



ESSENTIALS OF LAND USE PLANNING AND REGULATION

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



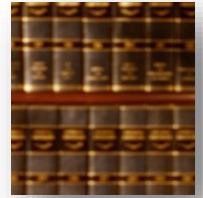
PLANNING FOR A VIBRANT SUSTAINABLE COMMUNITY

Section 1





Statutory Basis for Planning and Regulation



Municipal and Regional Planning and Development Act – Chapter 117

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

1931 – The Vermont Legislature first authorized Zoning Regulations.

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

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

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

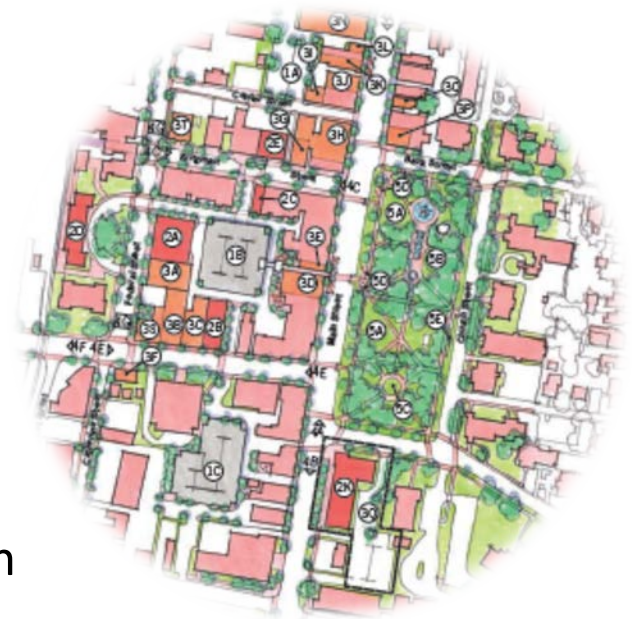
2004 – Act 115 incorporates additional significant updates to the zoning portions of Chapter 117

What is a Municipal Plan? Why have one?

What: A guide for accomplishing community aspirations and intentions through public investments, land use regulations and 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
- Affect Act 250 projects as applications must conform to your Town Plan
- Affect state and local access permits
- Have your Town's wishes considered in energy project reviews (Section 248 Certificate of Public Good Applications)
- Make 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

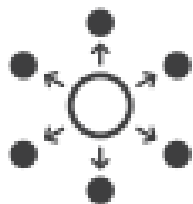
The process is often more important than the product!



“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

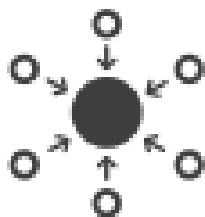
Types of Citizen Participation



INFORM

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

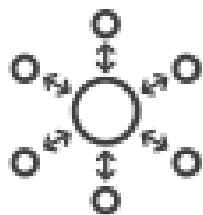
- ★ Fact Sheets
- ★ Newsletters
- ★ Websites



CONSULT

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

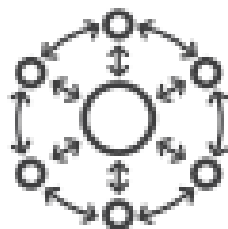
- ★ Surveys
- ★ Public Meetings



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's PLANNING GOALS

(24 VSA §4302,
local plans may
be compatible,
but shall be for
regional
approval)



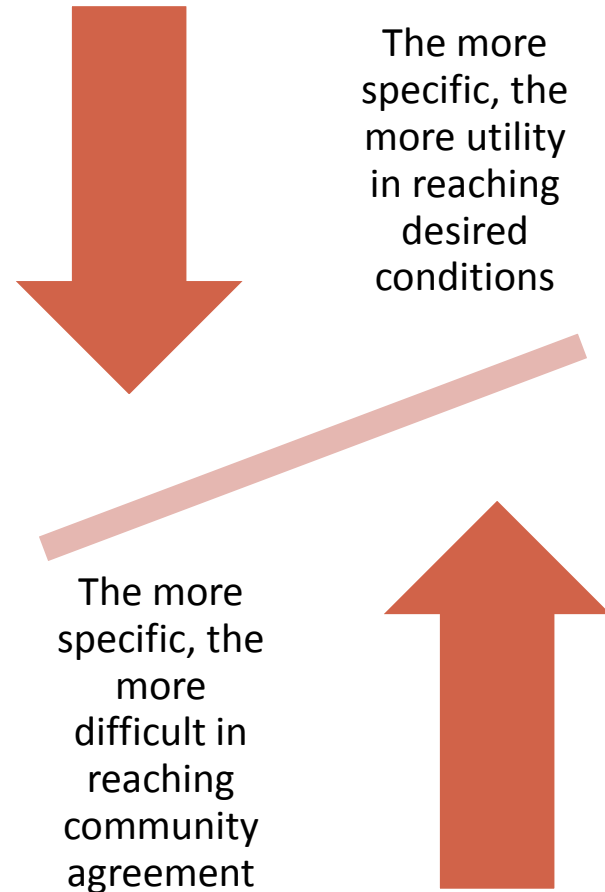


It's Your Municipal Plan (But there are requirements [§4382])

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



The Town Plan is the only statutory comprehensive document created publicly by the town to lay out 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**

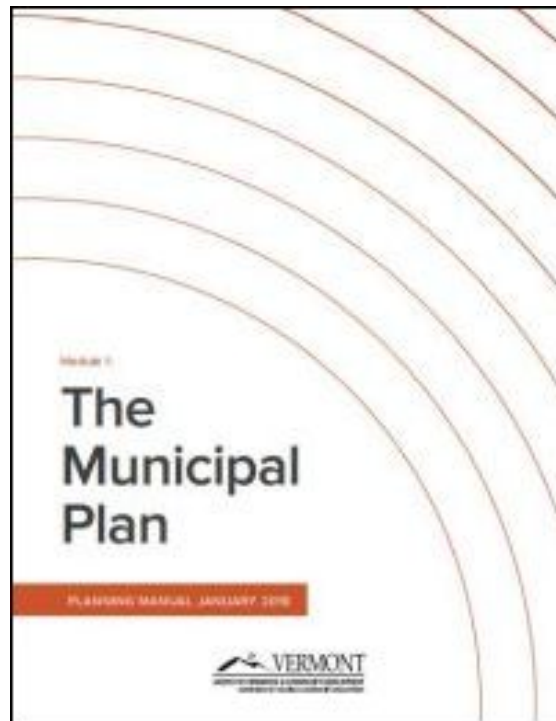
- Planning Commission hearing with notice to adjacent communities
- Selectboard hearing (1 in rural municipalities and 2 in urban)
- Decision on adoption shall be made by Legislative Body, unless the Legislative Body or voters have elected to decide by Australian Ballot
- Plans go into effect upon adoption



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 – www.vpic.info



ROLES AND RESPONSIBILITIES

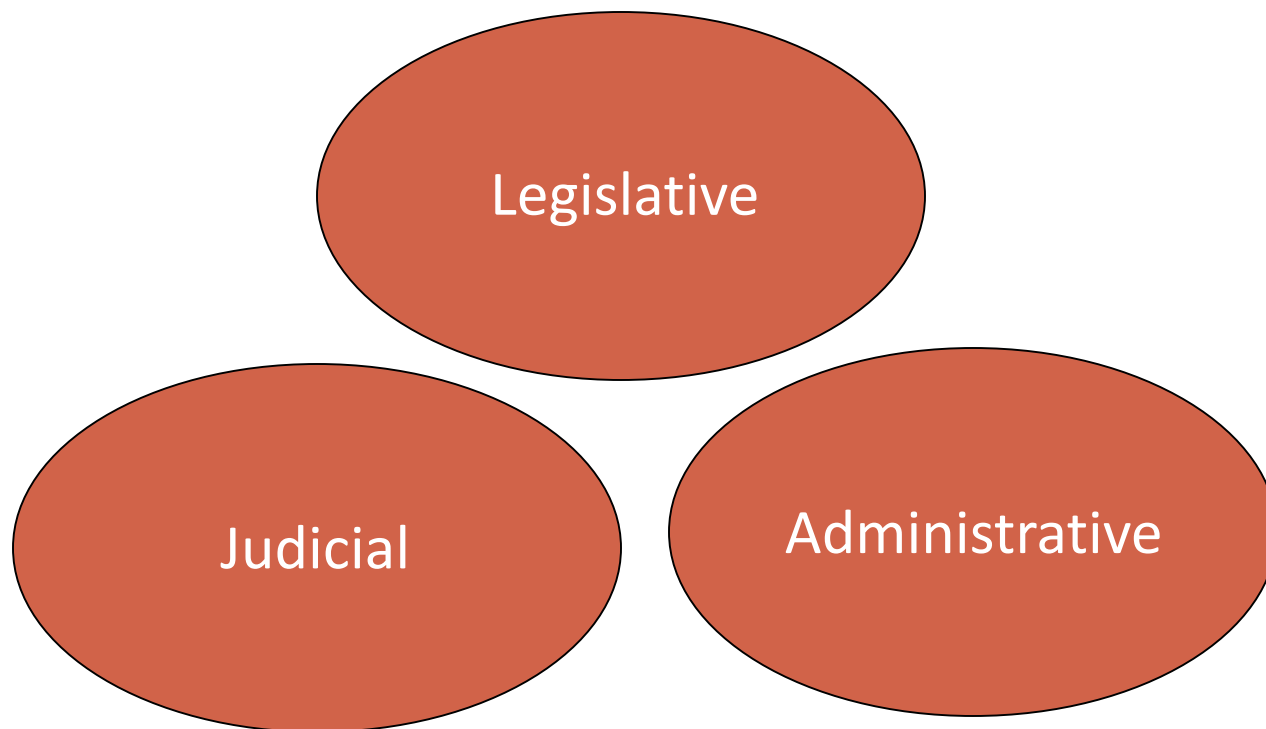
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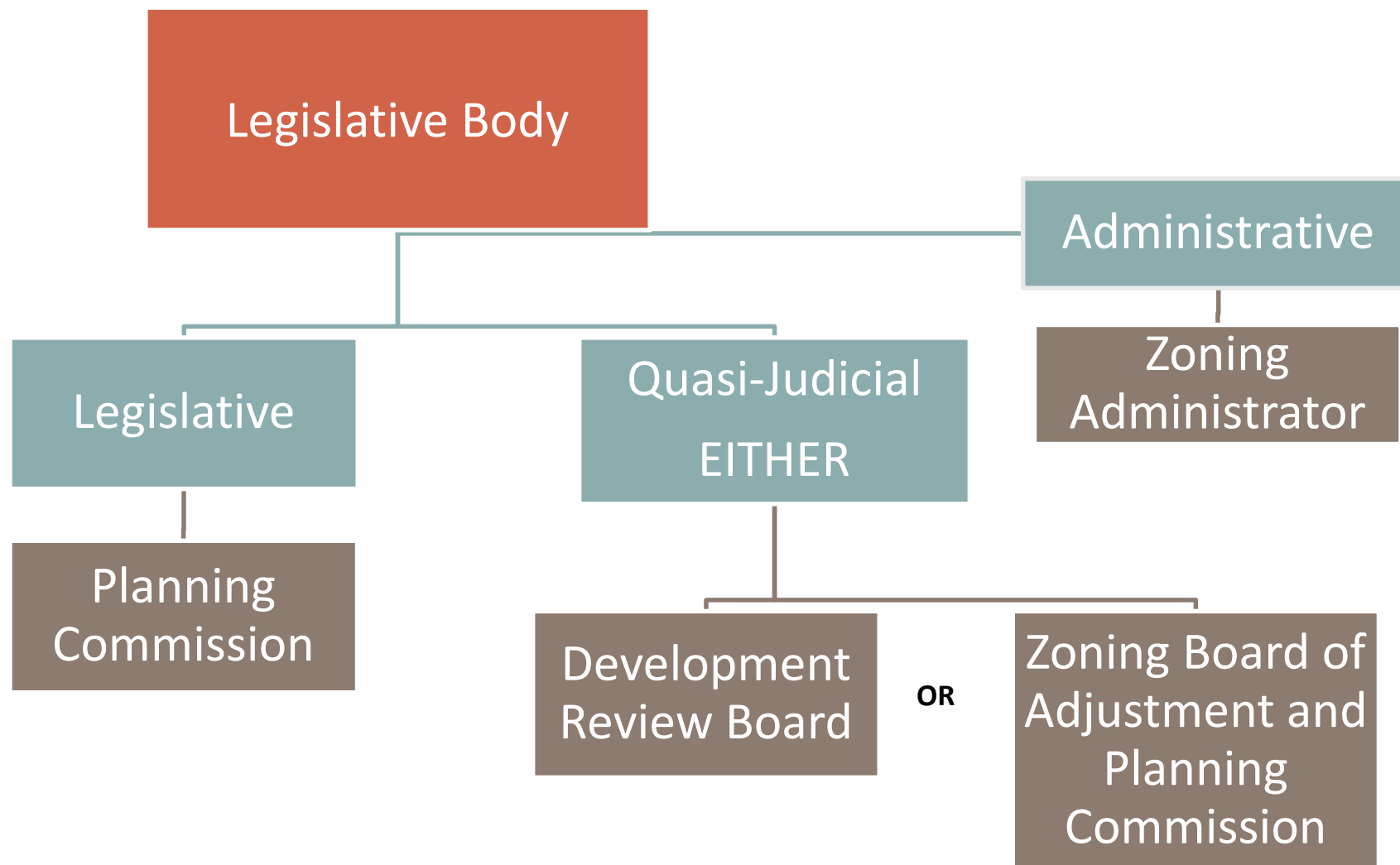


Local Roles and Responsibilities

- 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
 - Coordinates across permitting
 - Conducts Enforcement
 - Assists applicants
 - May staff DRB, PC, or ZBA
 - May also handle *review* functions for projects without significant impacts per 24 VSA 4464(c)

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



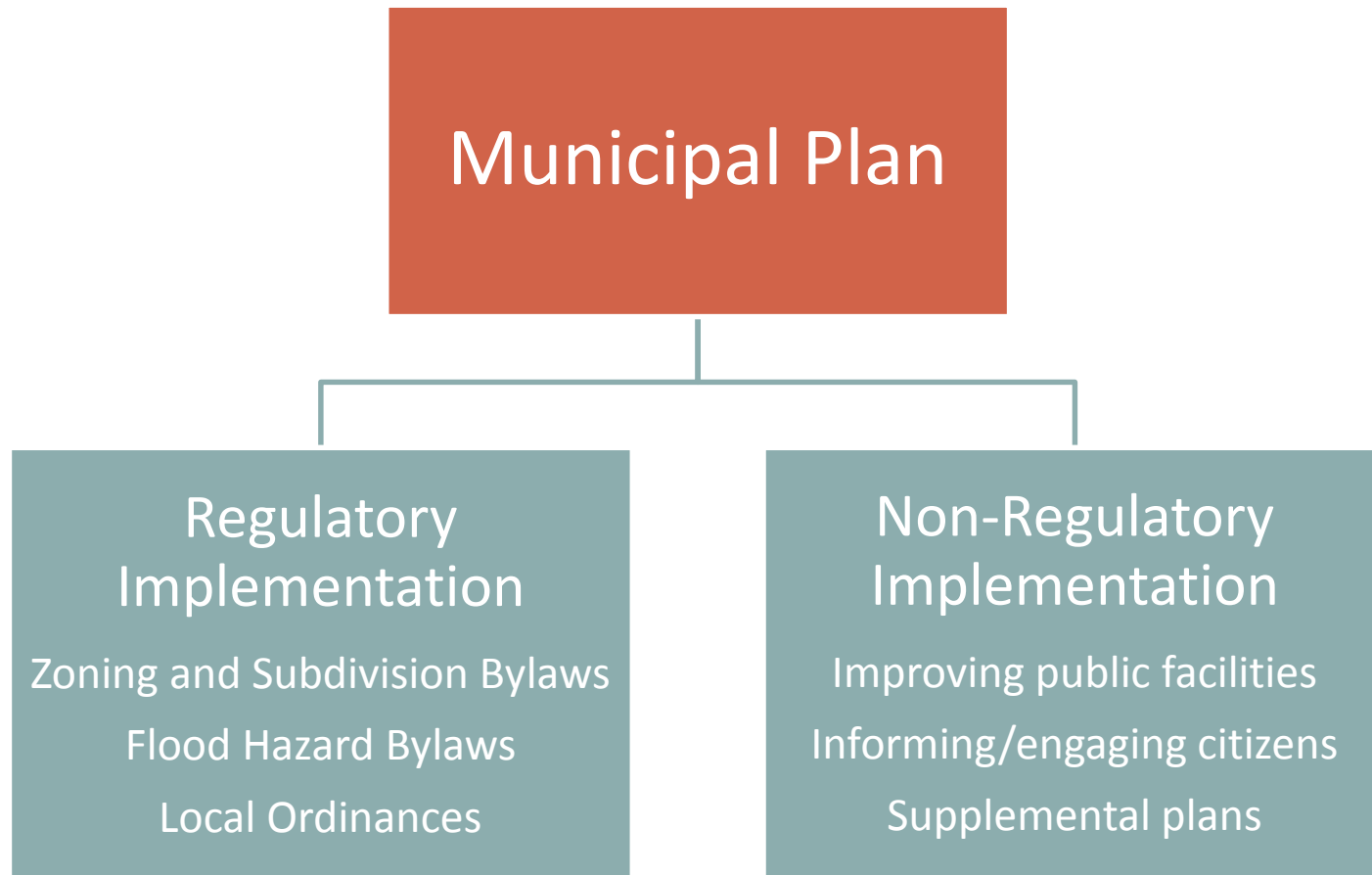
IMPLEMENTING THE MUNICIPAL PLAN

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



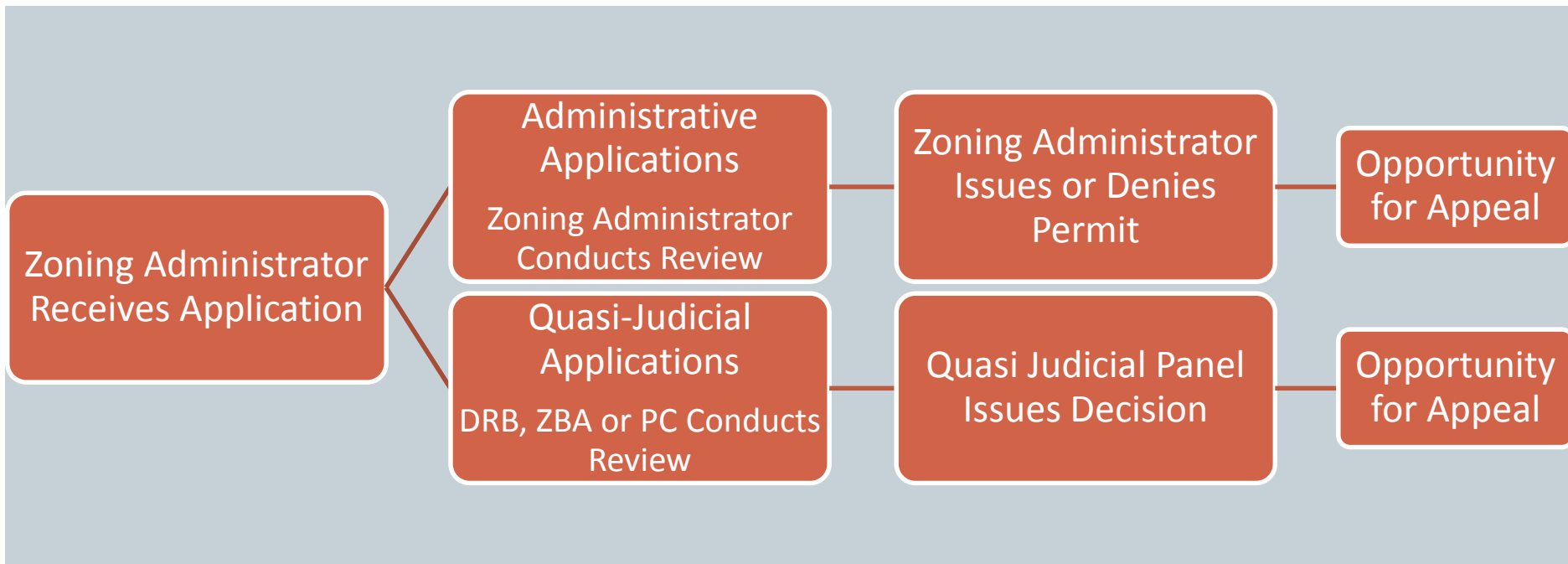
Make communities more flood resilient



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)
- Democracy takes place in the formation of the regulations, NOT in their administration

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, use is appropriate |
| Variances | Stringent statutory exception process |
| Waivers | Flexible local <u>dimensional</u> standards |
| Planned Unit Developments | Allows for flexible design |
| Subdivision | Controls the pattern of future development |



Non-Regulatory Implementation

Complements regulatory implementation

Chapter 117 authorizes:

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

Capital Budget and Program

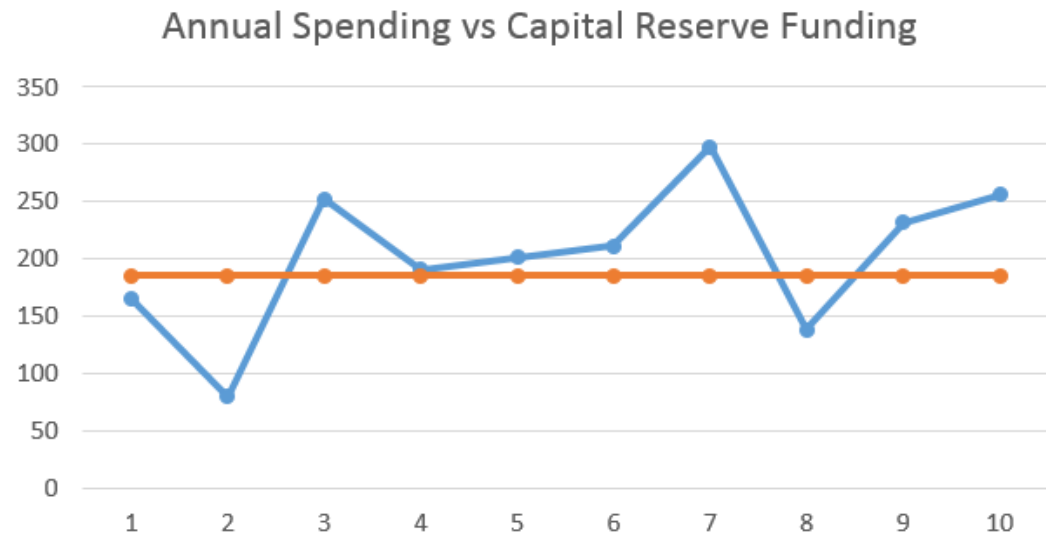
Title 24 § 4430

- “(a) A capital budget shall **list and describe the capital projects** to be undertaken during the coming fiscal year, the **estimated cost** of those projects, and the **proposed method of financing**. A capital program is a plan of capital projects proposed to be undertaken during each of the following **five years**, the estimated cost of those projects, and the proposed method of financing.”

We suggest going out to ten years to help smooth costs.

Capital Budgets and Programs

- smooth out annual costs
- avoid large tax hikes
- ensure that needed outlays are met
- creates well justified funding requests





MEETINGS, HEARINGS AND DUE PROCESS

Section 4





Meetings vs. Hearings

What happens...

Meetings

- Discuss business or take action
- Generally legislative

Legislative Hearings

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

Quasi-judicial Hearings

- Hear from parties seeking board approval

Who does it...

- All Public Bodies

- The Planning Commission
- Selectboard

- Boards that review proposed development



Vermont's Open Meeting Law

(1 V.S.A. §§310-314)

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

www.vlct.org/vermont-local-government/vermont-open-meeting-law/



Public Notice

Meetings

- For regular meetings: 1 VSA §§310-314
- At least 48 hours*
- At town and 2 other places

Legislative Hearings

- For plans and bylaw amendments
- 15 days
- Newspaper of record
- Certified Mailings

Quasi-Judicial Hearings

- For development review
- 7/15 days notice**
- Newspaper of record
- 3 or more public places
- Mailed to applicants and adjoining
- Posting within view of nearest public ROW

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.



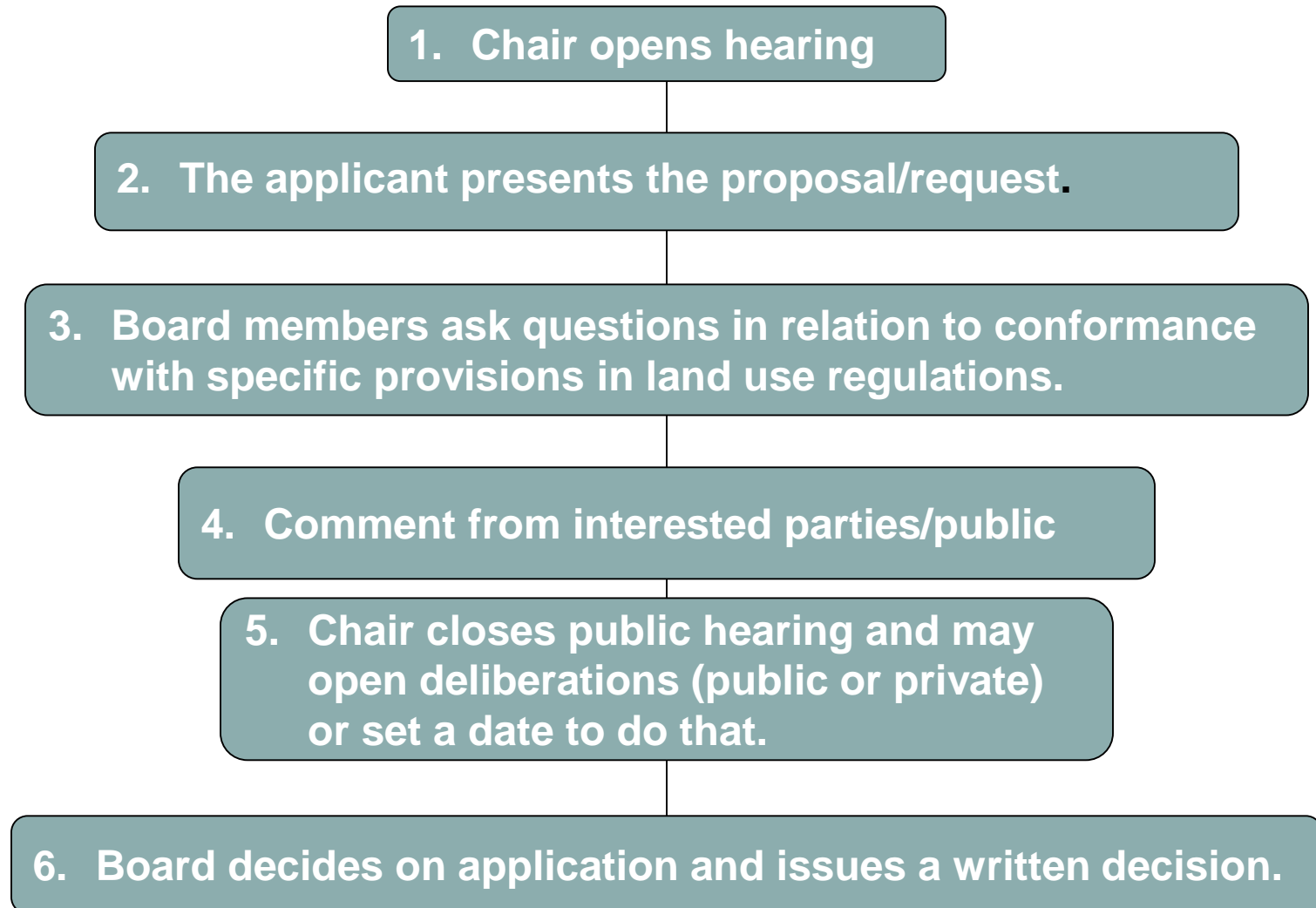


Managing Conflicts of Interest

- 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



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**, remind all that participation is necessary to retain appeal rights, 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)
 - Ensure ALL aspects are covered that are needed to make findings, continuing hearing if needed
 - Bring The Board To Resolution to Close Hearing
 - Explain next steps

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 so that you can base decision on evidence presented;
- Refer to your regulations;
- Avoid conflicts of interest;
- Must not prejudge a matter or publicly express opinions on a pending case.



Deliberative Session

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





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 (but this is a bad idea)

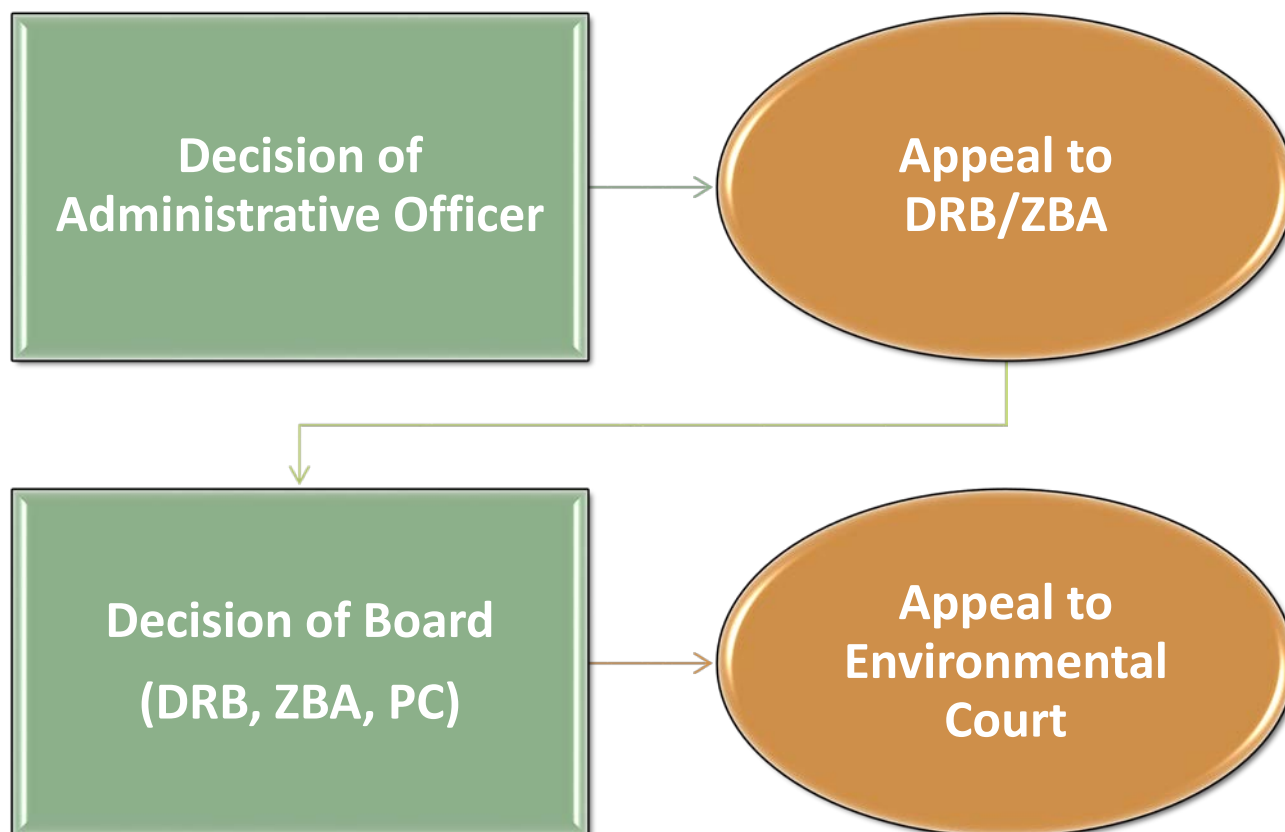
Timeline:

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!

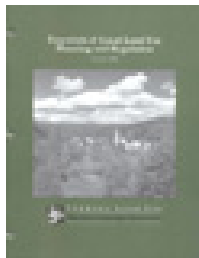
Board can choose not to make interested person determinations and leave it to the Environmental Court!



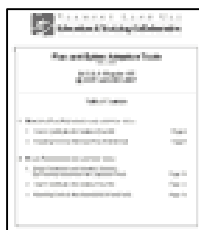
In Summary: Protecting Due Process

- 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

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
Two Rivers-Ottauquechee Regional Commission
www.TRORC.org and <http://www.trorc.org/ask/>
- www.vlct.org – Vermont League of Cities and Towns (VLCT)
- <http://accd.vermont.gov/community-development> – Department of Housing and Community Development



QUESTIONS?

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