VLCT NEWS

A Publication of the Vermont League of Cities & Towns

Serving and Strengthening Vermont Local Governments

July 2006

Long and Winding Ancient Roads Discussion Comes to End

Important Deadlines Loom in Future Years

After three years of debate, many proposed solutions of varying quality, gnashing of teeth and pulling of hair, the Legislature passed Act 178 – effectively setting in motion the end of the ancient roads discussion in Vermont.

The legislation attempts to solve the problems potentially caused by legally established town highways that have gone unused – and, in some cases – unnoticed for decades or even centuries. As towns, interested citizens, and property owners rediscover these Class 4 highways, conflicts have arisen over their reclamation, access and use, and structures that may have been built within their rights-of-way. In a few communities, the conflict has escalated into protracted legal wrangling between the towns and property owners.

Act 178 is an effort to resolve the problems created by these hard-to-see and somewhat forgotten roads, by allowing towns an opportunity to add them to their maps as Class 4 roads or trails, to give them up in

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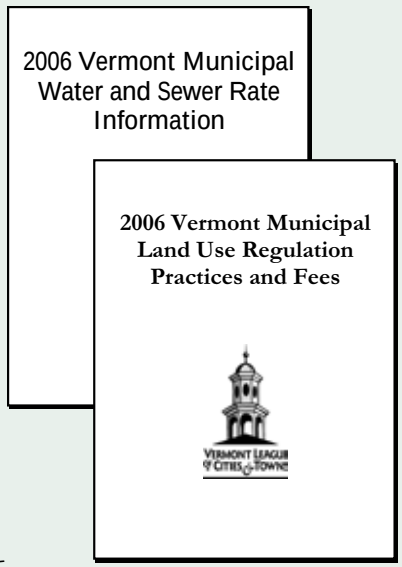
More 2006 Municipal Census Data Released

The VLCT Municipal Assistance Center recently published the *2006 Vermont Municipal Land Use Regulation Practices and Fees* on-line. This follows publication last month of the *2006 Vermont Municipal Water and Sewer Rate Information*.

The *2006 Vermont Municipal Land Use Regulation Practices and Fees* includes all the planning and zoning related questions from the *2006 Municipal Census* survey, as well as a comparison of those municipalities that included their various planning and zoning fees. Please visit www.vlct.org to view the data.

Nearly seventy-five percent of our member municipalities responded to the *2006 Municipal Census*, a survey on a variety of municipal issues and practices. Ninety-one responding municipalities included their land use regulation fees.



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First Members Appointed to Financial Task Force

In his Executive Director's Column last month, Steven Jeffrey outlined a new VLCT initiative that will examine the financial management challenges currently facing Vermont's local government.

The initiative – formation of a Local Government Financial Management Task Force – was approved by the VLCT Board of Directors at its May meeting. Task Force members appointed so far include:

- **Fred Duplessis**, a certified public accountant with significant municipal experience.
- **Paul Giuliani**, an attorney with significant municipal experience.
- **Ernie Saunders**, President, New England Municipal Resource Center.

St. Johnsbury Town Clerk/Treasurer and VLCT Vice President **Sandy Grenier** and Rutland City Treasurer and VLCT Board member **Al Wilkinson** have agreed to co-chair the Task Force.

VLCT will staff the Task Force with the following individuals:

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Legislative Wrap-up Lite

New or Altered Municipal Boundaries

In the *2006 Legislative Wrap-up*, VLCT staff missed one bill that changes the way that municipal boundaries between towns are located or altered. That bill is H.544, Act 102.

The issue of establishing boundaries between two towns occasionally arises in the Legislature because that body is responsible for ratifying town lines. In the past, towns had gotten into the habit of asking the Legislature to pay the cost of surveying those lines prior to their establishment and legislative approval.

Under the new law, if a municipal boundary line is in doubt and the involved towns agree as to its location, each legislative body must hold a public hearing and then vote to adopt the location of the line. The legislative bodies shall then conduct a survey or ratify an existing one, and file certified copies of the minutes of the meetings, the survey, and a list of property owners whose legal location is changed by the agreement with their town clerks, the Secretary of State and the E-911 Board. When the line is new and pursuant to a survey, one or more of the involved towns shall petition the General Assembly to establish location of the line and then file the survey and list of property owners after the General Assembly has ratified the line.

If the boundary is in doubt and the two involved towns cannot agree as to its location, the dispute goes to arbitration. If the arbitration does not result in an altered line, the result shall be filed with the Secretary of State and the clerks of those towns.

If the arbitration results in an altered line, then the arbitration award shall require a survey of the line, the cost of which is apportioned between the towns. Following the survey, the involved local legislative bodies must post notice of a petition to the General Assembly at least three weeks prior to at least one of the local legislative bodies filing a petition requesting the General Assembly to adopt the alteration of the line pursuant to the survey. Next, the local legislative bodies must file the survey and a list of property owners whose legal location is altered with the Secretary of State, the clerks of the involved municipalities, and the E-911 Board.

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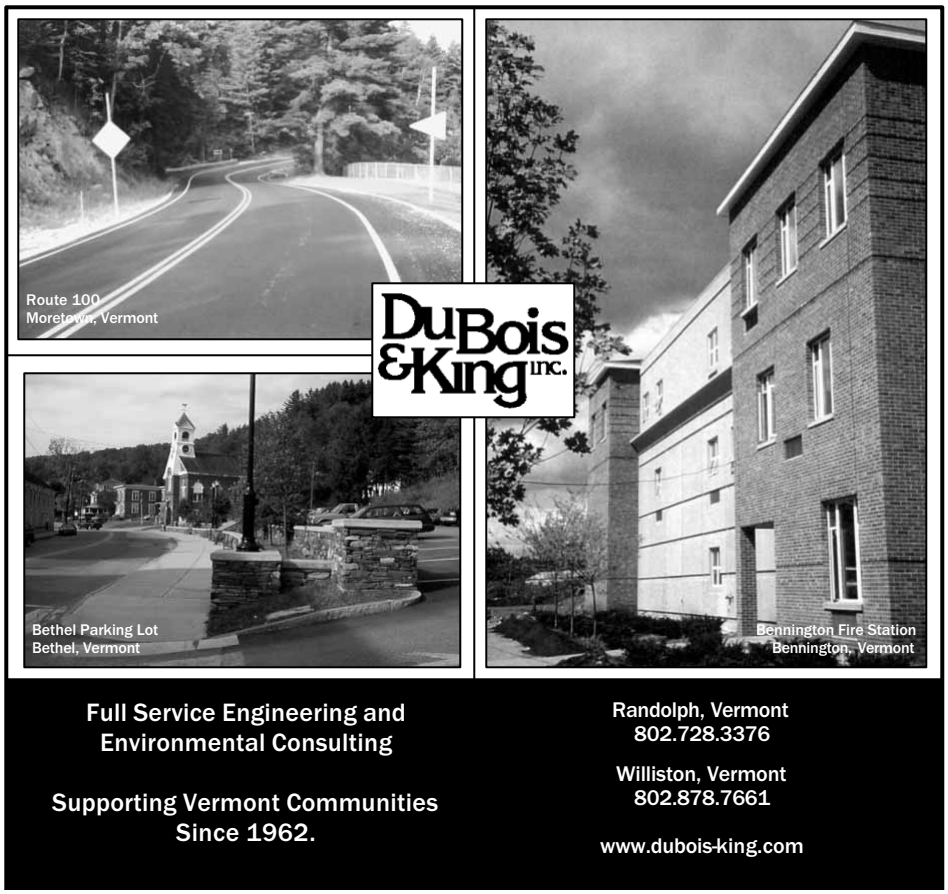

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Brief updates on Vermont's changing legal and regulatory environments

Legal and Regulatory Notes

Free Speech; Warrantless Entry; Tax Incentives and Commerce Clause

U.S. Supreme Court Curtails Right to Work-related Speech

A recent decision of the U.S. Supreme Court limits government employees' First Amendment right to free speech. Generally, municipal employers cannot take adverse action against employees for exercising their constitutionally protected right to free speech on matters of public concern. This protection, however, does not extend to all statements made by employees. This past month the U.S. Supreme Court in *Garcetti v. Ceballos*, 547 U.S. ___ (2006), ruled that statements made by employees *pursuant to their work duties* are not protected by the First Amendment.

This case involved Richard Ceballos, a deputy district attorney for the Los Angeles County District Attorney's Office. In the spring of 2000, Ceballos received a call from a defense attorney who insisted that an affidavit that was used to secure a critical search warrant contained significant inaccuracies. After Ceballos investigated the claim, he concluded that the affidavit contained "serious misrepresentations." He voiced his concerns to supervisors, and prepared a follow-up memo explaining his concerns and recommending dismissal of the case.

Following the memo, Ceballos claimed the County District Attorney's Office retaliated against him by reassigning him from his current position to trial work, transferring him to another office, and denying him a promotion. Ceballos sued the county and his supervisors under 42 U.S.C. § 1983, asserting a violation of his First Amendment right to free speech.

The question presented to the Court was whether the First Amendment protects a government employee from discipline based on speech pursuant to the employee's official duties. The Court, in a 5-4 decision, held that there was no First Amendment protection for this type of speech. In holding that Ceballos' speech was not protected, the Court distinguished between expressions made *pursuant to an employee's work duties* and expressions made by an employee *in her capacity as a private citizen*. The Court reasoned that public employers need a degree of control over employees' words and actions to effectively provide public services.

... the U.S. Supreme Court ... ruled that statements made by employees ***pursuant to their work duties*** *are not protected by the First Amendment.*

Ironically, the Court's decision may actually provide an incentive for government employees to voice criticisms publicly. Under the dichotomy the Court establishes, government employees may have more protection if they voice criticisms publicly than they do if they voice them privately to supervisors. The Court, recognizing the potential problems created by this framework, suggests in its opinion that "[a] public employer that wishes to encourage its employees to voice concerns privately retains the option of instituting internal policies and procedures that are receptive to employee criticism. Giving employees an internal forum for their speech will discourage them from concluding that the safest avenue of expression is to state their views in public."

Vermont municipalities have the option to institute these types of internal procedures by adopting personnel policies pursuant to 24 V.S.A. § 1121(a). Such procedures can set up an avenue for employees to air complaints and grievances through internal channels. A municipal employer may also use the personnel policy to articulate a philosophy of candid and open communication between employees and supervisors. In this way, the employer will, in effect, protect its employees' right to work-related speech, while maintaining internal controls that ensure it will have a positive impact on the municipality.

One question left unanswered by the opinion is how government employers are to determine whether a statement is made pursuant to an official work duty. This determination will necessarily be made on a case-by-case basis. A good starting point for municipalities is the employee's job description, which should provide an outline of his or her responsibilities and duties. Additionally, the municipal personnel policy should provide guidance regarding the roles and obligations of employees. The municipal employer should then consider whether the employee's statement was related to duties, roles or obligations clearly outlined in the em-

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Legal/Reg. Notes -

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ployee's job description or the personnel policies of the municipality.

If the statements were clearly made pursuant to an official duty, like the memo in *Ceballos*, the municipal employer may take appropriate corrective actions, including discipline and/or dismissal pursuant to the personnel policy. If, however, the statements were made outside of the employee's official duties, the municipality could not take any adverse actions against the employee if the speech was on a matter of public concern. For more information on this issue, see the VLCT Municipal Assistance Center's *Municipal Employment Law Handbook* (2004). Municipalities should always contact counsel or the VLCT Municipal Assistance Center for additional guidance.

While the *Ceballos* opinion provides more leeway for municipal employers, extreme caution is still necessary when disciplining or dismissing an employee in matters involving speech.

- Ben Rau, Intern, VLCT Municipal Assistance Center

U.S. Supreme Court Affirms Officers' Right to Enter Property

The belief that a person's home is his castle and that it is a fundamental right to be able to exclude others from entering it are

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Municipal Grants for Orphan Stormwater Systems

Is your municipality hosting an orphaned stormwater system? What, you might first ask, is an orphan stormwater system?

An orphan stormwater system is stormwater infrastructure that:

(1) is tied to an expired permit;
(2) serves a residential subdivision;
(3) discharges to a water body unimpaired by stormwater runoff; and
(4) has no responsible party for the system.

This year's Legislature passed Act 154, which created the Orphan Stormwater Systems Program. The Program will fund costs associated with bringing into compliance and re-permitting residential stormwater systems with expired permits. Stormwater systems include collection and treatment structures such as stone or grass swales, ditches, storm sewers, ponds and settling basins that manage stormwater discharges.

How does the Orphan Stormwater Systems Program work? It provides grant money to municipalities to cover upfront costs such as hiring a consultant to complete the Designer's Certification, permit fees and any repairs, construction, or maintenance necessary to bring the system into compliance. Long-term maintenance costs are not eligible for reimbursement under the grant program.

Municipal involvement is fundamental to the program. In order to be eligible for a grant, the municipality in which the orphan stormwater system is located must agree to be either a sole permittee or a co-permittee with the homeowners' association. The municipality must be willing to take full responsibility for the stormwater system, which includes maintaining, inspecting, repairing, as well as acquiring all necessary easements and access agreements. If the municipality is a co-permittee, it can negotiate side agreements with the subdivision residents for funding and performing future maintenance.

Many of the stormwater permits tied to residential subdivisions between 1978 and 2000 were issued to the original developer and have long since expired. Often, the permits were never transferred to individual homeowners or homeowners' associations. A number of the stormwater systems associated with these expired permits need maintenance repairs and upgrades in order to be eligible for permit renewal under current stormwater regulations. Homeowners in subdivisions with expired stormwater permits recently received notice by mail of the Orphan Stormwater Systems Program, and were encouraged to contact their municipal officials about participating. According to the 1998 Bianchi Law, an expired stormwater permit creates an encumbrance on property title, thus affecting the marketability of the property.

Grant applications will be accepted for six months beginning June 31, 2006. All applications for financial assistance must be postmarked by December 31, 2006. The application requires that the municipality provide information about the stormwater system, a description of any necessary repairs, and the amount of funding requested. Within two years of the grant award, the town must submit a complete application for coverage under General Permit 3-9010, "Previously Permitted Stormwater Discharges to Waters that are Not Principally Impaired by Collected Stormwater Runoff." The General Permit requires that a consultant certify that the stormwater system is in compliance with the original expired permit conditions.

For more information, contact Jim Pease at 802/241-2683 or Sarah Sanders at 802/241-4584 with the VT DEC Stormwater Section. The Orphan Stormwater Web page is: http://www.anr.state.vt.us/dec/waterq/stormwater/htm/sw_orphans.htm.

- Milly Archer, VLCT Water Quality Coordinator

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Questions asked by VLCT members and answered by the League's legal and research staff

Ask The League

Signed Orders; Disconnecting Water Service

If the selectboard meets every two weeks and paychecks are issued on a weekly basis, can the town treasurer disburse funds without selectboard authorization?

No. A town treasurer has no independent authority to pay bills without first receiving a signed order from the selectboard. Nor may the selectboard grant conditional approval to the treasurer to make certain payments, such as payroll, prior to an order being issued. Vermont law clearly states that the "treasurer shall pay orders drawn on him by officials authorized by law to draw such orders." 24 V.S.A. § 1576.

Generally speaking, an order must be approved by a majority of the total number of the selectboard. However, the Legislature has created a statutory fix to this administrative problem by allowing the selectboard to "authorize one or more of its members to examine and allow claims against the town" so long as the full board is "provided with a record of orders drawn" whenever orders are signed by less than a majority of the board. 24 V.S.A § 1623(1). Note that the initial act of delegating authority to one or more members is an act of the board. Practically speaking, the selectboard should choose a member(s) whose flexibility of schedule allows him or her to perform this duty.

As an alternative, the selectboard may submit a certified copy of its minutes to the treasurer (signed by either a majority of the board or its chair and clerk) showing to whom and for what purpose each payment is to be made. This too shall serve as full authority for the treasurer to make approved payments. 24 V.S.A. § 1623(2). Some municipalities have inquired whether this authority allows selectboards to approve payroll orders after payroll checks have been dispersed and reflect this approval in the minutes. We believe orders must be signed prior to dispersing any checks.

- Garrett Baxter, Senior Associate, VLCT Municipal Assistance Center

May towns enter private property to disconnect water service?

Yes, although in most towns this is not an issue because shut-off-valves are typically located within the town highway right-of-way. In those few towns where these valves are located on private property, the question is whether towns would be committing trespass when put on notice (via communication in person or by letter, telephone, etc. or by a sign or placard reading "No Trespassing") that entry is not allowed. In Vermont, unlawful trespass occurs when "without *legal authority* or the consent of the person in lawful possession, he enters or remains on any land or in any place as to which notice against trespass is given . . . " 13 V.S.A. § 3705. (Emphasis added.) This statute however must be read in conjunction with Vermont's Uniform Water and Sewer Disconnect law which authorizes water service to be

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"disconnected or interrupted *at the* premises of the ratepayer, which shall include disconnection or interruption *at or near* the premises of the ratepayer . . . " 24 V.S.A. § 5145(b). (Emphasis added.) Assuming proper notice has been provided (see uniform notice form in 24 V.S.A. § 5144), a bill or charge in excess of $15.00 is delinquent, and disconnection occurs during the statutorily prescribed hours of 8:00 a.m. and 2:00 p.m., towns may enter private property to disconnect service. Since towns have the legal authority to enter private property for the purpose of disconnecting water service, no trespass would occur.

On a related matter, entry upon private property for the purpose of disconnecting water service also raises the question of whether such an act is tantamount to an illegal search in violation of the Fourth Amendment to the United States Constitution. (See also the Legal and Regulatory Notes column in this issue for more discussion of the Fourth Amendment.) This Amendment secures the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures…"

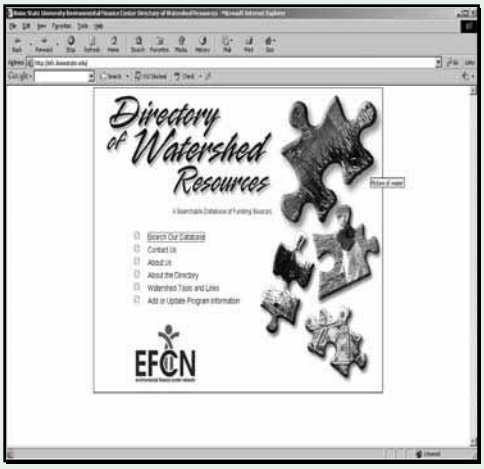
While yet to be addressed by the Vermont Supreme Court, this issue was resolved by the United States District Court for the District of Montana. In the case of *Frates v. City of Great Falls*, 568 F.Supp. 1330 (1983), employees of the City of Great Falls water department entered an unfenced portion of private property, where the water service valve was located, to disconnect water service due to delinquent payment. The Court held that such entry did not constitute an illegal search because: (1) The conduct was not directed at bringing criminal proceedings against the plaintiff and therefore did not constitute a "search" within the scope of the Fourth Amendment; and (2) The conduct was reasonable as entry was made in an "open and unobtrusive manner" to a portion of the property easily accessible to the public. Because this case deals with the disposition of a Constitutional claim, the inconsistencies associated with interpreting state law would not confound the clear and persuasive guidance this case would provide to Vermont's courts.

- Garrett Baxter, Senior Associate, VLCT Municipal Assistance Center

Directory of Watershed Resources

The New England Environmental Finance Center (NEEFC) offers an on-line *Directory of Watershed Resources*. The *Directory* is a free, searchable database of environmental funding programs and other support. Funding sources include the federal and state government, private foundations, corporations, and other organizations. To view the *Directory*, visit http://efc.boisestate.edu/.

*(From **The Local Landscape**, the newsletter of the federal Environmental Protection Agency's New England office.)*



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sentiments shared by many Americans. The Fourth Amendment of the United States Constitution recognizes the value our society places on this right to exclude. Principally, it protects people from unreasonable searches of their homes and other property. While this protection is great, it is not absolute; law enforcement officers may enter private property, so long as the entry is reasonable. In *Brigham City, Utah v. Stuart*, 547 U.S. __ _ (2006), the U.S. Supreme Court revisited the limits the Fourth Amendment places on warrantless entries by police officers into private residents.

What constitutes a "reasonable" entry has caused much debate. For law enforcement officers, the results of this debate have real world consequences, in that an entry must be considered reasonable for evidence to be admissible at trial. If a court finds an entry is unreasonable, evidence may be suppressed at trial.

When police officers observe ongoing violence occurring within a private residence, they can rest assured that it is constitutional for them to enter the home to help victims and restore peace.

In prior Fourth Amendment cases, the Court has held that a warrantless entry onto private property is presumptively unreasonable. The linchpin of the Fourth Amendment is "reasonableness." Nevertheless, the Court has authorized warrantless entries in several situations. For example, an officer may enter private property without a warrant to fight a fire, to prevent the imminent destruction of evidence, or to chase a fleeing suspect so long as the officer is in "hot pursuit."

Another situation where a warrantless entry may be deemed "reasonable" is where an officer enters to assist a person who is seriously injured or threatened with such injury. In the *Brigham City* case, police officers responded at 3:00 a.m. to a loud party at a private residence. After the officers heard shouting from the inside, they walked down the driveway. At the end of the driveway the officers observed two juveniles drinking beer in the backyard.

The officers entered the backyard to investigate and observed, through a screen door and windows, an altercation inside the home. According to the officers, four adults were trying to restrain a juvenile. After a few moments the juvenile broke free and punched one of the adults in the face. The victim of the blow was seen spitting blood into a sink.

Again the adults attempted to restrain the juvenile. At this time an officer opened the screen door and announced their presence. Amidst the ongoing melee nobody seemed to notice the presence of the officers. An officer then entered the home and again voiced the officers' presence. As the occupants became aware of the police presence at the scene, the altercation ceased. The defendants in this case, the adults, were arrested and charged with contributing to the delinquency of a minor, disorderly conduct, and intoxication.

The Court was faced with defining "reasonable" in the context of a warrantless entry. The defendants argued that courts should take a subjective view of "reasonableness" and consider the officers' intent in entering a home. The Court rejected this approach, instead adopting an objective approach. Under the Court's approach, "reasonableness" is determined by asking whether an officer had an "objectively reasonable basis" for believing that an injured victim may need help or that violence is ongoing. Under this approach, the intent of the officers entering the home is irrelevant. Courts may only consider whether the officers had an "objectively reasonable basis" for entering.

The Court found that an "objectively reasonable basis" existed in *Brigham City* and that the officers' warrantless entry was constitutional. Important to the Court's decision was the fact that the officers were responding in the early morning hours to a complaint, and that they *observed* an ongoing, violent fracas that had already resulted in one injury.

The Court's opinion reinforces the police officer's role as peace officer and recognized the need for officers to freely respond to violence, assist the injured, and restore order. When police officers *observe* ongoing violence occurring within a private residence, they can rest assured that it is constitutional for them to enter the home to help victims and restore peace.

- Ben Rau, Intern, VLCT Municipal Assistance Center

Tax Incentives Survive U.S. Supreme Court Review

Attracting new businesses to Vermont is an important goal to many in the state. Businesses choose to locate in Vermont for a variety of reasons. Some pick the state for its natural beauty and some because of its well-educated work force. Sometimes, however, more incentives are needed to attract businesses, especially when one considers that nearly every other state provides some sort of tax incentive to attract new businesses to their states. In 1998, the Vermont Legislature responded to calls from tax-incentive proponents by creating the Economic Advancement Tax Incentive Program (EATI). The program provides tax incentives to businesses that locate or expand their operations in Vermont. Additionally, many municipalities enter into tax stabilization agreements or provide other incentives to encourage businesses to locate and remain in their communities.

This month, the Supreme Court decided a case involving an Ohio tax incentive that is strikingly similar to the tax incentives found in Vermont's EATI program. In the case, *Daimlerchrysler Corp. v. Cuno*, the Court reviewed an Ohio tax credit that benefited manufacturers that located and/or installed new equipment at locations in Ohio communities. Several taxpayers challenged the tax credits under the Commerce Clause of the United States Constitution. The taxpayers claimed that the tax credits violated the Commerce Clause by providing an unfair advantage to companies that locate in Ohio and by encouraging companies to move from other states to Ohio. The Sixth Circuit agreed with the taxpayers and found the tax credits to be unconstitutional.

On appeal, the U.S. Supreme Court avoided the issue by ruling on procedural grounds. The Court held that the taxpayers did not have standing to sue Ohio under the Commerce Clause. Had the Supreme Court affirmed the lower court's decision, the tax incentive programs in many states, including Vermont, would have been called into question.

Standing is a requirement imposed on those who wish to gain access to courts. Courts require standing in an attempt to refine who has an interest in a case. Essentially, the court is deciding if someone is the

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proper person to bring a matter in front of the court. While the requirement for standing to sue in federal court cannot be found explicitly in the text of the Constitution, the Court has ruled that standing is implicitly required based on the constitutional limitation on the federal judiciary to only hear "cases" and "controversies." The Court requires a potential plaintiff to demonstrate three elements in order to establish standing in a federal court: (1) the plaintiff must allege a personal injury; (2) the injury is fairly traceable to the defendant's conduct; and (3) that a favorable court decision is likely to redress the injury.

While the issue of standing may seem complicated and the reasons for having the requirement obscure, a simple example may serve to illustrate the policy behind the rule. Suppose a Vermont landowner negligently spills a toxic substance onto a neighbor's land, making it uninhabitable. A third landowner lives in California. If one would have to choose between the Vermont landowner and the California landowner, most would logically say it is the second Vermont landowner who should be allowed to sue the negligent Vermont landowner. The Vermont landowner has a greater stake in the outcome of the case and incurred an injury that is traceable to the defendant landowner's act. This requirement of standing is based on the logical choice between who should be able to sue and who should not.

In the *Daimlerchrysler* case the taxpayers attempted to establish standing by arguing that tax credits drained revenue from the state, which led to the taxpayers bearing a disproportionate tax burden. The Court rejected this argument. Instead, they found that the taxpayers' supposed injuries were too speculative. First, the program may not result in a net loss of tax dollars as the taxpayers claimed. The goal of the program was to increase tax dollars by stimulating growth, and even if there was a decrease in revenue, there was no evidence that the taxpayers paid more or less money into the state coffers because of the tax credit. Since the taxpayers did not establish a discrete injury that was traceable to the defendant's action, they did not have standing to sue.

The practical effect of the decision is to limit the ability of people to challenge tax incentives on Commerce Clause grounds. The only people who may be able to establish standing in federal court, in order to challenge these incentives, are the people least likely to do so: the businesses who benefit from the tax incentives and other states which likely have similar programs.

The opinion essentially leaves two options for taxpayers dissatisfied with state or local governments giving tax breaks to business. A taxpayer can try to challenge the tax incentives in state courts or use the political process to spur legislative changes. For now, the Vermont Economic Advancement Tax Incentive Program is safe from constitutional challenges.

Municipal governments should note one final distinction. The tax credit in the *Daimlerchrysler* case was a *state* tax incentive. Even though the municipal government in Ohio could also assign tax credits to businesses, both the state and local tax credits derived from the same state tax law. The case also included a municipal property tax exemption separate from the state tax incentive program. The Sixth Circuit ruled that the property tax exemption was constitutional and the Supreme Court declined to hear that portion of the case. This distinction is of some significance. The federal courts treat the standing issue differently, depending on the level of government involved. Under the "municipal taxpayer standing" rule, federal courts have been more likely to find a taxpayer established standing when suing a municipality concerning a strictly municipal tax. The courts recognize that taxpayers have a more direct stake in how their local tax dollars are collected and spent.

Under the "municipal taxpayer standing" rule, the taxpayers would likely have been able to establish standing to sue the municipality concerning the municipal property tax exemption. While this does not mean that local tax exemptions, which benefit businesses, will be found unconstitutional (in fact the Sixth Circuit actually upheld the local property tax exemption), municipalities should note the increased scrutiny that may be given to the tax exemptions that they provide.

- Ben Rau, Intern, VLCT Municipal Assistance Center

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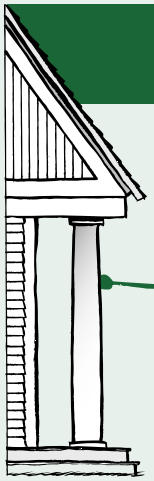

CUTS

(COMMUNICATIONS UNDER TEN SENTENCES)

HEALTH TRUST CHANGES LIFE AND DISABILITY CARRIER

The Board of Directors of the VLCT Health Trust voted last month to change the carrier of its life and disability insurance program from The Standard Insurance Company to UNUMProvident.

In a memorandum sent to all program participants on May 19, VLCT Member Relations Manager Larry Smith noted that the change was due to several service and cost-related issues. The new partnership with UNUMProvident promises, Smith said, "to provide both better service and rate guarantees for all of our participating members."

Specifically, members will benefit from:

- a three-year rate guarantee for life, accidental death and dismemberment, and long-term disability;
- a two-year rate guarantee for short-term disability;
- new and/or improved benefits;
- faster turnaround on policies and certificates; and
- two dedicated UNUMProvident account representatives.

The Health Trust intends to have the changeover to UNUMProvident completed by July 1, 2006. Small Group Trust participants will notice that their bills will now come directly from UNUMProvident, as the Health Trust will no longer be sending the bills. Initial UNUMProvident bills will go out in August for billing of the July and August premiums. Large group participants should disregard any July 2006 bills from The Standard Insurance Company, and wait for the initial bill from UNUMProvident.

Please feel free to call VLCT Member Relations staff members at 800/649-7915 if you have any questions about the switch to UNUMProvident.

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In Vermont, call 9-1-1 to save a life, stop a crime or report a fire; call 2-1-1 for community information and referral.

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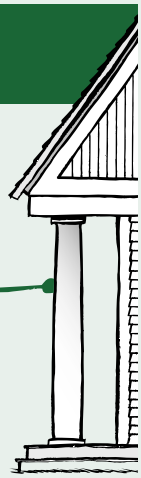

VLCT Health Trust Service Spotlight

Mail Order Prescription Drug Service

Are your employees taking advantage of the savings offered through the VLCT-sponsored mail order prescription drug program, offered through Immediate Pharmaceutical Services, Inc. (IPS)? If an employee is on a maintenance or frequently prescribed medication, he or she can save one co-payment by using this service for a 90-day supply. A doctor's prescription, patient profile, completed order form, and payment (equivalent to two co-pay amounts) are all that are required before the drugs can be delivered directly to the employee via mail.

Here are a few Q&As to help you better understand the program.

Q. How can my employees start using IPS?

A. Employees should obtain a prescription from their doctor for a 90-day supply of medication, including refills. They should be sure to ask if a generic equivalent is available to get the lowest possible price. Order forms and patient profiles should be completed and mailed to IPS, along with an amount equivalent to two co-payments.

Q. Can employees participate if our group is enrolled under a coinsurance rather than a co-payment prescription drug program?

A. Yes, employees should include the equivalent of two co-payments for a generic, or two coinsurance payments if the drug is a preferred or non-preferred brand.

Q. How and when should refills be ordered?

A. Employees should complete the reorder form and return to IPS, call IPS toll-free at 800/233-3872 or reorder on-line at www.ipsrx.com. Refills should be ordered approximately two weeks prior to the time the medication is due to run out.

Q. Where can we obtain order forms and patient profiles?

A. Contact Blue Cross and Blue Shield customer service at 800/247-2583. Forms may also be obtained from the VLCT Member Relations department at 800/649-7915.

Mail order savings may also be available through participating retail pharmacies. Please check with pharmacists to see if they might match the 90-day savings offered through Blue Cross.

If you have any questions regarding the mail order program, or your prescription drug benefit in general, please feel free to contact the Member Relations staff at VLCT and they will be pleased to assist you.

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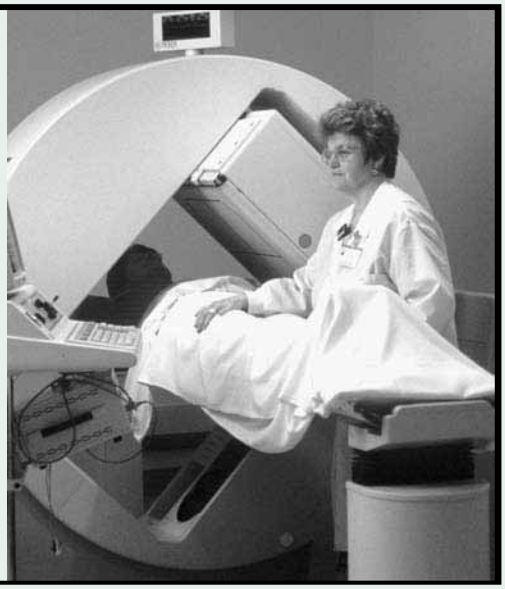

VLCT Staff News and Notes

Comings

VLCT recently welcomed new staff member **Susan Dubie**.

Susan, who came to VLCT from the Chittenden Insurance Group, is the new Underwriter for VLCT Group Services. She formerly served as Chittenden's Agency Marketing Coordinator, where she was responsible for servicing commercial accounts, marketing to prospective new accounts, and directing several special automation and management projects.

Prior to her ten years with the Chittenden Insurance Group, Susan was a Commercial Lines Account Representative for Smith, Bell and Thompson, Inc. and for T.S. Peck Insurance. Susan has experience as an Underwriter and Personal Lines Customer Service Representative, and also has professional designations as a Chartered Property Casualty Underwriter, an Associate in Risk Management, and a Certified Professional Insurance Woman.

Susan Dubie

Susan lives with her family in South Hero.

Welcome, Susan!

Also new to VLCT is Municipal Assistance Center summer intern **Ben Rau**. Ben just finished his second year at the Vermont Law School, where he is pursuing a J.D. and an M.S. in environmental law. Ben is from Wisconsin (that other dairy state) and has already settled into work, as is evident by his contributions this month to the Legal and Regulatory Notes column.

Welcome, Ben!

Goings

VLCT bid goodbye last month to **Pauline Singley**, who resigned as Manager, Safety and Health Promotion. Though she was only with us for a short time, Pauline was a cheerful and ever-helpful member of the VLCT staff. We wish her well.

Elevations

Tina Feeney, who has worked for VLCT's Underwriting and Member Relations departments over the last two years, was recently promoted to the new position of Underwriting Manager. Congratulations, Tina!

Legislative Lite -

(Continued from Page Two)

When the General Assembly enacts legislation that ratifies a survey of a municipal line, it may provide funds to mark the line with a monument at points where it changes direction. Any additional placing of monuments is at the town's expense.

The Secretary of State and Agency of Transportation are directed to develop a process for requesting proposals for surveying for use by municipalities.

Mediation Standards

A second bill that passed, H.33 (Act No. 126), establishes a uniform mediation act. The act applies to mediations in which parties are required to mediate by statute or court or administrative agency. The mediation is expected to be confidential, but will not apply to collective bargaining or if a judge who may rule on the case is conducting the mediation. Act 126 defines terms regularly used in mediation and establishes the parameters for mediation communications being privileged (confidential) and when that privilege may be waived or does not apply.

Both Act 102 and Act 126 take effect on July 1, 2006.

- Karen Horn, Director, VLCT Public Policy and Advocacy Services

Trivia

Congratulations this month to **Dawn Dyer**, Lyndonville Electric Department, and **Linda C. Lee**, Town of Lyndon Assistant Town Clerk, who correctly, and quickly, answered our June Trivia question. They knew that the Eastern mountain lion, the lynx, the marten, and the Indiana bat are the four mammals protected by Vermont's endangered species law. And that is even with our egregious typo, in which we referred to the law as the endangered special law. Our apologies!

Here is an appropriate one for the early summer season:

What is a staddle? And, for extra credit, what is switchel?

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.

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Tech Check

Using Hyperlinks for Your Procedures Manuals

I received a pesky recommendation in a few of my audits last year. Our auditors wanted us to provide a documented procedures manual for the finance department. Sound familiar?

Theoretically, this is a great idea and does indeed provide new staff with everything they need to get up and running after they are hired. The hitch, however, is that you have to keep the darned thing updated. If you are producing a hard copy of the manual, this may mean repaginating and reformatting the entire manual each time changes are made. My solution to this dilemma was to create a folder on the network to house the various written procedures that we have here in the VLCT finance department, and create a table of contents in Word that links to those documents, which are all Word documents as well.

It's a fairly easy process and it has a couple of advantages over maintaining the old binder copy: updates won't require reprints because it's paperless; and all documents are available to everyone who has access to the network folder. Staff can print copies of the specific procedures they need and keep their own bound versions, or they can print specific pages as they need them. You can also password-protect the documents to be sure nothing is edited without your knowledge.

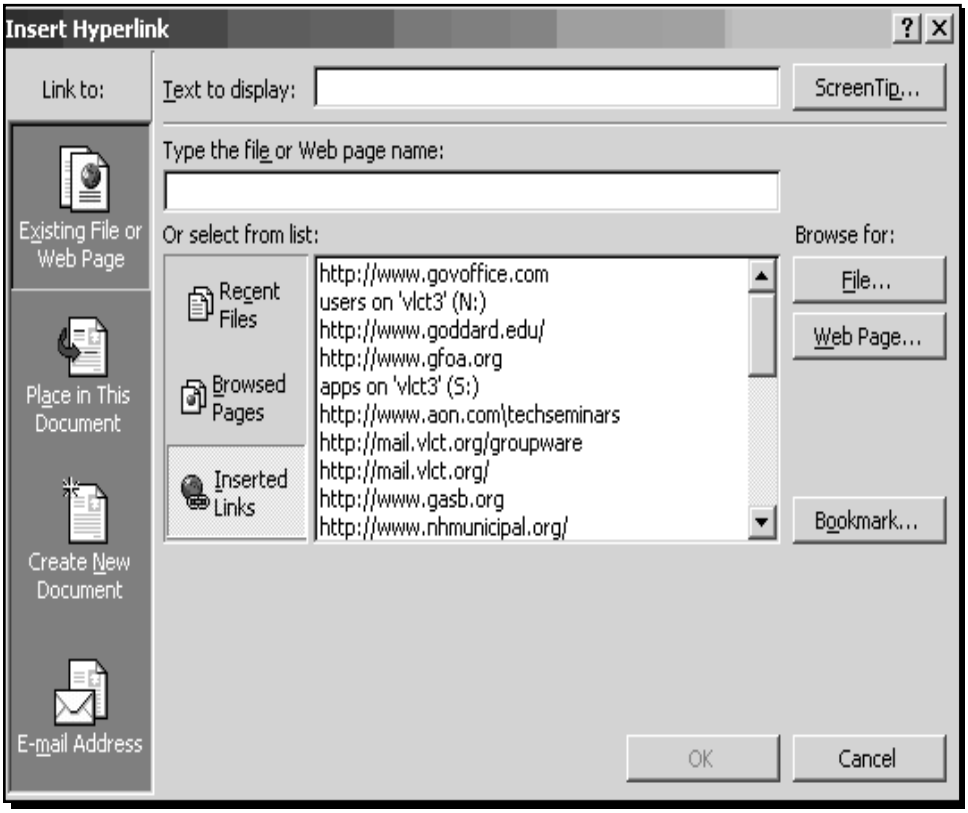
To create a hyperlink, simply click on **Insert** in the main menu, then **Hyperlink**. Or you can click on the icon for inserting a hyperlink from your standard toolbar (ctrl +k also works).

At the next dialogue box, click on File, and browse for the file you wish to link to. Click on it and you have the hyperlink!

When you need to look up a procedure, just scroll through the table of contents page until you find the procedure you want and click on the hyperlink. This takes you directly to the document that outlines the procedure. You might also set up the linking page in an index style, with procedures sorted in alphabetical order.

The following is a sample from the table of contents page that VLCT uses:

1. Finance Procedures
   - 1.1. Banking and Investments
     - 1.1.1. Banking Process
     - 1.1.2. Bank Statement Reconciliation
     - 1.1.3. Cash Flow Management
       - 1.1.3.1. Bank Transfers
       - 1.1.3.2. e-Banking Policy
   - 1.2. Collections
     - 1.2.1. Cash Collections Process
       - 1.2.1.1. Receipts Confirmation Form
       - 1.2.1.2. Bank Account Information
     - 1.2.2. Entering Receipts into Dynamics
   - 1.3. General Ledger
     - 1.3.1. Adjusting Journal Entries Process
       - 1.3.1.1. Creating Batches
       - 1.3.1.2. Entering General Journal Adjustments
       - 1.3.1.3. Posting a Series Batch
       - 1.3.1.4. Authorization Policy
     - 1.3.2. Review and Reconcile Trial Balance Monthly
     - 1.3.3. Create Reports



If you have any questions about this process, please contact me at mgilbar@vlct.org.

- Michael Gilbar, VLCT Chief Financial Officer

Ancient Roads -

(Continued from Page One)

a public discontinuance process, or to let them fade into obscurity and discontinuance on their own in nine years.

The focus of much of the mapping and research efforts towns will undertake is on those rights-of-way that are not easily seen. In fact, the bill attempts to define these roads as entities "not otherwise clearly observable by physical evidence of their use as a highway or trail." There is still some question as to who will define what is "clearly observable" and what is not. For example, a surveyor may enter an area and see signs that clearly indicate to him or her that a road runs through it, whereas an average citizen may not see any evidence of that road at all.

Municipalities will be given until July 1, 2009 to add any of those Class 4 highways described above to their town highway map, which they file annually on February 10 with the Vermont Agency of Transportation (VTrans). The highway map is submitted, along with a sworn certificate, to certify the amount of Class 1, 2, and 3 highway mileage in a town. VTrans uses those mileage numbers to determine what the municipality receives for state highway grant aid, as well as what changes need to be made to the town highway map. There has never been a financial incentive for municipalities to add Class 4 roads or trails to the sworn certificate or map because neither figures into the grant aid calculations. Some cities and towns, however, do submit that information to VTrans anyway.

In order to add unobservable highways to the sworn certificate and highway map, the municipality needs to follow the same process it does when filing its information with VTrans for the other classifications of road. The request to change the mileage recorded requires the selectboard to include additional information for the highways it wishes to add, such as:

- a description of the highway or trail;
- a copy of any surveys of the highway or trail;
- minutes from the meeting where the legislative body decided to make the mileage changes and add the highway or trail; and
- a current highway map with the changes (additions or deletions) sketched on it.

More detailed guidance on what the VTrans Mapping and GIS Unit will need from cities and towns in order to do its job is expected later this year.

Municipalities are required, before adding any Class 4 highways to the highway map that "are not otherwise clearly observable by physical evidence of their use," to notify property owners whose parcels the highway passes through or abuts of any proposed changes. This must happen at least 45 days before a duly warned public hearing is held to discuss and act on those changes.

After the July 1, 2009 deadline passes, those Class 4 highways that are not observable by physical evidence of their use become "unidentified corridors." The municipality has no responsibility to maintain an unidentified corridor, nor is it considered to create a subdivision (for zoning, tax, or septic purposes). Like a Class 4 highway, the unidentified corridor remains open and accessible to the public, however, it must be used in a manner consistent with its use in the 10-year period before January 1, 2006. Who determines what uses are consistent with those of the past decade is not clear.

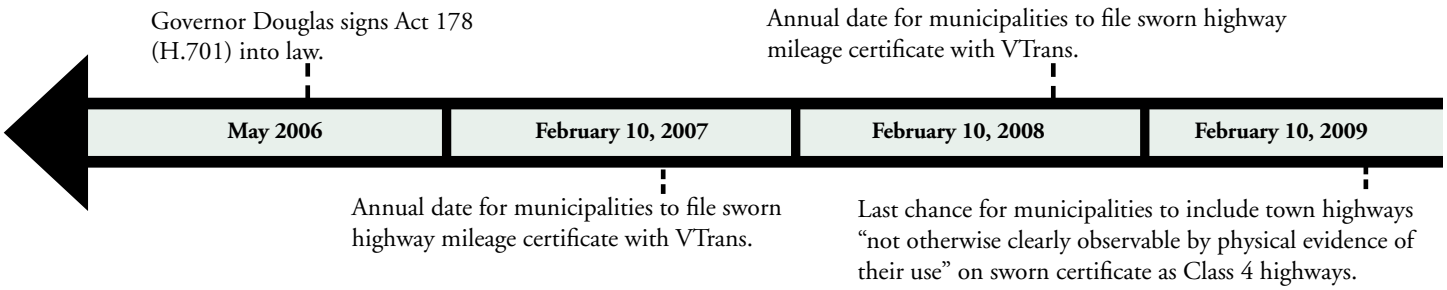
On July 1, 2015, unidentified corridors are automatically discontinued, and the land reverts back to the owner(s) of land the highway passed through or abutted. A town can reclassify an unidentified corridor as a Class 4 highway or a trail in that period between 2009 and 2015, but it must follow the process established in statute (19 V.S.A. § 7) for the laying out of highways or trails – a process which may also include compensation to an affected landowner.

The Act also states that by July 1, 2015 all sworn statements and highway maps filed with the VTrans include all Class 4 town highways and trails.

There is some funding made available to towns by Act 178, with at least $100,000 in grants offered annually through 2012. The grants will be administered by the Department of Housing and Community Affairs (DHCA) through the municipal and regional planning fund and will be made available for researching and mapping the unobservable highways a town wishes to keep. The forms, maximum grant amount, and

(Continued on next page)

Ancient Roads Implementation



Ancient Roads -

(Continued from previous page)

timeline for applying for a grant are in the process of being finalized.

The Act includes a provision that allows cities and towns that are happy with their highway maps and sworn certificates a chance to discontinue all other highways not appearing on either. The mass discontinuance provision allows a town to discontinue all highways not on the sworn statement, provided they follow a process that includes a public hearing. The process allows voters and landowners to save a highway from discontinuance or to request that the selectboard designate a highway (or portions of it) as a trail. The voters or landowners must present the selectboard with a petition that includes signatures from five percent of the registered voters in the town.

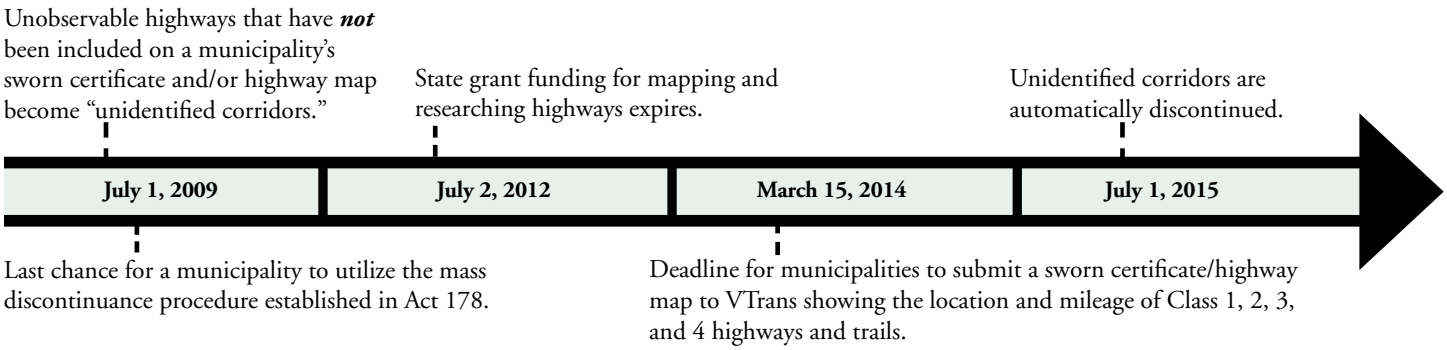
The selectboard must post a notice of the mass discontinuance hearing at least 30 days prior to the hearing, and include a copy of the town highway map indicating which highways will remain on it. The chairs of the local planning and conservation commissions must receive the notice and map, which must also be sent to the regional planning commission, the commissioner of the Department of Forest, Parks, and Recreation, and the selectboards of abutting municipalities as well.

Voters may also overturn a discontinuance decision made by the selectboard as long as a petition (again with signatures from five percent of the registered voters) is filed with the board within the 44-day window to do so. The petition would require a special meeting to be held in which a majority of voters can reverse the decision to discontinue a highway.

The earlier municipalities begin their work on researching and mapping unobservable highways, the easier it will be to navigate the process and ensure that public resources local officials and residents wish to keep are not inadvertently lost.

VLCT is working with VTrans, DHCA, and representatives of the Vermont Planners Association and the regional planning commissions to make sure the implementation of Act 178 goes as smoothly as possible for all municipalities.

- Trevor Lashua, Associate, Legislative and Information Services



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Vermont League of Cities & Towns

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- Zoning Bylaws
- Municipal Charter Amendments
- Highway Ordinances

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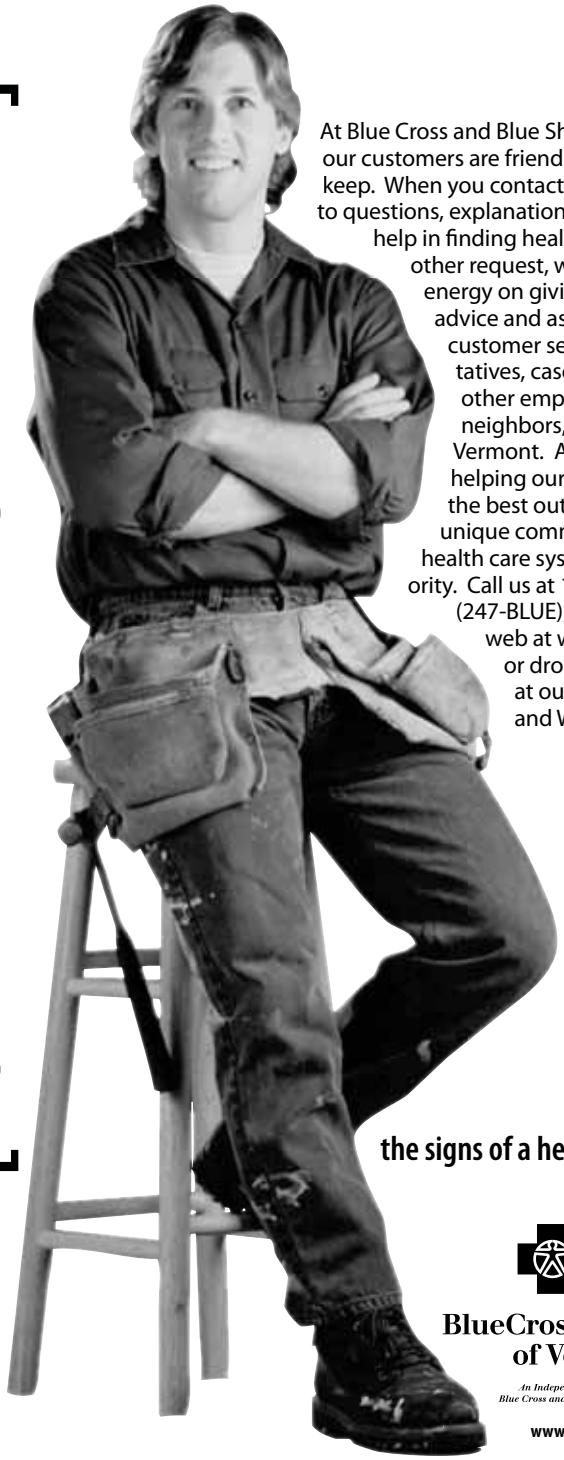

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Finance Task Force -

(Continued from Page One)

- **Jim Barlow**, Staff Attorney, Municipal Assistance Center
- **Dominic Cloud**, Director, Municipal Assistance Center
- **Michael Gilbar**, Chief Financial Officer
- **Steven Jeffrey**, Executive Director

The following organizations have also been asked to appoint representatives to the Task Force:

- Vermont Municipal Clerks and Treasurers Association
- Vermont Government Finance Officers Association
- Vermont Town and City Management Association
- State Auditor's Office
- State Treasurer's Office

Membership of the Task Force will be finalized this month, with meetings to follow over the summer and fall. It is hoped that Task Force recommendations will form the basis of legislative proposals, as well as provide direction for the VLCT Municipal Assistance Center, state agencies, and private sector firms as they develop training and products for local officials that will help them to manage the public's money as effectively as possible.

For more information about the Task Force, please contact Steven Jeffrey, VLCT Executive Director, tel., 800/649-7915, or e-mail, sjeffrey@vlct.org.

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Classifieds -

(Continued from Page Nineteen)

and a minimum of 5 years of experience. Hourly rate dependent on experience. To download an employment application, go to www.northherovt.com/forms.htm, or pick one up at the North Hero Town Office, 2681 US Route 2. To apply, mail application and resume to Town of North Hero, P.O. Box 38, North Hero, VT 05474, or e-mail Townclerk@northherovt.com, Attn. Terry Schaefer, Co-Chair, North Hero Water Board. (5-31)

Solid Waste Manager. The City of Lebanon, NH, seeks an experienced professional for the position of Solid Waste Manager. The Solid Waste Manager is a key member of the Department of Public Works and is a management level professional position that is responsible for planning, coordinating and supervising the activities for the operations of the Public Works Department's Solid Waste facility and associated recycling management. Work involves providing overall leadership for the Solid Waste Group; scheduling daily operations activities and maintenance projects; planning and coordinating work assignments; scheduling crews, materials and equipment; and supervising and inspecting work. Requirements: Bachelor's Degree in Conservation, Environmental Engineering, Civil Engineering, Business or Public Administration or related field; 5-7 years prior experience in solid waste management, construction and maintenance methods, 5 years of which involved solid waste management supervisory experience; and possession of or the ability to obtain a Class C Motor Vehicle Operators License, and State of New Hampshire Solid Waste Operators Certification, Level Four. Salary Range: $47,313 to $63,888, commensurate with experience. Competitive benefits package. Send cover letter and resume to: Michael S. Lavalla, Director of Public Works, City of Lebanon, 20 Spencer Street, Lebanon, NH 03766. A complete position description is available at www.lebcity.com. **Position open until suitable applicants are chosen**. Equal Employment Opportunity M/F/H. (5-25)

Town Administrator. The Town of Waitsfield, Vt. (pop. 1,649) is seeking an Administrator to oversee general municipal services including budgeting, grants administration, facilities management, personnel matters, coordination of legal issues, risk management, purchasing, and development of municipal water and wastewater infrastructure. The position supports a five-member selectboard. Knowledge of and experience with road construction, planning and zoning, and general accounting is preferred. Candidates should possess a demonstrated ability to effectively manage personnel and coordinate efforts of various volunteer public officials and paid staff. Position requires excellent written and verbal communication skills. Qualifications: Bachelor's degree in public administration or three years experience in public administration or business management. Competitive salary and benefit package. Position open in late June. Apply with cover letter, resume and three current letters of recommendation to: Waitsfield Selectboard, 9 Bridge Street, Waitsfield, VT 05673. **Applications accepted until position is filled**. (5-23)

Office Equipment Needed: Typewriter. Preferably a Nakajima AE-710. Other manufacturers will be considered. Please contact Barbara Young, St. George Town Clerk-Treasurer, at 802/482-5272. (6-13)

Forum on Sprawl Announces Awards Program

The Vermont Forum on Sprawl recently announced that it is accepting nominations for its first annual Smart Growth Awards and Arthur Gibb Award.

The Smart Growth Awards will showcase projects that are built or approved, as well as municipal planning initiatives, that embrace smart growth principles. The Arthur Gibb Award will honor an individual whose leadership has brought about a positive and lasting change in the way his or her community or the state integrates growth and conservation.

The deadline for the awards nominations is July 15, 2006. For more information, visit www.vtsprawl.org or contact Brian Shupe, Vermont Forum on Sprawl Program Director, at 802/864-6310 or bshupe@vtsprawl.org.

Vermont Communities Named Tree City USAs

Seven Vermont towns were recently designated 2006 Tree City USAs by the National Arbor Day Foundation, in cooperation with the U.S. Forest Service and the National Association of State Foresters. The recognized communities were Brattleboro, Burlington, Hartford, Montpelier, Grand Isle, Rutland, and St Johnsbury.

The program lays out four standards that provide both a starting point for the creation of a community tree program and a framework for its continuous, systemic operation. The four standards that must be met in order to be named a Tree City USA are:

(1) Someone in charge of the resource;

(2) A tree care ordinance in place;

(3) A community forestry program with an annual budget of at least $2 per capita; and

(4) Arbor Day must be proclaimed and celebrated.

The program was designed so that communities of any size who actively manage their public tree resource can participate. For more information about becoming a Tree City USA contact Kate Forrer, Community Involvement Coordinator, Vermont Urban and Community Forestry Program, at 802/223-2389 ext 25.

Classifieds

Please visit the VLCT Web site to view more classified ads: www.vlct.org/classifieds.cfm. You may also submit your ad via an e-mail link on this page of the site.

Help Wanted

Underwriting Assistant. Due to a promotion, VLCT seeks an Underwriting Assistant within its self-insured municipal property, casualty and workers' compensation insurance fund. This is an entry-level administrative assistant position encompassing an array of technical and administrative support duties. We seek an organized and efficient team player who also works well independently to successfully meet deadlines. The successful candidate will have excellent written, face-to-face and telephone communication skills along with computer literacy, a customer service orientation, and the ability to develop and implement efficient and effective procedures. A high school degree and administrative support training or experience is necessary. Recent college graduates will be considered. Knowledge of insurance or local government is helpful but not required. Interested candidates should e-mail cover letter, resume and names/phone numbers of three references (with Underwriting Asst as subject line) to jobsearch@vlct.org. **Applications to be reviewed immediately and accepted until filled**. (6-16)

Public Works. The Hartford, Vt. Public Works Department has the following openings:

Wastewater Chief Plant Operator II. Applicants must possess a broad base of technical knowledge and skills in all facets of STP operations, be familiar with all applicable regulatory processes and requirements, possess excellent mechanical skills, have a good understanding of basic chemistry relevant to sewage treatment operations, and must have excellent planning, administrative and supervisory skills. Applicant must possess, at a minimum, a Grade 3 treatment license with the ability to obtain a Grade 4. Must have good reading, writing, and math skills with experience using written technical manuals and blueprints.

Equipment Operator I. Applicants must be skilled in driving trucks and operating light to heavy equipment. Applicants must be able to obtain a CDL license with a tank endorsement, will be required to perform manual labor and be available for flexible hours.

Water Operator I. Applicants must possess good basic mechanical skills, have a basic knowledge of water distribution system piping and pumps, possess a valid driver's license and be able to use a variety of hand tools.

Excellent employee benefits; salary commensurate with experience. Complete job descriptions and applications for these full-time, union positions are available in the Public Works Department. To apply, mail cover letter and resume to the Public Works Department, 173 Airport Road, White River Junction, VT 05001; fax, 802/295-5579, or e-mail, jponzoni@hartford-vt.org. EOE. (6-15)

Executive Director. The Rutland Redevelopment Authority (RRA) is seeking an Executive Director to lead an independent public authority dedicated to fostering economic growth in the City of Rutland, Vt. Duties include strategic planning for redevelopment initiatives; preparing budgets and maintaining financial records; building working partnerships with businesses, property owners, government officials, and economic development and housing agencies; managing press relations; and seeking and administering grants. Required skills include an understanding of the fundamentals of economic development, real estate development, public finance, grants administration and municipal planning. Recommended minimum requirements include a 4-year college degree and at least 5 years experience in economic development or a related field. Prior experience with state and federal government agencies desirable. The successful candidate will be a self-starter with a proven track record of consensus-building and strategic visioning. RRA offers a competitive salary and full benefits. Send cover letter and resume to Search Committee, Rutland Redevelopment Authority, 103 Wales Street, Rutland, VT 05701, or rrajobs@sover.net. RRA is an Equal Opportunity Employer. (6-14)

Water Department. Town of North Hero, Vt. seeks a qualified person to operate and maintain a water system with 588 existing connections, four filters and approximately 30 miles of distribution mains. Applicant must have a Vermont Class 4 Water Operators License

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VLCT NEWS Classified Advertising Policy

The ***VLCT News*** welcomes classified advertisements from municipal entities, public agencies, businesses and individuals. This service is free for VLCT members (regular, contributing and associate); the non-member rate is $37.00 per ad. Ads are generally limited to 150 words.

The ***VLCT News*** is published eleven times per year and generally reaches readers by the third week of the month. (The August/September issues are combined.) Ads are also placed on the VLCT Web site as soon as they are received.

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

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

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Calendar

For more information about the following workshops or events, please contact Jessica Hill, VLCT Conference Coordinator, tel., 800/649-7915; e-mail, jhill@vlct.org. Or visit www.vlct.org, select the Calendar, and select a workshop for more information or to register on-line. The on-line registration option is available for VLCT workshops and events only.

GIS Mini Conference. Wednesday, July 19, 2006, Cyprian Learning Center, State Office Complex, Waterbury. Sponsored by Vermont Spatial Data Partnership and Vermont Center for Geographic Information. These biannual (July and January) conferences provide an opportunity to network and learn about GIS technology and how it is being used in Vermont. Sessions of interest to municipal officials will include: ArcPublisher/ArcReader, GIS-based Asset Management Tools, Data Sources Roundtable, and Internet Mapping Application Options. Please check the VSDP Events Web page for the detailed schedule and registration form as they become available. For more information, contact Leslie Pelch at lesliep@vcgi.org or 802/882-3002 or visit www.vcgi.org/vsdp.

Green Mountain Payroll Conference. Thursday, September 21, 2006, Capitol Plaza, Montpelier. Sponsored by the Green Mountain Payroll Association. A day filled with educational sessions focusing on the payroll and human resource professions. First come, first served; registration limited to 100. Registrations received after August 9 incur an additional $10.00 fee. After the last session, a 2007 Green Mountain Payroll Association membership will be raffled. You must be present to win. For more information, contact Janis Blais at jblais@nationallife.com or 802/229-3457 or visit www.greenmountainpayroll.netfirms.com.

VLCT Town Fair. Thursday, October 5, 2006, Barre Municipal Civic Center, Barre. The staff at VLCT is working hard to finalize this year's Town Fair program. Please watch your mail or www.vlct.org for more program information.