

## VLCT BOARD MEETS WITH GOVERNOR DEAN

### LEGISLATIVE ISSUES ON THE AGENDA

On Friday, December 15, 2000, the Vermont League of Cities and Towns Board of Directors met with Gov. Howard Dean to discuss municipal priority issues to be dealt with during the upcoming legislative session. This was the first time in four years the Board has had the opportunity to sit down with the Governor to discuss issues of mutual concern to state and municipal officials.

VLCT President and Burlington Mayor

Peter Clavelle started the meeting by thanking the Governor for his willingness to meet. Mayor Clavelle expressed his hope that similar meetings would become a regular occasion.

Board members and the Governor discussed the following five top priorities of VLCT for the 2001 legislative session:

- **Reducing the reliance on the property tax for support of education.**

The Governor expressed his concern that

much of the problem with escalating property taxes and education funding resulted from significant increases in spending, which he views as a local, not a state, issue. Whether steeply rising property taxes are exclusively local in origin or not, the severity of the problem requires the League to continue to work with the Governor and the Legislature to find solutions.

- **Allowing more local voter autonomy to decide local issues without state oversight.**

Governor Dean told VLCT Board members that he would be willing to consider a bill that would ease the legislative oversight of minor municipal charter amendments. This is great news for the League, as such a bill will surely be re-introduced in the new biennium, after having failed to gain approval in 2000.

- **Payment in Lieu of Taxes (PILOT) for state-owned land and buildings.**

The Governor warned that increased PILOT funding might be difficult this year, as much of the program's revenues for the current year came from one-time state surpluses.



*Governor Howard Dean met with the VLCT Board of Directors in December. To the Governor's left is Board President, Burlington Mayor Peter Clavelle; to his right are Board members Gail Fallar and Larry Kempton.*

*(Continued on next page)*

### Local Government Day in the Legislature

*Wednesday, February 14, 2001, Capitol Plaza and State House, Montpelier, Vermont*

#### Agenda

8:15 a.m.	Registration with coffee and muffins (Capitol Plaza)
9:00 a.m.	Welcome and Explanation of Day's Events
9:15 a.m.	Pending Legislation and Likely Action
9:45 a.m.	Walk to State House
10:00 a.m.	Attend Committee Meetings in House and Senate. Observe Floor Action in House and Senate Chambers.
10:30 a.m.	State House Tour (optional)
12:15 p.m.	Luncheon with Legislators at Capitol Plaza Speaker: <b>Rep. Walter Freed</b> , Speaker of the House
1:45 p.m.	Return to State House for Afternoon Committee Meetings
4:00 p.m.	Safe Journey Home

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# VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

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## GOVERNOR DEAN -

*(Continued from previous page)*

### • Expansion and extension of local governments to levy alternatives to the property tax.

Governor Dean expressed his support for not only local option sales and rooms and meals taxes but also local option fuel taxes. Such taxes would increase the options local governments have to raise funds to pay for local services.

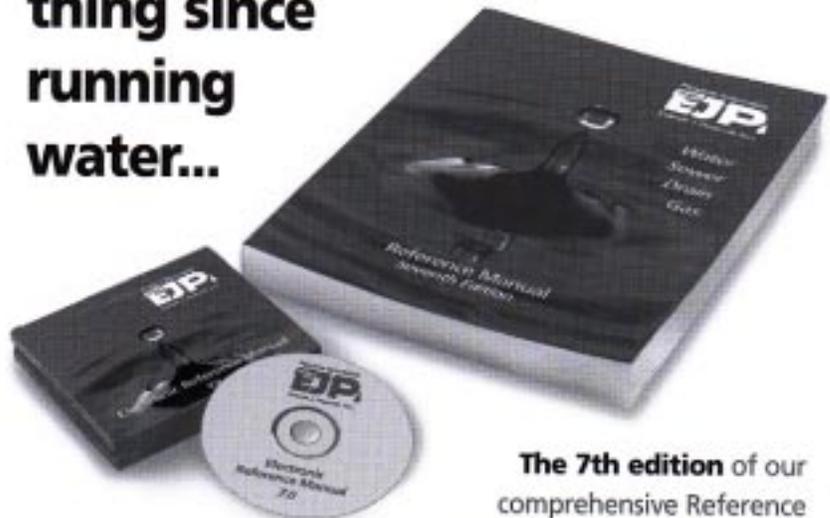
### • State funding for local transportation systems.

Governor Dean shared his concern with Board members that the state Transportation Agency's budget was very tight due to a number of large construction jobs beginning.

The Governor hinted that he might be using the state General Fund surplus to fund the shortfall in the transportation budget, but that the problem of finding greater transportation fund revenues will have to be addressed next year.

The Governor expressed a willingness to consider meeting with the VLCT Board of Directors again as the legislative session progresses and these priorities are taken up. Please watch your *Weekly Legislative Report* for updates on these issues as they are considered by the Legislature and, hopefully, discussed on an ongoing basis with the Governor.

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Long-Term Disability product that is equally price competitive. With our new carrier and subsequent savings to you for the group life and short-term disability portion of this product, we hope you will consider offering it as part of your employee benefit package! Members who offer their employees life and disability insurance through the former Health Trust program should contact VLCT to obtain a benefit comparison between the old and new programs.

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# ACT 250 & TOWN PLANS; PROPERTY RIGHTS & ADEQUATE NOTICE; FEDERAL PREEMPTION

## VERMONT SUPREME COURT REDEFINES STANDARD FOR ACT 250 INTERPRETATION OF TOWN PLANS

The Vermont Supreme Court has rendered a decision that makes it more difficult for provisions in town plans to apply to a proposed development under criterion 10 of Act 250, which requires that a project conform to any duly adopted local or regional

Reserve District, off of a Class IV town road, and at elevations between 1500-1700 feet.

The project required a subdivision permit from the town. As required by law, the town reviewed the proposed subdivision under its regulations in effect at the time that the developer filed the application. However, the subdivision regulations in effect did not reflect provisions of Waitsfield's Town Plan that were relevant to the project.

denied the Act 250 permit under several criteria, including criterion 10. The developer appealed the Environmental Board's decision under criterion 10 to the Vermont Supreme Court (Court).

The Court has ruled in previous decisions that provisions of a town plan apply under criterion 10 if the provisions articulate a specific policy that is relevant to the area of town in which a project is proposed. See *In re Molgano*, 163 Vt. 25 (1994). Following this standard the Board found that the project violated two specific provisions in the Waitsfield Town Plan.

The first provision related to construction on steep slopes. The provision in question stated that it was the town's goal to "prevent the creation of parcels on steep slopes ..." The Town Plan goes on to define slopes as either slight, moderate, severe or extreme. The Board ruled that, because the project was proposed on severe slopes, it clearly violated the provision of the steep slope provisions of the Town Plan.

The second provision related to improving Class IV roads. The Town Plan states that the upgrade of Class IV roads should be discour-

*(Continued on next page)*

*... what does this decision mean for municipalities? First, it means that unless provisions in your town plan are extremely specific and regulatory in nature it is likely that your town plan will not be deemed relevant in the Act 250 process. ... Second, the decision has a significant impact on municipalities that do not implement each and every substantive provision of their town plans through their zoning bylaws.*

plan. *In re Mark and Pauline Kiesel*, Vermont Supreme Court, No. 98-371 (December 29, 2000). Furthermore, the decision makes it extremely difficult for municipalities to have provisions of town plans apply in Act 250 if a town's zoning bylaws have not been updated to implement a specific goal of its plan.

The case involves a proposed five-lot subdivision in Waitsfield, Vermont. The project was proposed in Waitsfield's Forest

After a lengthy permit process the town issued a subdivision permit with more than 20 conditions. The town also issued a permit to the developer for the improvement of the Class IV road. Subsequently, the developer applied for an Act 250 permit. As a statutory party by right to the Act 250 proceeding, the town challenged the project under several Act 250 criteria. In a decision favorable to the town, the Environmental Board (Board)



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## LEGAL CORNER -

(Continued from previous page)

aged. The Board found that this provision was sufficiently specific to apply under criterion 10 and that the developer's proposal to upgrade the Class IV road did not conform with this provision of the Town Plan.

The Court reversed the Board's decision that the project did not conform with these provisions of the Town Plan on two main grounds. First, the Court found that both the steep slope and Class IV road provisions of the Plan were not specific enough to apply under criterion 10.

The Court took issue with the fact that the steep slope provision did not specify whether the Town intended to prohibit development on severe or extreme slopes. The Court ruled that because this issue is not explicitly addressed in the Plan the steep slope provision of the Town Plan is too vague to apply under criterion 10.

The Court also found that the Class IV provision of the Plan is too vague to apply under criterion 10. In reaching its decision the Court noted that the Town Plan merely *discouraged* as opposed to *prohibiting* the upgrade of Class IV roads.

By concluding that these provisions of the Waitsfield Town Plan are vague, the Court raised the bar for towns in terms of the level of specificity town plans must have to be effective in Act 250. The difficulty with the Court's decision is that it seems to penalize

municipalities for not writing town plans as if they were actual zoning bylaws. Town plans are planning documents that express the vision for growth in a municipality. Accordingly, town plans are not intended to be as specific as zoning bylaws. The Court seems to blur the distinction between adopting and applying zoning bylaws to a project through the local permitting process and ensuring that a project large enough to trigger Act 250 jurisdiction conforms to the vision for growth expressed by a municipality in a town plan.

The second reason that the Court cited for reversing the Board was that the *actions* of the town demonstrated that the project in fact complied with the Town Plan. This decision marks the first time that the Court looked to the *actions* of a municipality in implementing existing zoning bylaws to interpret the meaning of a town plan in Act 250.

The Court previously held that, if a provision of a town plan is ambiguous, the Board must look to the *text* of the zoning bylaws that implement the town plan to construe the meaning of town plan provisions at issue. See *In re Molgano*, 163 Vt. 25 (1994). However, in this case the provisions at issue in the town plan had not been implemented through the town's zoning bylaws. For example, Waitsfield did not adopt a steep slope bylaw in its zoning ordinance based on the steep slope provisions of its Town Plan.

Rather than examining the *text* of the zoning bylaws themselves the Court looked to the *actions* that the town took to help it

interpret the Waitsfield Town Plan. The Court found that because the town had issued a subdivision permit and a road permit to the developer these *actions* demonstrate that the town believed that the project conformed to the existing town plan.

The problem with the Court's reasoning is that the town's *actions* were based on bylaws and a road ordinance that did not fully reflect its Town Plan. Again, the Court appears to have confused the town's obligation to make local permit decisions based on its bylaws and the town's authority to argue that the typically more complex development projects that trigger Act 250 review do not conform with the vision for growth expressed in its Town Plan.

At the end of the day what does this decision mean for municipalities? First, it means that unless provisions in your town plan are extremely specific and regulatory in nature it is likely that your town plan will not be deemed relevant in the Act 250 process. Accordingly, if you want your town plan to apply in Act 250 be very specific in the language you choose. For example, use regulatory words such as prohibit and allow rather than planning words like discourage and encourage.

Second, the decision has a significant impact on municipalities that do not implement each and every substantive provision of their town plans through their zoning bylaws. For these municipalities, actions taken to apply bylaws as required by law, such as issuing local permits, may be used as evidence of a project's conformance with a town plan in the Act 250 process. To minimize this problem municipalities should amend their bylaws to reflect the substantive provisions of their town plans.

*(Editor's Note: For more information about Act 250 and local plans and bylaws, see "Two Views on Making Local Plans Work for Towns in the Act 250 Process," in the February, 2000 VLCT News.)*

### INITIAL NOTICE ADEQUATE IN ROAD CLASSIFICATION CASE

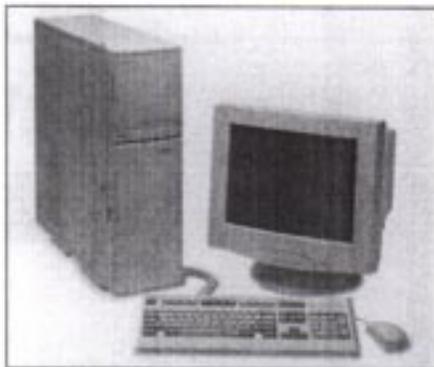
The Vermont Supreme Court has ruled that due process does not require a town to inform an individual of his or her right to appeal a town action that was taken after a hearing on reclassification of a highway. *Gabriel v. Town of Duxbury*, Vt. No. 2000-057 (Nov. 16, 2000).

In this case, the selectboard proposed to reclassify a road on which Ms. Gabriel owned property from Class 3 to Class 4. She was

(Continued on Page Ten)

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# ASK THE LEAGUE

## COLLECTION OF DELINQUENT TAXES

*(Editor's Note: The VLCT Municipal Law Center recently held a workshop for collectors of delinquent taxes. Some of the most commonly asked questions from this workshop are answered in this month's Ask the League.)*

**Our town has voted to charge interest on overdue property taxes at a rate of "one percent per month or fraction thereof," as provided in 32 V.S.A. §§ 4873, 5136. When can we add another one percent for a subsequent month? For other overdue accounts, such as water and sewer bills, we apply additional interest on the 10<sup>th</sup> of each month. Can we add interest on taxes then, too? Or must we add interest on the first day of the next calendar month?**

The statute allows voters to impose a penalty on overdue taxes "not to exceed one percent per month or fraction thereof for the first three months..." We interpret this provision to mean that when taxes become overdue, one percent interest is added on immediately. For example, if taxes are due November 15 and the payment is not made, one percent interest is applied on November 16. This part of the statute seems clear to the Law Center. When to apply the next one percent interest, however, is not very clear. There is a difference of opinion among attorneys and collectors of delinquent taxes contacted by the Law Center as to when the "fraction thereof" is applied and when the new month (with its new one percent) starts.

Some towns apply the additional interest on December 1st, reasoning that the fraction of November counts as a "fraction thereof" and December is a new calendar month that requires another one percent interest to be charged. Some towns let an entire month pass and apply the next one percent on December 15 when 30 days have elapsed. The rationale for this approach is that a month equals a 30-day period rather than a calendar month. Accordingly, for towns adopting this interpretation, their "fraction thereof" of interest gets tacked on at the end of a 30-day period rather than at the beginning of the calendar month.

Because the term "month or fraction thereof" is being interpreted differently, resulting in different practices in municipalities, our recommendation is to adopt a *written* policy setting out how your town will implement this provision. The policy regarding the assessment of interest should be adopted by the selectboard (or the voters) and not by the collector of delinquent taxes because the interest is the town's money and not the tax collector's. The policy should be made public and strictly adhered to, since equal treatment of all taxpayers is a must.

Another option would be to make taxes due at the end of the month. This would eliminate the issue of whether the next one percent interest charge kicks in after 30 days or in the next calendar month.

***If a taxpayer makes a partial payment on delinquent taxes, can the collector of delinquent taxes take 8% of the partial payment as a fee?***

Yes. The collector of delinquent taxes may take 8% of the partial payment after interest is deducted from the partial payment. The collector of delinquent taxes *may not* deduct 8% of the entire tax due from the partial payment.

***What should a municipality include in a Delinquent Tax Collection Policy? May the selectboard provide input into drafting the policy?***

The purpose of having a policy is to establish clear guidelines so that all delinquent taxpayers will be treated fairly and will know what to expect. The guidelines should establish procedural actions and collection policies. Examples of collection policy provisions are:

- a tax collector's notification schedule of delinquent taxes to the delinquent taxpayer;
- statement of when mortgage and other lien holders will be notified of the delinquent taxes;

- clarification as to whether partial payments will be accepted and under what terms;
- explanations of how partial payments will be applied against taxes, interest and penalties and of what happens if the taxpayer defaults on a partial payment agreement;
- conditions under which a tax sale will be noticed;
- list of costs and fees that will be charged to the taxpayer in connection with the preparation and conduct of a tax sale;
- list of taxpayer's rights, such as the notice of the right of redemption, the right to request an abatement of taxes and procedures for making such requests; and
- outline of legal steps that may be taken if no one purchases property at tax sale.

The Law Center has developed a model Delinquent Tax Collection Policy; call us if you would like a copy.

The selectboard may provide suggestions

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## ASK THE LEAGUE -

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when the policy is being drafted. However, it may not mandate that certain provisions be included in the policy.

### **May a collector of delinquent taxes waive the 8% collection fee?**

Yes, if the collector is paid by fees. If the collector is on a salary, the fee may not be waived. However, in waiving the fee the collector becomes open to charges of discrimination. Remember, as a collector you are acting as a government official and you must not violate any citizen's constitutional rights. Accordingly, the Law Center does not advise collectors to waive fees.

### **If a taxpayer requests abatement upon receipt of the notice of tax sale, is the town required to call off the scheduled tax sale?**

This is another question that is open to

### **HEALTH TRUST RATE CREDIT REMINDER**

VLCT Health Trust members are reminded that the surplus distribution announced in November 2000 will appear as a rate credit on their February bills. The \$788,000 premium distribution is the result of 1999's claim liabilities and administrative costs coming in below what was collected in premiums that year. If you have any questions about the credits or the particular credit amount on your bill, please contact Kim Gauthier, Administrative Assistant, VLCT Group Services, at 800/649-7915.

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interpretation. The statute does not state that if a taxpayer requests abatement the tax sale must be called off. However, the Vermont Supreme Court in *Blanchard v. Windsor* held that towns must inform taxpayers of their abatement rights in the notice of tax sale. It seems inconsistent with the spirit of this ruling to allow a municipality to sell the property at tax sale if a taxpayer acts upon his or her right to abatement. As a practical matter, it seems advisable for municipalities to postpone tax sales if a request for abatement is made. There is little to be gained by going through with the tax sale before the abatement issue is settled. Conversely, it should take little effort to postpone the tax sale until the abatement claim is resolved.

### **If the collector of delinquent taxes collects the 8% penalty on a delinquent tax payment while the tax assessment is under review by the Board of Civil Authorities, is the collector of delinquent taxes required to refund any of the penalty if the appeal is ultimately successful?**

This is another tax collection question that is open to interpretation. The statutes are silent on this question. Thirty-two V.S.A. § 4469 provides that whenever a taxpayer has had an appraisal reduced upon appeal and has paid the tax due upon the original appraisal, the taxpayer is entitled to a credit against the tax for the next ensuing tax year and for succeeding years, if required, to use up the credit for the amount of tax paid in excess of what was due upon the reduced appraisal. Thirty-two V.S.A. § 674 provides that the collector shall be allowed to charge and collect the 8% commission on the amount of tax after the expiration of time established in the tax notice. The statute is silent on what happens to the fee if there is an appeal. A quick review by the Law Center discovered no case law on this point.

One argument is that because the statutes are silent, collectors of delinquent taxes are not required to refund the fee. A counter argument is that the legal principle of equity requires that a fee be reduced if the amount of taxes due is reduced. Until clarification by a court, our conservative opinion is that collectors should hold off on spending such fees if the property assessment is under appeal.

### **If the voters approve a discount on taxes for early payment (32 V.S.A. § 4773), does such discount reduce the town's liability for education taxes due to the state?**

No. 32 V.S.A. § 5409 (8). Therefore, if you owe \$500 school tax, pay early and get a

2% discount (\$10.00), the town still owes the state the entire \$500, not \$490.

### **Do towns have the authority to pass on to the delinquent taxpayers postage costs associated with collecting delinquent taxes?**

The answer is no. The statutes are very clear about the charges municipalities may impose on delinquent taxpayers. Thirty-two V.S.A. § 1674 authorizes collectors of delinquent taxes to charge and collect an 8% fee. Moreover, Title 32, Chapter 17 is very specific with regard to the fees and costs municipalities may charge generally. Nowhere in this chapter is there a provision authorizing towns to charge overhead costs, such as postage, associated with the collection of delinquent taxes.

In Title 32, Chapter 133 (§ 5136), the law again specifically provides that municipalities may vote at town meeting to charge interest on overdue taxes. This provision states:

*a) When a municipality votes under an article in the warning to collect interest on overdue taxes, such taxes, however collected, shall be due and payable not later than December 1, and shall bear interest at the rate of not more than one percent per month, or fraction thereof, for the first three months and thereafter one and one-half percent per month or fraction thereof, from the due date of such tax. Such interest shall be imposed on a fraction of a month as if it were an entire month. A municipality having so voted to collect interest as herein before provided, and the amount thereof, shall thereafter collect such interest each year until the municipality shall vote otherwise at a meeting duly warned for the purpose of voting on such question.*

Again, this chapter, which relates to the assessment and collection of taxes, does not authorize municipalities to charge for overhead costs, such as postage, associated with the collection of delinquent taxes. In sum, VLCT's position is that the statutes are clear as to charges municipalities may impose with regard to the collection of taxes. Unless and until the Legislature authorizes the charging for overhead costs associated with the tax collection (or unless your town has a governance charter that allows for the collection of overhead expenses), the authority to do so does not exist. It is VLCT's position that the interest collected by collectors of delinquent taxes and fees - if collectors are paid by a salary - are meant to compensate the town for its overhead costs.



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# RISK MANAGEMENT NOTES

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



## RISK MANAGEMENT YEAR 2000 REVIEW

The year 2000 at VLCT Risk Management Services was filled with many new challenges and a lot of new and exciting Risk Management programs. What follows is a summary of some of the highlights of the year.

We were able to bring on board a new claim data system to help us process all of our member claims in a timely and efficient manner. The conversion to the new system went relatively smoothly and it is very user-friendly. It also allows us to track any claim trends so that we can focus our Risk Management efforts on particular types of claims and the members who are experiencing them.

Along the lines of focusing our Risk Management efforts on the areas of concern, the Risk Management Assessment Program (RMAP) was developed as a way to attack the problem claim areas. It allows us to target the types of claims that are occurring on a PACIF-wide basis as well as on an individual member basis. Once the areas of concern are identified, a "map" is developed on how to address those issues. This "map" consists of training programs, policies and procedures updates and any other remedies that may be deemed appropriate. The nice part about the program is that each PACIF member is actively involved in developing their "map," thus making each member an integral part of their own risk management destiny.

Some other tools that we use to help us with our RMAP mission are ergonomic assessments and Project Health & Safety. The ergonomics assessments go beyond the typical workstation evaluations that we are all familiar with, and actually evaluate a worker's day-to-day activities and how those activities affect a person's health. For example, the Risk Management Services staff will spend time with a worker watching and sometimes even videotaping his or her routine tasks and day-to-day duties to help the worker practice sound ergonomics. This helps us all ensure that anything we do on the job does not

contribute to a workplace injury in the future.

Project Health & Safety takes all aspects of a person's life into consideration when analyzing their time at work. It is important to realize that we are all people before we are employees, and what affects us while we are

"off the job" may also affect us "on the job." Project Health & Safety helps us all realize that things like good nutrition, exercise, healthy leisure-time activities, attitude, and stress management are all important in helping us be productive members of our municipal workforce.

### NEW FOR 2001

We are also planning some new initiatives for the year 2001. We are putting together a

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- Loss Prevention
- Local Control
- Education



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## RISK MANAGEMENT -

(Continued from previous page)

group of advisory boards throughout the State. Initially, these boards will be comprised of public works personnel and are designed to get people together with their peers to discuss issues relating to their specific area of expertise. Hopefully, these meetings will lead to discussions on how various municipalities can work together to provide service to their citizens. We are working on this with our friends from Vermont Local Roads. We hope that this will lead to advisory boards for other areas of municipal government.

New for 2001 is a day-long training session for municipalities. Topics of discussion will focus on risk management and loss prevention. This multi-tracked program is being developed with our friends at the New Hampshire Municipal Association. We will be looking to our members for input as to the types of programs that are needed. We will let you all know when we have a date and location for this event.

As you can see last year was a busy year for us and 2001 is picking right up where 2000 left off. Everyone at VLCT Risk Management Services is very excited and proud to serve the needs of our member municipalities. If you have any questions about any of the programs we provide, please give Risk Management Services Manager Patrick Williams a call at 800/649-7915, e-mail, pwilliams@vlct.org. Be safe and Happy New Year!



**Park Operations.** Friday, February 2, 2001, Three Stallion Inn, Randolph. The Vermont Recreation and Park Association is offering this morning session, to be conducted by Ben Pacey, Burlington Superintendent of Park Operations. Ben will discuss volunteer service workers, recruitment, work and work schedules, liability, preventative maintenance and work plans. For more information contact George Plumb, tel.802/883-2313.

**Local Government Day in the Legislature.** Wednesday, February 14, 2001, Capitol Plaza and State House, Montpelier. See full agenda on Page One.

**Stewardship of the Urban Landscape.** Thursday evenings, February 15 – April 28, 2001, White River Junction. The University of Vermont Extension and the Vermont Department of Forests, Parks & Recreation are teaming up to offer this free leadership training program to Vermont citizens who want to become more involved in urban and community forestry and landscape issues. The program will teach technical skills in communication, group process, fundraising and working with local government. For more information contact Jill Mahon, tel. 802/223-2389 or e-mail jill.mahon@uvm.edu.

**National Planning Conference.** Saturday, March 10 – Wednesday, March 14, 2001, Hilton Riverside, New Orleans, Louisiana. The American Planning Association's (APA) annual conference offers tracks on planning

for biodiversity and habitat protection; small town and rural planning; comprehensive planning; new urbanism; planning commissioner duties; smart growth; professional development; and students and careers. The registration and hotel reservation deadlines are February 9, 2001; after that you will need to register on site. For more information about the conference, call APA at 312/431-9100, visit their web site at [www.planning.org](http://www.planning.org) or call their fax-on-demand service at 800/800-1589.

**Public Risk Management Association (PRIMA) Annual Conference.** Sunday, June 10 – Wednesday, June 13, 2001, Chicago, Illinois. This annual conference is designed for government risk managers and offers educational sessions on employee benefits; risk financing; risk management; safety and loss control; school issues; workers' compensation; community risk; organizational risk; environmental issues; and legal and regulatory updates. *Some scholarship assistance is available from the Public Entity Risk Institute (PERI) for attendees from small municipalities,* the application deadline is February 19, 2001. Contact Audre Hoffman at PERI for information about the scholarship, tel. 703/352-1846, e-mail, [ahoffman@riskinstitute.org](mailto:ahoffman@riskinstitute.org), web, [www.riskinstitute.org](http://www.riskinstitute.org). For more information about the PRIMA Conference, call 703/528-7701 or visit them on the web at [www.primacentral.org](http://www.primacentral.org).

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## LEGAL CORNER -

(Continued from Page Five)

duly notified and attended two hearings on the matter. After the hearings, the town did reclassify the road. Gabriel attempted to appeal that decision to the superior court but was unsuccessful because her appeal was too late. She then appealed, arguing that the town violated her due process rights because it did not advise her of her right to appeal or that there was a time limit on such an appeal.

The Supreme Court began by assuming that the reclassification of a highway does have an effect on the property rights of abutting landowners. It then applied the three-prong test from *Mathews v. Eldridge*, 424 U.S. 319 (1976) which balances the private interest affected, the risk of erroneous deprivation of property and the government's interests.

The private interest in this case was the possible change in quality of access to the property that might result from reclassifying the road. The Court found that the potential change in property right in this case would be minimal.

Second, Gabriel had already taken advantage of the opportunity to be heard on the matter when she attended the two hearings. Thus, she had already had the chance to mitigate the risk of erroneous deprivation of her property right.

The Court then said that although the burden that would be created for the town by requiring it to inform Gabriel of her right to appeal was not heavy, consideration of the entire picture did not appear to justify even that slight burden in this case.

This is an interesting case when compared to two delinquent tax sale cases where Vermont lower courts have held that towns must inform delinquent tax payers of their right to apply for tax abatement and of the process for applying for abatement prior to tax sale. See *VLCT News* May 2000, p. 4 (*Town of Windsor v. Blanchard*) and August 1995, p. 6 (*Fysh v. Town of Bristol*). Those two cases had raised questions about the extent of notice which towns must provide when a person's property rights are being threatened by sale of their real estate for delinquent taxes.

A major difference between *Gabriel* and the tax sale cases is the extent of the property owner's possible damage. In the case of a tax sale, the property owner risked losing his or her home or business while, in the present case, the potential for damage to the property interest was very slight.

Also, in *Gabriel* the Supreme Court drew a distinction between the need to notify a

person of his or her right to appeal when the town's action has been unilateral (e.g. a decision by the zoning administrator where no hearing or other adversarial proceeding was provided) and when the town's action has occurred only after notice and an opportunity to be heard. Gabriel had received notice of hearings and had attended them prior to the town's final action.

In addition, the Court cited two federal court cases where it was said that there is no case law that requires that parties be advised of their right to appeal.

The lesson from these cases is that property owners have a right to a fair warning and a chance to respond when significant rights are threatened. If town officials follow all notice and hearing requirements, as was done in *Gabriel*, they will avoid complications later.

### FEDERAL AVIATION AND RAILROAD LAWS LEAVE ROOM FOR LOCAL REGULATION

Another legal issue that arises occasionally is that of conflict between federal law and local land use law. The Vermont Supreme Court ruled in favor of local land use law in two cases last year where that issue was raised.

The supremacy clause in the U.S. Consti-

tution, Article VI, Clause 2 states that "the laws of the United States ... shall be the supreme law of the land." Thus, if a federal law explicitly or implicitly preempts other laws or, on its face, actually overrules another law or is so broad that it covers the entire matter which is subject to that law, it will be held to preempt any state or local law pertaining to that matter.

The first case was *In Re Commercial Airfield*, Vt. No. 99-079 (Jan. 27, 2000) which involved a private airfield that consisted of a runway and maintenance shop for a commercial crop-dusting business. The Environmental Board ruled that the airfield needed an Act 250 permit. Appellant Edward Peet argued that federal law preempts any state or local law because it "pervasively and fully [occupies] the field of aviation," thus leaving no room for state or local law.

The Court began by saying that the purpose of the Federal Aviation Act (FAA) is to promote air traffic safety and that it has exclusive jurisdiction over airspace in the United States. In contrast, Act 250's purpose is "to protect and conserve the environment of the state." There is no explicit conflict of purpose in the two laws. The FAA does give

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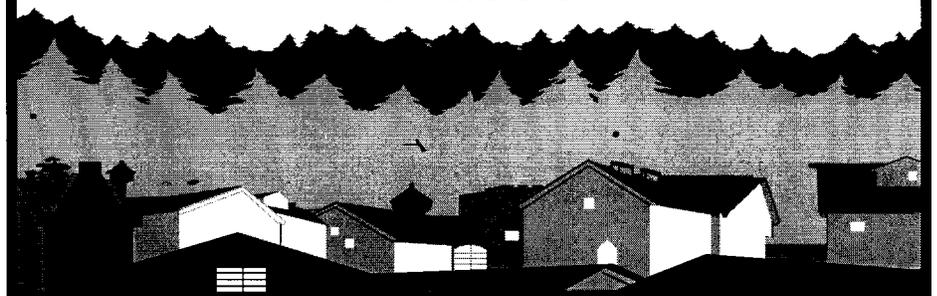
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## LEGAL CORNER -

(Continued from previous page)

the EPA input regarding environmental concerns stemming from large, public airports, but the small, private Peet airport is not in that category.

Secondly, while the FAA provides for federal input regarding the impact of airport construction on such things as air traffic patterns and man-made structures, it explicitly “does not relieve the proponent of responsibility for compliance with any local law, ordinance or regulation, or state or other [f]ederal regulation.... [E]nvironmental impact and land use compatibility are matters of local concern and will not be determined by the FAA” *Id.* at 2. The Court also cited a letter from the FAA about a small airport in which it said that although certain matters such as aircraft operations and noise were preempted by federal law “to the extent the [local] ordinance regulates land use in the Town ..., it is not preempted by federal regulation of aviation.” *Id.* at 2.

The other recent case is *In Re Appeal of Vermont Railway*, Vt. No. 99-350 (Dec. 8, 2000). Here, Vermont Railway acquired a property in the City of Burlington that includes a roofing company, metal works, storage facilities, and a salt shed. Prior permits for these properties imposed certain conditions on the use of the property. The Railway argued that these conditions were no longer valid because the local land use law was preempted by the Interstate Commerce Commission Termination Act (ICCTA), which regulates railroad operations.

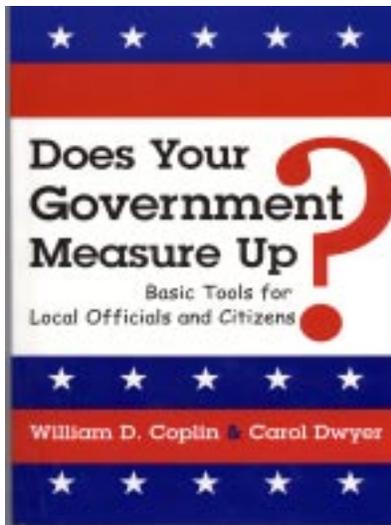
Without getting into too many details of the law, suffice it to say that the ICCTA itself, a number of cases cited from other states, and the Vermont Supreme Court make it clear that the ICCTA does not usurp the right of state and local governments to impose conditions which will regulate public health and safety aspects of property owned by railroads. Any determination of the validity of local regulations must be done on a case-by-case basis. In this case, the local permit conditions controlling truck traffic, parking, and contamination from the salt shed were upheld as matters of local safety and public health.

In summary, towns should not assume (or let someone convince them) that a federal or state law will automatically preempt their local planning and zoning laws. Each case must be examined carefully by examining the pertinent laws and the exact facts of the situation.

# DOES YOUR GOVERNMENT MEASURE UP?

## A BOOK REVIEW

The Maxwell School of Citizenship and Public Affairs at Syracuse University has just released an excellent new book, *Does Your Government Measure Up?*, by William Coplin



and Carol Dwyer, both of Syracuse. The tools presented for measuring and actually improving government performance were developed in cooperation with more than 100 government officials in Central New York and around the United States. The result is an exceptional, easy-to-follow road map for providing effective government.

A hands-on book, the authors present what they call the “bare essentials” of good local government in nine easily readable chapters, each followed by a checklist of items that Coplin and Dwyer believe are essential step-off points to running an efficient and effective government that is responsive to the public. There are chapters on organizing ambulance services; building code enforcement; government finance processes; property assessment; public works and web site design. A second section explains the basics of benchmarking (establishing goals for the government and measurements to assess whether or not those goals are met), as well as how to benchmark efficiency and quality of government services and quality of life in a community. Gaining support for benchmarks is also addressed.

The very first item in the book encourages government officials to seek feedback from their “customers” often and to implement

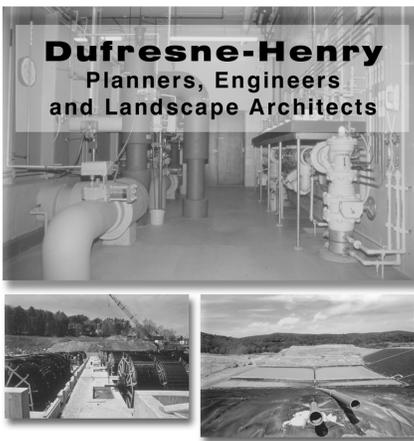
changes that address their comments. Appendix A follows up with formats for customer surveys – how to focus them; how to write and test them; how to solicit responses and how to present the results.

Vermont has some very small local governments. It may be that not all of the chapters in this 145-page book will apply to every municipality in Vermont. However, if you are looking for ways to address needs within your community and need some direction on how to get started, *Does Your Government Measure Up?* would be a very good place to start.

*Does Your Government Measure Up?* is available for \$20 from Syracuse University Press. It may be ordered online at the Maxwell School of Public Policy web site, which is [www.Maxwell.syr.edu/benchmarks](http://www.Maxwell.syr.edu/benchmarks), or from Syracuse University Press at [http://sumweb.syr.edu/su\\_press/](http://sumweb.syr.edu/su_press/). Discounts are available. To obtain information regarding discounted orders, contact Theresa Walsh or Lynn Hoepfel at Syracuse University Press, tel. 315/443-5547, fax, 315/443-5545, email, [twalsh01@syr.edu](mailto:twalsh01@syr.edu). The ISBN # is 0-9702864-0-6.

Also available on the Maxwell School’s web site are model surveys for all kinds of subjects about which a municipality may want to question residents.

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# GRANT OPPORTUNITIES

## VERMONT URBAN AND COMMUNITY FORESTRY PROGRAM GRANTS

Up to \$70,000 is available this year for municipalities and other organizations through the Urban and Community Forestry Program, Vermont Department of Forests, Parks and Recreation. The program seeks to increase public awareness of the role trees play in sustaining Vermont communities and assist municipalities to plant and manage their trees.

The funds are awarded as community planning/educational grants, planting grants, maintenance grants and mini-grants. The program is a 50/50 state/local match program. **Applications must be postmarked by February 16, 2001.**

For more information contact the Urban and Community Forestry Program at 802/241-3678 or [www.vtcommunityforestry.org/grants/htm](http://www.vtcommunityforestry.org/grants/htm).



## RECREATION CHALLENGE GRANTS

Recreation Challenge Grants to help communities add or improve recreation programs are available to public agencies and not-for-profit organizations. The grants are provided by the Vermont Recreation and Park Association, an organization that works to improve recreation and park opportunities in Vermont. Examples of these services are starting a summer recreation program, hiring a part-time or full-time recreation and/or parks director, developing an after-school program, or creating an innovative fitness program. There will be four grants awarded of \$500 each. A 50% match is required which may be cash or in-kind.

**Applications must be received by February 28, 2001** and applicants must be or become members of VRPA to be eligible. To obtain a copy of the grant application information, contact the Vermont Recreation and Park Association, 305 Plumb Lane, Washington, VT 05675, tel., 802/883-2313, or email, [plumb@together.net](mailto:plumb@together.net)

## ELECTRIC VEHICLES AVAILABLE TO MUNICIPALITIES

EVERmont is asking for interest in an expanded electric vehicle lease program. In this program towns will be asked to work with other community partners and lease five state-of-the-art electric vehicles per community. EVERmont will pay two-thirds of the cost of the vehicles and infrastructure. The vehicles (depending on availability) will be provided to the town/community partners in late summer of 2001. For more information please contact Richard Watts at 802/241-3556 or visit the EVERmont web site at [www.evermont.org](http://www.evermont.org).

EVERmont is a public-private partnership of state agencies, companies and non-profits supporting the testing and demonstration of cleaner vehicles.

## NEW YEAR STATS

Below are a few reminders for municipal treasurers. Effective January 1, 2001:

- The Internal Revenue Service increased the standard mileage rate for the cost of operating a car to 34.5 cents per mile from 32.5 cents in 2000.
- The State of Vermont minimum wage increased to \$6.25 per hour. The federal minimum wage remains at \$5.15 per hour. However, the state minimum wage prevails as it is higher.
- The Social Security taxable wage base increased to \$80,400.

Additional wage information can be found at the Vermont Department of Labor and Industry's web site, <http://www.state.vt.us/labind>.

## VLCT STAFF NOTES

### WELCOME BRADEN HILL

VLCT Conference Coordinator **Jessica Hill** gave birth to a son, Braden Daniel Hill, on January 4. Braden weighed in at 7 lbs., 7 ozs. and is bringing joy to Mom, Dad Daniel Hill and grandmother Beverlee Pembroke Hill, Assistant City Manager and Collector of Taxes for the City of Montpelier. Braden completes a busy baby year for VLCT that began with Sophie Roe in June and continued with Liam Manion in July, Ellie Dugan Churchill in November and Jacob Kindestin in December. No, it is not the water!!

VLCT Administrative Assistant **Deborah Solomon** will be filling in for Jessica until her return from maternity leave in late March. Please contact Deb if you have questions about workshops or the local government associations Jessica staffs (Vermont Constables Association, Vermont Community Development Association, Vermont Planners Association, Vermont Recreation and Parks Association and the Green Mountain Water Environment Association).

## PREVENTION PAYS!



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# Classifieds

## HELP WANTED

**Town Manager.** Raymond, New Hampshire (10,200). Salary: Range \$50-70K DOQ/E, plus excellent benefits. Two managers since position created in 1989. Five-member board of selectmen/town manager/town meeting form of government. Fifty-five full-time employees, 45 part-time employees, 6.3M municipal budget exclusive of schools. Located in Southeastern New Hampshire midway between Manchester and Exeter. About one hour from Boston, skiing, etc. Raymond is a fast-growing community seeking economic development. Citizenry is active with a high level of volunteer participation. Requires BA in PA or related field. Prefer MA. Five or more years administrative experience, preferably in municipal government; or any equivalent combination of education and experience which demonstrates possession of the required knowledge, skill and ability. Demonstrated experience in economic development as well as strong communication, interpersonal relations, leadership and management

skills. How to apply: Resume, cover letter and three professional references to Raymond Search, c/o Jacques Personnel, P.O. Box 300, Warner, NH 03278. Tel. 603/456-2677. Reply by February 19, 2001. EOE.

**Planner, Planning Assistant.** The Upper Valley Lake Sunapee Regional Planning Commission in Lebanon, New Hampshire has two positions available as follows: **Planner** needed to conduct a variety of community and regional planning projects during the coming year. Minimum requirements include a master's degree in planning or related field and two years of experience with community or regional planning, or bachelor's and appropriate additional experience, good verbal communication skills, strong computer skills, proven ability to work independently, and a valid driver's license. Experience with hazard mitigation planning and knowledge of the region a plus. Salary commensurate with experience. Please send resume, reference list, and brief writing sample.

**Planning Assistant** needed to help professional staff with traffic counts, computer mapping, research, data entry and other tasks as required. Range of duties and level of responsibility dependent on skills and experience. Fast-paced but friendly environment. Willing to train right individual. Full-time preferred, but negotiable. Qualifications include strong computer skills, a positive attitude and willingness to learn. Must have valid driver's license and be able to work some early mornings and evenings in spring, summer and fall. Hourly rate dependent on skills and experience. Competitive benefits. Please send resume or letter outlining skills and experience, and reference list. Applications will be accepted for each position until filled. EOE. Apply to the Upper Valley Lake Sunapee Regional Planning Commission, 77 Bank Street, Lebanon, NH 03766.

**Adopt-a-Site Clean Up Coordinator.** The Central Vermont Solid Waste Management District is seeking a summer employee to plan and lead our schedule of clean ups for illegal dump sites through its successful Adopt-a-Site program. The position will include occasional weekend and evening hours. There is funding for a full-time position, however, the District supports flexible scheduling and is willing to create a schedule that meets the needs of the program as well as those of the right candidate for the job. The District expects to pay an hourly wage of \$10.50, however, this rate is negotiable depending on experience. Supervisory and/or teaching experience of at least two years is required. A valid driver's license is also required. Applications are now being accepted. Interviews will take place until a candidate is found. The CVSWMD is an equal opportunity employer. To request a full job description or to submit a resume and letter of interest contact: Liz Helrich, Special Programs Coordinator, CVSWMD, 137 Barre Street, Montpelier, VT 05602, tel. 802/229-9383 or 800/730-9475.

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