

A PRIMER ON IMPACT FEES

An impact fee is a charge to developments by municipalities for the increased cost of providing municipal services to new developments. Municipalities have statutory authority to charge impact fees (24 V.S.A. § 5203(a)); the selectboard or local legislative body may create an impact fee program via ordinance or bylaw. The ordinance or bylaw must allow for an appeal process. 24 V.S.A. § 5203(f).

Prior to instituting an impact fee program, municipalities must meet three requirements:

1. develop a reasonable formula to assess the fee (24 V.S.A. § 5203(a)).
2. have a capital budget in place (24 V.S.A. § 5203(a)).
3. the municipality must confirm its impact fee program with the appropriate regional planning commission (24 V.S.A. § 4350).

THE REASONABLE FORMULA

A valid impact fee program depends upon the reasonable formula created to assess the

fees. This formula is the key to the entire program and is based upon (1) the level of service for the capital project funded by the fee, and (2) a method of assessing how much impact a development will have on this capital project.

- “Level of service” equals how much water the town supplies, or how much wastewater the town processes, or the number of fire and/or police officers employed by the town, etc.
- Based upon: (1) current levels of service, (2) state or federal standards, or (3) a standard created in the town plan or capital budget. 24 V.S.A. § 5203(a)(2).
- Impact equals square footage of the development, or the number of bedrooms for each unit in the development, or the size of the total parcel, or any other method reasonably relied upon by the town.

AMOUNT OF IMPACT FEE

The amount of the fee is established by the reasonable formula.

- The impact fee is equal to or less than the portion of the capital project that benefits the development.
- There are five factors to consider when creating the impact fee: (1) The cost of the existing or proposed facility; (2) grant,

(Continued on Page Seven)

“PERSONAL VALUES AND PUBLIC ETHICS”

2004 GROUP SERVICES DAY

Your age and your ethics, and how they interrelate as you make key leadership and



Consultant and keynote speaker Mary M. Grover is a former ethics advisor for the International City/County Management Association. She will be joined by Steve Dickens, Director of INVEST EAP. Mr. Dickens, also a psychologist and experienced mediator, will lead a session on “Leadership Styles.”

managerial decisions, are the topics for discussion at this year’s Group Services Day.

Nationally-known speaker Mary Grover will give the keynote address on “How Generational Differences Affect Ethical Perspectives” and lead a session on “Exploring Ethical Potholes.” She will be joined by speaker Steve Dickens, who will lead a session on “Leadership Styles.” Both speakers have extensive public sector experience in the areas of ethics and management.

Municipal officials are urged to attend Group Services Day, to be held this year on June 3 at Springfield’s Hartness House. The fee is \$10.00 and includes a luncheon and awards ceremony for the recently concluded VLCT wellness initiative, the “Virtual Long Trail Pedometer Adventure.”

“This is our third annual Group Services Day, an educational program that examines key issues faced by our members,” said Suzanne Schittina, Manager, Member Relations. “We’ll learn a lot about how we, as public officials, make decisions, and we’ll also have fun celebrating the successes of our members and our three trusts.”

To register on-line for Group Services Day, please visit the VLCT Web site, www.vlct.org/ calendar, or call VLCT at 800/649-7915.

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VLCT NEWS

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89 Main Street, Suite 4
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 Tel.: (802) 229-9111 • Fax: (802) 229-2211
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2005 MUNICIPAL POLICY PLANNING UNDERWAY

As of this writing, the 2004 legislative session is in its final throes. Believe it or not, that is the signal for VLCT to start planning for the 2005 session.

The first step is to assemble the four volunteer committees that will draft the four sections of the 2005 Municipal Policy in one or two meetings over the summer. (Committee members are treated to a delicious lunch for their efforts.) VLCT members should have recently received in the mail the nomination forms for the committees (Finance, Administration and Intergovernmental Relations; Public Safety; Transportation; and Quality of Life and

the Environment). If you enjoy politics and policy, have special expertise in one of the Policy areas, and would like to have input into VLCT's legislative platform next year, please consider joining a Municipal Policy committee. We look forward to hearing from you.

For more information about the committees and the Municipal Policy drafting process, contact Karen Horn, VLCT Director, Legislative and Membership Services, at khorn@vlct.org. For another copy of the nomination form, contact Jessica Hill, VLCT Conference Coordinator, at jhill@vlct.org. Hurry, the forms are due back at VLCT by **Friday, June 4, 2004**.



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EXPIRATION OF ZONING PERMITS; SEIZURE OF ANIMALS

WHAT CONSTITUTES “COMMENCEMENT OF CONSTRUCTION” FOR PURPOSES OF EXPIRATION OF ZONING PERMITS

Nearly every one of Vermont’s municipal zoning bylaws contains provisions stating zoning permits will expire unless construction is commenced within a specified time, generally

The plaintiffs appealed the ZBA’s decision to the Environmental Court, which ruled that the permit expired and was void because Manosh failed to commence construction within one year of the permit’s issuance. Manosh then appealed to the Vermont Supreme Court which reversed the Environmental Court’s decision and found that the permit had not expired.

The Vermont Supreme Court ruled that the Environmental Court had erroneously “applied

Recognizing that “Vermont law provides little guidance on this issue,” the Court looked at how other states interpret what constitutes “commencement of construction” and whether site work that is not related to structures specified in a permit is sufficient to constitute “commencement of construction.” The Court found that other jurisdictions “have taken a broader approach” and that the “standard to be applied should reflect the purpose to be served.” The Court then went on to explain that the purpose of statutes or bylaws that provide “for automatic expiration or revocation of use permits when work has not commenced . . . is to prevent the reservation of land for future purposes when the permittee has no good faith intent to presently commence upon the proposed use.”

After reviewing court decisions from around the country, the Court concluded that “a fair and reasonable approach to determine whether construction has commenced within the time limit imposed by a zoning ordinance or permit” should focus on whether “viewed as a whole – the work, time, and expenditures invested in the project demonstrate a good faith intent to presently commence upon the permitted use.”

(Continued on next page)

This case is important . . . because it provides guidance for the first time as to how municipal officials must determine if construction on a project has commenced for purposes of determining whether a permit has automatically expired due to passage of time and non-use.

12 months. Prior to last month’s Vermont Supreme Court decision in *In re Appeal of Beckstrom*, 2004 Vt 32 (April 8, 2004), the extent of activity that is required on a project in order to avoid a permit from expiring was an open question of law. *In re Appeal of Beckstrom* now provides towns with guidance as to what constitutes “commencement of construction” for purposes of determining whether a permit has expired due to passage of time and non-use.

In re Appeal of Beckstrom involved a permit to erect a radio tower and support building. The permit was issued on April 23, 1997 with a stated expiration date of April 23, 1998. The plaintiffs complained to the zoning administrator alleging that the permit was void because the permittee, H.A. Manosh Corp. (“Manosh”), failed to commence construction within one year of the permit’s issuance. The zoning administrator, however, decided not to institute enforcement proceedings and the plaintiffs appealed the zoning administrator’s decision to the zoning board of adjustment (ZBA). The ZBA upheld the permit and ruled that it had not expired, despite the fact that Manosh had not started construction of the actual radio tower. The ZBA based its decision on the fact that even though Manosh had not commenced construction on the radio tower and support building identified in the permit, Manosh had conducted other site work, including laying underground electrical conduits and upgrading an access road.

a legal standard which precluded consideration of work other than that directly related to the structures specified in the permit – the tower and the support building” . . . and “found that grading the access road, laying utility lines, and clearing the tower site were immaterial, and appeared to further conclude that the pouring of concrete at the site . . . was inadequate to demonstrate that construction had commenced.” *In re Appeal of Beckstrom*, 2004 Vt. 32 (April 8, 2004).

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LEGAL CORNER -

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In applying this newly articulated standard, the Court ruled that Manosh's permit had not expired and that Manosh had commenced work under the permit, even though work had not commenced on the two structures mentioned in the permit. The Court based its decision on the fact that "the record showed that over a period of several months, Manosh invested nearly 400 work-hours in the tower project, at a cost in excess of \$26,000. The extent and duration of the work demonstrates a good faith intent to make present use of the permit, not merely an artificial attempt to preserve the permit for future use."

This case is important to all municipal officials involved in zoning because it provides guidance for the first time as to how municipal officials must determine if construction on a project has commenced for purposes of determining whether a permit has automatically expired due to passage of time and non-use. The take-away messages from this case are: (1) to prevent an issued permit from expiring, the permittee must demonstrate a good faith intent to exercise his or her rights under the permit; and (2) construction on the actual structures identified in a permit is not necessary to prevent a permit from automatically expiring, so long as the permittee is conducting work at the site in good faith and in furtherance of the permitted project.

-Julie Fothergill, Attorney, VLCT Municipal Assistance Center

WARRANTLESS SEIZURE PROVISION OF ANIMAL CRUELTY STATUTE CONSTITUTIONAL

The Vermont Supreme Court, in *Hegarty v. Addison County Humane Society*, 2004 VT 33 (April 2, 2004), ruled a provision of the

Vermont Animal Cruelty statute authorizing humane officers to seize animals without a warrant does not violate an individual's right to protection from an unreasonable search and seizure.

The case of *Hegarty v. Addison County Humane Society* first arose when a humane officer from the Addison County Humane Society ("ACHS") investigated complaints that a mare owned by the Hegartys, Paka, was in poor health and not receiving adequate care. According to the facts of the case, an ACHS humane officer made numerous trips to Paka's pasture to evaluate her health and care and observed "inadequate compliance with feeding and shelter requirements." When the humane officer informed Suzanne Hegarty of his observations and concerns she told him to not return to her property.

Later that day, the humane officer requested that an ACHS veterinarian go to the Hegartys' property to assess Paka's health. The veterinarian issued a report stating that Paka was in an emaciated condition and was either sick, had poor teeth, or was receiving an inadequate diet. Upon receipt of the veterinarian's report, the humane officer contacted the State's Attorney to discuss the possibility of removing Paka from the Hegartys' custody. The State's Attorney advised the humane officer to proceed with seizing the animal in accordance with the procedures outlined in Vermont's animal cruelty statute, 13 V.S.A. § 354(b)(3), which states that "if the humane officer witnesses a situation in which the humane officer determines that an animal's life is in jeopardy and immediate action is required to protect the animal's health or safety, the officer may seize the animal without a warrant." The ACHS removed the mare from the Hegartys' home and took custody of the animal on August 18, 2000. The mare was returned to the Hegartys 12 days later, after it received veterinary care and treatment from the ACHS.

against unreasonable search and seizure by authorizing seizures of property without a warrant. The Court explained that while warrantless seizures are generally deemed unreasonable, they are lawful under *exigent, or emergency, circumstances*. The Court ruled 13 V.S.A. § 354(b)(3) constitutional because it authorizes a humane officer to seize an animal without a warrant only if exigent circumstances exist, specifically if a humane officer "witnesses a situation in which he determines that immediate action is required to protect the animal's health and safety." The Court did caution, however, "each case should be evaluated individually and the determination of exigency must be closely examined."

The Hegartys also argued that 13 V.S.A. § 354(b)(3) violated their constitutional right to due process by permitting ACHS to seize their horse without "a meaningful opportunity to be heard prior to the seizure." The Court rejected the due process claim explaining that although "the Hegartys' property interest in Paka was constitutionally protected... the degree of their deprivation was not serious, the procedures underlying the deprivation adequately address the potential for errors, and they could have requested a post-deprivation hearing..."

This case is important for municipal officials because it upholds the authority of humane officers to take immediate action, by seizing animals without a warrant, in emergency situations where a humane officer reasonably believes that an animal's life and safety is in danger. This authority, however, must be exercised cautiously and sparingly, and only when the circumstances outlined in the statute exist. The Court specifically cautioned that 13 V.S.A. § 354(b)(3)'s grant of authority to act without a warrant "is a narrow one which permits warrantless seizures only in the unusual situations where the humane officer makes a reasonable determination that an animal's life is in jeopardy and immediate action is required." Although the statutory authority exists to seize an animal under emergency circumstances, municipal officials and humane officers should exercise this power sparingly, and if at all possible, should obtain a warrant prior to seizing an animal if doing so is possible without jeopardizing the animal's health, safety, and welfare.

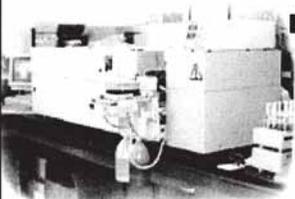
-Julie Fothergill, Attorney, VLCT Municipal Assistance Center

In response to the ACHS's actions, the Hegartys filed suit against ACHS alleging among other things, that ACHS's action violated their constitutional right to be protected from unreasonable search and seizure, as well as their rights to due process.

The Hegartys argued that 13 V.S.A. § 354(b)(3) violates both the state and federal constitutions' protections



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ASK THE LEAGUE

REGULATING "BYOB" ESTABLISHMENTS; RECORDING LAND SURVEYS

May towns regulate "bring-your-own-beverage" establishments?

Some restaurants that do not have liquor licenses allow customers to bring their own alcoholic beverages ("BYOB"). Most Vermont municipalities have chosen *not* to regulate these establishments.

Generally, Vermont municipalities may grant liquor licenses of various classes to establishments that serve or sell liquor. 7 V.S.A. § 161. The various classes are broken up in a few ways. For example, a first class license would allow the license holder to sell alcoholic beverages for consumption only on the licensed premises. A second class license would allow the license holder to sell packaged beverages for off-premise consumption. The other licenses are beyond the scope of this article.

In the context of "bring-your-own," there is no liquor license required because no liquor is being sold on the premises. It is, in fact, brought to the premises. However, the consumption of alcohol in a public place may warrant regulation, particularly because of alcohol's association with social problems such as drunken driving, public disorder, and so on.

If your municipality decides to explore regulating BYOB establishments, it should first look to its authority to craft regulations that promote the general health, safety, and welfare of the town. 24 V.S.A. § 2291. More specifically, it may "... regulate, license, ... or prohibit ... entertainments ... for which money is received." 24 V.S.A. § 2291 (11). Municipalities may view BYOB restaurants, clubs and establishments as an "entertainment" of sorts and may regulate them as such through an entertainment ordinance.

A final note: When determining how to permit BYOB establishments, there are some general rules that towns may not change: (1) the drinking age in Vermont is 21 and no alcohol may be furnished to minors on the premises, and (2) no one under 18 may be a waiter or waitress serving alcoholic beverages.

- Maria Gomez, Intern, VLCT Municipal Assistance Center

May a town clerk refuse to record a survey?

As a matter of law, clerks are required to record "deeds, instruments or evidences respecting real estate, writs of execution, and other writs," as defined in 24 V.S.A. § 1154. Generally, the clerk's job is to record and file records, not to determine the absolute validity of mortgages, deeds, survey plats, and other records to be filed. The nature of a recording office is such that it cannot possibly inquire into the legal validity of all the documents that it is presented with for recording. As a rule, clerks do not (and typically do not have the time to!) inquire into the legality of a document that is offered for recording.

There seems to be only one departure from this general rule of "non-inquiry" into the validity of a document. In this one instance, clerks do have discretion in the recording of an instrument. If a deed refers to a survey plat that has not already been filed with the clerk's office, the deed cannot be recorded. (The survey must be attached or must be referenced if it has already been recorded.) 27 V.S.A. § 341 (b).

Survey plats must meet certain legal requirements in order to be recorded. Survey plats are maps that are drawn to scale of a parcel, or parcels, of land, tracts, or subdivisions of land, that show, at a minimum, boundaries, corners, markers, monuments, and easements. 27 V.S.A. § 1401. Survey plats are also referred to as "mylars." Twenty-seven V.S.A. § 1403 lists specific requirements including, but not limited to, dimensions, information included on the plat, and signatures of surveyors that a survey plat must include in order to be recorded. Town clerks are directed by 27 V.S.A. § 1406 not to accept any survey plat for recording unless the plat is in compliance with the requirements listed in 27 V.S.A. § 1403.

Ultimately, if a survey plat is not in compliance with the requirements of the law, not only may a clerk refuse to record such a plat, he or she is statutorily prohibited from recording or filing it unless and until it is brought into compliance with 24 V.S.A. § 1403.

- Maria Gomez, Intern, VLCT Municipal

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IMPACT FEES -

(Continued from Page One)

federal aid or fees paid by other developers that financed this project; (3) offsetting the impact fee with taxes or other fees paid by the developer to cover the cost of this capital project; (4) extraordinary costs incurred by the town in serving this new development; and (5) the time-price differential inherent in fair comparisons of amounts paid at different times. 24 V.S.A. § 5203 (c).

- Three factors that cannot be included in impact fees are: the operation, administration or maintenance of the capital project. 24 V.S.A. § 5203 (b).

The town may charge a fee equal to the total cost of this capital project if the development is the only user of the project. However, if a later development uses the project, the town must charge the newer development an impact fee. This fee is then used to compensate the first development for the newer development's usage. 24 V.S.A. § 5203(b).

An example of how to calculate an impact fee: a new subdivision's water usage forces an increase in the town's water supply; the town charges an impact fee equal to or less than the percentage of water the subdivision receives multiplied by the cost to the town for increasing the water supply.

COLLECTING IMPACT FEES

There are several options for collecting impact fees and any combination can be used.

- Collect them during the permitting process (require payment before issuance of permits).
- File a lien on the development property to compel payment of the fees.
- Accept installment payments of fees.
- Require a line of credit from a bank to guarantee the payment of the fee. 24 V.S.A. § 5204.

REPORTING AND REFUND REQUIREMENTS

Towns must follow specific reporting requirements if collecting impact fees.

- Account annually for collected fees and the capital projects funded by them.

Refunding of fees may be required if:

- The town fails to spend fees collected within six years. (A refund must be given if the development applies for a refund.) 24 V.S.A. § 5203 (e).
- The fee collected is greater than the actual expenses incurred. (The town must refund the unexpended portion within one year after construction ends.) 24 V.S.A. § 5203 (d).

EXEMPTIONS FROM IMPACT FEES

A town may exempt certain developments from impact fees. The exemption is created when the program is created, and must clearly state the town's objective or policy for the exemption. For example, affordable housing developments are often exempt. An exemption will only be valid if a clearly stated objective or policy can be rationally related to the exemption.

- Elizabeth Willhite, Intern, VLCT Municipal Assistance Center

COURT RULINGS ON IMPACT FEES

The Vermont Supreme Court has upheld the imposition of impact fees. In one instance, the Town of Hartford's impact fees program was challenged on the ground that it was not a valid exercise of municipal authority. The Court disagreed and ruled that the impact fee, which was used to finance the future expansion of the Town's sewage capacity, was a valid exercise of municipal authority. *Robes et al., v. Town of Hartford*, 161 Vt. 187 (1993).

The Court also created a standard of review for impact fees, which established that rates or charges fixed by a municipality are presumed reasonable and legally valid. This places a heavy burden on challengers because they must be able to prove the fee is not reasonable. For example, a challenge to the Town of Williston's impact fees lost, in part, because the challenger failed to prove the impact fees were unreasonable. This fee program (to compensate for recreational and school services) was reviewed to determine if the Town's formula for assessing impact fees was valid. The Chittenden County Superior Court found that it was valid because the fee was based upon the level of service for the funded capital project. Next, the Superior Court applied the standard of review for this fee, which presumed the fee was reasonable. The challenger presented evidence that the fee could have been established using *different* formulas, but never established that the fee assessed was unreasonable. *H.B.A. of Northern VT v Town of Williston*, unpublished Chitt. Cnt. Sup. Cr. (2000).

Municipalities should be encouraged by these decisions. However, a more recent case ruled against a municipality when the Supreme Court found that the impact fee assessed was erroneously charged. In this case, developers who fell within the "grandfather clause" exemption of the City ordinance did not have to pay certain impact fees. *MBL Associates v. City of South Burlington*, 172 Vt. 297 (2001).

In sum, municipalities that implement a system of impact fees that follows the "reasonable formula" will be entitled to a strong legal presumption of validity. Moreover, it should be known that impact fees are a viable method of allocating costs for providing increasingly expensive governmental services.



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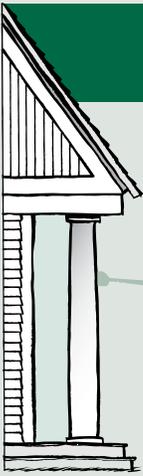


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Upcoming Dates

GROUP SERVICES DAY

*"PERSONAL VALUES
AND PUBLIC ETHICS"*

Thursday, June 3, 2004, Hartness
House, Springfield, Vermont

Please see article on Page One for more
information.

2004-5 DENTAL RATES AND RENEWAL

Members of the VLCT Health Trust's dental insurance plan recently received their renewal forms from Northeast Delta Dental, as well as a memo from the Health Trust outlining the 2004-5 dental rates. The dental insurance rates for July 1, 2004 to June 30, 2005 will increase by 4.27%, well below dental cost trends. This is good news for VLCT Health Trust members, as dental care costs in Vermont are still rising at an average of 7.9% annually. If you would like more information about VLCT's dental insurance plan, which is underwritten by Northeast Delta Dental, please call the VLCT Group Services Member Relations Department at 800/649-7915.

WELCOME

The Grand Isle Consolidated Water District recently joined VLCT PACIF, bringing total membership up to 334.

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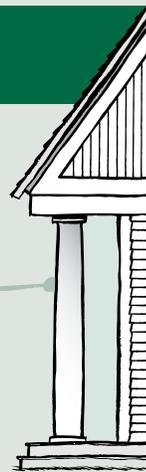
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PROTECT YOUR SKIN THIS SUMMER

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- Fair skin
- Blond or red hair
- Blue, green, or gray eyes
- More than 100 moles (or 50 by the age of 20)
- Excessive sun exposure (especially as a child or teenager)
- A family history of skin cancer



To be safe, check your skin regularly and look for moles or blemishes that are:

- Not symmetrical and have irregular borders
- Raised in parts
- Indistinct from the surrounding skin
- Varied in color (a mixture of white, tan, brown, black, or reddish pink)
- Larger than the diameter of a pencil eraser (about a quarter inch)
- Painful, itchy, or bleeding

If you notice anything out of the ordinary, contact your physician for an exam. The good news is that skin cancer can be prevented. Use a sunscreen of SPF 15 or higher when you're outside and limit the time you spend in the sun between 10 a.m. and 4 p.m.

For more information about VLCT Group Services' health and safety programs, contact Brian FitzPatrick, Manager, Safety and Health Promotion, at 800/649-7915 or bfitzpatrick@vlct.org.

ICMA RELEASES LOCAL GOVERNMENT POLICE MANAGEMENT, 4TH ED.

The latest addition to VLCT's library is the International City/County Management Association's (ICMA) reference book, *Local Government Police Management*. Designed to provide local departments with insight into management and emerging issues and problems in the law enforcement field, the book will prove a useful tool to police chiefs and local administrators.

Broken into five parts - 1) Foundations; 2) Basic services; 3) Special challenges; 4) Departmental infrastructure; and 5) External linkages - 19 chapters focus on everything from "the evolution of contemporary policing" to "patrol" to "terrorism and community security" to "personnel and agency performance measurement" and finally to "forensic sciences" and "practical ideals for managing in the new millennium."

Within the 19 general chapters of the book, the authors go into great detail on topics like problem solving, collective bargaining, operational intelligence, the investigative process, management of crime scene searches, and federal programs, using examples for explanation and drawing upon vast amounts of research and studies, all of which are indexed at the end of each chapter, allowing the reader to perform in-depth research with ease.

For anyone involved in law enforcement, the fourth edition of *Local Government Police Management* provides a great first reference for information relating to law enforcement management. The book can be borrowed from VLCT's library (e-mail dgunn@vlct.org), ordered from the ICMA Distribution Center at 800/745-8780, or ordered on-line at bookstore.icma.org.

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A TRIO OF NEW FACES JOINS VLCT

Two member support positions and an internal support position were recently filled when **Garrett Baxter**, **Kelley Avery** and **Shawna McNamara** joined the VLCT staff.

Garrett is the new Associate in the Municipal Assistance Center. He takes the place of Gail Lawson who left VLCT in February to become Montpelier's Zoning Administrator. Garrett will be assisting members with their legal and technical assistance questions, organizing workshops and writing for the *VLCT News*. He comes to the League after graduating last fall from the Vermont Law School with a J.D. and M.S. in Environmental Law. While at the Law School he worked in the South Royalton Legal Clinic and with the Vermont Legislature through the School's legislative clinic. In his "spare" time, Garrett is also

currently taking courses toward an M.S. in Administration at St. Michael's College in Colchester. Garrett lives in Montpelier, and in his truly spare time, he enjoys playing tennis and watching the Red Sox (who he claims are going to finally win it all this season).

Kelley has stepped into the Administrative Assistant/Member Relations position vacated in March when Nicolette White moved to Connecticut. Kelley will assist members with their questions about the VLCT Health Trust and Unemployment Trust, as well as work with Suzanne Schittina, Rikk Taft and Kim Gauthier to support their work in the field with members of each VLCT Trust. Kelley previously worked for the National Life Group in Montpelier for 12 years in a series of positions including Senior Technical Support Specialist, Field Systems

Analyst and Administrative Assistant. She holds a B.A. in English from Stetson University in DeLand, Florida. Kelley lives in Barre with her husband and three children, and enjoys singing, reading, walking and being a "hockey Mom."

As VLCT's new Production Technician, Shawna has taken over the League's own version of "Mailboxes, Etc." Shawna fills a position vacated by the promotion of Sonia Rivera, and has quickly familiarized herself with the many pieces of reproduction and mailing equipment in VLCT's two production rooms. Most of the written material that members receive from the League passes through these two rooms, under the able guidance of the Production Technician. Shawna's previous work experience includes five years as a Policy Services Clerk I with Vermont Mutual Insurance Company in Montpelier and a year as a Sales Clerk/Floor Manager with Nelson's Hardware in Barre. Shawna lives in East Barre.

Welcome aboard, Garrett, Kelley and Shawna!

*- Katherine Roe, VLCT
Communications Coordinator*



Garrett Baxter



Kelley Avery



Shawna McNamara



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CLASSIFIEDS -

(Continued from Page Fifteen)

Planner provides staff support to the Planning Commission and Development Review Board, developers, and the public. Starting salary, \$30s, DOQ/E, with an excellent benefit package. To apply, send cover letter, resume and salary history/requirements to "Town Planner" c/o Sanford I. Miller, Milton Town Manager, 43 Bombardier Road, Milton, VT 05468-3205, or e-mail smiller@town.milton.vt.us. Open until filled. EOE.

Public Works Director. The Town of Windsor, Vt. seeks a qualified person to supervise the Highway, Water and Sewer departments. Position calls for technical, administrative, supervisory and leadership capabilities. Person will respond to the dictates of the Selectboard as interpreted by the Town Administrator, provide oversight for all aspects of the Town's physical and public infrastructure and oversee the maintenance and repairs of the Town Municipal facility. Requires an in depth knowledge of modern day public works management, four years experience in PW operations – highways and/or utilities, knowledge of civil engineering principles, budget preparation and management, knowledge of motor vehicles and heavy equipment, communication skills, computer database maintenance skill including GIS reports/maps. The Director must live within Town limits, possess at least a high school diploma, a valid State driver's license with CDL endorsement or the ability to obtain one prior to hire. Salary, \$40,000-49,000, DOQ/E. Position includes full benefits: BC/BS, Dental, Life, LTD,STD, Cafeteria Plan, and Retirement Plan. Send resume to Town of Windsor, Town Administrator, P.O. Box 47, Windsor, VT 05089. Position open until filled. EOE.

Interim Town Manager. The Town of Norwich, Vt. is accepting applications for an Interim Town Manager. The position is part time (3 days per week) and would start in early to mid June. For more information, contact Dominic Cloud at VLCT, tel. 800/649-7915; e-mail, dcloud@vlct.org.

Community/Economic Development Coordinator. The Village and Town of Johnson, Vt. seek 20 hr/wk Community/Economic Development Coordinator. Deadline, June 7th, 2004. Contact Duncan Hastings, Municipal Administrator for details at 802/635-2611 or dhastings@townofjohnson.com.

the signs of a healthier vermont.



When Vermont's children receive the coverage, care, and comfort they deserve, these are signs of a healthier Vermont.

Vermont's ambulances now come equipped with new tools that help provide comfort and treatment to children—teddy bears. Blue Cross and Blue Shield of Vermont and The Vermont Health Plan learned that emergency crews use such toys to open the lines of communication between EMTs and children, who respond positively to the familiar comfort of a teddy bear. Teddy bears for children, the most innovative health plans, and the largest provider networks in the state—these are signs of a healthier Vermont. To learn more about The Vermont Health Plan, our teddy bear initiative and other programs, visit www.bcbsvt.com.



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FAIR LABOR STANDARDS ACT

OVERVIEW OF UPCOMING CHANGES

(Editor's Note: On May 4, 2004 the U.S. Senate voted 52 to 47 to adopt an amendment to block the new FLSA regulations discussed below. That amendment, however, was attached to an unrelated corporate tax bill and the House would have to pass that tax bill in order to derail the changes. Meanwhile, the President has promised to veto any such attempt. As an override would require a two-thirds vote of both the Senate and House, it is likely that the new regulations will remain intact. All employers, therefore, including cities and towns, would do well to examine all positions in light of the new definitions to be assured of proper classification and overtime pay handling.)

The long awaited updates to the Fair Labor Standards Act (FLSA) were published by the U.S. Department of Labor (DOL) in late April and are slated to go into effect on August 23, 2004. (See also "Fair Labor Standards Act: Sixty-five Year Old Law Faces Changes" in the September 2003 VLCT News.)

Although the FLSA governs the federal minimum wage level, record keeping and child labor laws, the focus of the changes is the regulation of overtime pay requirements for workers – specifically which employees may be classified as exempt from the requirement that for all hours worked over 40 in a workweek, workers must be paid at a rate of time and one-half the regular rate of pay. This is the first major overhaul of FLSA in more than 50 years and represents an attempt to provide clearer guidance to employers, including examples and

dollar amount requirements which are more relevant to current workplace standards.

The Department of Labor refers to the new regulations as FairPay rules and asserts that 1.3 million low wage workers, who were denied overtime pay under the old rules, will now receive overtime protection. To qualify as exempt from the rules, a "white collar" employee must earn more than \$455 per week (\$23,660 annually), be paid on a salaried basis, and additionally meet tests regarding specific job duties. Anyone earning less than the preceding figure (which is higher than the originally proposed regulations) is automatically protected by FLSA overtime pay requirements.

The enactment of the new regulations offers municipalities an opportunity to review job descriptions and re-evaluate all positions as to whether they should be classified as exempt or non-exempt. Help is available through the Department of Labor's "FairPay" Web site at www.dol.gov. It provides fact sheets and tutorials regarding all of the provisions and defines the terms used (such as "primary duty," "particular weight," and "discretion and

independent judgment"); also provided are links to actual regulatory text. The site permits employers to submit direct questions and to sign up to receive regulatory updates. There is also a toll-free help line at 866/4US-WAGE (866/487-8243).

In addition to the increase in minimum salary here is a brief synopsis of the new regulation content:

I. Deductions from Pay

The rules on deductions from exempt employees pay remains largely the same in that the predetermined weekly wage cannot be reduced due to variations in the quality or quantity of the employee's work. For any week in which the employee performs no work, pay is not required. The list of permissible deductions of less than a full week is expanded to include full day suspensions for disciplinary reasons previously not applicable to exempt employees.

II. Primary Duties Test

The "long" and "short" tests no longer exist, nor does the calculation of whether 20 percent of an employee's time is spent on non-exempt tasks. Rather, there are simplified tests for each of the exemptions based on "primary duties."

(Continued on next page)



You can read more about the Fair Labor Standards Act in the recently released VLCT MAC **Municipal Employment Law Handbook**. A complimentary copy was mailed last month to all VLCT PACIF members; others may order the handbook from VLCT, on-line at www.vlct.org, or by calling VLCT at 800/649-7915.

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FLSA-

(Continued from previous page)

Bear in mind that, in addition to the salary requirements noted above, *all* of the listed items in the test must be met in order to qualify for the particular exemption.

Executive Exemption. The primary duty must be managing the enterprise or customarily recognized department or subdivision thereof; the employee must customarily and regularly direct the work of at least two other full-time employees or equivalent; the employee must have authority to hire or fire; or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemption. The primary duty must be office or non-manual work directly related to the management or general business operations of the employer or employer's customers; the primary duty includes the exercise of discretion and independent judgment regarding matters of significance.

Professional Exemption. The "Learned Professional's" primary duty must be

performing work requiring advanced knowledge (predominantly intellectual and requiring consistent exercise of discretion and judgment) in a field of science or learning and acquired by a prolonged course of specialized intellectual instruction. The "Creative Professional's" primary duty must be performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

There are also exemptions defined for computer professionals and outside sales employees not outlined here but spelled out on the DOL Web site.

III. Highly Compensated Employees

An exemption has been created for those whose salaries are at least \$100,000 per year (this is much higher than the original proposal) and who perform office or non-manual work as well as one or more of the duties of the exemptions outlined above.

IV. Blue Collar Workers

The above exemptions apply only to "white collar" employees who meet both the salary and duties tests. "Blue collar" workers are considered to be those who perform work involving

repetitive operations with their hands, physical skill and energy. Non-management employees in production, maintenance, construction, and similar positions are non-exempt no matter how high their pay.

V. Police, Fire Fighters, Paramedics and Other First Responders

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, correctional officers, parole/probation officers, fire fighters, paramedics, emergency medical technicians, ambulance personnel and similar workers, regardless of rank or pay level who perform work such as: preventing controlling or extinguishing fires; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections of violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports or similar work.

- Jill Muhr, VLCT Human Resources Administrator

Municipal Assistance Center



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VLCT's Municipal Assistance Center specializes in the issues confronting Vermont municipalities today. Please give us a call if we can provide your municipality with any of the following services:

- ◆ *Counsel by municipal attorneys and VLCT staff.*
- ◆ *Review of proposed ordinances, policies, and contracts.*
- ◆ *Onsite workshops on topics such as financial management, land-use planning, and the proper functioning of municipal boards and commissions.*
- ◆ *Consulting services such as meeting facilitation, mediation, and personnel recruitment.*
- ◆ *Manuals and handbooks which provide a plain-English guide to state and federal laws.*
- ◆ *Regular surveys on salaries and benefits, municipal practices, rates and fees, etc.*
- ◆ *Model ordinances, bylaws, and policies.*

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TRIVIA

Mike Gilbar, VLCT's resident Trivia Guru, is delighted that he stumped everyone last month with the following question: In what year and in what town did voters at Town Meeting vote to lock up all liquor in a closet so that they could conduct business before the majority of the attendants were too inebriated to understand what they were voting for? The answer is Cabot in 1806.

Here is May's trivia question:

This town changed its name from Billymeade (named after the son of the person that chartered the town) to its current name (named after the birth place of the person who proposed the new name). Name the town and the year it changed its name. Also name the person for whom the town was originally named AND the person (as well as his birthplace) who suggested the name change.

Contact us with your answer: VLCT, 89 Main Street, Suite 4, Montpelier, VT 05602, tel. 800/649-7915, fax, 802/229-2211, e-mail, kroe@vlct.org.



TAX CREDITS AVAILABLE FOR WORK IN DOWNTOWNS AND VILLAGE CENTERS

Rehabilitating old buildings can be a challenge. Such work can pose more complex and difficult problems than new construction projects, and it can be hard to make the numbers work on older buildings.

To level the playing field and promote investment in older and historic buildings, the state recently enhanced its Downtown Development Act to provide significant tax credits to eligible property owners and long-term lessees of commercial buildings in designated downtown districts. The tax credits are available to those who install sprinklers, elevators, or lifts and/or complete work that brings buildings into compliance with labor and industry standards and life and safety codes (wiring, plumbing, fire separation, alarms, etc.).

The state and federal tax credits are designed to work together to target investment in income-producing older and historic properties, to make them safe and accessible and to protect the special character of Vermont cities, towns and villages. These tax credits allow property owners and lessees who rehabilitate income-producing historic buildings in Vermont to claim a tax credit between 10% and 50% of the cost of that renovation.

For those not familiar with tax credits and how they work, tax credits offer dollar-for-dollar reduction of income tax liability. Where deductions merely lower a taxpayer's taxable income, tax credits lower a taxpayer's actual tax bill. Statewide, federal tax credit rehabilitation projects last year alone stimulated private investments of more than \$15 million in historic properties, representing over \$3 million in tax credits for Vermonters.

STATE TAX CREDITS FOR BUILDINGS LOCATED WITHIN DESIGNATED DOWNTOWNS

There are three separate incentives for property owners and lessees of buildings located within designated downtown districts. (Some of these credits can be combined.)

- An unlimited 10% add-on credit for projects receiving the 20% federal rehabilitation tax credit for historic buildings. To qualify for the federal program the building must be listed or become listed in the National Register of Historic Places, and must be income-producing. Project expenditures must exceed \$5,000 and the building's adjusted basis. There is no cap on the

amount of credit per building.

- A 25% credit (\$25,000 maximum) for smaller projects that don't qualify for the 20% federal tax credit.
- A 50% credit for the costs associated with the installation of sprinklers, elevators or lifts. The credits for an elevator or sprinkler system are each capped at \$25,000, and \$12,000 for a lift. Total allocation of state rehabilitation tax credits is limited to \$1 million per fiscal year.

The requirements for the various tax credits differ, but there are some common elements.

- The building must be located in a designated downtown district - 17 downtown districts have been officially recognized by the state.
- The property must be an existing building. Historic buildings are generally eligible for more generous incentives.
- The property must be income producing, such as a store, office building, apartment building or a vacation rental.
- To get the full benefit of the credit, the building must remain in the same ownership for five years, after which owners can do with the property as they wish.

- The tax credits apply only to certain rehabilitation-related costs, not to the costs of acquisition or additions to the building, with the exception of elevator towers.

TAX CREDITS FOR VILLAGE CENTERS

There are two incentives for property owners and lessees with buildings located within designated Village Center districts. Villages must be designated prior to the start of the rehabilitation project for owners to qualify for the credits.

- A 5% state add-on credit for projects receiving the 20% federal rehabilitation tax credit for historic buildings.
- A 50% state income tax credit is available to property owners and lessees for capital improvements or fixtures in commercial buildings in order to comply with state requirements for fire prevention, life safety and accessibility, food establishments, sale of dairy and meat products, and/or weights and measures.

Only one award may be made to any one building from this program, up to a maximum tax credit of \$5,000.

Full details about all the programs and the list of designated downtowns and village centers can be found at www.historicvermont.org.

- *Chris Cochran, Tax Credit Coordinator, Vermont Division for Historic Preservation*

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Dot Matrix Printer. \$300 or best offer. Comes with original documentation, and drivers to support Windows 95, 98, 2000 and XP can be downloaded. Contact Dick Desautels at 802/862-4621 or e-mail waterdept@malletsbayfire.com.

Dump Truck. Killington, Vt. has for sale a 1998 Mack RD690P dump truck with a 7cy body, plow frame, reversible front plow, wing plow, and hydraulic tailgate sander. Asking \$45,000. This like-new truck is available immediately and can be seen or driven at the Town Garage by appointment. Write or call David Lewis, Town Manager, P.O. Box 429, Killington, VT 05751, 802/422-3241.

Alamo Ditch Bank Mower. Five-foot rotary head. Reach extends hydraulically four feet. Rear-mounted, so it doesn't tie up tractor for other chores. Complete service by Betco, December 2001, not used since. \$4,500 (half price of new), includes some spare parts and manual. Machine is at Brookside Equipment, tel. 888/763-4656.

HELP WANTED

Planner. The St. Albans, Vt. Town Planning Commission is seeking applicants for the full-time professional position of Planner for the Town of St. Albans. The position is responsible for developing and implementing various planning, zoning and economic development initiatives. A variety of tasks are involved that require technical analysis, sound decision making capabilities as well as the capability to provide staff support to the Planning Commission, Development Review Board, Selectboard, developers and the public. Broad knowledge of municipal comprehensive planning, zoning bylaws, federal and state planning law, growth management, transportation planning is essential. The position offers benefits and a salary commensurate with experience and

knowledge. To apply for this position, send a letter of interest and a resume to Office of the Town Administrator, P.O. Box 37, St. Albans Bay, VT 05481.

Water Department Maintenance

Technician. The Town of Shelburne, Vt. Water Department is seeking to fill the full-time, permanent position of Water Department Maintenance Technician. Principal functions are maintenance of the water distribution system and reading meters. This is a three-person department, 40 hours per week, with on-call rotation and some overtime. Most of the work is outdoors, in all weather conditions. High school diploma or equivalent required. Vocational or technical education and two years of public works or related experience desirable. Valid Vermont driver's license and excellent past work record required. Must work well in team-oriented, customer-driven environment, and must communicate well with co-workers and customers. Starting pay rate is \$12.50/hour with full benefits. To apply, submit letter of interest and resume to Town Manager, P.O. Box 88, Shelburne, VT 05482; e-mail, pbohne@shelburnevt.org. EOE.

Planning Technician. Central Vermont Regional Planning Commission. This entry-level position assists in the region's GIS, transportation, and land use planning programs. Duties include developing digital layers for use in spatial analysis and mapping, data entry, report generation and map production, field collection and analysis of highway/traffic data, tracking progress of highway and bridge projects, and general research. Qualifications: experience with map production and GIS software (Arcview and ArcGis preferred); familiarity with networks (Trimble GPS and Jamar Traffic Counting software a plus); excellent computer skills including Windows, Microsoft Office software; interest in Vermont's land use and transportation planning; excellent written and spoken communication and interpersonal skills; excellent public relations and client consulting skills. Send cover letter, resume, references, and salary history to: Steve Gladczuk, Transportation Planner, CVRPC, 29 Main Street, Suite 4, Montpelier, VT

05602. E-mail CVRPC@cvregion.com. Resumes accepted until position is filled. EOE.

Wastewater Operator. The Town of Shelburne, Vt. has an operator position available at its sewage treatment facility. Successful candidate must have high school diploma, possess or obtain CDL with tanker endorsement within six months, possess or obtain Grade I Wastewater Certification within two years. Must excel in team-oriented, quality-driven, detail-oriented environment. Must be able to communicate well with other staff and general public. Starting pay, \$14.77 per hour. Excellent benefits. Send cover letter and resume to Shelburne Town Manager, 5420 Shelburne Road, P.O. Box 88, Shelburne, VT 05482; fax, 802/985-9550; e-mail, pbohne@shelburnevt.org.

Town Manager. Brandon, Vt. With a municipal budget of \$2+ million and a staff of 24, its services include police, highway, wastewater, transfer station and recreation. Brandon's selectboard seeks a dynamic, experienced Town Manager to direct municipal operations and take us to the next level of achievement as a preferred destination for visitors and residents alike in which to live, work, shop and play. The ideal candidate will be goal-oriented and a self-starter, with a record of anticipating and resolving problems. She/he will have broad managerial experience, strong communication skills, and viable computer skills. The successful candidate will also demonstrate an ability to interact successfully with elected and appointed officials, employees, citizens and voters. Salary in the high 50s based on experience, training, and qualifications. Cover letter, resume and references must be received by **June 4, 2004** by the Town Manager Search Committee, Town Offices, Brandon, VT 05733. EOE. Visit our Web site at www.town.brandon.vt.us.

Town Planner. The Town of Milton, Vt. is seeking a qualified person for the position of Town Planner. Under the direction of the Planning Director, this position serves as an in-house resource for planning issues and requires technical analysis, sound decision-making capabilities and creativity. The

(Continued on Page Eleven)



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Calendar

For more information about the VLCT-sponsored events described below, please contact Jessica Hill, VLCT Conference Coordinator, tel., 800/649-7915 or e-mail, jhill@vlct.org. You may also visit www.vlct.org, select the Calendar, and select a workshop for more information or to register on-line.

Group Services Day. Thursday, June 3, 2004, Hartness House Inn, Springfield. Sponsored by VLCT Group Services. Please see article on front page for more information.

Planning and Zoning Series #4: Natural Resources Planning. Thursday, June 10, 2004, Vermont Interactive Television sites throughout the state. Sponsored by the VLCT Municipal Assistance Center. This final evening session in the series will illustrate how local tools

such as the town plan, zoning bylaws, and municipal ordinances can be vital in protecting open space, shore lands, flood plains, and preserving scenic and historic features.

Vermont Community Development Association. Thursday, June 24, 2004, Rutland. Join VCDA for a look at how Rutland reclaimed its historic buildings and reinvested in its downtown, leading to it becoming a Vermont "Success Story." For more information, contact Jessica Hill at 802/229-9111.

School Plant Operation and Maintenance Conference. Thursday, June 24 and Friday, June 25, 2004, Hartford High School, White River Junction. Sponsored by the Vermont School Custodians Association and the Vermont Department of Education. This Conference offers a variety of sessions for building custodians and maintenance personnel, including roof maintenance, carpet care, emergency

management, security, and more. Municipal custodians and maintenance personnel are welcome to attend. A number of vendors will also display janitorial supplies and equipment. For more information, contact Alvin Ricker at 802/295-2781.

VLCT Town Fair and Field Day. Wednesday, September 29 and Thursday, September 30, 2004, Barre Municipal Civic Center. Registration information will be in the mail by the 1st of July. Vendors may visit the VLCT Web site for exhibit registration forms, maps and other information. It's not too early to mark your calendars!