

ESSENTIALS OF LAND USE PLANNING AND REGULATION

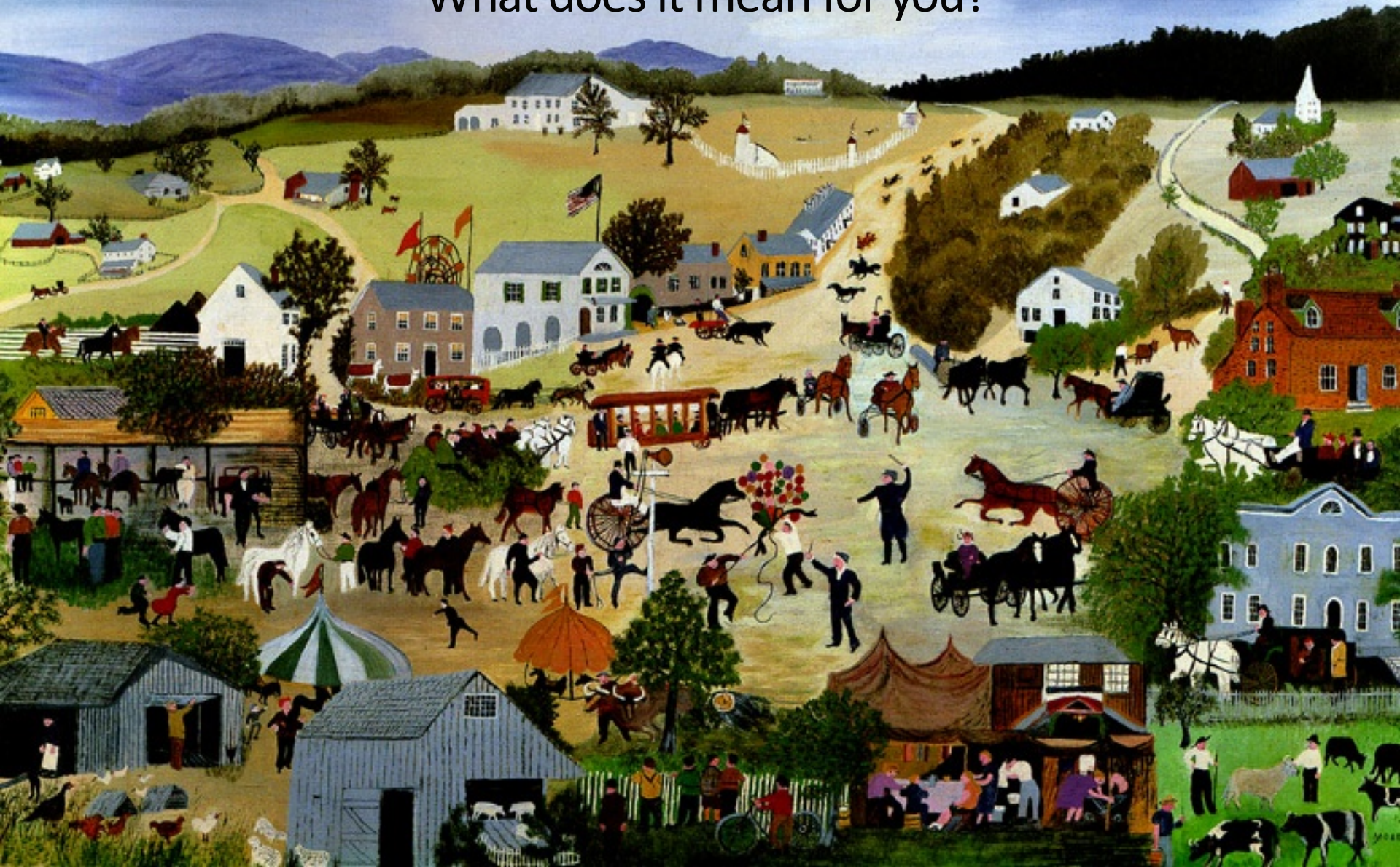
1. Planning for a Vibrant Sustainable Community
2. Roles and Responsibilities
3. Implementing the Plan
4. Meetings, Hearings and Due Process

PLANNING FOR A VIBRANT SUSTAINABLE COMMUNITY

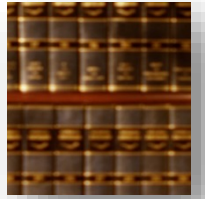
Section 1

Vibrant and Sustainable

What does it mean for you?



Statutory Basis for Planning and Regulation



Municipal and Regional Planning and Development Act – Chapter 117

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

1931 – The Vermont Legislature first authorized Zoning Regulations.

1968 – Municipal and Regional Planning and Development Act – Chapter 117

- Included purposes of planning and zoning
- Contents of municipal plans
- Adoption process for municipal plans
- Authorized zoning including specific types of review and regulations

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

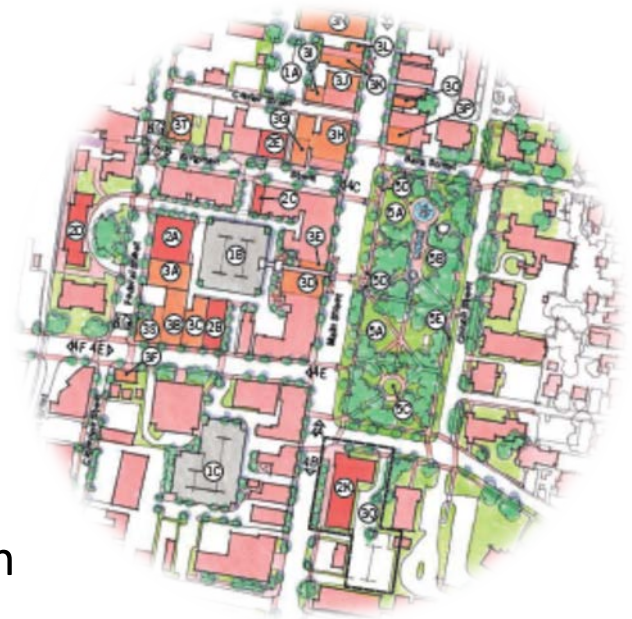
2004 – Act 115 incorporates additional significant updates to the zoning portions of Chapter 117

What is a Municipal Plan? Why have one?

What: A guide for accomplishing community aspirations and intentions through public investments, land use regulations and actions the town can take to achieve its vision.

Why:

- Inclusive process develops community-wide vision
- Empowers communities to respond to change in ways that reflect their own goals, needs, priorities and values.
- Allows communities to designate areas to maintain as is, evolve over time or to transform more quickly into a better place.



With a current plan you can...

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





Vermont Planning Process Goals

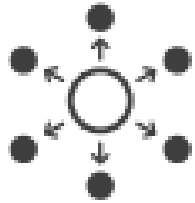
Planning Process (§4302, §4381-§4387)

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

“When it comes to planning, if you’re not doing it with people – they think you are doing it to them.”

Roger Millar, AICP
National Complete Streets Coalition

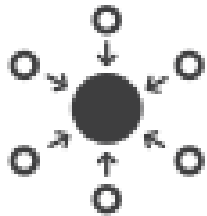
Types of Citizen Participation



INFORM

Commit to keeping residents informed about planning. Help the public understand problems and solutions.

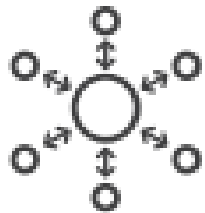
- ★ Fact Sheets
- ★ Newsletters
- ★ Websites



CONSULT

Provide opportunities for input on existing ideas – listen, acknowledge concerns and answer questions.

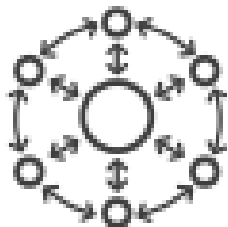
- ★ Surveys
- ★ Public Meetings



INVOLVE

Provide opportunities for dialogue and interaction. Obtain advice from the public and generate new ideas.

- ★ Workshops
- ★ Focus Groups



COLLABORATE

Partner with the public in decision-making, including the development of alternatives and identification of the preferred solution.

- ★ Citizen Advisory Committees
- ★ Participatory Decision Making (Charrettes)

Engaging People in Planning

Talk to people



**Food, fun and
celebration**



**Meet people
where they are**



**A culture of
communication**



VERMONT PLANNING GOALS

(§4302)



It's Your Municipal Plan (But there are requirements [§4382])

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

Create a plan for tomorrow,
not yesterday or today.

Municipal Plan Adoption

➤ **Plans expire every 8 years**

- Revise or rewrite the plan before expiration – at a minimum, make necessary edits to data and implementation program

➤ **Adoption process can take several months**

- Planning Commission hearing with notice to adjacent communities
- Selectboard hearing (1 in rural municipalities and 2 in urban)
- Decision on adoption shall be made by Legislative Body, unless the Legislative Body or voters have elected to decide by Australian Ballot
- Plans go into effect upon adoption

Regional Plan Approval & Confirmation

- **Municipalities may request RPC approval of the municipal plan.**
- **RPCs will confirm the municipal planning process if:**
 - If the municipal plan has been approved by RPC
 - The municipality is engaged in a process to implement the plan
 - Is maintaining efforts to provide funds for planning
- **A confirmed Planning Process allows municipalities to:**
 - Apply for state designation of downtowns, village centers, new town centers, neighborhood development areas and growth centers.
 - Apply for Municipal Planning Grants
 - Levy impact fees
 - Have plan considered by state agencies in their planning

Vermont Planning Manual

[https://accd.vermont.gov/
community-
development/town-
future/municipal-
planning-manual](https://accd.vermont.gov/community-development/town-future/municipal-planning-manual)

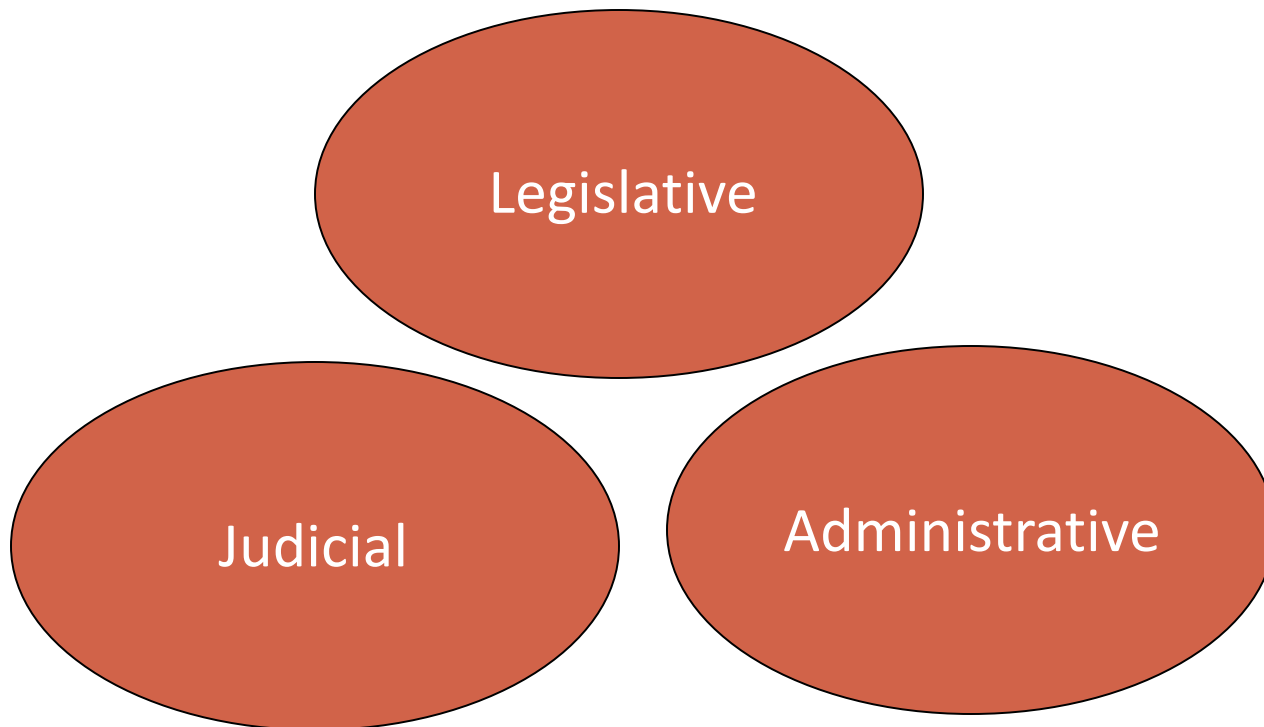


ROLES AND RESPONSIBILITIES

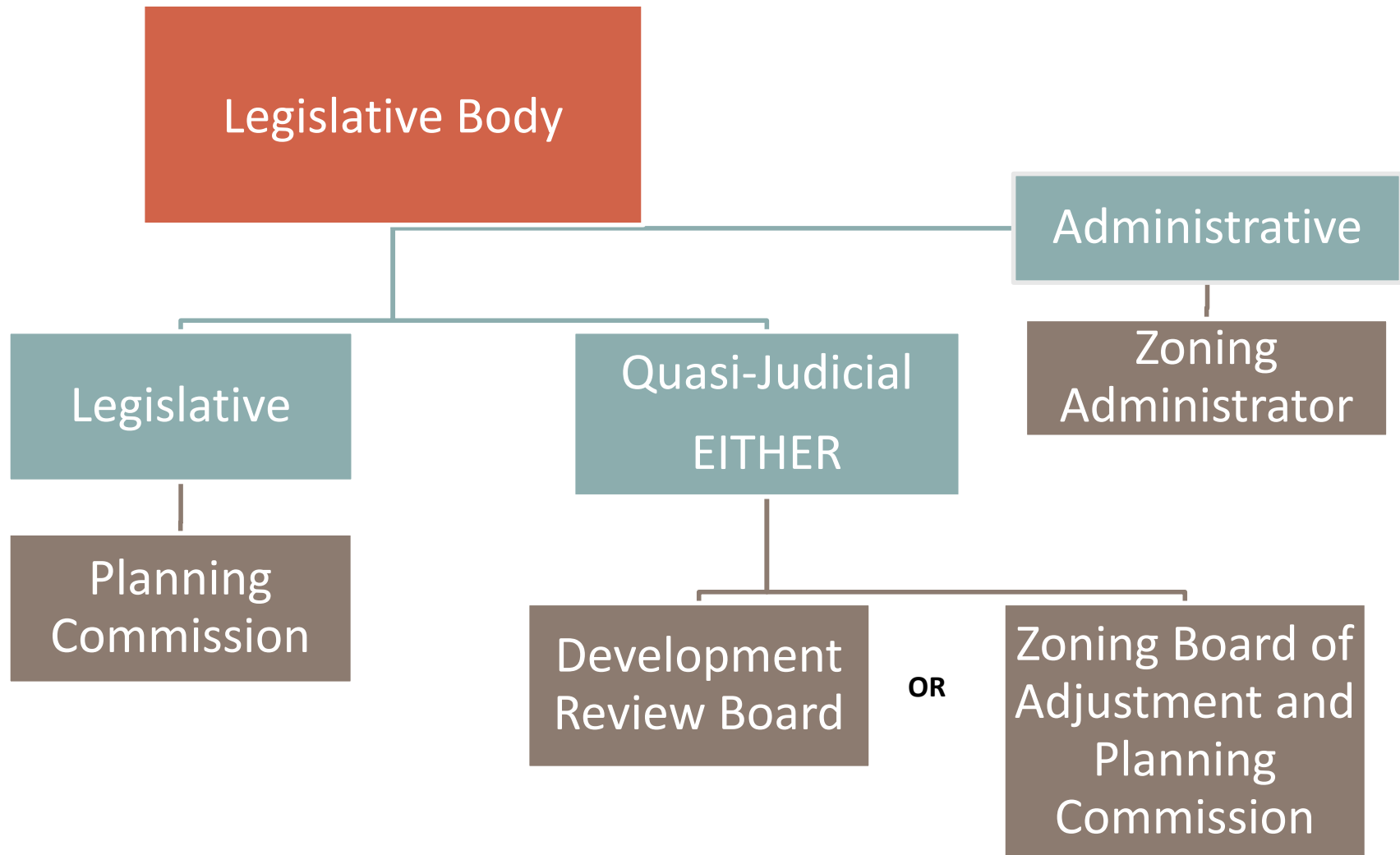
Section 2

Local Roles and Responsibilities

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



Local Roles and Responsibilities



Legislative Function

- Planning Commission

- Prepares the Municipal Plan
- Prepares Zoning/Development Regulations
- Can prepare or edit Capital Budget and Program
- Prepares other studies

- Legislative Body

- Reviews and may edit Municipal Plan and either adopts or sends to voters
- Reviews and may edit Zoning Bylaws/Development Regulations and either adopts or sends to voters
- Prepares or edits and adopts Capital Budget and Program

Quasi-Judicial Function

Development Review Board

- Site plans
- Subdivisions
- Conditional uses
- Lots without frontage
- Variances
- Appeals of ZA decisions

OR

Planning Commission

- Site plans
- Subdivisions
- Lots without frontage

Zoning Board of Adjustment

- Conditional Uses
- Variances
- Appeals of ZA decisions

Administrative Function

- Zoning Administrator
 - Issues zoning permits
 - Conducts Enforcement
 - Assists applicants
 - May staff DRB, PC, or ZBA

PERMIT NOTICE

Address: _____

Applicant: _____

Project Description: _____

☐ **Permit / Approval**
Type: _____
Date Issued: _____
Appeal by: _____

☐ **Public Hearing**
Date / Time: _____
Place: _____
Purpose: _____

For more information contact:

Applicant: This notice shall be displayed on the subject premises and be clearly visible from the public way. Notice shall be displayed at the time of application and shall not be removed until after the appeals expiration date.

VERMONT LAND USE
Education & Training Collaborative

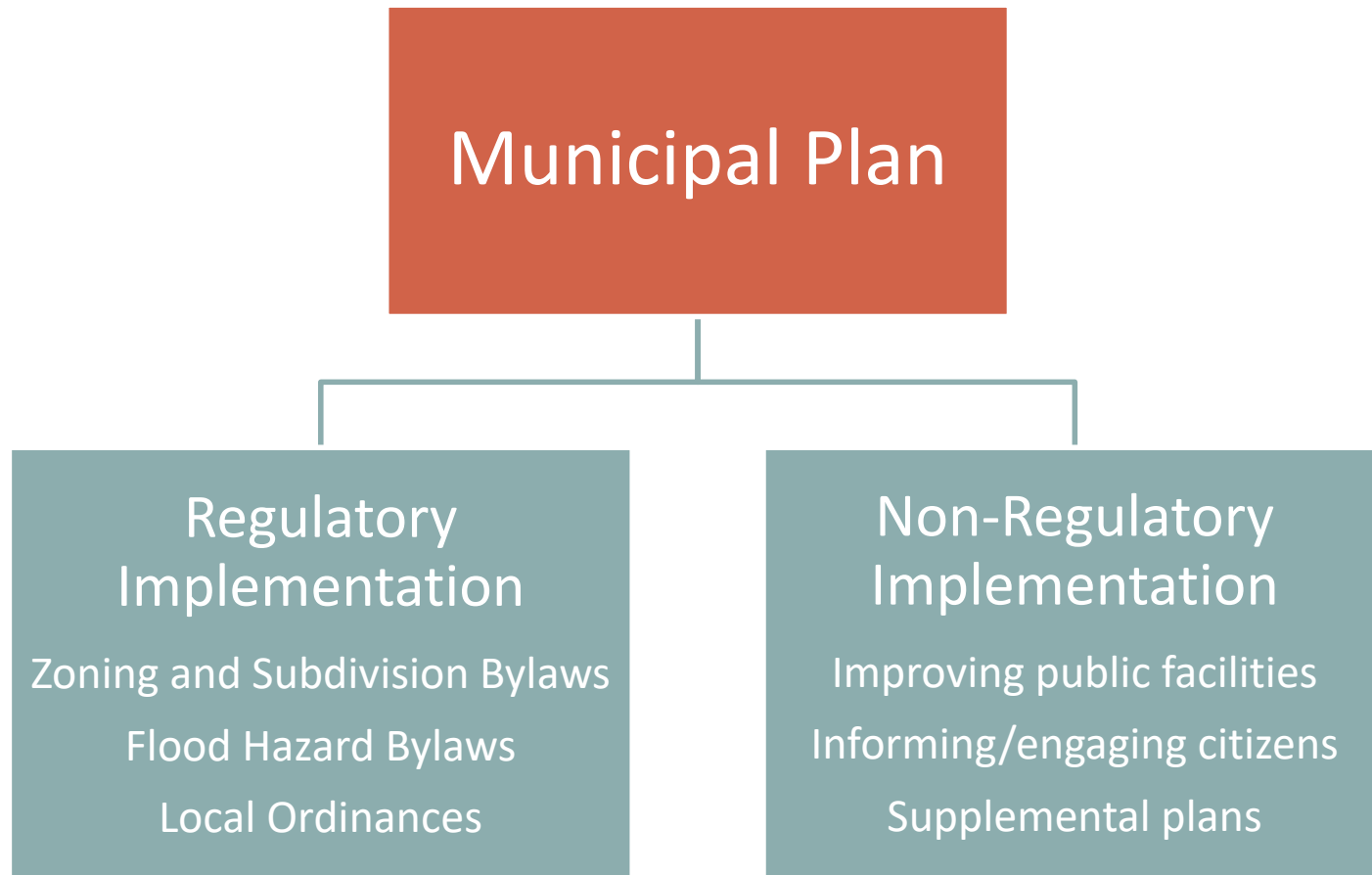
What's the difference?

- Regulation
- Bylaw
- Ordinance

IMPLEMENTING THE MUNICIPAL PLAN

Section 3

Implementing the Plan



Why Have Local Land Use Regulations?

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



Promote compact, walkable development



Protect important natural resources



Minimize fragmentation of farmland



Incentivize affordable housing



Encourage efficient use of infrastructure



Ensure compatibility with historic character



Establish safe vehicular and pedestrian circulation

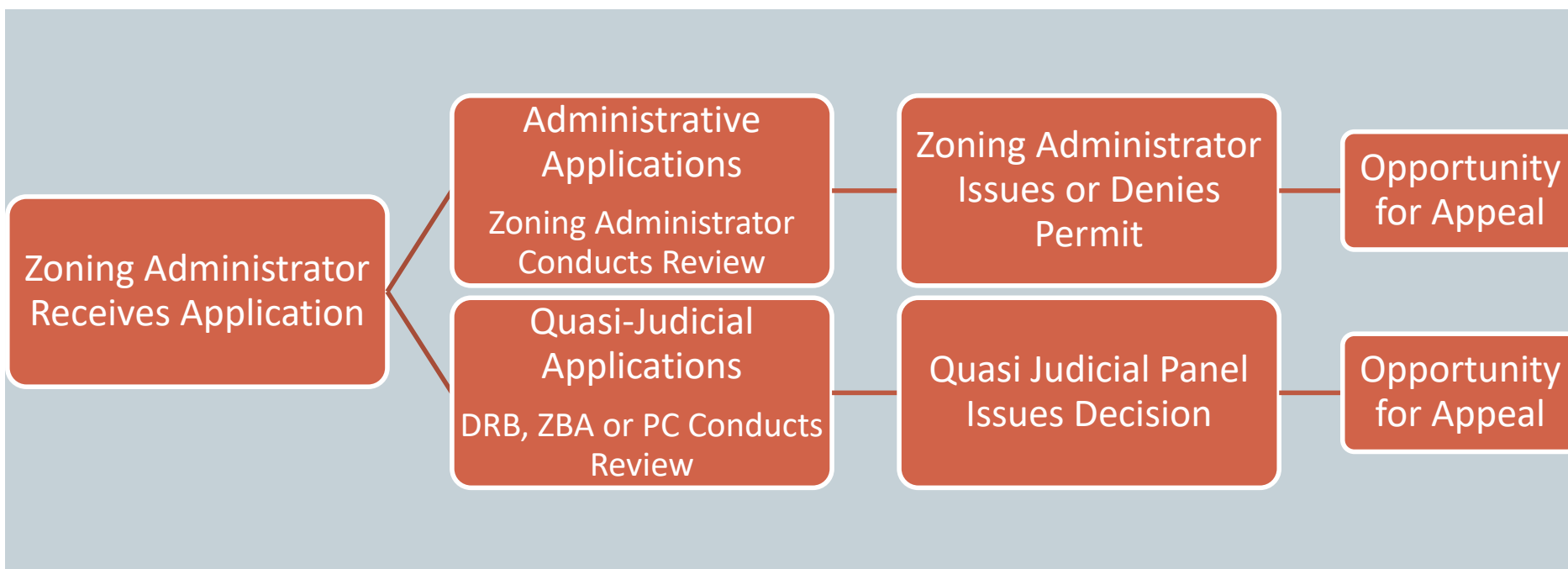


Make communities more flood resilient

Limits of Local Regulation

- Land use regulations tell people what they can and cannot do with their land, but they cannot deprive landowners of all reasonable use of their property (5th and 14th Amendments)
- Land use regulations can only regulate what is enabled in Vermont Statute (Dillon's Rule)
- Vermont Limitations and Prohibited Effects (§4412 and §4413):

Players and processes potentially involved in local regulation



Local Regulation: Types of Review

Land Development:

- *Division of a parcel into 2 or more parcels*
- *Construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure*
- *Or of any mining, excavation, or landfill*
- *Any change in the use of any building or other structure, or land, or extension of use of land*

Type of Review	Function of Review
Zoning	
Permitted Use	Established by right
Conditional Use	Can be established if found to be compatible
Site Plan Review	Ensures good site design
Variances	Stringent statutory standards
Waivers	Flexible local standards
Planned Unit Developments	Allows for flexible design
Subdivision	Controls the pattern of future development

Regulatory Decisions

Decisions must:

- Be in writing and contain:
 - ✓ Findings of fact on which each decision is based, and
 - ✓ Conclusions of law on how the bylaw applies
- Be based on review standards in bylaw
- Minutes may suffice
- Should memorialize concurrence of majority of board

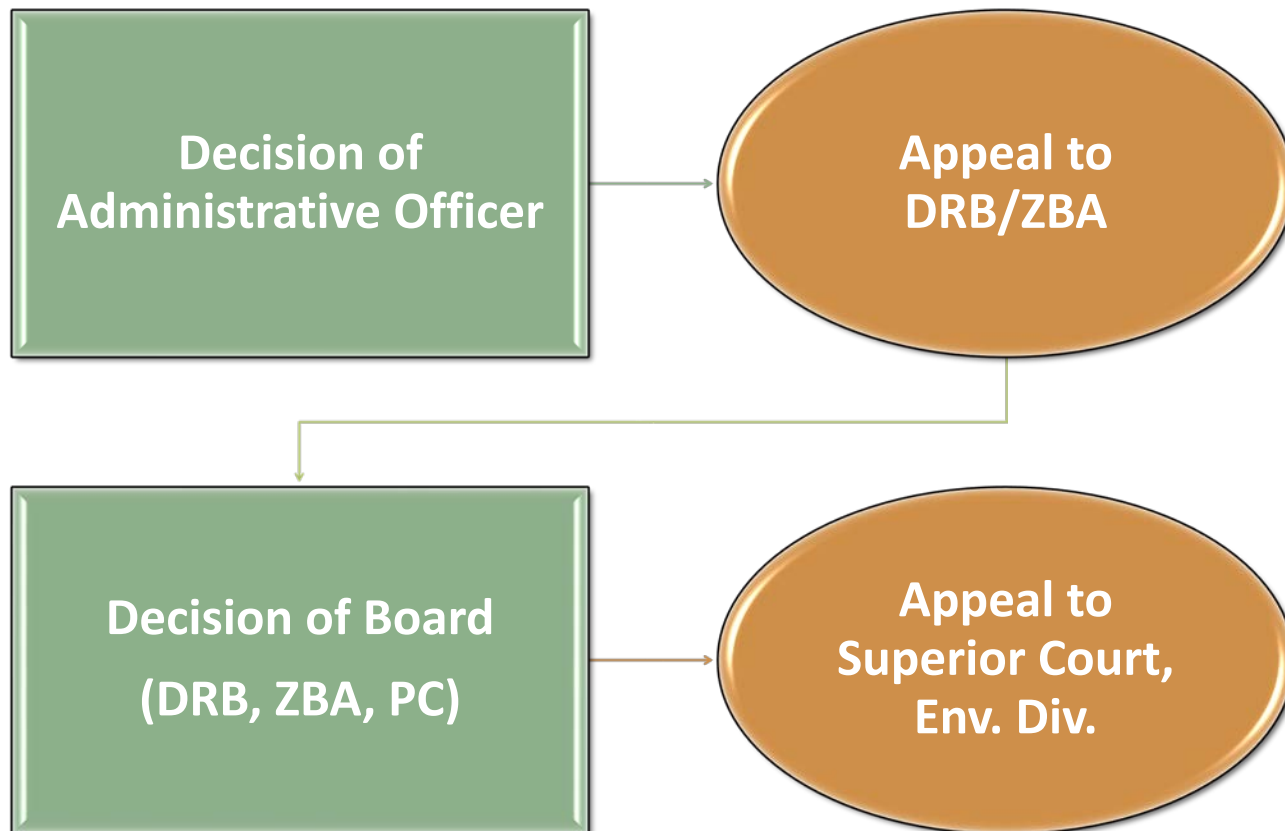
Timeline:

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

Who is responsible for preparing decisions?

Appeals

Appeals may be at either local or state levels.



Interested Persons May Appeal

Pursuant to 24 V.S.A. § 4465(b)

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

Only interested persons who have participated may appeal!

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

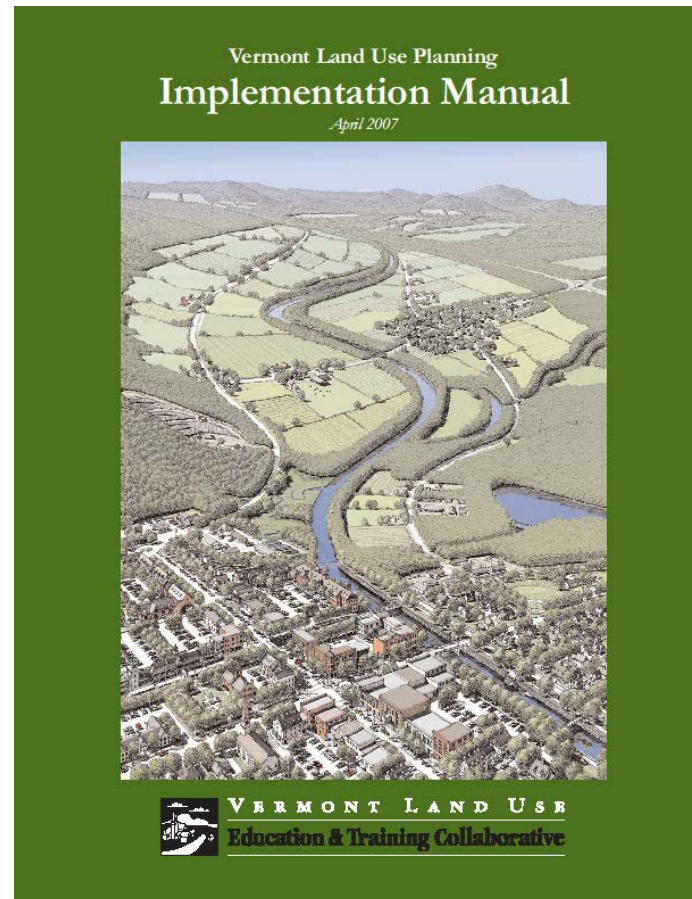
Non-Regulatory Implementation

Complements regulatory implementation

Chapter 117 authorizes:

- Capital Budget and Program
- Tax Stabilization Contracts
- Purchase/Acceptance of Development Rights
- Supporting Plans
- Advisory Commissions
- Other projects and studies (whatever your plan recommends)

Learn More at www.vpic.info



MEETINGS, HEARINGS AND DUE PROCESS

Section 4

Vermont's Open Meeting Law

(1 V.S.A. §§310-314)

Requires all **meetings** of **public bodies** to be **open to the public** unless a specific exception applies. In order to make a meeting open to the public, the public body must:

- Provide advance public notice of meetings, including meeting agendas.
- Discuss all business and take all actions in open meeting, unless an exception applies.
- Allow members of the public to attend and participate in meetings.
- Take meeting minutes and make them available to the public.

Applying the Open Meeting Law

What is a “Public Body?”

- Any board, council, or commission of the State or one or more of its political subdivisions
- Or any committee of any of the boards, councils, commissions

Temporary Changes (until 1/23):

- No physical location required
- Can use two electronic places rather than physical locations

What is a Meeting?

- A quorum is gathered
- To discuss business or take action
- Email conversations are public meetings –subject to the law-with narrow exceptions
- ‘Serial’ or ‘daisy chain’ communication may be considered a meeting under the law
- Texts, online editing, social media could be considered meetings

Meetings vs. Hearings

What happens...

(Quorum of members = Meeting)

Who does it...

(Use Parliamentary Procedure)

Meetings

- Discuss business or take action
- Generally legislative

- All Public Bodies

Legislative Hearings

- Receive public comment on a course of action (e.g. a plan or bylaw update)

- The Planning Commission
- Selectboard

Quasi-judicial Hearings

- Hear from parties seeking board approval

- Boards that review proposed development

Public Notice

Regular, Special and Emergency Meetings

Regular Meetings

- Set by ordinance or resolution
- 48 hours notice
- At town, 2 other places and on official website, if it exists

Special Meetings

- 24 hours notice
- Same posting as reg mtg

Emergency Meetings

- As soon as possible
- Same posting as reg mtg

Temporary Changes (until 1/23):

- Agenda must include details for direct telephone and electronic participation
- No physical location required
- Can use two electronic places rather than physical locations

Public Notice

Legislative Hearings

For plans and bylaw amendments

- 15 days notice
- Newspaper of record
- At town, 2 other places and on official website, if it exists
- Certified Mailings

Quasi Judicial Hearings

For development review

- 15 days notice
- Newspaper of record
- At town, 2 other places and on official website, if it exists
- Mailed to applicants and abutters
- Posting within view of nearest public ROW

Minutes

CONTENT

- All members in attendance
- Names of other active participants
- Motions, proposals and resolutions
- Result of all votes

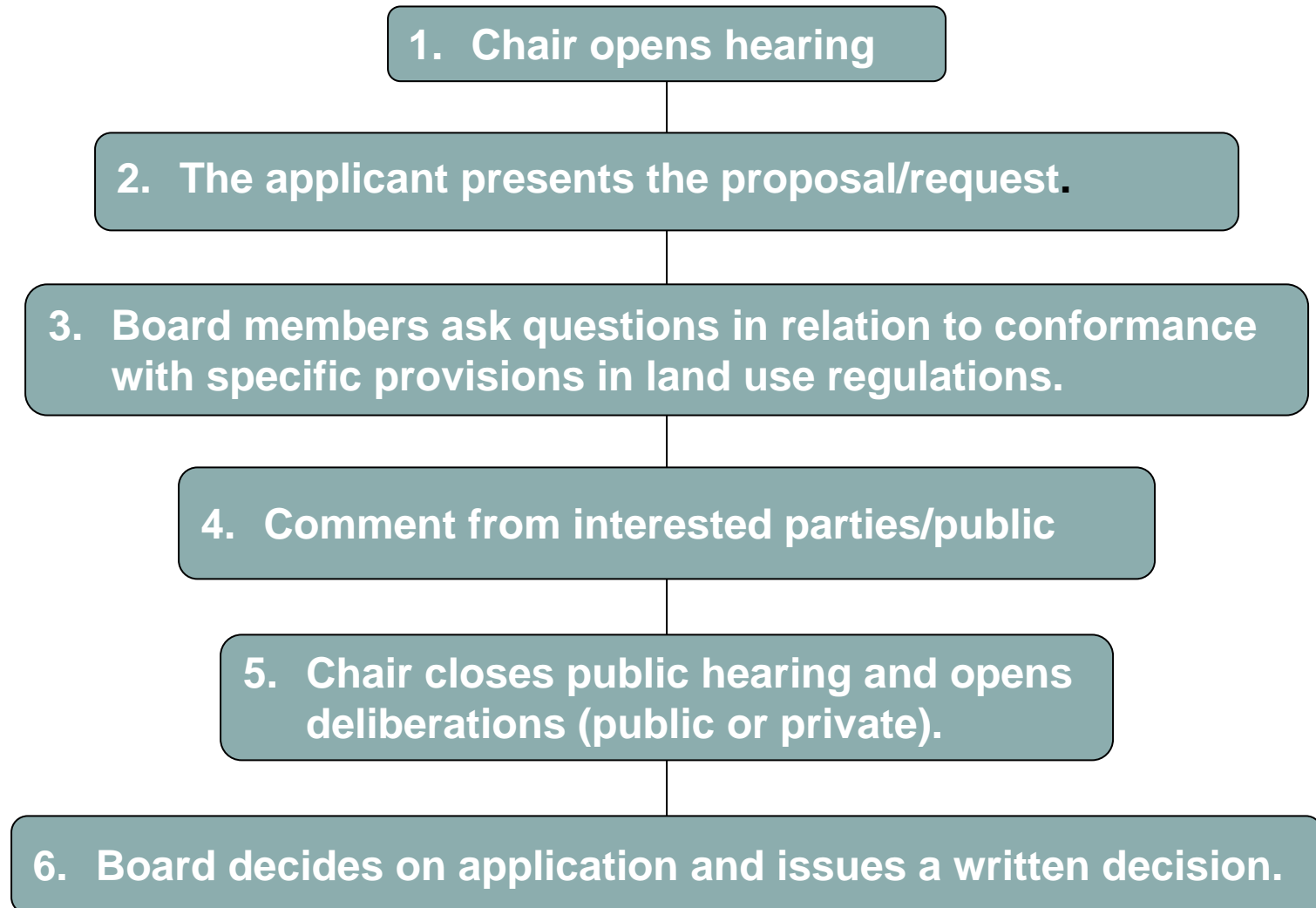
REQUIREMENTS

- Available within 5 days
- Posted on website within 5 days
- Maintained for one year

Temporary Change (until 1/23):

- Public bodies may extend minutes availability to 10 days in the event of staff shortage

Flow of Quasi-Judicial Public Hearing



Opening a Quasi-Judicial Hearing

1. Review order of events
2. Remind of the importance of order
3. Make copies of the **rules of procedure and ethics policies** available.
4. Review definition of **interested persons** and ensure documentation of participants. Administer oath.
5. Request disclosure of **conflicts of interests or ex parte communications**

Role of the Board Chair

A Chair administers the agenda, keeps board members focused on the issue at hand, and ensures the Board finishes on time.



- A Good Chair Should:
 - State the Question
 - Ask For Discussion (without giving own opinion)
 - Bring The Board To Resolution After Discussion (Coaxing a Motion)

Board Member Role at Quasi-Judicial Hearing

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

- Listen to testimony and evidence;
- Ask questions;
- Refer to your regulations;
- Avoid conflicts of interest;
- Base decision on evidence presented
- Must not prejudge a matter or publicly express opinions on a pending case.



Deliberative Session

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



Conflicts of Interest

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

It takes years to build trust with the public, but just one misstep to destroy it.



Managing Conflicts of Interest

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

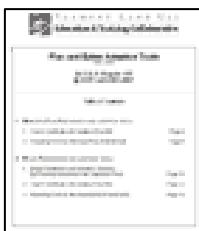
In Summary: Protecting Due Process

- Proper public notice
- People are given an opportunity to be heard
- An orderly proceeding
- Proper management of evidence
- Proper management of conflicts of interest

Learn more: www.vpic.info



Essentials of Local Land Use Planning and Regulation



Plan and Bylaw Adoption Tools



Rules of Procedure and Ethics Manual

And more resources at www.vpic.info

QUESTIONS?



Tools and Resources Available:

- Title 24, Chapter 117, V.S.A, current and up to date: www.leg.state.vt.us/statutes
- Your local Regional Planning Commission: www.vapda.org
- www.vlct.org – Vermont League of Cities and Towns (VLCT)
- <http://accd.vermont.gov/community-development> – Department of Housing and Community Development
- www.vlct.org/vermont-local-government/vermont-open-meeting-law/

