that only parking revenues are available for the payment of such bonds, and the time, date and place of the voting. A majority of those present and voting at the town meeting must approve the article for the bond to be issued. Other details of the bond issuance are set forth in 24 V.S.A. §§ 1868-1874.

By statute, the annual town report must include a "full, complete and accurate report of all meter and parking lot transactions." 24 V.S.A. § 1866. Also, the law prohibits "advertising matter of any kind" from being attached to or displayed upon parking meters or the standards thereof. 24 V.S.A. § 1867.

H. SIDEWALKS

Selectboards have the authority to construct and maintain sidewalks and footpaths within the limits of town highways where they do not conflict with travel on the highway. The State Agency of Transportation must approve sidewalks located on state highways. 19 V.S.A. § 905.

Selectboards also have the authority to:

- set off portions of town highways for sidewalks and regulate their use. 24 V.S.A. § 2291(1).
- require the owners, occupants or persons having charge of abutting property to remove snow and ice from sidewalks. 24 V.S.A. § 2291(2).
- regulate the location, protection, maintenance and removal of trees, plants and shrubs, buildings or other structures as well as signs, posters or displays on or above sidewalks. 24 V.S.A. § 2291(3) and (7).

I. DIGSAFE

In 1987, the Vermont Legislature passed a law establishing an "Underground Utility Damage Prevention System." The law was passed to reduce the damage done to pipes, wires and cables located underground through excavation. Anyone digging a hole deeper than one foot within an underground utility easement or in a public right-of-way in which an underground utility is located must call Dig Safe at (888) 344-7233 at least 48 hours prior to doing so. Dig Safe then notifies all utility companies having wires or pipes in the area to mark the location of the facilities so that the excavators don't break these lines, disrupting service and potentially harming themselves. Excluded from the definition of excavation is routine public highway maintenance. Emergency excavations (e.g. water or sewer line breaks) do not require the 48-hour period before digging. Towns that dig in violation of the law are subject to a fine and liability for actual damages. 30 V.S.A. §§ 7001-7008. For further information, visit the Dig Safe website at http://www.digsafe.com/.

CHAPTER 13
OTHER MUNICIPAL SERVICES

A. MUNICIPAL POLICE DEPARTMENTS

The selectboard – or the town manager if the town has adopted the manager form of government – may establish a police department and appoint a chief and other police officers. 24 V.S.A. § 1931. Once appointed, the direction and control of the entire police force is vested in the chief of police. 24 V.S.A. § 1931. Police officers employed by a municipal police department have the same powers as sheriffs in criminal matters (e.g., enforcement of the laws and serving criminal process) and these powers may be exercised statewide. 24 V.S.A. § 1935.

Municipal police officers must fulfill the minimum training standards set by the Vermont Criminal Justice Training Council before assuming their duties. 20 V.S.A. § 2358. The Criminal Justice Training Council has different levels of training requirements for part-time officers (working fewer than 32 hours per week or 25 weeks per year) and full-time officers. For more information about the requirements, contact the Criminal Justice Training Council, 317 Academy Road, Pittsford, VT 05763, (802) 483-6228.

There are statutes that provide for cooperation and assistance between law enforcement officers in different jurisdictions. Twenty-four V.S.A. § 1937 provides for reciprocal assistance agreements and 24 V.S.A. § 1938 provides for intermunicipal police service agreements.

The removal of police officers has proved to be a very complex and confrontational area. Prior to a 1990 Vermont Supreme Court decision that found the process unconstitutional, an officer facing charges of negligence, dereliction of duty or conduct unbecoming an officer could argue his or her case before the district court. If the district court found the officer guilty, the selectboard could remove him or her. Since the Court struck down this process and the Legislature has not since revised the statute, VLCT attorneys believe that municipal police are now entitled to the same due process rights as all municipal employees facing discharge. Please contact the VLCT Municipal Assistance Center for details.

B. FIRE DEPARTMENTS

There is no more essential local service than that of fire prevention and suppression. Unfortunately, in Vermont, few local services result in more confusion and unclear lines of authority than fire departments. There are close to 250 separate entities providing firefighting services to Vermont communities. Some are municipal departments of the town; others are volunteer departments that are incorporated separately and are independent of the town. There are also departments that are clearly privately owned, such as the IBM Fire Department in Essex Junction and the Vermont Yankee Nuclear Fire Department in Vernon. Other departments are affiliated with colleges, such as the Lyndon State College Fire Department. Several towns are served by more than one department, such as Randolph with the Randolph and Randolph Center departments or Rockingham, which is served by the Bellows Falls, Rockingham and Saxton's River departments. Also, some communities – such as Underhill and Jericho, and Danby and Mt. Tabor – share a department. Finally, some fire districts serve one or more towns. (See Section 3, below.)

1. **Municipal Fire Departments.** Municipalities are given the authority to create, maintain and operate a fire department, to purchase, own, and sell equipment and apparatus and to appoint officers, firefighters and other employees. 24 V.S.A. § 1951. The selectboard may appoint and remove fire department officers including a chief engineer, an assistant chief engineer and as many captains as it sees fit. It may also set their compensation and subject them to any rules or regulations it adopts. 24 V.S.A. § 1953. Firefighters are appointed by the chief and are subject to rules and regulations established by the selectboard. They may be dismissed or suspended by the chief, but may appeal such action to the selectboard by written request within five days of the action. 24 V.S.A. § 1954. All fire department personnel are subject to personnel rules and regulations established by the selectboard. 24 V.S.A. § 1956.

   All municipal fire department expenditures must be paid by the town general fund unless other means are provided for by the selectboard or voters. 24 V.S.A. § 1955. Towns have the right of eminent domain to acquire real property to house the fire department. 24 V.S.A. § 1952.

   The town fire chief has the same powers and duties as the chief engineer of a fire district. 24 V.S.A. § 1953. (Fire districts are discussed in Section 3, below.) The town chief's authority and responsibilities include:

   - being in charge of the firefighting equipment and keeping it in serviceable order;
   - wearing a badge while on duty that states his or her rank;
   - directing repairs of fireplaces, furnaces and stoves. If such directions are not complied with forthwith, "he or she may cause such change or repair to be made and recover the cost from the owner in a civil action;"
   - being in charge of all equipment and personnel at the scene of a fire or hazardous chemical/substance incident, or where there is a threat of fire or explosion, and removing goods and effects out of a threatened building. (The *exception* to this is that in case of a bomb threat, jurisdiction is with the police department rather than the fire department.);
   - pulling down or removing buildings he or she "deems necessary to prevent the spread of hazardous material or fire;"
   - calling the HAZMAT emergency team when needed; and
   - general crowd control. Traffic at a fire or other emergency is directed by the responding department's "ranking member." 20 V.S.A. §§ 2671-2674.

   A person who disobeys a chief's order may be fined up to $250. 20 V.S.A. § 2675.

   We urge caution with the use of the powers granted by these statutes, as there are questions of constitutional rights of citizens and of property owners – always fertile ground for litigation. In an emergency, immediate action may be called for, such as pulling down a building to stop the spread of fire. However, destruction of private property in a non-emergency situation calls for notice to the owner and a hearing to consider the balance between property rights and public safety. Likewise, the constitutional rights of free speech and assembly must be weighed against the need to suppress "tumults and disorders." In a crisis, knowing what *not* to do can be as important as knowing what to do.

2. **Volunteer Fire Departments.** In towns that do not maintain a firefighting force, the statute allows volunteer fire department chiefs the same authority at a fire as the fire district chief engineer or municipal chief (see Section 1, above). 20 V.S.A. § 2921. Statutes allow exemption of volunteer fire department property from property taxes if the town so votes (32 V.S.A. § 3840), provide for workers' compensation claims (21 V.S.A. § 601(12)(k)) and allow members to participate in a group health insurance program (8 V.S.A. § 4081).

   Volunteer departments are not statutorily affiliated with town government. Therefore, their governance and finances are separate from the town and are not subject to direct control by the selectboard. However, most of these departments derive a certain amount of financial aid from the town, sometimes in the form of purchasing a new fire truck or building a station. The town may attach "strings" to the funds appropriated by specifying them in the warning article. Selectboards also have a fiduciary responsibility to assure that town funds are not spent inappropriately. The more specific the article appropriating the funds, the more responsibility the selectboard has. If the article appropriates $5,000 for the "purchase of breathing apparatus," the selectboard could insist on having the bill submitted as proof the apparatus was actually purchased. If the funds are approved as a line item in the budget without direction, there is little the selectboard can or should do other than cut a check.

3. **Fire Districts.** The ability of selectboards or voters to create fire districts was granted by the Legislature in the 1850s to allow areas of towns to be served by a publicly owned and operated fire department. Over the years, they have become the governmental structure of choice for a number of special services, particularly water and sewer services.

   A fire district may be created within a town by the selectboard upon application in writing of 20 or more freeholders or voters who are residents of the proposed district. The selectboard establishes the district and defines its limits. The residents specify in the application the powers the district will have, chosen from those powers listed in 20 V.S.A. §§ 2601 and 2603. An application can also be made to expand or contract the boundaries. To pass, the change must be consented to by a majority of the landowners who will be affected. 20 V.S.A. § 2481(a).

   The establishment of a new fire district or a change in an existing one may be challenged if a petition signed by five percent of the legal voters of the entire town is filed with the town clerk within 30 days of the notice required for the public hearing on the matter. If such a petition is filed, the matter must be voted by the town at a special or annual meeting. The wording of the statute seems to indicate that the voters must vote by a majority to disapprove the proposed district or change in existing limits. This is a negative vote and should be worded properly to reflect that. 20 V.S.A. § 2481(b).

   Once created, the fire district is a body corporate. The last official act of the town selectboard is the calling of its first district meeting and presiding until a moderator is elected. 20 V.S.A. § 2482. The fire district operates like a town within a town, with the selectboard having no more authority, except that it fills vacancies on the prudential committee until an election is held. Other officers shall be elected at the annual or special meetings of the district. In the case of vacancies, replacements may be appointed by the prudential committee. Note that the chief and assistant engineers need not be residents of the district. 20 V.S.A. § 2485.

   A fire district may be formed within two or more different towns by joint action of the selectboard from each town. Once established, that district shall be governed by all of the

provisions that apply to fire districts located within a single town. The selectboards, by joint action, may fill vacancies of the prudential committee until an election is held. 20 V.S.A. § 2489.

Lastly, the voters of the town may vote to form a town fire district whose limits are the same as the town limits. 20 V.S.A. § 2541. In that case, in lieu of a prudential committee, the selectboard acts as a "board of fire commissioners." 20 V.S.A. § 2543. However, the municipal fire department statutes described in Section 1 above were added to the statutes in 1970, and appear to have removed any advantage to the creation of a town fire district under 20 V.S.A. § 2541.

A fire district may vote to adopt a town manager form of government and may levy taxes for:

- fire protection;
- sewers and sewage treatment plants;
- sidewalks;
- public parks;
- water works, reservoirs and dams;
- lighting (e.g. street lights and possibly to operate an electric company); and
- "for other lawful purposes." 20 V.S.A. § 2601.

The voters may regulate "the manufacture and safekeeping of ashes, gunpowder and combustibles, and the preservation of buildings from fire by precautionary measures and by inspection." 20 V.S.A. § 2602. The voters may empower their prudential committee "to cause the streets to be sprinkled or oiled." 20 V.S.A. § 2603. (It would be wise, however, to check current environmental regulations before "oiling" the streets.) The prudential committee may make contracts and purchases of apparatus and real property. 20 V.S.A. §§ 2604, 2605. A fire district has the power of eminent domain as granted in 20 V.S.A. § 2606.

C. CONSTABLES

A town constable may be elected or appointed, and voters, if they choose to do so, have the authority to limit the constable's law enforcement powers. 17 V.S.A. §§ 2646(7), 2651a; 24 V.S.A. § 1936(a). A vote to authorize the board to appoint the constable must be by Australian ballot.

If no limitations have been placed on his or her authority, the town constable is the town's local law enforcement officer, with all powers of search, seizure and arrest within the town. If, however, the town so votes, the constable only has the power to:

- serve civil or criminal process;
- assist the health officer in the discharge of his or her duties;
- destroy dogs when so ordered;
- kill injured deer;
- remove disorderly people from town meeting; and
- collect taxes, if no tax collector is elected.

There is no requirement that an *elected* constable have criminal justice training, however the voters can restrict the law enforcement activities of those constables who are untrained. 24 V.S.A. § 1936a.

1. **Election, appointment and removal.** At present, a town may choose a first constable and, if needed, a second constable, from among its legally qualified voters at annual town meeting. Alternatively, a town may vote to authorize the selectboard to appoint a constable. (An appointed constable does not have to be a resident of the town.) 17 V.S.A. §§ 2646, 2651a. If five percent of the voters of the municipality file a written protest against the article at least 15 days before the vote, such vote to authorize the selectboard to appoint a town constable must be approved by a two-thirds majority to be effective. Once adopted, the selectboard will continue to have the power to appoint a constable until that power is rescinded by the voters at an annual or special meeting. 17 V.S.A. § 2651a.

   A constable who is appointed by the selectboard may be removed for cause after notice is given to the constable and he or she has had the opportunity of a hearing on the matter. 17 V.S.A. § 2651a. The hearing may be held in executive session or may be public, depending upon the wishes of the constable. The selectboard may then meet in a deliberative session and decide whether to dismiss the constable for just cause. 1 V.S.A. § 312(e). An elected constable may not be removed by the selectboard.

   A constable's term of office is for one year unless a town votes to elect or appoint the constable for a two-year term. 17 V.S.A. § 2646. The constable must take an oath, administered by the justice of the peace (24 V.S.A. § 831) and must be bonded prior to embarking on his or her duties. The amount of the bond is set by the selectboard, which may ask for a larger amount if it sees fit.

2. **Incompatible offices.** The constable cannot serve as a selectboard member, school director, auditor or town manager. 17 V.S.A. §§ 2456, 2647. This rule does not apply to towns having 25 or fewer legal voters, except that the constable may not audit his or her own accounts. 17 V.S.A. § 2648.

3. **Independence of office.** An elected constable is an independent official who is not under the direction or control of the selectboard. However, the constable may not spend town money without the prior permission of the selectboard. This means that if a constable needs uniforms and equipment, the selectboard must agree to spend this money on behalf of the town. If a salary for the constable is not separately voted at town meeting, the selectboard may set the salary for the constable, and may limit the number of hours of law enforcement activities the town will pay for in a given year.

   The first and second constables are independent from each other, with neither acting as the supervisor of the other.

4. **Training requirements.** While an appointed constable must have training before exercising law enforcement authority, an elected town constable is not generally required to have any special training to exercise the functions of the position. 20 V.S.A. § 2358(d). Nonetheless, state law also allows towns to limit a constable's law enforcement power by voting to prohibit the constable from exercising law enforcement powers or by requiring him or her to complete a course of training offered by the Criminal Justice Training Council or another institution as a prerequisite to the exercise of law enforcement powers. 24 V.S.A. § 1936a.

For more information about training opportunities for constables, call the Criminal Justice Training Council at (802) 483-6228.

5. **Sources of law enforcement authority.** Unlike the authority of other law enforcement officers, who have historically enjoyed broadly implied law enforcement powers, the authority of town constables has been limited to only those powers and duties *expressly* granted by statute, and only those implied powers necessary to carry out the express duties. Op. Atty. Gen. No. 52-80 (Jan. 8, 1980). Thus, a constable may only act when authorized by a specific statute, and this power may not be extended by implication.

   A constable with law enforcement authority has the power of search, seizure and arrest within the town. 24 V.S.A. § 1931. Unlike other law enforcement officers, however, constables do not have statewide jurisdiction. As mentioned above, their jurisdiction is limited to the boundaries of the town. *State v. Hart*, 149 Vt. 104 (1987).

6. **Other duties and functions of the town constable.** The constable, like the sheriff, may serve civil and criminal processes, including complaints, summonses, subpoenas, writs and restraining orders, in all civil actions and in criminal process for lawbreaking. 12 V.S.A. §§ 691, 693. No constable is allowed to serve writs in cases in which he or she has a personal and/or financial interests in the debt involved. 12 V.S.A. § 694.

   The constable is also authorized to collect delinquent taxes, when ordered to do so by the tax collector, by seizing and selling the delinquent taxpayer's property by legal process. 32 V.S.A. § 5139. The constable will become tax collector if no specific officer by that title is elected at town meeting. 24 V.S.A. § 1529. The constable may be appointed as a court officer for district court. 4 V.S.A. § 446. The constable is authorized to destroy unlicensed animals, following the requirements of 20 V.S.A. §§ 3621-3623, and may kill an injured deer in accordance with 10 V.S.A. § 4749. The constable may assist the health officer in the discharge of his or her duties. 18 V.S.A. § 617. Finally, during town meeting, the constable may be called upon by the moderator to remove a particularly difficult person who is disturbing the meeting. 17 V.S.A. § 2659.

   Twenty V.S.A. § 2221 states that the governor may employ constables and other law enforcement officers in the event of a state and/or national emergency. This only authorizes the employment of additional constables (and law enforcement officers); it does not enlarge the scope of their authority.

   It is no longer possible for a town to appoint special constables. Instead, that need is met in towns without a police force by the appointment of temporary police officers to work under the jurisdiction of the selectboard. 24 V.S.A. §§ 1931(a), 1936. These temporary police officers are required to have completed law enforcement training. 24 V.S.A. § 1936 (b).

   Constables are not automatically authorized to enforce local ordinances in the town. Selectboards that have enacted civil ordinances can designate the officials who are authorized to enforce the civil ordinances by issuing tickets, and can designate those officials who may represent the town in the Judicial Bureau when a ticket is appealed. The designated individual may be the town constable, but the selectboard is not required to appoint the constable to these positions. If a municipality has retained some or all of its criminal ordinances, then a constable with law enforcement authority may enforce the ordinances.

For more information about the office of town constable, contact the VLCT Municipal Assistance Center at (800) 649-7915.

D. EMERGENCY MANAGEMENT

In accordance with the state emergency management plan and program, each town and city is required to establish a local organization for emergency management. The selectboard must appoint an emergency management director who is responsible for the organization, administration and operation of local emergency management activities in the town, subject to the direction and control of the selectboard. 20 V.S.A. § 6(a).

Many communities appoint their fire chief as the local emergency management director. The responsibilities of the director office can include, for example:

- acting as local point of contact for emergency management issues;
- helping to develop an emergency operations center (EOC);
- developing emergency operations center staffing and internal procedures;
- conducting tests and exercises;
- developing a local emergency operations plan;
- establishing and implementing a notification system to alert key officials in cases of emergency;
- coordinating and leading emergency communications planning and securing equipment;
- coordinating the establishment of an emergency shelter with the American Red Cross;
- establishing and maintaining a relationship with local businesses;
- coordinating training programs for local emergency management officials;
- helping to develop mutual aid agreements; and
- acting as a liaison to the Department of Public Safety's Emergency Management Division.

The local emergency management organization must participate in the development of an all-hazards plan with the local emergency planning committee and the public safety district in which the municipality is located. 20 V.S.A. § 6(c). Each local organization must annually notify the local emergency planning committee of its capacity to perform emergency functions in response to an all-hazards incident and must perform the emergency functions indicated on the most recently submitted form in response to an all-hazards incident. 20 V.S.A. § 6(d).

On the state level, the Vermont Department of Public Safety has an Emergency Management Division. The State Commissioner of Public Safety, with the approval of the Governor, appoints the Director of the Emergency Management Division. 20 V.S.A. § 3. The Director of Emergency Management is charged with coordinating all emergency management efforts within the state.

The Emergency Management Division has provided the following outline of suggestions for emergency management response:

Major emergency management activities fall into one or more of four phases: response, recovery, mitigation or preparedness.

Preparedness. Prior to any emergency – natural, manmade, accidental or deliberate – the major activities undertaken by any community include preparedness. Of the four phases of emergency management, the preparedness phase is often the easiest place to start. In some cases, such as a flood or hurricane, a municipality may have an early warning and several hours to act. However, often there is no prior warning of an impending emergency, such as with earthquakes, tornadoes, explosions, terrorist attacks or major fires. Preparedness is being ready to react promptly and effectively in the event of an emergency regardless of the nature of the event.

Response. Efficient disaster response depends on an organized and prepared government. Preplanning and practice are key to successfully dealing with a disaster. Each community in Vermont is strongly encouraged to develop a Rapid Response Plan to be used in the event of a local emergency. It is easy to complete and it can be an invaluable tool to have when the need arises. It outlines emergency points of contact, the location of emergency shelters, Vermont Emergency Management phone contacts, and other resources, including the American Red Cross, as well as response activities and who or what organization has that responsibility. Send a completed copy of this form to Vermont Emergency Management; give additional copies to selectboard members and the Emergency Manager. You can download this form at www.dps.state.vt.us/vem/rapid/htm.

Many emergency responders are trained in the Incident Command System (ICS) and all should be. In a large-scale incident, ICS will become very important. Simply put, ICS is the model tool for command, control and coordination of a response. It provides a means to coordinate the efforts of individual agencies as they work toward the common goal of stabilizing the incident and protecting life, property, and the environment. ICS uses principles that have been proven to improve efficiency and effectiveness in a business setting and applies them to emergency response. In any major incident, many local, state and federal agencies may become involved. ICS provides an important framework from which the various agencies can work together in the most efficient and effective manner. The principles of ICS enable emergency response agencies to utilize common terminology, span of control, organizational flexibility, personnel accountability, comprehensive resource management, unified command and incident action plans. We strongly urge local government officials to become familiar with the concepts of ICS to better understand emergency systems employed by the local responders, the state and supporting federal agencies.

When the jurisdiction is affected by a disaster, local officials must respond immediately to provide lifesaving operations, restore vital services and provide for the human needs of those affected by the emergency. Sometimes, local jurisdictions can manage the situation without further assistance, but often the State is asked to supplement local resources. State response can range from coordinating and providing State aid following local government's request, to requesting federal help. Local government officials will then work with federal and state personnel to determine which recovery programs are appropriate for implementation.

Recovery. It is difficult to pinpoint exactly when the response phase ends and the recovery phase begins. Generally, it begins when the situation starts to stabilize, sometimes following the response phase and but often overlapping it. It is categorized as either short-term or long-term. Short-term recovery is defined as restoration of vital services and facilities to minimum

standards of operation and safety. Examples include sheltering, feeding and life comforting efforts. Long-term recovery may continue for a number of months or years, as the community returns to pre-emergency conditions. Long-term recovery can include debris clearance, contamination control, disaster unemployment assistance, temporary housing and facility restoration. Local government continues to play an important role during the recovery phase because it is the first line of contact for citizens of the community. As a result, open lines of communication are established that enable local concerns and issues to be communicated to state and federal agencies.

The local emergency management director is most often the primary point of contact for these communications. This is the most effective method for addressing local issues, including setting or changing priorities and procuring additional resources so that the community can be returned to pre-disaster conditions. Additionally, mitigation measures begun during this phase reduce the community's vulnerability to similar disasters that may occur in the future. Lessons learned from the disaster will be considered when developing updated and improved protective measures, including the evaluation of the local emergency operating plan.

Mitigation. Mitigation is the ongoing effort to lessen the impact of natural disasters on people and property. Examples include local efforts to comply with codes and standards, fuel tank tie downs, and zoning. The Federal Emergency Management Agency has designated mitigation as the cornerstone of emergency management. Vermont Emergency Management also believes that the best response to natural disaster is to proactively prevent or diminish its impact. Consequently, the State of Vermont is invested in creating mitigation opportunities in all of its emergency management initiatives.

A number of programs directly support mitigation in Vermont: the National Flood Insurance Program (NFIP), the Flood Mitigation Assistance Program (FMAP) for NFIP-insured properties, the Hazard Mitigation Grant Program (HMGP) and the Pre-Disaster Mitigation Program (PDM). Local communities can address mitigation by assessing their risks and repetitive problems, making a plan that creates solutions to these problems, and taking action to implement the plan through corrective steps. Each of these measures is designed to reduce the vulnerability of local citizens and property.

For information and training opportunities for local emergency management directors, visit http://www.dps.state.vt.us/vem/emd, or call Vermont Emergency Management at (800) 347-0488.

E. FLOOD PROTECTION

Anyone who has ever been a selectperson or a road commissioner during a flood and its aftermath can appreciate the power of water and ice. Combine that power with Vermont's steep hills and narrow valleys, and major destruction is the frequent result. Your entire road budget may be consumed by the damage done to just one of your town highways in a few hours.

One major concern in town is the prevention of flood damage to highways. If the answer to a successful real estate transaction is "location, location, location," the answer to successful highway protection is "drainage, drainage, drainage." The selectboard has broad powers to maintain town highways, including the authority to change stream courses, erect embankments and construct drains and ditches. 19 V.S.A. § 304. In addition, specific statutes deal with

relocation of highways (19 V.S.A. § 935), diversion of streams (19 V.S.A. § 940), embankments (19 V.S.A. § 945) and placement of drains (19 V.S.A. § 950), as well as a process for condemnation of property and estimation of damages to the landowner when the town must take private property for highway use. 19 V.S.A. §§ 923, 926.

In addition to positive activities by the town, there is also the ability to prevent others from causing water damage to highways. Nineteen V.S.A. § 1108 provides that "a person who wantonly or willfully injures a highway, or a bridge ... [or] injures a public highway by obstructing or diverting a stream, watercourse or sluice ..." may be fined $100 for each offense and shall be liable for damages and costs. Another useful statute, 19 V.S.A. § 1111, enables towns to control activities in the highway right-of-way. This includes permitting for any driveways, installing wires, pipes and sewers and diversion of water so that it flows into the road. Nineteen V.S.A. § 1111(h) and (j) provide for enforcement of this statute by the state for state highways and by the selectboard for town highways and allow penalties from $100 to $10,000 per offense.

There are environmental constraints on the diversion of streams and removal of material from waterways that have a drainage area of greater than ten square miles. 10 V.S.A. Chapter 41. Note that the definition of "person" for purposes of Chapter 41 includes "municipality," so the selectboard must consider possible jurisdiction of the Department of Environmental Conservation (DEC) of the Agency of Natural Resources (ANR) when planning work that involves significant waterways. The penalty for unauthorized stream alteration is up to $10,000 per offense. A phone call ahead of time to prevent such a penalty would be prudent. DEC's Water Quality Division telephone number is (802) 241-3770.

In addition to highway concerns, a municipality may be able to prevent damage to other properties in two ways. First, it "may purchase, or acquire by gift, title to land ... for the purpose of constructing, maintaining and operating improvements for flood prevention...." 10 V.S.A. § 952(b). This may be done with the help of federal funds.

The second way is to adopt flood hazard bylaws. 24 V.S.A. §§ 4424. At a minimum, these bylaws must provide that no permit may be granted until a copy of the application is delivered by the zoning administrator or the appropriate municipal panel to ANR and either 30 days have elapsed following the mailing or the Agency delivers comments on the application. 24 V.S.A. 4424(2)(C). Flood hazard bylaws may contain standards that prohibit placement of damaging obstructions or structures, the use and storage of hazardous and radioactive materials, and practices that are known to further exacerbate hazardous or unstable natural conditions. They may also require flood and hazard protection through elevation, flood-proofing, disaster preparedness, hazard mitigation and other techniques, provision of adequate flood drainage and other emergency measures, provision of adequate disaster-resistant water and wastewater facilities, and establishment of restrictions to promote the sound management and use of designated flood and hazard areas. 24 V.S.A. § 4424(2)(B).

Repairing the damage after a major flood will probably be a joint effort involving the town, state and federal governments. The Vermont Emergency Management Division, part of the Public Safety Department, is headquartered in Waterbury. The Federal Emergency Management Agency (FEMA) becomes involved when the President declares a federal disaster situation. In addition to being there after the fact, these two instrumentalities periodically sponsor disaster management planning courses for town officials and fire and rescue personnel to help set up

plans for dealing with a variety of emergency situations. Also, the Vermont Agency of Transportation is quite helpful in providing engineering advice and expertise for repairing and replacing highways and bridges. For more information on emergency management, see Section D, above.

F. ELECTRIC POLES AND WIRES

The selectboard also has significant authority over the placement of electric, telephone and cable television cables above ground.

The statutes authorize the placement of lines or wires underground or "upon" a highway (30 V.S.A. § 2502), subject, of course, to the selectboard's permission under 19 V.S.A. § 1111(c). However, if such placement is "inconvenient or inexpedient," the utility can apply to the selectboard, which shall determine the placement and in what manner the wires shall be erected. 30 V.S.A. § 2503. The selectboard must notify interested parties, certify its decision and record it in the town clerk's office; "such decision shall be final."

The selectboard may also direct a line of wires be placed at a greater height or underground where it crosses a town highway. If a line is placed contrary to its direction and left unchanged, the board may remove the line and recover the expense. 30 V.S.A. § 2504. A resident can appeal the placement of such wires on town roads "in front of his [or her] residence" to the selectboard, which, upon notice and hearing, decides what, if anything, should be done. 30 V.S.A. § 2505. No tree located within a town highway may be cut or injured by the placement of such wires without the permission of the selectboard unless the adjoining owner or occupant agrees in writing. 30 V.S.A. § 2506.

If damage occurs to abutting landowners during the placement of wires along a town highway, they may appeal to the selectboard, which shall appraise the damage. Such damage must be paid for unless appealed to superior court. 30 V.S.A. § 2511. The selectboard also has the power to require that any person installing new lines along town highways place them on existing poles and to reimburse the pole owners a "fair proportion of [the] expense" up to one-half the estimated original cost of construction; and to restrict the removal or movement of such poles. 30 V.S.A. §§ 2515, 2516, 2518. Lastly, the selectboard may authorize and regulate persons constructing lines for private use. 30 V.S.A. § 2521.

Along state highways, the state transportation board makes the decisions that are outlined above and given to the selectboard along all town highways. 30 V.S.A. § 2501.

Although cell phones have made public telephones less important, selectboards are authorized to permit the construction, erection and maintenance of public telephones and telephone booths within the limits of public highways, sidewalks, parks and parking areas, "when consistent with the public interest under such reasonable rules, regulations and arrangements as they may prescribe." 30 V.S.A. § 2530. Notice must be given to adjacent landowners.

G. PURCHASING EQUIPMENT

A selectboard derives its authority to be the purchasing agent for the town from several sources. Its general authority comes from 24 V.S.A. § 872 and the derivative ministerial authority for "general supervision" and "causing to be performed all duties" not committed to any particular officer. It also has specific statutory authority to "purchase tools, equipment and materials

necessary for the construction, maintenance or repair of highways and bridges." 19 V.S.A. § 304(3). Lastly, when a town adopts the town manager form of government, one of the specific duties given to the manager under the statute is "to be the general purchasing agent of the town and to purchase all supplies for every department thereof." 24 V.S.A. § 1236(3).

Generally, the purchase of equipment is preconditioned upon the appropriation of funds by a vote of the town. Note the subtle difference between "purchasing" and "appropriation of funds." It is the selectboard that purchases; it is town meeting that appropriates the funds to finance the purchase. Though the law does not say so specifically, conventional wisdom holds that if the purchase will entail the payment of town money, the voters must concur through the act of appropriating funding. This does not require a specific article, but can be a line item in a budget.

The one possible area where a vote of the people may not be a prerequisite is where the town is under statutory mandate to perform a duty. For instance, towns are mandated by statute to "manage and regulate "the storage, collection and ... disposal of solid waste within their jurisdiction." 24 V.S.A. § 2202a(a). What happens when the voters refuse to provide funds to purchase equipment necessary to comply with this state mandate? The first option may be to find some other means to accomplish it (e.g., contracting out, using existing equipment or renting the necessary pieces), but the question may still remain whether the voters have appropriated the funds to do this.

If there was no choice but to make a purchase, we feel the statute would oblige you to do so. Remember that in Vermont, local governments – and each position or body, including town meeting – has only that authority provided it by the Legislature (Dillon's Rule). If the Legislature requires something be done, a town – or voters in the town – has no choice but to comply.

Selectboards have several choices as to methods of purchase. First, they may purchase equipment outright with cash provided by a town appropriation. Second, they may purchase it and finance the purchase through a loan or bond. (See 24 V.S.A. § 1786a.) Third, towns may establish and contribute annually to an "equipment fund" to provide for the periodic replacement of equipment. Normally, carrying forward funds from year to year is not allowed, but 24 V.S.A. § 2804 allows voters to establish reserve funds for such purchases. Annually, some town budgets include amounts – usually based on hourly rates for use of each piece of equipment – that will cover the purchase of new equipment, as it is needed. If approved by the voters, the money is deposited in the reserve fund and expended by the selectboard on the purchase or lease-purchase of the replacement equipment.

Any lease that lasts longer than one year should include a "non-appropriation" clause to protect the town should voters in future years refuse to appropriate the lease funds due. A lease usually runs three to five years with monthly payments throughout the term, but a town budget can only appropriate funds for the current year. Therefore, if a town enters a three-year lease and the budget line item for payments is defeated in the second year, the town has a problem. A "non-appropriation" clause basically makes the lease cancelable if funds are not appropriated in subsequent years.

H. INTERMUNICIPAL AGREEMENTS

There are several methods available for towns to work cooperatively. They range from handshake deals that swap the plowing and sanding of certain roads more accessible from a

neighboring town than from the town's own garage to shared permanent structures with their own enabling legislation. Services that are shared include specialized highway equipment, tax sharing and pooling for insurance purposes.

The statutes provide for several types of cooperative efforts, from specific areas such as sharing of town manager (24 V.S.A. § 1232) and fire mutual aid systems (20 V.S.A. §§ 2981, 2992), to the general enabling legislation, Intermunicipal Cooperation and Services, in Title 24, Chapter 121. Two different structures are contemplated under the general law: union municipal districts, in which a new legal entity is created, and interlocal contracts. Either type of agreement must first be recommended by a joint survey committee, comprised of three members from each community, one of which must be a member of the planning commission. A representative of the regional planning commission must be chosen by the municipal commission representatives to be an *ex officio* member. 24 V.S.A. §§ 4831-4833.

Either type of agreement must be approved by the State of Vermont attorney general. 24 V.S.A. § 4802. The union municipal district must be approved by a vote of each town by Australian ballot (24 V.S.A. § 4863), whereas the interlocal contract must be approved by the legislative body, subject to approval of the necessary expenses by the voters. 24 V.S.A. § 4901.

An alternative to using the intermunicipal cooperation processes set up in the statute would be to have a special act of the Legislature authorize the exact operation you have in mind.

I. PUBLIC FORESTS

1. **Town Forests.** There was explicit authority for towns to acquire land by gift or purchase for town forests in 24 V.S.A. § 2407, which appears to have been in effect from 1951 until it was repealed in 1985. The current statute, 24 V.S.A. § 2408, provides that if a town already had a forest when section 2407 became effective, or subsequently acquired one under authority of that section, the town is deemed to have a municipal forest. Since the repeal of section 2407, the explicit authority to purchase land for a forest is gone, but the town may still purchase land under the authority discussed in Chapter 14, Section D, of this handbook.

   A town may maintain a municipal forest which is "primarily devoted to producing wood products, maintaining wildlife habitat, protecting water supplies, providing forest recreation and conservation education." 10 V.S.A. § 2651. The forest must be a real one and not merely landscaped areas around buildings or playgrounds. When a town votes money for purchase of a town forest, it is eligible for any available state or federal matching funds. If the town subsequently sells a part of the land, it must return that portion of the money that was provided by the state and federal governments. 10 V.S.A. §§ 2652, 2655. If the town already owns a lot that the commissioner of the Department of Forests, Parks and Recreation deems suitable for a town forest, it may be designated as such and managed with the advice of the commissioner. Fire protection of the town forest is the responsibility of the town fire warden, who is appointed by the commissioner. 10 V.S.A. § 2641.

2. **National Forests.** Large tracts of land in many Vermont towns make up the Green Mountain National Forest. Questions frequently arise concerning the authority of the National Forest Service (NFS) to acquire land without the approval of the selectboard in the town in which the land is located. In 1 V.S.A. § 554, the State consents to the acquisition of land by purchase, gift or condemnation, which, in the opinion of the federal government and the State, may be needed for the establishment, consolidation and extension of national forests in

Vermont. However, the consent is limited to 43 towns and two gores in the state and is conditioned on the following requirements: the acquisition of land for the national forest must be approved by a state board consisting of the Governor, Lieutenant Governor, Attorney General, Commissioner of the Department of Forests, Parks and Recreation and Commissioner of Agriculture; and this board may act on a specific parcel only after it has the written approval of the legislative body (selectboard) of the town or the supervisors of an unorganized town or gore wherein the land is located.

However, no federal statute or rule requires the NFS to receive permission from a local legislative body prior to acquiring land. While Green Mountain National Forest representatives typically do consult with local selectboards on prospective purchases within their towns, it is unclear whether the state or a particular town could compel them to do this if for some reason they chose not to. This leaves towns within the National Forest with the burden of maintaining open lines of communication with NFS personnel to keep abreast of acquisition plans within the town. Hopefully, this can help avoid a confrontation over a proposed acquisition.

There is some payment made in lieu of property taxes to school districts from the National Forest. For details on these funds and their distribution, see 1 V.S.A. § 557.

J. PUBLIC PARKS

The creation of public parks is authorized in 24 V.S.A. § 2501. As outlined in that section, the process is initiated by a petition which must be signed by "a fifth or fifty or more" of the voters or landowners in town and submitted to the selectboard. Upon receipt of the petition, the board must respond in the same manner as it would to a petition for highway changes in 19 V.S.A. §§ 708 et. seq. The board must examine the property and hold a public hearing, after which it makes a decision, presumably based on the same standard as for highway decisions, that of "the public good, necessity and convenience of the inhabitants of the municipality." 19 V.S.A. § 710. The authority to condemn land in order to create a public park is implied in the use of the term "awarding damages," since the board would have to determine damages to be awarded if it took private land for the creation of a public park. In addition, the authority to condemn land derives from the fact that the procedure for creating a park is procedurally the same as that for creating or relocating a highway that involves condemnation of land and awarding of damages. 19 V.S.A. §§ 710, 712. If the owner of a property is aggrieved by the selectboard's decision, he or she may pursue the various remedies provided in 19 V.S.A. §§ 725, 726, 740 and 743.

K. SHADE TREES

Trees are a major component of Vermont. The beauty of Vermont depends in large part on its trees, and its financial health depends heavily on visitors who come to hike, camp, purchase maple syrup, sit by wood fires or to just look. The long-term importance of trees is reflected in the number of Elm Streets and Maple Avenues and in the fact that, without trees, we might not *be* the Green Mountain State.

The selectboard has the power "To provide for the location, protection, maintenance and removal of trees, plants and shrubs ... on or above public highways, sidewalks, or other property of the

municipality." 24 V.S.A. § 2291(3). To implement this, the board must appoint a tree warden and may adopt an ordinance concerning trees. 24 V.S.A. §§ 871, 2291(3), and 2506.

Chapter 67 of 24 V.S.A. gives the tree warden broad authority to oversee trees on public property by developing a preservation plan for trees and by planting, maintaining, pruning and removing trees. Trees may be maintained for shade or ornamental purposes and may be pruned, removed or treated for the sake of the tree or for public safety reasons. The tree warden should work with abutting landowners to control insect pests or tree diseases. He or she may consult with the Commissioner of Agriculture concerning serious infestations or disease and follow the Commissioner's recommendations for controlling the problem, even to the extent of treating trees on private property. 24 V.S.A. §§ 2504, 2511. He or she is authorized to enforce all laws applicable to public shade trees and to prescribe rules and regulations concerning trees. 24 V.S.A. § 2506. Funding for a tree program may come from the town, and financial or other agreements may be made with abutting landowners, other government agencies or private entities for the purpose of caring for shade trees. 24 V.S.A. §§ 2503, 2507.

Public shade trees, especially in the residential part of a town, may not be cut or removed without permission from the tree warden and/or a public hearing unless the tree is infested, diseased or a safety hazard. The decision of the tree warden is final unless he or she is an interested party, in which case the final authority is with the legislative body. Penalties for unauthorized damage to a public shade tree range from $50 to $500 per tree. 24 V.S.A. § 2510. In addition, there could be criminal charges under 13 V.S.A. § 3606. For more information, visit the Vermont Urban and Community Forestry Program at www.vtcommunityforestry.org, or call the Program at (802) 223-2389.

L. RECREATION

A municipality may be involved with recreation in two ways. First, it may actually provide certain recreational facilities or programs. Second, it may regulate certain types of recreation within its borders.

"Municipalities, singly or jointly, may establish, maintain and conduct a system of public recreation ..." and they may issue bonds to fund recreational projects. 31 V.S.A. § 202. Although this statute does not specifically mention direct appropriation of tax revenues for recreation, that is implied in the wording of sections 201 and 202 which allow cities and incorporated villages to appropriate funds for recreation. Section 201 limits the amount to be appropriated to not more than four percent of the grand list.

Many recreation departments operate on an "enterprise fund" basis, charging user fees for programs in order to help fund them. There is a philosophical debate as to whether it is fairer to have all taxpayers fund each program through taxes so that they are equally available to every would-be user or to have users only pay, taking the burden off the general taxpayer. Each town must make this decision on a program-by-program basis. Some towns make recreational programs and facilities available to all town residents for free or at a reduced cost but charge user fees or slightly higher fees to non-residents. Administration of the recreation program may be done in any of the ways mentioned in 31 V.S.A. § 203.

The statutes also provide for certain programs which may be funded by appropriations. "Free musical entertainments" may be funded up to the limits set by 31 V.S.A. § 204. Fairs and

exhibits "intended to promote the interests of any branch of agriculture, mechanical arts or any of the liberal arts" are authorized under 24 V.S.A. § 2301. A municipal forest, used partly for recreation, may be established and, if the town votes money for its forest, it may be eligible for matching state and federal funds. 10 V.S.A. §§ 2651, 2652.

The use of surface waters for recreational purposes is under the aegis of the State Natural Resources Board. This is the source of regulations regarding boating, water skiing, etc. However, of interest to towns is the possibility of grants-in-aid for the purpose of fighting "aquatic nuisances." 10 V.S.A. § 922. These nuisances are defined as "undesirable or excessive substances or populations that interfere with the recreational potential of a body of water" (e.g. milfoil, algae, sediment). 10 V.S.A. § 921.

Vermont towns are host to many other recreational activities that occur independently of municipal recreation departments or any other type of town sponsorship. Some of these activities may, however, be regulated by the towns to ensure that they are done safely and to minimize their impact on citizens. Following is a list of recreational activities that may be licensed or regulated in some way by municipalities, and the statutes that pertain:

- All-terrain vehicles – 23 V.S.A. Chapter 31;
- Motor vehicle racing – 31 V.S.A. Chapter 7;
- Snowmobiles – 23 V.S.A. § 3210;
- Coasting (sliding) on sleds – 31 V.S.A. § 511;
- Horse and dog racing – 31 V.S.A. Chapter 9;
- Menageries, wild west shows, itinerant shows, carnivals, games of chance, theater shows, movies and concert halls – 31 V.S.A. Chapter 9;
- Dance halls, pool halls, bowling alleys – 31 V.S.A. Chapter 11;
- Use of alcoholic beverages in public – 24 V.S.A. § 2291 (17) and (18); and
- Firearm use or discharge – 24 V.S.A. §§ 2291(8), 2295.

The authority granted under these different statutes varies widely and is frequently subject to other regulatory powers of the state. Check each statute carefully to assure that any action you take is proper. (See also Chapter 9, Ordinances and Regulations.)

M. LIBRARIES

A municipality may provide public library services to its residents in several different ways. First, it may establish its own library. 22 V.S.A. § 141(a). Second, it may contract with another municipality or a library corporation to supply services. 22 V.S.A. § 141(b). Third, it may help to support a library held in trust for its residents. 22 V.S.A. § 141(b).

In order to support a library or library services, a town may appropriate money for facilities, maintenance and care (22 V.S.A. §§ 141, 142), or it may vote to issue municipal bonds "for the cost of capital improvements to any privately-owned, municipality-supported library situated within the municipality for use of residents." 24 V.S.A. § 1752a.

There are several considerations to keep in mind if your town supports a private library. First, the finances and governance of the library will be conducted independently of the town and will not be under the direct control of the selectboard. The board has a fiduciary responsibility, however,

to make sure that town funds appropriated to the library are used in a way that benefits the town. Most boards do this by making the article(s) appropriating money to a private library clear in their intent (for general support of the library, for the purchase of a library computer, for the construction of a children's reading room, etc.). With the specific wording of an article to back it up, a board can request receipts and/or other proof from the library that the funds donated by the town are being used for the purposes envisioned by the voters.

Second, the Americans with Disabilities Act (ADA) requires local government programs and services to be accessible to the disabled. A municipality must ensure that this requirement is met even if it is paying a company to provide the service or contributing to a private organization that does so. If your local, private library is accepting funds from the town, the town may ultimately be held responsible if accessibility issues arise there.

Municipal libraries are governed by a board of trustees that is either elected or appointed by the legislative body. 22 V.S.A. § 143. The board must report on the condition and management of the library to the annual meeting of the municipality. 22 V.S.A. § 144.

The State Department of Libraries is charged with the "duties and functions" of serving other libraries, including municipal and school libraries, by providing reading materials and technical assistance. The Department of Libraries also administers state and federal grants for libraries and provides professional consultation and educational services for librarians around the state. 22 V.S.A. Chapter 13.

Finally, if you think your library's fines are outrageous and unreasonable, take note that, under 22 V.S.A. § 111, a public library may be awarded fines of up to $500.00 per offense and "each piece of library property shall be a single offense."

N. TOWN SCHOLARSHIPS

The voters of a town may appropriate money from the general fund for all or part of one or more students' college expenses. 16 V.S.A. § 2535. The statute specifies those persons who shall make up the "board of selection" which shall select students "on the basis of scholarship and need."

O. HANDICAPPED ACCESSIBILITY

There is much recently developed law concerning discrimination against persons with disabilities. The most far-reaching is the Americans with Disabilities Act (ADA), enacted by the federal government in 1990. The ADA prohibits discrimination against people with disabilities in all programs and activities of local government.

Towns that seek to make their services accessible to the disabled should be familiar with the ADA's Title II, "Public Entities." (Title I covers employment. [As an employer, a town cannot discriminate against the disabled in any way in its recruitment, hiring, advancement, discharge, compensation, job training and other employment terms or conditions.] Title III covers public accommodations, Title IV covers telecommunications and Title V covers miscellaneous provisions.)

Briefly, Title II requires that all municipal programs, services and activities be accessible and be offered in a setting and manner that is as close as is reasonably possible to those offered to non-disabled citizens. When determining exactly what these programs, services and activities are, a

selectboard member must widen his or her vision to include almost all aspects of town government. A disabled person should be able to be a member of a town board or committee, participate in town meetings, have access to all town facilities and records and be able to apply for all town employment opportunities, to name just a few programs and activities that must be accessible. Facilities (buildings, roads, sidewalks), communications and public transportation equipment must also be accessible. Some exceptions and some flexibility are allowed by the ADA. For example, programs can be relocated to accessible facilities, or auxiliary aids could be provided to assist a disabled individual to participate. Further, a municipality does not have to make a program accessible if to do so would "fundamentally alter the nature of the program, activity or service" or would result in "undue financial or administrative burdens."

At the state level, the Department of Labor is charged with enforcing state standards for architectural barriers and the accessibility of public buildings. 21 V.S.A. §§ 271-277. The Department also chairs the state Architectural Barrier Compliance Board, which can grant a variance to these standards under certain conditions.

Vermont's laws prohibiting discrimination against persons with disabilities in the provision of public accommodations are set out in 9 V.S.A. Chapter 139. That chapter is to be construed to be consistent with the ADA. 42 U.S.C. §§ 12101 et seq. In effect, it essentially adopts the ADA as state law.

Finally, all municipal building codes must comply with the ADA. There are extensive and detailed ADA regulations covering not only ramps, door widths and elevators, but also the height of water fountains, visual and tactile signs, hardware on doors and bathroom fixtures, turning space for wheelchairs, stairway railings and carpets. Obviously, anyone drafting a municipal building code must be familiar with the ADA as well as state statutes.

P. MENTAL HEALTH

The subjects of mental illness and mental retardation are covered generally in 18 V.S.A. Chapter 171-215. Involvement of local government in the mental health field is minimal, although 18 V.S.A. § 8909(b) encourages the working together of community mental health centers and governmental agencies in the interests of efficiency and economy.

The law allows "interested" persons or parties to become involved in dealing with mentally ill or retarded individuals. An interested person may include certain town officers. 18 V.S.A. §§ 7101(9) and 9302(4). An interested person may commence the process for having an ill or retarded person committed for involuntary treatment. 18 V.S.A. § 7612.

If you believe that you are an interested person and are about to become involved, be advised that you should know how the law defines mental illness, mental retardation and *many* related terms before you act. The law functions to protect the rights of everyone, and specific criteria must be met before people thought to be mentally ill or retarded can be deprived of their freedom or right to make their own decisions.

Finally, 24 V.S.A. §§ 4412 and 4413 provide some limitations on local zoning bylaws as they apply to some group homes, hospitals and institutions.

Q. BURIALS: PAUPERS AND VETERANS

A town may be required to arrange and pay for the burial of a resident who dies in the town and who did not have the necessary assets to pay for his or her burial. 33 V.S.A. § 2301(c). Note that the town has the authority to arrange the burial. This means that a relative of the deceased may not arrange and carry out the burial and then send the bill to the town. Towns are sometimes asked to pay for a burial of a resident who owned property in town but died without cash or other assets to pay for a funeral. The town is not responsible for funding such a burial any more than it would be responsible for paying the property taxes of a landowner who has no cash or other assets.

When the town has paid for a burial, the Department for Children and Families (formerly the Department of Social Welfare) shall reimburse it up to $250 for expenses incurred. The cases in the statutory annotations to this section make it clear that money from the Department or the town is to be used only for burial expenses and must go directly to reimburse the town or to pay the funeral director. Funeral directors should know the pertinent regulations concerning burial at public expense and should advise the person making the arrangements for burial of those regulations. 33 V.S.A. § 2301(a)(4). Definitions of "burial" and "funeral" are found in subsection (g) of the statute.

There are also funds available to assist in burial expenses and the cost of a headstone for an honorably discharged soldier, sailor, member of the armed forces of the United States or [his or her] widow[er]. 20 V.S.A. § 1604. If no official of a veterans' organization can testify to the fact that the veteran or widow[er] had insufficient assets to pay for burial and headstone, then the majority of the selectboard or the mayor of the city where the person lived may certify that fact under oath, after which the Commissioner of Finance and Management of the state shall provide up to $150 to help defray the costs.

R. PUBLIC TRANSPORTATION

Public transportation is important for individuals who do not own or have access to a vehicle, for communities wishing to offer their citizens an alternative to private transportation, and for the environment. Moving people easily and economically helps workers get to jobs and customers to businesses and shopping facilities, plus it saves energy and decreases pollution. The rural and remote character of Vermont makes it difficult for many towns to even imagine public transportation, but it is a service that municipalities have the authority to provide, either on their own or with other towns.

Should a municipality choose to provide public transportation, it will find that the State of Vermont's policy is to encourage and plan for public transportation and to help fund projects. 24 V.S.A. Chapter 126.

For the statutory authority needed to operate public transportation systems, municipalities should consult 24 V.S.A. § 5088(7). Municipalities may also join together to provide public transportation services through either a regional transit authority or a regional transit district. 24 V.S.A. Chapter 127. A regional transit authority is formed when two or more municipalities vote to join together to provide services within their geographical areas. This creates a separate municipal corporation which has the powers usually granted to such entities and which are spelled out in 24 V.S.A. § 5104. These powers include the power to borrow money, to acquire

property by eminent domain, to promulgate rules and regulations and to set fares and rates. A board of commissioners operates the authority and consists of two commissioners from each member municipality who are appointed by their legislative bodies for three-year terms. The commissioners have the power to hire personnel, fix their salaries and delegate responsibilities to them. 24 V.S.A. § 5107.

Annually, the commissioners prepare a proposed budget and present it to a warned meeting of the residents of the member municipalities. They then review the budget in light of public input and adopt a final budget for the fiscal year. Following the adoption of the budget, the treasurer of the authority apportions the amount to be contributed by each member municipality according to a formula based on mileage or on some other formula approved by the board and the members. The treasurer notifies each member of the amount assessed; the member then assesses such tax as is necessary to raise that amount. 24 V.S.A. § 5108. The board must prepare an annual report and submit it to the legislative body of each member. The operating year must be a fiscal year beginning on July 1. 24 V.S.A. § 5110. Termination of membership in the authority is governed by 24 V.S.A. § 5109.

Formation of a regional transit district is another way in which municipalities may join together to provide public transportation services. 24 V.S.A. §§ 5121-5129. In contrast to the regional authority, this is not a corporation. The district may be formed after studies by the municipalities and the state Agency of Transportation (AOT) have shown that the area to be served constitutes a reasonable transit district. At that time, voters may vote to create the district, with the approval of AOT.

The district shall have at least one member from each municipality appointed by its legislative body. There may also be "other members, who may be elected or appointed ... [as prescribed] by rule." 24 V.S.A. § 5124. The powers of the district, enumerated in 24 V.S.A. § 5125, include the authority to contract to provide transportation services outside of the member municipalities. The district is "exempt from sales, purchase and use taxes and from motor vehicle registration fees except those registration fees applicable to municipalities." 24 V.S.A. § 5127.

The board shall prepare a proposed budget for each fiscal year and send it to the legislative body of each member municipality. It *may* also call public meetings of the residents of the municipalities to present the budget to them. Following this, the board shall adopt a final budget and determine the contributions to be requested from each member. 24 V.S.A. § 5128.

Members of the board shall have no personal liability for actions taken in their official capacity and member municipalities shall have no tort liability. Total tort liability for the district is limited to $1,000,000. 24 V.S.A. § 5129.

CHAPTER 14
TOWN LANDS AND BUILDINGS

Vermont municipalities are the owners of a wide variety of lands and buildings. From the town hall to the town garage, from cemeteries to town forests, selectboards (or their delegates) are responsible for ensuring that these buildings and lands are well maintained and are safe for the municipal workers and members of the public who use them. Listed below are some of the properties a town may hold, with information on how they are administered. The general rules governing the municipal purchase and sale of property are also explained.

A. CEMETERIES

Town cemeteries are often one of a municipality's most beautiful and visited properties. The maintenance and administration of them, meanwhile, is much less in the public eye, as these tasks are usually accomplished behind the scenes by the selectboard or cemetery commission.

The authority to own and operate cemeteries is granted to municipalities in 18 V.S.A. §§ 5361, 5367 and 5373. Here, towns are also given the option to place their cemeteries under the control of either the selectboard or a cemetery commission.

If a town votes to have a cemetery commission, the commission automatically assumes the cemetery-related duties which were previously carried out by the selectboard. A town may vote to transfer the responsibility for the cemetery back to the selectboard, in which case the offices of cemetery commissioner terminate. 18 V.S.A. § 5381. Commissioners shall number three or five, with staggered terms of office, and vacancies may be filled by the remaining commissioners until the next annual meeting. 18 V.S.A. § 5374. Should the selectboard or cemetery commissioners neglect to carry out their duties in caring for the burial ground, fines may be imposed. 18 V.S.A. §§ 5363-5366. Additional responsibility for private cemeteries may also fall to the town if the cemetery has been abandoned and has become "unsightly." 18 V.S.A. § 5321.

Many towns enact bylaws to govern the operation of their cemeteries. 18 V.S.A. § 5378. Usually adopted by the cemetery commissioners, these regulations cover such topics as the care of lots (including endowments for individual lot care), rules of conduct (hours, permitted activities), interments, plantings and other changes to individual plots, specifications for memorial dimensions and materials, and the sale of plots. If you would like copies of sample cemetery bylaws, please contact VLCT.

Local officials in charge of cemeteries should be familiar with the general statutes regulating the permanent disposal of remains of the dead. 18 V.S.A. §§ 5319, 5320. Note, too, that these statutes also grant a private individual the ability to set aside a part of his or her land as a burial space for members of his or her immediate family. From time to time, selectboards, in their capacity as local boards of health, will receive requests for permission to establish such private burial plots. The Vermont Department of Health has issued a pamphlet of guidelines for the board (or local health officer) to consider when reviewing these requests. For a copy, contact the Health Department at PO Box 70, Burlington, VT 05402 (telephone 802-863-7200).

Land for use as a town burial ground may be purchased with public funds voted for that purpose, may be acquired through dedication and acceptance (express or implied dedication of land by a private owner for the public's use), by gift or by eminent domain. 18 V.S.A. §§ 5361, 5481-83.

The procedure for acquiring new land or additional earth or gravel needed for an established burial ground is spelled out in 18 V.S.A. § 5483. If a burial ground is to be discontinued and the remains of the dead are to be removed, 18 V.S.A. §§ 5369 and 5370 apply. The taking of any burial ground for another public use may not be done without permission from the town, cemetery association or the Legislature. 18 V.S.A. § 5318.

Several state statutes regulate the holding and passing of title to cemetery plots. Cemetery commissioners should be familiar with these laws so that they may advise citizens how to obtain or transfer ownership of a particular plot. Cemetery lots may be sold, but only if a plat exists for the lots. 18 V.S.A. § 5312. Deeds to lots must be recorded by the town clerk. 18 V.S.A. §§ 5311, 5376. The proceeds from such sales are subject to 18 V.S.A. § 5377. Burial records must be maintained and must be open to the public. 18 V.S.A. § 5313.

Generally, any moneys accrued from the sale of cemetery plots must be used directly for the operation and maintenance of the cemetery or placed in a perpetual care fund. They may not be used for any private gain. 18 V.S.A. §§ 5303, 5314, 5315. Any excess funds may be placed in a perpetual care fund and invested according to 18 V.S.A. § 5309, which lists permissible investments, including U.S., municipal or State of Vermont bonds, mortgage notes, shares in Vermont or federal savings and loan associations (FDIC insured), and common or preferred stock. Further restrictions on the investment of grants, gifts or bequests made to the town in trust for cemetery purposes are found in 18 V.S.A. § 5384.

Cemetery property may not be mortgaged or otherwise encumbered. 18 V.S.A. § 5316. Land found to be unsuitable for burial purposes may be sold and the proceeds may be used for the purchase of other land to be used for burial purposes or for the care and maintenance of the existing cemetery. 18 V.S.A. § 5315.

Commissioners must submit an annual report to the town auditors, who must audit it, file a report with the town clerk, and include it in the town's annual report. 18 V.S.A. §§ 5379, 5380.

"All cemetery lands, buildings and property, and the proceeds thereof ... which have been platted and devoted to or held exclusively for cemetery purposes" are exempt from taxation. 18 V.S.A. §§ 5317, 5376. Burial lots which remain unoccupied, the whereabouts of the person having legal title being unknown, may revert to the town after 20 years according to a procedure set out in 18 V.S.A. §§ 5533-37.

The town may be called upon to provide a headstone without charge for a deceased person whose estate does not have the funds to pay for one, and whose grave remains unmarked for three years following his or her burial. 18 V.S.A. § 5371. Finally, the selectboard or the cemetery commissioners may be asked to adjudicate the need for a permit allowing an applicant "to enter a graveyard enclosure to which there is no public right of way." 18 V.S.A. § 5322.

B. GLEBE LANDS

"Glebe lands" or "lease lands" are a type of public land referred to by the Vermont Supreme Court as a "somewhat unusual Vermont institution." *Mikell v. Town of Williston*, 129 Vt. 586, 587 (1971). Many of the original charters for Vermont towns contained reservations of parcels of land for the Church of England (pre-Revolutionary) and for the use of schools, colleges, or the support of the ministry. *Id*. at 587. After the American Revolution and the separation of church and state by the Constitution, lots reserved for the church or the ministry were generally

dedicated to the use of schools and the care of such lands was placed in the hands of the respective town selectboards. 24 V.S.A. § 2401; *Spaulding v. Fletcher*, 124 Vt. 318 (1964). Those public lands could be leased and the rents received "shall be annually paid into the treasury of the town." 24 V.S.A. § 2403. The leases of such public lands may be "durable leases, conveying to the lessee ... a lease of the land for 'as long as grass grows and water runs'" or phrases of similar durability. Although 24 V.S.A. § 2404 says that rental money received from land originally dedicated to religious purposes shall be distributed to "religious societies," this requirement has since been declared unconstitutional by the Vermont Supreme Court and the rental moneys must "become part of general revenue of the town." *Mikell v. Town of Williston*, 129 Vt. 586 (1971).

For many years it was understood that the town could not divest itself of these public lands, but could only lease them. However, 24 V.S.A. § 2406 authorizes towns to sell these lands, with two conditions attached. First, the leaseholder must be given preference as the grantee of the title, and, second, the funds received "shall be kept intact, in trust ... and the income only shall be used for the purposes for which such lands were originally granted." 24 V.S.A. § 2406. This second condition means, for example, that if the town decides to sell a lot that was originally designated for a school for a sale price of $20,000.00, this lump sum must be held intact as an endowment. Only the interest from it may be used and, furthermore, the interest must be used for school purposes. Section 2406 also provides that once the land is sold and ceases to be public land, it becomes taxable in the same way as any other land in town.

C. TOWN BOUNDARIES

When adjoining towns are unable to agree as to the location of the boundary line between them, they may petition the superior court to appoint commissioners to locate the line. The court must appoint three disinterested persons, one of whom must be "a practical and competent surveyor." 24 V.S.A., Chapter 47. The commissioners conduct a hearing, view the premises and make recommendations to the court. Their hearing must be conducted as a quasi-judicial proceeding.

The authority granted in this chapter is limited to the authority to locate the boundary line accurately, not to change its location. In order to actually alter a boundary, petition must be made to the Legislature, as provided in 2 V.S.A. § 17. If the towns have erroneously agreed to and have used the wrong boundary, that will not change the line if it can be accurately determined.

D. PURCHASE OF LAND

The authority for towns to purchase land derives from several sources. Some town charters expressly authorize the purchase and sale of land. There are also statutory authorizations for some specific purposes, such as sewage treatment, 24 V.S.A. § 3613, and conservation purposes. 10 V.S.A. Chapter 155. (If your town is purchasing land under a specific statute authorizing it to do so, please note that the statute may impose conditions on the purchase process, such as the requirement for a public vote, a time limit on bond issues, etc.) Finally, there is the implied authority to purchase land since, from time to time, land purchases are necessary for the effective functioning of the town.

The selectboard acts in a fiduciary capacity on the town's behalf in the purchase or sale of property. This means that the board and the individual members on it have a duty to be fiscally

responsible, to act in the best interests of the town and to avoid any conflict of interest when creating a contract for the town. As in all matters that come before the board, it is best to avoid even the appearance of impropriety. Remember, too, that while the board has the authority to purchase property on behalf of the town, it is ultimately the voters who will approve the expenditure of money to complete the purchase. In situations where a purchase opportunity comes up before the voters have appropriated the necessary funds, selectboards often incorporate a clause into the purchase agreement that makes the purchase contingent on town voter approval (at the next special or annual meeting) of the necessary funds. This guarantees that the town does not lose the opportunity to purchase the property while waiting for approval of the purchase funds.

E. SALE OF LAND

Real estate owned by the town, village or town school district may be conveyed by an agent who is either elected or appointed for that purpose. 24 V.S.A. § 1061. This office is different from that of "town agent" described in 17 V.S.A. 2646(11). The authority to sell town property derives from the same sources as the authority to purchase land that were mentioned above. In 1994, however, the Legislature took up the issue of municipal authority to sell real estate. In the end, the Legislature stopped short of taking away the selectboard's authority to sell, but it did add several procedural steps to the process of selling town land.

These steps are found in 24 V.S.A. § 1061. According to this section, notice of the terms of the proposed sale must be posted in at least three public places in the municipality and published in a local newspaper. If petitioned within 30 days of the posting and publication, the selectboard must ask the voters at the next special or annual meeting whether or not the town should sell the property. As an alternative to this procedure, the board may go directly to the voters and present the question for approval at an annual or special meeting. For boards faced with a time constraint on a sale and interested in saving the cost of a special meeting, the first procedure is preferable (assuming no petition is filed).

There are several exceptions to the requirement that boards follow the above procedures: if the sale is directly related to highways, public water, sewer or electric systems, or if it involves real estate used by housing authorities under 24 V.S.A., Chapter 113. Also, a town or village that has provisions in its charter addressing the conveyance of real estate is subject to the charter provisions where they conflict with the statute. Finally, 24 V.S.A. § 1061 does not impair a municipality's ability to deal with land it holds in a fiduciary capacity (i.e., holding a mortgage, land acquired through delinquent taxes, land held in trust, etc.).

Note, too, the provisions of 16 V.S.A. § 562(7), dealing with the purchase and sale by the school board of school buildings or sites. This statute requires the school board to seek voter approval before buying or selling school property.

The sale of glebe land is a special case governed by 24 V.S.A. §§ 2401 et seq. and discussed in Section B above.

F. EMINENT DOMAIN

The concept of eminent domain balances the power of the government to take private land for public use against the right of the private landowner to receive just compensation for the taking

of his or her property. The U.S. Constitution provides that "...private property [shall not] be taken for public use, without just compensation." U.S. Constitution, Amendment V. In Vermont, "private property ought to be subservient to public uses when necessity requires it; nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money." Vt. Constitution, Chap. I, Art. 2d.

In spite of the power of eminent domain which is inherent to the state, that power "cannot be exercised without a legislative declaration of its objects and purposes, and of the methods and agencies by or through which it shall operate. The statute must be definite and certain, and nondiscriminatory." McQuillin, *The Law of Municipal Corporations*, section 32.11, at vol. 11, 322 (3d ed. 1991). This means that, in order for municipalities to exercise eminent domain and condemn private property for public use, there must be legislation (state statute or charter provision) explicitly authorizing such action or Dillon's Rule will apply. (Under Dillon's Rule, remember, a municipality only has powers expressly granted, fairly implied, and essential and indispensable to its function.) Following is a list and brief description of the statutes that expressly grant municipal entities the power to exercise eminent domain.

a. 24 V.S.A. § 2805: a city, town, village or fire district may condemn land needed for buildings;
b. 24 V.S.A. § 1952: a city, town or village fire department may condemn land for a fire house or fire station;
c. 20 V.S.A. § 2606: a fire district may acquire land for buildings by condemnation;
d. 24 V.S.A. §§ 3602 and 3609: a municipal corporation may acquire necessary real estate and easements for sewage disposal by condemnation;
e. 24 V.S.A. §§ 3301 and 3303: a municipal corporation may acquire real estate and water rights necessary for a water works by condemnation;
f. 24 V.S.A. § 3342(c): consolidated water districts have the same power of condemnation as municipal corporations in (e) above;
g. 24 V.S.A. § 2801: selectboards may procure the right to lay aqueducts or pipes to supply "water for use in a town hall or watering trough on a public highway";
h. 30 V.S.A. §§ 2910 and 2914: a municipality may acquire an existing utility's plant by eminent domain and may acquire additional property by condemnation;
i. 24 V.S.A. § 3210: a municipality may acquire property by condemnation for urban renewal purposes;
j. 24 V.S.A. § 4012: municipal housing authorities may acquire property by eminent domain;
k. 5 V.S.A. § 651: a municipality or agency authorized to operate an airport may acquire property by eminent domain; and
l. 16 V.S.A. § 560: a school board may condemn land to be used for school purposes.

In addition to the statutes listed above, some municipal charters may provide specific authority of eminent domain. As mentioned in Chapter 10, Section C, land may also be condemned by the state or the town for use as roads.

The pertinent statutes frequently specify procedures to be followed in condemnation actions. It must be kept in mind that the power of eminent domain, like all government powers, must be

exercised in a fair and non-discriminatory way. Public necessity must be demonstrated and fair and adequate compensation must be provided.

A final consideration is that the state may be able to acquire land owned by a municipality by utilizing the state's power of eminent domain. The state's authority rests on the fact that its interests are seen to represent a broader base than a municipality's interests, which are viewed as more narrow, or "parochial."

G. SPECIAL MUNICIPAL PROPERTY

Several types of land may be owned by a town that differ in nature and purpose from the usual municipal properties (the town hall, roads, garage, recreation field, etc.). First are the glebe lands discussed in Section B, above. Second are lands owned by the municipality for the conservation purposes described in 10 V.S.A. Chapter 155. Third are "public funds" which may include land bequeathed or otherwise given to the town. 24 V.S.A. § 2406. Finally, there are "parks and shade trees." 24 V.S.A. § 2501.

Under 10 V.S.A. Chapter 155, land or certain rights or interests in land may be acquired by state agencies, municipalities or qualified organizations for certain purposes. Those purposes are to maintain present uses of undeveloped land, prevent accelerated development, preserve scenic natural resources, strengthen the recreation industry and provide for orderly growth in the face of increasing development. Chapter 155 allows towns to acquire real property or selected rights to real property by purchase, donation, devise, exchange or transfer. For example, the town might own the land outright or it might have only selected interests, such as the development rights, with all other rights remaining with another party.

In order to actually purchase land or rights, a municipality must use "authorized funds." 10 V.S.A. § 6302. Once it has acquired the land or selected rights, the town will be responsible for the administration or enforcement of the proper use of the land. Sales of such lands and other termination of rights are subject to 10 V.S.A. §§ 6304 and 6308.

Rights and interests acquired by a municipality are treated "as municipal ... with respect to taxation ..." 10 V.S.A. § 6306(a). Your listers should be aware that where property rights or interests have been acquired by a municipality, the owner of any remaining rights or interests may be taxed separately on his or her rights or interests. 10 V.S.A. § 6306 (c).

A third category of public land is real estate "held by a town in trust for any purpose, including cemetery trust funds." 24 V.S.A. § 2431. Such land is under the charge and management of the trustees of public funds elected by the town. The trustees must report to the town annually and shall "give bonds to the satisfaction of the selectmen ..." 24 V.S.A. §§ 2433-2434. Selectboards should be familiar with the terms under which this type of property was gifted or granted to the town. Often, such gifts come with restrictions on the use of the property (for example, a town beach that is to be used for access to a lake or pond by foot only, precluding the town from building a boat launch on the property) or on the use of the proceeds of the sale if the terms of the gift allow the town to sell the property.

Tucked away in Title 24 is a section that authorizes voters or property owners in a town to petition the selectboard to lay out a public park or square "for the erection of a soldiers' monument or for other public purpose." 24 V.S.A. § 2501. Remedies for someone not satisfied by the selectboard's response to such a petition are the same as those for a person unhappy with

the board's actions in laying out a highway. There is also fairly extensive law governing the care of shade and ornamental trees located within "public ways and places." 24 V.S.A. §§ 2502 et seq. For additional information and resources on caring for town trees, contact:

Vermont Department of Forests, Parks and Recreation
Urban and Community Forestry Program
103 South Main Street, Bldg. 10 South
Waterbury, VT 05671-0601.

H. RENTAL OF TOWN FACILITIES

Often, a municipality will receive requests from citizens to rent the town hall for weddings, meetings, classes, dances, or other, similar community events. Many towns do rent their facilities for such purposes, but do so under the provisions of a rental policy which clearly states the conditions to be met by the town and the renting party.

Such a policy should not be discriminatory in any way and should establish a rental fee based upon the town's actual cost to make the facility available. As you prepare your rental policy, keep in mind that once you open the town's facilities to outside groups, you must be prepared to do so for all groups that can satisfy the conditions of the policy. This means the politically acceptable monthly board meeting of the "Little People Day Care Center" as well as the potentially divisive "Concerned Citizens Against (fill in the blank)."

A typical rental agreement should include sections on purpose for which premises will be used, date and terms, rent, security deposit, cancellation, obligations of renter, required proof of insurance, non-liability of owner, limitations on assignment of the agreement to another party and restrictions on the use (for example, occupancy limits, alcohol policy, and cost of admission, if admission is allowed to be charged). Please contact the League if you would like a sample rental policy. It is also a good idea to check with your insurance carrier to find out if the company has any concerns or questions about rental uses of the town property it insures.

I. LIABILITY AND TOWN PROPERTY

In most Vermont towns, members of the public enter upon town property every day to do their business, be it to pay their property taxes, attend story hour at the library, take a knitting class at the recreation center, hike in the town forest or attend a zoning board hearing. As a result, there is constant municipal exposure to liability should the town's negligence result in a situation that poses a danger to the visiting public.

Although sovereign immunity may protect a town in many cases, it is important for a town to take steps to prevent potential liability. Most common are an array of safety and loss prevention programs to prevent dangerous situations from occurring. These efforts are made in conjunction with the purchase of comprehensive insurance coverage to protect the town financially in the unfortunate event that a dangerous situation does occur and results in an accident.

Safety and loss prevention programs help a municipality to identify and control potential risks. A typical program uses a variety of methods – including interviews with department heads, checklists, inspections and citizen complaint forms – to identify areas of potential risk before they become accidents. Careful maintenance schedules, frequent inspections, and compliance with state and federal regulations in design and operations can make town properties safer for the

citizens (and town employees) who use them. Risk control also involves minimizing the severity of a loss by careful accident reporting and follow-up with the injured party and the municipality's insurance company.

In choosing an insurance company, a town should look for a company that has expressed a willingness to represent the town's interests, shows an understanding of risk management and whose agents have experience working with local governments. The town may want to seek outside assistance in creating bid specifications for insurance coverage or for evaluating the effectiveness of the town's present coverage. For more information on coverage available through the VLCT's Property and Casualty Intermunicipal Fund, contact the League at (800) 649-7915.

CHAPTER 15
BUDGETING AND TAXES

Attention to the town budget is a major part of the selectboard's job throughout the year, and shouldn't be confined to the period when the board is drafting next year's budget. A budget is a plan of what the town expects to do in the upcoming year and how much it will cost taxpayers to do it. But, as the saying goes, "the best laid plans are the first to go awry." Property tax collections can plummet, a bad winter can wipe out the highway fund and prices for supplies can change with little notice. For these reasons, the selectboard should regularly review revenues and expenditures (most do it at least monthly) to make sure the town is staying within budgeted figures as the fiscal year progresses. Spotting a trend of deficient revenues or unexpectedly high expenditures (hopefully not both) earlier in the year rather than later gives a town more time to make adjustments to the budget.

A. PREPARING THE BUDGET

1. **Raising Revenue and Planning Expenditures.** In the fall and early winter, the selectboard's monthly budget review duties expand to include drafting next year's budget for consideration at town meeting. People tend to think of budgets as merely expenses – how much will we have to spend next year? However, before turning to expenditures, the board should give some attention to revenues. Are there ways to increase the town's income from non-tax sources?

   - *Have fees and fines been reviewed and updated to reflect the times?*
   - *Are state, federal or private grants available for certain projects?*
   - *Would the town benefit from charging user fees for some programs rather than paying for them with general tax dollars?*
   - *Are impact fees appropriate when there is new construction?*
   - *When there is money on hand, is it invested so it will earn a decent rate of interest?*

   The next step in preparing the budget is to plan expenditures. There are two aspects of that process. First is the actual coming up with figures, subtotals and totals. The second and more difficult aspect is preparing to justify those numbers when questioned by the taxpayers. (The budget really belongs to the voters. The selectboard merely prepares a *proposed* budget. Therefore, explaining and justifying the proposal to the voters is a key factor). The best way to deal with both of these tasks is to **START EARLY**. Gather factual information (old budgets, prices, estimates, etc.). Get your road commissioner, town clerk, law enforcement officers and others to work on their individual budgets early and insist on adequate documentation and justification. Talk to or meet with the school board about their budget. Then, when the total budget is developed, decision-making on justifiable expenditures, priorities and cuts will be much easier. Hard facts and adequate time to deliberate are the bases of a budget that is acceptable to the voters.

   This process can stretch from early fall, when department heads and elected officials are asked to submit their budget requests, to mid-January, when the warning for town meeting must be set. Throughout the budget writing process, the selectboard should be on the lookout for significant increases or decreases in the submitted figures and demand explanations for

them. Looking at the 'big picture' and using the budget as a policy tool, the board should also re-examine how services are offered, and not be afraid to propose changes to ensure that services are being delivered in the most efficient way. (Don't neglect to solicit proposed changes from your employees. Their "in the trenches" experiences can provide valuable ideas as you plan your budget.) Finally, citizen demand for a particular service may have increased or decreased, and the board will have to allocate resources accordingly.

As the final budget comes together, there will be some line items or special articles over which the town has very little control, such as assessments made against the town by the county or the solid waste district. The board must, however, be informed about the origin of such items since questions frequently arise at town meeting, such as "What is this for?" and "Do we have to pay that?"

On the other hand, there are ways to have some control over many line items. Shop around and gets bids whenever possible. Be aware that many suppliers with state contracts will also sell to municipalities at the state contract price. Find out if it would be more economical to contract out certain projects rather than having them done by town employees and equipment. Get information on whether it will cost more to maintain that town truck over the next two years than it will to buy a new one this year. Get low interest loans from the Municipal Equipment Loan Fund rather than from a bank. (The Fund is administered by the State Treasurer's Office, telephone 802-828-5193.) To find out about the state's surplus vehicle sale, which is held twice a year, contact the Agency of Transportation at 802-828-2657.

2. **Citizen Participation.** The role of citizens in this process varies from town to town. In some areas of the state, the formation of budget committees has become popular. These committees are not mentioned in state law and, therefore, have no independent authority or duties other than those the selectboard grants to them. Generally, the most important role for the committees is to make budget recommendations to the selectboard based on public hearings and committee members' concerns. The committees' work will, like all board-appointed committees, depend on the interests and skills of their members.

   In other towns, entities separate from the town have sprung up to act as fiscal watchdogs over the town and school budgets. Separately incorporated taxpayers' associations can be a useful resource to the board, but it must be said that they often have only one agenda – to cut expenses at all costs, with little regard to the consequences.

3. **Budget Article/Voting on the Budget.** As a selectboard member, you might think you are finished with the budget when it is all drafted and ready for the voters' perusal. However, separate monetary articles must be added to the town meeting warning if "requested by a petition signed by at least five percent of the voters ... and filed with the municipal clerk not less than 40 days before the day of the meeting." 17 V.S.A. § 2642. While petitions often raise the question of whether or not town meeting voters have the authority to vote on a particular issue, the state law clearly grants citizens the right to vote on budget matters and is worth repeating: *"A town shall vote such sums of money as it deems necessary for the interest of its inhabitants and for the prosecution and defense of the common rights..."* 17 V.S.A. § 2664. Examples of monetary articles that could come in by petition are a request for town funds for a bike path or a new fire truck.

This said, it is important to note that the Vermont Supreme Court has ruled on a citizen's right to place his or her own school budget on the warning by petition. In a case involving a school district which voted its budget by Australian ballot, the voters petitioned to add a separate article providing for an alternative budget. (The school board's article proposed a budget of $5 million and the petitioned article proposed a budget of $4 million.) The Court ruled the petition improper and said that the proposed alternative budget article did not have to be included in the warning. *Pominville et. al. v. Addison Central Supervisory Union*, 154 Vt. 299 (1990) Although this case involves school rather than town budgets, it can be interpreted to apply to towns which vote their budgets by Australian ballot, since 17 V.S.A. § 2680(c) is very similar to 16 V.S.A. § 711e, the law governing union school budget votes.

Budget articles, like all articles, must be stated as clearly and simply as possible so that voters know what the question is and what a "yes" or "no" vote will mean. Articles that ask for a single item or sum of money are usually easy and straightforward. For example:

- Will the voters authorize the purchase of a new tanker truck for the fire department for an amount not to exceed $80,000.00?
- To see if the town will vote to appropriate the sum of $1,000.00 for repair of the town hall roof?

Towns generally adopt the budget itself in one of two ways. Some ask in their budget article for the portion of the budget that must be raised from property taxes, after other revenues (state payments, fees, etc.) are factored in. Others ask for a figure that represents the total budgeted expenditures, recognizing that the amount to be raised by taxes will almost always be lower than the requested figure. Another very common practice is to vote on the town budget and the highway budget separately.

Each year towns wrestle with the question of requests for funding from various organizations. Some put each request on their warning as a separate article ("Shall the town give $200.00 to the Community Action Council or shall the town appropriate $250.00 for the Economic Development Council?") Other towns lump them all into one single article or put them as line items into the main budget, in which case those articles may be amended from the floor or may live or die with the rest of the budget on an Australian ballot vote.

When voting is from the floor, it is a good idea to present special money requests early so they can be voted on and resolved prior to the vote on the main budget. That way, the total town expenditure is evident when the main budget vote occurs. There is some variation in how towns voting from the floor vote on the final budget. One method is to amend the final budget upward to include the separate money articles previously approved. This, however, may result in double authorization to spend these funds. A preferable method is to *not* amend the final budget article upward, choosing instead to simply incorporate by reference the previously approved money articles into the final budget article.

Presenting the budget to the public in a "user friendly" way is becoming increasingly important. Remember that the budget is the board's way of telling the taxpayers how it proposes to spend their money on town business. The budget should be clear and understandable, like any other piece of communication that leaves the selectboard's office. For comparative purposes, it should show the figures for at least the previous fiscal year and for the current year. Many spreadsheet software programs have the capacity to produce graphs and charts that can make the numbers more understandable and interesting to look at.

Generally, budget items may be voted on by Australian ballot only if the town has voted to do so. 17 V.S.A. § 2680(c). An Australian ballot budget question presents voters with a simple "yes" or "no" choice, limits discussion of the budget to an informational hearing held within ten days before the vote and does not allow the budget to be amended (if the budget fails, the selectboard must warn another vote). In general, votes taken by Australian ballot have a much higher voter turnout than traditional town meeting.

(The exception to the rule noted above on budget questions and Australian ballot is for bond votes, which by statute must be taken by Australian ballot. 24 V.S.A. § 1758.)

B. SETTING THE TAX RATE

Depending on how it is voted on at town meeting, the total of all of the articles authorizing expenditure of money is the final town budget, or the final amount needed to be raised by taxes. When the final town budget is added to the school district and/or union school district's final budget, the grand total is that amount of money the town plans to spend for that fiscal year. Money to fund these proposed expenses comes from a number of sources, such as local taxes, state or federal highway and education funds, interest, fees, rental of town facilities, fines, sinking funds, enterprise funds, etc. When the total non-tax revenues is determined, that total is subtracted from the total proposed expenditures in order to arrive at the amount of money which must be raised by property taxes. (This may have been estimated already if the town voted at town meeting on an amount to be raised by taxes in lieu of a total town budget amount). For example:

Equation 1

Line A	Total anticipated expenditures	$1,596,477.00
Line B	Total anticipated non-tax revenue	823,991.00
Line C	Money to be raised through taxes.....	$772,486.00

Now set the tax rate based on the need to raise $772,486.00. (If a town votes specific amounts in lieu of a rate on a dollar of the grand list, the selectboard shall, after the grand list book has been computed and lodged in the office of the town clerk, set the tax rate necessary to raise the specific amounts voted. 17 V.S.A. § 2664.)

At present, local property taxes are the source of almost all tax dollars for municipalities. The grand list (see Section E below) is the total assessed value of the property in town. To arrive at a tax rate, divide the amount of tax revenue needed by the total grand list. For example, if the grand list is $331,594.00, then:

Equation 2

$772,486.00 ÷ $331,594.00 = $2.33. For the property owner, this calculates to $2.33 cents per $100.00 worth of assessed property value. For example, the owner of an $80,000.00 property will pay $1,864.00 in taxes.

Of course, tax rate calculation never comes out right on the exact penny value. A tax rate that is too low results in deficit spending and unhappy taxpayers who accuse their elected officials of fiscal irresponsibility. Likewise, a tax rate that is too high results in money left over and unhappy taxpayers who accuse their elected officials of over taxation. A close estimate is the best you can do or really be expected to do, but you should be prepared to justify and explain the proposed budget at the beginning of the year and the actual income and expenditures at the end of the year.

C. DUE DATE

The municipality may set the date or dates on which property tax payments are due. 32 V.S.A. § 4773. If the town sets a due date, the treasurer or tax collector "shall ... mail to each taxpayer ... a notice stating the amount of his or her grand list, the tax rate, the amount of taxes due, ... and when the same are payable." 32 V.S.A. §§ 4772, 4792. If no date is set by the voters or if the treasurer or tax collector does not mail the notice 30 days before the date set, then taxes are due 30 days from the date of mailing the notice to the taxpayer. 32 V.S.A. §§ 4772, 4792. (This eliminates the provision in Section 4792 which previously required the treasurer to "post notices in at least three public places and publish ... in the newspapers." It also grants the town the ability to, in effect, set a new tax due date 30 days from the date of mailing the tax bill. This is very helpful should the town or school budget repeatedly fail, which prevents the town from setting the tax rate and issuing tax bills in time to meet the date set by the voters.)

Municipalities may vote to collect taxes on a single date or in as many as four installments throughout the year. 32 V.S.A. §§ 4871-4872. The advantages to the town and to the taxpayer of installment payments are that cash flow is smoother and tax money is payable in smaller amounts at intervals rather than in one lump sum. The disadvantages are that the treasurer or tax collector has more bookkeeping and taxpayers have more deadlines to meet (or miss). In towns where the annual settlement with the auditors is on the first day of January (i.e. the town is on a calendar year and not a fiscal year) the final tax installment must be due on or before December 31.

When taxes are due in installments, the town may vote to charge interest on overdue payments. Interest may be "at a rate not to exceed one percent per month or fraction thereof for the first three months and thereafter one and one-half percent per month or fraction thereof, either from the due date of the last installment or from the due date of each installment." 32 V.S.A. § 4873. In addition to setting the interest rate, the town must decide whether to start charging interest as soon as *any* payment is overdue or to start charging interest only when the final payment for that year is overdue. A vote to charge interest remains in effect until rescinded by the voters at a properly warned meeting.

In order to encourage pre-payment of taxes, the town may vote a discount not to exceed four percent. 32 V.S.A. § 4773. This discount must be voted at the same meeting at which the tax is raised. Thus, when the town votes a budget or authorizes an expenditure at a meeting, it can, at that same meeting, vote to provide for the discount. Taxes may be prepaid "at any time after the municipality has so voted" and one or more installments may be paid in advance. 32 V.S.A. §§ 4774, 4872.

For a discussion of delinquent taxes, see Section K of this chapter.

D. RETIRING A DEFICIT

A deficit occurs when a town or school district has exceeded its budget – when it has simply spent more money than it had available. Vermont law requires that these deficits be resolved in a timely manner – at the latest by the issuance of the next annual tax bill.

There are several ways to retire a deficit. The method your town chooses will depend on a number of factors, including the amount of the deficit, the timing of its discovery and the overall

financial health of the town. First, the board may opt to convert the deficit to debt by issuing municipal bonds for an amount equaling the deficit. 24 V.S.A. § 1771. This bond acts by creating a replacement debt which will be paid off over a period of years. Second, the voters may vote a deficit liquidation tax to generate adequate funds. 24 V.S.A. § 1523. This tax most frequently shows up as a "deficit payment" line item in next year's budget. Third, if neither of those options has been taken, the selectboard "when making up the next annual tax bill, shall add thereto a tax ... as will provide sufficient revenue to liquidate such deficit." 24 V.S.A. § 1523. This appears as a mandatory deficit liquidation surcharge attached to the next year's tax rate.

E. THE GRAND LIST

The grand list is prepared by the listers and is a total of the assessed value "of all taxable real and personal estate taxable within the town...." 32 V.S.A. § 4151. Properties which are exempt from taxes are discussed in 32 V.S.A. Chapter 125 and include property owned by the state, disabled veterans and charitable organizations.

Questions frequently arise as to whether a particular property is tax exempt under the exemptions granted by 32 V.S.A. § 3802 to charitable, non-profit, educational or religious properties. There are many annotations under Section 3802, reflecting the number of cases that have progressed all the way to the Vermont Supreme Court. Since those cases are a tiny percentage of the actual controversies which arise and are settled at a lower level, this large number gives some idea as to the amount of confusion, controversy and high emotion which has arisen over the years on this subject. To further complicate the matter, 32 V.S.A. § 3832 lists a number of exceptions to the exemptions granted to "public, pious or charitable" uses. Again, there are numerous annotations that should be read for guidance on how to interpret Section 3832.

In addition to the general exemption statutes, many specific statutes deal with properties used for mining 32 V.S.A. § 3834, airports, farming, hotels, etc. A look in the index or just a perusal of Chapter 125 in Title 32 may be necessary in order to evaluate a particular situation in town. In some cases, exemptions are available only after the town has voted at town meeting to grant the exemption or to refuse it. Often these exemptions expire in a certain number of years, and must be voted on again by town meeting to continue in place.

The grand list can also be affected by municipal tax stabilization programs for farm and forest lands, open space land, industrial or commercial real and personal property and alternate-energy generating plants. 24 V.S.A. § 2741. Stabilization can be achieved by fixing the value of the property in the grand list, the rate of tax or the tax amount itself. Voters may delegate the authority to enter into the agreements wholly or partially to their legislative body or can retain the authority themselves. For more information about tax stabilization programs or for sample programs and agreements, contact the VLCT Municipal Assistance Center at (800) 649-7915.

Consolidated water and sewer district exemptions are covered in 24 V.S.A. §§ 3352 and 3683.

For more information about exempt and semi-exempt types of property, consult the *Vermont Listers Handbook*, available from the Vermont Department of Taxes, Division of Property Valuation and Review (802-828-5860).

The grand list must be completed and lodged with the town clerk by June 25 (subject to the extensions of time granted by 32 V.S.A. § 4341). Per 32 V.S.A. § 4152, the list must contain, in alphabetical order, the names of real and taxable personal property owners, their last known

mailing address, a brief description of taxable real estate parcels, the listed valuation of each owner's personal estate taxable in the town and a description of any mobile homes. How the valuation of real property is listed depends on whether or not it is subject to any one of a number of complicated property tax relief or exemption programs, the most notable of which is the state's Current Use Program for owners of farm and forest lands. See 32 V.S.A. § 4152 for more guidance on how the value of real property should appear on your grand list.

The statutes set out a schedule for the listers and board of civil authority to follow as they draw up the grand list, hold grievance hearings and consider appeals. As noted above, extensions of the dates that make up this calendar are set out in 32 V.S.A. §§ 4341 and 4342. The state Division of Property Valuation and Review's *Vermont Listers Handbook* mentioned above is a useful resource if you need more information about the development of the grand list in your town.

F. GRAND LIST CORRECTIONS

The general statutes concerning the correction of the grand list are in 32 V.S.A. Chapter 129, Subchapter 6. Omissions from the list made by mistake may be corrected by the listers, with the approval of the selectboard, any time prior to December 31. 32 V.S.A. § 4261. Procedural errors made by the listers may be corrected as prescribed in 32 V.S.A. §§ 4261-4265.

Property tax on construction equipment (as defined in 32 V.S.A. § 3603) is given special attention in 32 V.S.A. § 4151(d). If the listers become aware of such construction equipment in town after the grand list has been completed, they may correct the grand list by giving notice to the taxpayer and the town treasurer. If there is no timely appeal by the taxpayer, the treasurer shall then send an amended tax statement.

G. TAX ABATEMENT

Tax abatement is the decision by the town to reduce "in whole or in part taxes, interest and collection fees." 24 V.S.A. § 1535. Note that this is different from tax appeals (which are addressed in the following sections and in 32 V.S.A. Chapter 131) in that taxpayers come to the board of abatement not with a complaint about the assessment of their property but with a request to the town to reduce or eliminate their tax obligation.

Vermont statutes allow abatement when the taxpayer has died insolvent, has left the state or is unable to pay. Abatement may also be granted when there was "manifest error or a mistake" by the listers or where property has been lost or destroyed. 24 V.S.A. § 1535. In towns, the board of abatement consists of the board of civil authority, listers and town treasurer. 24 V.S.A. § 1533. In cities, it is made up of the mayor, city clerk, alderpersons, justices of the peace and assessors. 24 V.S.A. § 1537. In villages, it consists of the trustees, clerk, justices of the peace and listers. 24 V.S.A. § 1537.

Interestingly, the abatement statute does not state exactly how far back an applicant for tax abatement may go for relief. This is a decision to be made at the discretion of the board of abatement, and will depend upon the circumstances of the particular request. For instance, in the case of a person seeking abatement due to his or her inability to pay, the board should look for evidence of the event that triggered the new circumstances that could then give it a date from which to abate. In another case, an applicant might cite an error made years ago by the listers and

ask for an abatement of all subsequent overcharges. In such situations, it is best to be consistent, objective and fair when making decisions. A court will most likely uphold a decision based on facts and made in good faith.

Remember that abatement is not meant to replace the grievance process for property owners who are dissatisfied with the value placed on their property by the listers. (See Sections I, "Grievances," and J, "Tax Appeal Process," below.) Finally, municipalities that have charters should consult them to see if they contain any special provisions regarding abatement.

The quorum requirements for the number of abatement board members needed to take binding action are defined for towns in 24 V.S.A. § 1533. Meetings of the board must "be notified like meetings of the board of civil authority, except that at least one of the listers shall have personal notice...." 24 V.S.A. § 1534. (See 32 V.S.A. § 4404(b) for board of civil authority notice requirements.) Records of abatements must be made and filed with the tax collector and town treasurer. 24 V.S.A. § 1536.

H. BOARD OF CIVIL AUTHORITY

The board of civil authority is a municipal body charged with various duties related to elections and with hearing tax appeals. For tax appeal purposes and unless otherwise defined by charter, the town board of civil authority consists of the selectboard, town clerk and justices of the peace. The make-up of a city and village board is slightly different. 24 V.S.A. § 801. Section 801 also sets out a less stringent quorum requirement for the board of civil authority than is required for most town boards and commissions. It states "The act of a majority of the board *present* at a meeting shall be treated as the act of the board..." when hearing tax appeals (emphasis added). For information on the board's election-related functions, see 17 V.S.A. § 2103(5).

I. GRIEVANCES

Taxpayers who are unhappy with the town's appraisal of their property have a lengthy appeal process available to them. The first step is that listers "shall hear persons aggrieved by their appraisals or by any of their acts...." 32 V.S.A. § 4221. Grievances must be filed in writing and hearings must be completed by June 2. (See 32 V.S.A. § 4341-4342 for extensions of time.) At the time of hearing, the taxpayer may decline to appear at all, may appear personally or may be represented by an attorney or agent. Evidence may be oral testimony or by pertinent documents. The listers must then make a decision and notify the taxpayer of actions taken. 32 V.S.A. §§ 4222, 4223.

J. TAX APPEAL PROCESS

Taxpayers aggrieved by the final decision of the listers may appeal that decision to the board of civil authority within 14 days. 32 V.S.A. § 4404(a). Notice of such appeal may be given to the town clerk who shall then call a meeting of the board. Notice of the meeting shall be made by public notice in three or more places in town as well as by mail to each board member, the town agent, the chair of the board of listers and each appellant. 32 V.S.A. § 4404(b).

The basis for appeal to the board of civil authority is that the taxpayer disagrees with the appraisal value arrived at by the listers. The appraisal value for each property must be fair when considered with other comparable properties in town. The board must first find comparable

properties (in town if possible) for which a fair market value can be established. Then it must determine whether the property under appeal is being appraised and taxed fairly vis-à-vis the comparables. For example, if properties A and B each have a fair market value of $100,000 but property A is being taxed on an appraised value of $100,000 and property B is being taxed at an $80,000 value, such inequity is unfair and cannot be allowed.

The board must hold a meeting to hear testimony from the appellant property owners and the listers. A committee of not fewer than three members of the board then must inspect each property and report its findings to the full board which then gives a written decision with the reasons for the decision. The appellant must allow the inspection committee to inspect the property "including the interior and exterior of any structure on the property [or] the appeal shall be deemed withdrawn." 32 V.S.A. § 4404(c).

It is imperative that the board "substantially comply with the requirements of" 32 V.S.A. § 4404(c). If it does not, there are two possible outcomes, either one of which benefits the taxpayer.

If a taxpayer grieves his 2006 appraisal which is higher than 2005's because his property was reappraised, and if he can show that the board has not followed the mandates in Section 4404(c), his *grand list* (appraisal value) for 2006 will remain at the 2005 level and his taxes will be based on that value.

If a taxpayer grieves her 2006 appraisal which is higher than 2005's because there was a town-wide reappraisal and if she can show that the board has not followed the procedures in Section 4404(c), her *tax liability* for 2006 will be the same as it was for 2005.

Either way, the town loses some tax revenue, even if only for the one-year period. Notice that this is the result of 2006 changes to the statute and that it is retroactive to any grand list prepared on or after April 1, 1991.

The phrase "substantially comply with the requirements" of Section 4404(c) means that if the board of civil authority mishandles the appeal, the property owner wins the appeal. Keep in mind that the hearing before the board is a quasi-judicial one which must be properly conducted. (See Chapter 2, Section F(1)(h) of this handbook.)

The decision of the board is also subject to appeal by the taxpayer or the selectboard. 32 V.S.A. § 4461. Within 30 days of the mailing of the board of civil authority's decision, any one of these three parties may appeal to either the director of Property Valuation and Review or the Superior Court.

For more information on the tax appeal process, see *A Handbook on Property Tax Appeals,* published by the Vermont Secretary of State and the Division of Property Valuation and Review (2001), and available at: http://www.sec.state.vt.us/municipal/pubs/tax_jan_01.pdf.

K. DELINQUENT TAXES

Property taxes become delinquent as soon as the taxpayer fails to pay them on the final due date. Where taxes are due in installments, there is no actual delinquency until after the last installment's due date. However, the town may vote to charge interest on the late payment of any single installment. For example, if taxes are due August 15 and November 15 and the taxpayer

does not pay his or her August installment until October 15, the town may (if it has so voted) charge interest for that two-month period.

When taxes become delinquent, the treasurer then issues a warrant against the delinquent taxpayer to the collector of delinquent taxes. 32 V.S.A. §§ 4793, 4874. Note that when the delinquent tax warrants have been delivered to the collector of delinquent taxes, the town treasurer can no longer accept payment directly from the taxpayer. All payments must go first to the collector of delinquent taxes. *Rooney Vermont Associates v. Town of Pownal*, 140 Vt. 150 (1981). Collectors of delinquent taxes are entitled to an eight percent commission for collection of taxes, unless that amount has been changed by the voters, 32 V.S.A. § 1674, or unless the town has instead voted to pay him or her a salary, 24 V.S.A. § 1530. In this case, the eight percent will be deposited into the town's general fund.

For a more detailed treatment of this topic see the VLCT Municipal Assistance Center's *Handbook for Collectors of Delinquent Taxes*.

L. TAX SALES

There are several methods for forcing collection of overdue taxes: foreclosure, 32 V.S.A. § 5061, distraint, 32 V.S.A. § 5075, action at law, 32 V.S.A. § 5221, and tax sale, 32 V.S.A. § 5252. The most commonly used method is the tax sale.

Under 32 V.S.A. § 5252, the collector of delinquent taxes may extend a warrant on the property and proceed with tax sale preparations. Such preparation includes filing with the town clerk, advertising in a local newspaper, notifying the delinquent taxpayer (by registered mail), notifying any mortgage or lien holders of record or their agents or attorneys, and providing public notice within the town.

A 1996 change to the law allows the delinquent taxpayer to ask the town to sell a portion of his or her property equal in value to the amount of taxes due. 32 V.S.A. § 5254. However, if this is not possible – due to zoning regulations, for instance – it is the responsibility of the town to see that any excess money collected through the tax sale is ultimately returned to the taxpayer. For example, if Owner A owes $1,000 in back taxes and his property is sold at tax sale for $5,000, the town must pay the extra $4,000 (minus costs allowed under 32 V.S.A. § 5258) to Owner A.

A municipality *may* purchase property that is offered at tax sale. 32 V.S.A. § 5259. Note that this must be by act of the mayor or selectboard. Each property should be treated separately and consideration must be given to whether the property is a desirable one to purchase or is one that has attached liabilities such as harboring toxic wastes or other hazards. Purchase of the latter by the town is generally poorly advised and extremely expensive in the long run.

When property has been sold at tax sale, the delinquent taxpayer has one year in which to redeem the property by paying the town the amount for which the property was sold plus one percent interest per month. 32 V.S.A. § 5260. If the property is redeemed, the redemption money is paid to the party that purchased the land at tax sale and the original owner/delinquent taxpayer retains his or her original interest in the property. For more information on tax sales, see the above-mentioned *Handbook for Collectors of Delinquent Taxes.*

M. INVENTORY TAX AND BUSINESS PERSONAL PROPERTY TAX

Towns may vote to exempt inventory or business personal property from local taxation. 32 V.S.A. §§ 3848, 3849. If the town does not vote to exempt inventory, then it will be added to the grand list and taxed as outlined in 32 V.S.A. Chapter 129. Likewise, without a town vote to exempt, business personal property may be taxed under 32 V.S.A. § 3618.

"Inventory" is defined in 9A V.S.A. § 9-102(48). It includes such things as cars on a dealer's lot waiting to be sold or leased, the items for sale in your local grocery store or pharmacy, or materials that will be used up in the production of some end product.

The term "business personal property," defined in 32 V.S.A. § 3618(c)(1) means any tangible, depreciable, non-real estate property used in a commercial enterprise, such as books, furniture, tools, and machines. It does not include inventory, or items "so affixed to real property as to have become part thereof ...," or "poles, lines and fixtures which are taxable under Sections 3620 and 3659 [of Title 32]."

N. COUNTY TAXES

The assistant judges of each county are charged with the responsibilities of caring for county property and setting a county budget each year. 24 V.S.A. §§ 131, 133. Items which shall or may be included in the budget are listed in 24 V.S.A. § 133(e).

Notice of the final budget and the amount assessed to each town is not due until "on or before March 1." Therefore, the amount of county tax that must be allowed for in the proposed town budget must be a best estimate until almost Town Meeting Day. The county tax is due "on or before July 5." This tax is the source of some frustration to selectboards and local taxpayers because the town has no say in its formulation and cannot vote to not pay it. While the assistant judges are required each year to hold a hearing on the proposed budget, the input they receive has been determined by the courts to be non-binding.

The total county budget is divided up among the municipalities within the county on the basis of the "equalized grand list of such county." 24 V.S.A. § 133(f). The "whole amount [assessed] shall not exceed in one year five cents on a dollar of the equalized grand list of each county." 24 V.S.A. § 133(d).

O. SCHOOL DISTRICTS

The town collects taxes for itself and for the town school district. Within 20 days of the date on which the school's portion of taxes is collected, the treasurer must deposit the amount actually collected into the school's account, unless the selectboard and school board have agreed in writing to some other arrangement. However, if notification of the amount to be transferred to the school district by the commissioner of taxes has not been received within 20 days of the date taxes are due and payable, the transfer must be effected within 20 days of notification by the commissioner. 16 V.S.A. § 426(a).

This leaves any delinquent school taxes still to be dealt with. Sometime within 120 days after the taxes became delinquent (and no later than the end of the school year), the treasurer must pay to the school district "the balance of the sum of the gross school tax levy...." 16 V.S.A. § 426(b). This means that if the total school taxes are $100,000 and, even after collecting delinquent taxes,

only $95,000 has been collected, the town treasurer still must transfer that extra $5,000 to make up "the balance of the sum."

Such a law may strike the selectboard as rather draconian, as it searches for a way to fill the $5,000 hole in the town's funds. However, the law seems quite clear and unforgiving.

In the case of union school districts, the town also collects the school taxes and, unless otherwise agreed, must pay them to the union district as specified in 16 V.S.A. § 711b. Amounts derived from taxes must be paid within 20 days of the day they were due. Amounts derived from state aid must be passed on within 20 days of the day each installment was received by the town. 16 V.S.A. § 711b. Overdue payments are subject to penalties and interest as set out in 16 V.S.A. 711b(d).

CHAPTER 16
FINANCES

A. SIGNING ORDERS

The selectboard has the authority to draw or issue orders that instruct the treasurer to pay the town's bills. The treasurer has no independent authority to disburse money without a signed order. 24 V.S.A. §§ 1621, 1576. As with any other action or decision, the selectpersons must act as a board. This means that no single member may authorize payment and that the board (or a quorum of the board) must meet and concur on a decision to draw the order. 1 V.S.A. § 172. In some towns, it is common practice for selectboard members to stop at the town office individually and each sign an order without discussion or with other members. This is not proper, since there has been no concurrence of a majority of the board.

If meeting to consider and vote on all orders proves too onerous for a selectboard, there is an exception to the general rule discussed above. The selectboard may instead authorize one or more members of the board to allow claims and to draw orders. Note that this is an act of the board – the delegation of authority to a member or members. 24 V.S.A. § 1623. This authority to delegate is useful in towns where the board meets infrequently and there is a need to pay certain bills (such as paychecks) in between regular meetings. It is also useful in the case of a one-time purchase or contract that has been approved by the entire board, but certain paperwork needs to be done outside of the meeting. This authority should be used sparingly and the orders "shall state definitely the purpose for which they are drawn." Notice to the treasurer that an individual board member has been authorized to sign for the board must be in the form of a certified copy of those relevant portions of the selectboard minutes where the authority was granted.

The authority to sign orders for town obligations vests broad power in the selectboard. Whereas other officials may have the authority to perform certain acts, if it is going to cost money, in most cases they have to convince the selectboard to pay for those acts. Some common examples are when the zoning administrator needs money to enforce a zoning violation, or when the listers hire assistance to help defend an appraisal.

B. RESERVE FUNDS AND SINKING FUNDS

A reserve fund is one which is established by the voters for a special purpose and which may be carried over from year to year. For example, the town would like to make improvements to the recreation field which will cost about $30,000. There is a comprehensive plan for the improvements, which will have to be done incrementally over several years. The voters may appropriate the entire amount now for that specific purpose. That money must be put into a special, dedicated account, which will be administered by the selectboard solely for the recreation field.

A second example is the commonly used "equipment fund," by which voters approve money to be put aside for big ticket items such as dump trucks or graders. The money set aside each year can be invested and accumulate so that the eventual purchase of a $150,000 item can be accomplished without borrowing and paying interest on the whole amount.

The board should act in a fiscally responsible manner and assure that all money is invested wisely until such time as it is actually needed. The voters, not the selectboard, have the authority

to spend money from the reserve fund for purposes other than the original purpose if they so vote at an annual or special meeting. 24 V.S.A. § 2804.

A sinking fund differs from a reserve fund in that it is money appropriated strictly for the retirement of a bond or other debt. 24 V.S.A. § 1777. In other words, the money is allocated for money already spent. Money in a sinking fund must be used for the intended purpose and may not be used for current operating expenses..

C. CAPITAL BUDGETING

A capital budget is a planning tool. It may be developed by the selectboard alone or with help from the planning commission.

- The legislative body may adopt, amend or repeal a capital budget after notice and public hearing, if a town plan is in place. 24 V.S.A. § 4443.
- A planning commission may prepare and present a recommended annual capital budget for action by the legislative body. 24 V.S.A. § 4430.

A *capital budget* is a list of capital projects for the year, along with their estimated costs and proposed method of financing. A *capital program* is the same information projected over a five-year period. A *capital project* may include physical improvements (or the machinery, apparatus or equipment needed to make physical improvements), preliminary studies and surveys, land rights or any combination of the above. 24 V.S.A. § 4430. For example, to build a water treatment plant, a town might need to conduct surveys and soil tests, purchase land, do blasting and excavation, install a temporary drainage system during construction, and purchase and install tanks, filters and pumps. Each of those things and all of them in combination would be necessary components of the capital project.

The capital budget or program must be prioritized and specify:

- the project and estimated cost;
- the proposed method of financing;
- anticipated state or federal funding;
- impact fees, if any;
- proposed amount and type of bonding and the period of probable usefulness; and
- the estimated effect upon operating expenses of the town. 24 V.S.A. § 4430.

There are several reasons to develop a capital budget and plan. First, it forces the board to set priorities and to plan ahead. This can help to smooth out those bumps in the budget where two or more major expenses occur in a single year, causing a sudden rise in the tax rate. Planning ahead, in the form of timing these expenses for different years or setting up a reserve fund in anticipation of certain expenses, will eliminate some of those bumps. Second, a capital budget adopted under 24 V.S.A. Chapter 117 must be in place in order to levy impact fees on development within the town. 24 V.S.A. § 5203(a)(1). For more information on impact fees, see Section F in this chapter.

D. PUBLIC FUNDS AND PUBLIC MONEY

1. **Trustees of Public Funds.** Trustees of public funds must be elected from among the legal voters at the annual meeting if the town so directs. 17 V.S.A. § 2646(12). The duty of the three trustees is to manage real or personal property held by the town in trust for any purpose. 24 V.S.A. § 2431. This includes trust funds to be used, for example, for charitable, educational and cemetery purposes but excludes "United States public money." (See **Trustees of Public Money** below.) There is some overlap of responsibility for cemetery funds among trustees, cemetery commissioners and town treasurers. It appears that if trustees of public funds are elected, they have primary responsibility for the investment of funds and for the annual reporting on them.

   The trustees have the duty and authority to manage public funds, including the authority to:

- apply the income to its designated purpose;
- create deeds and contracts;
- lease, sell or convey real estate and invest the proceeds;
- lend money and hold deeds and mortgages;
- invest in certain bonds and shares; and
- hold, purchase, sell, assign, transfer and dispose of securities and investments and the proceeds of investments. 18 V.S.A. § 5384(b); 24 V.S.A. § 2432.

   In some investments the trustees are subject to certain federal and state banking and insurance guidelines.

   Each year, the trustees must report to the town or, in the case of school money, to the state board of education the results of their handling of investments and the use of the income from public funds. 24 V.S.A. § 2434. Trustees must be bonded to the satisfaction of the selectboard. Finally, they may prosecute and defend in legal actions involving public funds. 24 V.S.A. § 2433.

2. **Trustees of Public Money.** Towns which "retain possession of a portion of the surplus funds of the United States received under the Act of 1836" must elect a trustee of public money. 17 V.S.A. § 2646(13). This trustee is not the same as the trustee of public funds discussed above.

   In 1836, Congress passed a statute that deposited most of the excess money left in the U.S. Treasury with the states. The law reserved $5 million for the U.S. and divided the rest of the funds among the states in proportion to their representation in Congress. *U.S. Statutes at Large*, 5:55, June 23, 1836. To accept the money, the states had to pledge to keep the money safe and to repay it "from time to time, whenever the same shall be required ... for the purpose of defraying any wants of the public treasury, beyond the amount of the five millions aforesaid…." *Id.*

   States were free to refuse these surplus funds, but it appears that Vermont accepted, because the State Legislature provided for distribution of these public moneys to towns that had appointed or elected trustees to manage the money. Trustees were charged with reporting to the town at the annual meeting.

Whether any towns still have any of this federal surplus money is questionable. However, it is certainly historically interesting, if not absolutely fascinating, that the U.S. government actually had surplus funds in 1836-37 and that it felt it could distribute them to the states, keeping only a $5 million buffer against future expenses. If there is still surplus money out there, keep in mind that the U.S. Secretary of the Treasury probably still has the authority to call for it in amounts not to exceed $10,000 from any one state, in any one month.

E. REVENUE SOURCES

Until the passage of Act 60 (the Equal Education Opportunity Act) in 1997, towns appraised properties, passed their budgets, set the tax rate and collected taxes on real and personal property sufficient to pay most town and school expenses. With the passage of Act 60, the property tax system became somewhat fragmented, especially with regard to school taxes. The state now collects and administers some property taxes which are then redistributed to school districts in a manner designed to equalize school property tax rates and to provide more equal financing for the various school districts. Nevertheless, the local property tax remains the backbone of municipal finances. (See Chapter 15 for more detail on budgets and taxes.)

Some municipal charters provide authority to impose local option taxes. In addition, 24 V.S.A. § 138 gives authority for certain municipalities to impose local option taxes. These taxes may be imposed on rooms, meals, alcohol and telecommunications.

In addition to taxes, municipalities may realize revenues from such sources as:

- fines and penalties collected from ordinance violations, traffic and parking tickets, and zoning violations;
- impact fees on new development;
- special assessments for such things as water and sewer expansion;
- application and permit fees for planning, zoning, or on-site septic;
- user fees or rental income for use of recreational facilities or meeting rooms;
- utility fees for water, sewer, electricity;
- fees for filing and recording in the town records; and
- interest on investments and trust funds.

Municipal cemeteries may have trust funds that generate money. They will also have some income from the sale of burial lots. Trust fund income must usually be used solely for the purpose designated by the trust. The exact terms of each trust should be consulted. There may be other gifts or bequests that occur incidentally or from which ongoing income may by derived.

By statute, a certain percentage of the income from property tax transfers is to be returned to the towns for planning purposes. 24 V.S.A. § 4306(a).

Borrowing is a source of capital for special projects. See Chapter 17 for more detail on bonding generally.

In disaster situations such as flooding, federal and state emergency funds may be available. Contact the Federal Emergency Management Agency at (617) 956-7506, or Vermont Emergency Management at (802) 244-8721.

The state Agency of Transportation (VTrans) provides financial assistance to towns on a per-mile basis of highway. It also provides grants for paving, bridges and culverts, and pavement markings (yellow lines) on some town highways upon request. Note that money from VTrans is available only if the town complies with the requirements of 19 V.S.A. Chapter 3.

Several revolving loan funds are available to help municipalities with water quality and solid waste control projects. They are:

- pollution control revolving fund for sewage systems and sewage disposal plants;
- drinking water state revolving fund for planning, designing, constructing, repairing or improving water systems;
- solid waste revolving fund for planning and constructing solid waste handling and disposal systems;
- drinking water planning fund for loans to municipalities with populations of less than 10,000 for feasibility studies and preliminary plans and designs for public water systems; and
- drinking water source protection fund to help municipalities purchase land or easements to protect water sources. 24 V.S.A. Chapter 120.

From time to time there are other revolving loan funds and grants from various agencies to help with specific projects.

F. IMPACT FEES

An impact fee is a special fee imposed as a condition for issuance of a zoning or subdivision permit to cover a portion of the cost of a capital project which will benefit or is attributable to the applicant or to compensate the municipality for construction expenses. For example, when a subdivision permit is issued and the new subdivision will necessitate an extension of water and sewer services, some of the cost of that extension may be imposed as an impact fee, to be paid by the applicant.

Municipalities may impose impact fees in accordance with 24 V.S.A. Chapter 131. Such an impact fee may be levied if the municipality has:

- an approved town plan;
- a capital budget and program pursuant to 24 V.S.A. Chapter 117; and
- developed a reasonable formula to assess impact fees. 24 V.S.A. § 5203.

There are a number of factors provided in the statute for calculating the amount of the impact fee to be imposed.

The municipality must spend the impact fee on the capital project for which it was intended within six years of payment. If it does not, the payer of the fee is entitled to a refund. 24 V.S.A. § 5203(e).

A municipality must establish a formula for calculating the impact fee and a procedure for levying it by ordinance adopted under 24 V.S.A. Chapter 59 or by bylaw under 24 V.S.A. Chapter 117.

In lieu of an impact fee, the municipality may accept off-site mitigation. Either condition may be required before issuance of the permit. 24 V.S.A. § 5204. Certain types of development may be

exempted from impact fees, if the exemption will accomplish other policies or objectives of the municipality. 24 V.S.A. § 5205.

G. CALENDAR YEAR VERSUS FISCAL YEAR BUDGETING

1. The Pros and Cons of a Fiscal versus Calendar Year. Vermont law mandates that school districts operate on a fiscal year of July 1 through June 30, but allows municipalities to operate on a calendar or fiscal year. 24 V.S.A. § 1683. According to VLCT's most recent data, between one third and one half of Vermont municipalities have moved to a July 1 to June 30 fiscal year. Following are some of the advantages and disadvantages of making the switch.

Reasons to maintain the status quo of a calendar year:

1. Inertia, or, "this is the way we have always done it."
2. The transition period will require more work.
3. Depending on how the transition is made, there could be a nine-month gap between the end of the fiscal year and the next town meeting. This may make officials seem less accountable and will make it difficult for voters to discuss expenditures made as long as 21 months before the meeting and plan expenditures up to 16 months in the future.
4. It will complicate payroll records and income tax reporting that are required to be done by calendar year.

Reasons to switch to a fiscal year:

1. The school and town will be on the same time schedule so the budgets will be concurrent.
2. The voters get to approve the budget in March for the tax year that starts in July. Therefore, no operating expenses are incurred before budget approval. This is in contrast to the calendar year basis where the town operates from January 1 until town meeting with no budget in place.
3. Tax collection may start soon after the beginning of the fiscal year, thus eliminating the need to borrow money for operating expenses.
4. Auditors will have more time to do their job as they can audit the books in July and August and prepare the town report by December or January.
5. Winter highway maintenance costs are in a single year budget cycle.
6. The town's fiscal year will coincide with the state's fiscal year for highway and other funding, such as Act 60.
7. There is room to schedule the annual budget vote for May or June by which time the grand list will have been completed and the Legislature will have adjourned (probably) so that more information will be available about state funding and statutory changes.
8. If surrounding municipalities are on a fiscal year, intermunicipal agreements with them would be easier.

2. **How to Change.** State statute governs the way (Australian ballot or not) your municipality votes on the question of changing its fiscal year. If your town votes to decide this particular question by Australian ballot or if it has already voted to decide all public questions by that method, then the vote must be by Australian ballot.

   Although there is no specific statute, it is reasonable to conclude from similar voting situations that the town must vote on whether or not to switch over to a fiscal year at one meeting and then vote on the actual budget at a subsequent meeting.

   While towns making the move to a fiscal year can adopt a transitional six-month budget for the period January 1 to June 30, experience has shown that the adoption of a single, transitional 18-month budget is probably the more expeditious way to make the change. While this method may appear difficult because 18 months of tax money is lumped into one budget, spreading the payments out into quarterly payments will make the actual paying of taxes less painful.

   If you have questions about changing your municipality's fiscal year, please contact the VLCT Municipal Assistance Center. The Center can assist you with your questions and put you in contact with other municipalities that have recently changed, so that you may hear first hand about the process.

H. HIGHWAY FUNDS

The selectboard has broad authority to spend money for highways and highway equipment. This authority derives from 19 V.S.A. § 304, which mandates certain duties and responsibilities regarding care of highways, and from 19 V.S.A. § 310, which sets the standard for highway maintenance. Funds appropriated by the town for highways *may not be used for other purposes.* 19 V.S.A. § 312.

A common problem is an unforeseen need to buy an expensive piece of highway equipment when no money has been appropriated for that purpose. There are several ways to handle this. One solution is to call a special meeting and ask the voters to authorize a short- or long-term loan to fund the purchase. Another is to enter into a lease-purchase agreement. Typically such agreements run for three or four years. This necessitates a vote each year of the agreement to authorize that amount of money needed to pay that year's installment. Finally, the board has the authority, under its broad mandate to maintain highways, to purchase the item and make up the deficit by asking the voters to approve a special tax or by levying a tax on the next year's grand list to "provide sufficient revenue to liquidate such deficit." 24 V.S.A. § 1523.

I. GRANTS, GIFTS AND BEQUESTS

Each grant, gift or bequest is different and must be read carefully so that all of the conditions and requirements are understood and the town is sure that it can meet them. Grants are frequently available from state and federal government sources for highways, historic preservation and planning. These grants can come with extensive recordkeeping, audit and other reporting requirements that may make them ultimately unworkable for a town.

For conservation purposes, municipalities "may acquire ... real property or any right and interest therein by purchase with any authorized funds, or by donation, devise, exchange or transfer…" under 10 V.S.A. Chapter 155. Property interests may also be acquired by the state under this

chapter. In either case, there may be property tax implications in the form of tax exemption or payments in lieu of taxes (PILOT).

Grants, gifts and bequests may be available from private or charitable sources from time to time. Again, these must be evaluated individually to be sure that the municipality can comply with any conditions inherent in them. There may be constitutional issues, state statutes or long-term financial considerations that must be weighed before accepting grants, gifts or bequests. There may also be political repercussions, especially where property is acquired by gift or bequest, but over the long term there will be loss of tax income or a cost to the town to maintain the property through tax dollars. In some situations, it would be wise for the selectboard to have an advisory or a binding public vote before accepting an apparent "freebie."

See also Chapter 18, Community Development, for contact information on the federal/state Community Development Block Grant Program.

J. PURCHASING POLICIES AND PURCHASE ORDERS

1. **Purchasing Policy.** There is no requirement that towns purchase through a bid process. This is in contrast to state government and school districts, which are required to follow a bid process. The selectboard may adopt a purchasing policy. In a large municipality, such a policy is advisable because of the complexity of government and the need for a standard procedure. In a small municipality, such a policy is advisable because of the need to provide a fair and consistent system in cases where local suppliers or contractors are also municipal officers or are related to municipal officers. The temptation to automatically award municipal contracts to yourself or to a relative may lead to real or perceived conflicts of interest and favoritism. A clearly stated policy and procedure for purchasing goods or services will help to prevent such conflicts.

   Factors that should be addressed in a purchasing policy include:

   - conflict of interest;
   - how to advertise or notice requests for bid or proposals (posting, publishing);
   - what is exempt from bid system (e.g. legal services, insurance, or purchases less than a certain dollar amount);
   - when can the board waive the bid process (e.g. emergencies, sole supplier available);
   - what, if any, preference for local suppliers;
   - what, if any, preference based on prior experience with the bidder;
   - clear specifications for the service or product to be bid;
   - provision of insurance or performance bond required;
   - provision of warranty required;
   - gifts, rebates and gratuities for town employees and officers are not allowed;
   - regular, recurring purchases and charge accounts; and
   - bidding procedure with time and place parameters.

   The VLCT Municipal Assistance Center has a number of sample purchasing policies on file and will supply copies on request. See the Appendices for a model purchasing and bidding policy.

2. **Purchase Order System.** Some Vermont municipalities use an "encumbrance" or purchase order system in conjunction with their normal purchasing and accounting procedures. Most of the financial management software applications that are specifically designed for municipalities will offer a purchase order feature. Purchase orders can be extremely useful for elected officials and municipal administrators for many reasons, such as:

   - the purchase order represents a financial obligation on behalf of the community;
   - a purchase order may be required by some vendors;
   - use of a purchase order assures that purchases have been reviewed and approved by appropriate authorities before a financial obligation is made;
   - purchase orders, used with an encumbrance system, will enable municipal officials to determine the current status of budgeted expenditures, even before invoices are actually received or paid for outstanding purchases. Accounting reports can be set up to display (1) total budget, (2) total expenditures to date, (3) total encumbered (orders made but goods or invoice not received), and (4) remaining unencumbered balance; and
   - purchase orders confirm, in a written format, the cost, quantity, specifications and delivery location for goods and services.

   Purchase orders can be a useful tool to help officials maintain a good handle on planned and actual expenditures as they relate to the authorized municipal budget.

K. INVESTMENTS

"Moneys received by the town treasurer on behalf of the town may be invested and reinvested by the treasurer with the approval of the legislative body." 24 V.S.A. § 1571(b). What criteria or guidelines apply when making decisions about investments?

The first factor is to determine the type of funds being invested. Depending on the source of town funds being invested, there may be statutory standards that must be adhered to. For instance, certain federal grants must be deposited in federally insured accounts. Specific state statutes control the deposit and investment of cemetery funds. The proceeds of municipal bonds and notes must be deposited and invested in conformance with detailed federal regulations. The donor of monetary gifts and bequests to the town may have imposed investment restrictions in the document conveying the funds to the town. So-called "public funds," that is, money held by a town in trust, are under the control of elected or appointed trustees. Investment powers and restrictions relating to public funds are set out in 24 V.S.A. § 2432. The point is that the source of the funds being invested may determine the range of available investment vehicles.

The next line of inquiry is the purpose for which the funds are being invested. An escrow account to ensure compliance with zoning permit conditions or conditional use approval will be subject to the controlling concern that there be sufficient dollars on hand to complete the infrastructure improvements if the town has to resort to the fund upon default of the developer. The same can be said of impact fees and sewer system reserve funds. What characterizes these accounts is the reliance of third parties (not necessarily the town or its inhabitants) upon the availability of dollars earmarked for a specific purpose.

There is little guidance in the statutes on the investment of unrestricted general funds. Vermont does not have a public funds investment statute. The subject is controlled by the common law that treats the treasurer and selectpersons as fiduciaries in managing, controlling, investing, and

expending public funds. Being fiduciaries, they are held to a higher standard of care than they would be if managing their personal funds. The test is not "what I would do if investing my own money?" Instead, it is "have I thoroughly examined the potential of return, risk of loss and degree of liquidity to satisfy myself that this particular investment is safe?" Remember that rate of return is not the controlling factor. Although it might be tempting to push the envelope in order to squeeze a higher yield out of an investment or deposit, that sort of motivation is an invitation to disaster. Prudence is the pole star in this area. Would I prefer to sleep soundly in exchange for giving up a one-tenth-of-a-percent increase in investment yield? You bet I would!

In assessing the risk inherent in any investment there are myriad considerations that you should ask of your banker, attorney, accountant and other financial professionals. Availability of deposit insurance, deposit collateralization, direct or indirect state or federal governmental guarantees, track record of the investment sponsor, Vermont domicile or registration and financial status of the financial institution are only a few of the factors the treasurer and selectboard should look at before even thinking about rate of investment return. The goal is to be supremely confident that the town's funds will be available when needed without loss or delay.

The Federal Deposit Insurance Corporation (FDIC) is an independent agency of the United States government that provides up to $100,000 insurance per account for certain types of accounts in many banks and savings associations. When a municipality has more than $100,000 to invest, it should be sure to place such money in insured accounts and in different accounts or financial institutions in order to be fully covered by the FDIC. (For more information, contact your bank or the regional office of the FDIC at 200 Lowder Brook Drive, Suite 3100, Westwood, MA 02090.)

L. CLAIMS AGAINST THE TOWN

When a person allegedly suffers a loss or injury because of an action by a municipality or one of its officials, a suit against the municipality may result. Under 24 V.S.A. § 901, when an action involves "any appointed or elected municipal officer or town school district officer," the action must be brought against the town or school district rather than the individual. The municipality must then assume all reasonable legal fees incurred where "the officer was acting in the performance of his duties and did not act with any malicious intent."

In contrast to towns, when the official is "a duly appointed public or peace officer of the village," he or she *may* be indemnified and "the trustees *may* defend such action" at the village's expense. 24 V.S.A. § 1313 (emphasis added). The Vermont Supreme Court has further ruled that where an individual is both "a municipal officer" under § 901 and "a duly appointed public officer" of a village under § 1313, then only § 1313 applies and the village *may* indemnify or defend but is not required to do so. *Holmberg v. Brent*, 161 Vt. 1153 (1993).

To further confuse this matter, governmental bodies may be held to be immune from suit under the doctrine of sovereign immunity. This in turn depends on what type of action the town official or employee was performing at the time damage or injury occurred. Furthermore, the court has held that sovereign immunity is waived to the extent that the municipality is insured. (For example, if the town is insured for $1 million and damages are $1½ million, the town may be held to have waived its immunity up to the insured amount.)

Because cases in this area tend to be complex and quite fact-specific, the best advice we can give is to consult your town attorney or an attorney with special expertise in this area if such a problem arises.

M. BUDGET DEFICIT OR SURPLUS; CASH FLOW

1. **Deficit.** Vermont statutes clearly define ways to deal with a budget deficit at the end of the year. (See Chapter 15, Section D.)

2. **Surplus.** A frequent question is what to do with a surplus in the budget. First of all, it depends where the surplus is. Reserve funds, trust funds and other special funds may be carried over into the next year. Such funds consist of local tax dollars set aside by the voters for a specific use or non-tax dollars borrowed, granted or given for a specific use. These funds must be kept for that use indefinitely or for a specific period of time (for example, a six-year limit on impact fees).

   The law on the subject of other carry-over, or leftover, funds is not so clear. Perhaps the best discussion of the subject was written by former Deputy Secretary of State Paul Gillies, who said in his 1992 *Book of Opinions*:

   > Assuming that there are no charter provisions on the subject, then we believe the best answer [regarding use of surplus funds] is provided by 17 V.S.A. § 2664, which gives the electorate the authority to appropriate specific amounts for specific purposes. This would restrict the municipality's use of specifically appropriated sums to their original purposes and would authorize the voters to appropriate surplus or unused funds for other purposes, assuming the articles making these appropriations are specific and properly warned.
   >
   > Sums voted at an annual or special meeting need to be spent during the fiscal year. At any time the electorate may revisit the budget at a duly warned meeting of the town and reallocate it. Only when funds are appropriated for highway projects or for [reserve] funds will they carry over from year to year, and even then the voters are free to change their minds on how money should be spent.
   >
   > What about an unencumbered balance in the tens of thousands of dollars being used to decrease the amount necessary to be appropriated at the annual meeting? Can an unexpended balance be carried over into the next fiscal year for the discretionary use of the selectmen? We wish the law were clearer (a familiar refrain). The key is the wishes of the electorate. The safest policy is to stick to the basic principle that only voters can approve appropriations. A surplus does not automatically revert to lower taxes. It depends on the warned article and the voted article. The surplus can be carried forward, or it could be reappropriated by the electorate to lower taxes for the coming fiscal year. It all depends on how careful the electorate is in wording an amendment to the general fund appropriation.

3. **Cash Flow.** The question frequently arises as to when and if the selectboard can move money around within the budget. The statutes and the case law never clearly address this dilemma. Seventeen V.S.A. § 2664 says "A town shall vote such sums of money as it deems necessary... ." Does that mean that the line item amounts are cast in stone?

For example, there is a need for numerous new culverts after a flood, or there is serious fire damage to a town building. Can the selectboard take money from the recreation department funds to pay for culverts or uninsured fire damage? The answer is probably somewhere between common sense and the law. The selectboard is mandated to see that the town operates in the best interest of the people. It is also specifically charged with maintaining the highways to a certain standard. Therefore, when something unforeseen (and expensive) happens, the board must act on behalf of the town and in its best interests. This may mean moving money between accounts where feasible. It also may mean just spending the extra money and ending the year with a deficit that must be paid off in one of the ways designated under 24 V.S.A. §1523. Common sense and political savvy may mean calling a special meeting to ask for a vote or just to provide an opportunity to inform the voters and to get feedback from them.

In the case of minor juggling of funds from one line item to another, the board must have the authority and discretion to act in the best interests of the town by using its judgment and applying the tax dollars where they are most needed. For example, if special elections must be held and the budget has insufficient funds to pay the ballot clerks, money may be moved from other line items to cover the necessary costs.

The selectboard may borrow money for current expenses in anticipation of taxes. If, at the beginning of the budget year, there is simply not enough money in the bank to pay bills, the board may borrow the necessary money, planning to repay it when tax dollars are received. Such debts must be paid off within the year. 24 V.S.A. § 1786.

There is also a statute that authorizes short-term, interest-free loans between the town and the school district. 16 V.S.A. § 429. In a situation where such loans would overall be advantageous to the taxpayers, this may provide a good solution to a temporary money crunch.

CHAPTER 17
MUNICIPAL BORROWING

From time to time, almost every municipality finds that it must borrow funds for a municipal construction project or large purchase (most often a school, sewer system, water works or a fire truck) rather than finance the project or purchase from its annual tax revenue. Statutes granting a municipality the ability to borrow money and incur debt are found in 24 V.S.A., Chapter 53. While many town and village charters also address the subject, virtually every exercise of debt-issuance authority brings the municipality back to Chapter 53 and the procedures, standards and limitations set out therein. Even when a municipality relies upon specific statutes relating to the financing of particular governmental projects (e.g., water and sewer systems), invariably Chapter 53 becomes an integral part of the process.

Regardless of the purpose for which debt is to be issued, it is critical that all applicable statutory provisions be adhered to. While there is a validating mechanism (24 V.S.A. § 1757) for those situations in which there exist relatively minor technical deficiencies in the bond election process, not all procedural defects can be corrected in this way. For that reason, we strongly recommend that local officials take the time at the outset of any contemplated capital improvement financing to review the statutes and familiarize themselves with the process.

A. SUBMITTING THE PROPOSITION

The process begins with the legislative body adopting what is known as a necessity resolution. This document establishes the public benefit of the particular improvement and directs the selectboard to submit a proposition to incur bonded indebtedness to the voters for their approval. At the same time, a warning for an annual or special meeting is approved, one that contains language that tracks the statutory form of an article for incurring bonded indebtedness. 24 V.S.A. § 1758. It is important to remember that the posting and publication requirements for a bond election warning, 24 V.S.A. § 1756, vary substantially from those relating to annual and special meetings generally. 17 V.S.A. § 2641. Also, there must be at least one public informational hearing in the ten-day period immediately preceding the date of the bond election. This hearing may be held at the same time as a regular or special meeting of the legislative body. 17 V.S.A. § 2680(g).

The vote on the proposition of incurring bonded indebtedness is conducted by Australian ballot. 24 V.S.A. § 1758(a). The general laws applying to Australian ballot elections, dealing with absentee ballots, checklist revision, meeting conduct, etc. apply. Ballots should be preserved for at least six months. As with other votes, there is a 30-day rescission and reconsideration period. Blank and spoiled ballots are not counted.

B. INTERIM FINANCING

Once the proposition of incurring bonded indebtedness has been approved, the selectboard may proceed with construction of the authorized improvements and arrange for temporary financing pending sale of the municipality's bonds. Temporary construction financing has two components, namely bond anticipation notes and grant anticipation notes. Each form of temporary indebtedness is controlled by specific state and federal laws. However, as a general

proposition, both types of notes have one-year maturities, but may be renewed until bonds are sold and grants-in-aid are received.

Assuming there is compliance with Section 148 of the Internal Revenue Code of 1986, note proceeds can be invested until needed, with interest earnings thereon being available to assist the municipality in financing the authorized improvements.

C. ALTERNATIVE DEBT FINANCING

For relatively low-cost capital improvements, or for capital items having a short depreciable life, it may be desirable to finance the same through capital improvement notes rather than traditional bonds. The process is set out in 24 V.S.A. § 1786a(b). For capital improvement debt that will be repaid in less than five years, authorization is obtained from the voters in the same manner as any other warned article is approved. This may take the form of voice vote, paper ballot or Australian ballot if the municipality has elected to use that option. For improvements to be financed over a term of more than five years, the traditional bond authorization process, 24 V.S.A. § 1756, must be followed, even though the ultimate form of debt will not be a bond. 24 V.S.A. § 1786a(c).

D. REFINANCING

The legislative body, on its own motion, has the authority to refinance outstanding debt and/or operating deficits that take the form of current expense notes. Often it is advantageous to issue new bonds when interest rates decline, but this is not always the case. Redemption premiums and transactional costs could erode potential debt service savings. The services of an independent financial advisor are indispensable if your municipality is considering refinancing all or part of its debt.

Refunding bonds or notes is generally used as a means of liquidating a municipality's deficit. Under 24 V.S.A. § 1523, once a deficit is recognized at the close of the fiscal year, the municipality must arrange for its liquidation. Depending on the size of the deficit, it is either included in next year's budget, or it is converted to debt and paid off over a number of years. With some notable exceptions, most deficit liquidation takes the form of a one-year current expense note that is renewed annually over a term of years in accordance with a schedule approved in advance by the legislative body. Only in extreme cases are long-term bonds employed as a means of deficit liquidation.

For end of the year school district deficits, see 24 V.S.A. § 1523(b).

E. DEBT CHARACTERISTICS

As a general proposition, municipal bonds are payable over a maximum term of 20 years in equal or diminishing amounts of principal due annually, interest due semi-annually. However, certain types of bonds (e.g., water and sewer system improvements) can be structured for longer terms and with level debt service that has the same characteristics of a home mortgage. Normally, any type of utility bond is structured to achieve level debt service over its term. For more specific information on water and sewer debt see 24 V.S.A. Chapters 89, 97 and 101.

F. DISPOSITION OF PROCEEDS

Keep in mind that the Internal Revenue Code of 1986, and specifically Sections 141 and 148, has a direct impact on whether the municipality's bonds and notes will enjoy favorable tax treatment in the eyes of investors and banks. There are certain use restrictions and expenditure/investment requirements that must be adhered to in order to avoid having the bonds or notes classified as "private activity bonds." In most instances, especially those involving municipal bond financing of construction projects, compliance with the applicable code provisions is not a problem. However, any departure from a normal "plain vanilla" municipal financing probably warrants some professional advice.

G. BOND ISSUANCE

By far, the most user-friendly means at the municipality's disposal for permanent financing of its capital improvements is the Vermont Municipal Bond Bank. There are some instances, however, where the size or complexity of the project or the project financing warrants a step up to a bond sale, on a competitive bid basis. In such a situation, the services of a competent financial advisor or underwriter are indispensable. For more information about the Bond Bank, visit http://vtbondagency.org/index.html.

In addition to the Bond Bank, some types of infrastructure improvement bonds are eligible for purchase through programs administered by the U.S. Department of Agriculture's Farmers Home Administration, Community and Business Programs, located at 89 Main Street, Montpelier, VT 05602 (802-828-6030). Also available is the State Revolving Loan Fund administered by the Agency of Natural Resources. For more information about the State's programs, contact the Agency's Department of Environmental Conservation at 103 South Main Street, 1 South, Waterbury, VT 05671 (802-241-3800). Generally, both the federal and state programs offer financing of water and sewer system improvements.

*(Our thanks to Paul Giuliani, Esq., of McKee, Giuliani and Cleveland, Montpelier, for contributing this chapter to the **Handbook for Vermont Selectboards**.)*

CHAPTER 18
COMMUNITY DEVELOPMENT

A. INTRODUCTION

Effective community development has two necessary components. First, it must be of the people, by the people and for the people. It is not a process that can be mandated by the state. Instead, it must occur because people care about their town's economic viability, safety, quality of life, appearance, and appeal to prospective residents and businesses. Second, community development does not just happen. It must be based on the recognition of problems and solid planning to correct those problems.

Actors at the local level may be elected officials, local businesses, banks, or citizens who work together to identify problems, collect data and develop solutions. Financial and technical help may be available from state or federal government agencies but the real solution must be developed locally.

There are several specific community and economic development tools that the state has granted directly to municipalities. These include the statutory authority to undertake tax stabilization and tax increment financing. The state also offers a wide range of community and economic development programs, which are bolstered by the complementary efforts of regional entities and federal agencies.

Following is a discussion of the specific, local community and economic tools available to selectboards for use in their towns. Following this section is a list of state, regional and federal programs which includes contact information and a brief explanation of each program's mission. Keep in mind, however, that while a specific tool or program may be able to solve a particular problem, the process of community development is an all-inclusive one. From a town's land use permitting and property tax policies to its educational and cultural facilities, community development is a multi-faceted process. It is beyond the scope of this handbook to address the comprehensive inventory, planning and implementation work that is the foundation of successful community development. Instead, we hope that an outline of the wide range of available tools and resources will help selectboards work with citizens in their towns to ensure a vibrant, successful community.

B. TAX STABILIZATION

1. **Eligibility.** The Legislature has given municipalities the authority to enter into tax stabilization agreements in order to encourage the following public interests:

   - economic development;
   - alternative energy development;
   - agriculture and forestry; and
   - preservation of open land. 24 V.S.A. § 2741.

   In addition to the authority granted under 24 V.S.A. § 2741, there are other, more specific statutes that deal with tax stabilization for the following types of properties. They are:

   - Factories, quarries and mines, 32 V.S.A. § 3834;

- Private homes and dwellings, 32 V.S.A. § 3836;
- Airports, 32 V.S.A. § 3837;
- Hotels, 32 V.S.A. § 3838;
- Low income housing, 32 V.S.A. §§ 3843, 3844, 5404a((a)(3);
- Public utilities and railroads, 24 V.S.A. § 2743;
- Alternate-energy sources, 32 V.S.A. § 3845;
- Farmland, 32 V.S.A. § 3846;
- Tax stabilization in gores and unorganized towns, 32 V.S.A. § 4985;
- Non-profit fire and ambulance companies, 32 V.S.A. § 5404a(a)(4);
- Certain municipally owned property; and
- Tax exemptions generally, 32 V.S.A. Chapter 125.

One caveat must be mentioned. Vermont's Equal Educational Opportunity Act created a system under which some tax stabilization agreements and other tax exemptions affect only the town's property tax grand list and not the education property tax grand list. This is spelled out in 32 V.S.A. § 5404a.

2. Implementation. Tax stabilization may be accomplished in one of three ways: fixing the valuation of a property, fixing the tax rate or amount of tax on the property, or by fixing the tax as a percentage of the total, annual property tax. 24 V.S.A. § 2741(a).

The *first step* in tax stabilization is for the voters to approve it by a two-thirds majority in the case of commercial or industrial property or by a simple majority vote in the case of other types of property. The voters may give the selectboard authority to enter into stabilization contracts or it may allow the board to negotiate a contract that must then be ratified by the voters. The term of such contracts may not exceed ten years and, in the case of alternative energy plants, may not exceed the term of any licenses or permits needed by the plant. 24 V.S.A. § 2741 (b)(c). Municipalities must also apply to the Vermont Economic Progress Council (VEPC) for approval of certain tax stabilization contracts that they enter into locally (an exception is made for certain pre-existing stabilization agreements, which are allowed to continue until their contractual lifetime has expired). A description of VEPC and the process and criteria for tax stabilization approval is found in 32 V.S.A. § 5930a.

In summary, there are now three tax stabilization alternatives:

1. Agreement to stabilize a portion of the municipal tax liability; decision made at the local level as outlined above.
2. Agreement to stabilize a portion of the municipal and education tax liability; decision again made at the local level. *However, such an agreement does not alter the municipality's liability to the state education fund*. Therefore, the town must still raise enough money to provide the total amount of education tax due to the state. 32 V.S.A. § 5404a(d).
3. The state, upon approval of VEPC, can enter into a stabilization agreement for the state education tax liability. In order for a property to be eligible, the municipality must approve a proportional stabilization of its municipal tax.

A municipality may also apply to VEPC for an allocation of a portion of any increase in its education grand list for up to ten years. If awarded, the revenues from the allocated portion of the education grand list shall be used by the municipality to support economic development through the purchase or financing of infrastructure. 32 V.S.A. § 5404a (e).

C. TAX INCREMENT FINANCING

Vermont selectboards are given the authority to designate tax increment financing districts within their municipalities. Such a district can be utilized by a municipality to raise tax revenues targeted for improvements within (in whole or in part) the district. A municipality may also, with the voters' approval, borrow against the district's revenue to finance the improvements. 24 V.S.A. §§ 1894, 1897.

The district works like this: on the first year of its existence, the lister or assessor for the municipality certifies the assessed valuation of all taxable real property within the district. This value is called the *original taxable value,* and the lister or assessor annually certifies to the selectboard whether this original value has increased or decreased. If the value increases, the taxes gained from this increase (the "tax increment") are reserved for use in the district directly or for debt service on bonds issued for district improvements.

While tax increment financing districts are not widely used by Vermont municipalities, they are helpful in certain situations.

Finally, municipalities which have tax increment financing districts under 24 V.S.A. Chapter 53, subchapter 5, may apply to VEPC to expand these districts and to collect and use the taxes collected. 32 V.S.A. § 5404a(f).

D. TAX EXEMPTIONS

Towns may elect to exempt business personal property tax and/or inventory from the grand list in order to encourage manufacturers and merchants to locate in town. 32 V.S.A. §§ 3848-3849. "Inventory" is defined in Section 3848 and generally means goods held temporarily for sale or use in manufacturing. "Business personal property" is defined in 32 V.S.A. § 3618(c) and generally means tangible, depreciable items used to conduct a business, which are not part of the real property (e.g. tools, machines, books, furniture, etc.).

If the voters do not exempt business personal property from property tax, it may be appraised at fair market value or, subject to a vote at town meeting, it may be appraised by one of the other methods delineated in 32 V.S.A. §§ 3618(a)(1) and (2).

E. HOUSING AUTHORITIES

Because of its public policy concern that safe and sanitary housing be available to all, the Vermont Legislature has granted municipalities the power to create housing authorities. These public corporations are charged with clearing substandard housing and providing affordable, safe and sanitary housing for those in need. 24 V.S.A. § 4001.

To accomplish this, housing authorities have broad powers to own, rent or lease property, invest, borrow, sue or be sued, and to investigate areas of substandard living quarters and plan for and carry out repairs and renovations. 24 V.S.A. § 4008. The seriousness of the problem is reflected

in the statements that "these slum areas cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved through the operation of private enterprise" and that "clearance ... is declared to be a public use for which private property may be taken by eminent domain and public funds raised by taxation." 24 V.S.A. § 4001.

When a governing body determines that there is a need for a housing authority, it may create one by appointing five commissioners and investing in them the power to act as a housing authority. 24 V.S.A. § 4004. These commissioners may not be employees or officials of the municipality, may not own any housing projects and may be removed "for inefficiency or neglect of duty or misconduct in office." 24 V.S.A. §§ 4004, 4006, 4007. Notice and hearing must be provided to a commissioner being removed from office. 24 V.S.A. § 4007. Three members of the board create a quorum and action may be taken by "a majority of those present" unless that housing authority's bylaws say otherwise. 24 V.S.A. § 4004. This means that if three commissioners are present and they vote two to one, a valid vote has occurred. (This is an exception to the general rule concerning quorum and voting and should not be applied to other municipal bodies.)

Housing authorities are subject to other laws, ordinances and regulations such as zoning, septic and electrical codes and the development of a low cost housing project must take into consideration the development of the area in which it is located. 24 V.S.A. § 4013. A municipality that creates a housing authority must fund its first year of operation and may, after that year, provide loans and/or donations to it. 24 V.S.A. § 4023. The authority must charge the lowest possible rent and, at the same time, provide good housing and pay all of its bills (an impressive mandate!). 24 V.S.A. § 4009. The property of an authority is declared to be public property used for essential public and governmental purposes and such property "... shall be exempt from all taxes and special assessments.…" Special agreements may be made for payment in lieu of taxes (PILOT). 24 V.S.A. § 4020.

Provision is also made in state law for housing authorities to function for more than one municipality. First, two or more municipalities may jointly create a single authority. 24 V.S.A. § 4027. Second, two or more separate "authorities may join or cooperate with one another...." 24 V.S.A. § 4011. Finally, a state housing authority is created for the purpose of improving housing through the use of federal funds. 24 V.S.A. § 4005.

F. MISCELLANEOUS

Statutes also give municipalities and groups of municipalities the authority to set aside money for a publicity fund to be used for area development as well as the authority to enter into agreements with towns from adjoining states for the purpose of regional or interstate economic planning and development. 24 V.S.A. §§ 2744, 2779. In addition, economic development grants from the state may be available to help administer regional economic development corporations. 24 V.S.A. Chapter 76.

G. COMMUNITY DEVELOPMENT RESOURCE LIST

1. Agricultural Development

a. Agricultural Development Division. The Division assists in developing ways to increase agricultural use of Vermont lands and resources. It develops and maintains a directory of producers, identifies new markets for Vermont agricultural products, and

assists in maintaining a price reporting system. 6 V.S.A. § 2963. For more information, call the Division at (802) 828-2416.

b. Vermont Economic Development Authority (VEDA). VEDA provides a number of programs to help family farmers in Vermont. 10 V.S.A. Chapter 12. For a complete list, visit VEDA online at http://www.state.vt.us/veda, or call them at (802) 828-5627.

- **Family Farm Debt Stabilization Program** provides low interest loans to family farmers to assist in refinancing operating debts.
- **Agricultural Finance Program** provides low interest loans (Family Farm Finance loans) to family farmers and agricultural facilities to encourage diversification, cooperative and innovative farming, and assist in environmental conservation initiatives and measures. Loans are also available to help establish new farms and strengthen existing ones.
- **Vermont Rehabilitation Corporation** administers the Family Farm Assistance Loan Program, which seeks to strengthen existing farms, encourage diversification and innovation, increase energy efficiency, decrease energy consumption, and assist beginning farmers. 10 V.S.A. § 273.

2. Economic Development

a. Economic Advancement Tax Incentives. The Vermont Economic Progress Council (VEPC) coordinates tax incentives available to businesses and municipalities for economic development activities designed to stimulate quality job growth in Vermont. 32 V.S.A. § 5930a. For more information, call VEPC at (802) 828-5256.

b. Downtown Program provides a wide variety of grants, loans and tax credits to promote re-investment in and development of Vermont's downtown areas. For more information, call (802) 828-3211. 24 V.S.A. Chapter 76A.

c. Vermont Community Development Program receives federal Community Development Block Grant Funds and awards them to municipalities for projects such as rehabilitation and acquisition of housing and public facilities, lead abatement, planning, home ownership assistance, loans to businesses, disaster assistance, and handicap accessibility. 10 V.S.A. Chapter 29, subchapter 1. For more information, visit the Department of Housing and Community Affairs' website at http://www.dhca.state.vt.us/, or call (802) 828-3211.

d. Vermont Community Loan Fund (VCLF) provides technical assistance and support to develop community projects, loan capital to community groups and businesses, and investment opportunities in local community renewal, through two subsidiary loan funds. Visit VCLF online at http://www.vclf.org/ or call (802) 223-1448.

e. Regional Development Corporations coordinate job development activities within their respective regions. Information about Vermont's 12 regional development corporations can be found at http://www.thinkvermont.com/resources/regdev.cfm, or call the Department of Economic Development at (802) 828-3080.

f. Vermont Small Business Development Center is a non-profit partnership of government, education, and business that seeks to help small businesses succeed and

grow by providing them with counseling and training. Visit them online at http://www.vtsbdc.org/ or call (802) 728-9101.

g. Vermont Economic Development Authority (VEDA) was established to help promote economic development and alleviate and prevent unemployment. VEDA administers a number of financial assistance programs including, Direct Loan Program, Local Development Corporation Loans, Industrial Revenue Bonds, Mortgage Insurance Program, Financial Access Program, and the Vermont Job Start Program. 10 V.S.A. Chapter 12. For more information about economic development programs and services offered by VEDA visit them online at http://www.veda.org or call (802) 828-5627.

h. Revolving Loan Funds. Capitalized from a variety of sources, many of them federal, these loan funds may be used in conjunction with other sources to leverage additional monies or independently finance a project. Administration of regional funds is generally by a non-profit development corporation; local funds are most often overseen by the selectboard with the help of a loan committee. To obtain a list of the 16 regional and 49 local revolving loan funds, contact the Agency of Commerce and Community Development's Department of Economic Development at (802) 828-3080.

3. Health

a. The **Vermont Department of Health** works to protect and improve the health of Vermonters. Visit http://www.healthyvermonters.info for a list of regulations, reports, newsletters, fact sheets, booklets and brochures, or contact the Department of Health at (800) 464-4343. Other useful telephone numbers include:

- Rabies Hotline, (800) 472-2437;
- Childhood Lead Prevention Program, (800) 439-8550;
- Drinking Water Testing Kits, (800) 660-9997.

4. Historic Preservation and the Arts

a. The **Department of Housing and Community Affairs' Division of Historic Preservation** identifies, protects and promotes Vermont's historic resources. It maintains information and an inventory of historic sites throughout the state, and administers grant programs relating to historic preservation. Visit the Division at http://www.historicvermont.org/ or call (802) 828-3211.

b. Rehabilitation Income Tax Credit (RITC) is a federal income tax credit available to owners or long-term lessees of historic buildings used for businesses or rented to others. Twenty percent of the qualified rehabilitation costs are eligible to investors as a tax credit. For additional information, contact the Division of Historic Preservation at (802) 828-3211.

c. Vermont Arts Council provides funds, services and information to "advance the arts for the benefit of all." For specific information on grants and services, visit the Council on-line at http://www.vermontartscouncil.org/, or call (802) 828-3291.

5. Housing

a. Vermont Housing and Conservation Trust Fund provides grants for the creation of affordable housing and conservation of Vermont's agricultural lands and its natural and

historic resources. Call the Vermont Housing and Conservation Board at (802) 828-3250, or visit them online at http://www.vhcb.org/.

b. Vermont Housing Finance Agency (VHFA) finances and promotes affordable housing opportunities. To request an information packet or for additional information, call them at (802) 864-5743 or visit them online at http://www.vhfa.org/.

c. Vermont State Housing Authority was created to improve housing conditions through federal resources. The Authority is responsible for allocating federal money for low-income housing projects and improvements. For more information, visit them online at http://www.vsha.org/, or phone (802) 828-3295.

d. Vermont Department of Housing and Community Affairs provides assistance and information for land use planning, historic preservation, community development, housing and grants management. The Department has an online document library to access a great deal of information and resources. Visit the Department online at http://www.dhca.state.vt.us/, or call (802) 828-3211.

e. U.S. Department of Housing and Urban Development (HUD) offers a wide variety of programs to help with community development projects and to create affordable housing. Visit them online at http://www.hud.gov/ or call the local HUD office at (802) 951-6290.

6. Human Services

a. Long Term Care Community Coalitions (LTCCC) are partnerships focused on local decision-making, to improve the quality of life for Vermonters. For further information, call (802) 241-2326 or visit the Department of Disabilities, Aging and Independent Living online at http://www.dad.state.vt.us/.

b. Community Grants Available through the Agency of Human Services. For a list of grants available to communities for programs relating to alcohol and drug abuse, child care services, juvenile justice and delinquency prevention and safe and drug-free schools and communities, contact the Agency of Human Services at (802) 241-2950 or visit their website at http://www.ahs.state.vt.us/.

c. Regional Community Action Agencies are five private, non-profit corporations created to address issues regarding poverty in Vermont. They organize and operate a variety of social service, food and nutrition, emergency assistance, and housing and energy programs for the benefit of individuals, groups, and municipalities. For a list of all five agencies, contact the Vermont Agency of Human Services' Community Services director at (802) 241-3570.

d. Area Agencies on Aging. For information on helping senior citizens and people with disabilities live independent lives, phone (800) 642-5119.

7. Infrastructure

a. Vermont Agency of Natural Resources is responsible for protecting Vermont's natural resources and managing state-owned lands. For information regarding state land use permits and regulations, water quality, air quality, waste management, state lands, fish and wildlife, and educational resources, visit the Agency online at http://www.anr.state.vt.us/ or call (802) 241-3600.

b. **U.S. Department of Agriculture (USDA)** runs Rural Development Programs through their Office of Community Development, Rural Housing Service and Rural Business Cooperative Service. For information on these programs, visit the USDA online at http://www.usda.gov/ or call (202) 720-2791.

c. **Vermont Agency of Transportation** administers a variety of grant and loan funds for local highway and bridge projects, including federal SAFETEA-LU funds for transportation "enhancement" (related to transportation) projects. For more information, visit the Department on line at http://www.aot.state.vt.us/.

d. **Vermont Municipal Bond Bank** is a legislatively established, independent unit of state government that provides access to low cost, tax-exempt capital financing for Vermont's municipalities. It issues regular and revenue bonds to finance projects such as school additions, highway renovations, water system improvements, solid waste projects and electrical department expansions and upgrades. For more information, contact the Bond Bank at (802) 223-2717, or visit http://vtbondagency.org/counsels.html.

8. Planning

a. **Regional Planning Commissions.** Twelve commissions around the state assist municipalities with land use and transportation planning issues. For a list of them with contact information see Chapter 21, Planning, or visit the Vermont Association of Planning and Development Agencies at http://www.vapda.org/.

CHAPTER 19
MUNICIPAL LIABILITY

A. SOVEREIGN IMMUNITY

Sovereign immunity is a common law doctrine adopted by the Vermont Supreme Court in the mid-1800s. Generally, the doctrine operates to protect a municipality from tort (e.g., personal injury and property damage) liability. Since adopting the doctrine, the Vermont Supreme Court has attempted to limit its application by applying a governmental function/proprietary function distinction. The rationale for the distinction is that municipalities perform governmental responsibilities for the general public as instrumentalities of the state; they conduct proprietary activities only for the benefit of the municipality and its residents. A municipality is given no immunity for its proprietary activities.

While the conceptual difference between governmental and proprietary functions is fairly clear, the practical difference is not. In fact, the courts in most states have found the distinction so unworkable that they have rejected the doctrine of sovereign immunity entirely. In a dissent to a 1997 published opinion, Justice Dooley stated, "the governmental/proprietary distinction is neither appropriate nor workable and should be abandoned." *Hillerby v. Town of Colchester***,** 167 Vt. 270 (1997). While the doctrine is still good law, the Court has signaled that its reluctance to meddle in sovereign immunity is not limitless and given an extended period of non-action by the Legislature and the right facts, the Court may abandon the doctrine altogether.

Because the governmental/proprietary distinction is essentially a question of fact, prospectively laying out a bright line rule for its application is nearly impossible. Each application necessarily turns on the facts of the particular case and 150 years of oft-confusing case law. For this reason, VLCT advises a conservative approach to the sovereign immunity doctrine and its application. Sovereign immunity is a powerful doctrine, but one whose nuances may result in a false sense of security for municipal officials. When considering any action that may result in tort liability, the doctrine of sovereign immunity should never be relied upon as the town's first line of defense.

1. Waiver of Sovereign Immunity. When a municipality or a county purchases liability insurance, it waives sovereign immunity to the extent that it has insurance coverage. 29 V.S.A. § 1403. For example, if a town has liability insurance up to $100,000 per occurrence, then it may be sued and held liable for up to $100,000 worth of damage resulting from an incident. An important exception to this rule is found in 24 V.S.A. Chapter 121, Subchapter 6. That statute authorizes municipalities to enter into inter-municipal agreements to provide self-insurance (e.g. VLCT Property and Casualty Intermunicipal Fund [PACIF]). Participation in such an agreement " shall not ... constitute a waiver of sovereign immunity" because such an activity is "an essential governmental function." 24 V.S.A. § 4946.

B. STATUTORY IMMUNITY FOR MUNICIPAL VOLUNTEERS, EMPLOYEES AND OFFICERS

There are situations where the interests of the municipality and its officials or employees diverge. Generally, in the case of a municipal employee or volunteer, or an elected town or town school district official, any legal action must be brought against the town or school district rather than against the individual employee, volunteer, or officer. 24 V.S.A. §§ 901-901a. However it

should be noted that an action may be brought against "a duly appointed public or peace officer of [a] village," and the village may choose whether or not to defend the official in that action. 24 V.S.A. § 1313.

C. OTHER IMMUNITIES

1. **Immunity for Quasi-Judicial Acts.** Generally, officials are not liable for judgments or actions taken while acting in a quasi-judicial capacity so long as they are not negligent and they are acting in good faith. *First Universalist Soc. in Fletcher v. Leach*, 35 Vt. 108 (1862).
2. **Immunity for Legislative Acts.** The U.S. Supreme Court has held that local officials are immune from civil liability when they are performing a legislative function, just as state and federal legislators are. *Brogan & Roderick v. Scott-Harris*, U.S. No. 96-1569 (March 3, 1998). Selectboards perform legislative acts when they adopt policies, bylaws and ordinances. Therefore, a board member could not be sued for actions taken in adopting such regulations. This is not to say that a court might not find an ordinance or bylaw unconstitutional or that the enforcement could not be held improper due to arbitrary and capricious application. It merely immunizes the officials when they are adopting legislation.
3. **Immunity Based on a Signed Waiver.** Municipalities sometimes require that people who wish to participate in some activity (such as recreation department programs) sign a waiver absolving the municipality from liability for any damages incurred during the activity. Waivers (also called exculpatory agreements) may provide protection for the municipality in the case of inherent risk such as sprained ankle while rounding second base or broken wrist due to a fall while playing hockey. However, a court is unlikely to uphold a waiver which is too broad or when there was actual negligence on the part of the municipality. For example, if a softball player trips over a mower while running for a foul ball, that will likely not be found to be an inherent risk and the municipality will probably be found negligent.
4. **Immunity Based on "Good Samaritan" Laws.** Several laws provide varying degrees of protection for municipalities and/or individuals who perform Good Samaritan acts. For example:
   - Volunteer emergency service providers under certain circumstances. 12 V.S.A. § 519; 24 V.S.A. § 2687.
   - Good faith donors of food. 12 V.S.A. § 5761-5762.
   - Certain persons responding to actual or threatened hazardous materials emergencies. 12 V.S.A. § 5783.
   - Municipalities which acquire public water systems or sources. 18 V.S.A. § 122 (e). and
   - Fire personnel responding to a fire or accidental or natural emergency. 20 V.S.A. § 2990.

D. HIGHWAYS AND BRIDGES

Selectboards are given broad authority and a duty to maintain town highways. Generally, the board has discretion in its care of the highways but there is a mechanism for citizens to proceed in a situation where they feel that "a highway or bridge is out of repair or unsafe for travel." 19 V.S.A. § 971.

In contrast to highways generally, special liability is imposed in the case of bridges and culverts. Where damage or injury is the result of "insufficiency or want of repair of a bridge or culvert," the injured party may proceed against the town (or towns) in a civil action. 19 V.S.A. § 985.

E. OTHER AREAS OF CONCERN

1. **Section 1983: Civil Rights.** Under federal law, individuals may not be deprived of those rights, privileges or immunities "secured by the Constitution and laws." The U.S. Code 42, Section 1983 creates an action for damages where people have been deprived of their rights. Municipalities and municipal officials are prohibited from depriving people of their rights. *Monell v. New York City Dept. of Social Services*, 43 U.S. 658 (1978); *Maine v. Thibout*, 100 S. Ct. 2502 (1980). Municipal officials may be found to have qualified immunity where they have acted in good faith, but such immunity is not a defense for the municipality itself. *Owen v. City of Independence*, 445 U.S. 622 (1980).

   Sovereign immunity does not apply to actions brought under Section 1983. However, a plaintiff must show that the act complained of was not an isolated incident but was a part of a policy or custom of the municipality.

   There is a significant amount of activity under Section 1983, involving sexual harassment, gender bias issues, voting rights, employment issues, racial bias, search and seizure procedures, etc. Towns must have clear policies and procedures and must *ensure that they are followed*. Merely having a policy filed away somewhere will not suffice. When a municipality is found guilty of a violation, it may be liable for damages plus attorney's fees.

2. **Employment Discrimination and Employee Entitlements.** Municipalities are subject to a number of laws here, including:
   - the Fair Labor Standards Act (age, wage and overtime requirements);
   - the Americans with Disabilities Act and the Vermont Fair Employment Practices Act;
   - the federal and Vermont Family and Medical Leave Acts;
   - Workers' Compensation law; and
   - OSHA and VOSHA workplace safety requirements.

3. **Personnel Matters.** Discharge of employees is an area with many pitfalls. Some employees are unionized and fall under the specific mandates of their union contracts. Even without a union contract, other employees may have certain procedural due process rights in matters affecting their relationship with their municipal employer. In the past, employers and employees operated under an at-will arrangement, which meant that one could quit or be disciplined or fired at-will. With the development of various laws and of personnel policies, employees have gained some employment rights and an expectation that they cannot be fired without reason and without some fair process.

   Before discharging an employee, ask yourself:
   - Is there a union contract?
   - Is there a written employment contract?
   - Is this an at-will situation or is just cause required for discharge?

- Is the employee a person who is a member of a protected class (e.g. race, gender, disabled, sexual preference)?
- Has the employee done anything recently for which discharge may be seen as retaliation by the employer (e.g. taken or requested excessive leave, been a "whistle-blower" or filed a workers' compensation claim)?
- Is there a personnel policy and has the municipality followed it?
- Is there a specific statute governing this situation?
- Is the person an elected official and thus immune from discharge?

This area of law is complex, quite changeable and quite fact-specific for each case. It is much safer to consult a personnel expert or an attorney before taking any action. It may also be much less expensive than litigation brought against the town by an angry employee or ex-employee.

4. **Land Use Regulation and "Takings."** Municipalities have a limited right to regulate and to "take" private property. The authority to regulate through planning and zoning is given by 24 V.S.A. Chapter 117. The limitations on that right are constitutional ones:

> "That private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent of money." *Vermont Constitution, Chapter I, Article 1.*

Likewise, the state may not:

> "… deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." *U.S. Constitution, XIV Amendment.*

These constraints mean that planning and zoning bylaws must be drafted carefully to advance a legitimate municipal interest. A court will look to the town plan to determine if a challenged bylaw or action by the town reflects a stated purpose or goal of the town and will ask if that stated purpose is a legitimate one. Bylaws must be enforced fairly and equally. Arbitrary or discriminatory enforcement of bylaws (or of any ordinance) will be held unconstitutional. In addition, property owners must have notice of the town's actions or decisions and must have an opportunity to be heard on appeal. Even the adoption of bylaws that will curtail property rights must provide for notice and an opportunity to be heard before those laws go into effect.

Note that municipalities have authority to take or to regulate the use of property in other ways, such as condemnation or eminent domain, adoption of housing codes and nuisance ordinances, regulation of solid waste dumping and the prohibition of backyard burn barrels. All of these takings of private property or constraints on the owner's use of private property are areas of potential liability and must be approached carefully and, when in doubt, with the advice of legal counsel.

F. MUNICIPAL LIABILITY AND SPECIAL EVENTS

Many of Vermont's cities, towns and villages host at least one special event each year. These municipalities have discovered that festivals and fairs can be excellent sources of revenue and great generators of community spirit.

But whether they are organized by a municipality or by another organization in town, special events require careful planning to minimize a municipality's liability exposure. Even though the municipality does not organize an event, you may have some responsibilities if the activity involves the use of public facilities or necessitates municipal services.

Generally, a special event is defined as any organized assembly or activity conducted by an individual or organization for a common purpose. Examples of special events include parades, circuses, fairs, participation sports (such as marathons or bike tours) and spectator sports (youth football or baseball games).

- **Exposures, Risks.** Some of the major loss exposures for special events include damage to public property, such as equipment and machinery, and lost work time and medical costs for public employees who may be injured during an event. The municipality is also exposed to liability losses for civil rights violations, injuries to attendees and damage to private property.

  If the municipality knows, or should reasonably have been expected to know, about a dangerous condition but did not repair it or warn others about it, injured parties would be able to show that the municipality violated its duty of care. Thus, they could expect compensation for injuries or damages.

- **Buildings and Facilities.** Inspect all permanent and temporary structures, such as bleachers, grandstands or stages. If private groups plan to build any structures, make sure they have the necessary building permits. Also be sure that the lighting is safe and adequate for night events and that portable toilets are provided, if necessary.

- **Fire Safety.** The fire department should review the projected occupancy of all enclosures, use of tents or other fabric structures, handling of vehicle fuel, cooking facilities and any use of an open flame or fireworks. All electrical systems installed for the event should also be inspected. Make sure that all groups have the necessary fire department and fire warden permits.

- **Cleanup Plans.** All participating groups should have a plan for cleaning up the premises or streets after an event. They should be notified in writing prior to the event that they will be billed for any repairs if they damage public property.

- **Law Enforcement and Safety.** Make sure that there are enough law enforcement and other emergency personnel to ensure the safety of all participants.

- **Traffic Control.** Map out parking areas and travel routes to and from an event site to avoid traffic problems, both for event attendees and non-participants who must travel through the area. Special care must be taken concerning the placement of barriers, cones and temporary signs. It is especially important to keep emergency routes open for ambulances, fire trucks, and other emergency vehicles. You may not want to hold or permit a special event at a time and place that is normally already crowded.

- **Food Facilities.** If food will be served or sold at the event, make sure that food handling, preparation and distribution comply with health codes. For liability reasons, it is

recommended that no alcoholic beverages be permitted at municipal events or on municipal property.

- **Contracts.** Many municipalities require groups to provide certificates of insurance and hold-harmless agreements when they participate in an event on municipal property.

  If the group has insurance, the municipality should be named as an additional insured for specific amounts and types of coverages, to ensure that the group is financially able to pay for losses. Hold-harmless agreements are useless if the group is not able to pay for losses; injured parties may still seek compensation from the municipality.

  If the group leases a public facility for an event, make sure the lease contains a hold-harmless agreement and a certificate of insurance requirement. Under a leasing arrangement, the municipality gives up control of the facility and would be held liable only if it knew about a dangerous condition and did not notify the lessee.

CHAPTER 20
MUNICIPAL PLANNING AND ZONING

A. INTRODUCTION

Municipal land use planning is the process of assessing current conditions in a community, envisioning a desired future, and charting a course towards that future. It involves multiple stakeholders, which many times include property and business owners, elected and appointed municipal officials, and even those who come into your town to shop, recreate and work. Planning encompasses many activities, including adopting town plans and municipal bylaws, capital budgeting, development review, and enforcement.

As explained in the Introduction of this handbook, Vermont municipalities are political subdivisions of the state. Like all functions of local government, authority to engage in planning activities is granted by the Legislature. The Vermont Legislature first provided municipalities the opportunity to undertake local land use planning in the 1920s. Since then, the Legislature has passed extensive enabling legislation that allows communities to conduct a wide range of activities related to local land use planning and regulation.

The goals for both the process and content of municipal land use planning can be found in 24 V.S.A. § 4302 and reflect "the intent of the Legislature that municipalities, regional planning commissions, and state agencies shall engage in a continuing planning process that will further the following goals:

- "To establish a coordinated, comprehensive planning process and policy framework to guide decisions by municipalities, regional planning commissions and state agencies;
- 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;
- To consider the use of resources and the consequences of growth and development for the region and the state, as well as the community in which it takes place; and
- To encourage and assist municipalities to work creatively together to develop and implement plans." 24 V.S.A. § 4302(b).

To that end, this chapter contains a brief discussion of the rules for municipal planning and how those rules impact the roles and responsibilities of the legislative body (selectboard, city council and village trustees), planning commission, appropriate municipal panel, planners, regional planning commissions, and others who play pivotal roles in local land use administration.

B. ROLES AND RESPONSIBILITIES IN MUNICIPAL LAND USE

Most municipal officials have distinct roles that are delineated both by statute and by function. Within the local land use system, there are legislative, quasi-judicial, and administrative functions. The broadest function is legislative and involves not only drafting and approval of the municipal plan and bylaws, but also conducting public hearings to determine the future direction of the community. The **legislative function** is shared by the planning commission and the selectboard, city council, or village trustees.

In contrast, the **quasi-judicial function** involves interpreting and applying the land use regulations. It is occupied by the appropriate municipal panel (AMP), which may be the planning commission, development review board, or zoning board of adjustment, depending on the structure established by the municipality.

The **administrative function** involves mostly non-discretionary acts such as issuing permits, enforcing bylaws and assisting applicants. The administrative officer commonly referred to as the zoning administrator (ZA) occupies this function.

1. **Planning Commission.** A planning commission can be created at any time by the legislative body (selectboard city council, or village trustees). 24 V.S.A. § 4321 (a). Planning commissions must have at least three but no more than nine voting members, the majority of whom must be residents of the municipality. The legislative body appoints and sets the term lengths of planning commission members. As an alternative, state law also permits municipalities to elect planning commissioners for four-year terms. 24 V.S.A. § 4323 (c).

   In its legislative role, 24 V.S.A. § 4325, state law provides planning commissions with broad authority to plan for the future needs of their communities, which may be addressed in drafting and maintaining a current municipal plan and identifying tools, regulatory and non regulatory, to implement the plan. In support of that role, the planning commission has powers to:

   - prepare and recommend a capital budget;
   - undertake capacity studies and make recommendations on matters of land development, urban renewal, transportation, and economic and social development;
   - require information from other departments of the municipality that relates to the work of the planning commission;
   - participate in a regional planning program;
   - retain staff and consultant assistance; and
   - perform such other tasks as it may deem necessary or appropriate to fulfill the duties and obligations imposed by Chapter 117 of Title 24.

   The planning commission solicits public input, weighs options and makes policy decisions, some of which will chart the future of the community and which may eventually have the force and effect of law. As such, it must take care to represent all members and interests of the community. To this end, the board should seek maximum feasible participation by other public officials, interest groups, civic groups, and citizens.

   State law also allows planning commissioners to convene as an "appropriate municipal panel" to review development applications under the land use laws. When reviewing development applications, the planning commission is acting in a quasi-judicial capacity.

2. **Appropriate Municipal Panel**. An appropriate municipal panel (AMP) is defined as "a planning commission performing development review, a board of adjustment, a development review board, or a legislative body performing development review." 24 V.S.A. § 4303(3). The AMP acts in its quasi-judicial capacity when reviewing applications for land development. The two most common organizational development review models are a planning commission and a zoning board of adjustment (PC/ZBA) or a planning commission and a development review board (PC/DRB).

- **PC/ZBA Model**. As mentioned above, planning commissions can work in both a legislative or quasi-judicial function. The planning commission, in its quasi-judicial capacity, reviews land use development applications for site plan and subdivision review. The zoning board of adjustment exercises its quasi-judicial authority in review of conditional use applications, appeals of administrative officer decisions and requests for variances. Many municipalities still operate under the planning commission/zoning board of adjustment model, though an increasing number are seeking to separate the legislative and quasi-judicial functions through the creation of a development review board.
- **PC/DRB Model**. Planning commissions become a purely legislative entity, with authority to draft the town plan and use both regulatory and non-regulatory tools to implement the plan. The development review board becomes the quasi-judicial entity responsible for hearing all development review applications, including applications for site plan, subdivision, variance, conditional use, administrative officer appeals, and any other reviews authorized by the bylaws, including local Act 250 review.

  A strength of the PC/DRB model is that it vests all legislative functions with a planning commission, and all development review functions with a development review board. Separating the legislative and quasi-judicial functions allows more planning to occur and streamlines the development review process for applicants.

Regardless of which local board serves as the appropriate municipal panel, its role is to hear and review applications for development under the applicable bylaws. The AMP can only approve applications that comply with the applicable bylaw or state law, and the board can only apply conditions that are permitted under the bylaw. By the same token, if a project meets the applicable bylaw criteria, the AMP must grant the approval.

3. **Administrative Officer.** The administrative officer (also known as the zoning administrator, or ZA) is the primary contact for those affected by local zoning bylaws. The legislative body (selectboard, city council or village trustees) appoints an administrative officer for a three-year term promptly after the first bylaws are adopted or when a vacancy exists. The appointment is made at the recommendation of the planning commission. After consulting the planning commission, the administrative officer may be removed for cause. An administrative officer may not be a member of the zoning board of adjustment or development review board.

   State law (24 V.S.A. § 4448) requires the administrative officer to administer the bylaws literally and prohibits granting permits for any land development that does not conform with the bylaws. For those permit applications that require a prerequisite review, the administrative officer refers the application to the appropriate municipal panel, and may only issue a permit after the AMP grants approval. Any action or inaction by the administrative officer may be appealed to the AMP. In addition to the permit review function, the administrative officer is responsible for providing the necessary forms to applicants and "should coordinate a unified effort on behalf of the municipality in administering its development review program."

   Enforcement of zoning violations is another responsibility of the administrative officer. He or she should keep in close contact with the selectboard, which provides the funding for the land use program, and keep the board apprised of enforcement needs in the community. The legislative body, having initiated a regulatory program through the adoption of bylaws,

should understand the importance of adequately funding the program, including paying for enforcement proceedings and enlisting the services of the municipal attorney. Only the local legislative body has the authority to pursue an enforcement claim in court.

Many administrative officers also play a broader role in staffing the planning commission or appropriate municipal panel. For those staffing AMPs, the role of the administrative officer is varied and may include guidance in the review process, keeping minutes for the board, preparing staff reports on an application or even drafting the written decision for the board.

4. **Selectboard, City Council, Village Trustees (Local Legislative Body).** The legislative body plays an important role in developing a successful land use and implementation program in any municipality. The legislative body will set the tone by showing its support, including incorporating the municipal plan into decisions regarding public investment (such as sidewalks); including the planning commission in discussions of ordinances and policies with land use implications (such as those concerning roads or sewers); including reasonable budget requests from the planning commission and the AMP; ensuring that the various boards and commissions are comprised of able volunteers and are appropriately staffed; and providing funding for training and education of those volunteers.

   One of the legislative body's most important functions is to appoint and remove members of the planning commission (when not elected), the appropriate municipal panel, any advisory commissions, and the administrative officer. In this capacity, the legislative body represents the voters, serves as the accountability mechanism, and ensures that the expectations of the position are being fulfilled. In addition to managing the people involved in the land use program, the legislative body retains much of the final authority over the adoption of the various non-regulatory documents (including the municipal plan), capital budget, and any regulatory tools such as zoning and subdivision regulations.

   Finally, it is crucial for the selectboard to maintain an ongoing relationship with the various land use officials. An open dialogue will foster a better understanding of land use planning and implementation in the community, and will help keep difficult situations from becoming outright political battles. Some municipalities have instituted annual or other regular meetings between the legislative body and the various boards and commissions in order to promote strong relationships and open communication. To this end, it is worth noting that the selectboard members of a rural town, or two appointees of the legislative body in an urban municipality, are "ex-officio members of the planning commission." 24 V.S.A. § 4322.

5. **Professional Planners.** A wide variety of planning professionals can assist a municipality with its planning needs.

   A professional **staff planner** can make significant contributions to a successful land use planning and implementation program. Planners are trained in facilitating public processes, can provide in-depth analysis of development applications, and bring professional knowledge that is so vital in a unique and rapidly changing field. A growing number of Vermont municipalities dedicate resources to employ a staff planner. Small towns could pool resources and share a planner with an adjacent community.

   Regional planning commissions were first created as a result of towns getting together to consider planning and development issues on a larger than local basis. Their role has evolved into developing land use policy at the local, regional and state levels. They are staffed by

professionals with training in land use, transportation, emergency management and watershed planning, as well as geographic information systems mapping, brownfields planning and other areas of expertise.

Under the current statute, every municipality is a member of a regional commission designated for that geographic area. A board of commissioners, comprised of representatives from each participating municipality, governs each of the 11 regional commissions. The legislative body is responsible for appointing a representative to the board of commissioners and may remove the representative at any time upon majority vote of the entire body. 24 V.S.A. § 4343. Representatives may be compensated and reimbursed by their municipalities for necessary and reasonable expenses. 24 V.S.A. § 4342.

Frequently, regional commissions provide technical assistance to local planning commissions by drafting municipal plans and bylaws as well as other local regulatory and non-regulatory documents. In order for a town to qualify for state and federal grant funding, the regional planning commission must approve the municipal plan. State law requires that a local plan be consistent with the state planning goals. 24 V.S.A. §§ 4350(b)(1), 4382(a). Other tasks regional planning commissions may perform include coordination of local and regional mapping projects, and participation in state-level reviews, such as Act 250 or Section 248 proceedings (the certificate of public good process for electric generation and transmission facilities). 24 V.S.A. § 4345a. For a link to each of the 11 regional planning commissions, visit www.vapda.org.

The **planning consultant** is another significant player in local land use planning. Planning consultants can play a valuable role in providing expert drafting of municipal plans, bylaws and other regulatory documents. Local land use officials often look to planning consultants to deal with unique planning issues in their municipalities, such as developing design review guidelines, transportation planning for a failing intersection or finding creative ways to revitalize a downtown.

Typically, consulting planners work closely with the local planning commission, but may also work with the legislative body, municipal employees, and the public. An effective planning consultant will distill information gathered through contact with all stakeholders into documents that express the community's vision for its future. A consultant will be able to translate information gleaned from this collaborative process into a municipal plan, bylaw or other implementation tool. For a list of planning consultants, contact the Vermont Department of Housing and Community Affairs, or visit www.dhca.state.vt.us/Planning/PlanningConsultants.xls.

Many communities do not have the funds within their municipal budget to pay for expert consultation. Through 24 V.S.A. § 4306 the state maintains a municipal and regional planning fund from the property transfer tax revenue. Each year, 20% is disbursed to municipalities in support of local planning.

6. **Advisory Commissions.** Under 24 V.S.A. § 4433, a legislative body may create advisory commissions that may counsel the appropriate municipal panel, legislative body, applicants, and interested parties on matters ranging from municipal plan and bylaw amendments to development review applications. Oftentimes, towns with historically significant properties, important natural features, unique housing pressures, or other special concerns requiring a

particular expertise create an advisory commission to assist the legislative and quasi-judicial boards in their roles.

These committees have broad authority and may engage in any activity that assists the legislative body or planning commission with preparing, adopting and implementing the municipal plan. Advisory commissions must have at least three members, all of whom are appointed by the legislative body. The most common advisory commissions are conservation commissions, historic preservation commissions, design review commissions, and housing commissions.

C. MUNICIPAL PLANNING

1. The Town Plan. The town plan is a first step in a municipal planning process. The town plan is a statement of policy that will guide municipal decision-making with regard to many elements including transportation, land use, utility infrastructure, energy, housing and conservation. It will aid the private sector as a predictor of how local government will act. The town plan also becomes a document that enables the community to engage in other planning activities including adopting zoning and subdivision regulations, capital budgeting and levying impact fees. Once adopted, all development projects subject to state land use review (Act 250) must be consistent with the town plan. A community with a current town plan is also eligible to receive state and federal funding for planning activities.

State statute provides that at least ten elements will be addressed in a town plan. 24 V.S.A. § 4382. In addition to the prerequisite elements, a community has the flexibility to expand the scope and content of the town plan to further address the goals in 4302 (b); and may include other topics, such as economic development, the arts, and telecommunication and wind power generation facilities. Regional planning commissions approve town plans to assure that municipal plans meet state planning goals, and adequately address the ten required planning elements.

The ten required elements of a town plan are:

1. A statement of the objectives, policies and programs of the municipality;
2. A land use plan (map and statement);
3. A transportation plan (map and statement);
4. A utility and facility plan (map and statement);
5. A statement on the preservation natural areas, scenic and historic features and resources;
6. An educational facilities plan (map and statement);
7. A recommended program for the implementation of the plan;
8. A statement of how the plan relates to plans and development trends of neighboring communities and the region;
9. An energy plan; and
10. A housing element, which addresses low and moderate housing needs.

Once adopted, the town plan will expire after five years unless re-adopted or amended. Upon the expiration of a plan, all bylaws and planning programs shall remain in effect but may not

be amended until the town plan is re-adopted or amended, which will start the five-year clock again. 24 V.S.A. § 4387(c).

The planning commission undertakes the initial drafting of a plan. However, an amendment to the plan may be prepared by, or at the direction of, the planning commission, or by any other person or body. Amendments supported by a petition signed by five percent of the voters of the municipality may also be brought before the planning commission. The planning commission may only correct technical deficiencies before the proposed amendment proceeds according to 24 V.S.A. § 4384 (c) through (f).

Once the planning commission forwards a proposed plan or amendment to the legislative body, at least one public hearing shall be noticed and held. The legislative body may make changes to the document at this time. If the changes are substantial and alter the "concept, meaning or extent of the proposed plan" new public hearings shall be warned. Once the hearing process is complete, the proposed town plan may be adopted by a majority of the members of the legislative body at a new meeting. 24 V.S.A. § 4385. (An alternative to the adoption by the legislative body is adoption by the voters.) All proposed plans become effective upon adoption. If a plan or amendment is not adopted within one year of the date of the final hearing of the planning commission, it shall be considered rejected by the municipality. 24 V.S.A. § 4385 (c).

Although the resulting final document makes a community eligible for significant benefits, the public planning process itself has value. The process of vetting alternatives futures, drawing attention to municipal government and engaging stakeholders will only strengthen future planning activities.

2. **Implementation.** Any town that has adopted a town plan can use regulatory and non-regulatory tools to implement the plan. Many towns rely heavily on regulatory tools, but an implementation program that integrates both sets of tools will result in a more effective program. Regulatory tools include bylaws (zoning, site plan, telecommunications, subdivision and flood plain), impact fees, transfer of development rights and an official map. 24 V.S.A. § 4402. Non-regulatory tools include capital budgeting (see *Chapter 16, Finances*), establishing tax increment finance districts, permitting tax stabilization contracts (see *Chapter 18, Community Development*), and developing other plans in support of the town plan. But a municipality is not limited in its efforts to implement the town plan.

Examples of Non-Regulatory Tools

- Tax increment financing, which can be used to fund projects within a discrete area of the municipality, such as sidewalks, increased police presence, or a parking garage;
- Tax stabilization contracts, which can help a municipality promote development in the community by certain businesses or types of businesses;
- Purchase or acceptance of development rights, which can assist a municipality in preserving undeveloped land;
- Plans supporting the municipal plan, which may be sub-plans concerning unique portions of a community; and
- Advisory commissions, which can assist other municipal officials in addressing issues like affordable housing, historic preservation, design review and conservation.

Chapter 117 gives municipalities expansive authority to regulate land development. A municipality may regulate development through its bylaws so long as the bylaws conform to the approved town plan. The most commonly used regulatory tools are zoning and subdivision bylaws, which can be combined with other freestanding bylaws into unified development bylaws. Unified development bylaws make for a consolidated permitting and review process. Bylaws, either freestanding or combined, permit, prohibit, restrict, regulate, and determine land development.

Zoning bylaws regulate land use, and the density and disposition of that land use. 24 V.S.A. § 4411. There are many different permissible types of zoning regulations that may be adopted by a municipality including zoning districts and supplementary overlay districts. Within each district, bylaws will typically define the types of development (uses) that are allowed within the district, and provide various standards that the use must comply with in order for a permit to be issued.

Vermont land use law contains provisions for the equal treatment of housing, procedures for small lots, and defines how municipalities may regulate uses such as childcare homes and facilities and telecommunication facilities, among others. 24 V.S.A. § 4412. In addition, state law provides special protections for certain uses including educational institutions, hospitals, and solid waste management facilities. These uses may only be subjected to limited types of regulations and only to the extent that regulations do not interfere with the intended use. There are even uses exempt from local regulations, including public power generating and transmission facilities, and agricultural uses. 24 V.S.A. § 4413.

Uses are typically separated into two categories: permitted and conditional uses. Uses other than single-family and two-family dwellings, even if permitted, will require at least site plan review by the appropriate municipal panel for conformance with standards governing site improvements. 24 V.S.A. § 4416. If the use is categorized as conditional, the AMP will consider whether the proposed use will conform to the standards in the district and whether the proposal will have an undue adverse affect on the district and the community. (State law provides general standards for making an undue adverse affect determination.) If approval of either site plan or conditional use is granted, the administrative officer must issue the permit.

Waiver standards are a tool to allow a reduction in dimensional requirements in accordance with specific criteria in the bylaw. 24 V.S.A. § 4414(8). As envisioned, waivers would be used only to provide relief from dimensional requirements in certain situations spelled out in the bylaws, and would permit mitigation of a compliance problem through screening, design, or other remedy. Waivers allow municipalities to preserve the integrity of their bylaws and avoid the pressure to approve an otherwise valuable project by issuing a variance. In order to enact a waiver provision in a local bylaw, the municipality must define the process by which waivers may be granted and appealed.

While zoning and site plan regulations address the way a particular lot is developed, **subdivision regulations** control the pattern of development − the way land is divided up to accommodate uses and supporting infrastructure such as roads and utilities. Similarly with all prerequisite reviews, subdivision review is conducted by the appropriate municipal panel as specified in the regulations. Subdivision regulations are strengthened when supported by zoning bylaws regulating lot size and density. In the simplest sense, subdivision regulations

are meant to ensure that the division of land into smaller units results in lots or parcels that are useable, safe and reflect the physical characteristics of the site.

Planned unit development (PUD) **standards** allow for flexibility in the design of subdivisions. PUD standards are enacted to accomplish the goals in 24 V.S.A. § 4302 and must conform to the purposes of the municipal plan and bylaws. 24 V.S.A. § 4417. The review procedures and application materials for PUD review should be clearly articulated in the regulations, as well as the review criteria for varying densities, dimensional requirements and uses not otherwise permitted under the bylaws. Towns may also include provisions to encourage mixed-use development. Other permitted PUD standards include provisions for phasing, requirements for public or private improvements, and payment of impact fees. The regulations should coordinate the review process with other required reviews by the appropriate municipal panel.

Some municipalities choose not to adopt zoning or other regulations. Nevertheless, the Federal Emergency Management Agency requires that there be municipal **flood hazard regulations** before insuring properties located in flood hazard areas. Therefore, many municipalities without regulatory implementation tools will have a freestanding flood hazard bylaw. Some provisions of zoning such as variance provisions must be applied to flood hazard regulations and other freestanding bylaws. Municipalities with a zoning bylaw commonly incorporate flood hazard regulations into the bylaw. See 24 V.S.A. § 4424.

Another tool available to municipalities is the authority to levy **impact fees** under 24 V.S.A. § 5202. An impact fee (defined in 24 V.S.A. § 5201(3)) may be issued only as a condition of a land use permit. An example is to assess a fee to cover the cost of an extended sewer line to serve a new subdivision. The developer of the subdivision will benefit from the sewer system, which is a capital project. Thus, the municipality may make it a condition of the permit that the developer pay for all or a part of the sewer extension. A municipality may levy impact fees only if it has been confirmed by the regional commission under 24 V.S.A. § 4350 and developed a reasonable formula to assess the impact fee.

The statute requires a formula based on square footage, number of bedrooms or "a standard adopted as part of a town plan or capital budget." 24 V.S.A. § 5203(a). An impact fee may be assessed only for the capital project and not for operation, administration or maintenance of a capital project. It may be assessed on a developer for the entire cost of a capital project that will initially be used only by the beneficiaries of the development. However, if the project will be used in the future by beneficiaries of other future development, then the formula established for payment of impact fees (or a separate formula) shall include a requirement that the future beneficiaries pay an impact fee to the owners of the development on which the impact fee has already been levied.

A municipality may, under statute, exempt certain types of development from some or all of a fee assessed if the exemption achieves other policies or objectives clearly stated in a municipal plan, such as affordable housing. However, extreme care should be taken to craft an ordinance or bylaw that is not discriminatory. Professional assistance may be advisable in developing any exemptions to an impact fee ordinance.

3. **Process**. Bylaws and amendments are typically drafted by the planning commission and are adopted in a manner consistent with state law. This process includes the preparation and approval of a written report on the proposal. The report must include findings regarding the

proposal's advancement of the goals of the municipal plan, its compatibility with proposed uses and densities and how it carries out specific proposals for any planned community facilities. This report is important because it demonstrates the required conformance between the plan and proposed bylaw. A copy of the proposed bylaw and the report must be delivered to the planning commission chair of each adjoining municipality, the executive director of the regional planning commission, and to the Vermont Department of Housing and Community Affairs at least 15 days prior to the first hearing.

After holding at least one hearing on the proposed bylaw, the bylaw is forwarded to the selectboard for further review and adoption. It then becomes the legislative body's role to hold at least one public hearing on the proposed plan or amendment. The legislative body has the authority to make changes to the proposal, but may only make "minor" changes in the 14 days preceding the final public hearing. (Note that the term "minor" is not defined.) Any time the legislative body makes "substantial" (another undefined term) changes in the proposal, it must hold a new public hearing on the proposal. A copy of the changed proposal must also be filed with the clerk of the municipality and with the planning commission, which is then charged with amending its final report to the legislative body concerning the proposal's conformance with the municipal plan.

After the final public hearing, the legislative body may adopt the bylaw at a meeting. It takes effect 21 days after adoption, unless the electorate files a petition for an Australian ballot vote within 20 days. As an alternative to adoption by the legislative body, the legislative body or the electorate may vote to adopt bylaws via Australian ballot. The complete bylaw adoption process is described in 24 V.S.A. §§ 4441,4442.

For more information on town plan and bylaw adoption tools, and for other documents addressing land use planning in Vermont – including *Essentials of Local Land Use Planning and Regulations* and *Implementation Manual*, published by the Vermont Land Use and Education Collaborative – please go to www.vpic.info.

4. **Appeals of Local Land Use Decisions.** An appeal of a local land use decision can go all the way to the Vermont Supreme Court. There are two possible appeal processes at the local level: the appeal of the administrative officer's decision and the appeal of an appropriate municipal panel's decision.

   Virtually any act of the administrative officer is appealable, including decisions to refer an application to a particular board, a decision that a proposed land development activity does not require a permit, or a decision not to act on a violation. When someone appeals an act of the administrative officer, the appropriate municipal panel must schedule a hearing within 60 days of the filing of the notice of appeal. 24 V.S.A. § 4468. As part of the hearing, the appropriate municipal panel must determine if the appellant is an "interested person." 24 V.S.A. § 4465(b).

   Appeals of a decision of an appropriate municipal panel are taken to the Environmental Court, a trial-level court that has many of the same powers as a county superior court. Depending on the community's bylaws, Environmental Court appeals may be heard as if there were no proceeding at the municipal level; this is called a *de novo* appeal. The parties are entitled to present entirely new evidence, and the court makes a decision as if the appropriate municipal panel had never considered the case. 24 V.S.A. § 4472(a).

If the municipality has adopted "on the record" review, the Environmental Court only examines whether the appropriate municipal panel misinterpreted the bylaw or state law. The court does not hold any new factual hearings, and any questions as to the facts will be resolved by looking at the record developed by the appropriate municipal panel. A basic requirement is an audio recording or true record of the proceeding. 24 V.S.A. § 1205(c).

There is no obligation for municipalities to participate in an Environmental Court proceeding where a decision of an appropriate municipal panel has been appealed. Municipalities may choose to participate in Environmental Court proceedings to defend the local decision, or may allow the applicant and any interested persons to participate. As discussed below, there are limited circumstances when the legislative body has standing to appeal a decision of an AMP.

The Environmental Court is increasingly turning to mediation to resolve cases. Parties to a local proceeding (including the municipality) may wish to consider involving a mediator in order to resolve local land use disputes. For more information on mediation, contact the Environmental Court or the Department of Housing and Community Affairs.

When an administrative officer's decision is appealed, the AMP hears the appeal. The legislative body's role is minimal at this point, and primarily focuses on clarifying expectations for all involved, including the municipal attorney. The legislative body may have to coordinate with the municipal attorney to clarify who the client is and define the scope of the attorney's services.

When a case is appealed from the appropriate municipal panel to the Environmental Court, the AMP's role ends. It has no authority to appeal, to participate in an appeal or to represent the municipality. However, the legislative body may appeal a decision of the appropriate municipal panel if "the plan or bylaw is at issue." 24 V.S.A. § 4465(b)(2). While this statute may seem to grant broad authority to participate, case law has limited that right to those cases where the legislative body believes there has been an illegal or unconstitutional interpretation of a bylaw. *In re 232511 Investments, Ltd*., 2006 VT 27. Nevertheless, a legislative body may participate in an appeal that has been initiated by another appellant.