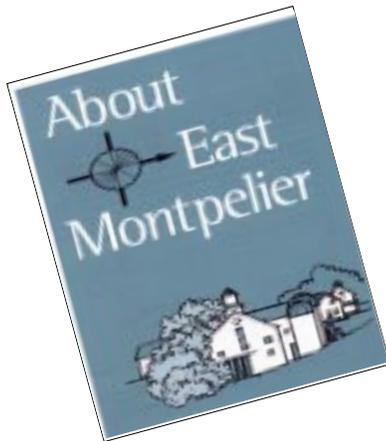


EAST MONTPELIER'S "TAKE PART" COMMITTEE

A COMPREHENSIVE APPROACH TO ENCOURAGING CIVIC PARTICIPATION

(Editor's Note: Each December, as Town Meeting deadlines approach, the VLCT News includes a few articles on Vermont's annual exercise in grassroots democracy. This year, our Ask the League column on Page 6 answers

several questions about Town Meeting details. The article below takes a look at the big picture by explaining East Montpelier's multi-faceted approach to keeping its Town Meeting alive and well. Our thanks to the VLCT Law Center staff and to East Montpelier resident Weston Cate, Jr. for their contributions to this special issue.)



How can we energize public interest in town affairs? Can we save Town Meeting? Is "drive by voting" using just the Australian ballot an end to thoughtful discussion of town issues? Do we care?

The answers aren't yet clear, but the town of East Montpelier is trying to discover them and is finding that it takes more than a shot in the civic arm, a spoonful of Geritol, or a packet of "pink pills for pale people."

It all began at the town's pre-Town Meeting in late February of 2000. For years the elementary school board had offered its budget, explained it briefly at the pre-town

meeting, and saw it passed, often with little discussion, at the school meeting. Though the board was divided on the issue, they inserted an article in the Warning to the effect that henceforth the school budget should be voted upon by Australian ballot. Their thinking was simple: if the town was going to automatically pass the school budget year after year with scant discussion anyway, why not put the issue to vote by Australian ballot and save everybody's time.

"Hold on," came the cry from the pre-town meeting floor. "We already elect our town officers by Australian ballot, pass our town budget the same way, and even specify that any expenditure over \$10,000 must be approved by that method. Do we want to pass this article and end our last opportunity to have a real discussion of school budget issues on the floor of Town/School Meeting?"

With that question the meeting came to life as those in favor and opposed rose to argue their positions with some vigor. Later, when the town school district meeting convened, the budget proposed by the school board was actually amended from the floor, an example of a right that would be lost had the vote been by Australian ballot.

When the article was reached to henceforth vote the school budget by Australian ballot,

(Continued on next page)

LEGISLATIVE SESSION 2001 LOOMS

By now, municipal officials and newly elected legislators have received their copies of VLCT's 2001 Vermont Municipal Policy. And by now we know who are the members of the legislature. So what is the Vermont League of Cities and Towns looking forward to in the 2001 legislative session?

There are 14 Republicans and 16 Democrats in the Senate. Barbara Snelling is returning to the Senate and seven senators are newly elected. Those newly elected include Gerry Gossens, former selectboard chair in Salisbury (who has served in the

House); Jim Condos, city council chair in South Burlington; and Virginia Lyons, selectboard chair in Williston. Both Gossens and Condos have served on the VLCT Board of Directors and Condos continues to serve. (Also, please note that Leigh Laroque, a returning incumbent in the House, also sits on the VLCT Board of Directors.) The House now has 83 Republican, 62 Democrat and 5 Independent/Progressive members. There are 46 new House members, including two

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VLCT NEWS

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EAST MONTPELIER -

(Continued from previous page)

discussion was lively and heartfelt. Voters overwhelmingly defeated the article.

Meanwhile the selectboard, aware of the community interest in the article and anxious to be helpful, had suggested that citizens interested in working to improve public understanding and town meeting voting could leave their names on a sheet at the rear of the auditorium.

Surprisingly, 17 people signed up and in early April the selectboard appointed all 17 to a committee to examine better ways to increase informed participation in the voting process and to strengthen the vitality of the East Montpelier Town/School Meetings.

The committee began its work in May with 100 percent attendance at its first meeting. It quickly became clear that there were no swift and easy ways to meet the charge. It also recognized that work would have to be done on several different long- and short-term projects and that civic education was a never ending task.

The committee accepted some procedural rules including the use of agendas and one that set 7 p.m. as the meeting hour and 8:30 as the time to adjourn. It was agreed that too many committee members turn into vegetables after the first hour and a half of a

meeting. They decided to call themselves the "Take Part" Committee.

Sub-committees were quickly formed to tackle specific projects: community, education, town charters, reasons for non-participation, and employer attitudes towards Town Meeting attendance.

Over the summer the community sub-committee met regularly. Believing that more citizens would participate if they knew more about the town, the committee wrote and published an attractive 16-page booklet, "About East Montpelier," packed with information from town history to zoning permits, from Town Office services to descriptions of town committees. Paid for by the selectboard, the booklet was mailed to every home in town while extra copies at the Town Office will be given to new residents. The committee is now looking at other community building projects with long-term benefits.

Why don't people go to Town Meetings or otherwise take part in town affairs? One sub-committee developed a questionnaire to be circulated by committee members. Admittedly an unscientific survey, answers helped the group to understand how deeply some citizens are removed from any interest in their own government.

Aware that young people learn habits of participation at an early age, the education sub-committee began to review the variety of citizenship programs for school now becoming available and now beginning to be used locally. Several groups, including the Secretary of State's office, made presentations. The committee is now working with both the elementary and the high school in sharing information.

(Continued on next page)

WHAT IT TAKES

When the Town of East Montpelier formed a committee to look into bolstering participation in its Town Meeting, 17 people signed up and formed five subcommittees! The subcommittees and their issues are:

- **Community** – How to encourage a sense of community and participation in town affairs.
- **Education** – How to introduce young people to local government and their role in it.
- **Town Charter** – Examine whether the East Montpelier charter may be amended in a way to make Town Meeting work better for the town.
- **Survey** – Determine why people do not participate in Town Meeting.
- **Employer Attitudes** – Determine whether or not employers offer the state holiday for Town Meeting Day, and, if not, how might their employees otherwise be able to attend Town Meeting.

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EAST MONTPELIER -

(Continued from previous page)

The question of whether folks might discuss items on the Australian ballot while voting in another part of the same building led to a study of town charters, their relationship to home rule, and possible legislative relief.

Yet another committee began a survey of employment practices as they relate to Town Meeting attendance. Since Town Meeting day is a legal holiday in Vermont, what arrangements do employers make so that their employees may attend Town Meeting?

Finally, the entire committee worked with the selectboard and school boards to publicize meetings of the bodies while they were in the process of building budgets. The goal was to encourage public input during the process rather than having to wait until the final budget was presented at a formal budget hearing.

The East Montpelier study committee thinks the end is not in sight. Ongoing educational efforts to build civic community strength, though they may take different forms, are part of the price we pay for democracy.

VLCT WELCOMES NEW DIRECTOR OF ADMINISTRATIVE SERVICES

B. Michael Gilbar began work this month in his new position of VLCT Director of Administrative Services. Michael came to the League from the town of Hanover, New Hampshire, where he held the same position. Previously he was Hanover's Director of Finance and, prior to that, Business Manager

for the Orange North Supervisory Union in South Barre.

Michael will oversee a department of 12 employees who manage the League's financial, production and mail, communications, conferences and seminars, secretarial, human resources, and information systems functions. Staff in the Department of Administrative Services work behind the scenes to support their colleagues in the League's other two departments - Legislative and Membership Services and Group Services.

Michael brings to the League a breadth of skills in the areas of financial management, human resources, information systems and municipal services. His new colleagues at the League also expect to benefit from his experiences as a former municipal official, as we plan new products and services for VLCT members.

Michael received his MA in Education and BA in music from Johnson State College in Johnson, Vermont and resides in East Barre. Welcome Michael!



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ISSUING PERMITS UNDER PROPOSED ZONING; OWNING POLLUTED LOTS

VERMONT SUPREME COURT DEEMS PROVISION OF TITLE 24 CHAPTER 117 UNCONSTITUTIONAL

In a decision that all municipalities should take note of, the Vermont Supreme Court ruled that 24 V.S.A. § 4443 (d) is unconstitutional. *In re Handy v. Town of Shelburne, Vt. Nos. 98-015 and 98-016 (November 17, 2000).*

... what does this case mean for municipalities? It means that when an application for a zoning permit is submitted after proposed zoning amendments have been publicly noticed, but before the zoning amendments are adopted and effective, 24 V.S.A. § 4443(d) no longer applies.

In sum, 24 V.S.A. § 4443(d) provides that if proposed zoning amendments have been publicly noticed for a hearing, the zoning administrator may not issue a permit if the application relates to the proposed zoning amendments. Under the statute, a permit may only be issued for such a project if the selectboard or city council, following a public hearing, indicates in writing that it consents to the issuance of the permit. The purpose of 24 V.S.A. § 4443(d) appears to be to allow

municipalities to apply the intent of proposed zoning amendments to zoning permit applications submitted during this interim period.

In its decision, the Court focused on the fact that 24 V.S.A. § 4443(d) does not spell out the process that the municipalities must follow in implementing the statute. In fact, based on the absence of clear standards for applying the statute, the Court rendered it

unconstitutional.

In re Handy actually involves two separate cases with two separate appellants. The cases were both decided by the Environmental Court under 24 V.S.A. § 4443(d) and consolidated in an appeal before the Vermont Supreme Court.

The appellant Paul Handy submitted an application for conditional use and variance approval to the town of Shelburne after public notice of proposed zoning amendments had

been issued by the town but prior to adoption of the zoning amendments by the selectboard. The appellant Jolley Associates submitted an application for conditional use approval to the town of Shelburne after the proposed zoning amendments were adopted by the selectboard but prior to the effective date of the zoning amendments, which by statute is 21 days after adoption for urban municipalities.

Both appellant Handy and appellant Jolley Associates stood to benefit significantly from having their respective applications reviewed under the existing rather than the proposed zoning. In both cases the new zoning would prohibit the use proposed by the appellants and the existing zoning treated the projects as conditional uses.

After it examined and rejected the Environmental Court's interpretation of 24 V.S.A. § 4443(d)'s timing requirements, the Vermont Supreme Court shifted its analysis to its own concerns regarding the construction of the statute. In a rare decision, the Vermont Supreme Court decided to base its decision on a legal rationale that was not addressed by the Environmental Court or argued by any of the parties to the case.

(Continued on next page)

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LEGAL CORNER -

(Continued from previous page)

Even though no party raised the issue, the Vermont Supreme Court, in its decision, expressed grave concerns regarding the lack of standards in the statute for a selectboard or city council to follow in a review of a zoning permit application under 24 V.S.A. § 4443(d). The Court cited several cases, including its recent decision in *In re Miserocchi* that invalidated a local nonconforming use bylaw, in which it ruled that the lack of standards rendered a zoning ordinance unconstitutional. At the end of the day, the Vermont Supreme Court ruled in *Handy* that the lack of criteria and standards in 24 V.S.A. § 4443(d) renders the statute unconstitutional for the following reasons:

- (1) a delegation of legislative power without adequate standards violates the separation of powers required by the state constitution;
- (2) the power to grant or refuse zoning permits without standards denies applicants equal protection of the laws; and
- (3) administration of zoning without standards denies landowners due process of law because it does not give them notice of what land uses are acceptable.

In striking down 24 V.S.A. § 4443(d) as unconstitutional, the Vermont Supreme Court recognized that some rule must be in place for municipalities to follow when permit applications are submitted in the interim

period between proposing and effectively adopting amendments to existing zoning. Accordingly, the *Handy* decision provides that when permit applications are submitted while zoning amendments are pending, municipalities must apply Vermont's vested rights rule to determine whether the existing zoning bylaws apply.

The vested rights rule is set forth by the Vermont Supreme Court in *Smith v. Winhall Planning Commission*, 140 Vt. 178 (1981). In *Handy*, the Vermont Supreme Court described the vested rights rule as "normally" vesting "a right in the developer to develop under the zoning ordinance in effect at the time of application." However, the Court noted that when it adopted this rule in *Smith v. Winhall Planning Commission*, which is the minority rule in the country, it explained that the rule "particularly fit a situation where no zoning amendment is pending at the time of application." Moreover the Court pointed out that under its vested rights rule a zoning application must be "validly brought and pursued in good faith." Accordingly, the Court sent both the *Handy* and the *Jolley Associates* cases back to their respective local zoning boards to be decided based on the new vested rights/good faith analysis.

So what does this case mean for municipalities? It means that when an application for a zoning permit is submitted after proposed zoning amendments have been publicly noticed, but before the zoning amendments are adopted and effective, 24 V.S.A. § 4443(d) no longer applies. This means that the zoning administrator is no longer prohibited from acting on a zoning permit during this interim period without the consent of the selectboard or city council. This does not, however, mean that municipalities may ignore the fact that an application is being submitted while zoning amendments are pending.

Instead of applying 24 V.S.A. § 4443(d) the governing zoning authority in a municipality (the zoning board of adjustment, the development review board or planning commission depending upon the type of application submitted) must decide whether the applicant has a vested right to have its application reviewed under the existing zoning. As discussed above, under Vermont's vested rights rule applications submitted while zoning amendments are pending must be reviewed under the existing zoning effective at the time the application is filed unless it is determined that the applicant is not acting in good faith. Accordingly, the good faith analysis

should now be a preliminary issue for local review of applications submitted during the interim period between the time zoning amendments are officially proposed and the time the amendments become effective. If the appropriate zoning authority determines that the applicant is not acting in good faith, then the existing bylaws may not be applied to the project.

The question arises how does a municipality determine whether an applicant is acting in good faith? In *Handy*, the Vermont Supreme Court cited several cases from other states that set forth this good faith standard. See *Stowe v. Burke*, 122 S.E.2d 374, 379-80 (N.C. 1961); *Penn Township v. Yecko Bros.*, 217 A.2d 171, 173 (Pa. 1966); see generally *City of Jackson v. Lakeland Lounge*, 800 F. Supp. 455, 461-62 (S.D. Miss. 1992) (collecting cases); *G. Hanes & J. Minchew, On Vested Rights to Land Use and Development*, 46 Wash. & Lee L. Rev. 373, 398-400 (1989). These cases provide some guidance on what the good faith standard is.

In addition, as an example of how the good faith analysis works, the Vermont Supreme Court indicated that appellant *Jolley Associates* would have a higher "burden to show that it did not engage in a race to put in some development proposal before the ordinance became effective." The inference being that an applicant who rushes an application to take advantage of the provisions in the existing zoning that would not be available under the pending zoning amendments is not acting in good faith. Ultimately, zoning authorities must address the good faith issue based on the facts and circumstances of each case.

What is lost as a result of this decision is the opportunity for developers who wish to take advantage of proposed zoning amendments to have a project approved prior to the final adoption of the zoning amendments. The zoning amendment process can be lengthy, particularly for municipalities that vote on zoning amendments by Australian Ballot. Prior to this decision, 24 V.S.A. § 4443(d) allowed a selectboard or city council to approve a project under proposed zoning while zoning amendments are pending. This flexibility no longer exists under the law.

In sum, *In re Handy* is a significant decision that should be reviewed and discussed by the selectboard and local zoning and planning boards. The Law Center may be reached at 800/649-7915 with specific questions regarding the impact of this decision on your municipality.

(Continued on Page Fourteen)



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ASK THE LEAGUE

DELINQUENT TAX LIST; ELECTING TOWN OFFICERS; COLLECTOR OF DELINQUENT TAXES TERM

Must the town report include a delinquent tax list that identifies each taxpayer by name? If the auditors do not now include such a list, can the town require the auditors to do so?

There is no specific legal requirement that mandates towns to list each delinquent taxpayer by name in the town report. Twenty-four V.S.A. § 1683, the governing statute, requires that the town report show a detailed statement of the financial condition of such town and school districts for their fiscal year, a classified summary of receipts and expenditures, and a list of all outstanding orders and payables more than 30 days past due. Notwithstanding this provision, we understand that it has been the practice of many towns for a number of years to identify delinquent taxpayers in the town report.

Municipalities do have the authority to direct the auditors to include an individual listing in the town report in one of two ways. First, voters could mandate that auditors must provide such a list under a municipal governance charter. The second option, and the easier option to implement, is to obtain voter approval of a special article requiring the auditors to list each delinquent taxpayer by name at a regular or special town meeting. The latter authority is found in 24 V.S.A. § 1683(a) which reads, "the report shall show...such other information as the municipality shall direct" (emphasis added).

The VLCT Municipal Law Center does not advise one way or another whether town reports should identify individual delinquent taxpayers. This is a decision that each municipality must make on its own. However, we will provide the following food for thought. While it is true that town financial reports necessarily must include any unpaid property tax assessments, this can be accomplished without revealing individual names. An argument against listing the individual names is that the primary purpose of the town report is to present the voters with "...a detailed statement of the financial condition

of ... the town and school district for their fiscal year..." not to embarrass the town's taxpayers. On the other hand, some cities and towns believe strongly that listing delinquents by name in the town report provides an effective incentive for timely payment of taxes and that is why we continue to see this practice persist.

At Town Meeting, the voters authorized the selectboard to appoint a first constable for a two-year term. Can the selectboard place the constable on a six-month probationary period, as is done with all new hires?

If the voters approved a two-year term, the selectboard cannot adjust it. The applicable law (17 V.S.A. § 2646(7)) provides:

The terms of office of the first and second constable elected or appointed shall be for one year unless a town votes that they shall be elected or appointed for terms of two years. When a town votes for a two-year term ..., the two-year term shall remain in effect until the town rescinds them by a majority vote of the legal voters voting at an annual meeting, duly warned for that purpose.

There is no legal authority to apply a "six-month probationary period" to an appointed constable. The selectboard does have the ability to terminate the appointment but it must be "for just cause" after notice and hearing (17 V.S.A. § 2651a(a)) - the appointee is entitled to due process.

(Continued on next page)

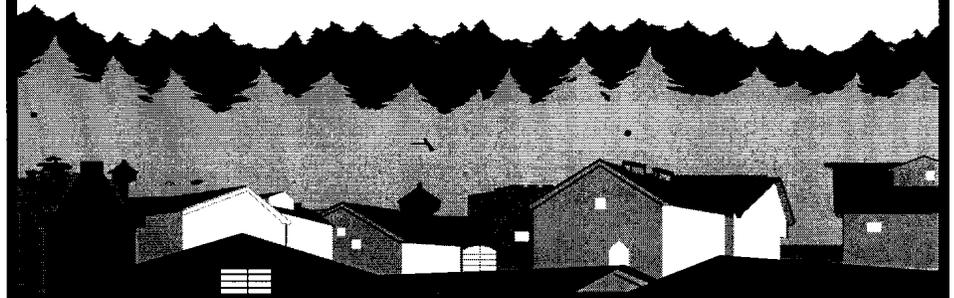
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ASK THE LEAGUE -

(Continued from previous page)

Which town officers must be elected using the Australian ballot system?

None of the town officers enumerated in the local election statute must be elected by Australian ballot. Although the phrase "by ballot" is found in the relevant statute for some of the town officers, the term implies 'paper' ballot, not the more formal Australian ballot process of voting. Further, the [paper] ballot requirement applies *only* to the following officers: selectboard members, listers, auditors, and, if the town elects to do so, water commissioners and road commissioners. (Otherwise, water and road commissioners are appointed by the selectboard.) 17 V.S.A. § 2646.

Vermont law specifies under what conditions the provisions of the Australian ballot process for voting apply. 17 V.S.A. § 2680. Generally, it *does not* apply unless specifically required by a statute or municipal governance charter OR if the voters have decided to use it for certain items of town business. Examples of votes that must, by statute, be done by Australian ballot include:

- authorizing the selectboard to appoint (vs. election) the town constable (17 V.S.A. § 2651a);
- adopting zoning bylaws or amendments in a 'rural' town (24 V.S.A. § 4404(d)); and
- issuing municipal bonds for public improvements or capital assets (24 V.S.A. §1758).

Examples of areas in which voters may decide to use the Australian ballot include:

- electing all town officers (17 V.S.A. § 2680(b));
- approving the budget or other money questions (17 V.S.A. § 2680(c)); and
- acting on other public questions (17 V.S.A. § 2680(c)) (for example, establishing a specific reserve fund, 24 V.S.A. § 2804).

Thus, if the voters have never voted to use the Australian ballot system to elect their town officers, approve the budget or decide other money or public questions, absent a municipal governance charter provision, your town should not be voting by Australian ballot.

Our town clerk/treasurer is elected to a three-year term. This year the clerk is also seeking the office of collector of delinquent taxes. For consistency, can the voters elect her to a three-year term as collector?

No. Under state law, a collector of delinquent taxes is elected for a single year. This is also true for the collector of current taxes. 17 V.S.A. § 2646 (8) and (9). At the November meeting of the Vermont Association of Collectors of Delinquent Taxes, there was consensus by members for a legislative proposal to amend § 2646 (8) and (9) regarding collectors' term of office. Under the proposal, voters would have the option of electing a collector to either a one or three-year term of office, consistent with the election authority for the offices of town clerk and town treasurer. 17 V.S.A. § 2646 (2) and (3). However, until this proposal is enacted, the current statute limiting the term of the collector of delinquent taxes applies.

VLCT STAFF NOTES

Senior Claims Representative **Kelly Kindestin** and her husband Bill welcomed their new son, Jacob Thomas, into the world on December 1. Jacob was born at 4 p.m. and weighed 8 lbs., 15 oz.

Trusts Financial Assistant **Linda Becker** left the League this month to travel with her husband and son Chandra to Central America, where her husband will be working on agricultural and environmental projects. Trusts Finance Officer **Irene Manion** has been promoted to the new position of VLCT Finance Manager. Watch for more changes in the Administrative and Group Services Departments, as new department heads **Michael Gilbar** and **Dave Sichel** work with staff and members to create the most effective staffing arrangements for their respective departments.

Happy Holidays and Best Wishes for the New Year



from the VLCT Staff!



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LOSS PREVENTION NOTES

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



VLCT RELEASES MUNICIPAL ERGONOMICS VIDEO

Hot off the "press" is our new video, "Designing a Municipal Ergonomics Program." The video is an edited version of the workshops we presented in June 2000 in collaboration with VOSHA. Program guidelines follow the OSHA Ergonomics Standard which include the following elements:

- Management Leadership and Employee Involvement
- Hazard Information and Reporting
- Job Hazard Analysis and Control
- Training
- MSD (musculoskeletal disorders) Management

• Program Evaluation

(These program guidelines parallel the elements of a good Health and Safety Program.)

Take a proactive approach to reducing the number of MSDs at your municipality by adopting an ergonomics program. This video will help guide you. For a copy of the video and the OSHA Ergonomics Standard, contact Maureen Turbitt at 800/649-7915. The standard may also be found at www.osha.gov.

If you need additional help developing a program, the VLCT PACIF Risk Management Services staff is eager to help. Give us a call.

MUNICIPAL WELLNESS AWARD WINNERS

On November 28, 2000, at the Workplace Wellness Conference, Governor Dean presented the Governors' Council on Physical Fitness and Sports Awards to the following municipalities.

- TOWN OF TUNBRIDGE - GOLD AWARD - JACKIE HIGGINS**
- TOWN OF RANDOLPH - BRONZE AWARD - JENNY LANE**

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Automated external defibrillators (AEDs) make it possible for trained lay rescuers to deliver defibrillation. In addition to rescue services, police, fire, and public offices are becoming equipped with AEDs to rapidly aid a victim in cardiac arrest.

VLCT has obtained discounts for the Physio-Control LifePack 500 and the Heartstream Forerunner. Discounts are offered to PACIF and/or Health Trust member towns. Contact Risk Management Services Administrative Assistant Maureen Turbitt at 800/649-7915 to obtain an

informational packet describing the discounts.

Additionally, the U.S. Senate has approved a \$25 million appropriation to increase access to AEDs in rural areas. We will keep you posted on the progress of this bill.

AED CLASSES OFFERED

The Vermont Police Academy is currently offering the four-hour automated external defibrillator course as presented by the Vermont affiliate of the American Heart Association. Courses will be offered at your location at a time convenient to your police officers. The course fee is \$20.00. For more information, call Ron Morrell, Executive Director, Vermont Police Academy, 802/483-6226, ext. 23.

PLANNING COMMISSIONERS AND PLANNERS TAKE NOTE

The Vermont Department of Housing and Community Affairs recently issued a new edition of its *Planning Manual for Vermont Municipalities*. The 171-page manual is intended to be a guide for municipalities as they prepare and update their municipal plans.

Chapters cover planning in Vermont, the municipal plan, the planning commission's role, and collecting the information needed to write a municipal plan. An appendix offers a list of resources, a glossary, bibliography and checklists.

The manual is available from the Department for \$4.00 (if mailed) and \$2.50 if picked up at its office in Montpelier. For more information, or to order a manual, contact the Department at 800/622-4553 or 802/828-3211.

Caterpillar's new H-Series Snow Arrangement Motor Graders are designed and equipped so operators can maintain high performance levels while fighting even the most severe snowstorms. Features include:

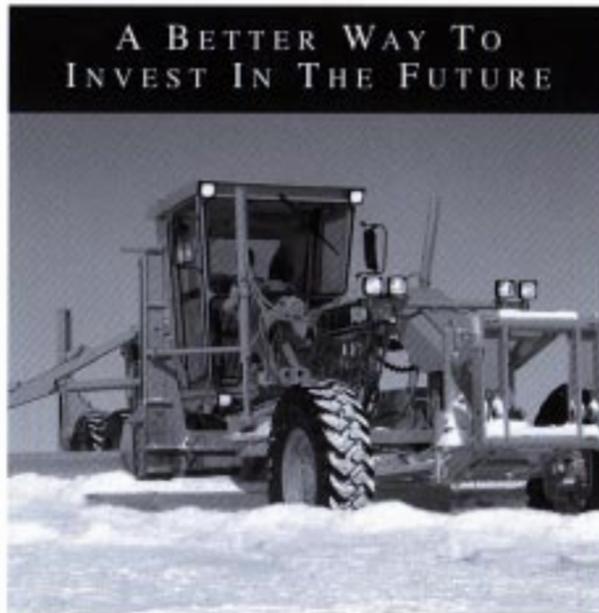
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2001 LEGISLATURE - (Continued from Page One)

returning to the House after brief absences and Steve Webster who was in the Senate two years ago. There are 12 lawyers among House members this term.

Vermonters will not know the makeup of committees, particularly in the House, at least until the Legislative session starts on January 3. Nonetheless, municipal officials need to strategize now about how to secure their legislative agendas once the session does begin. The *Municipal Policy* is 40-plus pages long. At the VLCT Board of Directors' November 9 meeting, board members established priorities among those legislative policies. As was the case in 2000, local officials' first priority will be to secure for municipalities the ability to solve problems locally. Local officials will also be seeking to reduce Vermont's continued over-reliance on the property tax; secure payments in lieu of taxes for state-owned property in towns and cities in Vermont; and enable cities and towns to assess local option taxes within their own borders, with a portion of those revenues being shared among other communities.

While Act 60 will certainly be on the agenda for legislators, other municipal priorities may not be, given the time and energy issues such as civil unions and reapportionment may take. Local officials will need to remind their representatives about other municipal issues – transportation funds; emergency management; land use planning; watershed planning; cost shifts to municipalities for providing state public safety services; health insurance costs; and municipal obligations to maintain Class 4 roads. An excellent opportunity to meet with your legislators will be **Local Government Day on February 14 in Montpelier**. Watch your mailboxes for information on Local Government Day! Local legislative bodies should also invite their legislators to meet with them during the session to go over funding and legislative proposals that will affect towns and cities in the coming year.

The 2001 Legislative Session promises to be lively. The landscape has changed significantly, the dynamics will be new and what that means for municipal governments is hard to tell before the session starts. Remember to read the VLCT *Weekly Legislative Report* at the end of each week to keep abreast of municipal issues as they develop. In addition to being mailed to local officials, you may read them on the VLCT web site, www.vlct.org.

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BULLETPROOF VEST BILL NOW LAW

President Clinton signed a bill last month that extends and expands the federal government's bulletproof vests program. The President called the program, which provides federal funds to help defray the costs of bulletproof vests for state and local police officers, an "unqualified success."

Senator Patrick Leahy initiated the program after the tragic Carl Drega shootout in 1997 on the Vermont-New Hampshire border, during which federal officers were equipped with the life-saving armor, but state and local officers on the scene were not because of the cost. Two New Hampshire state troopers, not wearing vests, were killed in the gun battle.

The Bulletproof Vest Partnership Grant Act of 1998 has helped to provide more than 325,000 new bulletproof vests to police officers nationwide, including more than 536 vests for Vermont police officers. The vest grants to Vermont have totaled \$140,253. Under the program the federal government pays up to 50 percent of the cost of the vests

for state and local officers. Senator Ben Nighthorse Campbell (R-Colo.) joined Leahy in cosponsoring the original 1998 legislation, as well as the bill to reauthorize and expand the bill.

The bill reauthorizes the Bulletproof Vest Partnership Act for another three years and doubles funding from \$25 million to \$50 million. Under the new bill smaller jurisdictions of fewer than 100,000 people, which often cannot afford the body armor even with the federal matching funds, will receive the full 50 percent allowed by law. The program has been swamped with requests, and some recent grants have been less than the full 50 percent match. In FY 2000 requests under this \$25 million program topped \$80 million. This bill also makes eligible for grants the purchase of stab-proof vests, used primarily by corrections and sheriff's officers who face violent criminals in close quarters in local and county jails.

Details about the Bulletproof Vest Grant Program are available at: <http://www.vests.ojp.gov>.

MPA PROGRAM CLASSES OFFERED AT THREE SITES

The University of Vermont Masters in Public Administration Program has provided the educational foundation for a generation of leaders for federal, state, local entities, and non-profit organizations throughout Vermont. Now you have the added convenience of taking the classes close to home at the UVM Regional Centers in Montpelier, Rutland and Brattleboro. Spring courses begin in the week of January 16, 2001 ... so sign up today.

Spring courses around the state are:

PA 395, SUSTAINABLE DEVELOPMENT & ADMINISTRATION: Three Credits

- Instructed by Phillip J. Cooper
- Monday, 4:00 - 7:00 p.m.
- Via interactive television from campus to the Montpelier Regional Center and Vermont Law School.

This course addresses the environmental, social, political and management dimensions of the complex challenge of administering sustainable development. Sustainable development, by its nature, is a global enterprise but one that is critical from the smallest local communities to the largest international organizations.

PA 303, RESEARCH METHODS: Three Credits

- Instructed by George Candler
- Wednesday, 5:30-8:30 p.m.
- Via interactive television from campus to the Montpelier, Rutland & Brattleboro Regional Centers.

This required core course for the MPA program addresses data analysis and communication of statistical information for management and decision-making.

PA 395, HEALTH LAW & POLITICAL SCIENCE

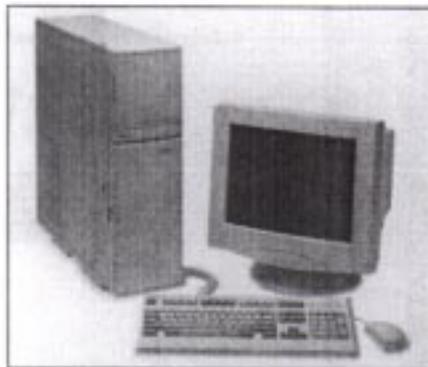
- Via interactive television from the Vermont Law School to the UVM campus
- Tuesday, 3:35 - 5:15 p.m.

For a complete list of courses offered both on and off the campus, or for more information about the UVM MPA Program, please call 802/656-4464.

Mark Your Calendars! Local Government Day in the Legislature is Wednesday, February 14, 2001.

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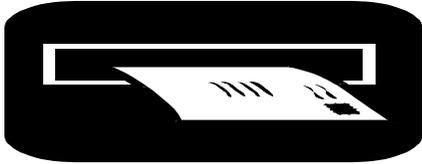
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KEEPING THE POST OFFICE DOWNTOWN

LOCAL OFFICIALS MEET TO STRATEGIZE

Trouble communicating with the United States Postal Service about locating or relocating post offices in downtowns is a



common problem for local officials, not only in Vermont but also around the country. Last month, local officials from around Vermont

met at Montpelier City Hall with representatives of Senators Jeffords and Leahy and Congressman Sanders to discuss the problems encountered with the Postal Service. Also providing assistance at the meeting were Emily Wadhams, Vermont Historic Preservation Officer, and Gina Campoli from the Agency of Natural Resources.

In 33 Vermont towns the United States Postal Service (USPS) is in various phases of constructing or awarding funds for the construction of post offices. When the structure is small, fewer than 6,500 square feet, the Postal Service generally awards the

funds to a developer to complete the program for them and will then lease space from the developer. Should more than 6,500 square feet be required, the USPS will construct the facility itself and own it. There are ramifications to each option once a facility is built, but Vermont's municipalities have the most trouble when the USPS plans to locate or relocate a local post office in a newly constructed facility.

Our traditional downtown centers are built around public buildings such as the school, the town offices, the library and the post office. In smaller communities, much business is conducted whilst picking up or dropping off the mail. When the Postal Service decides to move or increase space, repercussions in our downtowns and village centers are significant. If the decision is to increase square footage significantly, to build a big sprawling one-story box with lots of parking lots and a turning area for 53-foot trucks, as well as to move the post office out of town toward the highways, the impact on a downtown or village center can be devastating. This is the model the USPS has been constructing around the country and the effects on downtowns are easy to see.

Vermont municipalities would like to work with the USPS to assure that post offices:

- are scaled to Vermont's small cities, towns and villages;
- stay downtown;
- encourage pedestrian traffic; and
- are designed to fit into the character of downtowns or villages.

(Continued on next page)

CORRECTION

An article in the October 2000 issue of the *VLCT News* (see "Judicial Bureau Reverses Policy on Overweight Vehicle Fines") stated that municipalities do not have the authority to adopt ordinances that set weight limits on their highways. A question from Gail Fallar, Clerk/Treasurer of Tinmouth, made us re-examine that conclusion.

The law of vehicular weight, size, and load restrictions is found in 23 V.S.A. Chapter 13, Subchapter 15. The state weight limits are set out in 23 V.S.A. § 1392 and include restrictions based on classes of highways, structural materials of bridges, etc. That statute also carves out certain exceptions for indivisible loads and for milk, forest and quarry products. Municipalities have some authority to alter those weight limits, depending on the type of municipality.

Cities and incorporated villages have the same general weight limits as the state unless the "local authorities" restrict the limits and post them. 23 V.S.A. § 1393 (a). This implies that such municipalities may set their own weight limits on all municipal highways.

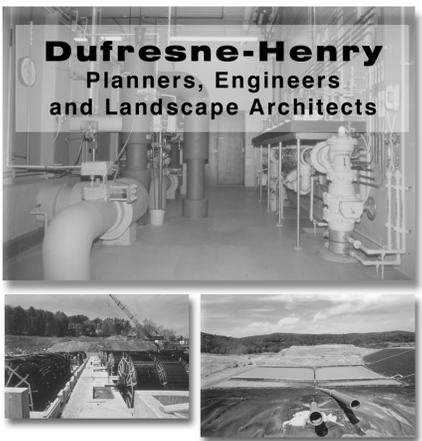
In towns, the selectboard may adopt the general limit from § 1392 for any highway or it may request in writing that the Vermont Agency of Transportation (VTrans) set the weight limit on Class 1 highways lower than the state limit "if a reasonable alternative route is available." 23 V.S.A. §§ 1393 (a) & 1396. Factors that must be considered when determining if there is a suitable alternative route are listed in § 1393 (b). A selectboard may also vary the weight limits for any Class 2, 3 or 4 highways or bridges under its jurisdiction. 23 V.S.A. § 1396 (a).

Special weight limits on municipally controlled highways and bridges must be posted with signs of a permanent nature placed at each end of the highway or at approaches to bridges. 23 V.S.A. § 1397.

In addition to setting weight limits, selectboards, trustees and city councils have authority to issue overweight permits for highways except Class 1 town highways. In return for the permits, the municipality may demand compensation for the extra wear and tear on its highways. Compensation must be based on certain criteria set out in 23 V.S.A. § 1400a. Note that the municipality must then file a complete copy of those restrictions with the Vermont Department of Motor Vehicles each year, no later than February 10. If they are not properly filed with the state they will be unenforceable. 23 V.S.A. § 1400b

To summarize, municipalities do have authority to set weight limits depending on the type of municipality and the class of the highway. This should be done with care and with attention to statutory constraints.

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WHAT'S NEW IN DOWNTOWN?

BUILDING BUSINESS ON MAIN STREET

The Vermont Downtown Program's second annual downtown revitalization conference – Building Business on Main Street – marked



another successful year for Vermont downtowns. Held late last month in the newly restored and magnificent Paramount Theater in downtown Rutland, the event attracted over 100 downtown businesses, downtown organizations and municipal officials.

The keynote address was given by Kennedy Smith, Director of the National Main Street Center in Washington, DC, and one of the nation's foremost experts on downtown revitalization. She noted a number of trends in downtowns across the US:

- Shoppers are spending more time shopping downtown, and less in the mall.
- More "location neutral" businesses are finding a home in downtowns, preferring the close proximity of services and afford-

able space.

- Teens are gravitating to the downtown and away from malls – malls are no longer "cool" – reflecting the shift of the population in general towards a more genuine environment. Some may see teens as a problem, but they are also future shoppers and business people ... and they prefer downtown.
 - As they struggle to maintain market share, malls are looking at successful downtowns for new ideas on how to compete. However, it is unlikely that they can synthesize the genuineness, character, and social ambiance of historic downtowns.
 - Communities are increasingly looking to parking management strategies to get the most out of their parking spaces – before investing in creating expensive new spaces.
 - Downtown businesses are thinking smarter and becoming more competitive with malls and discounters, with extended hours, better merchandising, and innovative business practices.
 - The internet offers unique opportunities for downtown businesses. Increasing numbers of downtown businesses are using the internet for sales, advertising, and customer service, 24 hours a day, 7 days a week – reaching national and even international markets. Growth of small downtown businesses need no longer be limited by local demand.
 - Downtown organizations can play a key role in getting high speed internet access service to downtown, helping property owners wire their buildings, and helping businesses establish an internet presence.
 - Municipal planning and zoning is increasingly being used to ensure that new commercial development is compatible with historic downtowns. This includes limiting the footprint of new buildings – for example to 30,000 square feet – or making sure that existing space is occupied before zoning new areas for development.
- Ms Smith, and other speakers, noted that the telecommunications and internet revolution has changed everything for downtowns. With telecommunications deregulation, the best service (meaning high speed access) will be where profits are greatest – and densely developed downtowns offer enormous market potential for them. As small internet-dependent businesses in rural areas grow, they will need better access, and downtown will be a logical place to meet this need. Downtowns can also offer proximity to a wide variety of

POST OFFICES -

(Continued from previous page)

This is much the same effort that local governments make with all commercial developers seeking to build in communities in the 21st century.

However, the USPS presents some special problems. Chartered by the federal government, it is no longer a federal government agency, but rather a quasi-public entity. As a result, local officials have experienced certain roadblocks when attempting to work with Postal Service employees. Determining whether the USPS is a public federal entity (and thus possibly exempt from local zoning, Act 250 or possibly federal land use regulations or property taxes) or a private entity (and thus entrepreneurial and responsive to consumer needs) is difficult and seems to vary from one situation to another. The USPS representatives who meet with town officials at the beginning of the process frequently do not reappear or respond to inquiries for extended periods of time and when they do it turns out the particular person contacting the community is not a decision maker who can say "yes" or "no" to alternative locations or designs.

The group of local officials gathered in November developed a list of potential solutions to the issues of dealing with the USPS. They included encouraging the Postal Service to "think outside of the box" so that options such as a post office on the first floor and private offices on the second floor, or putting retail and distribution facilities in

separate locations might be considered. Other ideas were to have Vermont Historic Preservation develop a community model for post office construction in Vermont; establish in federal legislation that post offices are subject to municipal zoning; provide incentives for a post office to locate in a downtown area; have VLCT write model zoning language addressing post offices; and add teeth to USPS regulations so that if the postal service itself fails to meet its timelines for responding to requests, there are consequences.

Vermont's congressional delegation is ready to help. Legislation was passed last session but not signed into law, which would have required the USPS to comply with local zoning among other items. It was apparently not signed into law because the USPS developed a set of self-regulating guidelines instead. A wide range of interest groups supported that legislation, including municipalities, retired persons and letter carriers. The legislation will be reintroduced in the coming Congress.

Additionally, the Vermont Historic Preservation office and Emily Wadhams will be following the issue and hosting meetings to follow up on issues that arise. Please contact Emily Wadhams, State Historic Preservation Officer, 802/828-3056, ewadhams@dca.state.vt.us or Karen Horn, VLCT, 802/229-9111, khorn@vlct.org, if you would like to be informed of progress on this issue.

(Continued on next page)



LEGAL CORNER -

(Continued from Page Five)

FORECLOSING ON POLLUTED SITES – WHO IS LIABLE

In a recent decision the Vermont Supreme Court addressed the issue of who is liable when an entity forecloses on property that is known to contain a polluted site. *Pownal Development Corp. v. Pownal Tanning Co., Inc., Vt. Nos. 98-577 (November 17, 2000)*. Aspects of this decision relate to the potential liability a town may have when it acquires property through mechanisms such as foreclosure or tax sales.

The facts of the case were not materially in dispute. The Pownal Development Corporation purchased, at a substantial discount, a mortgage note on ten lots once owned by the Pownal Tanning Company. The Tanning Company used the lots as security for a loan it obtained in 1984 from the First National Bank of Boston. The tannery ceased operation in 1990. The Pownal Development Corporation purchased the mortgage note from the First Bank of Boston in 1995.

One of the ten lots purchased by the

Pownal Development Corporation was contaminated by industrial waste from the former tannery operation. The lot is a listed "Superfund" site, which the Vermont Agency of Natural Resources has targeted for cleanup.

Realizing that one of the ten lots is a polluted site that it did not wish to own and be responsible for, the Pownal Development Corporation foreclosed only on the nine lots that were not polluted. The Vermont Agency of Natural Resources (Agency), seeking an owner that could be made responsible for cleanup of the "Superfund" site, challenged the Pownal Development Corporation's legal right to choose not to foreclose on the tenth polluted site. The Agency also took the position that regardless of whether the Pownal Development Corporation foreclosed on the lot, it is liable for cleaning up the site because the site is part of a larger "facility" the Corporation purchased when it foreclosed on the other nine lots.

The Vermont Supreme Court rejected the Agency's argument that it is illegal to foreclose on less than all of the mortgaged property. The Court simply found that there was no legal authority to support the Agency's argument. Accordingly, partial or selective foreclosure is clearly legal in Vermont.

The Court also rejected the Agency's argument that it would be inequitable or unfair to allow the Pownal Development Corporation to avoid liability by closing on all of the lots except for the contaminated site. The Court found that the Pownal Development Corporation is merely a holder of a loan instrument and bears no responsibility for the polluted site. Accordingly, the Court found it would not be unfair to allow the Pownal Development Corporation to choose not to foreclose on the polluted site in order to avoid liability.

Municipalities should note the Court's decision regarding partial foreclosure and equitable considerations. This ruling

may apply to situations in which a municipality wishes to avoid purchasing all lots available at a tax sale to avoid liability or if a municipality finds itself in a position to foreclose on a piece of property.

Finally, noting that a mortgagee who commences a foreclosure is only a secured lender until foreclosure becomes final after the redemption period, and that the redemption period had not yet expired at the time of the lawsuit, the Court found that it could not rule on whether or not the Development Corporation became owner of the entire "facility." (The Agency's interest in the outcome of this question is based on state law that makes the owner of a "facility" liable for remediation costs associated with the entire "facility.")

With the definition of "facility" still an open question, the Law Center must add to its longstanding advice to municipalities not to purchase properties that may be polluted: *municipalities should also avoid purchasing unpolluted properties that are contiguous to polluted lots.*

DOWNTOWNS -

(Continued from previous page)

other business services – accounting, legal, copying, supplies – and employee amenities such as food, photo services, gifts, and convenience items.

So, the future for downtowns nationwide is looking bright, with stronger businesses, more investment ... and more fun. In Vermont, the interest in revitalization has blossomed too. The list of designated downtowns – those who have shown a serious commitment to revitalization – has grown to 11, and almost 25 percent of the state's population lives in these 11 municipalities. Many others are interested or are getting started. While it takes hard work and commitment, it is clear that residents care about their downtowns, and that the benefits make it all worthwhile.

For more information on Vermont's Downtown Program, contact Joss Besse, Vermont Division of Historic Preservation, at 802/828-3211, e-mail at jbesse@dca.state.vt.us.

(Contributed by Joss Besse, Vermont Department of Housing and Community Affairs, Division of Historic Preservation.)

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Police Chief. The City of Franklin, New Hampshire (Pop. 8,500) is seeking candidates for the position of Police Chief. The successful candidate shall be responsible for overseeing the operation of the City's Police Department which is staffed by 29 employees and consists of 20 full-time officers, broken down within patrol and investigations, 5 full-time communications specialists (one being the supervisor), 3 secretaries, and a full-time prosecutor. The Police Department works under a fiscal budget of approximately \$1.3 million. The Chief of Police is responsible for all functions within the Police Department including staffing, purchasing of supplies and equipment, the development and operation of the capital budget, interacting with the City Manager, City Council and general public as the Department's spokesperson. The successful candidate must be certified by the New Hampshire Police Standards and Training Council as a police officer, and a Bachelor's Degree in Criminal Justice or a related field with 10 years of managerial experience or any equivalent combination of education and experience necessary to satisfactorily carry out the responsibilities of the position. Salary: negotiable depending on qualifications and experience of successful candidate. Send resume and letter of introduction to: Office of the City Manager, Police Chief Search, 316 Central Street, Franklin, NH 03235. Resumes will be accepted at the City Manager's office until 5:00 p.m. Friday, January 12, 2001. For additional information or a copy of the job

description, please call 603/934-3900 or stop in the City Manager's office at the Franklin City Hall.

REQUEST FOR PROPOSALS

Franklin, Vermont Post Office Building

The town of Franklin selectboard is accepting proposals to prepare a facility for the United States Post Office (USPS) at the corner of Main Street and Homestead Drive in the village of Franklin. The USPS has selected the above referenced town property as the site for a new post office building. The site currently

serves as the headquarters for the Franklin Volunteer Fire Department and the Franklin Rescue Service. USPS specifications are available at the Franklin town clerk's office on Main Street in Franklin. Proposals are due by January 5, 2001 and may be brought to this office during normal business hours or mailed to: Town of Franklin Selectboard, c/o Franklin Town Clerk, P.O. Box 82, Franklin, VT 05457. Telephone inquiries may call 802/285-2101. The town of Franklin selectboard reserves the right to reject, without cause or justification, any or all RFP's.

Calendar

Personnel Training. Thursday, January 11, 2001, Suzanna's Restaurant, Lague Inn, Berlin. Sponsored by the VLCT Municipal Law Center, this day-long workshop offers sessions on personnel law, workplace harassment, due process requirements and the Americans with Disabilities Act. For more information about the workshop, contact Jessica Hill, VLCT Conference Coordinator, tel. 800/649-7915; e-mail, 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.

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 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.





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