

# VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

STRENGTHENING VERMONT LOCAL GOVERNMENT

November 2000

## DAVID SICHEL IS NEW VLCT GROUP SERVICES DIRECTOR

Deputy Director of Group Services David Sichel dropped the word "Deputy" from his job title this month when he was named the new Director of VLCT Group Services. Sichel fills the position vacated by Thomas LoPizzo, who recently left the League for a



position with the Compensation Funds of New Hampshire.

Most members of the three VLCT insurance trusts know Dave Sichel from the hundreds, if not thousands, of selectboard meetings he has attended in his 12 years with VLCT. He has traveled to almost every Vermont municipality, fire district, solid waste district and regional planning commission to explain coverages, services and costs to potential and current PACIF members. Dave's knowledge of our members' risk management needs is well grounded by these years of experience in the field, and is complemented by the national experience he has gained as a current member of National League of Cities (NLC) Mutual Insurance Company Board of Directors and as a former member of the Board of Directors of the NLC Risk Information Sharing Consortium.

VLCT's Group Services Department is its largest in terms of staff with 15 individuals performing a variety of services for the VLCT

Health Trust, the VLCT Property and Casualty Intermunicipal Fund (PACIF) and the VLCT Unemployment Trust. Together, the three Trusts have 370 municipal members, and manage over \$26 million in municipal funds to meet their risk management needs.

Patrick Scheidel, President of the VLCT PACIF Board and Essex Town Manager, was pleased with the appointment. "Tom LoPizzo's shoes will be hard ones to fill," Scheidel said, "but we are pleased that we have found in our midst a person with David's personal qualities and experience. He brings qualifications to the job that we will need to continue to provide the quality services we've grown to expect from the League. We look forward to working with David to develop new products and services essential to meeting the needs of Vermont municipal government in the 21<sup>st</sup> century."

Dave came to the League in 1988 as Field Representative/Loss Control Coordinator for VLCT PACIF. Shortly thereafter he moved into the position of Risk Management/Field Services Director, and became Deputy Director of Group Services in 1995. Prior to coming to VLCT, he served as the Finance Director for the Town of Brattleboro for six years and as Administrative Assistant in the

*(Continued on Page Three)*

### VLCT HEALTH TRUST ANNOUNCES 2001 RATES ISSUES FIRST PREMIUM REFUND SINCE 1995

At its Eleventh Annual Meeting held this month at the Inn at Essex, Essex, Vermont, the VLCT Health Trust announced rate increases of 10% for its health benefit plans for 2001. The one exception was a 15.2% rate increase for BlueCare Plus, the Blue Cross Blue Shield of Vermont HMO. Trust board members and staff were also pleased to announce a \$788,000 premium distribution back to member municipalities for the 1999 fund year. The refund, representing 5.9% of all

premiums collected for that year, is a result of total claim liabilities and administrative costs coming in at a level below what was collected in premiums. This refund brings the total distributions back to Health Trust members to approximately \$6 million since 1992, and will be credited against Trust members' February 2001 bills from Blue Cross and Blue Shield.

The rate increases are in sharp contrast  
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# VLCT BOARD PROFILE

## MEET NEW MEMBER STEPHEN WILLBANKS

### SELECTBOARD CHAIR, TOWN OF STRAFFORD

Two qualities from his previous journalism jobs have come in handy for Strafford selectboard chair Steve Willbanks. Persistence and an ability to “work the phones” are valuable skills, Willbanks says, for anyone serving as selectperson in Vermont.

Willbanks was elected to the VLCT Board of Directors at September’s annual meeting. He has served for nine years on the Strafford selectboard so he can comment with authority on the persistence necessary to get things done at the local government level. And as an admittedly frequent caller to VLCT for information and advice, Willbanks knows that it is often helpful to tap into statewide resources to solve small town problems.

“Things don’t happen instantly,” Willbanks said, adding, “if you are on the selectboard over a period of time, you have to adjust your expectations, be patient and have a broad view.” This is not necessarily a bad thing in Willbanks’s mind, as he believes it is difficult for a selectboard to gauge the ripple effects of quick change. It is also something that he would like to see the VLCT Board devote some time to.

“I’m not sure whether we need leadership training so much as training in how to be patient and how to avoid burnout,” Willbanks commented. “The additional responsibilities [of being a selectboard member] can wear someone out fast.”

Willbanks initially got involved in Strafford’s local government in the late 1980s, after devoting time to the Parent Teacher Association and helping organize the Strafford Lion’s Club. He is still not sure how it happened, but he went to one meeting of a local planning group and ended up spearheading the group’s efforts from that point

forward. The group had received a state planning grant, and used it to conduct an extensive town-wide survey of residents’ opinions on the town’s future. In the course of writing the survey and compiling the results, Willbanks delved into Strafford’s history, researched all aspects of the current community and wrote up its hopes for the future in the form of a final “white paper.” “It was a very unique opportunity to understand the community, one that most people don’t get,” he noted.

From the planning group, Willbanks moved to the planning commission for two years and then to the selectboard in 1991. He continues to attend planning commission meetings as the liaison between the two boards and was principal author of the Strafford Town Plan in the mid-1990s. The switch from one board to the other seemed natural to Willbanks. “It was a move from backing specific ideas and getting them going to being in a position to keep them going,” he



noted. Asked about his favorite accomplishments in a decade plus of local government service, the planning survey, its positive influence on the Town Plan, and several local land conservation projects identified as important in the survey came immediately to Willbanks’s mind. Another project, the volunteer-run recycling program he helped start, is on his list for not only being environmentally responsible, but also for giving volunteers and community members a chance to chat over the recycling bins on Saturday mornings.

In a town that seems blessed with a strong volunteer ethic, the recycling program stands out. The key to its success, Willbanks feels, is

*(Continued on next page)*



## WILLBANKS -

(Continued from previous page)

that one person, in this case himself, is responsible for the overall program, which allows the almost 40 other volunteers to take on smaller jobs that fit into their busy lives. "This is nothing new," he said, "but I've found that the key to getting people involved in local government is to not overwhelm them with responsibility, and to have someone available with the knowledge and prior experience to give guidance if needed."

Willbanks has also served as Strafford's representative on two solid waste district boards. He is currently chair of the Greater Upper Valley Solid Waste District Board, and if it finalizes plans to build a new landfill in the next few years, this will definitely make his list of accomplishments. "Developing a landfill site," he said, fully aware of his understatement, "attracts obstacles."

Willbanks is looking forward to his work on the VLCT Board, particularly as the Board prepares for the upcoming legislative session. "I'm certainly not an expert," he said, "but it seems that we could be more successful in the

legislature if we focus our leverage on certain key issues." One issue important to him is adequate funding for highway and bridge projects that are suitable for Vermont's small towns. "State transportation funding shouldn't be siphoned off to the general fund," he said, adding that he now finds it difficult to get state highway projects done in a timely manner and done so that they are not over-engineered.

Willbanks fits his local government service into a life that is already full, but flexible enough to absorb the fluctuating needs of the town. As he put it, "you never know when an issue is going to come up that can suck up your time." He raises sheep on a farm that he shares with his wife Stephanie, who is a Dean of Academic Affairs and professor at Vermont Law School. They have one son at home, in the eighth grade, and a daughter who is a college sophomore. Willbanks received a Bachelor of Arts in English and a Master's degree in social work, and has worked as a counselor, writer and journalist - all skills that he has probably put to good use as a local government official and can now apply to his work on the VLCT Board. Welcome aboard, Steve!

## SICHEL -

(Continued from Page One)

City of Delaware, Ohio. While at Brattleboro, David served on the Board of Directors that created PACIF and managed it in its formative years.

Dave received his undergraduate degree in political science and his graduate degree in public policy issues from the University of Michigan. Though born right next door to Vermont in Albany, New York, Dave grew up in Ann Arbor, Michigan.

Dave is jumping right in at the Trusts' busiest time of year. Three budgets are being prepared for 2001 and three renewals are underway. As soon as these projects are behind him, Dave will take a close look at the organization of the Group Services staff and decide whether or not to replace himself. He will be working with existing staff, the Trust boards and members to determine how the Group Services staff can be configured to provide the best service to members of the Health Trust, VLCT PACIF and the Unemployment Trust. Congratulations, Dave, and good luck!

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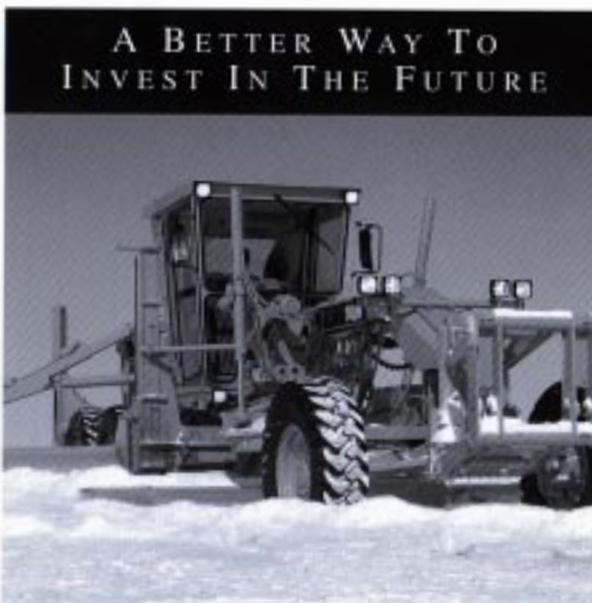
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## LOCAL ZONING & THE STATE; IMPACT FEES; RIGHT TO SUE

### STATE AGENCY SUBJECT TO LOCAL PERMIT

In *City of South Burlington v. Vermont Department of Corrections*, the Vermont Supreme Court held that a state agency is not exempt from the exclusivity-of-remedy provisions of state zoning law and that a state agency must raise the issue of "sovereign immunity" within the applicable appeals period for the permit or else the right to raise

expansion to an existing prison. The planning commission granted the permit with conditions, including a limit on the number of inmates that could be housed at the prison. The Department violated this condition. When the city attempted to enforce the permit seven years after it was issued, the Department claimed the permit was void based on the legal theory of "sovereign immunity."

an open issue that may be decided in another case.

In conclusion, the impact of the decision is that a state agency that submits to the local permit process is bound by the terms of the permit, unless the permit decision is appealed within the period prescribed by law. In addition, the Court did not address the issue of whether the state is exempt from local zoning under the legal theory of sovereign immunity. Accordingly, municipalities should proceed as if state agencies are not exempt from local zoning until a decision to the contrary is rendered by the Court.

*The impact of the decision is that a state agency that submits to the local permit process is bound by the terms of the permit, unless the permit decision is appealed within the period prescribed by law.*

this issue is forfeited. The Court also strongly implied that the Vermont Department of Corrections (Department) is not exempt from local zoning under the legal theory of sovereign immunity, which provides that governmental entities are immune from certain legal actions. (See also "Vermont Department of Corrections Bound by Conditional-Use Permit," August, 2000 *VLCT News*)

The Department applied for and obtained a permit from the planning commission for an

The Court ruled that by accepting the permit with conditions and not appealing it within the statutory time periods, the Department failed to employ its exclusive remedy under 24 V.S.A. § 4472 to challenge the condition. Accordingly, the Court held that the Department is bound by the condition. Unfortunately, the Court did not address the Department's sovereign immunity argument because it decided the case on the grounds that the Department failed to raise its claim of sovereign immunity within the statutory appeal period. Accordingly, this is

### CHITTENDEN SUPERIOR COURT DECIDES IMPACT FEE CASE

In *Home Builders Association of Northern Vermont, Inc. v. Town of Williston*, the Chittenden County Superior Court upheld the Town of Williston's impact fee ordinance. It remains to be seen whether the Home Builders Association of Northern Vermont (HBA) will appeal the decision to the Vermont Supreme Court. However, the Superior Court decision provides a detailed legal analysis of impact fee ordinances that any

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## LEGAL CORNER -

(Continued from previous page)

Vermont city or town considering adopting impact fees should review.

The central issue in the case is the validity of the Town of Williston's impact fees for recreation and schools. The HBA challenged the basis for the impact fees by questioning the methods that Williston utilized to calculate its recreation and school impact fee. In its decision, the Chittenden County Superior Court concludes that the town employed "reasonable" formulas to calculate its impact fees and that there is an adequate nexus between the nature and amount of the fees and the projected impacts from new development.

The Superior Court began its analysis by restating the established legal principles that "Vermont municipalities have only such powers as are expressly granted by the legislature" and that all "reasonable and substantial doubts concerning municipal authority are resolved against the municipality." The Superior Court also recognized that municipal acts are presumed to be reasonable and the individual or entity challenging the municipal act has *the burden to prove such act is unreasonable*.

The Superior Court's decision highlights the fact that the key to adopting a valid impact fee ordinance is to develop a "reasonable formula" for assessing impact fees that reflects "the level of service for the capital project to be funded." 24 V.S.A. § 5203(a)(2). In addition, a city or town must

develop a means of assessing the impact associated with the development. 24 V.S.A. § 5203(a)(2).

To meet its burden of proof, the HBA made several specific arguments related to the basis of Williston's impact fee and Williston's failure to comply with Vermont's impact fee statute. These arguments include a claim that Williston should have factored in the impact of existing dwellings on schools – not just focus on the impact of new-home construction; Williston provided no documented explanation for imposing 30% of the cost of new recreational facilities on new dwellings; Williston failed to utilize the state minimum requirements to calculate school costs; Williston's capital budget did not include specific impact fees; and Williston failed to comply with law by not providing an annual accounting for each impact fee collected. It is important to note that these are just *some* of the arguments that HBA raised in attempt to invalidate Williston's impact fee ordinance.

With regard to the HBA's arguments relating to the basis for the impact fees, the Superior Court held that the HBA failed to meet its burden to prove that the fees are not reasonable and there is not a "rough proportionality" between the fee imposed and the impact from the development. The Superior Court's conclusion on these points is best summarized in the following finding:

*In general, Home Builder's experts have convinced us that specialists with Ph.D's could engage in more sophisticated analysis, and arrive at impact fee projections and calculations involving greater subtlety. But they have not persuaded the court that Williston's "cookbook" methods resulted in the new development paying more than its proportional share of the capital costs of school or recreational facilities necessary to serve its own marginal needs.*

This is an important point for municipalities. The Superior Court recognizes that highly educated experts can propose viable alternatives to the developing impact fee projections. However, the *standard* for enacting valid impact fees is not whether experts will agree with a municipality's projection. The standard is that the impact fees must be based on a reasonable formula that results in new development paying its proportional share for the capital project that will benefit or is attributable to the project. 24 V.S.A. § 5203(b). Moreover, a developer must prove that the fee is not reasonable, not that experts can arrive at an alternative fee that may be viable.

The Superior Court also rejected HBA's claim that Williston is precluded from enacting impact fees because it omitted impact fees from its capital budget. The Superior Court recognized that the statute requires a municipality to adopt a capital budget and program pursuant to Title 24 Chapter 117 as a prerequisite to enacting impact fees. 24 V.S.A. § 5202(a)(1). However, the Superior Court stated that while mandated, the capital budget and program are "proposals," and these proposals are not invalid for failure to include a specific impact fee component.

In deciding this issue, the Superior Court held that the statutory requirement that municipalities state the proposed method of financing for capital projects, including the amount to be financed by impact fees, does not mean that municipalities *must* include impact fees in their capital budgets prior to levying impact fees on new development. The Superior Court views the capital budget process as a flexible planning process that is not intended to bind municipalities with regard to funding capital projects. As a matter of practice, however, municipalities should include impact fees in their capital budgets if impact fees to fund long-term capital projects are being contemplated at the time that the budget is proposed.

Finally, the Superior Court agreed with HBA's argument that Williston did not maintain an annual accounting as required by law. 24 V.S.A. § 5203(e). The Superior Court rejected Williston's defense that, while it did not provide a detailed annual accounting, all the data necessary for an accounting was available to HBA. However, the Superior Court found that HBA suffered no damages as a result of Williston's failure to perform the accounting. Accordingly, the Superior Court did not impose a penalty on the town.

In sum, municipalities should be encouraged by the Superior Court's decision to uphold Williston's impact fees as reasonable in the face of expert testimony intended to call into question the basis for the town's fees. Municipalities must continue to develop reasonable impact fee formulas and establish that the fees relate to specific capital projects that will be affected by the project. However, in the eyes of the Chittenden County Superior Court, municipalities are *not* required to hire Ph.D. economists in order to enact valid impact fees. VLCT will track this case and inform its membership if the HBA appeals the decision to the Vermont Supreme Court.

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# ASK THE LEAGUE

## SCHOOL TAXES; TAX OVERPAYMENT; SIGNING CHECKS; RESTORATION RESERVE FUND

*(Editor's Note: We are pleased to share with you this month a series of questions that were asked at the Treasurer's Roundtable offered at the VLCT Town Fair in September.)*

### **When must the town treasurer deposit the school district's share of the taxes in the school district's account?**

Sixteen V.S.A. § 426 provides several answers to this question. First, the general rule is that within 20 days after the school taxes are due and payable, the treasurer must deposit the amount collected into the district's account.

Second, the exception to this rule is that the selectboard and the school board may agree, in writing, to have the money transferred at some other time.

Note that the rule and the exception apply only to the money actually collected. For example, total school taxes assessed were \$1,000,000. The amount actually collected as of day 20 was \$900,000. Therefore, by day 20 the treasurer must deposit \$900,000 in the school district's account.

The third part of the answer is that "within 120 days after the date on which [school] taxes become delinquent, but in no event later than the end of the school year," the entire amount of school taxes assessed must be deposited in the district's account. Thus, if the total amount of school tax assessed was \$1,000,000 but the amount collected so far is only \$950,000, the town must dip into its own pocket to make up the difference and be sure that the school gets its entire \$1,000,000 within those 120 days.

Finally, notwithstanding 16 V.S.A. § 426, a "sending town" under Act 60 will be billed by the state commissioner of taxes to send its property tax liability payments to the state by December 1 and June 1 of the following calendar year. 32 V.S.A. § 5402. This statute has the effect of partially overriding 16 V.S.A. § 426 in the case of towns that send to the sharing pool. The 20 and 120 day provisions are still in effect for direct payments to the local school district, but the money which

goes to the sharing pool goes directly to the state on December 1 and June 1.

### **If an individual overpays his or her property tax by a few dollars, what should I do with the overpayment?**

Paul Gillies once commented on a similar question by saying that "The law is sorrowfully silent on the question." We agree. However, 32 V.S.A. § 4774 "sort of" applies. That statute says that where a taxpayer has made a tax overpayment as a result of paying early and neglecting to take a discount allowed for early payment, an excess of \$2.00 or less may be retained by the town. It also provides that the taxpayer has one year to realize the error and demand a refund of the excess paid, in which case the treasurer must return it.

Can this statute be stretched to apply to other tax overpayments of \$2.00 or less? Stretching statutes is rather ill advised. However, a court would probably find that a town could adopt a policy that any property tax overpayment of \$2.00 or less will be retained by the town, unless the taxpayer reports the error and asks for a refund within one year.

### **Can a municipality adopt a policy that there be a second signer of all checks written for more than a certain amount? For example, the chair of the selectboard shall co-sign all checks that are written for an amount exceeding \$500.**

This is another one where Paul Gillies said it best. The following is from his *Book of Opinions* p. 743-4, with his permission.

*The treasurer complained that the legislative body of the municipality had insisted that no check be made out and sent without the co-signature of one of the members of that body.*

*We advised that no co-signature is required. The necessary security provided by the system of orders signed by a majority of the legislative body is sufficient, without further concern about*

*writing a check.*

*Our municipal law is based on a fundamental trust of individuals filling elective office. A treasurer is elected or appointed to be responsible for his or her duties. Mandated oversight by trustees in this case offends that principle, and is unnecessary, redundant and improper.*

### **Thirty-two V.S.A. § 1671 provides authority for the legislative body of a municipality to create a "restoration reserve fund ... which shall be used solely for restoration, preservation, and conservation of records." What do these terms mean? Can they include purchase of a copier or computer software to copy or store records? Could they mean only safekeeping of records in their original form?**

There are no easy statutory or legal definitions of the terms used in the statute. Using definitions from the general dictionary, the intent of the statute seems to be to prevent damage or harm to original records and to repair or undo damage that has already occurred.

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## ASK THE LEAGUE -

(Continued from Six)

Proceeding from the premise that "a stitch in time saves nine," prevention of damage should be a priority. Prevention may include a better vault (fireproofed, temperature and humidity controlled), hanging files for maps, or improved shelving. Prevention would not include copiers since photocopying actually accelerates deterioration of records through increased handling which causes stress on pages and bindings and increased heat and light exposure from the copier itself.

Software to be used for the storage of records, while it may ultimately decrease handling of the original paper copies, should not be a priority at this time because of the somewhat iffy legal status of electronic records. Resources should be put into taking care of the original records rather than creating electronic copies that may not be adequate for legal purposes. This advice, of course, may change as definitions of what is a legal record change.

Restoration of the original records by a vendor who can do deacidification and repairs is vitally important. Although the cost of such work seems high, when that cost is compared to the millions of dollars invested in the land listed in the records, restoration costs are well worth it. Likewise, genealogy records are priceless and irreplaceable.

Each town should develop a plan or list of priorities for its use of the funds based on the condition of its records and storage facilities and the money available.

For more information, Greg Sanford, in the Secretary of State's archives division, suggests the following:

- Secretary of State's Report on Condition of Municipal Records, 1999, available at <http://Vermont-towns.org/munrec/munrprt.htm>.
- Grant opportunities to help develop plans for assessing needs and actively managing records, available at <http://Vermontarchives.org/boards/vhrab.htm>.

Happy Thanksgiving from  
the  
VLCT  
Staff



## LEGAL CORNER -

(Continued from Page Five)

### COURT FINDS NO RIGHT TO SUE MUNICIPALITY

The Vermont Supreme Court has ruled that when a municipality fails to enforce an ordinance that was adopted for the purpose of protecting the general public, an individual who suffers damages as a result of the non-enforcement cannot bring a legal action against the municipality. *Lunenburg Fire Dist. No. 2 v. Maciejko*, Vt. Entry Order No. 98-385 (Aug. 21, 2000).

The Maciejkos suffered property damage when water and sewage backed up in their basement as a result of a blockage in the sewage system operated by the Fire District. The case initially went to Small Claims Court which held the Fire District liable for damages on the theory that it had a duty to maintain the sewer system and that it breached that duty, resulting in damage to the plaintiff.

The Superior Court heard the case and ruled that there was insufficient evidence to prove that the lack of a maintenance plan was the direct or proximate cause of the damage. However, the Superior Court held that the Fire District was still liable for damages because it had failed to enforce its own sewage ordinance. The ordinance required that the owner (landlord in this case) keep a cap in place over the drain so that it could not back up. The landlord had been warned to do so but had not complied and the District had taken no further steps to require him to comply. Thus, the Court said, if the District

had enforced its ordinance, the backup into the basement would not have occurred, even if a blockage in the sewer occurred.

The Supreme Court considered the case and found that the plaintiffs had no basis on which to bring this action. First, the common law provides no basis for a private citizen to sue a municipality for failure to enforce its ordinances. Second, the pertinent statutes in 24 V.S.A. Chapter 101 give no indication that the Legislature intended to create a basis for such action. (*Editor's note: Certain statutes do grant citizens the ability to compel a municipality to enforce bylaws. For example, a zoning administrator who fails to enforce a zoning bylaw may be brought to court by a citizen and be ordered by the court to enforce the law.*) Third, the ordinance itself specifically stated that its purpose was "the protection of the health and safety of Fire District No. 2 and of the general public...." *Id.* at 4 (internal quotes omitted). In other words, it did not create a duty to individuals or a mechanism by which individuals could bring such an action.

This decision is consistent with prior cases. For example, there was no private action allowed based on failure to enforce a housing code which was adopted for the good of the general public. *Corbin v. Buchanan*, 163 Vt. 141 (1994).

One lesson from this case is to draft ordinances carefully so that they do not create some liability for the municipality. However, an equally important lesson is that regular maintenance and effective enforcement of the ordinance might have prevented the blockage and subsequent, costly lawsuit.

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# LOSS PREVENTION NOTES

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



## DETERMINING THE "ROOT CAUSE" OF AN ACCIDENT

ASK WHO, WHAT, WHERE, WHEN, WHY, HOW

Accidents can happen at any municipality. Even in cities and towns with excellent safety programs, accidents may still occur. Many municipalities are unprepared when it comes to investigating an accident. But when an accident happens at a well-prepared municipality, it is ready to learn from its mistake by using a pre-planned and well-executed accident investigation. Information gained from an investigation will improve the municipality's safety program, and save the time and money that further accidents would otherwise consume.

So how are accident investigations

conducted, and how can they be used today to prevent accidents from happening tomorrow? Follow these steps from VLCT's Risk Management Department to safety success, and remember, good interviewing skills and technique are important.

### • What happened?

- ⇒ What was the employee doing?
- ⇒ What was the employee working with?
- ⇒ Type of accident - e.g., fall from ladder.
- ⇒ Type of injury - e.g., fracture.

⇒ Part of body affected.

### • Why did it happen?

#### People

- ⇒ Was the right person selected for the job?
- ⇒ Was the job suited to the person's ability?
- ⇒ Was the employee adequately trained?
- ⇒ Was attitude a factor?

#### Equipment

- ⇒ What equipment was used?
- ⇒ Was the proper equipment selected?
- ⇒ Was it used properly?
- ⇒ Was it properly maintained?

#### Material

- ⇒ What material was involved?
- ⇒ Was the proper material selected?
- ⇒ Was it placed properly?

(Continued on next page)

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## ACCIDENT -

(Continued from previous page)

- ⇒ Was it handled properly?
- ⇒ Was it processed properly?

### Environment

- ⇒ Proper lighting?
- ⇒ Too hot or cold?
- ⇒ Too much noise or vibration?
- ⇒ Did chemicals play a part?
- ⇒ Windy day?
- ⇒ Plant, animal or insects?

### •What should be done?

- ⇒ Based on investigative results from "Why did it happen?"
- ⇒ How will such action improve operations?
- ⇒ Seek to prevent accidents, then seek to prevent injuries.

### Corrective action taken

- ⇒ Denote those corrections already implemented.
- ⇒ Results of investigative report should be shared with employees at staff/safety meetings.
- ⇒ Discussion of results should include solving daily operation problems.
- ⇒ Develop an increased ability to recognize conditions that can cause accidents in their early stages.
- ⇒ Treat each injury and incident as though it produced a major injury or damage.

### •Ultimate goal

- ⇒ Reduce accidents, minimize injury through active loss prevention techniques and programs.

# NEW VLCT PACIF FIELD SERVICES

## CONCLUDE FIRST SEASON

### 36 MEMBERS VISITED

In June 2000, VLCT PACIF instituted two new programs for its members. Don Stubbs, former Loss Prevention Manager for VLCT PACIF and now a seasonal consultant, spent the summer and early fall months traveling to PACIF member municipalities to gather data on municipal buildings. (See also "New VLCT PACIF Program Commenced for Members," August, 2000 *VLCT News*.) The data were then entered into an appraisal program for municipally-owned buildings and will be used to determine the replacement cost in the event a building suffers damage or loss. The appraisal program is based on a commercial estimating computer program purchased from Marshall & Swift, Los Angeles, California. Stubbs also prepared a separate photo report of all municipally-owned property to assist with property inventory and management.

**What is the difference between the appraisal and the photo report?** The **appraisal** applies to building replacement cost only, and does not include building contents. For example, if an existing building is destroyed, the program estimates a value for its current replacement cost. Data must be collected for each municipally-owned building and entered into the computer program. The types of data required are: type of construction, ceiling height, square feet, perimeter, heating and cooling system information, type of exterior, number of stories, sprinkler systems, fire alarms, number of elevators, basement finish, balconies, mezzanines, building use, and condition. Using this information, the computer program estimates the average replacement cost for the particular building based on zip codes. This program does not figure a market value for resale or property listing information - only replacement cost. Every six months, Marshall & Swift updates the replacement costs so the estimates remain current. Other property such as covered bridges, gazebos, statues, or other unique structures occasionally used by municipalities will not be included in the Marshall & Swift program because they do not meet the criteria required.

The **photo report** is separate from the Marshall & Swift commercial estimating report. A color photo of every municipally-owned property, including covered bridges, gazebos, statues, monuments, shelters, as well as those included in the Marshall & Swift report, will be taken. Detailed information about the photo will be included on a separate document identifying the name of the object in the photo. In addition to some of the information included in the Marshall & Swift estimator program, unique information about the particular building or structure will be identified. Some examples are size and location of gasoline, diesel, or propane fuel tanks, whether or not the building is equipped with an emergency generator, age of the building or structure, unique characteristics such as bell towers, national historic recognition, location of described property, and detailed use of the building. Each building or structure will be on a separate page of the

## PROPERTY APPRAISAL AND GASB 34

Property value information being gathered by the new VLCT PACIF appraisal program will be useful to municipalities at audit time. Under the Government Accounting Standards Board Rule 34 (GASB 34), municipalities have to maintain a listing of fixed assets and a record of the initial real cost of these assets. New GASB 34 rules will require the fixed asset list to be included in a combined balance sheet, making their accuracy more important.

If initial real cost records are not available, and a municipality has been unsuccessful in finding them, it may use the replacement value list of its property generated by the PACIF program. To do so, it must start with the fixed asset's replacement value and go back as far as is necessary in consumer price index records to get an estimate of the initial real cost of the asset.

VLCT PACIF is pleased to be contributing to its member municipalities' accurate financial, as well as insurance record keeping!

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(Continued on Page Twelve)



## HEALTH TRUST -

(Continued from Page One)

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to last year, when most indemnity plan rates increased by almost 16% and BlueCare Plus rates increased by more than 30%. They also continue the Health Trust's tradition of tracking below the average statewide increases. However, for most local government officials trying to set their budgets for the coming year, 10% rate increases and rising health insurance costs in general continue to be a serious financial problem.

For this reason, the VLCT Health Trust Board of Directors began to work hard in early August to negotiate the 2001 rate increases noted above. The Board sought the lowest possible rate increases while at the same time retaining the best plan benefit packages available and remaining financially sound to cover 2001 claims. "Utilization of services continues to be the number one factor driving higher claim costs year after year," outgoing VLCT Group Services Director Thomas LoPizzo noted. "Prescription drug costs," he added, "continue to take a larger bite out of every premium dollar collected by us on our members' behalf."

Although the costs of medical services and prescription drugs are rising only moderately, it is the fact that *more medical services and more prescription drugs are being used* that is driving the health benefit plan rate increases. "There is a little good news," LoPizzo said. "Although statewide utilization is going up, utilization by VLCT Health Trust member municipalities is tracking slightly lower."

LoPizzo also announced that there will be no benefit changes for 2001. After extensive changes last year to comply with new coverages mandated by the state legislature, Health Trust plan benefits will remain the same in 2001. On the near horizon, however, is a new and improved life and disability insurance program. And for 2002, the Health Trust is looking to replace Vermont Freedom Plan office visit maximums with office visit co-pays, and to replace its two-tiered prescription drug card rider with a new three-tiered plan. For more information about these proposed changes, or any other Health Trust sponsored health benefits plan, please call Suzanne Schittina, Trust Marketing Representative, or David Sichel, Director, Group Services, at VLCT, tel. 800/649-7915.

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## PROPERTY APPRAISAL -

(Continued from Page Ten)

report. A cost estimate will not be included in the photo report.

**Who benefits from the service?** VLCT PACIF benefits by having a complete and accurate inventory of each individual structure in the member municipality. Information concerning replacement costs for buildings will help the PACIF staff assist members with adequate coverage for their property.

The individual member municipality benefits by having an inventory of all property under its direction and control. VLCT PACIF will send a completed Marshall & Swift commercial estimator report, along with a completed photo report, to each member.

**How does a PACIF member apply for this service?** Application is not required. VLCT PACIF is automatically extending this free service to every PACIF member. Between June and October of this year, Don Stubbs visited 36 members, collected information on 372 buildings/structures and entered the data into the program. Appraisal efforts began at the southern border of the state and will continue north to Canada until complete information is obtained from every PACIF member.

Progress was slow during this initial summer while Stubbs familiarized himself with the Marshall & Swift program requirements and finished up two other unrelated projects. Now that a total commitment to the appraisal program is possible, the project will go faster when it resumes in 2001.

**What does the appraisal program cost the member?** There is no cost for the appraisal program or reports. This is another service provided to VLCT PACIF members to assist them with sound risk management and cost control.

**What should the member be prepared to do when visited by the PACIF staff?** The PACIF staff member will have a copy of the buildings currently covered by PACIF. Be prepared to review that list with the staff member and add or delete any property as appropriate.

Have good directions, a map or guide to each property to minimize time spent "searching" for property. Be sure every building is accessible so the PACIF staff member can enter it to get the required information. Try to have information available about size and location of oil tanks, year the building was built and use(s) of the building.

The length of time a PACIF staff person

will have to spend in each municipality will depend on the number and complexity of buildings to be appraised, difficulty in locating buildings and availability of information concerning the building. There will be a minimum of interference to the municipality while the staff person gathers the required information.

**How will a PACIF member know when a PACIF staff person will visit?** Letters will be sent to each PACIF member announcing an approximate time a staff person will be visiting them to gather information for the appraisal program. The most productive time for PACIF staff to gather appraisal information is during the late spring to early fall. PACIF staff will resume the program again in June 2001.

**How long will it take to complete the program?** The project will take several years. It is impossible to determine an exact date because it is difficult to project how many buildings will have to be identified for the program. As is customary with VLCT PACIF programs, we will focus on completeness and precision in order to achieve a worthwhile program.

VLCT PACIF is pleased to offer this service to assist our members with their risk management needs. For questions or

additional information, contact Patrick Williams, Risk Management Services Manager, at VLCT PACIF, tel. 800/649-7915.

## VLCT STAFF NOTES

**Michael Gilbar** has accepted the position of Director of Administrative Services and will begin work at the League on December 18. Michael, who is currently Director of Administrative Services for the town of Hanover, New Hampshire, is filling the position vacated last month by Jana Bagwell. A profile of Michael will appear in the December *VLCT News*.

**Molly Dugan**, Associate, Legislative and Information Services, and her husband, Francis Churchill, became the proud parents of Eleanor Patrice Dugan Churchill on November 7. Eleanor weighed 7 pds., 8 ozs. and was born at 9:45 p.m., just about the time Florida swung from Al Gore to George Bush – certainly an exciting time in our nation's history to be born! Eleanor joins her two-year old sister at home, where both girls will keep Molly busy until her return to work in early February.

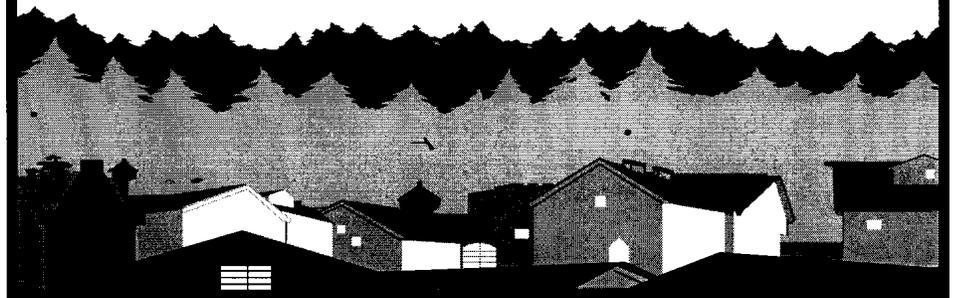
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# “TAKINGS LEGISLATION” – ONE WIN, ONE LOSS IN CONGRESS

In the past several years, Congress has developed a penchant for passing laws that preempt local officials' authority over municipal governmental issues. This Congressional session two bills were proposed that would have limited local government's ability to administer and enforce local land use, or zoning, bylaws. Both bills would have extended more federal control over the already tricky question of when land use regulations unfairly take away the rights of private property owners. One bill passed and the other did not ... for now.

## S. 1028 & “TAKINGS”

A priority of Senator Hatch, S. 1028, “*The Citizens Access to Justice Act*” came very close to passage in the U.S. Senate before it adjourned for the elections last month. Under current law a property owner must make every effort to resolve land use disputes through the local public hearing, review and appeals process, including the state court, before going to federal court. Under the provisions of S. 1028, a property owner could bring his or her “takings” complaint directly to federal court, bypassing the state system completely. The

result of such a bill would be to significantly increase the costs of litigation in defense of zoning decisions for local governments. It would take any opportunity for compromise out of the hands of local officials. In addition, passage of S.1028 would make it much harder to put in place or uphold zoning bylaws that protect the community from the over-enthusiastic proposals of one well-financed developer. “Takings” cases are often complicated and in the past they have been brought against cities and towns around the country for a variety of reasons, including efforts to regulate illegal drug trafficking, nude dancing; and liquor licensing.

As S. 1028 headed to the Senate floor without any committee hearings or opportunity for discussion among senators, only Senator Leahy stood in the way of its passage. With the urging of VLCT, he slowed down the bill's progress until legislators from other states began to express misgivings as well. In the end, S. 1028 was pulled, although Senator Hatch has made clear that he continues to believe passage of a bill wresting zoning law from the local and state appeals process is a priority.

## S. 2869 & LOCAL ZONING

In other action, in late September, President Clinton signed into law a similar bill pertaining to religious institutions, S. 2869, the “*Religious Land Use and Institutionalized Persons Act of 2000*” (RLUIPA). This Act accords special status to religious institutions upon the assumption that zoning laws have discriminated against religious institutions in the past (a claim that was unsubstantiated in

*(Continued on next page)*

## WHY ZONING AND PLANNING?

In the face of recent congressional action, and continued attacks on land use regulation by private property rights advocates, a brief pep talk is needed. Municipal comprehensive plans are an expression of a city, town or village's vision for its future. Zoning bylaws are the mechanism by which those visions are implemented on the ground. *Without* clear plans and specific zoning bylaws, municipalities have no recourse when a telecommunications company announces its plans to put an enormous cell tower on the most visible peak in town, or a shopping center is proposed for the spot along the river that a town was hoping to use for a park and walking trails. *With* zoning bylaws in place, a municipality is empowered to require that the cell tower does not extend above the tree tops; that it is far enough away from neighboring structures that it won't fall on them; and that if the proposed site is inappropriate, another should be selected. Shopping centers can be redesigned to accommodate walking trails and to provide parking and bicycle racks for both the park and the mall at the same time. In summary, the zoning and planning process is a good arena in which to reconcile the rights of private property owners with the health, safety and welfare needs of the general public.

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## CONGRESS -

(Continued from previous page)

the only comprehensive study of the issue by an independent researcher at the University of Arizona).

The RLUIPA prohibits any government from imposing or implementing any land use regulation in a manner that imposes a substantial burden on a religious exercise of a person, assembly or institution. "Substantial burden" is not defined and the prohibition applies to the implementation of land use regulations that make individualized assessments of a proposed property use.

The RLUIPA also states that no substantial burden shall be imposed on the religious exercise of a person residing in an institution (even if the burden results from a rule of general applicability). The exception to this rule is if the "burden" furthers a compelling governmental interest and is the least restrictive means of doing so. "Religious exercise" is broadly construed, meaning any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

Vermont zoning and planning officials should be aware of this new federal law as they go about the day-to-day administration of their bylaws.

# VTCMA ANNOUNCES ANNUAL AWARDS

The Vermont Town and City Management Association (VTCMA) held its fall meeting in Stratton on October 19 and 20. The educational agenda included an analysis of federal and state court decisions affecting local governments and requirements for municipal compliance with VOSHA and the federal Bureau of Mine Safety (if a town or city owns a gravel pit). The Association's annual awards were also announced.

The VTCMA gives out two awards annually. The Distinguished Service award honors someone who has served municipal government exceptionally well over a career or a number of years. The Frances B. Elwell Award for Outstanding Achievement Award honors someone who has recently undertaken and completed a specific project or initiative of significance in his or her community.

**Paul McGinley** received the award for Distinguished Service in recognition of a career in town management that has served many Vermont towns in times of crisis. Paul was manager in Barre Town for several years and after leaving he served as long and short

term interim manager in Rockingham/Bellows Falls, Shelburne and Northfield. In those places he provided stability and continuity as the towns went through the processes of deciding their future direction and hiring permanent managers. Additionally, McGinley served briefly as manager in Williston.

Phil Swanson, manager in the Town of Woodstock, received the Outstanding Achievement award for his service to the town, and particularly for his directing its fireworks displays over the past few years. Phil has been manager in Woodstock for 15 years.

The VTCMA is a membership organization created in 1977 to "increase the knowledge and ability of local government managers, and to promote increased professional management of Vermont municipalities." Eligible members are persons appointed town or city manager, chief administrator, assistant town or city manager or administrative assistant to a town or city manager, or who hold a similar position in any municipality. VTCMA is affiliated with the International City Management Association (ICMA).

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## IN THE MAIL FROM VLCT

### 2000 - 2001 MUNICIPAL SALARIES & BENEFITS REPORT

Municipalities that responded to VLCT's 2000 - 2001 salary and benefit survey will receive their copy of the final report by the end of this month. One free copy of the report was sent to the clerk or clerk/treasurer, mayor and manager in each of the responding towns, cities or villages.

The report contains information on 237 municipalities and is divided into separate sections for larger and smaller communities. The survey had an excellent response rate of 87% from VLCT member municipalities. The extensive information contained in the report should be useful to municipalities preparing their 2001 budgets.

Municipalities that did not respond to the survey must pay for the report; the cost is \$50. Additional copies for responding towns are also available from VLCT. Please call Niki White, tel. 800/649-7915, for ordering information.



**STORMWATER  
MANAGEMENT  
RESOURCES AVAILABLE  
MEETING DECEMBER 12, 2000**

The Vermont Agency of Natural Resources, Department of Environmental Conservation, is in the process of developing stormwater management rules pursuant to legislation passed by the 2000 General Assembly. The Department is posting interim information and resources for public viewing as it develops scientific data and a handbook of acceptable management practices through the fall. This material is located on the Agency's web site, <http://www.anr.state.vt.us/dec/stormwater.htm>.

There will also be a meeting on December 12, 2000, from 1 – 4 p.m. at the Pavilion Auditorium for people who wish to review and comment on a draft Technical Support Document prepared by the Department. The document is available on the web site mentioned above. For more information about the meeting or the draft document, contact Karen Horn, VLCT Director, Membership and Legislative Services, tel. 800/649-7915; e-mail, [khorn@vlct.org](mailto:khorn@vlct.org).

**GREENBACKS FOR  
GREENWAYS  
RECREATION TRAIL GRANTS  
PROGRAM**

The Vermont Recreation Trails Grant Program is seeking proposals from municipalities for recreation trail grants under the 2001-2002 round of funding. The Department of Forests, Parks & Recreation expects approximately \$500,000 in matching funds to be available from a combination of federal and state funds. Both funds require a minimum 20% sponsor match for projects, except for Mini Grants which require no local match.

Up to \$3,000 of available funds will be set aside for the Mini Grant option. Mini Grants of up to \$500 are available at 100% of project costs.

The Recreation Trails Grant Program provides matching grants for a variety of trail related expenses. Applications must be received by 4:30 p.m. on **Friday, February 2, 2001**. For more information on this program, contact Laurie Adams, Vermont Department of Forests, Parks & Recreation, 103 South Main Street, Bldg. 10 South, Waterbury, VT 05671-0604, tel. 802/241-3690. e-mail, [ladams@fpr.anr.state.vt.us](mailto:ladams@fpr.anr.state.vt.us).

**ALL-AMERICA CITY AWARD  
APPLICATIONS  
NOW AVAILABLE ON-LINE**

The National Civic League and Allstate Insurance Company announced recently that the application for the year 2001 All-America City Award is available online.

For over 50 years, the All-America City Award has encouraged and recognized civic excellence, honoring communities of all sizes in which citizens, government, businesses and

voluntary organizations work together to address critical local issues. Since 1949, nearly 500 communities have earned the All-America City designation.

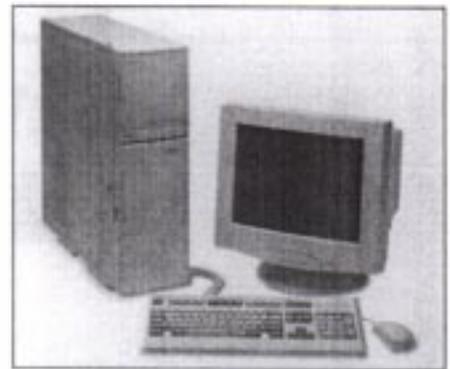
For more information about the All-America City Award, contact Sharon Hartman at the National Civic League at 303/571-4343, or email [SharonH@ncl.org](mailto:SharonH@ncl.org). To apply for the award visit [www.ncl.org/NCL/aacapp.htm](http://www.ncl.org/NCL/aacapp.htm). The deadline to apply is March 29, 2001.

The National Civic League is a 106-year-old non-profit, non-partisan organization dedicated to strengthening citizen democracy by transforming democratic institutions. The NCL accomplishes its mission through technical assistance, training, publishing, research, and the All-America City Awards. The National Civic League is headquartered in Denver, Colorado and also has an office in Washington, D.C. The Allstate Insurance Company has been the sole sponsor of the All-America City Awards since 1988. Allstate Insurance Company is the nation's largest publicly-held personal lines insurance company, insuring one of every eight homes and automobiles in the country.



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## Calendar

**Workshop for Collectors of Delinquent Taxes.** Thursday, November 30, 2000, Steakhouse Restaurant, Berlin. Sponsored by the VLCT Municipal Law Center, this day-long workshop offers sessions on delinquent tax collection basics, conflict management, legal issues and a roundtable discussion. There will also be a brief report from the President of the Collector of Delinquent Taxes Association. For more information about the workshop, contact Jessica Hill, VLCT Conference Coordinator, tel. 800/649-7915; e-mail, [jhill@vlct.org](mailto:jhill@vlct.org).

**Vermont Recreation and Park Association: Budgeting Challenges.** Friday, December 1, 2000, Three Stallion Inn, Randolph. The winter quarterly meeting of the VRPA features an educational program on budget management skills. For more information contact VRPA Executive Director George Plumb, tel. 802/883-2313; e-mail, [plumb@together.net](mailto:plumb@together.net).

**Workshop for Constables.** Thursday, December 14, 2000, Lobster Pot Restaurant, Berlin. Sponsored by the VLCT Municipal Law Center, this annual workshop provides continuing education and training for constables. Sessions will cover liability issues, making an arrest stand up in court, a roundtable discussion, a Constable Association update and a review of the new Underage Drinking Law. For more information about the workshop, contact Jessica Hill, VLCT Conference Coordinator, tel. 800/649-7915; e-mail, [jhill@vlct.org](mailto:jhill@vlct.org).

**Part-time Basic Phase I Training Academy.** January 28 & 29 and February 3 & 4, 10 & 11, 2001, Vermont Police Academy, Pittsford. The Vermont Police Academy is offering a three-weekend series of law enforcement trainings for Provisional Part-time Certification. For more information about the trainings, contact the Police Academy at 802/483-6228.

## Classifieds

### HELP WANTED

**Director of Parks and Recreation.** Town of Killington, Vermont. Resort municipality desires highly motivated professional for progressive full-service department. Competitive salary (range low to mid \$30's) depending upon qualifications, plus excellent benefits. Desire degree in Recreation and municipal recreation high level administrative experience. Ability to work independently, administer and supervise the Town's recreational facilities as well as plan and coordinate programs and activities. Submit resume, including present salary, by January 15, 2001, to David W. Lewis, Town Manager, P.O. Box 429, Killington, VT 05751, tel., 802/422-3241.

### FOR SALE

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## VLCT NEWS CLASSIFIED ADVERTISING POLICY

The *VLCT News* welcomes classified advertisements from municipal entities, public agencies, businesses and individuals. This service is free for VLCT members (regular, contributing and associate); the non-member rate is \$37.00 per ad. Ads are generally limited to 150 words and are accepted in the following categories: Articles for Sale, Help Wanted, Situations Wanted and Services.

The *VLCT News* is published every month and usually reaches readers by the third week of the month. Ads are also placed on the VLCT web site as soon as they are received.

The copy deadline for advertisements is the first Friday of the month for that month's issue. However, space is occasionally available for late additions. Please feel free to check with the editor for availability.

For more information on classified and display advertising in the *VLCT News*, please contact Katherine Roe, Editor, *VLCT News*, 89 Main Street, Suite 4, Montpelier, VT 05602, tel. 800/649-7915, fax 802/229-2211, e-mail [kroe@vlct.org](mailto:kroe@vlct.org).





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